

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

February 14, 2019

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

- *Main Meeting Site - 90 Church Street 4th Floor, Room 4A & 4B, New York City*
 - *Via Video Conference - New York State Department of Health Offices at 584 Delaware Avenue, 2nd Floor Video Conference Room, Buffalo, NY 14202*
 - *Via Video Conference - New York State Department of Health Offices at the Triangle Building, 335 East Main Street, 1st Floor Conference Room, Rochester, New York 14604*

I. INTRODUCTION OF OBSERVERS

Jo Ivey Boufford, M.D., Vice Chair

II. APPROVAL OF MINUTES

December 13, 2018 Meeting Minutes

III. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

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

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

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

C. Report of the Office of Public Health Activities

Brad Hutton, Deputy Commissioner, Office of Public Health

IV. REGULATION

Report of the Committee on Codes, Regulations and Legislation

Thomas Holt, Vice Chair of the Committee on Codes, Regulations and Legislation

For Adoption

18-12 Addition of Section 405.34 to Title 10 NYCRR (Stroke Services)

18-18 Amendment of Part 14 of Title 10 NYCRR (Food Service Establishments)

For Information

19-01 Amendment of Sections 709.14 and 405.29 of Title 10 NYCRR (Cardiac Catheterization Laboratory Centers)

18-19 Amendment of Parts 69, 400 & 405 and Addition of Part 795 to Title 10 NYCRR (Midwifery Birth Center Services)

V. HEALTH POLICY

Report on the Activities of the Health Planning Committee

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

Request for Stroke Center Designation

Applicant

Olean General Hospital

VI. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Peter Robinson, Chair of Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

NO APPLICATIONS

CATEGORY 2: Applications Recommended for Approval with the Following:

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

Acute Care Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	182128 C	NYU Langone Hospitals (New York County) Dr. Kalkut – Recusal	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

CON Applications

Certified Home Health Agency - Construction

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 182216 C	St. Joseph's Hospital Health Center CHHA (Onondaga County) Ms. Baumgartner – Opposed at EPRC	Approval

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Certified Home Health Care Agencies – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 182158 E	NYU Langone Hospitals (Nassau County) Dr. Kalkut – Recusal	Contingent Approval

2.	181331 E	Elderwood Certified Home Health Agency, LLC Ms. Baumgartner – Recusal Dr. Gutiérrez – Recusal (Erie County)	Contingent Approval
----	----------	--	---------------------

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	182125 B	Everett Road Surgery Center (Albany County) Dr. Bennett - Recusal	Contingent Approval
2.	182205 B	Wehrle Drive ASC (Erie County) Ms. Baumgartner - Interest	Contingent Approval

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	181059 E	2700 North Forest Road Operating Company, LLC d/b/a Elderwood at Getzville (Erie County) Ms. Baumgartner – Interest Dr. Gutiérrez - Recusal	Contingent Approval
2.	181390 E	Warren Center for Rehabilitation and Nursing (Warren County) Dr. Kalkut – Interest Dr. Ruge – Recusal	Approval
3.	182218 E	Westgate Operations Associates, LLC d/b/a Rochester Center For Rehabilitation and Nursing (Monroe County) Dr. Kalkut - Interest	Contingent Approval

Certificate of Dissolution

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
Community Care Organization, Inc. Dr. Kalkut - Recusal	Approval

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

CON Applications

Certified Home Health Care Agencies – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	182220 E	Good Samaritan Hospital Home Care Department (Rockland County)	Contingent Approval

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	182214 E	Buffalo Surgery Center, LLC (Erie County)	Contingent Approval

Certificates

Certificate of Dissolution

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
The Foundation of New York-Presbyterian/Lawrence Hospital	Approval
The Foundation of New York-Presbyterian/Queens	Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	182183 E	Endoscopy Center of Niagara, LLC (Niagara County) Ms. Baumgartner - Recusal Dr. Berliner – Opposed at EPRC	Approval

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

HOME HEALTH AGENCY LICENSURES

Changes in Ownership

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	182015 E	Lincare of New York, Inc. (Albany County)	Contingent Approval

Affiliated with Assisted Living Programs (ALPs)

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	181303 E	2680 North Forest Road Operating Company, LLC d/b/a Elderwood Home Care at Getzville (Erie County) Dr. Gutiérrez - Recusal	Approval
2.	182187 E	Danforth Home Care Services Agency (Rensselaer County)	Contingent Approval

VII. PROFESSIONAL

Executive Session – Report of the Committee on Health Personnel and Interprofessional Relations

VIII. NEXT MEETING

March 28, 2019 – Albany
April 11, 2019 – Albany

IX. ADJOURNMENT

State of New York
Public Health and Health Planning Council

Minutes
December 13, 2018

The meeting of the Public Health and Health Planning Council was held on Thursday, December 13, 2018 at the Empire State Plaza, Concourse Meeting Room 6, Albany. Chairman, Jeffrey Kraut presided.

COUNCIL MEMBERS PRESENT

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

DEPARTMENT OF HEALTH STAFF PRESENT

Ms. Deirdre Austin	Ms. Marthe Ngwashi
Ms. Suzanne Barg	Ms. Lauren Orciuoli
Ms. Barbara DelCogliano	Ms. Sylvia Pirani
Mr. Brian Gallagher	Ms. Tracy Raleigh
Ms. Rebecca Fuller Gray	Ms. Beverly Rauch
Mr. Mark Furnish	Ms. Gilda Riccardi
Mr. Scott Franko	Ms. Lora Santilli
Dr. Eugene Heslin	Mr. Keith Servis
Mr. Richard Kortright	Mr. Daniel Sheppard
Ms. Colleen Leonard	Mr. James Tardy
Mr. George Macko	Ms. Lisa Thomson
Ms. Karen Madden	Mr. John Walters
Ms. Adrienne Mazeau	Mr. Richard Zahnleuter
Mr. Brian Miner	

INTRODUCTION

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

SYLVIA PIRANI RETIREMENT

Mr. Kraut announced that Mr. Abel will be retiring from State service. On behalf of the Council, Mr. Kraut and Dr. Boufford signed a Resolution of Appreciation and thanked Mr. Abel for his years of dedications to the Council. Please refer to pages 4 through 7 of the attached transcript.

APPROVAL OF THE MINUTES OF OCTOBER 11, 2018

Mr. Kraut asked for a motion to approve the October 11, 2018 Minutes of the Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval which was seconded by Dr. Gutiérrez. The minutes were unanimously adopted. Please refer to page 3 of the attached transcript.

PUBLIC HEALTH SERVICES

Dr. Boufford began her report and presented a power point presentation. Dr. Boufford presented the Prevention Agenda 2019-2024 to the PHHPC members. Dr. Boufford motioned for approval of a Resolution to accept the Prevention Agenda 2019-2024. Dr. Brown seconded the motion. The motion carried. Dr. Boufford concluded her report, to view the detailed report see pages 5 through 18 and 27 through 37 of the attached transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Mr. Kraut introduced Dr. Zucker to give a report on the Department of Health report who was participating via phone.

Dr. Zucker began his report by stating the best way to beat the flu is to get the flu shot, wash your hands and stay home if you are sick. Dr. Zucker noted that New York State pharmacies outside of NYC have reported 840,792 doses of the flu vaccine administered since August 2018.

Dr. Zucker also spoke on the issue of immunizations. The State is actively managing the extensive response to measles outbreak with partners both in Rockland and Orange Counties where there have been 96 confirmed cases. In addition, Erie County has a positive case of measles, New York City is managing a similar response in Brooklyn where there have been 44 confirmed cases and the original cases originating in late September and early October from international travelers and the dozens of secondary cases since that time underscore the importance of vaccinations. Dr. Zucker advised that getting the measles vaccine is simply stated, the best way to prevent measles. The Department has had daily calls since early October, shipped supplies, weekly support staff traveling from Albany and New York City and a measles hotline has received 1000 calls and extensive community outreach have all factored in to truly coordinated responses. In addition, the State has worked with Rockland County to enforce student exclusions at schools that are impacted in the impacted areas with less than 70 percent MMR vaccination rate. That effort has since been expanded to all schools with less than an 80 percent vaccination rate. The schools are required to keep an under vaccinated students at home until 21 days have passed since the last confirmed cases of measles in that community.

Anyone who is not protected against measles is at risk of getting the disease and they may spread measles to people who cannot get vaccinated because of the age or specific health conditions as well. Dr. Zucker noted that he is personally invested in and has visited the communities on multiple occasions and will continue to encourage everyone to be up to date with their MMR vaccines.

Dr. Zucker next updated the Council members on the topic of e-WIC. Since October 2017 the Department has been busy continuing the statewide rollout of e-WIC an electronic benefits transfer card which eliminates the paper checks and provides a more convenient way for families in the Women, Infants, and Children program to shop for nutritious WIC foods. All across the State we are hearing from grateful families about the differences that this technology has made, and ensuring that they have access to nutritious foods without the shame that can be felt by holding up a grocery line using outdated system. Dr. Zucker stated that he had an opportunity to be at one of the launches. e-WIC is now online in the Capital Region, Central New York, Southern Tier, Rochester, Finger Lakes region, Buffalo, and the Western New York region and the Department is in the process of bringing Hudson Valley region online with Long Island and New York City in the new year, the Department is ahead of the 2020 federal guidelines.

Dr. Zucker advised that in late November 2018, the Department held its first meeting of the New York State Hepatitis C Elimination Taskforce. The Governor charged the Taskforce with developing the State's plan for eliminating Hepatitis C as a public health epidemic. The work of the Taskforce will be supplemented by five workgroups. One is prevention, two is testing in linkage to care, three is care and treatment, four is surveillance data and metrics, and five are the social determinants. Over the next several months, the five workgroups will meet to review update enhance and prioritize Hepatitis C elimination recommendations. The draft recommendations will be delivered to the Taskforce for review in early spring with a meaning to finalize the recommendations and seek community engagement.

Dr. Zucker noted that the Governor's End the Epidemic initiative was celebrated the first week of December on the 20th anniversary of World AIDS Day. The Governor's initiative features a three point plan which includes identifying people with HIV who remain undiagnosed, and linking them to healthcare. Number two, linking and retaining people diagnosed with HIV to healthcare and getting them on treatment to maximize HIV viral suppression. And three, providing access to appropriate prophylaxis for people who engage in high risk behaviors to keep them HIV negative. Thanks to the initiative, new diagnoses of HIV are falling while rates of enrollment and treatment for those diagnosed continues to decline, new HIV diagnoses in New York declined for a third consecutive year reaching an all-time low of 2769 in 2017 which is down 20 percent since 2014 and we continue to drop. The number of new HIV diagnoses in people with a history of injection drug use reached an all-time low of 110 during 2017 and that was down 28 percent from 2014 where it was 153. The Governor announced regulations governing HIV uninsured care programs will be amended to update income criteria and eliminate the assets test. Currently to be eligible for the HIV uninsured care program, an applicant's household income must be equal to or less than 435 percent of the federal poverty level and the applicant's liquid resources must be less than \$25,000. These new regulations will increase eligible income to 500 percent of the federal poverty level and eliminate the cap on resources. The proposed regulations are being finalized with adoption anticipation in early 2019.

Dr. Zucker advised that the New York State of Health is in the middle of open enrollment. As of December 5, 2018 more than 930,000 consumers have enrolled or renewed coverage in a qualified health plan or the essential plan. 51,000 are new consumers. The Department contributes the large number of the new enrollees to a wide range of participating plans, a targeted consumer outreach, and easy auto renewal which help ensure the goal of getting every New Yorker covered. December 15 is the deadline to qualify for the January 1, 2019 coverage and open enrollment runs through January 31, 2019.

Lastly, Dr. Zucker spoke on the topic of the aging innovation challenge which took a year of work on part of everyone in many parts of the Department and to work hard to make sure New York is an age friendly state. The first week of December 2018, was the culmination of the effort by the Department to work with a group called HERO X to develop a crowd source competition to generate innovative solutions to help older adults and their caregivers in carrying out activities of daily living. The challenge was open to all undergraduate and graduate students attending a college or university in New York State. It was a panel of expert judges who evaluate the five finalists and their innovations to determine which team would win the first ever Aging Innovation challenge. There were co-winners who split the \$25000 top prize. A team from Corning Community College demonstrated something called Grip Aid. It was an assisted eating device targeted to people who have motor control issues and inhibit their ability to feed themselves. It was very innovative to look, you can put a spoon in, you could actually put a toothbrush in, and many other things in there. And a team from Syracuse University designed PNEU-Strength. PNEU, PNEU-Strength, which is an inflatable seat cushion device that provides physical assistance to older adults in standing up from a sitting position on a chair or a sofa. It is clear if you have trouble standing up without assistance, this was something which clearly could help them. The two teams from Cornell University and a team from University of Buffalo also received \$5000 each as finalists. All the teams were incredible, enthusiasm, professionalism, it was truly a pleasure to see the ingenuity that entrepreneurial spirit, their market research that they did, and it was a wonderful day and we look forward to doing this again.

Dr. Zucker stated that the Department has been actively managing an extensive response to the measles outbreak

Dr. Zucker concluded her report. To read the complete report and questions from the Members, please see pages 18 through 27 of the attached transcript.

REGULATION

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

Report of the Committee on Codes, Regulation and Legislation

For Adoption

18-10 Amendment of Sections 405.7 and 751.9 of Title 10 NYCRR (Patients' Bill of Rights)

Dr. Gutiérrez described For Adoption the proposed Amendment Sections 405.7 and 751.9 of Title 10 NYCRR (Patients' Bill of Rights) and motioned for adoption. Dr. Berliner seconded the motion. The motion carried. Please see page 40 of the transcript.

18-01 Amendment of Section 400.18 of Title 10 NYCRR (Statewide Planning and Research Cooperative System (SPARCS))

Dr. Gutiérrez described For Adoption the proposed Amendment Sections 405.7 and 751.9 of Title 10 NYCRR (Patients' Bill of Rights Amendment of Section 400.18 of Title 10 NYCRR (Statewide Planning and Research Cooperative System (SPARCS)) and motioned for adoption. Dr. Kalkut seconded the motion. The motion carried. Please see page 40 and 41 of the transcript.

For Information

18-23 Addition of Section 415.32 to Title 10 NYCRR (Nursing Home Weekly Bed Census Survey)

18-21 Amendment of Sections 766.9 & 766.12(c)(4) of Title 10 NYCRR (New Requirements for Annual Registration of Licensed Home Care Services Agencies)

18-20 Amendment of Part 405 and Section 751.5 of Title 10 NYCRR (Hospital Policies for Human Trafficking Victims)

18-18 Amendment of Part 14 of Title 10 NYCRR (Food Service Establishments)

18-13 Amendment of Part 19 of Title 10 NYCRR (Clinical Laboratory Directors)

Dr. Gutiérrez described For Information the proposed Amendment Addition of Section 415.32 to Title 10 NYCRR (Nursing Home Weekly Bed Census Survey), Amendment of Sections 766.9 & 766.12(c)(4) of Title 10 NYCRR (New Requirements for Annual Registration of Licensed Home Care Services Agencies), Amendment of Part 405 and Section 751.5 of Title 10 NYCRR (Hospital Policies for Human Trafficking Victims), Amendment of Part 14 of Title 10 NYCRR (Food Service Establishments), and Amendment of Part 19 of Title 10 NYCRR (Clinical Laboratory Directors). Please see pages 41 through 43 of the transcript.

Mr. Kraut then moved to the next item on the agenda and introduced Dr. Ruggie to give the Report on the Activities of the Health Planning Committee

PUBLIC HEALTH SERVICES

Dr. Rugge began his report and advised that the Health Planning Committee has a 13 part agenda with topics for consideration over the next two years. Many of the items come from the RMI process for review and consideration. There will also be the opportunity to review the standards used for CON review. Dr. Rugge stated that there will be much more to follow and a few more meetings to attend so that the Committee can address concerns that are really central to everything that the Council is to do.

Request for Stroke Center Designation

Applicant

Glens Falls Hospital

Mr. Kraut introduced for approval a Request for Stroke Center Designation for Glens Falls Hospital and noted for the record that Dr. Rugge has a conflict and has exited the meeting room. Mr. Kraut motions for approval, Dr. Berliner seconds the motion. The motion to approve carries. Dr. Rugge returns to the meeting room. Please see pages 45 and 46 of the transcript.

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

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Mr. Robinson, Chair, Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Residential Health Care Facilities - Construction

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
182082 C	Menorah Home & Hospital for Aged & Infirm (Kings County)	Contingent Approval

Mr. Robinson calls application 182082 and motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carries. Please see pages 46 and 47 of the transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

Ambulatory Surgery Centers – Construction

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
181329 C	Albany Medical Center Hospital (Schenectady County) Dr. Bennett – Recusal Dr. Ruge - Recusal	Contingent Approval

Mr. Robinson calls application 181329 and motions for approval. Dr. Gutiérrez seconds the motion. After members discussion there was a roll call vote. The motion to approve passed with 6 members opposing. Please see pages 46 through 60 of the attached transcript.

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
181277 E	The Surgery Center at Orthopedic Associates, LLC (Dutchess County)	Approval

Diagnostic and Treatment Centers – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
181183 B	Visiting Services, LLC d/b/a Visiting Docs (Rockland County)	Contingent Approval
182073 B	Union Square Eye Center, LLC d/b/a Union Square Eye Care – Harlem (New York County)	Contingent Approval

Certified Home Health Agencies – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
181268 E	Oswego Health Home Care, LLC (Oswego County)	Contingent Approval

Mr. Robinson calls applications 181277, 181183, 182073 and 181268 and motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carries. Please see pages 60 through 62 of the transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
172379 E	St. Peter’s Health Partners (Albany County) Dr. Bennett – Interest/Abstaining	Contingent Approval
182052 E	HQ-WCHN Health Systems, Inc. (Dutchess County) Dr. Bennett – Interest/Abstaining Mr. Kraut - Interest	Contingent Approval

Mr. Robinson calls application 172379 and notes for the record Dr. Bennett’s interest and motions for approval. Dr. Kalkut seconds the motion. The motion carries with Dr. Bennett’s noted abstention. Please see pages 62 and 63 of the transcript.

Mr. Robinson calls application 182052 and notes for the record Dr. Bennett and Mr. Kraut’s interest and motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carries with Dr. Bennett’s abstention. Please see pages 63 through 66 of the attached transcript.

Dialysis Services – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
172406 B	Queens Boulevard Extended Care Dialysis Center II (Queens County) Mr. Kraut - Interest	Contingent Approval

Mr. Robinson introduces application 172406 and notes Mr. Kraut’s interest. Mr. Robinson motions for approval, Dr. Gutiérrez seconds the motion. The motion to approve carries. See pages 66 and 67 of the transcript.

Hospice Services – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
181405 E	Visiting Nurse Hospice and Palliative Care (Monroe County) Ms. Baumgartner – Recusal Mr. Robinson – Recusal Mr. Thomas - Recusal	Contingent Approval

Certified Home Health Agencies – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
181403 E	Visiting Nurse Service of Rochester and Monroe County (Monroe County) Ms. Baumgartner – Recusal Mr. Robinson – Recusal Mr. Thomas – Recusal	Contingent Approval

Dr. Kalkut calls applications 181405 and 181403 and notes for the records that Ms. Baumgartner, Mr. Robinson and Mr. Thomas have declared conflicts and have exited the meeting room. Dr. Kalkut motions for approval, Dr. Gutiérrez seconds the motion. The motion to approve carries with the noted recusals. Ms. Baumgartner, Mr. Robinson and Mr. Thomas return to the meeting room. Please see pages 67 through 69 of the transcript.

171041 E	Shining Star Health Care (Kings County)	Disapproval
----------	--	-------------

Mr. Robinson next calls application 171041 and motions for approval, Dr. Gutiérrez seconds the motion. There was discussion amongst members. A roll call vote was conducted, the motion to approve failed. Mr. Robinson made a second motion to disapprove, Dr. Kalkut seconded the motion. There was a roll call vote, the motion to disapprove carried. Please see pages 69 through 83 of the attached transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

CON Applications

Residential Health Care Facilities – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
181293 E	Carthage Center for Rehabilitation and Nursing (Jefferson County)	Contingent Approval
181295 E	New Paltz Center for Rehabilitation and Nursing (Ulster County)	Contingent Approval

181297 E	Onondaga Center for Rehabilitation and Nursing (Onondaga County)	Contingent Approval
181298 E	Schenectady Center for Rehabilitation and Nursing (Schenectady County)	Contingent Approval
181299 E	Slate Valley Center for Rehabilitation and Nursing (Washington County)	Contingent Approval
181300 E	Troy Center for Rehabilitation and Nursing (Rensselaer County)	Contingent Approval

Mr. Robinson called applications 181293, 181295, 181297, 181298, 181299, and 181300 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion carried with one member opposing. Please see pages 83 through 85 of the attached transcript.

CATEGORY 4: Applications Recommended for Approval with the Following:

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

CON Applications

Residential Health Care Facilities – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
181294 E	Glens Falls Center for Rehabilitation and Nursing (Warren County) Dr. Ruge – Interest/Abstaining	Contingent Approval

Mr. Robinson calls application 181294 and notes for the record Dr. Ruge’s interest. Mr. Robinson motions for approval, Dr. Gutiérrez seconds the motion. The motion carries. Please see page 85 of the transcript.

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

Acute Care Services – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
182217 E	St. Joseph’s Health, Inc. (Onondaga County) Mr. Robinson - Interest	Contingent Approval

Mr. Robinson calls application 182217 and notes for the record he has interest and motions for approval. Dr. Gutiérrez seconds the motion. The motion carries with one member opposing. Please see pages 85 and 86 of the attached transcript.

HOME HEALTH AGENCY LICENSURES

Serious Concern/Access

182030 E	Amerita of New York LLC d/b/a Amerita (Nassau County)	Contingent Approval
----------	---	---------------------

Affiliated with Assisted Living Programs (ALPs)

182014 E	The Mohawk Homestead, Inc. d/b/a The Mohawk Homestead Licensed Homecare Services Agency (Herkimer County)	Contingent Approval
182076 E	The Eliot at Troy, LLC (Rensselaer County)	Approval
182078 E	The Sentinel of Amsterdam (Montgomery County)	Contingent Approval

Mr. Robinson calls applications 182030, 182014, 182076, and 182078 and motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carries. Please see pages 86 and 87 of the attached transcript.

ADJOURNMENT:

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

NEW YORK STATE DEPARTMENT OF HEALTH
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
FULL COUNCIL MEETING TRANSCRIPT
DECEMBER 13, 2018
CONCOURSE LEVEL, MEETING ROOM 6, ALBANY, NY

JEFF KRAUT: Good morning. I'm Jeff Kraut and I have the privilege to call to order the meeting of the Public Health and Health Planning Council for December 13, 2018. I welcome the members. Commissioner Zucker will be joining us in a little while by phone. Other participants and observers. I'd like to remind the council members, staff and the audience, the meeting is subject to the open meeting law, is broadcast over the internet and you can access webcasts through the Department of Health's website at NYHEALTH.GOV. These on-demand webcasts are going to be available no later than seven days after the meeting for a minimum of 30 days and then a copy will be retained in the Department for up to four months. Remember we have synchronized captioning. It's important that we do not speak over each other. Obviously we can't do it correctly when two people speak at the same time. The first time you speak, please identify your name and briefly identify yourself as a council member, staff member, and I'll be assistance in recording the meeting and transcribing

1 our proceedings. Remember that the microphones are hot. They
2 pick up every sound. Try to avoid the rustling of paper near the
3 mic when you see the red light on, and be careful about side
4 conversations because they tend to get memorialized on our
5 webcast forever. As a reminder for our audience, There's a form
6 that needs to be filled out before you enter the meeting room.
7 It records your attendance here. It's a requirement of the joint
8 commission on public ethics in accordance with executive law
9 section 166, and the form is also posted and available at
10 NYHEALTH.GOV, the Department of Health's website, under
11 certificate of need. So in the future you can fill out that form
12 prior to attending the council meeting, and I really appreciate
13 your cooperation in fulfilling our duties as prescribed by law.
14 And today's meeting, I'm going to turn it over to Dr. Boufford
15 in a minute who will present for adoption the prevention agenda.
16 Then we'll move to reports from the Department of Health and
17 then committee reports. I just want to remind everybody that
18 before we get to the Establishment and Project Review Committee
19 Recommendations and Establishment actions there are, we've
20 organized the agenda by topics or category, and this
21 reorganization includes batching certificate of needs for our
22 voting. And I've asked the members prior to us calling that
23 committee that if you think there's an application that has been
24 batched that you would like to be removed and considered

1 independently, please let us know during the course of the
2 morning. Our next agenda item is the adoption of the minutes,
3 and may I have a motion for adoption of the October 11, 2018
4 Public Health and Health Planning Council Dr. Berliner. All
5 approve, say aye.

6

7 [Aye]

8 That's it. Before I ask Dr. Boufford to speak, I want to
9 take a moment and I want to provide, this is the last meeting
10 with Ms. Sylvia Pirani who is going to be present today and
11 retiring from state service. And on behalf of the council, Dr.
12 Boufford and I have signed a resolution about the years of
13 support, and I just thought that I would just read some of the
14 things about ... I'll put it down and give it to you in a second.
15 24 years of service, beginning in state service in 1994. She
16 originally appointed the director of the office of public health
17 practice in 2007 and she became a member of the Department's
18 leadership team, and since that time has been involved in every
19 major decision, policy initiative regarding promoting public
20 health and protecting the health of New Yorkers. She has served
21 six commissioners of health, several governors, and she's always
22 contributed to the countless successful initiatives in many
23 facets of healthcare, particularly focusing on public health and
24 the healthcare infrastructure of the state. She's supported

1 actions to include the accreditation and public workforce
 2 promoting collaborations throughout the state and the health in
 3 all policies by state leadership, and in 2003 you may remember
 4 she provided support to the council in developing a report
 5 regarding strengthening the public health system for the 21st
 6 century.

7 There are so many things that Sylvia has done regarding
 8 what the activities of the council, leading the prevention
 9 agenda, charged with overseeing the development and review of
 10 objectives, and the improvement plan known as the prevention
 11 agenda towards the healthiest state. And her expertise was just
 12 invaluable creating the 2013 agenda and the one that Dr.
 13 Boufford is going to be presenting in a minute. Also, her
 14 efforts in getting the Department of Health to be one of the
 15 first large states in the nation accredited by the Public Health
 16 Accreditation Board in 2014 along with Chairman Streck and Vice
 17 Chairman Boufford at that time. There are just so many things
 18 that she has done getting us to consider public health in
 19 deliberation of the certificate of need applications and the
 20 like. And her advice, her dedication, her commitment to
 21 strengthening healthcare in New York has just, she's been the ...
 22 just the example of what a great public servant is. On a
 23 personal level her content of her character is above reproach.
 24 She's always been fundamentally committed to doing the right

1 thing. Sometimes it's a difficult bureaucracy to do that in,
2 but somehow her and her colleagues and the team that she's
3 recruited here have always prevailed. And on behalf of this
4 council, on behalf of the Department of Health, on behalf of the
5 State of New York and its residents, we are tremendously
6 thankful and appreciative.

7 [applause]

8 SYLVIA PIRANI: Thank you all very much. The team is
9 arriving right now, so it's perfect. This has been a real
10 pleasure to work with you on public health and on the prevention
11 agenda, and it's been a lot of years and I really believe that
12 you have all successfully drank the public health cool aid so I
13 really appreciate that. We've made a big difference. You've
14 really fully incorporated it into your activities and into the
15 certificate of need which I think is the final bar that we had
16 to pass. So, it's been a real pleasure. I really enjoyed this
17 time. Thank you.

18

19 JO BOUFFORD: I don't want to go on, but just to say
20 Sylvia has been indispensable in this process and I think we all
21 know that. So congratulations on this next phase. I think she's
22 still with us for a while, but it's very appropriate that we
23 should be acting on the prevention agenda, 2019-2024 your last
24 official meeting. So thank you for everything.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

JEFF KRAUT: And Sylvia, based on the requirements of the State and (JCOB) we all chipped in and got you a \$5 Holiday Magic lottery for your retirement. Sensible person please.

[applause for the team]

JEFF KRAUT: Those people who just came in, unfortunately you didn't hear my introductory remarks about our appreciation, not only about Ms. Pirani but the work that she and the team have created, and she basks in reflected glory of your efforts. So, I hope that you'll take the opportunity to watch the webcast. You'll be probably one of the few people. Or depending on how the day goes, many people, to rereview it. But we thank you for your efforts. We don't always get a chance to know who really works behind the activities that Dr. Boufford is about to present to us, but you know, In the last couple of years we've tried to emphasize what the role of the council and not forgetting its first name is public health. And thank you very, very much for all your work and your dedication. And I can think of a no fitting introduction after that to present Dr. Boufford to deliver and present for our adoption the prevention agenda 2019-2014. Dr. Boufford.

1 JO BOUFFORD: Thank you very much Jeff. And thank you
2 colleagues and colleagues in the back as well. This resolution
3 is brought to you by after a meeting of the Public Health
4 Committee on December 3, and was passed unanimously and brought
5 forward for your consideration. You received a lot of material
6 in advance because we didn't want to take any chance that any of
7 the details might be missed for those that were digging into it.
8 I think I want to appreciate Colleen and colleagues for sending
9 out this material, but you did receive the sort of, all the back
10 up material for the health for all, the deveins of healthy aging
11 as well as a nice note I think from Sylvia summarizing the areas
12 that we were bringing to your attention, the sort of
13 introductory executive summary, pages 4 to 8 of the long
14 prevention agenda as well as the table of contents. And the
15 whole thing so you can go in to a particular section if you were
16 interested and had invited you to make comments on that and are
17 still invited to do that today. We also did send you the
18 executive order of Governor Cuomo so you'd have that in detail
19 sort of incorporating even further in the DNA. Hopefully this
20 health across all policies. So all of that was done in an effort
21 to make what could've been a very long presentation shorter. So
22 let me move ahead with that, and this is going to be a group
23 effort. Let me also introduce I guess formally, perhaps, to the
24 council Laura Santilli who is the new Director of the Office of

1 Public Health Practice and officially the commissioner's
 2 ambassador for the Prevention Agenda. So we have our first
 3 ambassadorial position here at the PHHPC and welcome Laura, and
 4 it's been great working with you the last couple weeks. And of
 5 course Sylvia Pirani and her last official appearance, but not
 6 unofficial we hope.

7 So let me just start very quickly by looking at just some
 8 highlights from the short executive summary that you received.
 9 This is page 4 to 8. This is the update of the prevention agenda
 10 which is our responsibility as the New York State Public Health
 11 and Health Planning Council overseeing this process on behalf of
 12 the Department and this is the third cycle for this statewide
 13 initiative that started in 2008. New to this cycle is the
 14 incorporation of health across all policies approach which was
 15 initiated by the State in 2017 when Governor Cuomo put in his
 16 State of the State message and repeated it again that all state
 17 agencies should look at how to identify and strengthen the ways
 18 in which their existing policies and programs can have a more
 19 positive effect on health. This is in the public health jargon
 20 called health across all policies, health in all policies. It's
 21 quite an important cutting edge political leadership move in any
 22 territory, any kind of responsibility. So we appreciate the
 23 Governor's action there. And it also embraces the healthy aging
 24 and the State's commitment to making New York State the first

1 age-friendly state. So this cycle builds on both of these
 2 important statements and also on the experience of the
 3 prevention agenda coalitions from across the state. These are
 4 led by the local health directors and key hospital leaders along
 5 with other stakeholders depending on the particular community.
 6 And these have been formed in previous cycles and part of the
 7 challenge is keeping them moving and keeping them encouraged and
 8 trying to act to mobilize local funds to support their efforts.
 9 The goal of course is to make New York the healthiest state and
 10 to address health disparities, and the process, official process
 11 for this council - you'll hear more about the details - the
 12 other key participant in both overseeing the health across all
 13 policies and the age friendly agenda from the Governor's point
 14 of view is the ad-hoc committee on leadership for the prevention
 15 agenda. And they also have been with the public health committee
 16 of this council overseeing the last two cycles. They met in this
 17 cycle in April and again in August and have been very helpful in
 18 broadening the outreach and consultation that occurred around
 19 this draft that is before you, and the other groups I want to
 20 mention especially the office of mental health and the state
 21 office of alcoholism and substance abuse services who have been
 22 with us since the beginning of the second cycle and have been
 23 core partners in this third cycle and now joined by the State

1 Office on Aging and a number of other agencies. So it's very,
2 very exciting I think as you'll see. So let me begin.

3 This should be familiar to you. We won't have a test on it.
4 But obviously our goals are clear. I think the important thing,
5 we sometimes perhaps don't give enough attention to is the
6 prevention agenda is really successful because of local action,
7 and the State has made a huge effort over the last two cycles to
8 provide evidence-based information about both interventions that
9 can be taken as well as to assist with even more intensive data
10 availability at the local level and support in evaluating
11 strategies. And the ad-hoc committee has been very active in
12 overseeing the work. This diagram really reflects the new
13 approach for this next five year period where we're
14 incorporating health in all policies which is sort of the wheel
15 where the different sectors are identified beyond the healthcare
16 delivery system as well as the age-friendly New York State
17 activity and the prevention agenda combines the two and
18 integrates the resources from both. And the state agencies that
19 are now involved with the prevention agenda have met twice with
20 Dr. Zucker and secretary of health Paul Francis and we have
21 another meeting scheduled for January 8, and we want to thank
22 all of those agencies, those that have been more directly
23 involved in the last few months and those that will be joining

1 us more actively going forward. You're going to see some great
2 examples of that.

3 So with that, let me turn this over to Laura Santelli who I
4 think will present the next few slides, and then after that,
5 Sylvia.

6

7 LAURA SANTILLI: Great. Thank you Dr. Boufford and
8 Sylvia. I echo everybody's thanks. She's been phenomenal in
9 helping me transition to this role and it's going to be
10 impossible to fill your shoes. You have big shoes for a little
11 woman. But I guess as Shakespeare said, "although she little,
12 she is fierce." So, I will aspire to continue to make them drink
13 the cool aid as you said. Thank you all.

14 Just to give you a little bit of summary as the progress
15 that we've made, so this graph is a little active, but just to
16 kind of help you kind of decipher what's in here. So these are
17 the prevention agenda priorities from the past cycle. The one on
18 the left is the overarching indicator, so that's improving our
19 health status and reduce health disparities. So that's our
20 cross-cutting priority. And then the bars to the right are the
21 individual priority areas for the past cycle that have been
22 tweaked that you'll hear about with the new cycle as well. So
23 those bars across the top, those dark green bars, those are the
24 ones where we can cheerlead and celebrate our success. So 28of

1 our indicators have been met. Those objectives have been met to
 2 give you some of the examples of what those look like. That top
 3 one green on the left mark, on the left bar, that's the age
 4 adjusted preventable hospitalizations per 10,000. So for those
 5 that are 18 and above. So the preventable hospitalizations,
 6 we've met that objective. That's one of our cross cutting. In
 7 the healthy and safe environment, we've had success with the
 8 rate of hospitalization due to falls for those age 65 and above.
 9 So again, when we think about our health across all policies and
 10 healthy aging, those hospitalizations due to falls is something
 11 we definitely have to continue to work on, but we've had
 12 success. In the chronic disease, percentage of cigarette smoking
 13 in adults with income less than \$25,000, so we've met that
 14 objective. And in communicable disease, the newly diagnosed HIV
 15 cases and the difference in the rates between Black and White
 16 and Hispanic and White cases, so really looking at those racial
 17 disparities. In the healthy women, infants, and children, the
 18 maternal mortality rate per 100,000 births, and the maternal
 19 mortality ratio of the Black- Non-Hispanic to the White Non-
 20 Hispanic. So we've seen success there. And another example in
 21 the mental health and substance abuse disorder prevention
 22 category. The age-adjusted percentage of adults binge drinking
 23 during the past month. So we met that objective. So you always
 24 start with the positive. We want to celebrate those successes.

1 Pat ourselves on the back. But as you can see we still have much
 2 work to be done. So, towards the bottom that neon greenish, that
 3 parts of the bar, those are the ones that have not been met, but
 4 they are improving. So we've made some impact, but we're not
 5 quite there yet. An example of that is the percentage of
 6 children and adults who are obese.

7 The red ones in the middle, those are the ones that are
 8 going in the wrong direction, so we really need to focus on
 9 those. Some examples of those are the percentage of residents
 10 served by a community water system with optimumly [sic]
 11 fluoridated water. So we are going in the wrong direction with
 12 that one. The annual number of days with unhealthy levels of
 13 ozone, we've gone in the wrong direction with that one. The
 14 percentage of health plan members with diabetes who have good
 15 blood glucose control as measured by their A1C, and the rates of
 16 men and women with syphilis and other STIs. So although we're
 17 making an impact on the HIV, on the other STIs, not so much. So
 18 those red bars are the ones that are going in the wrong
 19 direction. So that just gives you an idea of what we're tracking
 20 to the level of we're tracking and how we did in the past, and
 21 we will continue to track each and every one of the objectives
 22 going forward as well.

23 Again, with the lens of healthy aging, we want to think
 24 about the trends in our population growth. As part of our health

1 assessment we do look at the demographics of our State. This
 2 slide shows the growth in the New York State population
 3 especially for our older age groups. Between 2015 and 2010 our
 4 population grew from 19.5 to 19.7 million, so about half a
 5 percent. We're obviously going to keep growing. As our
 6 population ages, the 60 and older group are expected to see the
 7 most growth as well as the age groups increase 75 and older,
 8 also increasing. So with our residents living a bit longer, our
 9 baby boomer generation really is going to tap into the services
 10 of both the prevention services to keep them healthy as well as
 11 the healthcare services to treat them. These are the focal
 12 points that we'll have to look at. You will see that population
 13 continue to grow.

14 We also look at everything at the geographic level breaking
 15 down into the county perspective and you'll see this is just one
 16 example looking at the percent of adults who are obese in 2015
 17 and gives you a graphical representation at the county level.
 18 Those darker shaded counties are the ones that are in the
 19 quartile with most concerns. So in this particular case it's
 20 the, they have an obesity rate of 34.7 percent or higher. Our
 21 prevention agenda objective is 23.2. So you see it visually on
 22 the map. You also see the bar graph, and so our counties can
 23 pick out where they are, compare themselves to other counties.
 24 Tons of data. Lots of resources that will be available. The

1 data-driven programing is a fundamental key element of what we
2 do.

3 Alright. I'll turn it back over to you guys. Thank you.

4 I can keep going, Sylvia. I can keep going. I thought I
5 could pass it. That's good.

6 Alright. So summary of our health issues. So just in
7 general I think I'm preaching to the choir here, chronic disease
8 continue to be the major burden so the heart diseases, cancers,
9 diabetes and asthma. As we mentioned, we're making some good
10 progress, especially in those maternal and infant health
11 indicators, teen pregnancy and breast feeding, but more work
12 needs to be done in those disparities, especially related to
13 infant mortality, preterm birth, and maternal mortality. We're
14 on the end, on the path to end AIDS as I mentioned with the HIV
15 objectives going in the right direction, but STIs really are
16 going through the roof, and Hep C remains a concern. Drinking
17 water quality is a leading priority but New York State is also
18 leading the nation in addressing these issues. And most
19 importantly the opioid overdose, substance abuse disorders in
20 combination with our mental health concerns are contributing to
21 the decline in health and life expectancy for the first time.
22 Let me give you a little bit more background on that with our
23 leading causes of deaths. This is an application that is
24 available on the website. So if you want to go pick around and

1 see what it looks like, you can look at it from the geographic
 2 perspective from different age and gender types of cohorts. But
 3 what you will see, what is most critical is if you follow that
 4 graph in the bottom right corner you see that brown cell in that
 5 bottom right corner. What that is is our unintentional
 6 injuries. Ok. So in 2009 it was six? Seven? Can't see it. To the
 7 right. Six, thank you. And then as the years come up you watch
 8 that it goes fifth and now it's fourth. Unintentional injuries
 9 includes our substance abuse disorder and our unintentional drug
 10 overdoses. So the opioid epidemic is single handedly driving
 11 that category and the leading causes of death with the
 12 overdoses. Because it's also impacting our younger population,
 13 it is single handedly driving the decline in life expectancy. So
 14 when we talk about years of potential life lost, that is
 15 contributing to that. This gives you another way of looking at
 16 that. The overdose deaths. And you will see the dramatic upturn
 17 since 2014. This is only showing 2016 when our data sources are
 18 up to date and we see 2017 and 2018. The increase continues.
 19 Maybe have started to see just a slight leveling. We're very
 20 hopeful. But we have to continue to focus on this effort.

21 Our stakeholder feedback... go ahead.

22

23 JO BOUFFORD: This is the non-technical part.

24

1 LAURA SANTILLI: That's ok. Go ahead.

2

3 JO BOUFFORD: Just on the stakeholder feedback areas, this
4 was as you said a very wide ranging consultation thanks to the
5 ad-hoc committee as well as the different agencies within our
6 departments, within the overall Department of Health and Mental
7 Health and Substance Abuse. And this was the kind of feedback we
8 discussed with the ad-hoc committee were the themes that emerged
9 and generally the sense to continue with the five goals and
10 continue the work that isn't finished as you heard. The second
11 area that was expanded on a good bit which had been largely
12 focused on tobacco was the issue of vaping and e-cigarettes and
13 adverse childhood experiences, opioid, food security... these are
14 new areas that sort of emerged where people felt strongly they
15 needed to be called out in the objectives underneath the overall
16 goals. And then the implementations plans. The other.. and
17 violence as well. I'm going to come back to that in a minute.
18 The integration of actionable interventions for older adults is
19 very explicit in most of the areas. In some areas it's very
20 explicit. It says for older adults or gives an age range. In
21 others it says for individuals of all ages. And those are
22 different. Those are changes that bring to focus the integration
23 of health across all and age friendly. As Laura said, being
24 specific about disparities especially beginning to focus on

1 these areas like STIs, HIV, maternal mortality, I think we've
2 done a good job of bringing attention to maternal mortality
3 which is now in the hands of the Governor's commission, among
4 other activities, but issues like water quality, the communities
5 in which that's a problem, and then linking really to the End
6 the Epidemic commission for HIV and others not recreating the
7 wheel, but using the various activities that are ongoing.

8 The Commissioner is available now. So we will interrupt
9 this presentation to hear from him.

10

11 JEFF KRAUT: I'm going to put the Commissioner is joining
12 us from New York City given the window we have to get him, he
13 has a lot of things today, and we just really wanted him to give
14 a report. So you have to, I beg your indulgence. We're going to
15 stop right here and turn over to the Commissioner now.

16

17 HOWARD ZUCKER: I'm right here. Thanks. If they want to
18 finish, what another five minutes? Why don't you finish up what
19 you're doing?

20

21 JEFF KRAUT: No, commissioner. I think let's not put
22 pressure on them. You just go ahead. We're find.

23

24 HOWARD ZUCKER: Sure. I don't want to interrupt.

1 Well, thank you all for all your work that you're doing.
 2 And I wanted to wish you all a happy holiday season. Sorry that
 3 I couldn't be there in person. But I want to remind everyone
 4 that this is the time of year that we talk about gifts and it's
 5 the flu season so I just want everyone to remember the gift of
 6 getting their flu shot would be one of the best things we can
 7 give to ourselves.

8 As we say often here at the Department, the best way to
 9 beat the flu is to get a flu shot, wash your hands, and stay
 10 home if you're sick. And believe me, it's not too late to get
 11 your flu shot. I got mine. I gather most of you, all of you have
 12 gotten yours, but also to provide that information to your
 13 relatives and friends and family.

14 Last year as you know was particularly active flu season
 15 and we're hoping New Yorkers will heed our advice this year. The
 16 Department collects, it compiles and analyzes the flu activity
 17 year round and all the corners of the State and report the
 18 information weekly between the beginning of October and through
 19 the following May. We've also closely followed the number of
 20 doses that have been administered. The New York State pharmacies
 21 outside of New York City have reported 840,792 doses of the flu
 22 vaccine administered since August of 2018. And 25,413 of these
 23 doses were administered in pharmacies to children less than 18
 24 years of age. And this is a reminder that children two years of

1 age and older can now get the influenza vaccine in a local
2 pharmacy. This was the directive that began as emergency
3 regulation which was issued last year by the Governor to help
4 stem the tide of an especially active virus transmission, and is
5 now permanent in state law. In total, 755,159 doses of the
6 influenza vaccine have been administered to children in New York
7 State outside of New York City. And during last year's flu
8 season there were 23,377 flu related hospitalizations and
9 unfortunately six pediatric deaths in New York. So I encourage
10 everyone to get their flu shots if you haven't done so already.

11 Staying on the issue of immunizations, as I'm sure many of
12 you are aware, the State is actively managing the extensive
13 response to measles outbreak with our partners both in Rockland
14 and Orange Counties where there have been 96 confirmed cases as
15 of yesterday. In addition, Erie County now has a positive case of
16 measles which is unrelated to the cases in the lower Hudson
17 Valley. At the same time, New York City is managing a similar
18 response in Brooklyn where there have been 44 confirmed cases
19 and the original cases originating in late September and early
20 October from international travelers and the dozens of secondary
21 cases since that time underscore the importance of vaccinations.
22 Getting the measles vaccine is simply stated, the best way to
23 prevent measles. You're considered immune to measles if you have
24 written proof of two valid doses of the MMR vaccine or other

1 live measles containing vaccine. Also considered immune to
 2 measles if you have written lab report of immunity or if you
 3 were born before 1957. Anyone who lacks proof of measles
 4 immunity as defined by those two criteria should receive at
 5 least one dose of the MMR and two doses of the MMR vaccine are
 6 recommended for some groups of adults including healthcare
 7 personnel, college students, and international travelers. And
 8 the dose should be given at least 28 days apart. I'm working
 9 closely with Rockland and Orange Counties to support free
 10 vaccination clinics and in close coordination with the federally
 11 qualified health centers and private healthcare providers. More
 12 than 11000 MMR vaccines have been administered to date in those
 13 counties. Daily calls since early October, shipment of supplies,
 14 weekly support staff traveling from Albany and New York City and
 15 a measles hotline which has received 1000 calls and extensive
 16 community outreach have all factored in to truly coordinated
 17 responses, but nothing short of remarkable. Your work between
 18 the counties and together on tackling this problem. In
 19 addition, the State has worked with Rockland County to enforce
 20 student exclusions at schools that are impacted in the impacted
 21 areas with less than 70 percent MMR vaccination rate. And that
 22 effort has since been expanded to all schools with less than an
 23 80 percent vaccination rate. The schools are required to keep
 24 un- and under vaccinated students at home until 21 days have

1 passed since the last confirmed cases of measles in that
 2 community. Measles as many of us know, is highly contagious.
 3 Anyone who is not protected against measles is at risk of
 4 getting the disease and they may spread measles to people who
 5 cannot get vaccinated because of the age or specific health
 6 conditions as well. So it's an issue I've personally invested
 7 in. I visited these communities on multiple occasions and will
 8 continue to encourage everyone to be up to date with their MMR
 9 vaccines.

10 The next issue is e-WIC. Since last October we have been
 11 busy continuing our statewide rollout of e-WIC and electronic
 12 benefits transfer card which eliminates the paper checks and
 13 provides a more convenient way for families in the Women,
 14 Infants, and Children program to shop for nutritious WIC foods.
 15 All across the State we're hearing from grateful families about
 16 the differences that this technology has made, and ensuring that
 17 they have access to nutritious foods without the shame that can
 18 be felt by holding up a grocery line using outdated system. I
 19 had a opportunity to be at one of the launches. It's really
 20 amazing and we did have a video, but unfortunately it doesn't,
 21 the pixels won't work so we can't share that with you, but it is
 22 quite amazing what we've done. By bringing the WIC system into
 23 the 21st century we're enhancing this critical benefit program
 24 and promoting convenient shopping for all New Yorkers. WIC

1 gives infants and children truly a healthy start in life, and
 2 the program helps pregnant, post-partum moms and their families
 3 with a healthy lifestyle and ensures a brighter future for all
 4 New Yorkers. e-WIC is now online in the capital region. It's in
 5 central New York, Southern Tier, Rochester, Finger Lakes region,
 6 Buffalo, and the Western New York region. And right now we're in
 7 the process of bringing Hudson Valley region online with Long
 8 Island and New York City in the new year. So we're on track with
 9 statewide implementation well ahead of the federal guidelines
 10 which is 2020.

11 Another issue is Hepatitis C. In late November we held our
 12 first meeting of the New York State Hepatitis C elimination
 13 taskforce. The Governor charged the taskforce with developing
 14 the State's plan for eliminating Hepatitis C as a public health
 15 epidemic. The work of the taskforce will be supplemented by five
 16 workgroups. One is prevention. Two is testing in linkage to
 17 care. Three is care and treatment. Four is surveillance data and
 18 metrics, and five are the social determinants. Over the next
 19 several months, the five workgroups will meet to review update
 20 enhance and prioritize Hepatitis C elimination recommendations.
 21 The draft recommendations will be delivered to the taskforce for
 22 review in early spring with a meaning to finalize the
 23 recommendations and seek community engagement. On the issues of
 24 what the team is working on, we have End the

1 Epidemic, so the work of the Hepatitis C taskforce will follow
 2 nicely in the footsteps of the tremendous progress we've made
 3 with the Governor's End the Epidemic initiative, which we
 4 celebrated last week on the 20th anniversary of World AIDS Day.
 5 The Governor's initiative features a three point plan which
 6 includes identifying people with HIV who remain undiagnosed, and
 7 linking them to healthcare. Number two, linking and retaining
 8 people diagnosed with HIV to healthcare and getting them on
 9 treatment to maximize HIV viral suppression. And three,
 10 providing access to appropriate prophylaxis for people who
 11 engage in high risk behaviors to keep them HIV negative. And
 12 thanks to the initiative, new diagnoses of HIV are falling while
 13 rates of enrollment and treatment for those diagnosed continues
 14 to decline. New HIV diagnoses in New York declined for a third
 15 consecutive year reaching an all-time low of 2769 in 2017 which
 16 is down 20 percent since 2014 and we continue to drop. The
 17 number of new HIV diagnoses in people with a history of
 18 injection drug use reached an all-time low of 110 during 2017
 19 and that was down 28 percent from 2014 where it was 153. And the
 20 Governor announced last week that regulations governing HIV
 21 uninsured care programs will be amended to update income
 22 criteria and eliminate the assets test. Currently to be
 23 eligible for the HIV uninsured care program, an applicant's
 24 household income must be equal to or less than 435 percent of

1 the federal poverty level and the applicants liquid resources
 2 must be less than \$25,000. These new regulations will increase
 3 eligible income to 500 percent of the federal poverty level and
 4 eliminate the cap on resources. And the proposed regulations are
 5 being finalized with adoption anticipation in early 2019.

6 Regarding the New York State of Health, we're in the middle
 7 of open enrollment for the program. As of December 5, more than
 8 930,000 consumers have enrolled or renewed coverage in a
 9 qualified health plan or the essential plan. 51,000 are new
 10 consumers, and both the numbers we're very pleased with. We
 11 contribute the large number of the new enrollees to a wide range
 12 of participating plans, a targeted consumer outreach, and easy
 13 auto renewal which help ensure the goal of getting every New
 14 Yorker covered. Another reminder is this Saturday December 15 is
 15 the deadline to qualify for the January 1 coverage. And open
 16 enrollment runs through January 31.

17 On aging innovation challenge, this is a very interesting
 18 thing that we did. I wanted to close my highlight, a program I
 19 came to the conclusion last week, it took a year of work on part
 20 of everyone in many parts of the Department, and it's really
 21 something very interesting, and as one who cares, has elderly
 22 parents and realizes what it is to be caregiver and work hard to
 23 make sure New York is an age friendly state, last week was the
 24 culmination of the effort by the Department to work with a group

1 called HERO X to develop a crowd source competition to generate
 2 innovative solutions to help older adults and their caregivers
 3 in carrying out activities of daily living. The challenge was
 4 open to all undergraduate and graduate students attending a
 5 college or university in New York State. It was a panel of
 6 expert judges who evaluate the five finalists and their
 7 innovations to determine which team would win the first ever
 8 Aging Innovation challenge. We ended up splitting the winners so
 9 the co-winners split the \$25000 top prize. A team from Corning
 10 Community College demonstrated something called Grip Aid. It
 11 was an assisted eating device targeted to people who have motor
 12 control issues and inhibit their ability to feed themselves. It
 13 was very innovative to look, you can put a spoon in, you could
 14 actually put a toothbrush in, and many other things in there.
 15 And a team from Syracuse University designed PNEU-Strength.
 16 PNEU, PNEU-Strength, which is an inflatable seat cushion device
 17 that provides physical assistance to older adults in standing up
 18 from a sitting position on a chair or a sofa. It's clear if
 19 you're really sort of have trouble standing up without
 20 assistance, this was something which clearly could help them.
 21 The two teams from Cornell University and a team from University
 22 of Buffalo also received \$5000 each as finalists. All the teams
 23 were incredible, enthusiasm, professionalism, it was truly a
 24 pleasure to see the ingenuity that entrepreneurial spirit, their

1 market research that they did, and it was a wonderful day and we
2 look forward to doing this again. Probably do it in a two-year
3 cycle. So I close by just wishing everyone a happy and healthy
4 holiday season. Look forward to working with you in the new
5 year. I'm happy to answer your questions that you may have on
6 these topics or other topics as we move toward the end of the
7 year and start 2019. Thank you.

8

9 JEFF KRAUT: Thank you Commissioner. Any members of the
10 council have any questions on this or any other matter that
11 they'd like to raise, ask the Commissioner? Commissioner, we
12 wish you as well a happy holiday and a happy healthy new year,
13 and we look forward to next year.

14

15 HOWARD ZUCKER: Thank you. Sorry to interrupt the flow
16 before.

17

18 JEFF KRAUT: Thank you.

19

20 JO BOUFFORD: Briefly, just to go back, I wanted to
21 highlight the issue of the inclusion of wellbeing and our mental
22 health goal and, this was an area of a lot of interesting
23 discussion and was included because this is a lot of effort at
24 the National Academy of Medicine and others to begin to think

1 about the, what does wellbeing mean? How does it play out? How
 2 does it address this issue of quality of life and issue of
 3 empowerment. And I think you'll find some of the subobjectives
 4 in that area of mental health and wellbeing to be very
 5 interesting. So we're pleased with that change.

6 So this is our continuing goal. I would say since 2008 we
 7 started with 26 ranking in America's health rankings beginning
 8 of this second round, went down to 17 and now we're at 10. Up to
 9 10. Low is good. 10th ranking in the America's health rankings.
 10 Since we're using America's health rankings, we are also paying
 11 attention to the ranking for older persons, which is at 18, so
 12 we have some ground to cover in the age-friendly area in the
 13 next round of the prevention agenda. These are the goals. Very
 14 strong feeling. As I said before, that we would stay with the
 15 same goals. The language changes. You see wellbeing. Our
 16 colleagues in the broader infectious disease area decided to use
 17 the notion of communicable diseases rather than calling out
 18 every single one they're working on. As you've heard, it's a
 19 busy agenda and that will continue as part of the core business.
 20 So with that, let me turn it over to Sylvia to sort of take us
 21 through the details.

22

23 SYLVIA PIRANI: So I'm just going to quickly go through each
 24 priority area. There are five priorities as we said. This is

1 the, prevent chronic disease priority whereas before we had a
 2 specific priority about reducing obesity, the subject matter
 3 experts that led this discussion with members of our committee,
 4 ad-hoc committee, local health departments, hospitals, NYSECHO,
 5 Dr. Watkins was represented, and others decided that they should
 6 split this between healthy eating and physical activity, and
 7 then the other thing that's new here is this added goal relating
 8 to food security which many of our hospitals, calling on
 9 Northwell here for one, and others are working on and wanted
 10 included, and most importantly this is reflecting our new
 11 collaboration with Ag and Markets as part of health across all
 12 policies that wanted to participate with us on this. So that's
 13 one of the things that's new. Jo mentioned in tobacco we have
 14 calling out e-cigs, electronic vaping products. This priority
 15 addresses three major risk factors for mortality and morbidity
 16 and then preventive care and management.

17 On this, promote a healthy and safe environment, want to
 18 call out that violence prevention is one of the goals, and
 19 injuries, violence, and occupational health. This was the
 20 subject of much discussion at our public health committee and by
 21 some of the public health committee members. Mr. Lawrence and
 22 others specifically and we did broaden this and made it a bigger
 23 focus area, goal, and as part of this focus area than it was
 24 before. There's a new focus area here related to food and

1 consumer products. That's what's new from the last cycle.
 2 Healthy women, infants and children. These are focus areas that
 3 we had before except for the cross cutting one which focuses on
 4 racial, ethnic, economic, and geographic disparities. We worked
 5 hard to include in the first goal area increasing use of primary
 6 and preventive healthcare services, not just for women of
 7 reproductive age, but for women of all ages including older
 8 adults. And this includes maternal mortality of course, which
 9 has received a lot of attention from this council as well as the
 10 governor's office.

11 This is a broader title for what was before mental health
 12 and substance abuse priority. The promote wellbeing, as Jo
 13 noted. This was a new concept. We spent a lot of time to talk
 14 about it. In the second focus area includes a new goal related
 15 to opioid and other substance misuse and deaths. It includes
 16 additional attention to adverse childhood experiences which
 17 local health departments and hospitals and others are paying
 18 attention to. And it included some stakeholders who were
 19 concerned about the mental health and wellbeing of older adults.
 20 So there's attention here to that population.

21 And finally, prevent communicable diseases. We shortened
 22 the title. We have included vaccine preventable diseases, HIV,
 23 sexually transmitted infections, trying to reduce the annual
 24 rate of growth because it keeps going up. So we have a lot of

1 attention on that. And then a new attention to antibiotic
 2 resistance.

3 So just really quickly, we are starting, one of the pieces
 4 of feedback we got was to try and keep it simple. This is a big
 5 plan. Everybody wants to see themselves in it. You got the 200
 6 page document. You know it's not that simple, but we're trying
 7 to do that with our web design. So this is just an example of
 8 what next year you'll see. When you go to chronic diseases,
 9 you'll be able to touch on a specific focus area like healthy
 10 eating and food security and when you go there you'll see the
 11 goals. For each goal we have objectives and interventions. Under
 12 the increase food security we also have some interventions that
 13 were supported by the Department of Ag and Markets, and we're
 14 going to connect to some of what they're working on here for
 15 example. They've been very engaged and eager to connect local
 16 prevention agenda coalitions to resources that make a local food
 17 more affordable including the 500 community farmers markets
 18 statewide, the farmers market nutrition program, incentive
 19 programs that make SNAP available, that you can use SNAP to pay
 20 for food at markets.

21

22 JO BOUFFORD: Just a quick comment. I think this is an
 23 example of how working with the other agencies really adds
 24 enormous resources to trying to get to a particular goal and

1 we're hoping to begin having maps of these county level
2 resources across many more of the Departments going forward.

3

4 SYLVIA PIRANI: And then I just want to say a word about
5 local community health improvement planning because the
6 prevention agenda is the basis for that planning. This has
7 probably been one of the most satisfying parts of this for me
8 overall these years working on that. Before the prevention
9 agenda started, we had in article 28 and article 6 which is the
10 public health part of public health law, requirements for local
11 health departments and hospitals to do community health
12 improvement planning. Hospitals did something called a community
13 service plan. It was a retrospective look at all the things we
14 did in the community over the last three years. Local health
15 departments did these plans but they did them by themselves. In
16 2008 the first cycle, we, Dr. Daines asked local health
17 departments and hospitals to do this priority setting together.
18 We had some success in that collaboration but not a lot of
19 success in the implementation of the plans. In 2013 we kicked it
20 up a notch with a lot of technical assistance and support and
21 strong guidance that required the two to do it together, and we
22 also started asking hospitals to report community benefit
23 spending, so we were encouraging them to align that spending
24 with the prevention agenda. We've had a fair amount of success

1 with that. The last cycle as I think you all know, more than
2 half the counties did the plans with their hospitals, less for
3 us to read, less for them to do, and more importantly strong
4 collaboration. Dr. Watkins is someone who can attest to that
5 benefit of getting the hospital to invest in the prevention
6 agenda in the community which is huge for his county. As we move
7 forward we're going to strongly encourage that continued
8 collaboration. Jo would like us to require that single plan. But
9 we've had some... it's challenging with the multi hospital systems
10 especially in the City and in the Metro area. We're going to ask
11 hospitals to describe how they're investing their resources to
12 support local prevention agenda efforts and this effort has also
13 been supported by the council's actions to connect the
14 prevention agenda to the certificate of need application.

15 Just want to say a word about community benefit spending.
16 We were anticipating that with the increase in the number of
17 people who had insurance that there would be a reduction by
18 hospitals in spending on charity care which is one of the
19 categories of community benefit spending. We thought we'd see an
20 increase in the community health improvement spending category.
21 Community benefit accounted for \$6.8 billion of, or 12 percent
22 of hospitals operating expenses in 2016. Of that, \$257 million
23 was spent on community health improvement. That's only .47
24 percent. But it's not nothing. Compared to our public health

1 budget, that's a significant amount of resources. So we think
2 it's good that we're calling attention to that. But it hasn't
3 increased as much as we would like. And this shows you how the
4 hospitals are spending or not on this. 60 percent on hospitals
5 spent between zero and \$1 million. 30 hospitals spent nothing in
6 this category in 2016. So we'd like to... and those are not the
7 distressed hospitals in New York State. There's just a couple on
8 that list that are distressed. We'd like to continue attention
9 on this. We think hospitals ... it's been helpful for this body
10 especially to bring attention to the need for hospitals to
11 support their entire community in the community benefits
12 spending.

13 This is our last slide. Just to let you know we're doing
14 the office kick off of the updated prevention agenda at a summit
15 in the end of February in Albany to celebrate progress on
16 everything that's been achieved to learn about the updated
17 prevention agenda and to support communities and their efforts
18 to implement it.

19

20 JO BOUFFORD: Ok, thank you. So in the spirit of opening
21 the discussion and questions, may I move the resolution to adopt
22 the prevention agenda 2019-2014.

23 [so moved!]

24

1 JEFF KRAUT: And the resolution, you've all received a
 2 copy of. It's the Public Health Committee of the New York State
 3 Public Health and Health Planning Council is going to move to
 4 accept the prevention agenda that establishes the priorities for
 5 state and local action in New York State to help it become the
 6 healthiest state for all people, for people of all ages. The
 7 Council agrees that the new focus of the plan shall include
 8 action by additional state agencies to support the Governor's
 9 Health Across All Policies and goals for an age-friendly New
 10 York State by focusing on the broad determinants of health and
 11 the council commits itself to a regular review of programs
 12 during the implementation period to support its successful
 13 implementation. And so that's the agenda, and we also have to
 14 acknowledge not only the work of Sylvia Pirani and the staff
 15 that we did, but the extraordinary leadership of Dr. Boufford in
 16 doing this. I would say that she single handedly..

17 [applause]

18 And I know they wrote remarks for me but I have the one
 19 that doesn't have my remarks. But I really don't need remarks.
 20 I mean, Dr. Boufford in not only here but outside the walls of
 21 this room have an extraordinary commitment of advancing public
 22 health in all the roles that she's held throughout her career.
 23 It's been her life's work. We are blessed and fortunate that we
 24 have such a leader in the Public Health Council that is taking

1 all of that experience and insight and helping us focus it I
2 think very, very appropriately. And you see the work, the
3 manifestation of all of those efforts in a lot of the numbers,
4 in moving the needle so to speak, so her leadership, her
5 tenacity, have absolutely led to the success of the agenda.
6 You've earned the support involved in an aberration of all the
7 organizations throughout New York State, not only the Department
8 and this Council, but we are forever grateful and thank you so
9 much Dr. Boufford.

10 So I have an emotion [sic]. We moved it. I'm assuming
11 there'll be no debate. All those in favor aye?

12

13 [aye]

14 Opposed? Abstention? Uncharacteristic, the motion carries.
15 Thank you so much. Go ahead Dr. Boufford. Final word.

16

17 JO BOUFFORD: Thank you so much everybody really for all
18 your support. It's been great. The Public Health Committee,
19 we've had many, many members of the Council coming to that
20 committee meeting and the ad-hoc committee as well. I did want
21 to mention one other thing that the Public Health Committee did
22 discuss at their recent meeting which is a bit we hope, a
23 preview of coming activity, was our... we may recall that five
24 years ago we said we would focus on obviously overseeing the

1 Prevention Agenda, but raising one particular issue to higher
 2 intention, and that issue was maternal mortality. So this
 3 council had a number of hearings about it. The Public Health
 4 Committee as well, and happily it is a commission of the
 5 Governor, is focusing on maternal mortality, so we feel it's
 6 time to turn our attention to another issue. We'll always keep
 7 our eye on the ones that are underway. We had a very important
 8 discussion I think about the potential role of bringing
 9 attention to violence prevention as it is memorialized in the
 10 Prevention Agenda as an issue for us, and we've had some
 11 internal conversations and I think the initial reactions are
 12 quite positive, so we will be coming back to you with some
 13 thoughts about how we might have some public activity to, again,
 14 working across agencies begin to look at this as it's
 15 represented in the prevention agenda. And that's especially to
 16 Mr. Lawrence and Ms. Rautenberg for their interventions in that
 17 space. So we look forward to working on that as well.

18

19 JEFF KRAUT: OK, with that, we'll continue with the
 20 agenda. But as it seems to be this time of year there's so many
 21 things to celebrate so I have one more item I just want to bring
 22 to your attention. You look around the room. The people that are
 23 around this table. There's a lot of things to be proud of and
 24 how we've contributed to the healthcare in New York. I'm going

1 to point out, there's one other person in this room who did
 2 something I want to bring to your attention. This individual is
 3 a true hero. It's Dr. Ted Strange. He was running the New York
 4 City Marathon, as they crossed mile 16 which is the 59th Street
 5 Bridge or the Ed Koch Bridge, or the Queens Borough Bridge, this
 6 41 year old runner from out of state collapsed. Cries for help
 7 come out. Dr. Strange nearby comes over, runs the code, gets the
 8 defibrillator, I think you paddled her four times, brought her
 9 back from the code and brought her back to life. And unchara...
 10 characteristically of the humility that Ted is a doctor's
 11 doctor. He is a tremendously respected physician on Staten
 12 Island and through, I get to work with Ted in our health system,
 13 but he said, the headline in the New York Post was "please don't
 14 call him a hero." But the "Doc Saves New York Marathon Runner's
 15 Life." And so Ted, we just want to congratulate you for the work
 16 you do outside the Council. And he, it ruined his time a little,
 17 but he did 5hrs 16min. which is extraordinarily... compared to
 18 what I would run it in which would be in days. Ted, just
 19 congratulations. And I just can't imagine just what went on that
 20 day.

21

22 THEODORE STRANGE: I want to say thank you for that and
 23 yeah, I was in third at the time... I don't know what to say. I
 24 was hoping for... but anyway. What I'd like people to get out of

1 this and here we are sitting at the Public Health Council is, in
 2 speaking recently with the American Heart Association
 3 Nationally, providers including physicians, nurses, and others
 4 and besides everybody else in the community, and here we are
 5 talking about wellness and health and prevention, we all need to
 6 understand and know what CPR is in 2018 going into '19 and that
 7 AEDs save lives. And there's an adage "if you see something, say
 8 something," and I'm going to say to you, if you see something,
 9 do something. If we're part of healthcare please get on a video,
 10 get on YouTube. You can learn CPR in an hour. It's really basic.
 11 As I said in one of the articles it's not about mouth to mouth
 12 which everybody is always concerned about. It's about getting on
 13 the floor and doing some chest compressions and hopefully EMS or
 14 somebody is going to arrive with something more that will help
 15 as they did in this case. And it truly saves lives. And the
 16 American Heart Association told me this week that we're still
 17 only doing this when necessary. About 15 percent of the time.
 18 And that's a real shocking number. Hundreds of runners passed me
 19 by not for any other reason that they thought probably something
 20 was being done for her, but we just need to stop and just do
 21 something. There is no hero to that. That's just being a good
 22 human being, and that's what I truly believe. So I thank you for
 23 that Jeff.
 24 [applause]

1

2 JEFF KRAUT: It's now my pleasure to ask Dr. Gutierrez to
3 give a report on the Codes, Regulations, and Legislation
4 Committee.

5

6 ANGEL GUTIERREZ: Thank you. It is still morning. Good
7 morning. At today's meeting of the Committee of Codes,
8 Regulations, and Legislation the committee reviewed seven
9 proposals; two for adoption and five for information. For
10 adoption was patient's Bill of Rights. This proposal will amend
11 sections 405.7 and 751.9 of Title 10 to update information
12 reflected in the patients' Bill of Rights. The Committee voted
13 to recommend adoption to the full council and I so move.

14

15 JEFF KRAUT: I have a motion. I have a second, Dr.
16 Berliner. Any conversation? Any questions? Hearing none I'll
17 call for a vote. All those in favor, aye.

18

19 [aye]

20 Opposed? Abstention? The motion carries.

21

22 ANGEL GUTIERREZ: For adoption also is statewide planning
23 and research cooperative system. This proposal will revise
24 section 400.18 of Title 10 regarding the statewide planning and

1 research cooperative system referred to as SPARCS. The proposal
2 will make necessary updates and grant the Department the
3 flexibility to explore new data intake options. The Committee
4 voted to recommend adoption to the full Council and I so move.

5

6 JEFF KRAUT: I have a motion. Do I have second? Dr.
7 Kalkut. Any questions from the Council? All those in favor aye.

8

9 [aye]

10 Opposed? Abstention? The motion carries.

11

12 ANGEL GUTIERREZ: The next five will be for information
13 only. Nursing home weekly bed census. This proposed regulation
14 will add a new section 415.32 to Title 10 that will require
15 nursing homes to electronically submit the weekly bed census
16 data surveyed to the Department to ensure that the Department
17 has accurate bed availability information. There was no vote on
18 this proposal.

19 The next one is for information also. New requirements for
20 annual registration of licensed home care services agencies.
21 This proposal will amend part 766 of Title 10 and update
22 requirements for licensed home care services agencies referred
23 to as LHCSAs with respect to annual registration and reporting.

1 Next for information also was hospital policies for victims
2 of human trafficking. This proposal will amend part 405 and
3 section 751.5 of Title 10 to require hospitals and diagnostic
4 and treatment centers to establish policies and procedures
5 pertaining to the identification and referral of victims of
6 human trafficking.

7 Next for information, food service establishments. This
8 proposal will amend part 14 of Title 10 and will restrict the
9 use of liquid nitrogen and dry ice in food preparations.

10 And last for information clinical laboratory directors.
11 This proposal will amend part 19 of Title 10 pertaining to
12 clinical laboratory directors. To update the list of recognized
13 board certifications that qualify clinical laboratory directors
14 among other changes. No more on this, and this concludes my
15 report from the Codes Committee. Thank you very much.

16

17 JEFF KRAUT: Thank you very much Dr. Gutierrez. I'm going
18 to turn it over to Dr. Rugge to give the report on the Health
19 Planning Committee and I'll do the stroke center designation
20 because I know you're in conflict. After Dr. Rugges...

21 After Dr. Rugge's presentation we're going to take a five
22 minute break just to get to the bathroom before the Committee so
23 you can plan accordingly. Dr. Rugge.

24

1 JOHN RUGGE: Thank you. As we all know this is the Public
2 Health and Health Planning Council, and we've just seen how
3 productive and effective the public health section has been and
4 is. I think also the health planning section is coming to life
5 and that we have a 13 part agenda with topics for consideration
6 over the next two years as outlined by Dan Sheppard. Dan is not
7 here and I hope it's not because his feelings were hurt. I did
8 ask him to keep his discussion of each of those items down to 15
9 minutes.

10

11 JEFF KRAUT: So, Dan I should mention this, Dan has
12 unavoidingly been called away for a very urgent matter. He at
13 least acknowledged that you were going to handle most of the
14 issues that he was going to talk about, you're going to handle
15 in the Planning Committee presentation.

16

17 JOHN RUGGE: And again, I hope that's not a covered
18 story. I did ask him to keep the discussion of each of those 13
19 items down to 15 minutes each. So we'd be out by 2:30. But in
20 any case, many of these items come from the RMI process for
21 review and consideration. Others are new and will be coming up
22 shortly.

23 Also maybe more importantly, imbedded in those discussions
24 and hopefully coming out of them will be the opportunity to

1 review the standards we use for CON review. With regard to
 2 public need, as I see it, clearly a need for service is one
 3 standard, but also questions about a need for choice. How do we
 4 connect public need to the need for competition or the value of
 5 competition among providers. With regard to financial
 6 feasibility, this is a standard that developed decades ago when
 7 the state was actually setting reimbursement rates. And
 8 financial feasibility entailed how much was the State committing
 9 to spend on healthcare? These days I think we are asking Tracy
 10 to review the budgets of providers coming in, to say are they
 11 actually going to make money on a service? And it strikes me as
 12 a little silly. Regarding character and competence; competence I
 13 think translates to quality. And to have a new discussion and
 14 one that's advanced in terms of what are our expectations of
 15 quality and how do we measure and how should we use those
 16 discussions to determine decisions regarding CON applications
 17 will be important. With regard to character, this was a standard
 18 evolved long before we had a national or out of state providers,
 19 before we had parent companies and grand parent companies with
 20 layers and levels of responsibility that need to be considered
 21 with some sensitivity and some precision that right now I think
 22 we're simply incompetent to do. We simply have not had the
 23 background discussions necessary and the refreshing that this
 24 council deserves and really needs to undertake for itself. There

1 will hopefully be much more to follow and a few more meetings to
2 attend so that we can address concerns that I think are really
3 central to everything that we are charged to do.

4

5 JEFF KRAUT: Thank you. And you know, it is going to be a
6 very rich conversation if we can plow through this and come to
7 some meaningful thing. It's kind of a continuation of some of
8 the other issues that have come up in some recent CONs as well,
9 is to get clarification and to create kind of a framework for
10 decision making and to focus policy. So I think it would be very
11 productive. And I also suspect for the following year, we might
12 want to reconsider, you know, we didn't want to do it every
13 year, but every two years possibly, to have kind of a retreat
14 again. Particularly there may be some movement of new council
15 members coming, some council members terming out. So next year
16 that might be a good time when some of those changes occur to
17 start, to revisit some of the things we did two years ago.

18 Any other comments for Dr. Ruggie? If not, I'm going to call
19 a stroke center designation. We have a request for a stroke
20 center designation for Glens Falls Hospital. Presentation was
21 made and the Committee had voted to approve. I don't know if
22 there's any comments that the Department wishes to make?

23

24 [just questions]

1 If there are any questions. The material is in your report.
2 Dr. Rugge has left the room. And if that's the case, I'd like to
3 make motion to approve Glens Falls Hospital for stroke center
4 designation. Second Dr. Berliner. Any questions or comments?
5 Hearing none, I'll call the vote. All those in favor, aye.

6
7 [Aye]

8 Opposed? Abstentions? The motion carries.

9 That concludes the report of the Health Planning Committee.
10 Let's take a 10 minute break. If you can return back in here at
11 five to twelve, and we will take the Establishment and Project
12 Review Committee.

13 JEFF KRAUT: I'm going to reconvene the Public Health and
14 Health Planning Committee. I'm going to now ask Mr. Robinson to
15 give the report on Establishment and Project Review.

16

17 PETER ROBINSON: Thank you Mr. Kraut. As the Council
18 notes, where possible we're going to attempt to batch
19 applications and consider them in a grouping. Please indicate at
20 any time when you want an application pulled out so we can give
21 it individual consideration.

22 So beginning with category one, and this is a single item,
23 182082C, Menorah Home and Hospital for Aged and Infirm in Kings
24 County. This is to perform renovations to convert a 16 bed

1 hospice unit to a 16 bed residential unit and certify 16 RHCF
2 beds. The Department is recommending approval with conditions
3 and contingencies, as did the Committee and I so move.

4

5 JEFF KRAUT: I have a motion. I have a second, Dr.
6 Gutierrez. Does the Department wish to comment?

7

8 TRACY RALEIGH: Just take questions.

9

10 JEFF KRAUT: Does any member of the Council have any
11 questions? Hearing none, I'll call for a vote. All those in
12 favor, aye.

13

14 [Aye]

15 Opposed? Abstention? The motion carries.

16

17 PETER ROBINSON: Thank you. This is an application for
18 ambulatory surgery center construction. 181329C. Albany Medical
19 Center Hospital in Schenectady (County). I will note an
20 interest, abstention, and recusal by both Dr. Rugge and Dr.
21 Bennett who are leaving the room. So this is to certify a
22 multispecialty ambulatory surgery center extension clinic to be
23 located at 1769 Union Street in Niskayuna. The Department has
24 recommended approval with a condition and contingencies. The

1 Committee had a lengthy debate and ended up voting 6-5 in favor
2 [sic] which results in no recommendation to the full council. I
3 make a motion for approval with a condition and contingencies.

4

5 JEFF KRAUT: I have a motion, I have a second by Dr.
6 Gutierrez. Department?

7

8 TRACY RALEIGH: I'll just point out that additional
9 information was distributed to members following the Committee
10 meeting, and it was information both by the applicant, Albany
11 Med, as well as from opposing hospital, Ellis Medicine. So we
12 hope that members have had a chance to review that material. And
13 we'll take any questions.

14

15 LAWRENCE BROWN: Good afternoon, this is Lawrence Brown,
16 member of the Council. So I was wondering just out of interest,
17 I didn't have the opportunity to review everything, but maybe I
18 missed something with respect to what is your sense about your
19 understanding of the famous prevention agenda?

20

21 TRACY RALEIGH: Sure, Dr. Brown, I won't do justice to the
22 presentation made by Albany Medical Center in responding to this
23 important question. But I will note that there was significant
24 discussion about the investment that Albany Med has made into

1 community outreach and services, particularly I have a call
2 noting the amount of cancer screenings done and certainly the
3 provision of ensuring that there is specialty services in the
4 surrounding communities as well. It was also clarified from our
5 staff report that they, for 2017, have now documented their
6 significant investment in the community benefit spending. That's
7 required to be reported. That was noted in the staff report for
8 2016 as having not had the ability to capture, and that was also
9 clarified.

10

11 JEFF KRAUT: Any other members of the Council have any
12 comments? Observations? Because I'm going to make some. Yes, Ms.
13 Carver-Cheney.

14

15 KATHLEEN CARVER-CHENEY: What did you think about Ellis'
16 assertion that there wasn't actually any need, that you looked
17 at the wrong counties, etc.?

18

19 TRACY RALEIGH: I would just comment that we are working
20 within the current regulations and guidance that this PHHPC body
21 has given us to assess ambulatory surgery centers. I will note
22 that, and let me just back up and say that those regulations
23 really for the need of ambulatory surgery right now focus on
24 whether the proposal has enough sufficient volume to be

1 financially feasible, and certainly in our review of Albany
2 Medical Center's application that our conclusion that there was.
3 We did have a discussion at the Committee meeting regarding the
4 fact that there is a services in Saratoga County that if there
5 was the framework to look at overall utilization from a region,
6 we should have acknowledged that. So we'll take that back. But
7 we made our conclusions based on the current regulatory
8 framework and guidance before us.

9

10 HARVEY LAWRENCE: My question is not directly directed at
11 this particular applicant. We just went through a presentation
12 of the prevention agenda, and we looked at uneven spending for
13 community benefits by hospitals. And I noticed that in our
14 presentations of these applications we usually look at charity
15 care and Medicaid expenditures. Can we add the percentage of
16 their budget that is devoted to community benefit spending?

17

18 TRACY RALEIGH: I'm sorry, I'm not sure I'm understanding
19 the question.

20

21 JEFF KRAUT: Are you asking in the future? Not specific
22 to this application.

23

1 HARVEY LAWRENCE: Not this application in particular. But
2 just as an indicator looking at the amount of community service
3 spending that hospital in particular have whenever they present
4 an application.

5
6 TRACY RALEIGH: I'll just point out that certainly I think
7 that's a good comment. We currently in our recently adding the
8 public health and prevention agenda questions to our
9 applications for hospitals, we ask those questions and we report
10 out on the community benefit spending. But certainly we'll
11 consider that in terms of how we can apply that in other
12 applications as well.

13
14 ELLEN RAUTENBERG: That chart raised a huge number of
15 questions ... community benefit spending. (inaudible)

16
17 JEFF KRAUT: I think in general terms, the community
18 benefit spending is something that you do need to have a lot of
19 conversation with what those categories mean. As you, just to
20 digress for a moment, if you looked at the growth in the
21 categories, because Sylvia I think had pointed out that there
22 were certain categories didn't increase in community investment.
23 And partly because if you're using that money, take a look at
24 what did increase, which was subsidization of government payers

1 who are not paying cost. And significant part of that community
 2 benefit is going to maintaining access for Medicaid patients and
 3 the economic consequences of doing so. Because it went from 3.68
 4 percent of total benefit for statewide, to 5.63... I'm pulling out
 5 numbers, I probably made up the last two digits because they
 6 sounded good. But I'm pretty good it went from 3.6 something to
 7 5-something. And you just need to understand, if you think it's
 8 a zero-sum gain, it's not. Because every year the gap that
 9 institutions are trying to close between revenue and expenses
 10 has been growing. And this year nationally is the largest gap
 11 that have been reported. So far it's 1.6 percent nationally. But
 12 the gap that institutional providers have to close between what
 13 they're getting paid and what their expenses are in a lot of
 14 markets, and they have to generate a margin and how to do that.
 15 And that's overall. So I think that's a great conversation to
 16 have, and I think in John's Committee I think it would be
 17 helpful, because I think some of those agenda items, and if it's
 18 not, let's get it in there because it is useful information, but
 19 again, you have to remember what you have to be careful about
 20 doing and we'll come back I think to this application in a
 21 moment is you don't think you can second guess investment
 22 decisions. Because some of the decisions that we're asking,
 23 we're being asked to approve are trying to strengthen or support
 24 the hospital that it might create additional margin so it can

1 continue to just serve what it serves. And it's not a fungible
2 number in and of itself.

3

4 HARVEY LAWRENCE: Yeah, I think, I don't confess to
5 completely understand the dynamics of hospital investments in
6 expenditures, but what was somewhat concerning is that in the
7 presentation there was a 21 percent of the hospitals that paid
8 zero and also that these were not distressed hospitals. They
9 were not the hospitals that were ...

10

11 JEFF KRAUT: And I think that's appropriate.

12

13 HARVEY LAWRENCE: ... the category that you are alluding
14 to. And so maybe it does merit further investigation. But I
15 think we need to know when the hospital is being presented for
16 approval here, when in fact whether they fall within the 21
17 percent category that paid zero, or they are in some other
18 category.

19

20 JEFF KRAUT: I absolutely agree with you.

21

22 HOWARD BERLINER: Jeff, I have to disagree with you.

23

24 JEFF KRAUT: I would've been disappointed otherwise.

1

2 HOWARD BERLINER: On your comments, and this is a very
3 long discussion and will get very arcane, so we're not going to
4 have it now. But I certainly agree with your suggestion that the
5 planning committee take it up. For years, the for-profit
6 hospital industry has claimed that their charity care includes
7 the difference between what they accept from Medicare and
8 Medicaid and what they say is their cost which is really their
9 price. And for years everyone who was not a member of a for-
10 profit hospital chain has said, What? That's crazy. You signed a
11 contract with Medicaid. That's your accepting it. You can't
12 call that charity care if it's less than what you want to charge
13 a well insured patient. So just want to say..

14

15 JEFF KRAUT: Yeah, but it's not charity care. There's a
16 gap in the categorization. That's not charity care. It's
17 classified under "unreimbursed" services.

18

19 HOWARD BERLINER: Well, on that chart...

20

21 JEFF KRAUT: That's why I'm thinking there's an issue
22 here, you've got to have... it's not as simple as a chart might
23 suggest. And that's the point, exactly. OK. Could we go back to
24 the application? Thank you. The applicants are saying, "what the

1 hell does this have to do with me?" but it does. So, I'm
2 bothered. This application is symptomatic of an issue that we
3 have here. And we have three statutory criteria and one
4 undefined criteria anything else. And when we deal with concerns
5 or arguments that are raised about competition, we kind of
6 suspend all the conversations we've had about where the policy
7 initiatives are with the state, what we discussed at our
8 retreat, and what we've discussed in the planning committee, and
9 it's kind of like Groundhog Day again. And so that's where I'm
10 trying to... what I'm trying to look at is to get the Council to
11 understand, we need to have a cohesive framework to make some
12 decisions. There are three very clear framework items. Does the
13 applicant, and we'll apply it to this one in particular, have
14 the character and competence to operate an am-surg center, and I
15 think the answer is yes. Is it financially feasible? Well,
16 they've showed they have the existing volume already, also
17 possibly making the argument about need. That they've already
18 established a need because patients in that area have chosen to
19 go to this place. And those patients, so what they're asking now
20 is to take an existing physician practice as we've approved for
21 the last six or seven years and say, a hospital based physician
22 practice wants to now become a hospital-based ambulatory surgery
23 center. Now we've had arguments when it's been doctors in an
24 area organizing and not taking on the same obligations of the

1 hospitals, and we've treated hospital to hospital competition
 2 differently than we've treated the doctor to hospital
 3 competition because they're slightly different dynamics. This is
 4 business that we already proved that has left... not in the
 5 hospital today and has left. Then we have this other thing
 6 that's a very nebulous criteria that's called 'any other item
 7 that we don't like.' Here we're confronted with like it or not,
 8 we're living in an environment where there is competition. We've
 9 stated that as an absolute basis of policy in New York State. We
 10 permit it. We are careful in certain environments to see if that
 11 competition could be negatively affected, and you have everybody
 12 comes up here with every argument that they keep just throwing
 13 up. They're hoping one of these resonates here. Clearly Ellis
 14 is very concerned. I would suggest by the actions it's fragile.
 15 And maybe it needs to also take a look and be concerned with
 16 their board to explore other options if they think an ambulatory
 17 surgery center that already is existing, where doctors are doing
 18 endoscopies and colonoscopies, if that is going to make the
 19 difference of the future of that hospital. And but I do think
 20 that we have to be clear about the type of competition. We
 21 cannot use this venue to stop what's happening. Imagine what
 22 happens when Amazon or Apple goes to telemedicine and they're
 23 going to divert all the patients. they're not coming into an
 24 urgent center. Not going to be done. It's going to be done in a

1 remote location. You can't use a regulatory process to stop
 2 inevitable things that are going to be happening. And that's
 3 what I'm afraid is occurring. And all I'm asking, and one of the
 4 reasons I voted to support the applicant, but I just would ask
 5 us to take a step, we need to be consistent. Because we are
 6 inconsistent, and I think that inconsistency sends signals that
 7 make it very difficult to have these conversations. That's not
 8 to say there's not validity and other things here, but I just
 9 wanted to express my concern here. And I really do suggest that,
 10 if the hospital really thinks this is a real problem for its
 11 longevity and its fiscal viability as they've suggested, then I
 12 think that board has to look way beyond this application as to
 13 how they are going to maintain access to services and look at
 14 different options. Because clearly I'm just not convinced. Dr.
 15 Brown.

16

17 LAWRENCE BROWN: I must confess Jeff, that part of what
 18 you have articulated I can see concurrence with respect to this
 19 application. I can probably see that. I'm not sure that I can
 20 embrace it though at a larger level, higher level, because I
 21 think the issue about access to care and the challenges before
 22 us are going to continue to evolve. So in some ways there's
 23 going to continue to be evolution about how we actually execute
 24 to make sure that the citizens of New York State are being

1 adequately served. So I hear with you about the different models
2 that are going to come. I'm not sure I can, from a macroscopic
3 level say that we gotta let business be business, but I do
4 understand with respect to this applicaiton, I cannot disagree
5 with you at all on this.

6

7 JEFF KRAUT: I get the big picture. So any other... not
8 that we're getting into a debate, I just wanted to express my
9 concerns. So I'll call a vote. All those in favor, aye.

10

11 [Aye]

12 Opposed? You're going to have to do a roll call. We'll do a
13 roll call.

14

15 Ms. Baumgartner

16 Yeah

17 Dr. Berliner

18 No.

19 Dr. Brown

20 Abstain

21 Ms. Carver-Cheney

22 Yes

23 Dr. Gutierrez

24 Yes

- 1 Mr. Holt
- 2 Yes
- 3 Dr. Kalkut
- 4 Yes
- 5 Mr. LaRue
- 6 Yes
- 7 Mr. Lawrence
- 8 No.
- 9 Dr. Martin
- 10 No
- 11 Mr. Rautenberg
- 12 Yes
- 13 Mr. Robinson
- 14 Yes
- 15 Ms. Soto
- 16 No
- 17 Dr. Strange
- 18 Yes
- 19 Mr. Thomas
- 20 Yes
- 21 Dr. Torres
- 22 No
- 23 Dr. Watkins
- 24 Yes

1 Dr. Yang

2 (?)

3

4 JEFF KRAUT: I'll vote yes for the record. There is no...
5 we need 13 affirmative vote. The vote is?... 12-6 and one
6 abstention. Would you like to change the abstention.

7

8 LAWRENCE BROWN: Yes I would like to change the
9 abstention if I'm allowed to do so.

10

11 JEFF KRAUT: Mark?... Yes.

12

13 LAWRENCE BROWN: My vote would be yes.

14

15 JEFF KRAUT: Motion passes. Next item.

16

17 PETER ROBINSON: The following applications I am going
18 to batch. These are applications for establishment and
19 construction. Application 181277E, the Surgery Center at
20 Orthopedic Associates, LLC in Dutchess County. This is a request
21 for indefinite life for CON 112379. With the Department and the
22 Committee recommending approval with a condition.

23

1 JEFF KRAUT: I have a motion?... OH, you're batching. I'm
2 sorry.

3
4 PETER ROBINSON: application 181183B, Visiting Services
5 LLC, d/b/a Visiting Docs in Rockland County. This is to
6 establish and construct a new diagnostic and treatment center to
7 be located at 240 North Main Street in Spring Valley. Here the
8 Department recommends approval with conditions and
9 contingencies, as did the Committee.

10 Application 182073B, Union Square Eye Center LLC d/b/a
11 Union Square Eye Care in Harlem in New York County, to establish
12 and construct a diagnostic and treatment center at 1825 Madison
13 Avenue in New York with the Department and the Committee
14 recommending approval with conditions and contingencies.

15 Application 181268E, Oswego Health Homecare LLC in Oswego
16 County. To establish St. Joseph's Health Inc. as the parent and
17 Trinity Health as the grandparent of the certified home health
18 agency. The Department recommends approval with a condition and
19 contingencies as did the Committee. I make a motion in favor of
20 that batch.

21
22 JEFF KRAUT: I have a second. Department wishes to
23 comment on any aspects?

24

1 TRACY RALEIGH: Any questions about any item in that batch?

2 Hearing none, I'll call for a vote. All those in favor, aye.

3

4 [Aye]

5 Opposed? Abstention? The motion carries.

6

7 PETER ROBINSON: Application 172379E, St. Peter's Health
8 Partners in Albany County. Noting an interest and abstention by
9 Dr. Bennett. To co-establish Trinity Health Corporation over all
10 the St. Peter's Health Partners facilities as active parent and
11 co-operator. I will note the applicant came back and listened to
12 the Council and it's direction regarding the structure and we
13 were most appreciative of that. The Department is recommending
14 approval with a condition and contingencies as did the
15 Committee.

16 Application 182052E, HQ-WCHN Health Systems Inc., in
17 Dutchess County. Pardon? You want to pull this out? Well then
18 I'll make a motion with the applications that I've just
19 reiterated.

20

21 JEFF KRAUT: So I have a motion. I have a second by Dr.
22 Kalkut. Any questions from the Council for the Department on any
23 of these applications? Hearing none, I'll call for a vote. All
24 those in favor, aye.

1

2 [Aye]

3 Opposed? Abstention? The motion carries.

4

5 PETER ROBINSON: OK. Separately 182052E, HQ-WCHN Health
6 Systems Inc. in Dutchess County. Noting an interest and
7 abstention by Dr. Bennett and an interest by Mr. Kraut. This is
8 to establish HQ-WCHN Health System Inc. as the co-operator of
9 licensed entities owned by Healthquest Systems Inc. including
10 Northern Dutchess, Putnam, and Vasser Bros. Hospitals. Northern
11 Dutchess RHCF, and Healthquest Homecare Inc. which is both a
12 CHHA and a LHCSA and the Department is recommending approval
13 with a condition and a contingency as did the Committee and I so
14 move.

15

16 JEFF KRAUT: I have a second, Dr. Berliner.

17

18 HOWARD BERLINER: We had a speaker (Dr. Hyde) asking
19 about this application. It turns out that HealthQuest is
20 purchasing a hospital outside of New York State in Connecticut,
21 Sharon Hospital, which I believe parenthetically is the first
22 New York Hospital that would actually own an out-of-state
23 hospital. But the question raised by the speaker was, and he
24 sent a letter afterwards, and I'm wondering if the request that

1 Sharon Hospital made could be added as conditions or things to
2 this...

3

4 PETER ROBINSON: What was that request?

5

6 HOWARD BERLINER: It was just a couple training programs,
7 residency program, things like that.

8

9 GARY KALKUT: It was related to maternity services.

10

11 HOWARD BERLINER: And maternity services.

12

13 TRACY RALEIGH: If we may address, and thank you for raising
14 that Dr. Berliner. So, just for clarity the Department's
15 understanding is that Health Quest is already operating Sharon
16 Hospital so it's not an acquisition of Sharon Hospital. What was
17 going before both this body and New York State as well as the
18 Connecticut regulatory agency is the establishment of the new
19 parent over both the Western Connecticut Network and Health
20 Quest. Just to clarify that.

21 Secondly, we evaluated the letter subsequently received
22 from Dr. Hyde and it is requesting that New York take action on
23 a Connecticut facility that from our perspective wouldn't be a
24 action that this body can take.

1

2 HOWARD BERLINER: But, it's kind of interesting because
3 when we look at it the other way, when we, when an out of state
4 is operating or purchasing a New York hospital, we always have
5 lots of questions about their policies and how their policies
6 might interact with New York's and things like that. Seems to
7 me this is just the other side of that question.

8

9 JEFF KRAUT: But we have jurisdiction. How do we have
10 jurisdiction in Connecticut?

11

12 HOWARD BERLINER: Well, we have jurisdiction over the
13 parent which is a New York State article 28.

14

15 JEFF KRAUT: That's correct, but why would we... I don't
16 know what the consequences of what you're asking us to do. We
17 don't have... I don't know if that makes the hospital financially
18 unfeasible. I just don't know.

19

20 HOWARD BERLINER: I must say, and I don't know the answer
21 to this, didn't seem to me that any of those were outrageous or
22 even particularly unreasonable kinds of requests from a
23 hospital. Now, maybe they should've made that argument in
24 Connecticut when that got taken over. But, I mean, ...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

TRACY RALEIGH: And from my understanding I believe there was a lengthy public comment and exchange of questions and answers and I believe appropriately that was taken up on the Connecticut public comment period. Just to update the Council, the public comment period has ended, and now the counterpart to this body in Connecticut, the regulatory agency will have 60 days to conclude it's recommendation on that application. The concerns as we understand relate to maternity services, and it is again, whether we have enough information to understand the dynamics in a facility operating in Connecticut, it is a rural environment and the question comes down to whether there will be the availability of practitioners.

JEFF KRAUT: So call the question. All those in favor, aye.

[Aye]

Opposed? Abstention? The motion carries.

PETER ROBINSON: Application 172406B, Queens Boulevard Extended Care.

1 JEFF KRAUT: Hold on. I want to point out, because I
2 didn't announce it, Dr. Bennett abstained on the previous vote.
3 (we did)

4 OK. Thank you.

5
6 PETER ROBINSON: 172406B, Queens Boulevard Extended Care
7 Dialysis Center II in Queens County. Noting an interest by Mr.
8 Kraut. To establish and construct a 15 station chronic renal
9 dialysis center at Queens Boulevard Extended Care facility, a
10 residential care facility located at 61-11 Queens Boulevard,
11 Woodside. This is a companion to CON 181286. The Department is
12 recommending approval with conditions and contingencies, as did
13 the Committee, and I so move.

14
15 JEFF KRAUT: I have a second. Any questions from the
16 Council? All those in favor, aye.

17
18 [Aye]

19 Opposed? Abstention? The motion carries.

20 I'm going to now call the next one, two... two applications.
21 Oh, you're going to do it Gary. I'm sorry.

22
23 GARY KALKUT: And we'll batch the two. Got it. 181405E,
24 Visiting Nurse Hospice and Palliative Care. There's a conflict

1 declared by Ms. Baumgartner, Mr. Robinson, Mr. Thomas who have
2 left the room. This is to merge the hospice program of Visiting
3 Nurse Service of Rochester and Monroe County Inc., and the
4 Ontario Yates Hospice Program, a Finger Lakes Visiting Nurse
5 Service and change the corporate name of VNSR and their sole
6 corporate member. Of note is contingencies 5, 6, 7 have been
7 added. Department and the Committee recommend approval with
8 conditions and contingencies, and I so move.

9

10 JEFF KRAUT: Any questions from... you're going to do the
11 second? Sorry. Gotta do them both.

12

13 GARY KALKUT: 181403E, VNS of Rochester and Monroe County.
14 Again, conflicts by Ms. Baumgartner, Mr. Robins and Mr. Thomas
15 who are out of the room. This is to merge Finger Lakes Visiting
16 Nurse Services into Visiting Nurse Service of Rochester in
17 Syracuse and incorporate and change the corporate name of VNSR
18 and their sole corporate member. Contingency number 3 has been
19 added. Again the Department and the Committee recommended
20 approval with conditions and contingencies, and now I so move.

21

22 JEFF KRAUT: I have a second by Dr. Gutierrez. Any
23 questions? Hearing none, all those in favor, aye.

24

1 [Aye]

2 Opposed? Abstention? The motion carries. Could you ask Ms.
3 Baumgartner, Mr. Thomas and Mr. Robinson to return.

4

5 PETER ROBINSON: OK. So here we go with Shining Star.
6 Application 171041E, Shining Star Home Health Care in Kings
7 County. This is request for a three year extension of limited
8 life for CON 072094E. The Department is recommending approval
9 with conditions and contingencies and with a three year
10 extension of the operating certificate from the date of the
11 Public Health and Health Planning Council recommendation letter.
12 The Committee also recommended approval with conditions and
13 contingencies and with a three year extension of the operating
14 certificate from the date of the Public Health and Health
15 Planning Council recommendation letter, and I so move.

16

17 JEFF KRAUT: I have a second Dr. Gutierrez. The
18 Department or any questions on this application? Dr. Berliner.

19

20 HOWARD BERLINER: I have a question for counsel. If this
21 does not get approved or whatever...

22

23 JEFF KRAUT: If we do not extend the operating
24 certificate...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

HOWARD BERLINER: What happens?

RICHARD ZAHNLEUTER: I can field that. My name is Richard Zahnleuter, general counsel. Under the State Administrative Procedure Act, when there is a license that expires and when there is also an application for renewal or extension, that license stays in effect for an indefinite period of time until it is either granted again or rejected. And so if in this case it gets rejected, then the license is ended. But under the State Administrative Procedure Act, there's a four month grace period thereafter for the licensee to bring an article 78 petition. So if you reject it today, then what will happen is there will still be four months of life, if you will, but then it will expire unless there's a court action that changes that.

JEFF KRAUT: And just to follow that up, the practical thing is that the applicant would have to give the Department a wind down plan.

RICHARD ZAHNLEUTER: That is correct.

1 JEFF KRAUT: And you'd monitor compliance that the
2 patients are handed off effectively and safely. OK. Yes I'm
3 sorry. Ms. Soto.

4
5 NILDA SOTO: To continue our earlier conversations on
6 some of these proposals, I noted that under the need summary,
7 the agency did not meet the 2 percent charity care required in
8 any of the five years of operation. But is projecting 2 percent
9 going forward. So I think this again it's bringing in terms of
10 the non-compliance of charity care.

11

12 JEFF KRAUT: And I think there was a discussion at the
13 Committee level, and the applicant was questioned. I just don't
14 recall the substance.

15

16 PETER ROBINSON: We also went into the recommendations
17 of the ad-hoc committee on ambulatory surgery and the notion of
18 the blending of Medicaid access and charity care recognizing
19 that the amount of charity care now is actually much more
20 limited in terms of its, because of the success of getting more
21 and more people in the State covered.

22

23 JEFF KRAUT: So on that basis the Committee voted yes.

24

1 PETER ROBINSON: The Committee did vote yes.

2

3 JEFF KRAUT: Any other questions or comments? Hearing

4 none, I'll call for a vote. All those in favor, aye.

5

6 [Aye]

7 Opposed? Take a roll call vote please.

8

9 Ms. Baumgartner

10 No.

11 Dr. Bennett

12 Yes

13 Dr. Berliner

14 No.

15 Dr. Brown

16 No

17 Ms. Carver-Cheney

18 Yes

19 Dr. Gutierrez

20 Yes

21 Mr. Holt

22 Yes

23 Dr. Kalkut

24 No

- 1 Mr. LaRue
- 2 No
- 3 Mr. Lawrence
- 4 No.
- 5 Dr. Martin
- 6 Yes
- 7 Mr. Rautenberg
- 8 No
- 9 Mr. Robinson
- 10 Yes
- 11 Dr. Ruge
- 12 No
- 13 Ms. Soto
- 14 No
- 15 Dr. Strange
- 16 Yes
- 17 Mr. Thomas
- 18 Yes
- 19 Dr. Torres
- 20 No
- 21 Dr. Watkins
- 22 No
- 23 Dr. Yang
- 24 (?)

1 Peter Robinson

2 No.

3

4 JEFF KRAUT: It's 9-11. 9 yes, 11 no. The motion fails.

5 OK. We need to have in order for this applicant... this is a

6 limbo. So we're the decider, not the Commissioner? Is this an

7 existing providers? This is an extension of a limited life and

8 in order to avail the applicant the right of an article 78

9 hearing there has to be an affirmative action of the Council.

10

11 RICHARD ZAHNLEUTER: Your option is to try another vote with

12 a negative.

13

14 JEFF KRAUT: Yes. So, ...

15

16 GARY KALKUT: INAUDIBLE

17

18 RICHARD ZAHNLEUTER: Well, I don't like the word 'limbo' but

19 that is correct, there is no decision.

20

21 JEFF KRAUT: Again, just to remember, one of the

22 policies...

23

24 HOWARD BERLINER: If it's in limbo, what happens to it?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

RICHARD ZAHNLEUTER: If there is no decision then it stays in effect pursuant to the State administrative procedure act.

JEFF KRAUT: So, this is the issue: again, trying to establish consistent policy in this room. What we've had, when we can't reach a conclusion affirmatively for or against an applicant, typically what we've done, we've done one of two things; we've tabled it to allow the applicant more time to talk to the Department and now given the fact this is maybe the third time here, I don't know how productive, what's going to happen. You can just leave it in limbo and have it come back to us at another time for another vote, or you can turn it down, even people who voted to approve it are turning it down to give the applicant the right to go and appeal the decision in an administrative law judge hearing. Correct? So those are your essential choices. If we entertain a motion to turn it down, and it doesn't get turned down, we do not affirmatively vote to disapprove the application, the applicant will continue to operate ... and I don't know how to complete the sentence. Other than they may come back after some period of time where some of the operations have improved that would suggest that we might reconsider at a different point in time. But you're essentially permitting them to continue to operate.

1

2 [indefinitely]

3

4 PETER ROBINSON: On that basis, I'm going to make a
5 motion for disapproval.

6

7 JEFF KRAUT: I have a motion for disapproval of this
8 application. I have a second, Dr. Kalkut. Does anybody want to
9 have any other discussion or understanding this motion will
10 disapprove, not accept the Department's recommendation and not
11 accept the application of the establishment committee. We're
12 going to say no. And then that applicant has a right within the
13 time period that was described by Mr. Zahnleuter to seek an
14 appeal of that decision. And they'll continue to operate until
15 they exhaust all those appeals. And then if they fail, the
16 Department will act to an orderly shutdown of that entity.
17 That's what, when you're voting yes to disapprove, that's what
18 you're voting for. Yes, Mr. Lawrence.

19

20 HARVEY LAWRENCE: I'm not a parliamentarian and so what
21 happened to the vote that was just taken?

22

23 JEFF KRAUT: It failed to...

24

1 RICHARD ZAHNLEUTER: The vote to approve the application
2 failed.

3

4 JEFF KRAUT: Failed by three votes? Three or four votes.
5 Four votes.

6

7 HARVEY LAWRENCE: So that means that it, so we get a do-
8 over?

9

10 JEFF KRAUT: Now you're turning it... no, now you're
11 turning it down. You're basically saying they're not going to
12 extend the life of this entity. Hold on. I want to make sure Mr.
13 Lawrence gets all his questions answered.

14

15 HARVEY LAWRENCE: Ok, so we ... there was an impass on the
16 earlier vote. It didn't move.

17

18 RICHARD ZAHNLEUTER: It did not approve.

19

20 HARVEY LAWRENCE: And so we get another crack at this
21 because it wasn't approved.

22

23 RICHARD ZAHNLEUTER: But the other crack is a reverse. It's
24 a negative. It's the motion to disapprove.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

JEFF KRAUT: Essentially the Council chose not to accept the recommendation of the Project Review Committee and the Department. Yes, Dr. Rugge.

JOHN RUGGE: It seems like this is one more occasion the Council should take a look at its own procedures or the procedures given to it, and here we have a vote not to extend the life and the impact of that vote is to extend the life indefinitely, and this is ...

JEFF KRAUT: Well, if you don't vote on this next motion, it will be.

JOHN RUGGE: No, and we will vote on that. But it would seem a rather absurd need for an extra step when the Council just rendered a decision but the impact of the decision if it were left to stand is the exact reverse of what the vote indicated. We need to improve our procedures.

JEFF KRAUT: I will give it over to the legal scholars of why this is the case.

1 PETER ROBINSON: This is actually in state regulation
2 how this has to work. I don't think it's just a Council
3 operating decision.

4
5 JOHN RUGGE: No, but the Council can certainly make a
6 recommendation to the legislature and the Governor how to
7 straighten out a procedure so they're more rational and
8 impactful.

9
10 JEFF KRAUT: This goes back to the Long Island hand case.
11 That's what we're trying to avoid for those of you who are
12 students of history.

13
14 HOWARD BERLINER: Just a question for counsel. How long
15 does an applicant have to go for the article 78 hearings?

16
17 JEFF KRAUT: They have to file.

18
19 HOWARD BERLINER: 30 days?

20
21 RICHARD ZAHNLEUTER: The period of time is four months form
22 the date of the decision.

23

1 JEFF KRAUT: I don't want to complicate it, but how long
2 does the administrative law judge have to render a decision?
3 That's another variable.

4
5 RICHARD ZAHNLEUTER: I'm sorry, what was the variable?

6
7 JEFF KRAUT: From the date an application is filed, when
8 would an administrative law judge rule? And you don't know the
9 answer to that question.

10
11 RICHARD ZAHNLEUTER: That's to be determined by that
12 administrative law judge.

13
14 JEFF KRAUT: But it's a process. You have to permit the
15 applicant to avail themselves of the process. Once it leaves
16 here, it is the process that controls when the Department acts.
17 This will never come back to us unless there's a ruling from the
18 administrative law judge to direct us otherwise. Because if
19 they affirm our decision, it will not come back to the Council.
20 They will notify us that it was affirmed, but we are not voting
21 again after this.

22
23 RICHARD ZAHNLEUTER: The administrative law judge will
24 conduct a hearing, if requested to do so by the applicant, and

1 then make a recommendation, and that will come back to the
2 Council.

3

4 JEFF KRAUT: But if they affirm it? It still comes back
5 to us?

6

7 RICHARD ZAHNLEUTER: Whatever the recommendation is. Yes.

8

9 JEFF KRAUT: I hope that thoroughly...

10

11 HARVEY LAWRENCE: So would a better outcome be to delay
12 and provide this applicant with another opportunity to sort of
13 pull it all together? As opposed to having it go through this
14 process and going through an administrative judge and then
15 having it brought back to us? I mean, they are a small operation
16 I guess and they are running a business. And I think this is an
17 applicant as I recall had some financial difficulties early on
18 and so to work through those difficulties and sort of put
19 themselves on a pathway to maybe being able to meet the charity
20 and the Medicaid goals or criterias.

21 I think this is a pretty small operation as I understand
22 it. And I suppose that would be...

23

1 PETER ROBINSON: So, Mr. Lawrence, that's an alternative
2 motion that I guess the Council could consider which is to table
3 this and have the applicant go back. I just don't know what the
4 reasons were for members of the Council who voted against the
5 application. You're getting into each persons' rationale for
6 their decision and whether or not that will produce a result
7 that's going to be satisfactory.

8

9 JOHN RUGGE: Just by way of providing a rationale, over
10 and again, we've considered what kind of threshold there should
11 be for indigent care. Here we have an operator who is not
12 running a successful business who also has been unable to get to
13 two percent of indigent care. If we're ever going to set an
14 example and make it clear, we have expectations and we expect
15 the providers that we are licensing to live up to those
16 expectations they pledge to, this is that opportunity.

17

18 JEFF KRAUT: Can I call the question? Please? Just to
19 see where we end up here and because this at least starts the
20 process. It may come back to us as you heard.

21 All those in favor of the motion to disapprove this
22 application, 171041E, ... no the motion was made and seconded.
23 You (Mr. Robinson) made the motion. Dr. Kalkut seconded.
24 Disapproval. So we have that motion. All those in favor say aye.

1

2 [Aye]

3 Opposed? Abstaining? The motion carries. Continue.

4

5 PETER ROBINSON: This is going to be another batch.

6 Beginning with applications for residential healthcare

7 facilities for establishment and construction. 181293E, Carthage

8 Center for Rehabilitation and Nursing in Jefferson County.

9 Transfer a total of 88 percent ownership interest from one

10 withdrawing member and one existing member to another existing

11 member and three new members with the Department recommending

12 approval with a condition and contingency. The Committee in this

13 case voted approval with condition and contingency, but with one

14 member opposing.

15 181295E, New Paltz Center for Nursing and Rehabilitation in

16 Ulster County. Transfer a total of 88 percent ownership interest

17 from one withdrawing member and one existing member to another

18 existing member and three new members. The Department

19 recommending approval with a condition and contingency. The

20 Committee did the same, but with one member opposing.

21 Application 181297E, Onondaga Center for Rehabilitation and

22 Nursing in Onondaga County. Again, transferring a total of 88

23 percent ownership interest from one withdrawing member and one

24 existing member to another existing member and three new

1 members. The Department recommending approval with a condition
2 and contingency as did the Committee with one member opposing.

3 Application 181298E, Schenectady Center for Rehabilitation
4 and Nursing in Schenectady County. Again, transferring a total
5 of 88 percent ownership interest from one withdrawing member and
6 one existing member to another existing member and three new
7 members. The Department recommending approval with a condition
8 and contingency as did the Committee with one member opposing.

9 181299E, Slate Valley Center for Rehabilitation and Nursing
10 in Washington County. You're getting the rhythm here. Transfer a
11 total of 88 percent ownership interest from one withdrawing
12 member and one existing member to another existing member and
13 three new members. The Department recommending approval with a
14 condition and contingency. But for the Committee one member
15 opposed.

16 And the last one in the batch, 181300E, Troy Center for
17 Rehabilitation and Nursing in Rensselaer County. Transfer a
18 total of 88 percent ownership interest from one withdrawing
19 member and one existing member to another existing member and
20 three new members. The Department recommending approval with a
21 condition and contingency as did the Committee with again one
22 member opposing. And I so move that batch.

23

1 JEFF KRAUT: I have a second by Dr. Gutierrez. Any
2 questions about these applications? All those in favor, aye.

3
4 [Aye]

5 Opposed? One no. Abstentions? The motion carries.

6
7 PETER ROBINSON: Ok, and a final batch. 181294E, Glen
8 Falls Center for Rehabilitation and Nursing in Warren County.
9 With an interest and abstention by Dr. Ruge. Transfer a total
10 of 88 percent ownership interest from one withdrawing member and
11 one existing member to another existing member and three new
12 members. The Department recommending approval with a condition
13 and contingency as did the Committee with one member opposing.
14 I think I'm going to stop at that one instead of making it a
15 batch. So I make that motion.

16
17 JEFF KRAUT: I have a second, Dr. Gutierrez. Any
18 questions from the Council? All those in favor, Aye.

19 [Aye]
20 Opposed? Abstention. The motion carries.

21
22 PETER ROBINSON: Application 182217E, St. Joseph's Inc.,
23 in Onondaga County. This is to establish Trinity Health
24 Corporation as the active parent and co-operator of St. Joseph's

1 Health Center. I declared an interest in this. The Department is
2 recommending approval with a condition and a contingencies. The
3 Committee just this morning in special session recommended
4 approval with a condition and contingencies and I so move.

5

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

8 [Aye]

9 Opposed? Abstention. The motion carries. I'm sorry... no vote
10 by Dr. Bennett. Any abstentions? The motion carries.

11

12 PETER ROBINSON: 182030E, Amerita of New York LLC d/b/a
13 Amerita in Nassau County. This is a serious concern access home
14 health agency licensure. Applications 182014E, the Mohawk
15 Homestead Inc., d/b/a the Mohawk Homestead Licensed Homecare
16 Services Agency in Herkimer County.

17 182076E, the Eliot at Troy, LLC in Rensselaer County, and
18 182078E, the Sentinel of Amsterdam in Montgomery County. In all
19 cases the Department is recommending approval with a contingency
20 as indicated in the staff reports as did the Committee and I so
21 move.

22

23 JEFF KRAUT: I have a second by Dr. Gutierrez. Any
24 questions: All those in favor, Aye.

1 [Aye]

2 Opposed? Abstention. The motion carries.

3

4 PETER ROBINSON: That concludes the report of the

5 Establishment and Project Review Committee.

6

7 JEFF KRAUT: Thanks very much Mr. Robinson. The full

8 meeting of the Public Health and Health Planning Council is now

9 going to be adjourned. The next committee day will be on January

10 24 and the full council will convene on February 14 in New York

11 City. Please make sure you check your email to make sure we're

12 confirming the location, time of the meeting. We have to just

13 make sure we have the building is going to be available to us.

14 Thank you so much.

15 I want to wish everybody a happy holiday, a New Year filled

16 with health, happiness and joy, and surrounded by your family,

17 friends, and neighbors. So I hope everything goes well.

18

19 [end of audio]

Pursuant to the authority vested in the Public Health and Health Planning Council and subject to the approval of the Commissioner of Health by Section 2803 of the Public Health Law, a new Section 405.34 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby added, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 405.34 Stroke services.

(a) Definitions. The following terms when used in this section shall have the following meanings:

- (1) “Stroke patient” means a patient exhibiting the signs and symptoms of a suspected stroke.
- (2) “Certifying organization” means an accrediting organization approved by The Centers for Medicare and Medicaid Services (CMS), that has applied to the Department and has been approved by the Department to certify that a hospital meets the criteria to provide advanced stroke care.
- (3) “Certified stroke center” means a general hospital that has successfully completed a stroke center certification with a certifying organization.
- (4) “Designated stroke center” means a certified stroke center approved by the Department to operate as a designated stroke center under this section.

(b) General Provisions.

- (1) General hospitals may choose to participate in the designated stroke center program under this section.

- (2) Only a certified stroke center may apply for stroke center designation from the Department.
 - (3) No hospital shall hold itself out to the public as having a stroke center designation unless it has a stroke center designation under this section.
- (c) **Certifying Organization Application.** Accrediting organizations may apply, in a format determined by the Department, to be approved as certifying organizations. Upon review of the application, the Department may approve certifying organizations to perform stroke center certification.
- (d) **Stroke Center Designation.** Hospitals seeking stroke center designation shall:
- (1) Obtain and maintain continuous stroke center certification from a certifying organization. The Department may participate in any onsite visits conducted by the certifying organization during certification and recertification.
 - (2) Submit an application to the Department with a copy of the certifying organization's certification and supporting documents. When determining whether to approve a certified stroke center as a designated stroke center, the Department may take other criteria into consideration, including but not limited to investigations by federal or state oversight agencies.
- (e) **Issuing Authority.** The Department shall make the final determination on all applications for stroke center designation. The Department shall provide written notification to a hospital when an application for a stroke center designation is approved. If an application for stroke center designation is denied, the Department shall provide written notification

and a rationale for the denial, and shall allow additional opportunities for the hospital to apply for a stroke center designation.

(f) Withdrawal of Stroke Center Designation.

(1) The Department may withdraw a hospital's stroke center designation upon notice to a designated stroke center if:

(i) The designated stroke center does not comply with state or federal regulations relating to stroke centers.

(ii) The designated stroke center fails to comply with its certifying organization's certification requirements and certification lapses.

(iii) The designated stroke center requests withdrawal of stroke center designation.

(2) Before withdrawing a stroke center designation pursuant to subdivision (f)(1)(i) or (ii) of this section, the Department shall provide the designated stroke center with a written notice containing a statement of deficiencies. If the designated stroke center fails to adopt a plan of correction acceptable to the Department within thirty (30) days, the Department may withdraw the hospital's stroke center designation.

(3) If a hospital no longer maintains stroke center designation, the hospital shall immediately notify affected parties and provide the Department with a written plan describing specific measures it has taken to alter its arrangements and

protocols under subdivision (i) of this section within thirty (30) days of a withdrawal of stroke center designation.

(g) Transition Period.

(1) Hospitals designated as stroke centers by the Department prior to the effective date of this section shall have two years from the effective date of this section to initiate the stroke center certification process with a certifying organization approved by the Department. The process is initiated when a hospital enters into a contractual agreement with a certifying organization. Once the hospital has entered into a contractual agreement with a certifying organization, the hospital shall have one year to complete the certification process.

(2) Any hospital that does not initiate the stroke center certification process with a certifying organization within two years of the effective date of this section shall no longer maintain a stroke center designation and may no longer hold themselves out as a designated stroke center.

(h) Coordination Agreement. Designated stroke centers shall communicate and coordinate with one another to ensure appropriate access to care for stroke patients, in accordance with a written coordination agreement. The Department may issue guidance to specify the provisions of coordination agreements. Designated stroke centers shall have policies and procedures in place for timely transfer and receipt of stroke patients to and from other hospitals consistent with section 405.19 of this Part. Transport of stroke patients to the appropriate receiving hospital shall be in accordance with State Emergency Medical

Advisory Committee (SEMAC) approved EMS protocols developed and adopted pursuant to subdivision two of section 3002-a of the Public Health Law.

- (i) Emergency Medical Services Providers; Assessment and Transportation of Stroke Patients to Designated Stroke Centers. Designated stroke centers shall work with Emergency Medical Services agencies to ensure that stroke center destination protocols are consistent with protocols adopted by the State Emergency Medical Advisory Committee, the State Emergency Medical Services Council (SEMSCO), the Regional Emergency Medical Advisory Committee (REMAC), and the Regional Emergency Medical Services Council (REMSCO).
- (j) The Department shall maintain and post on its public web page a list of designated stroke centers. The Department shall notify the State EMS advisory bodies and EMS regions via established communication networks whenever there is a change to a hospital stroke center designation, including but not limited to a new designation or a withdrawal of designation.
- (k) Reporting of Data and Quality of Care Initiatives.
 - (1) Each designated stroke center shall submit data, as requested by the Department, that shall be sufficient to determine the performance of the hospital and the system of care on at least an annual basis and in a format determined by the Department.
 - (2) The Department shall define the data elements to be reported.
 - (3) Each designated stroke center shall conduct stroke quality improvement activities including, but not limited to:

- (i) evaluation of the quality and appropriateness of care provided;
- (ii) participation in regional and statewide quality improvement activities, including but not limited to activities conducted by the Regional Emergency Medical Advisory Committee, consistent with section 3006 of the Public Health Law;
- (iii) analysis of data to identify opportunities for improvement; and
- (iv) integration of these activities with the hospital's quality assurance program, as required by section 405.6 of this Part.

REGULATORY IMPACT STATEMENT

Statutory Authority:

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

Legislative Objectives:

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

Needs and Benefits:

This proposed regulation will create a tiered voluntary stroke designation program and stroke system of care for hospitals in New York State.

Stroke, also known as brain attack, is a medical emergency. It occurs when a vessel in the brain is either ruptured (hemorrhagic stroke) or blocked by a clot (ischemic stroke), arresting the blood supply to the brain. Stroke is a deadly condition, and it is the fifth leading cause of death and a major cause of disability in the United States. Each year, about 795,000 people in the United States develop a stroke, producing an enormous economic and healthcare burden. It is estimated that there are almost three million survivors of stroke living with a long-term disability in the United States, with a societal cost of approximately \$34 billion.

Since stroke treatment is complex and time sensitive, advanced hospital care is crucial. Evidence has shown that a standardized approach to hospital care for patients with acute stroke improves outcomes by increasing survival and minimizing disability.

The current New York State Department of Health (NYSDOH) stroke designation program began as a demonstration pilot program in select areas of the state in 2002 and was later expanded in 2004 to the entire state. The designation program is voluntary. Since 2004, NYSDOH has only recognized one level of stroke center designation: The Primary Stroke Center. As of June 2018, there are 120 designated Primary Stroke Centers among 213 hospitals in New York State. According to the Centers for Disease Control, New York State has the second lowest stroke mortality rate in the United States, demonstrating the success of the current program. NYSDOH data shows that the mortality rate (risk-adjusted, 30-day, all cause) for stroke patients is lower in Primary Stroke Centers versus non-designated hospitals (13.76 vs. 16.08 deaths per 100 admissions).

Stroke care guidelines and clinical evidence have evolved, and these stroke regulations align with the latest guidelines to ensure patients continue receiving high quality advanced stroke care. A consensus statement from the Brain Attack Coalition in 2005 cited evidence that integration of a new level of stroke center, called a Comprehensive Stroke Center, into stroke systems of care would likely improve outcomes of patients who require these services. Nationally recognized accrediting organizations began certifying Comprehensive Stroke Centers in 2012. In 2015, the American Heart Association issued a Class 1A recommendation for endovascular therapy for eligible ischemic stroke patients with large vessel occlusion, and recommended that access to endovascular therapy should be incorporated into stroke systems of

care. Because the current NYSDOH stroke designation program has remained static, some NYS hospitals have sought Comprehensive Stroke Center certification from outside organizations.

The current NYSDOH stroke center designation program requires interested hospitals to submit an application demonstrating that they meet or exceed a set of 14 criteria that are based on “The Brain Attack Coalition Guidelines for Primary Stroke Centers,” originally published in the Journal of the American Medical Association in 2000 and updated in 2011. The application is then reviewed by the Office of Quality and Patient Safety (OQPS) in NYSDOH, and an on-site evaluation is done by a nurse and a medical director from NYSDOH at no charge to the applying hospital. Once the hospital passes all requirements, the NYSDOH designates the hospital as a New York State Primary Stroke Center.

Representatives from the NYSDOH began engaging stakeholders and soliciting comments and feedback internally and externally in the fall of 2017 from the following affected parties: Healthcare Association of New York State, Regional stroke coordinators from hospitals across the state, Stroke Advisory Committee, Greater New York Hospital Association, Iroquois Healthcare, American College of Physicians, The Medical Society of the State of New York, The Joint Commission/American Heart Association, DNV GL Healthcare, the Healthcare Facilities Accreditation Program, the Center for Improvement in Healthcare Quality, South Carolina stroke designation program, Fire Department of NY, Fort Drum Regional Health Planning Organization, and the State Emergency Medical Services Council (SEMSCO). The input received was the impetus for the proposed regulation.

This proposed regulation will create a tiered voluntary stroke designation program and stroke system of care for hospitals in New York State. During the transition period, EMS should continue to operate within their existing framework and per their protocols.

NYSDOH will designate nationally recognized accrediting organizations to certify the ability of hospitals to provide care to stroke patients. Currently, Primary, Thrombectomy Capable or Comprehensive levels are among levels of programs certified by nationally recognized certifying organizations. Certifying organizations will be required to adhere to evidence-based standards provided by the Department.

The regulation also gives the NYSDOH the authority to withdraw designation from a hospital for non-compliance and the failure to maintain or adhere to criteria for stroke designation. Pursuant to the proposed regulations, NYSDOH will continue to collect data and require stroke centers to maintain quality improvement efforts.

With this regulation, the NYSDOH will leverage the experience and resources of the certifying organizations and improve the quality of stroke care, using a multi-tiered system of stroke care that aligns with the latest evidence.

COSTS:

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

The proposed regulation will create costs for hospitals seeking stroke center designation. The certifying organizations each charge a fee for stroke certification, which includes the following services: a consultation visit, onsite survey, ongoing monitoring, data collection and reporting to NYSDOH. The cost of certification for hospitals varies by organization, and by level of stroke center certification, but ranges from \$2,500 - 55,000 every two years. However, the proposed regulation does not require hospitals to be fully accredited by the accreditation organization to receive stroke center designation. Instead, the proposed regulation only requires

hospitals to be certified by the accreditation organization for their disease-specific stroke program. This provision makes the stroke certification costs significantly less expensive than acquiring a full hospital accreditation.

A hospital may also incur infrastructure and staffing costs associated with meeting certification requirements. Stroke center designation could increase the volume of patients that a hospital receives, and consequently revenue, since patients are transported to designated stroke centers by EMS agencies, and community awareness of stroke center designation may increase patient self-referral.

Costs to Local and State Government:

The proposed regulations are not expected to impose any costs upon local or state governments. If a hospital operated by a State or local government chooses to apply to become a designated stroke center, it would have the same costs as hospitals that are not operated by a State or local government.

Costs to the Department of Health:

There will be little to no additional costs to the Department associated with the proposed regulations. The Department will monitor the certifying organizations and will supervise the stroke designation process with existing staff.

Local Government Mandates:

There are no local government mandates.

Paperwork:

Hospitals that participate in the stroke designation program must enter into a contractual agreement with an accreditation organization to initiate the stroke center certification process. Certified stroke centers applying for stroke center designation must submit an application to the Department.

Each hospital with stroke center designation will be required to submit data electronically for performance measurement.

Duplication:

These regulations do not duplicate any State or Federal rules, since there are no existing stroke regulations.

Alternative Approaches:

The Department could continue the existing stroke designation program. However, proposed regulations will ensure access to the highest standard of evidence-based care for stroke patients in New York.

Federal Requirements:

Currently there are no federal requirements regarding the stroke regulation.

Compliance Schedule:

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

Contact Person:

Katherine Ceroalo
New York State Department of Health
Bureau of Program Counsel, Regulatory Affairs Unit
Corning Tower Building, Rm. 2438
Empire State Plaza
Albany, New York 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.ny.gov

**REGULATORY FLEXIBILITY ANALYSIS FOR
SMALL BUSINESSES AND LOCAL GOVERNMENT**

Effect of Rule:

Only general hospitals may apply to become a designated stroke center. There are no general hospitals in NYS that are classified as a small business. There are several hospitals run by local governments. There is a total of six hospitals operated by NYS counties.

Compliance Requirements:

The stroke designation program is a voluntary program, so there is no mandate for a hospital to participate. Those choosing to apply for stroke center designation will be expected to comply with NYSDOH stroke center requirements and certifying agency standards. These standards include maintenance of a stroke log and registry as well as reporting requirements for performance measures.

Professional Services:

A hospital choosing to participate in the stroke designation program will be required to receive certification from a nationally recognized accrediting organization with stroke center certifying authority.

Compliance Costs:

The proposed regulation will create costs for hospitals seeking stroke center designation. The certifying organizations each charge a fee for stroke certification, which includes the following services: a consultation visit, onsite survey, ongoing monitoring, data collection and reporting to NYSDOH. The cost of certification for hospitals varies by organization, and by level of stroke center certification, but ranges from \$2,500 - 55,000 every two years.

Economic and Technological Feasibility:

This regulation establishes a voluntary stroke designation program, and as such there is no mandate for compliance. Hospitals seeking stroke center designation shall have the resources, both economic and technological to meet requirements and standards of the program.

Minimizing Adverse Impact:

This regulation will not have any adverse economic impact on small businesses or local governments. Hospitals with stroke center designation will preferentially receive suspected stroke patients from EMS providers, increasing volume and having a positive economic impact.

Small Business and Local Government Participation:

NYSDOH has included various stakeholders in the development of this regulation, including general hospitals run by local governments through in person presentations and hospital association engagement.

STATEMENT IN LIEU OF RURAL AREA FLEXIBILITY ANALYSIS

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

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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

Pursuant to the authority vested in the Public Health and Health Planning Council and Commissioner of Health by Sections 225(4) and 201(1) of the Public Health Law, Subparts 14-1, 14-2, 14-4 and 14-5 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended to be effective upon filing a Notice of Adoption in the New York State Register, to read as follows:

New sections 14-1.89 is added to read as follows:

14-1.89 Use of Liquid Nitrogen and Dry Ice.

For the purposes of this section, liquid Nitrogen shall mean Nitrogen in its cryogenic liquid form, which comes in direct contact with food or is used as a food additive. Dry Ice shall mean Carbon Dioxide in its solid form, which comes in direct contact with food or is used as a food additive.

- (a) Only food-grade liquid Nitrogen or Dry Ice may be added to food.
- (b) Liquid Nitrogen, used in the preparation of food, shall be evaporated completely or the operator shall ensure that all residual liquid Nitrogen is drained prior to service.
- (c) Dry Ice, used in the preparation of food, shall be sublimated completely prior to service or the operator shall ensure no residual Dry Ice is served to the patrons.
- (d) Liquid Nitrogen or Dry Ice shall not be added to any food before service, such that a “fog” or “smoke” effect remains at time of service or is created during eating.

Section 14-2.3 is amended to include a new subdivision (g) to read as follows:

(g) For the purposes of this subdivision, liquid Nitrogen shall mean Nitrogen in its cryogenic liquid form, which comes in direct contact with food or is used as a food additive. Dry Ice shall mean Carbon Dioxide in its solid form, which comes in direct contact with food or is used as a food additive.

(1) Only food-grade liquid Nitrogen or Dry Ice may be added to food.

(2) Liquid Nitrogen, used in the preparation of food, shall be evaporated completely or the operator shall ensure that all residual liquid Nitrogen is drained prior to service.

(3) Dry Ice, used in the preparation of food, shall be sublimated completely prior to service or the operator shall ensure no residual Dry Ice is served to the patrons.

(4) Liquid Nitrogen or Dry Ice shall not be added to any food before service, such that a “fog” or “smoke” effect remains at time of service or is created during eating.

New section 14-4.96 is added to read as follows:

14-4.96 Use of Liquid Nitrogen and Dry Ice.

For the purposes of this section, liquid Nitrogen shall mean Nitrogen in its cryogenic liquid form, which comes in direct contact with food or is used as a food additive. Dry Ice shall mean Carbon Dioxide in its solid form, which comes in direct contact with food or is used as a food additive.

(a) Only food-grade liquid Nitrogen or Dry Ice may be added to food.

(b) Liquid Nitrogen, used in the preparation of food, shall be evaporated completely or the operator shall ensure that all residual liquid Nitrogen is drained prior to service.

(c) Dry Ice, used in the preparation of food, shall be sublimated completely prior to service or the operator shall ensure no residual Dry Ice is served to the patrons.

(d) Liquid Nitrogen or Dry Ice shall not be added to any food before service, such that a “fog” or “smoke” effect remains at time of service or is created during eating.

New sections 14-5.46 is added to read as follows:

14-5.46 Use of Liquid Nitrogen and Dry Ice.

For the purposes of this section, liquid Nitrogen shall mean Nitrogen in its cryogenic liquid form, which comes in direct contact with food or is used as a food additive. Dry Ice shall mean Carbon Dioxide in its solid form, which comes in direct contact with food or is used as a food additive.

(a) Only food-grade liquid Nitrogen or Dry Ice may be added to food.

(b) Liquid Nitrogen, used in the preparation of food, is to be drained or allowed to evaporate completely prior to vending.

(c) Dry Ice, used in the preparation of food, shall be sublimated completely or removed prior to vending.

(d) Liquid Nitrogen or Dry Ice shall not be added to any food before service, such that a “fog” or “smoke” effect remains at time of service or is created during eating.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The New York State Public Health and Health Planning Council is authorized by New York State Public Health Law (PHL) Section 225(4) to establish, amend and repeal sanitary regulations known as the Sanitary Code of the State of New York (Sanitary Code), subject to approval by the Commissioner. PHL Section 201(1)(m) authorizes the New York State Department of Health (Department) to supervise and regulate the sanitary aspects of public eating and drinking establishments.

Legislative Objectives:

This rulemaking is in accordance with the legislative objective of PHL Sections 225(4) and 201(1)(m) authorizing the PHHPC, in conjunction with the Commissioner of Health, to protect public health and safety through the regulation of the sanitary aspects of Food Service Establishments. In accordance with this objective, the proposed amendments prohibit Food Service Establishment operators from using liquid Nitrogen or Dry Ice at the point of sale to protect the health and safety of New Yorkers patronizing Food Service Establishments.

Needs and Benefits:

The Department is aware of new trends in food service that utilize liquid Nitrogen and Dry Ice at the point of sale. Using liquid Nitrogen and Dry Ice at the point of sale of

food products may cause serious injury if the consumer touches or consumes the residual liquid Nitrogen or Dry Ice.

One of these food trends is commonly referred to as “Dragon’s Breath.” Dragon’s Breath is made by pouring liquid Nitrogen over cereal puffs, popcorn or other similar foods, immediately before serving. The liquid Nitrogen (boiling point: -320°F) super cools the food which is then served in a cup with a skewer to be used to remove the puffs from the cup. When chewed the cold food condenses the moisture in the consumer’s breath creating the appearance of breathing smoke. The Department identified reports of injuries associated with Dragon’s Breath, including a 14-year old girl in Florida who suffered frost bite after touching liquid nitrogen in the cup, and a boy in Korea who suffered severe gastrointestinal injuries after drinking residual liquid Nitrogen. More recently, an incident was reported where a boy in Florida suffered an asthma attack which may have been triggered by consuming Dragon’s Breath. In September 2018, the Department received its first complaint of injury from liquid Nitrogen from a food product served in a New York State food service establishment. An 11-year old boy in Victor, NY reportedly experienced oral bleeding and burning sensation shortly after consuming Dragon’s Breath from a mall food service.

Currently, at least three local health departments in New York State have enacted local laws prohibiting the use of liquid Nitrogen at food service establishments and others are exploring similar actions. The US Food and Drug Administration (FDA), on August 30, 2018, issued a Consumer Advisory, advising consumers to avoid eating, drinking or handling foods prepared with liquid Nitrogen at the point of sale, citing the potential for injuries such as those described above. Consequently, the Department is proposing to

amend Part 14 to prevent consumers of Food Service Establishments from coming into contact with liquid Nitrogen or Dry Ice added at the point of sale of the food product.

Liquid Nitrogen is an FDA approved food additive and has various uses in the food service industry. Not all these uses of liquid Nitrogen have the potential for accidental service of liquid Nitrogen to the customer. Therefore, the proposed regulation amendment only pertains to the use of liquid Nitrogen just prior to service of the food product to the customer, to prevent accidental service of residual liquid Nitrogen.

The proposed amendment also restricts the use of Dry Ice (solid carbon dioxide) in foods at the point of service. Like liquid Nitrogen, Dry Ice is an approved food additive that is widely available and can be used to create a fog effect in foods. Dry Ice has a sublimation temperature of -109°F and, if touched or consumed in solid form, presents a risk of thermal injury like that of liquid Nitrogen. If the use of liquid Nitrogen is restricted without similar restrictions for Dry Ice, operators may use Dry Ice as a substitute ingredient.

Costs:

Cost to Regulated Parties:

The proposed amendments will impose minimal if any additional costs to regulated parties. Menu boards and signs may need to be updated to remove products that require the use of liquid Nitrogen or Dry Ice at point of sale. A small number of businesses which specialize in Dragon's Breath may be required to cease operating or modify their business to include other food items.

Cost to State and Local Governments:

There are no direct costs to State or Local Governments associated with the proposed amendments as the State and Local Governments are currently inspecting Food Service Establishments.

Local Government Mandates:

The proposed amendments do not impose any new mandates, duties or responsibilities on any county, city, town, village, school district, fire district or special district. City and County health departments already enforce Part 14 therefore health department staff will incorporate the proposed amendment as part of their existing program responsibilities.

Paperwork:

Adoption of this regulation does not impose any new paperwork requirements for regulated parties or State or local health departments.

Duplication:

The proposed amendments do not duplicate existing State or Federal requirements.

Alternatives:

The Department considered two alternatives to the proposed amendments. The first was to propose no regulatory change but recognize that local health departments may

adopt more stringent requirements through local laws or regulations. The second alternative included amending Part 14 of the State Sanitary Code to incorporate the requirements of the Department's previously issued guidance that require operators to maintain a written safety plan for the use of liquid Nitrogen, approved by the permit-issuing-official, with an additional requirement of providing a written consumer advisory be conspicuously posted at the point(s) of sale and service.

Both alternatives are inconsistent with FDA guidance to avoid consuming products with liquid Nitrogen added at the point of service. They also create a paperwork burden for operators and local health departments staff.

Federal Standards:

Nitrogen is an approved food additive and there are no Federal regulations restricting the use of liquid Nitrogen in food service establishments. The FDA does not have any direct regulatory authority over retail food operations. However, the FDA's consumer advisory warning to not eat foods with liquid Nitrogen added at the point of service establishes a clear federal position that the practice is considered unsafe.

Compliance Schedule:

The proposed amendments will become effective upon publication of a Notice of Adoption in the State Register.

Contact Person:

Ms. Katherine E. Ceroalo
New York State Department of Health
Bureau of Program Counsel, Regulatory Affairs Unit
Empire State Plaza
Corning Tower Building, Room 2438
Albany, New York 12237
(518) 473-7488
(518) 473-2019 FAX
REGSQNA@health.ny.gov

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESS AND LOCAL GOVERNMENT

Effect on Small Business and Local Government:

While many of New York State's food service establishments are considered small businesses, none of the amendments are directed solely at small businesses. The rule will apply to all 100,000 regulated food service establishments operating in New York State, although the vast majority of establishments do not use liquid Nitrogen or Dry Ice in the preparation of food. These establishments are already required to comply with the food safety provisions of Part 14. The proposed amendments will not result in significant costs to comply for regulated parties and none of the proposed amendments will apply solely to small businesses. A small number of businesses which specialize in Dragon's Breath may be required to cease operating or modify their business to include other food items.

Local Health Departments are already responsible for overseeing the food service operations of New York State, so there will not be a significant effect on local governments.

Compliance Requirements:

Small businesses must comply with the proposed regulation by not utilizing liquid Nitrogen or Dry Ice in food products at the point of sale. The proposed amendments do not create any new reporting or record keeping requirements.

Professional Services:

The proposed amendments do not create a need for regulated parties to seek any professional services.

Compliance Costs:

The proposed amendments will impose minimal, if any additional, costs to regulated parties. Menu boards and signs may need to be updated to remove products that require the use of liquid Nitrogen or Dry Ice at point of sale. A small number of businesses which specialize in Dragon's Breath may be required to cease operating or modify their business to include other food items.

Cost to State and Local Governments:

There are no direct costs to Local Governments associated with the proposed amendments as Local Governments are currently inspecting Food Service Establishments.

Economic and Technological Feasibility:

The proposed amendments do not require any new technology and have a negligible economic impact.

Minimizing Adverse Economic Impact:

The regulations currently allow for a waiver to be granted at the discretion of the permit-issuing official, provided that alternative arrangements are made to protect the health and safety of the public.

Small Business and Local Government Participation:

The proposed amendments implement a recommendation received from the New York State Association of County Health Officials. When considering regulatory alternatives, the Department also sought input from the New York State Restaurant Association.

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

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

JOB IMPACT STATEMENT

Nature of the Impact:

The addition of Liquid Nitrogen and Dry Ice to food products at the point of service is a new novelty trend at food service operations. The proposed regulation's prohibition on the use of liquid Nitrogen and Dry Ice at the point of sale is expected to have no job impact on the majority of Food Service Establishments where such food products are not the focus of the business, as these food products make up only a small percentage of their sales. Businesses that specialize in or solely sell this type of product may be required to cease operating or modify their business to include other food items. We do not have an accurate estimate of the number of Food Service Establishments affected since there is no registration requirement for the use of liquid Nitrogen or Dry Ice, however the number is expected to be small.

Categories and Numbers Affected:

The main category affected by this regulation is the Food Service Establishment that focuses its primary business on the sale of novelty foods that have liquid Nitrogen or Dry Ice added to them at the point of sale. Because of the lack of data about the number of food establishments that sell these types of food products, it is not possible to accurately estimate the number of jobs affected, however the number is expected to be small.

Regions of Adverse Impact:

The Department anticipates any jobs or employment impacts will occur equally throughout the regions of the state.

Minimizing Adverse Impact:

The Department will consider different types/levels of enforcement while retailers adapt to the new regulation.

SUMMARY OF EXPRESS TERMS

Pursuant to the authority vested in the Public Health and Health Planning Council, subject to the approval of the Commissioner of Health, by section 2803(2)(a) of the Public Health Law, sections 709.14 and 405.29 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York are hereby amended, to be effective after publication of Notice of Adoption in the New York State Register, to read as follows:

Section 709.14 (a) is amended to change the focus of need reviews for PCI services from being site specific to health system related and to reflect the transition from State Hospital Review and Planning Council to Public Health and Health Planning Council.

Section 709.14 (b) (2) is amended to reflect the increased prevalence of cardiac surgical services since the regulation was last amended.

Section 709.14 (b) (3) is amended to remove the requirement of a documented projected volume of 300 PCI cases within two years of approval to initiate an adult cardiac surgery center and replace it with a requirement for a documented projected volume of 36 emergency PCI cases within two years of approval.

Section 709.14 (d) is amended to differentiate between PCI capable cardiac catheterization laboratory centers at hospitals with no cardiac surgery on-site between (A)

those hospitals that are co-operated with a hospital that is a cardiac surgery center and (B) those hospitals that have a clinical sponsorship with a cardiac surgery center. The regulation sets forth factors in determining public need for both. The amendment removes site specific total volume requirements and focuses remaining volume requirements on only emergency cases at the applicant facility. The amendment of this subdivision goes on to set forth requirements specific to co-operated and clinically affiliated applicants.

Section 405.29 (a)(4)(i) is amended to make a non-material edit for readability.

Section 405.29 (c)(8)(i) is amended to include language delineating clinical sponsorship agreements and the required provisions thereof.

Section 405.29 (d)(2)(i)(b) is amended to make a non-material edit for readability.

Section 405.29 (e)(1)(iv)(j) is amended to revise cardiac catheterization laboratory center structure and service requirements to allow for clinical sponsorship agreements.

Section 405.29 (e)(2)(ii)(c) is amended to allow a co-operated parent cardiac surgery center to report to the cardiac reporting system on behalf of a PCI capable cardiac catheterization laboratory center.

Section 405.29 (e)(2)(iii) differentiates requirements for co-operated and sponsored PCI capable cardiac catheterization laboratory centers.

Section 405.29(e)(2)(iv) eliminates previous total volume threshold requirements and establishes minimum volume requirements focusing exclusively on emergency cases. PCI centers with an annual volume below 150 percutaneous coronary intervention cases a year for two consecutive calendar years, or a volume below 36 emergency percutaneous coronary intervention cases a year for two consecutive calendar years will no longer be required to immediately surrender their approval or have it revoked. Instead, centers falling below those volume thresholds will be required to retain an independent physician consultant to conduct an annual appropriateness and quality review from which the Department will determine the disposition of the program.

Section 405.29 (e)(3) is clarified to reflect that no additional diagnostic cardiac catheterization services have been eligible for approval since the regulations were last amended on November 4, 2009.

Pursuant to the authority vested in the Public Health and Health Planning Council, subject to the approval of the Commissioner of Health, by section 2803(2)(a) of the Public Health Law, sections 709.14 and 405.29 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York are hereby amended, to be effective after publication of Notice of Adoption in the New York State Register, to read as follows:

Subdivision (a) of section 709.14 is amended to read as follows:

(a) These standards will be used to evaluate certificate of need applications for cardiac catheterization laboratory center services and cardiac surgery center services. [All need determinations are hospital site specific.] It is the intent of the Public Health [State Hospital Review] and Health Planning Council that these standards, when used in conjunction with the planning standards and criteria set forth in section 709.1 of this Part, become a statement of planning principles and decision-making tools for directing the distribution of cardiac catheterization laboratory center services and cardiac surgery center services. These planning principles and decision-making tools build on the existing regional resources that have been developed through the regulatory planning process. The goals and objectives of the standards expressed herein are expected to promote access to cardiac catheterization laboratory center services and cardiac surgery center services, and maintain provider and operator volumes associated with high quality care, and avoid the unnecessary duplication of resources while addressing the geographic distribution of services necessary to meet the needs of patients in need of emergency percutaneous

coronary interventional (PCI) procedures. Additionally, it is intended that the methodology provide sufficient flexibility to consider additional circumstances that reflect on the need for cardiac services[.], including providing flexibility for regional health systems to provide cardiac services at sites that are convenient to patients in the communities they serve.

Paragraph (2) of subdivision (b) of section 709.14 is amended to read as follows:

(2) Planning for cardiac surgery center services shall ensure that, to the extent possible, eighty percent of the total population of each HSA region resides within 100 miles of [a] one or more facilit[y]ies providing cardiac surgical services.

Paragraph (3) of subdivision (b) of section 709.14 is amended to read as follows:

(3) A facility proposing to initiate an adult cardiac surgery center must document a cardiac patient base and current cardiac interventional referrals sufficient to support a projected annual volume of at least 500 cardiac surgery cases and a projected annual volume of at least [300] 36 emergency PCI cases within two years of approval. The criteria for evaluating the need for additional adult cardiac surgery centers within the planning area shall include consideration of appropriate access and utilization, and the ability of existing services within the planning area to provide such services. Approval of additional adult cardiac surgery center services may be considered when each existing adult cardiac surgery center in the planning area is operating and expected to continue to

operate at a level of at least 500 cardiac surgical procedures per year. Waiver of this planning area volume requirement may be considered if:

(i) the HSA region's age adjusted, population based use rate is less than the statewide average use rate; and

(ii) existing adult cardiac surgery centers in the applicant facility's planning area do not have the capacity or cannot adequately address the need for additional cardiac surgical procedures, such determinations to be based on factors including but not necessarily limited to analyses of recent volume trends, analyses of Cardiac Reporting System data, and review by the area Health Systems Agency(s); and

(iii) existing cardiac surgical referral patterns within the planning area indicate that approval of an additional service at the applicant facility will not jeopardize the minimum volume required at other existing cardiac surgical programs.

Subdivision (d) of section 709.14 is amended to read as follows:

(d) Public need for cardiac catheterization laboratory centers:

(1) PCI capable cardiac catheterization laboratory centers. The factors and methodology for determining the public need for PCI capable cardiac laboratory centers shall include, but not be limited to the following:

(i) PCI capable cardiac catheterization laboratory centers at hospitals with a cardiac surgery center on site. Applicants approved as cardiac surgery centers are approved PCI capable cardiac catheterization laboratory centers as provided under paragraph (b)(9) of this section and must meet standards at section 405.29(c), (e)(1) and (2) of this Title.

(ii) PCI capable cardiac catheterization laboratory centers at hospitals with no cardiac surgery on site. [Factors for determining] Determinations of public need for PCI capable cardiac catheterization laboratory centers at hospitals with no cardiac surgery on-site will be differentiated between: (A) hospitals that are established by the Public Health and Health Planning Council as co-operators with a hospital that is a cardiac surgery center as defined in section 405.29(3) of this Title; and (B) hospitals that have a clinical sponsorship with a cardiac surgery center as defined in section 405.3(f)(3) of this Title and that are applying to be a PCI capable cardiac catheterization laboratory center. For the purposes of this section, clinical sponsorship shall mean that the hospital applying to be a PCI capable cardiac catheterization laboratory center has entered into a clinical sponsorship agreement with a cardiac surgery center acceptable to the department and in accordance with the standards established in section 405.29(c)(8)(i) of this Title.

(iii) For both co-operated hospitals and hospitals that are proposing to enter into a clinical sponsorship agreement, factors for determining public need shall include, but are not limited to:

(a) the planning area for determining the public need for PCI capable cardiac catheterization laboratory centers at hospitals with no cardiac surgery on-site shall be the area within a one hour average surface travel time, as determined by the department of transportation and adjusted for typical weather conditions, of the applicant facility, unless otherwise determined by the commissioner in accordance with section 709.1(c) of this Title;

[(b) evidence that existing PCI capable cardiac catheterization laboratory centers within the planning area cannot adequately meet the needs of patients in need of emergency percutaneous coronary interventions due to conditions such as capacity, geography, and or EMS limitations;]

[(c)] documentation by the applicant must demonstrate the hospital's ability to provide high quality appropriate care that would yield a minimum of 36 emergency PCI procedures per year within the first year of operation [and would yield a minimum of 200 total PCI cases per year within two years of start-up].

(1) Documentation of the number of cardiologists on staff at the proposed site, credentialed by the co-operated hospital, and/or employed by the clinical sponsorship hospital who currently perform percutaneous coronary interventions at other hospital sites and a summary of experience (including the most recent 3 years of volume and outcomes) for each.

(2) Documentation in support of volume projections for emergency PCI procedures must include, at a minimum: discharge data indicating the number of patients with a diagnosis of acute myocardial infarction (AMI) and/or other diagnoses associated with PCI, the number of doses of thrombolytic therapy ordered for acute MI patients in the applicant hospital's emergency department (as documented through hospital pharmacy records), and documentation of transfers to existing PCI capable cardiac catheterization laboratory centers for PCI.

(3) Additional documentation that may be submitted in support of [projected volume and] the need for a proposed PCI capable cardiac catheterization laboratory center include:

(i) the number of acute care beds at the applicant hospital and the range of acute care services provided;

(ii) documentation by the applicant of barriers that impact care experienced by specific population groups within the planning area and demonstration of cultural competency at the applicant site specific to the proposed populations to be served by the applicant;

(iii) documentation by the applicant demonstrating outreach to underserved populations that identifies potential new PCI cases within the service area;

(iv) emergency department discharge data;

(v) documentation by the applicant of regional demographics and transport patterns within the applicant's emergency medical service (EMS) region that impact the provision of cardiac care;

(vi) the geographic distribution of PCI capable cardiac catheterization laboratory center services and the ability of such existing centers to serve the patients in the applicant's service area;

(vii) letters from local physicians quantifying the number of PCI referrals from their practice and the portion of those that would have been treated at the applicant facility if PCI had been available;

[(viii) additional information that may be considered in projecting volume for an applicant from an established Article 28 network, or multi-site facility as defined at section 401.1 of this Title, with an approved cardiac surgery center within its system that is seeking to add a PCI capable cardiac catheterization laboratory center at a non-cardiac surgery hospital site within the system and for a co- applicant proposing to operate a PCI capable cardiac catheterization laboratory center without surgery onsite, under a co-operator agreement, approved by the department, with an existing cardiac surgery center. Such additional volume projection criteria include documentation by the applicant of the number of patients residing in the service area of the proposed site who have received percutaneous coronary interventions at the cardiac surgery center site and who would have been candidates to receive their procedures at the proposed non-surgery site.

(d) existing referral patterns indicate that approval of an additional service at the applicant facility will not jeopardize the minimum volume required at other existing PCI capable cardiac catheterization laboratory centers and one of the following conditions exists:

(1) the proposed PCI capable cardiac catheterization laboratory center is located more than one hour average surface travel time, as determined by the department of transportation and adjusted for typical weather and traffic conditions, from the nearest existing PCI capable cardiac catheterization laboratory center; or

(2) all existing PCI capable cardiac catheterization laboratory centers within one hour average surface travel time of the applicant facility, as determined by the department of transportation and adjusted for typical weather and traffic conditions, perform and are expected to continue to perform at a level of at least 300 PCI procedures per year after the addition of the proposed new program. Evidence for evaluating this expectation shall include, but not be limited to:

(i) data indicating the number of patients residing in the applicant's primary service area who are currently receiving percutaneous coronary intervention procedures at existing centers and the location of the centers where patients are receiving that care;

(ii) volume at existing PCI capable cardiac catheterization laboratory centers within one hour of the applicant hospital;

(iii) analysis provided by the applicant evaluating the portion of its proposed patient case load that would result in a redistribution of cases from existing centers and the portion that would represent new cases from currently under served populations. Such analysis shall include documentation of any outreach programs by the applicant facility that would support projections of new cases.]

([e]c) a written plan submitted by the applicant that demonstrates the hospital's ability to comply with standards for PCI capable cardiac catheterization laboratory centers at sections 405.29(c), (e)(1) and (2) of this Title;

([f]d) a written plan submitted by the applicant that outlines staff training and demonstrates the hospital's readiness to accommodate the needs of the PCI patients;

([g]e) a written plan has been submitted by the applicant which would promote access to cardiac catheterization laboratory center services for all segments of the hospital service area's population. The document shall include:

(1) a description of current and proposed initiatives for improving outcomes for patients with heart disease,

(2) a plan documenting the hospital's ability to maintain a comprehensive program in which high quality interventional procedures are provided as a component of a broad range of cardiovascular care within the hospital and within the community, to include an emphasis on processes of care and a description of how a patient will traverse through the system of care to be offered,

(3) a plan for ensuring continuity of care for patients transferred between facilities,

(4) documentation of outreach to regional EMS councils served by the applicant,

(5) documentation that EMS system capabilities have been taken into consideration in the delivery of cardiac services;

(6) a description of activities that promote planning for cardiac services within the region;
and

(7) a description of current and proposed initiatives and strategies for reaching patients not currently served within the area.

([h]f) comments and recommendations received from community organizations;

([i]g) the hospital shall propose and implement a hospital heart disease prevention program as set forth at subparagraph (b)(5)(ii) of this section;

([j]h) [where public need is established herein, priority consideration shall be given to applicants that agree] a description of existing and planned activities to serve the medically indigent and [patients regardless of payment and can document a history of the provision of services to] populations that experience health disparities [;].

(k) Where public need is established herein, priority consideration shall be given to applicants that can demonstrate projected volume in excess of 300 PCI cases a year.

(l) Where public need is established herein, priority consideration will be given to the expansion of an existing service as opposed to the initiation of a new service.

(m) A written and signed affiliation agreement with a New York State Cardiac Surgery Center, acceptable to the department, has been submitted in accordance with standards at section 405.29(c)(8)(i) of this Title.

(n) In addition, hospital applicants proposing to jointly operate a PCI capable cardiac catheterization laboratory center at a hospital without cardiac surgery on-site under a co-operator agreement with a cardiac surgery center must:

(1) Submit a written and signed operational agreement between the applicant cardiac surgery center and the applicant hospital without cardiac surgery on site that demonstrates there will be an integration of expertise and resources from the cardiac surgery center that would support a high quality program at the proposed site and that is acceptable to the department. The agreement must specify that the department shall be provided 60 day prior written notification of any proposed change, termination or

expiration of the agreement, and any changes must be found acceptable to the department prior to implementation. The agreement shall further provide that the parties agree that termination or expiration of the agreement shall result in closure of the co-operated cardiac catheterization laboratory center.

(2) Submit documentation that demonstrates high quality cardiac care is provided at the applicant cardiac surgery center site and that expanding the service to the proposed site would serve as a benefit to patients and the community.

(3) Submit written documentation of governing body approval of the co-operator contract.]

Subparagraph (vi) of paragraph (2) of subdivision (d) of section 709.14 is amended to read as follows:

~~(vi)~~ Hospitals approved as cardiac surgery centers shall be deemed to have demonstrated public need to perform cardiac electrophysiology.

Subdivision (d) of section 709.14 is amended by adding new paragraphs (4) and (5) as follows:

(4) For co-operated hospitals under subdivision (d)(1)(ii) of this section:

(i) The application for PCI services must be submitted jointly by the applicant facility and the co-operated parent.

(ii) Documentation acceptable to the department must be submitted demonstrating that all cardiac catheterization laboratory centers within the co-operated parent's system have staff sharing agreements that include, at a minimum, provisions for rotation and training of staff with the parent hospital and integration into the parent hospital's quality and patient safety programs, quality assurance and peer review.

(iii) Documentation acceptable to the department must be submitted demonstrating that the co-operated parent hospital will be responsible for maintaining the competency of the cardiac interventionalist physicians, nursing, and technical staff performing services at the applicant facility.

(iv) Documentation acceptable to the department must be submitted demonstrating that the co-operated parent hospital will be responsible for ensuring that the applicant facility can provide PCI services on a 24 hour a day, 365 days a year basis and is capable of

assembling a dedicated team within 30 minutes of the activation call to provide coronary interventions 24 hours a day and 365 days each year.

(v) If the co-operated parent is not in the planning area of the applicant facility, then the applicant facility must document that it has an emergency transfer agreement with a New York State Cardiac Surgery Center in the planning area that has an on-site cardiac surgery program.

(5) For applicant hospitals in a clinical sponsorship relationship with a New York State Cardiac Surgery Center:

(i) the application for PCI services must be submitted by the applicant hospital.

(ii) the sponsoring New York State Cardiac Surgery Center must be located in the same planning area as the applicant hospital.

(iii) the sponsoring New York State Cardiac Surgery Center must perform at a level of at least 600 PCI procedures per year.

(iv) a written and signed PCI clinical sponsorship agreement with the sponsoring New York State Cardiac Surgery Center, acceptable to the department and in accordance with standards at section 405.29(c)(8)(i) of this Title, must be submitted. The PCI clinical sponsorship agreement must specify that the department shall be provided 60 days prior written notification of any proposed change, termination or expiration of the agreement, and any changes must be found acceptable to the department prior to implementation.

The agreement shall further provide that the parties agree that termination or expiration of the agreement shall result in closure of the applicant hospital's cardiac catheterization laboratory center.

(v) both the applicant hospital and the sponsoring hospital must submit written documentation demonstrating that the respective governing bodies have approved the clinical sponsorship agreement.

Subparagraph (i) of paragraph (4) of subdivision (a) of section 405.29 is amended to read as follows:

(i) a PCI capable cardiac catheterization laboratory center [cardiac catheterization laboratory center] performs percutaneous coronary and other percutaneous procedures to diagnose and treat abnormalities of the heart or great vessels in adult patients. Such PCI capable cardiac catheterization laboratory centers may be approved with or without cardiac surgery at the same hospital site, however, those with no cardiac surgery on site must meet additional criteria at subparagraph (c)(8)(i) of this section;

Subparagraph (i) of paragraph (8) of subdivision (c) of section 405.29 is amended to read as follows:

(i) In addition, cardiac catheterization laboratory centers located in hospitals with no cardiac surgery on-site must enter into and comply with a fully executed written clinical sponsorship agreement with a New York State cardiac surgery center. The agreement will include provisions that address, at a minimum:

(a) cardiac surgery center representatives shall participate in the affiliated cardiac catheterization laboratory center hospital's quality assurance committee and other reviews of the quality of cardiac care provided by the affiliated cardiac catheterization laboratory center and in the provision of recommendations for quality improvement of cardiac services. Each cardiac surgery center and each affiliated cardiac catheterization laboratory center hospital shall take actions necessary, including but not limited to entering into a written agreement to authorize such participation by the cardiac surgery center representatives in the affiliated cardiac catheterization laboratory center hospital's quality assurance committee and for purposes of such participation, the cardiac surgery center representative or representatives shall be deemed members of the affiliated cardiac catheterization laboratory center hospital's quality assurance committee. Cardiac surgery center representatives may only access confidential patient information for quality assurance committees as set forth in the affiliation agreements and these regulations. Members of hospitals' quality assurance committees must maintain the confidentiality of patient information and are subject to the confidentiality restrictions of Public Health Law section 2805-m and other applicable confidentiality restrictions as provided by law. The cardiac surgery center representative(s) shall participate in the review of information and data for quality improvement purposes as described in the agreement which may include:

(1) statistical data and reports used in quality improvement activities;

(2) the affiliated cardiac catheterization laboratory center hospital's quality improvement program, policies, and procedures;

(3) care provided by medical, nursing, and other health care practitioners associated with the cardiac services;

(4) appropriateness and timeliness of patient referrals and of patients retained at the affiliated cardiac catheterization laboratory center hospital who met criteria for transfer to the cardiac surgery center hospital; and

(5) adverse events or occurrences including death and major complications for patients receiving cardiac care at the affiliated cardiac catheterization laboratory center hospital.

(b) Joint cardiology/cardiac surgery conferences to be held at least quarterly, with a focus on continuous quality improvement to include review of: all cardiac laboratory related morbidity and mortality, review of a random selection of uncomplicated routine cases, patient selection, rates of normal outcomes for diagnostic studies performed, rates of studies needed to be repeated prior to intervention, quality of the studies conducted, rates of patients referred for and receiving interventional procedures subsequent to the

diagnostic cardiac catheterization procedure, and the number and duration of cardiac catheterization laboratory system failures;

(c) A mechanism for a telemedicine link between the cardiac catheterization laboratory center and the cardiac surgery center that provides the capability for off-site review of digital studies, and a commitment on the part of each hospital to provide timely treatment consultation by appropriate physicians on an as needed basis;

(d) the cardiac surgery center's involvement in developing privileging criteria for physicians performing cardiac catheterization procedures at the hospital with no cardiac surgery on-site;

(e) development and ongoing review of patient selection criteria and review of implementation of those criteria. The process shall include a comprehensive review of the appropriateness of treatment for a random selection of cases;

(f) consultation on equipment, staffing, ancillary services, and policies and procedures for the provision of cardiac catheterization laboratory procedures;

(g) a pre-procedure risk stratification tool which ensures that high risk and or complex cases are treated at a cardiac surgery center;

(h) procedures to provide for appropriate patient transfers between facilities;

(i) an agreement to notify the department of any proposed changes to the initial agreement and to obtain department approval prior to the change; [and]

(j) an agreement to jointly sponsor and conduct annual studies of the impact that the cardiac catheterization laboratory center service has on costs and access to cardiac services in the hospital's service area[.];

(k) a plan for how the proficiency of physicians, nurses and other staff at the affiliated cardiac catheterization laboratory center will be maintained through rotational or other training opportunities; and

(l) a plan for how the cardiac catheterization laboratory center will maintain the capacity to provide PCI services on a 24 hour a day, 365 days a year basis and be capable of assembling a dedicated team within 30 minutes of the activation call to provide coronary interventions 24 hours a day and 365 days each year.

Clause (b) of subparagraph (i) of paragraph (2) of subdivision (d) of section 405.29 is amended to read as follows:

(b) coronary care organized, staffed and available [-] on a 24-hour basis by clinical personnel trained in the care of critical care patients and equipped to provide the specialized care required of complex cardiac conditions; and

Clause (j) of subparagraph (iv) of paragraph (1) of subdivision (e) of section 405.29 is amended to read as follows:

(j) in addition to standards at subparagraph (c)(8)(i) of this section, for cardiac catheterization laboratory centers approved under a [co-operator] clinical sponsorship agreement as set forth in section 709.14(d)[(1)(ii)(n)](5) of this Title, the written and signed [co-operator] clinical sponsorship agreement between a cardiac surgery center and the cardiac catheterization laboratory center without cardiac surgery on site must be maintained and must specify that the department shall be provided 60 day prior written notification of any proposed change, termination or expiration of the agreement, any changes must be found acceptable to the department prior to implementation and any proposed termination or expiration shall require prior submission of a plan of closure to the department. The agreement shall provide for an integration of expertise and resources from the cardiac surgery center that would support a high quality program at the hospital without cardiac surgery on site, and shall delineate responsibilities of each institution. The agreement shall further provide that the parties agree that termination or expiration of the agreement shall result in closure of the co-operated cardiac catheterization laboratory center.

Clause (c) of subparagraph (ii) of paragraph (2) of subdivision (e) of section 405.29 is amended to read as follows:

(c) the PCI capable cardiac catheterization laboratory center shall have a data manager who has special training in the clinical criteria used in the PCI module of the cardiac reporting system as provided by the department or its designee, is designated and authorized by the hospital and shall work in collaboration with the physician director to ensure accurate and timely reporting of cardiac reporting system data to the department. In addition to the data manager, relevant medical and administrative staff must be trained in the use of the cardiac reporting system and the specific data element definitions involved. For PCI capable cardiac catheterization laboratory centers that have a co-operated parent cardiac surgery center, responsibilities related to the cardiac reporting system may be performed by the cardiac surgery center on behalf of the data manager of the PCI capable cardiac catheterization laboratory center as long as all data is delineated at the facility level.

Subparagraph (iii) of paragraph (2) of subdivision (e) of section 405.29 is amended to read as follows:

(iii) patient selection criteria. PCI capable cardiac catheterization laboratory centers shall adopt criteria for appropriate coronary artery diagnostic and interventional procedures in accordance with generally accepted standards for cardiac patients. For centers with no

cardiac surgery on site and not co-operated with a New York State cardiac surgery center, patient selection criteria shall be reviewed and approved annually by the affiliated sponsored cardiac surgery center in accordance with subparagraph (c)(8)(i) of this section.

Subparagraph (iv) of paragraph (2) of subdivision (e) of section 405.29 is amended to read as follows:

(iv) minimum workload standards. [There shall be sufficient utilization of a center to ensure both quality and economy of services, as determined by the Commissioner.] Each PCI capable cardiac catheterization laboratory center must maintain a minimum volume of at least 36 emergency percutaneous coronary intervention cases per year. For hospitals that are part of [an] a co-operated article 28 network and multi-site facilities with more than one approved PCI capable cardiac catheterization laboratory center, and for PCI capable cardiac catheterization laboratory centers operating under a [co-operator]clinical sponsorship agreement pursuant to section 709.14(d)[(1)(ii)(c)(3)(viii)](5) of this Title, minimum volume standards for emergency PCI procedures are site specific and may not be combined for purposes of achieving minimum workload standards. [Any hospital seeking to maintain approval shall present evidence that the annual minimum workload standards have been achieved by the second full year following initiation of the service and maintained thereafter. Each PCI capable cardiac catheterization laboratory center must maintain a minimum volume of 150 percutaneous coronary intervention cases per

year including at least 36 emergency percutaneous coronary intervention cases per year. Hospitals with volumes below 400 percutaneous coronary intervention cases per year must comply with the following:

(a) PCI capable cardiac catheterization laboratory centers with an annual volume between 300 and 400 percutaneous coronary intervention cases shall undergo a review of cases and outcomes trends conducted by the department to evaluate the appropriateness and quality of care provided by the center;

(b) PCI capable cardiac catheterization laboratory centers with a volume between 150 and 300 percutaneous coronary intervention cases a year must procure the services of an independent physician consultant, acceptable to the department, who shall conduct an annual review of the appropriateness and quality of percutaneous coronary intervention cases performed at the facility and shall provide a copy of the findings directly to the department. Findings will be used by the department to determine whether continued approval or withdrawal of approval best meets the needs of the patients in the region; and]

([c]a) PCI capable cardiac catheterization laboratory centers with an annual volume below 150 percutaneous coronary intervention cases a year for two consecutive calendar years, or a volume below 36 emergency percutaneous coronary intervention cases a year for two consecutive calendar years, [shall surrender approval to perform percutaneous

coronary interventions or have approval to perform the procedure revoked] must procure the services of an independent physician consultant, acceptable to the department, who shall conduct an annual review of the appropriateness and quality of the percutaneous coronary intervention cases performed at the facility and shall provide a copy of the findings directly to the department. Findings will be used by the department to determine whether continued approval or withdrawal of approval best meets the needs of the patients in the planning area.

Paragraph (3) of subdivision (e) of section 405.29 is amended to read as follows:

(3) Diagnostic cardiac catheterization services. [As of the effective date of these regulations, no] No additional diagnostic cardiac catheterization services shall be approved. Diagnostic cardiac catheterization services hospitals are not approved to perform percutaneous coronary intervention or cardiac surgery, are subject to annual reviews of volume, appropriateness of cases and other quality indicators for diagnostic cardiac catheterization, and must meet the following standards:

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of these regulations is contained in Sections 2800 and 2803(2) of the Public Health Law (PHL). In particular, PHL Section 2803 (2) authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objective of PHL Article 28 includes the protection and promotion of the health of the residents of the state by requiring the efficient provision and proper utilization of health services, of the highest quality and at a reasonable cost.

Needs and Benefits:

Title 10 Health Codes Rules and Regulations (10 NYCRR) Section 709.14 provides standards to be used in evaluating certificate of need (CON) applications for cardiac catheterization laboratory and cardiac surgery services in hospitals located in New York State. Alongside 10 NYCRR Section 709.1, these regulations are intended as a set of planning principles and decision-making tools for directing the distribution of these services, with a goal of ensuring appropriate access to high quality services while

avoiding the unnecessary duplication of resources. 10 NYCRR Section 405.29 provides standards for the provision of cardiac services.

Section 709.14 was last amended in November 2009 to allow the provision of Percutaneous Coronary Intervention (PCI) services (commonly referred to as angioplasty or stenting) outside of a Cardiac Surgery Center by defining and establishing a need methodology Cardiac Catheterization Laboratory Centers. The need methodology focused on the premise that a minimum volume of procedures at a facility ensures quality. Additional programs were deemed imprudent if they could not reasonably project certain volumes and unnecessary if their approval would cause an existing program at a facility in the same service area to fall below the minimum volume thresholds.

Since those last amendments, significant advances in technology and medical practice have made PCI and cardiac surgery procedures safer. In addition, standalone community hospitals are increasingly becoming part of integrated regional health care networks that are anchored by large academic medical centers. This transformation is increasing the potential for expanded access to quality cardiac care in these communities. Also, recent research by the University at Albany School of Public Health has shown that the correlation between volume and outcomes for PCI services has decreased in importance but that some minimal threshold is still needed.

The existing regulations have the effect of limiting new program entrants into geographic

markets, and they are not aligned with the increasing prevalence of integrated regional health care systems that are operated and governed by large academic medical centers. Such systems improve the coordination and delivery of health care services and help improve quality and ensure the financial sustainability of community hospitals within the network. In such systems, the co-established parent hospital governs the member hospitals through its reserve powers. Several of these systems have achieved broad clinical integration, including joint clinical department heads, quality assurance and training programs, information systems with data exchange and the sharing of clinical and support staff such as specialty teams.

A Regulatory Modernization Initiative convened by the Department of Health in the Fall of 2017 solicited industry and stakeholder input, considered all the above factors, and made recommendations that form the basis for these amendments herein. The regulations, once promulgated, will form a new basis for cardiac catheterization program approval and operation. The result will be greater, more convenient access to safe, quality PCI services and perhaps lifesaving and more timely access to emergency PCI.

Hospitals approved as PCI Capable Cardiac Catheterization Laboratory Centers will be required to provide emergency PCI on a 24-hour, 7 day a week, 365 days a year basis. Such hospitals will also be required to provide data to the Cardiac Reporting System as those who already provide this care do now.

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

It is a voluntary choice for hospitals to provide these PCI services and not a mandate.

There are approximately 66 hospitals that are currently PCI Capable Cardiac Catheterization Laboratory Centers out of 223 hospitals. The cost of implementation and compliance of these regulations is expected to be minimal for the affected entities already caring for these patients. Hospitals that voluntarily choose to provide such services, and that do not currently do so, will need to adhere to these standards and may incur costs to upgrade their services.

Cost to State and Local Government:

Any hospital in New York State that is part of State or local government that chooses to provide cardiac services will need to comply with these provisions. As discussed above, the cost of implementation and compliance of these regulations is expected to be minimal for entities already caring for these patients.

Cost to the Department of Health:

The Department of Health will need to monitor and provide surveillance and oversight for the system of care provided to these patients. It is not expected to incur any additional costs, as existing staff will be utilized to conduct such surveillance and oversight.

Local Government Mandates:

There are no local mandates within this regulatory amendment.

Paperwork:

Hospitals seeking to provide Cardiac Catheterization Laboratory Center Services with no Cardiac surgery onsite under the sponsorship model will be required to maintain a clinical sponsorship agreement with an existing Cardiac Surgery Center. Hospitals seeking to provide Cardiac Catheterization Laboratory Center Services with no Cardiac surgery onsite under the co-operator model will be required to maintain a staff sharing agreement with the parent Cardiac Surgery Center. Cardiac Surgery and Cardiac Catheterization Laboratory Centers will continue to be required to report data to the Department.

Duplication:

This regulation does not duplicate any other state or federal law or regulation.

Alternative Approaches:

The Department considered maintaining some lower total volume thresholds of PCI procedures for approval of a new program as an incremental approach. However, given the weakening correlation between volume and outcomes for PCI services generally, any threshold, albeit lower, would still be somewhat arbitrary and problematic. Instead, to facilitate access to timely emergency PCI procedures, volume requirements for non-emergency procedures will be eliminated where the emergency PCI volume and standards associated with high quality care can be maintained.

Federal Requirements:

This regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

This proposal will go into effect upon a Notice of Adoption in the New York State Register.

Contact Person:

Katherine Ceroalo
New York State Department of Health
Bureau of Program Counsel, Regulatory Affairs Unit
Corning Tower Building, Rm 2438
Empire State Plaza
Albany, NY 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.ny.gov

REGULATORY FLEXIBILITY ANALYSIS

Effect of Rule:

Three hospitals are considered small businesses (defined as 100 employees or less) and will be affected by this rule. Similarly, any hospital that is operated by a local government will be affected by this rule.

Compliance Requirements:

Those hospitals that are considered a small business will be required to have written transfer agreements in place with hospitals that will be receiving cardiac patients and with emergency medical services to transport these patients to the appropriate facility for definitive care in a timely and appropriate manner.

Professional Services:

This regulatory amendment does not appreciably change the professional services required to provide Cardiac Catheterization Laboratory Center Services.

Compliance Costs:

This regulatory amendment does not appreciably change the compliance costs associated with the provision of Cardiac Catheterization Laboratory Center Services.

Economic and Technological Feasibility:

This proposal is economically and technically feasible.

Minimizing Adverse Impact:

There is no adverse impact.

Small Business and Local Government Participation:

Outreach to the affected parties was conducted through the recent Regulatory Modernization Initiate Process. Organizations who represent the affected parties and the public can obtain the agenda of the Codes and Regulations Committee of the Public Health and Health Planning Council (PHHPC) and a copy of the proposed regulation on the Department's website. The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting.

STATEMENT IN LIEU OF
RURAL AREA FLEXIBILITY ANALYSIS

A Rural Area Flexibility Analysis for these amendments is not being submitted because amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

**STATEMENT IN LIEU OF
JOB IMPACT STATEMENT**

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

SUMMARY OF EXPRESS TERMS

This regulation amends Title 10 of the New York Codes, Rules and Regulations to add a new Article 10 to the State Hospital Code and a new Part 795 – Midwifery Birth Centers.

The new Part 795 defines midwifery birth center and sets standards for such birth centers aligned with national evidence-based standards. Part 795 allows midwifery birth centers to demonstrate compliance with these regulations by obtaining accreditation from an accrediting organization approved by the Department, in lieu of routine surveillance by the Department.

Part 795 requires a midwifery birth center to have a center director, who may be a midwife. The center director may appoint a consulting physician and must have collaborative relationships as required by the Education Law and this regulation.

Part 795 sets standards for staffing at midwifery birth centers and requires at least two staff members with training and skills in resuscitation, one for the patient giving birth and one for the post-delivery neonate, to be present at every birth.

Part 795 requires midwifery birth centers to have quality assurance programs and plans for emergency care, including transfer when indicated.

Pursuant to the authority vested in the Public Health and Health Planning Council, and subject to the approval of the Commissioner of Health, by sections 2801 and 2803(11) of the Public Health Law, sections 69-8.1, 69-10.1, 400.9, and 405.21 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended, and Subchapter C of Chapter V of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding a new Article 10, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Subdivision (d) of section 69-8.1 is amended to read as follows:

(d) institution caring for infants (facility) means all general hospitals having maternity and infant services or premature infant services as defined in section 405.21 of this Title, [and] primary care hospitals and critical access hospitals as defined in section 407.1 of this Title, [and] birthing centers as defined in section 754.1 of this Title, and midwifery birth centers as defined in section 795.1 of this Title.

Subdivision (r) of section 69-10.1 is amended to read as follows:

(r) “Hospital” means a general hospital or a maternity hospital, including a birthing center located is a general hospital or a maternity hospital, [or] a birthing center operating as a diagnostic and treatment center, or a midwifery birth center, as defined by section 2801 or the public health law.

Paragraph (2) of subdivision (b) of section 400.9 is amended to read as follows:

(2) include in such agreement reasonable assurance that there will be transfer of the patient or resident whenever deemed medically appropriate and mutually agreed upon by the physician responsible for the medical care in the referring facility, or by the midwife responsible for the medical care in the case of a referring midwifery birth center, and by the physician who will become responsible for the medical care in the receiving facility, or, in the case of a certified home health agency, by the physician who will become responsible for the medical care when such patient or resident is to receive services from the certified home health agency;

Subparagraph (i) of paragraph (9) of subdivision (c) section 405.21 is amended to read as follows:

(i) Such transfer shall be accomplished in accordance with the provisions of sections 754.2(e) [and], 754.4, 795.2(e) and 795.4 of this Title.

A new Article 10 is added to read as follows:

Article 10 – Midwifery Birth Centers

Part 795 Midwifery Birth Centers

§ 795.1 Definitions. As used in this Part:

- (a) A *midwifery birth center* means a facility licensed pursuant to Article 28 of the Public Health Law that is engaged principally in providing prenatal and obstetric care, and where such services are provided principally by midwives. The facility shall be organized to provide prenatal, child birth and postpartum care and primary preventive reproductive health care to patients at low risk. Services are provided by a midwife, licensed pursuant to Article 140 of the Education Law, to

patients at low risk, during pregnancy, labor, delivery, and who require only a stay of less than 24 hours after birth. Such services shall include newborn evaluation, resuscitation and referral. Midwifery birth center services are based on a philosophy that promotes a home-like setting and family-centered approach to care and views pregnancy and delivery as a normal physiological process requiring limited technological and pharmacological support. The center services are designed to meet the specific needs of the population being served and promote optimum pregnancy outcomes. The licensed midwife provides care for the low-risk patient during pregnancy and stays with the patient during labor from the time of admission to the midwifery birth center through the immediate postpartum period, providing continuous physical and emotional support, evaluating progress, facilitating family interaction and assisting the patient in labor and delivery. Other health care providers can provide prenatal and postpartum care to midwifery birth center patients. They may also provide supportive care during labor and delivery, but the attending provider for birth must be a licensed midwife.

(b) *A patient at low risk* means a patient who has: a normal medical, surgical, and obstetrical history; a normal, uncomplicated pregnancy as determined by adequate prenatal care; and prospects for a normal, uncomplicated gestation and birth. Risk shall be determined using standardized criteria based on generally accepted standards of professional practice.

(c) The *Department* means the New York State Department of Health.

§ 795.2 Administrative requirements. The operator shall ensure that:

- (a) only patients at low risk are admitted and cared for at the midwifery birth center;
- (b) written policies, procedures and standard risk assessment criteria for determining low-risk pregnancies based upon generally accepted standards of practice are developed and implemented;
- (c) written policies, procedures and protocols for the management of care are implemented pursuant to generally accepted standards of practice and in accordance with midwifery birth center philosophy;
- (d) a record is made of all informed consent, including shared decision making, that indicates concurrence from both caregiver and patient parties;
- (e) there is a transfer agreement with one or more perinatal centers for medical care of patients when complications arise antepartum, intrapartum, or postpartum and that meets the following requirements:
 - (1) compliance with section 400.9 of this Title;
 - (2) the surface travel time to reach a receiving perinatal hospital is less than two hours under usual weather and road conditions; and
 - (3) the receiving hospital is accessible and convenient to the patient's place of residence whenever possible;
- (f) support services such as laboratory, radiology and imaging, and family planning services not provided by the midwifery birth center are available by referral;
- (g) the midwifery birth center services are available 24 hours a day for the admission of patients, professional consultation and prompt response to inquiries;
- (h) kitchen facilities are available to enable families to store and prepare food brought in for the laboring family;

- (i) the midwifery birth center acts in accordance with the requirements of section 405.21(c)(14) of this Title with respect to a voluntary acknowledgement of paternity for a child born out of wedlock;
- (j) the midwifery birth center refers patients for genetic screening, carrier testing, and genetic counseling;
- (k) the midwifery birth center refers patients requiring physical or occupational therapy to an appropriate therapist; and
- (l) the needs of infants demonstrating difficulty feeding and swallowing are addressed to ensure the infant is healthy and developing properly, including referral to a licensed speech-language pathologist as needed.

§ 795.3 Service restrictions. The operator shall ensure that:

- (a) only patients at low risk are admitted and cared for at the midwifery birth center;
- (b) surgical procedures are limited to those which may be performed during and after an uncomplicated childbirth, such as episiotomy and repair. Other surgical procedures, including forceps and vacuum extraction are not permitted;
- (c) general and regional anesthesia are not administered at the center; and
- (d) labor is not induced, inhibited, stimulated or augmented with pharmacological agents acting directly on the uterus during the first or second stages of labor.

§ 795.4 Midwifery birth center transfer procedures.

- (a) The midwifery birth center shall maintain the capability to evaluate, stabilize and transfer patients other than patients at low risk, including newborns. The midwifery birth center shall refer or transfer patients for any health care services that fall outside the scope of midwifery birth center resources and risk criteria at

- any point during the course of care. The midwifery birth center shall initiate transfer when risks are identified, including when there is prolonged labor, fetal distress, or a need for spinal or epidural anesthesia, or when there may be an operative or cesarean birth.
- (b) Midwifery birth centers shall have written plans and procedures for the transfer of patients to the obstetrical or pediatric services of the receiving hospital(s) when complications arise. Such plans and procedures shall include arrangements for an ambulance service and, when necessary, accompanying the patient in the ambulance with a clinical staff member of the midwifery birth center.
 - (c) The operator, in consultation with the receiving hospital(s), shall develop a list of indicators necessitating transfer and a written procedure for automatic acceptance of such transfers by the receiving hospital, which shall include transfer of patients when neonatal abstinence syndrome or fetal alcohol syndrome is evident or suspected.
 - (d) The operator shall implement a system to ensure that a copy of the medical record accompanies the patient upon transfer to the hospital.
 - (e) The operator shall establish a mechanism for jointly reviewing all transfer cases by the receiving hospital(s) and the midwifery birth center as part of the quality assurance program specified in section 795.9 of this Part.

§ 795.5 Midwifery birth center director and medical consultants. The operator shall appoint a midwifery birth center director who:

- (a) is a licensed midwife or physician;

- (b) maintains documentation of collaborative relationships required under Section 6951 of the Education Law;
- (c) approves all policies, procedures and protocols for the management of care;
- (d) approves standardized criteria for admission screening and monitoring risk status during pregnancy, labor, birth and postpartum;
- (e) is available for consultation and referral or has made arrangements with a qualified physician for these services;
- (f) may appoint a consultant physician who:
 - (1) is a qualified specialist, as defined in section 700.2 of this Title, in pediatrics or family practice and who has pediatric privileges that include admission and care of newborns at the receiving hospital(s). In the absence of pediatric privileges, there must be formal arrangements included in the transfer agreement for the provision of pediatric care at the receiving hospital(s); and
 - (2) is available for consultation and referral;
- (g) ensures that the midwifery birth center has:
 - (1) collaborative relationships with one or more licensed physicians who are board certified as obstetrician-gynecologists by a national certifying body, who practice obstetrics, and who have obstetric privileges at one or more general hospitals licensed under Article 28 of the Public Health Law;
 - (2) collaborative relationships with pediatricians and other medical specialists needed to meet patients' needs, including with at least one pediatrician who has pediatric privileges that include admission and care of newborns at the receiving hospital(s). In the absence of pediatric privileges, there

shall be arrangements for the provision of pediatric care at the receiving hospital(s); and

- (3) transfer agreements with perinatal centers licensed under Article 28 of the Public Health Law to provide:
 - (i) obstetrics through a licensed physician having obstetrical privileges at such perinatal center;
 - (ii) consultation, collaborative management and referral to address the health status and risks of the provider's patients; and
 - (iii) emergency medical coverage for patients; and
- (h) has standardized criteria for admission screening and monitoring risk.

§ 795.6 Clinical staff. The operator shall ensure that:

- (a) a licensed midwife attends each patient from the time of admission, during labor, during the birth and through the immediate postpartum period, and that such practitioner maintains current certification by the American Academy of Pediatrics as a Neonatal Resuscitation Program (NRP) provider;
- (b) a second trained staff person is also present at each birth who:
 - (1) is under the supervision of the licensed midwife;
 - (2) has specialized training in labor and delivery techniques and care of the midwifery birth center patient;
 - (3) receives planned and ongoing training as needed to perform assigned duties effectively; and
 - (4) maintains current status as a NRP provider;

- (c) trained and qualified staff are available to educate and assist patients to initiate breastfeeding; and
- (d) at least two people who attend patients during labor, delivery and postpartum are currently certified NRP, Basic Life Support (BLS), and Advanced Cardiac Life Support (ACLS) providers and are able to provide oxygen and all equipment necessary to maintain airways for the patient and infant.

§ 795.7 Services for the care of patients. All patients shall be assessed to determine availability of sufficient resources prior to and following delivery. The operator shall ensure that the midwifery birth center provides at least the following:

- (a) admission screenings to ensure that only patients at low risk are admitted to the midwifery birth center;
- (b) active participation by patients and families in their own plan of health care, which shall include but not be limited to:
 - (1) orientation to the midwifery birth center services and its philosophy and goals preceding registration; and
 - (2) attendance at prenatal education classes approved by the clinical staff which address, at a minimum, labor and delivery, infant care and feeding, parenting, nutrition, the effects of smoking, alcohol and other drugs on fetal development and on the newborn patient, signs of postpartum depression, what to expect if transferred, and the newborn screening program, including hearing screening, with the provision and distribution of newborn screening educational literature;
- (c) prenatal and intrapartum care including:

- (1) a plan of care developed according to accepted professional standards;
- (2) selection of pediatric services by the patient for follow-up care of the infant;
- (3) providing HIV counseling and recommending voluntary testing to pregnant patients during a prenatal visit. Counseling and/or testing, if accepted, shall be provided pursuant to Public Health Law Article 27-F. Information regarding the patient's HIV counseling and HIV status must be transferred as part of the patient's medical history to the labor and delivery site. Patients with positive test results shall be referred to the necessary health and social services within a clinically appropriate time;
- (4) continuous risk assessment of all patients;
- (5) labor support and professional attendance at birth for the patient and the patient's family;
- (6) consultation with perinatal qualified mental health professionals to determine the appropriate course of action for patients who screen positive during the prenatal screening for depression or perinatal mood disorder or who have other mental health conditions;
- (7) a system for screening patients prior to admission for alcohol/substance use during pregnancy and for prior physical, sexual and emotional abuse, as part of routine obstetric care, and for referral of patients as appropriate to a higher-level facility; and
- (8) a system for directing patients to appropriate health care providers for further diagnosis and treatment, including consultation by a radiologist or

qualified provider who can interpret imaging results when results are inconclusive or an abnormality is detected that requires immediate care;

(d) postpartum care including:

- (1) care in the midwifery birth center to be provided for a minimum of four hours and a maximum of 24 hours after the third stage of labor is complete;
- (2) a physical assessment of the newborn with the required eye prophylaxis in accordance with sections 12.2 and 12.3 of this Title and newborn screening tests in accordance with Part 69 of this Title;
- (3) birth registration in accordance with section 4130 of the Public Health Law;
- (4) a physical assessment of the patient in accordance with established protocols including the evaluation of Rh status, need for Rh prophylaxis and the patient's ability to feed the infant prior to discharge from the center; and
- (5) the transfer to the newborn's medical record of a patient's HIV test result, if one exists; and

(e) discharge and follow-up including:

- (1) a program for discharge and follow-up of the patient and infant in their home for the immediate postpartum period unless arrangements have been made for the infant to be seen by another health care provider. The home visits may be performed by licensed professional nursing staff from the midwifery birth center, if the facility is approved under article 36 of the Public Health Law, or through an agreement with a certified or licensed

home health agency, to include an assessment of the parent-child relationship, an evaluation of the nutritional status of the infant and the physical and psychological status of the patient, performance of a hematocrit, rubella vaccination and Rh prophylaxis, if indicated, and newborn screening blood collection in accordance with Part 69 of this Title;

- (2) assurance of immediate and ongoing pediatric care;
- (3) provision of family planning counseling or arrangements for such services, if desired by the patient; and
- (4) arrangements for follow-up visits at the midwifery birth center within a six-week period following the birth.

§ 795.8 Medical records. The operator shall ensure that, in addition to meeting the requirements in section 751.7 of this Title:

- (a) The medical record for each patient shall contain the following information:
 - (1) results of physical and risk assessments;
 - (2) patient history, to include medical, surgical, gynecological and psychosocial history;
 - (3) record of informed consent, including shared decision making, for midwifery birth center services;
 - (4) ongoing assessments of fetal growth and development;
 - (5) periodic evaluations of patient health;
 - (6) results of laboratory tests;
 - (7) labor and birth information;

- (8) newborn patient physical assessment, including APGAR scores, maternal-newborn interaction, ability to feed, eye prophylaxis, vital signs and accommodation to extrauterine life;
 - (9) postpartum assessment;
 - (10) discharge and follow-up plans;
 - (11) home visit reports;
 - (12) midwifery birth center follow-up visit report; and
 - (13) documentation of family planning counseling and the arrangements made for family planning services, if any.
- (b) The medical record for each newborn shall be cross-referenced with the patient's medical record and contain the following information:
- (1) copy of the newborn physical assessment;
 - (2) results from newborn screening tests;
 - (3) discharge summary with follow-up plans; and
 - (4) home visit report.

§ 795.9 Quality assurance. In addition to meeting the requirements set forth in section 795.8 of this Title, the operator shall ensure that there is a review of all pregnant and postpartum patients and/or newborn hospital transfers, with reasons for such transfers documented. Findings from these reviews shall be used by the operator and midwifery birth center director in the development and revision of policies and in the consideration of renewing or granting staff privileges.

§ 795.10 Emergency care. The midwifery birth center shall have the capability and equipment to provide care to patients at low risk and a readiness at all times to meet any unexpected needs of patients within the center, and to facilitate transport to an acute care setting when necessary. The midwifery birth center shall stabilize and transfer patients to an appropriate general hospital for continued care when medically indicated. Staff with required current course completion status in NRP, BLS, and ACLS shall be available and shall have immediate access to all necessary equipment in accordance with these certifications to initiate resuscitation of patients. The midwifery birth center must have availability of adequate numbers of qualified professionals with competence and ability to stabilize and transfer high-risk patients. The operator shall ensure that at a minimum:

- (a) emergency equipment and supplies approved by the midwifery birth center director are available for use for resuscitation of both adult and neonate patients and include at least the following:
 - (1) intravenous therapy equipment;
 - (2) infant warmer;
 - (3) infant transport equipment;
 - (4) oxygen and oxygen administration equipment for patient and infant;
 - (5) airways and manual breathing bags for patient and infant;
 - (6) suction machine and equipment for patient and infant;
 - (7) adult and infant laryngoscope and endotracheal tubes; and
 - (8) medications and intravenous fluids with supplies and equipment for administration;
- (b) center staff are certified in NRP, BLS, and ACLS resuscitation and other emergency procedures; and

- (c) a licensed midwife, and one other staff member, both trained in NRP, BLS, and ACLS emergency procedures, are on duty in the center when patients are in the midwifery birth center.

§ 795.11 Midwifery birth center accreditation.

- (a) Midwifery birth centers must comply with sections 400.2 through 400.7, 400.9, and 400.10, and sections 751.5 through 751.10 of this Title and must comply with evidence-based standards for midwifery birth centers published by a national standards body selected by the Department and published on the Department's website. The Department may accept, as evidence of compliance with minimum operational standards in this subdivision, accreditation by an accreditation agency that the Department has determined has accrediting standards sufficient to assure the Department that midwifery birth centers so accredited are in compliance with such minimum operational standards. The Department may enter into collaborative agreements with one or more accreditation agencies to provide that such an agency's accreditation survey can be used in lieu of a survey by the Department. As part of such collaborative agreements, an accreditation agency may, at the Department's discretion, investigate complaints received by the Department related to care and services provided by a midwifery birth center. Notwithstanding any such collaborative agreements, the Department reserves the right to survey any midwifery birth center for compliance with the evidence-based standards established pursuant to this section. A list of accreditation agencies with which the Department has a collaborative agreement will be posted on the Department's website.

- (b) Except as otherwise prohibited by law, all survey reports, complaint investigation results, plans of correction, interim self-evaluation reports, certificates of accreditation, notices of noncompliance, or any other document, provided to the Department by an accreditation agency, pursuant to a collaborative agreement with the Department, shall be subject to public disclosure.
- (c) The midwifery birth center shall notify the Department in writing within seven days of failure to be accredited, re-accredited or the loss of accreditation by the accreditation agency.

§ 795.12 Application for establishment.

- (a) An application to the Public Health and Health Planning Council (Council) for establishment of a midwifery birth center, as required by law, shall be in writing on forms provided by the Department and executed by the chief executive officer or other officer duly authorized by the proposed operator. An original and eight copies shall be filed with the Council through the project management unit in the Department's central office in Albany, which shall transmit one copy to the health systems agency having geographic jurisdiction.
- (b) Applications to the Council shall contain information and data with reference to:
 - (1) the public need for the existence of the proposed midwifery birth center at the time and place and under the circumstances proposed;
 - (2) the character, experience, competency and standing in the community of the proposed incorporators, directors, stockholders, sponsors, individual operators or partners;
 - (3) the financial resources and sources of future revenue of the midwifery birth center to be operated by the applicant;

- (4) the fitness and adequacy of the premises and equipment to be used by the applicant for the proposed midwifery birth center; and
- (5) such additional pertinent information and documents necessary for the Council's consideration, as determined by the Department.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Chapter 397 of the Laws of 2016 amended the definition of hospital in section 2801 of the Public Health Law to add midwifery birth centers under the supervision of a midwife, and added a new subdivision 11 to section 2801 to give the New York State Department of Health (the Department) specific authority to establish regulations relating to the establishment, construction, and operation of midwifery birth centers, in consultation with representatives of midwives, midwifery birth centers, and general hospitals providing obstetric services.

The 2016 law supplemented the authority of the Department and the Public Health and Health Planning Council (PHHPC) under section 2803 of the Public Health Law to regulate health care facilities, including birth centers.

Legislative Objectives:

Chapter 397 of the Laws of 2016 was intended to remove barriers that restrict the establishment of freestanding birth centers led by licensed midwives and to permit the Department to determine, with consultation, which Article 28 certificate-of-need requirements are appropriate and reasonable for the scope of services provided by midwifery birth centers. Education Law requirements governing the practice of midwifery will continue to apply to all midwives, regardless of the practice setting.

Needs and Benefits:

There are currently only three freestanding birth centers in New York. All of these are directed by physicians. This regulation -- which encourages the creation of midwife-led centers -- will foster the growth of birth centers throughout New York.

Evidence shows that midwifery birth centers can offer high-quality, cost-effective maternity and neonatal care. Research indicates that freestanding birth centers operated by midwives tend to have low cesarean-section rates, fewer labor inductions, and successful parent bonding and breastfeeding without prolonged separation. Midwife-led birth centers promote wellness-based birth over technology and interventions. They consistently earn high patient satisfaction from women seeking a welcoming environment without restrictions on the presence of supportive staff, friends, and family members. They can provide more cost-effective maternity and neonatal care with outcomes that are comparable to births in other settings. Midwifery birth centers can play a vital part in serving the needs of mothers and families in New York State.

This regulation implements Chapter 397 of the Laws of 2016 by creating a new Part 795 authorizing midwifery birth centers. Under these regulations, the midwifery birth center director may be a licensed midwife or a physician, provided that they maintain documentation of collaborative relationships required under Section 6951 of the Education Law.

These regulations allow midwifery birth centers to meet national standards set by a standards-setting agency selected by the Department in lieu of meeting some provisions of the State Hospital Code. This regulation also allows accreditation of midwifery birth centers in lieu of surveillance by the Department, although the Department retains the authority to inspect midwifery birth centers at its discretion. An accreditation agency can

ensure high quality of care consistent with Department regulations and nationally recognized standards in a manner that is flexible and imposes less of a resource and cost burden on the Department.

A physician-led birth center that is a diagnostic and treatment center and is regulated under 10 NYCRR Part 754 must have a transfer agreement with a perinatal hospital located within 20 minutes' transport time from the birth center to the receiving hospital. Under this regulation, for a midwifery birth center, the surface travel time to reach a receiving perinatal hospital must be less than two hours under usual weather and road conditions. This will allow birth centers to be established in rural areas that would otherwise not have access to this type of care.

This regulation requires that the medical record for each patient at a midwifery birth center must contain a record of informed consent, including shared decision making, for birth center services. Public Health Law §2805-d, which generally requires a patient's informed consent when receiving health care services, is applicable to midwifery birth centers.

COSTS:

Costs to Private Regulated Parties:

A provider seeking to establish a midwifery birth center would require the approval of the Department as part of the Certificate of Need process. An application for a Certificate of Need for a midwifery birth center will be subject to a fee, established by Public Health Law § 2801-a, of \$2,000. An additional fee of 0.55% of the midwifery birth center's total project cost would be assessed upon approval of the Certificate of Need.

A provider opting to obtain accreditation, in accordance with these proposed regulations, would also be subject to fees charged by the accreditation agency. According to a national accreditation organization for midwifery birth centers, the Commission on the Accreditation of Birth Centers, typical fee structures for birth centers are as follows: a new birth center would be charged an initial registration fee of 4,000 dollars and a follow-up visit fee, one year later of 3,300 dollars. After that, a 250 dollar- per-month fee is assessed during the lifetime of the accreditation. All of these costs are subject to change. Foundation grants may be available to potentially cover half of the costs for the initial and follow-up visit.

Costs to State and Local Governments:

The Department does not anticipate that any birth centers will be operated by State or local government.

Local ordinances would be enforced at midwifery birth centers in a comparable manner to any other local businesses.

Costs to the Department of Health:

There will be no additional costs to the Department, as systems already exist to approve and regulate birth centers and, as proposed, the services of the national standards setting body and accreditation would fulfill many obligations typically fulfilled by the Department.

Local Government Mandates:

The proposed regulations impose no new mandates on any county, city, town or village government.

Paperwork:

To become a new birth center, including a midwifery birth center, an applicant will need to follow certificate of need process as required by Public Health Law Article 28. This regulation does not create new reporting requirements.

Duplication:

There are no duplicative or conflicting rules.

Alternatives:

One alternative would be for the State to not allow accreditation of birth centers by a nationally recognized organization as evidence of compliance with minimum operational and construction standards. However, this alternative was rejected as inefficient and unnecessary.

Another alternative was to require midwifery birth centers to meet the exact same requirements as physician-led birth centers, other than allowing the center to be directed by a midwife. This alternative was rejected, because the Department believes that the Legislature intended and the public interest would best be served by the Department creating a regulatory framework that facilitates the establishment of distinct midwifery birth centers.

Federal Standards:

The proposed regulation does not exceed any minimum standards of the Federal government.

Compliance Schedule:

The proposed regulation will take effect upon a Notice of Adoption in the New York State Register.

Contact Person:

Katherine Ceroalo
New York State Department of Health
Bureau of Program Counsel, Regulatory Affairs Unit
Corning Tower Building, Rm. 2438
Empire State Plaza
Albany, New York 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.ny.gov

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect of Rule:

The proposed regulations will apply to midwifery birth centers in New York State. This proposal will not impact local governments or small businesses unless they operate such facilities. Many of the midwifery birth centers will be small businesses under the definition in the State Administrative Procedure Act (SAPA). In such case, the flexibility afforded by the regulations is expected to minimize delays and any costs of compliance as described below.

Compliance Requirements:

Pursuant to this rule, midwifery birth centers that are small businesses will be required to maintain appropriate documentation of professional credentialing and agreements between the birth center and other receiving medical facilities.

These regulations utilize the approach of allowing accreditation instead of traditional surveillance. This is intended to allow for oversight to be performed by accrediting organizations with specific experience measuring standards of compliance for midwifery birth centers. Small businesses may be required to enter into a contractual relationship with an accrediting organization.

Professional Services:

This proposal is not expected to require any additional use of professional services.

Compliance Costs:

A provider seeking to establish a midwifery birth center would require the approval of the Department as part of the Certificate of Need process. An application for a Certificate of Need for a midwifery birth center will be subject to a fee, established by Public Health Law § 2801-a, of \$2,000. An additional fee of 0.55% of the midwifery birth center's total project cost would be assessed upon approval of the Certificate of Need.

A provider opting to obtain accreditation, in accordance with these proposed regulations, would also be subject to fees charged by the accreditation agency. According to a national accreditation organization for midwifery birth centers, the Commission on the Accreditation of Birth Centers, typical fee structures for birth centers are as follows: a new birth center would be charged an initial registration fee of 4,000 dollars and a follow-up visit fee, one year later of 3,300 dollars. After that, a 250 dollar- per-month fee is assessed during the lifetime of the accreditation. All of these costs are subject to change and will vary by size of birth center. Foundation grants may be available to potentially cover half of the costs for the initial and follow-up visit.

Economic and Technological Feasibility:

This proposal is economically and technically feasible, as these regulations would enable the establishment of midwifery birth centers and do not impose requirements on existing birth centers.

Minimizing Adverse Impact:

No adverse impact is anticipated, as these regulations would enable the establishment of midwifery birth centers and do not impose requirements on existing birth centers.

Small Business and Local Government Participation:

The Department convened a 49-member expert panel to make recommendations for the perinatal system in New York State, which includes freestanding birth centers, Level 1 hospitals, Level II hospitals, Level III hospitals, and Regional Perinatal Centers (RPCs), as described in 10 NYCRR Part 721. Regulated parties will also have an opportunity to submit comments during the notice and comment period.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (<http://quickfacts.census.gov>).

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

There are no birth centers currently operating in rural areas.

Reporting, Recordkeeping, Other Compliance Requirements and Professional Services:

Pursuant to this rule, midwifery birth centers will be required to maintain appropriate documentation of professional credentialing and agreements between the birth center and other receiving medical facilities.

These regulations utilize the approach of allowing accreditation instead of traditional surveillance. This is intended to allow for oversight to be performed by accrediting organizations with specific experience measuring standards of compliance for midwifery birth centers. Birth centers may be required to enter into contractual relationships with these accrediting organizations.

Professional services such as midwives and other health care practitioners will be needed to operate a midwifery birth center. It is also anticipated that staff will be needed to maintain the center and provide for a setting that is safe from biological or environmental hazards.

Costs:

A provider seeking to establish a midwifery birth center would require the approval of the Department as part of the Certificate of Need process. An application for a Certificate of Need for a midwifery birth center will be subject to a fee, established by Public Health Law § 2801-a, of \$2,000. An additional fee of 0.55% of the midwifery birth center's total project cost would be assessed upon approval of the Certificate of Need.

A provider opting to obtain accreditation, in accordance with these proposed

regulations, would also be subject to fees charged by the accreditation agency. According to a national accreditation organization for midwifery birth centers, the Commission on the Accreditation of Birth Centers, typical fee structures for birth centers are as follows: a new birth center would be charged an initial registration fee of 4,000 dollars and a follow-up visit fee, one year later of 3,300 dollars. After that, a 250 dollar- per-month fee is assessed during the lifetime of the accreditation. All of these costs are subject to change and will vary by size of birth center. Foundation grants may be available to potentially cover half of the costs for the initial and follow-up visit. These costs would be the same in a rural or non-rural area.

Minimizing Adverse Impact:

It is intended that midwifery birth centers will meet some of the needs of rural communities to provide birth services in the absence of a nearby hospital. The Department has added a standard within this rule allowing for midwifery birth centers to operate in any area of the state as long as the center is located within a two-hour road travel radius of a potential receiving hospital. This provision was specifically designed to allow for the possibility that a birth center could open in a rural community.

Allowing accreditation will minimize any adverse impact associated with the Department's surveillance process and will help to allow these centers to operate in rural communities.

Rural Area Participation:

The Department held meetings to seek input from practitioners in rural settings. The Department conducted outreach with state and national professional associations of midwifery birth centers, as well as representatives of midwives, midwifery birth centers,

and general hospitals. This included practitioners practicing and intending to practice in rural settings. The proposed regulation will have a 60-day public comment period.

JOB IMPACT STATEMENT

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

MEMORANDUM

TO: Members of the Health Planning Committee

FROM: George Macko
Director Division of Planning and Licensure, Office of Primary Care and
Health Systems Management

DATE: February 7, 2019

SUBJECT: **Application for Designation as Hospital Stroke Center –Olean General
Hospital (Olean, New York)**

Enclosed is the staff recommendation requesting support to designate Olean General Hospital in Olean, New York as a NYS Designated Stroke Center

Olean General Hospitals application has been reviewed by staff in the Western Regional and Albany Offices, and they have found the application to be acceptable. Following the application review, a site visit was conducted by staff from the Western Office on January 17, 2019. This visit confirmed that the facility satisfies all the key elements of a NYS Designated Stroke Center.

The NYS Stroke Designation Program recommends designating this facility as a stroke center. The Department is seeking the Council's endorsement of this recommendation.

Olean General Hospital will be the 122nd designated stroke center in the state.

Once designated, the regional emergency medical services council will be notified and local EMS can begin directing patients with signs and symptoms of stroke to Olean General Hospital Center. EMS protocol provides for bypass of hospitals which are not stroke designated.



**New York State Department of Health Stroke Center Designation
Onsite Audit Tool**

Hospital Name: Olean General Hospital (Olean, New York)

Visit Date: January 17, 2019

Site Visit Participants: Gregory E. Young MD, Associate Commissioner & Medical Director/Western Region; Cindy S. Pullano RN, NH Regional Program Director/Central NY Regional Office

Elements	Mode of Validation	Yes	No	Comments:
<p>1. Stroke Team: Acute Stroke team coverage 24/7</p> <p>Team of Health Care Professionals available 24/7</p> <p>Team arrives within 15 minutes of patient arrival</p>	<p>Review list of members of stroke team</p> <ul style="list-style-type: none"> • Observe on call schedules/Evidence of drills • Ensure that drills have been practiced at least once 	X		<p>A member of the stroke team must be available within 15 minutes of patient arrival.</p> <p>Identify person on site and interview if possible, i.e. triage nurse, ED physician.</p> <p>Is the team knowledgeable re: stroke team members and system including activation of the stroke code. Determine continuity/coordination of members and services.</p> <p>A Code Stroke is paged overhead, and stroke team members (throughout all departments) reported no issues with audibility. Code strokes are called upon EMS notification prior to arrival. There have not been issues with on-call neurology service availability.</p> <p>ED registration staff is present 24/7 and is trained in recognizing acute stroke symptoms and the actions to take (immediate call to triage, patient not to sit in waiting room). EMS staff stop at the door, and if labs were not already drawn by them, ED staff draws labs there before the patient is brought to CT. There have not been any issues noted with EMS-drawn</p>

			<p>specimens. Blood specimens are labeled Code Stroke and are sent via a pneumatic tube system from ED to the lab.</p> <p>The 20-bed ED which evaluates approximately 33,000 patients annually, has three weighted beds. If the patient has not already been placed on one, a weighted bed is brought to CT.</p> <p>ED staff interviewed were knowledgeable about the Code Stroke process, as per the stroke policies. Drills had been performed for three months in 2017 with mock Code Strokes still being called, and actual Code Strokes are called daily given the volume they see.</p> <p>Doses of tPA are maintained in ED and pharmacy. A pharmacist pre-mixes tPA, or on the night shift a trained ED nurse mixes the tPA. The tPA is checked by two RNs and administered by RNs. ED nurses are Stroke Champions, and respond to inpatient Code Strokes, mixing tPA if indicated. The decision for tPA use can be made by Neurology, an ED physician, a hospitalist, or an intensivist.</p>
<p>2. Protocols: Emergency care of patients with stroke</p> <ul style="list-style-type: none"> Ischemic, Hemorrhagic and tPA, blood pressure management 	<ul style="list-style-type: none"> Observe that protocols exist in Emergency Department. 	<p>X</p>	<p>Protocols must be in the ED at all times. They have been reviewed in detail by Central Office Reviewers.</p> <p>The facility's stroke policies/protocols and order sets are online and available to staff throughout the facility. Yellow folders that are maintained in the ED and inpatient units contain stroke protocols, tools, and lab stickers; a yellow folder is pulled on every Code Stroke patient.</p>
<p>3. Facility Support</p>			

<p>Stroke Center Medical Director training Medical Director requirements, 2 of the following</p> <ul style="list-style-type: none"> • Completion of stroke fellowship • Participation in at least 2 regional, national, or international conferences on stroke each year • Five or more peer-reviewed publications on stroke • Eight or more CME credits each year in the area of cerebrovascular disease <p>Clinicians' training must be one of the above or equivalency.</p>	<p>Interview select stroke team staff members to assess knowledge of team function</p>	<p>X</p>	<p>Stroke team credentials have been submitted with application and reviewed by DOH staff prior to site visit.</p> <ul style="list-style-type: none"> • Determine continuity of team credentials • Review schedule for ongoing training <p>Medical staff have all completed the full amount of required stroke specific annual training.</p> <p>Nursing and ancillary staff training was acceptable in both the amount of required hours and its content. All stroke nursing staff (ED, ICU and stroke unit) are trained in NIHSS and dysphagia screening. Ancillary staff such as PT/OT/ST, EMS staff, and the community all received stroke education at least twice annually, with a continuing plan for biannual training.</p>
<p>4. Laboratory/Other Services: Lab work performed and reported within 45 minutes of being ordered 24/7</p>	<p>Documentation of lab reports with reports given to physician within 45 minutes of being ordered</p> <p>Observe CT/MRI unit and system for timely interpretation of diagnostic results</p>	<p>X</p>	<p>Laboratory and ED must have written agreement in application – previously reviewed by staff.</p> <p>Blood work arrives from the ED to the lab via a pneumatic tube system having an audible and visual alarm upon its arrival and is retrieved for immediate processing. Laboratory staff can hear the overhead code stroke page allowing them to anticipate the blood samples arriving. Lab results are available in the EMR system with critical labs verified via phone calls. In the case of downtime, the results are called to ED.</p> <p>The hospital has a 128-slice CT scanner in the imaging department off the ED. CT technicians are onsite 24/7. CT, CT angiography, and CT perfusion studies are performed. MRI is available day/evening hours 7 days/week, with MRI technicians on-call at night. Facility radiologists do readings 7am to 8pm, with readings done via NightHawk from 8pm to 7am.</p>

<p>5. Stroke Unit: Designated Stroke Beds</p> <p>Written Care Protocols on Unit including:</p> <ul style="list-style-type: none"> • Ischemic Stroke • Hemorrhagic Stroke • tPA administration • Admission\Discharge criteria • Patient census and outcome data 	<ul style="list-style-type: none"> • Observe Designated beds • Review bed assignment protocol: evidence that stroke patient is the priority for stroke unit beds • Observe written care protocols • Documentation is provided on unit: admission/discharge criteria, protocols, patient census • Evidence of monitoring capabilities, continuous non-invasive telemetry • Interview select staff: determine their familiarity with care protocols on unit • Ask about ongoing or planned training for staff in unit 	<p>X</p>	<p>Designated beds do not have to be a separate unit. However, specific beds do need to be a priority for post acute stroke patients.</p> <p>Patients who received tPA are admitted to their 14 bed ICU for at least 24 hours, with two beds being designated for stroke patients. All ICU nurses are stroke-trained. Multidisciplinary rounds are held each morning and include the intensivist, hospitalist, RN, RD, RT, pharmacist, and PT. Intensivists serve as the attending physician, with hospitalist staff following along, and then becoming the attending once the patient is transferred out of the ICU. Neurology follows throughout the hospitalization.</p> <p>The stroke unit is a PCU (Progressive Care Unit), a 35 bed telemetry unit that has 8 hard-wired beds used for stroke patients. All rooms have telemetry. All PCU nurses are stroke-trained. Multidisciplinary rounds are held each afternoon Monday through Friday with the RN, RT, RD, pharmacy, the hospitalist, a cardiologist, a discharge planner, and sometimes an NP. These occur in the afternoon to avoid conflicting with the multidisciplinary rounds in the ICU held in the mornings. Observation rounds are held on the weekends. All stroke patients are on the hospitalist service, with neurology consulting. Rehab staff come to the patients' bedsides as needed, and there is both a rehab gym and an apartment in the sub-acute rehab unit for use as needed.</p> <p>All hospital nurses are trained in dysphagia screens and a bedside swallow test is conducted for all stroke patients.</p> <p>Interviewed staff on both units were knowledgeable</p>
---	--	----------	---

				<p>about the stroke patient care protocols, which are available online and in folders. Staff have participated in drills or actual Code Strokes. Patient/family stroke education was comprehensive, with a discharge packet being provided the family.</p> <p>In the event of new-onset stroke symptoms in an inpatient, nursing staff call the Immediate Response Team, which consists of a respiratory therapist, a critical care RN, a hospitalist, and a phlebotomist. If indicated, Code Stroke is then called and the patient is brought to CT, and then sent to ICU if tPA is needed. Pharmacy will mix tPA, or if this occurs on the night shift, an ED RN will mix the tPA.</p>
<p>6. Neurosurgery Services Capability</p> <ul style="list-style-type: none"> • Within 2 hours deemed necessary 	<ul style="list-style-type: none"> • Observe that coverage exists as evidenced by call schedules 	X		<p>Transfer agreements have been reviewed in application.</p> <p>The hospital has a transfer agreement with Kaleida Health for neurosurgical services.</p>
<p>7. Quality Improvement</p> <p>The Stroke Center director has established quality assurance committees that meet regularly to review prepared reports, discuss opportunities for improvement.</p>	<p>Observe minutes of quality assurance meetings or at a minimum the schedule of quality assurance activity</p>	X		<p>Discuss activity of quality assurance committee.</p> <p>The stroke program was developed and achieved as an A3 Lean project. The stroke team committee monthly meeting minutes were reviewed and included appropriate topics and actions.</p> <p>The stroke program is active with GWTG, with improving metrics. Their December 21, 2018 meeting minutes documented multiple metrics were at 100% (Stroke Education, Rehabilitation Considered, IV tPA</p>

			<p>Arrive by 3.5 hours treat by 4.5 hours, IV tPA Arrive by 2 hours treat by 3 hours, Antithrombotic, Anticoagulation for AFib/Aflutter, and Smoking Cessation).</p> <p>2 acute stroke patients' records were reviewed for appropriate acute stroke care. One received tPA, the other could not due to delayed presentation to the hospital.</p> <p>2 medical staff files, one an ED physician, the other a hospitalist were reviewed and found to be complete.</p>
<p>8. Conditions/Contingencies/Equivalencies noted in review</p> <ul style="list-style-type: none"> Review copy of staff report prior to onsite visit and attach to this validation tool. Note contingencies will require onsite verification. 	<p>Observe compliance of specific contingencies and conditions noted on the Staff Report for the SHRPC (State Hospital Review and Planning Council)</p>	<p>X</p>	<p>Address all contingencies/conditions/equivalencies in space below:</p> <p>Commendable:</p> <ul style="list-style-type: none"> Their application was thorough with no issues identified prior to the onsite survey. All medical staff credential files reviewed were very well laid out, thorough, and up to date. Their staff educational program is very robust, and inclusive. The EMS feedback form they developed, which is mailed out to EMS agencies for every stroke patient transported to their facility, is detailed with case-specific times included and is one of the best we have seen. Their A3 Lean stroke project resulted in a robust acute stroke response system, with documentation that demonstrated consistently improving outcomes. <p>Contingencies:</p> <ul style="list-style-type: none"> None <p>Recommendation is to approve this hospital as a NYS</p>

				designated Primary Stroke Center.



**Project # 182128-C
NYU Langone Hospitals**

Program: Hospital
Purpose: Construction

County: New York
Acknowledged: September 26, 2018

Executive Summary

Description

NYU Langone Hospitals (NYULH), an 844-bed, voluntary not-for-profit, Article 28 acute care hospital located at 550 First Avenue, New York (New York County), requests approval for NYU Winthrop Hospital (NYU Winthrop) to become a division of NYULH. NYU Winthrop is a 591-bed, voluntary, not-for-profit, Article 28 acute care hospital located at 259 First Street, Mineola (Nassau County). NYU Langone Health System (the System) has a passive parent relationship with NYULH and an active parent relationship with NYU Winthrop. BFA Attachment C presents the organizational chart of the System pre-closing and post-closing.

On April 1, 2017, the System implemented the first phase of a two-phase affiliation whereby it became the active parent and co-operator of NYU Winthrop and its Article 36 certified home health agency (CHHA), NYU Winthrop CHHA (CON 162391). This is the second phase of the affiliation, whereby the Winthrop campus will be operated as a division of NYULH. Upon completion of phase two, NYU Winthrop will cease to exist as a separate entity and its assets and liabilities will merge into NYULH. However, NYU Winthrop's Board of Directors will remain intact to advise NYULH's Board of Trustees and senior management on local issues. The System will maintain its role as sole member and passive parent of NYULH, and New York University will remain as the sole corporate member and passive parent of the System.

Phase one of the affiliation was anticipated to generate substantial savings through efficiencies in information technology (IT), patient care management, and revenue cycle and supply

chain management. These integration activities have resulted in annualized savings of \$24.5 million, with the expectation that annualized savings will increase to \$50 million. The governing bodies of NYULH, NYU Winthrop and the System determined that a full asset merger of NYU Winthrop into NYULH would garner even greater savings and enhance patient care. The merger will provide NYU Winthrop with access to investment capital needed for improvements in clinical program expansion, increase operational efficiencies, and provide transformational investments in IT, real estate and common platforms.

Concurrently under review, NYULH is seeking approval to be established as the operator of NYU Winthrop CHHA (CON 182158).

OPCHSM Recommendation

Contingent Approval

Need Summary

There will not be any impact on need or utilization through the completion of this project. 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 associated with this application. The proposed budget is as follows:

	<u>Current Year*</u>	<u>Year One</u>
Revenues	\$5,130,404,684	\$6,151,479,279
Expenses	<u>4,869,768,967</u>	<u>5,788,306,728</u>
Net Income	\$260,635,717	\$363,172,551

**NYULH and NYU Winthrop combined*

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 Merger Agreement, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of an executed amendment to the Certificate of Incorporation of NYU Langone Hospitals (NYULH), acceptable to the Department. [CSL]
3. Submission of a photocopy of the amended bylaws of NYULH, acceptable to the Department. ([CSL]
4. Submission of a photocopy of an executed amendment to the Certificate of Incorporation of NYU Langone Health System (Health System), acceptable to the Department. [CSL]
5. Submission of a photocopy of the amended bylaws of Health System, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed Resolution of the Board of Trustees of NYULH, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed Merger Agreement of NYU Winthrop Hospital (NYU Winthrop) into NYULH, acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Certificate of Merger of NYU Winthrop into NYULH, 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

February 14, 2019

Need and Program Analysis

Background

NYU Langone Hospitals (NYULH) located at 550 First Ave, New York, NY 10016 seeks approval to acquire and certify NYU Winthrop Hospital (NYU Winthrop), located at 259 First Street Mineola, NY 11501, as a division.

Upon approval, NYU Winthrop will cease to exist as a separate entity, and its assets and liabilities will merge into NYU Langone Hospitals. An advisory board comprised of members of the current Winthrop Board of Directors will provide input on local issues directly to the NYULH Board of Trustees and senior management team. There will be no changes to beds or services as a direct result of this application

Compliance with Applicable Codes, Rules and Regulations

The 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

The priorities selected for action in NYU Winthrop Hospital's most recent community service plan are in alignment with the Community Health Improvement Plan developed by the Long Island Health Collaborative. The two priorities to be addressed are (1) Preventing Chronic Disease, focusing on Obesity and Preventive Care and Management, which includes strategies to reduce obesity; incorporation of the 5-2-1-0 program in Head Start; conducting cancer screening; offering a free, 6-week tobacco smoking cessation workshop for adults; and offering Tai Chi classes to prevent arthritis; and (2) Promoting Mental Health and Preventing Substance Abuse by focusing on conducting Mental Health First Aid classes and distributing wellness information. The Long Island Health Collaborative has a diverse group of organizational partners.

Winthrop's 2017 workplan update report indicated that recruitment and retention of participants into classes and integrating well-being are challenging. The applicant reported about \$1 million of Community Benefit spending on community health improvement.

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. There will be no impact on need or utilization through the completion of this transaction.

Financial Analysis

Merger Agreement

The applicant has submitted a draft Merger Agreement between NYULH and NYU Winthrop. The terms of the agreement are summarized below:

Merging Entities:	NYU Langone Hospitals and NYU Winthrop Hospital
Surviving Entity:	NYU Langone Hospitals
Asset Acquired:	All assets
Liabilities Acquired:	All liabilities
Purchase Price:	\$-0-

Operating Budget

The applicant has submitted their current year ending August 31, 2017, and their first-year operating results post-merger, in 2018 dollars, as shown below:

2017 – Current Year	NYU Langone	NYU Winthrop	Combined
Operating Revenue	\$4,129,615,684	\$1,000,789,000	\$5,130,404,684
Operating Expenses	<u>3,881,358,967</u>	<u>988,410,000</u>	<u>4,869,768,967</u>
Total Net Income/Loss	\$248,256,717	\$12,379,000	\$260,635,717

Total Discharges	68,637	24,546	93,183
Total Visits	1,752,123	462,146	2,214,269

Combined	Current Year	Year One
Operating Revenue	\$5,130,404,684	\$6,151,479,279
Operating Expenses	<u>4,869,768,967</u>	<u>5,788,306,728</u>
Total Net Income/Loss	\$260,635,717	\$363,172,551

Total Discharges	93,183	108,202
Total Visits	2,214,269	2,214,453

Combined (by Payor)	Current Year	Year One
<u>Revenues</u>	<u>Total</u>	<u>Total</u>
Commercial (FFS+MC)	\$3,016,761,642	\$3,528,647,034
Medicare (FFS+MC)	1,145,275,557	1,385,523,229
Medicaid (FFS+ MC)	597,204,177	676,065,392
Private Pay	33,342,567	40,999,416
Uninsured/Charity	2,719,000	3,496,462
All Other	<u>335,101,651</u>	<u>516,747,748</u>
Total Revenue	\$5,130,404,684	\$6,151,479,279

<u>Expenses</u>		
Operating	\$4,503,051,683	\$5,330,265,207
Capital	<u>366,717,284</u>	<u>458,041,521</u>
Total	\$4,869,768,967	\$5,788,306,728

Net Income (Loss)	<u>\$260,635,717</u>	<u>\$363,172,551</u>
-------------------	----------------------	----------------------

Total Discharges	93,183	108,202
Total Visits	2,214,269	2,214,453

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

<u>Inpatient Discharges</u>	<u>Current Year</u>	<u>Year One</u>
Commercial (FFS+MC)	38.10%	39.31%
Medicare (FFS+MC)	33.57%	34.16%
Medicaid (FFS+MC)	24.88%	23.78%
Private Pay	0.75%	0.25%
Uninsured/Charity	1.40%	1.23%
All Other	<u>1.30%</u>	<u>1.27%</u>
	100.00%	100.00%

<u>Outpatient Visits</u>	<u>Current Year</u>	<u>Year One</u>
Commercial (FFS+MC)	35.06%	41.46%
Medicare (FFS+MC)	26.37%	24.37%
Medicaid (FFS+MC)	30.75%	26.86%
Private Pay	1.68%	1.54%
Uninsured/Charity	4.51%	4.41%
All Other	1.63%	1.36%
	100.00%	100.00%

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

- Revenues, expenses, and utilization are based on historical experience. The increases are related to the full asset merger agreement and NYULH (surviving entity) acquiring NYU Winthrop. It is anticipated that the merger will produce benefits through clinical program expansion, operational efficiencies including revenue cycle improvements, transformational investments in IT and Real Estate and common platforms.
- Volume and Growth assumptions are based on the following:
 - Increased volume due to greater throughput resulting from initiatives such as Discharge Before Noon and Information Systems improvements to ease documentation;
 - Volume increases due to Family Group Practice (FGP) base of physicians on Long Island;
 - Continued growth in the Emergency Department (ED);
 - Clinical Documentation Improvement (CDI) program that is focused on improvements on quality measures and financial outcomes;
 - Opening of an endoscopy center in Riverhead in Year 3;
 - Length of Stay initiatives;
 - Expansion of Operating Room (OR) hours;
 - 23 hour extended stay coverage at an offsite Ambulatory Surgical Unit (ASU);
- Expense assumptions are based on the following:
 - Salary increases of 3% and 2.5% for Years 1 and 3, respectively;
 - Increase in Full-Time Employees (FTEs) with additional growth from programmatic changes;
 - Increases in employee benefits per year with additional increases for new FTEs;
 - Annual increases for Pharmaceutical and Medical/Surgical supplies;
 - Clinical product standardization; and
 - 3% annual increase for FGP subsidy.

Capability and Feasibility

There are no project costs associated with this application. The submitted budgets indicate a net income of \$363,172,551 during the first year after the merger.

BFA Attachment A is a financial summary of the 2016 – 2017 Certified Financial Statements and Internal Financial Statements as of August 31, 2018 for NYU Langone Hospitals. 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 B is a financial summary of the 2017 Certified Financial Statements and Internal Financial Statements as of August 31, 2018 for NYU Winthrop Hospital. As shown, the entity had an average positive working capital position, average positive net assets, and an average positive income for the periods shown.

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

Attachments

- BFA Attachment A Financial Summary – 2016 – 2017 Certified Financial Statements and Internal Financial Statements as of August 31, 2018 for NYU Langone Hospitals
- BFA Attachment B Financial Summary – 2017 Certified Financial Statements and Internal Financial Statements as of August 31, 2018 for NYU Winthrop Hospital



Project # 182216-C

St. Joseph's Hospital Health Center CHHA

Program: Certified Home Health Agency
Purpose: Construction

County: Onondaga
Acknowledged: November 6, 2018

Executive Summary

Description

St Joseph's Hospital Health Center CHHA (St Joseph's CHHA), a voluntary not-for-profit, Article 36 certified home health agency (CHHA) located at 7246 Janus Park Drive, Liverpool (Onondaga County), requests approval to expand their geographic service area to include Oswego, Cayuga, Madison, Oneida, and Lewis counties. The CHHA is a hospital-based agency operated by Joseph's Hospital Health Center (SJH, the Hospital), a 451-bed, voluntary not-for-profit, Article 28 hospital located at 301 Prospect Avenue in Syracuse. The CHHA is authorized to serve Onondaga and Cortland counties and is licensed to provide Home Health Aide, Medical Social Services, Medical Supplies/Equipment and Appliances, Nursing, Nutrition, Occupational Therapy, Physical Therapy, Respiratory Therapy and Speech Language Pathology Therapy services. Upon approval, there will be no change in services provided by the CHHA.

This application is submitted in response to a New York State Department of Health (NHSDOH) contingency on the September 7, 2018 approval of St. Joseph's CHHA's request for a regulatory waiver of 10 NYCRR Sections 762.2(a) and 762.2(c)(2), as authorized under the Hospital-Home Care-Physician Collaboration Program, Public Health Law (PHL) Section 2805-x. BFA Attachment B is the regulatory waiver from the NYS Department of Health.

St Joseph's CHHA is proposing to add the counties contiguous to its current service area to better manage SJH's attributed lives population in Value Based Payment (VBP) contracts, through the provision of in-home services through its CHHA department.

Since January 1, 2017, SJH has been participating in risk-based VBP contracts with:

- Medicare, under the Medicare Shared Savings Program, Medicare Bundled Payment for Care Improvement Program;
- Excellus Blue Cross, the major regional commercial payor, in their Accountable Cost and Quality Arrangement (ACQA) shared savings program; and
- Medicaid, contracting with Fidelis Care and Molina under the NYS VBP Pilot Program for a shared savings arrangement.

The total attributed lives for which SJH is responsible in the proposed new CHHA service area counties is approximately 27,000. Adding the counties proposed in this application to the CHHA operation will enable SJH to effectively manage the patient population and meet the target measures for cost and quality with payors.

OPCHSM Recommendation

Approval for five years from September 7, 2018, the date of the PHL 2805-x regulatory waiver approval.

Need Summary

The expansion will help improve patient care access and outcomes.

Program Summary

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance.

Financial Summary

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

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$16,499,993	\$17,919,300
Expenses	<u>24,943,560</u>	<u>26,439,605</u>
Net Income	\$(8,443,567)	\$(8,520,305)

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval for five years from September 7, 2018, 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

February 14, 2019

Need and Program Analysis

Program Description

St. Joseph's Hospital Health Center, a not-for-profit corporation, operates an Article 36 Certified Home Health Agency. This project requests approval to expand the service area of St. Joseph's Hospital Health Center CHHA to include Oswego, Cayuga, Madison, Oneida and Lewis counties, with no change to currently approved services.

At present, St. Joseph's Hospital Health Center CHHA services Onondaga and Cortland counties. The demographics of the target populations of Oswego, Cayuga, Madison, Oneida and Lewis are very similar to those populations already being served with regard to population size, age, and socio-economic status.

To best serve these additional counties, St. Joseph's Hospital Health Center CHHA has stated that they will continue to geographically align clinical staff based on their residency to the area in which they are assigned to cover. In 2018, the average travel distance for clinical staff between visits was 8.1 miles. The applicant intends to utilize support staff in Onondaga County who have close proximity to the expanded service area.

Complex Care Collaboration Model

Pursuant to 2805-x of the Public Health Law the Department may waive regulations under Title 10 of the New York Codes, Rules, and Regulations to support voluntary initiatives that support collaboration to improve patient care access and management, patient health outcomes, cost-effectiveness in the use of health care services and community population health. The Department approved a waiver of Sections 762.2(a) and 762.2(c)(2) of Title 10 of the New York Codes, Rules and Regulations for St. Joseph's Hospital Health Center to initiate a Complex Care Collaboration program in the counties listed above.

Upon approval of this project, the Complex Care Collaboration Model will be approved for a five-year period from the date of the waiver approval, September 7, 2018.

St. Joseph's Complex Care Collaboration Model (CCCM) proposal will support patients with complex care needs in all counties in which St. Joseph's has attributed patients under value-based payment/risk arrangements to reduce avoidable utilizations and improve health outcomes, thus the request for the additional counties.

According to St. Joseph's, the inability to currently fully integrate services due to the limitation on the geographic service area is resulting in a growing disparity in patient utilization rates. For those patients in areas the CHHA has approval to serve, they have seen a 45% reduction in monthly inpatient admissions, a 27% reduction in monthly ED visits, and a 70% reduction in CPEP utilization. Expanding the service area will allow St. Joseph's to implement their model for all their attributed patients.

Quality

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.

CHHA Quality of Patient Care Star Ratings as of December 14, 2018	
New York Average: 3 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
St. Joseph's Hospital Health Center CHHA	3 out of 5 stars

Conclusion

Expanding the service area will allow St. Joseph's to implement their model of complex care collaboration and reduce inpatient admissions, ED visits, and CPEP utilizations.

Financial Analysis

Operating Budget

The applicant has submitted the CHHA's current results for the year ending June 30, 2017, and the projected first and third year operating budgets, in 2019 dollars, as summarized below:

Revenues	Current Year		Year One		Year Three	
	Per Visit	Total	Per Visit	Total	Per Visit	Total
Commercial-FFS	\$152.91	\$1,402,943	\$151.48	\$1,473,913	\$149.35	\$1,598,005
Medicare-FFS	\$160.56	7,996,696	\$158.50	8,420,523	\$154.93	9,076,216
Medicare-MC	\$156.18	3,713,074	\$154.86	3,903,924	\$149.10	4,339,370
Medicaid-FFS	\$183.93	940,451	\$178.34	983,161	\$168.39	1,055,456
Medicaid-MC	\$178.63	1,540,842	\$175.61	1,609,652	\$170.55	1,737,257
Private Pay	\$139.76	40,529	\$135.74	46,829	\$136.38	49,097
Other (incl. Wk. Comp.)	\$154.48	<u>55,151</u>	\$145.18	<u>61,991</u>	\$144.57	<u>63,899</u>
Total Revenue		\$15,689,686		\$16,499,993		\$17,919,300
Expenses						
Operating	\$205.79	\$19,990,358	\$200.84	\$20,790,247	\$192.48	\$22,258,792
Capital	<u>\$42.72</u>	<u>4,149,813</u>	<u>\$40.12</u>	<u>4,153,313</u>	<u>\$36.16</u>	<u>4,180,813</u>
Total	\$248.51	\$24,140,171	\$240.96	\$24,943,560	\$228.64	\$26,439,605
Gain/Loss		(\$8,450,485)		(\$8,443,567)		(\$8,520,305)
Total Visits		97,141		103,516		115,641

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

	Current Year	Year One	Year Three
Commercial-FFS	9.4%	9.4%	9.3%
Medicare-FFS	51.3%	51.3%	50.7%
Medicare-MC	24.5%	24.4%	25.2%
Medicaid-FFS	5.3%	5.3%	5.4%
Medicaid-MC	8.9%	8.9%	8.8%
Private Pay	0.3%	0.3%	0.3%
Other (incl. Charity) *	<u>0.4%</u>	<u>0.4%</u>	<u>0.4%</u>
Total	100.0%	100.0%	100.0%

*The applicant's charity care policy is to assess the individual based on income to determine eligibility fee, reduced fees, and/or charity care. Their commitment includes providing uncompensated services to uninsured patients lacking the financial resources to pay.

The following is noted with respect to the submitted budget:

- Revenues, expenses, and utilization are based on historical experience. The increases are related to the expansion of their service area.
- The Medicare managed care episodic payment is estimated at \$2,659.86.
- As a hospital-based CHHA, the financials of the agency are included in the financial statements of St. Joseph's Health, Inc., which includes the Hospital. The Hospital funds losses experienced by individual programs via other programs and services that operate with positive margins.

Capability and Feasibility

There are no project costs associated with this application. The submitted budget indicates a net loss of \$8,443,567 during the first year after the expansion. Revenues, expenses, and utilization are based on historical experience. The projected increases in revenues, expenses and utilization are related to the expansion of their service area. The CFO of St Joseph's Hospital Health Center has submitted an affidavit indicating a financial commitment to continue the operations of the CHHA. The CHHA has historically been funded by the Hospital and is included as part of the financial statements of St. Joseph's Health, Inc. The hospital-based CHHA helps reduce avoidable inpatient admissions and preventable Emergency Department (ED) visits. SJH sees the leveraging of home care services as key to achieving targeted acute care length of stay (LOS) reductions and associated operating cost reduction opportunities. The increased utilization of home health services has resulted in reduced skilled nursing facility days and patient re-admissions, which supports their attainment of gain share distributions under the at-risk payment models for commercial, traditional Medicare and Medicaid Managed Care insurers.

BFA Attachment A is a financial summary of St Joseph's Health, Inc. and Subsidiaries (the Hospital) for June 30, 2017 and June 30, 2018 (certified), and their internal financials thru September 30, 2018. The hospital shows positive working capital and positive equity for all periods shown. The hospital indicates a net loss on the internal financial statements ending September 30, 2018, which is due to a one-time expense related to prior periods totaling approximately \$1.8 million. The hospital is working on initiatives related to LOS, care retention, access to care, and ED throughput to strengthen the overall financial performance of the organization.

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

Attachments

- BFA Attachment A June 30, 2017 & June 30, 2018 certified financial summary and internals as of September 30, 2018
- BFA Attachment B Regulatory waiver of 10 NYCRR Sections 762.2(a) and 762.2(c)(2)



**Project # 182158-E
NYU Langone Hospitals**

Program: Hospital
Purpose: Establishment

County: Nassau
Acknowledged: October 4, 2018

Executive Summary

Description

NYU Langone Hospitals (NYULH), an 844-bed, voluntary not-for-profit, Article 28 acute care hospital located at 550 First Avenue, New York (New York County), requests approval to transfer ownership of NYU Winthrop Hospital Certified Home Health Agency (Winthrop CHHA), an Article 36 CHHA located at 290 Old Country Road in Mineola (Nassau County), from NYU Winthrop Hospital (NYU Winthrop) to NYULH. On April 1, 2017, NYU Langone Health System (the System) implemented the first phase of a two-phase affiliation when it became the active parent and co-operator of NYU Winthrop and Winthrop CHHA (CON 162391). Upon approval of this application, NYULH will be established as the operator of Winthrop CHHA. There will be no change in services provided or counties served by the CHHA.

Concurrently under review, NYULH is seeking approval for the second phase where NYU Winthrop will become a division of NYULH (CON 182128). NYU Winthrop is a 591-bed, voluntary not-for-profit, Article 28 acute care hospital located at 259 First Street in Mineola (Nassau County). Upon completion of phase two, NYU Winthrop will cease to exist as a

separate entity and its assets and liabilities will merge into NYULH. The System will maintain its role as sole member and passive parent of NYULH and New York University will continue to be the sole corporate member and passive parent of the System.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no change to counties served or services provided 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

There are no project costs or budgets associated with this application.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of photocopy of a final, complete, executed and dated Merger Agreement between NYU Langone Hospitals and NYU Winthrop Hospital, acceptable to the Department. [CSL]
2. Submission of a photocopy of a final, executed and filed Certificate of Merger between NYU Langone Hospitals and NYU Winthrop Hospital, acceptable to the Department. [CSL]
3. Submission of a photocopy of applicant's final, executed and filed Certificate of Amendment of its Certificate of Incorporation, acceptable to the Department. [CSL]
4. Submission of a photocopy of the final executed and filed Certificate of Amendment of the Certificate of Incorporation of NYU Winthrop Hospital, acceptable to the Department. [CSL]
5. Submission of a photocopy of the final amended bylaws of each of (a) applicant, (b) NYU Winthrop Hospital and (c) NYU Langone Health System, acceptable to the Department. [CSL]
6. Submission of evidence, acceptable to the Department, of the authorization of the merger of NYU Winthrop Hospital with and into NYU Langone Hospitals by the boards of trustees of each of (a) NYU Langone Health System, (b) NYU Langone Hospitals, (c) NYU Winthrop Hospital, and (d) New York University. [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

February 14, 2019

Need and Program Analysis

Program Description

NYU Langone Hospitals, a not-for-profit corporation, requests approval to acquire and merge the assets of a Certified Home Health Agency (CHHA) currently operated by NYU Winthrop Hospital, under Article 36 of the Public Health Law.

Currently, NYU Langone Health System is the active parent of NYU Winthrop Hospital and the passive parent of NYU Langone Hospitals. The sole member of NYU Langone Health System is New York University. This structure was approved by the Public Health and Health Planning Council (PHHPC) in CON 162391, which was granted final approval on March 28, 2017. This project proposes for NYU Langone Hospitals to acquire and merge the assets of NYU Winthrop Hospital. At the close of this transaction, NYU Winthrop Hospital CHHA will be operated by NYU Langone Hospitals. NYU Langone Health System would be the sole parent of NYU Langone Hospitals, with New York University as the grandparent.

The corporate structure of NYU Langone Health System currently includes the following facilities, which were reviewed as part of this project:

- NYU Langone Hospitals (Hospital)
- NYU Langone Hospitals – Brooklyn (Hospital)
- NYU Orthopedic Hospital (Hospital)
- NYU Langone Health Cobble Hill (Free Standing Emergency Department)

This project will have no impact on the services provided or counties served by NYU Winthrop Hospital CHHA.

Character and Competence Review

The Board of Trustees of NYU Langone Hospital and NYU Langone Health System are identical. The following members of the board have been previously approved by the Public Health and Health Planning Council in Hospital CON 162391 and provided updated information for review:

William R. Berkley	Casey Box
Edgar Bronfman, Jr.	Susan Block Casdin
Kenneth I. Chenault	William J. Constantine
Jamie Dimon	Fiona B. Druckenmiller, Co-Chair
Laurence D. Fink, Co-Chair	Lori Fink
Luiz H. Fraga	Paolo Fresco
Trudy Elbaum Gottesman	Robert I. Grossman, MD
Andrew Hamilton, PhD	Mel Karmazin
Kenneth G. Langone, Chair	Sidney Lapidus
Thomas H. Lee	Laurence C. Leeds, Jr.
Martin Lipton, Esq.	Stephen F. Mack
Roberto A. Mignone	Edward J. Minskoff
Thomas K. Montag	Thomas S. Murphy
Thomas S. Murphy, Jr.	Frank T. Nickell
Debra Perelman	Ronald O. Perelman
Isaac Perlmutter	Laura Perlmutter
Douglas A. Phillips	Richard P. Richman
Linda Gosden Robinson	E. John Rosenwald, Jr.
Alan D. Schwartz	Barry F. Schwartz
Bernard L. Schwartz	Larry A. Silverstein
Carla Solomon, PhD	William C. Steere, Jr.
Daniel Sundheim	Chandrika Tandon
Allen R. Thorpe	Alice M. Tisch

Thomas J. Tisch	Jan T. Vilcek, MD, PhD
Bradley J. Wechsler	Anthony Welters, Esq.

The following members are new to the Board of Trustees of and were reviewed accordingly:

Robert M. Valletta Retired <u>Affiliations</u> NYU Langone Health System NYU Langone Hospital	Melanie J. Clark Not employed <u>Affiliations</u> NYU Langone Health System NYU Langone Hospital
Stephanie Pianka (ex officio) Senior VP, CFO, NYU <u>Affiliations</u> NYU Langone Health System NYU Langone Hospital	Charles M. Strain, Esq. Partner, Farrell Fritz, PC Walter W. Buckley Jr. Retired

Charles M. Strain disclosed that his employer, Farrell Fritz, PC is occasionally named as a defendant in civil actions.

Stephanie Pianka disclosed she was a defendant in civil litigation against a company by which she was previously employed. The company settled the case and the litigation was terminated. Ms. Pianka also disclosed that as the Chief Financial Officer of New York University she is sometimes engaged in legal actions arising out of the normal course of the University's operations. Additionally, Ms. Pianka disclosed she held equity interest in Avaya, Inc. which filed chapter 11 bankruptcy in January 2017.

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A search of the individual named above on the New York State Unified Court System revealed that the individual is currently registered and has no disciplinary actions taken against them.

Facility Compliance / Enforcement

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

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

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

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

CHHA Quality of Patient Care Star Ratings as of November 28, 2018	
New York Average: 3 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
NYU Winthrop Hospital	4 out of 5 stars

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a certified home health agency.

Conclusion

There will be no change to Counties Served and Services provided as a result of this application. 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 Analysis

Financial Analysis

There are no projected changes in the utilization, revenues or expenses of Winthrop CHHA as a direct result of this project.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 36 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility

Capability and Feasibility

There are no project costs or budgets associated with this application. BFA Attachment A is YULH's consolidated certified financial statements for the year ended August 31, 2017, and unaudited internal financials through August 31, 2018. NYULH maintained positive working capital, net asset position and net operating income of \$300,222,000 and \$136,002,000 in 2017 and as of August 31, 2018, respectively.

BFA Attachment B is NYU Winthrop's consolidated certified financial statements for the period ending August 31, 2017, and their unaudited internal financial statements through August 31, 2018. During the successor period of April 1, 2017 and August 31, 2017, Winthrop maintained positive working capital and net asset positions and reported an operating income of \$18,536,779. Winthrop maintained positive working capital, net assets and a net operating income of \$59,032,662 as of August 31, 2018.

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

Attachments

BFA Attachment A	NYULH August 31, 2017 certified financial statements, and internal financial statements through August 31, 2018
BFA Attachment B	Winthrop August 31, 2017 certified financial statements and internal financial statements through August 31, 2018
BFA Attachment C	NYULH's proposed pre- and post-closing corporate organizational chart

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 14th day of February, 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application for a change of ownership of the certified home health agency currently operated by NYU Winthrop Hospital, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

182158 E

NYU Langone Hospitals

APPROVAL CONTINGENT UPON:

1. Submission of photocopy of a final, complete, executed and dated Merger Agreement between NYU Langone Hospitals and NYU Winthrop Hospital, acceptable to the Department. [CSL]
2. Submission of a photocopy of a final, executed and filed Certificate of Merger between NYU Langone Hospitals and NYU Winthrop Hospital, acceptable to the Department. [CSL]
3. Submission of a photocopy of applicant's final, executed and filed Certificate of Amendment of its Certificate of Incorporation, acceptable to the Department. [CSL]
4. Submission of a photocopy of the final executed and filed Certificate of Amendment of the Certificate of Incorporation of NYU Winthrop Hospital, acceptable to the Department. [CSL]
5. Submission of a photocopy of the final amended bylaws of each of (a) applicant, (b) NYU Winthrop Hospital and (c) NYU Langone Health System, acceptable to the Department. [CSL]
6. Submission of evidence, acceptable to the Department, of the authorization of the merger of NYU Winthrop Hospital with and into NYU Langone Hospitals by the boards of trustees of each of (a) NYU Langone Health System, (b) NYU Langone Hospitals, (c) NYU Winthrop Hospital, and (d) New York University. [CSL]

APPROVAL CONDITIONED UPON:

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

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



Project # 181331-E
Elderwood Certified Home Health Agency, LLC

Program: Certified Home Health Agency
Purpose: Establishment

County: Erie
Acknowledged: May 10, 2018

Executive Summary

Description

Elderwood Certified Home Health Agency, LLC, a New York limited liability company, requests approval to be established as the new operator of Rosa Coplon Jewish Home and Infirmary Certified Home Health Agency, an Article 36 certified home health agency (CHHA) located at 2700 North Forest Road, Getzville (Erie County). The CHHA is currently owned and operated by Rosa Coplon Jewish Home and Infirmary, Inc., a not-for-profit corporation whose sole member is Menorah Campus, Inc., which also operates the 180-bed residential health care facility (RHCF) located on the same campus. There will be no change in service area or services as a result of the transition.

On November 22, 2017, Post Acute Partners Acquisition, LLC (PAP), a Delaware limited liability company licensed to do business in New York State (NYS), entered into an Asset Purchase Agreement (APA) with Menorah Campus, Inc. for the sale and acquisition of the CHHA's operating interests. The APA includes the sale of the following: Rosa Coplon Jewish Home and Infirmary (Rosa Coplon RHCF); Menorah Campus Adult Home, Inc. Licensed Home Care Services Agency; Dosberg Manor Adult Home; The Meadows, an enriched and independent living facility; Garden House, an assisted living residence; and senior living apartments known as Forest Creek Commons. Separate applications are being submitted for the sale of these entities, all of which are on the RHCF campus. The aggregate purchase price for the assets is \$46,750,000 of which \$750,000 is allocated to the sale of the CHHA.

The proposed ownership is as follows:

Table with 2 columns: Members and Percentage. Elderwood Certified Home Health Agency, LLC (100%), 2700 North Forest Road Operating Holdco, LLC (50%), Warren Cole (50%), Jeffery Rubin, D.D.S. (50%).

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no programmatic changes to the CHHA as a result of the change in ownership and all services will continue to be provided as approved for Erie County.

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

The purchase price of \$750,000 will be met via members' equity. The proposed budget is as follows:

Table with 2 columns: Category and Amount. Revenues \$1,462,238; Expenses \$1,138,025; Net Income \$324,213.

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 building license agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed Assignment of Rights, acceptable to the Department of Health. [BFA]

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

February 14, 2019

Need and Program Analysis

Program Description

Elderwood Certified Home Health Agency, LLC d/b/a Elderwood Certified Home Health Agency, a limited liability company, requests approval for a change in ownership of a Certified Home Health Agency (CHHA) under Article 36 of the Public Health Law.

The single member of Elderwood Certified Home Health Agency, LLC is 2700 North Forest Road Operating Holdco, LLC. The members of 2700 North Forest Road Operating Holdco, LLC are:

Warren Cole, Treasurer – 50%
Partner, Post Acute Partners, LLC

Dr. Jeffrey Rubin, President – 50%
Partner, Post Acute Partners, LLC

A search of the individuals and entity named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to continue to serve the residents of Erie County from an office located at 2700 North Forest Road, Getzville, New York 14068.

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

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Housekeeper
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Medical Equipment & Supplies	Respiratory Therapy
Homemaker		

Character and Competence

Experience

The ownership interests of Warren Cole and Dr. Jeffrey Rubin are identical. A seven-year review of the operations of the following affiliations was performed as part of this review (unless otherwise noted):

<u>NYS Nursing Homes</u>	
Elderwood at Hamburg	07/2013 to present
Elderwood at Liverpool	07/2013 to present
Elderwood at Amherst	07/2013 to present
Elderwood at Grand Island	07/2013 to present
Elderwood at Wheatfield	07/2013 to present
Elderwood at Lancaster	07/2013 to present
Elderwood at Cheektowaga	07/2013 to present
Elderwood at Williamsville	07/2013 to present
Elderwood of Uihlein at Lake Placid	10/2016 to present
Elderwood at Waverly	07/2013 to present
Elderwood at Hornell	04/2016 to present
Elderwood of Lakeside at Brockport	01/2018 to present
Elderwood at Ticonderoga	04/2018 to present
Elderwood at Lockport	01/2018 to present
Elderwood at North Creek	01/2018 to present

NYS Adult Home/Enriched Housing Program

Elderwood Village at Ticonderoga		04/2018 to present
Elderwood Village at Williamsville		07/2013 to present
Elderwood Assisted Living at Wheatfield		07/2013 to present
Elderwood Assisted Living at West Seneca		07/2013 to present
Elderwood Assisted Living at Cheektowaga		07/2013 to present
Elderwood Assisted Living at Hamburg		07/2013 to present
Elderwood Assisted Living at Waverly		07/2013 to present
Elderwood Assisted Living at Tonawanda		04/2016 to present

NYS Licensed Home Care Agency

Elderwood Assisted Living at West Seneca		07/2013 to present
Elderwood Assisted Living at Cheektowaga		07/2013 to present
Elderwood Assisted Living at Hamburg		07/2013 to present
Elderwood Assisted Living at Waverly		07/2013 to present

NYS Pharmacy

Woodmark Pharmacy of New York, LLC		07/2013 to present
------------------------------------	--	--------------------

Massachusetts

Woodmark Pharmacy of Massachusetts	RX	06/2014- present
------------------------------------	----	------------------

Pennsylvania

Pediatric Specialty Care at Point Pleasant	ICF	02/2011-present
Pediatric Specialty Care at Doyleston	ICF	02/2011-present
Pediatric Specialty Care at Quakertown	ICF	02/2011-present
Pediatric Specialty Care at Lancaster	ICF	02/2011-present
Pediatric Specialty Care at Hopewell	ICF	02/2011-present
Pediatric Specialty Care at Philadelphia	ICF	02/2011-present
Elderwood Senior Living at Lancaster	HOM	02/2011-present

Rhode Island

Elderwood at Riverside	SNF	02/2014-present
Elderwood at Scallop Shell at Wakefield	SNF	12/2010-present

Vermont

Elderwood at Burlington	SNF	12/2018-present
-------------------------	-----	-----------------

KEY

ACU acute care/hospital	ICF intermediate care facility/group home
ALF assisted living facility	IRF intermediate rehab facility
HHA home health agency	LTA long term acute care hospital
HOM homecare	RX pharmacy
HOS hospice	SNF skilled nursing facility/nursing home

Healthcare Consulting Companies

Elderwood Administrative Services, LLC
Post-Acute Partners Management, LLC

Mr. Warren Cole and Dr. Jeffrey Rubin have submitted signed affidavits indicating that they each hold 50% ownership interest in the out-of-state healthcare facilities located in Massachusetts, Pennsylvania and Rhode Island. The affidavits state that all noted deficiencies had been corrected to the satisfaction of the agency in question within the prescribed time frames. The affidavits further confirm that none of these health care entities have received any material fines or civil monetary penalties during the past ten years or the time of ownership interest.

Enforcement History

Elderwood at Ticonderoga:

- A federal CMP of \$6,633 was assessed for July 24, 2017 survey findings.
- A federal CMP of \$15,625 was assessed for July 24, 2017 survey findings.

Elderwood at Amherst:

- The facility was fined \$4,840 pursuant to Tag 686-G- Treatment/Services to prevent/Heal Pressure Ulcers. The facility had a Federal Comparative Survey on 05/11/18 with G level (Harm) deficiency plus D, E, and F level deficiencies. The CMP was for the Federal Comparative Survey only.

Elderwood at Grand Island:

- The facility was fined \$ 2,000 pursuant to a Stipulation and Order for survey ending November 2, 2018. A deficiency was found under NYCRR 483.12(b)(1) prohibit and prevent abuse, neglect and exploitation of residents and misappropriation of resident property. 483.12(b)(2) establish policies and procedures to investigate any such allegations.

Elderwood at Waverly:

- The facility was fined \$10,000 pursuant to a Stipulation and Order for survey ending November 19, 2018 for an Immediate Jeopardy (IJ) - F-678-Cardio-Pulmonary Resuscitation.

Elderwood at Williamsville:

- The Facility incurred a Civil Monetary Penalty of \$3,250 on 09/19/2017.

Elderwood Assisted Living at Waverly:

- The facility was fined \$2,800 pursuant to a Stipulation and Order. A deficiency was found under 18 NYCRR 487.7(f)(5), Resident Services, identified in two inspection reports dated 7/27/2016 and 11/21/2016.

Elderwood Assisted Living at Wheatfield:

- The facility was fined \$2,800 pursuant to Stipulation and Order ACF-17-029 issued July 5, 2017 for inspections dated 7/27/2016 and 11/11/2016. A deficiency was found under 18 NYCRR 487.7(f)(5), Resident Services.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated the remaining facilities have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The Information provided by the Bureau of Quality and Surveillance has indicated that the remaining residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

CHHA Quality of Patient Care Star Ratings as of January 14, 2019	
New York Average: 3 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
Rosa Coplon Jewish Home and Infirmary Certified Home Health Agency	2.5 out of 5 stars

Conclusion

There will be no change to services provided or the service area as a result of this application. The review of the Personal Qualifying Information indicates the applicant has the required character and competence to operate the CHHA.

Financial Analysis

Purchase and Sale Agreement

The applicant submitted an executed agreement for the purchase of the CHHA, to be effectuated upon Public Health and Health Planning Council approval of this application.

Date:	November 22, 2017
Purpose:	Buyer desires to purchase all rights of the Seller to own and operate the CHHA, and all CHHA's assets.
Seller:	Menorah Campus, Inc.
Buyer:	Post Acute Partners Acquisition, LLC
Assets Acquired:	Inventory; right, title/interest of the Seller to all furniture, furnishings, equipment, computers, machinery, mechanical and security systems, vehicles, office equipment; real property records; assumed contracts and all assumed admission agreements; licenses in connection with the facility; trademarks, trade names, service marks, trade dress used in connection with operation of the facility; patient records, books and records; DOH settlement payments; all tangible and intangible personal property used in connection with operation/maintenance of the facility.
Excluded Assets:	Sellers bank accounts, cash, cash equivalents, securities, HUD replacement reserves, mortgage sinking fund, replacement/tax escrow reserves, accounts receivable, refunds/reimbursements; prepaid expenses, deposits; claims, disputes, litigation, insurance proceeds; employee benefit plans; non-transferrable or non-assignable permits/licenses; and seller's financial books/records.
Assumed Liabilities:	Accrued paid time off for employees who are transitioned to the new operator.
Purchase Price:	\$750,000
Payment of the Purchase Price:	\$1,500,000 deposit held in escrow (applicable to the APA in total, including acquisitions other than the CHHA) to be applied to the overall purchase price at closing. Balance due at closing.

The aggregate purchase price for the assets is \$46,750,000 of which \$750,000 is allocated to the sale of the CHHA operations. The purchase price for the CHHA will be met entirely with members' equity.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 36 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of November 28, 2018, the facility has no outstanding Medicaid liabilities.

Assignment of Rights

The applicant submitted a proposed Assignment of Rights for the assignment of the assets associated with the APA, as shown below:

Assignor:	Post Acute Partners Acquisition, LLC
Assignee/Operator:	Elderwood Certified Home Health Agency, LLC
Skilled Nursing Operating Assets Transferred:	Assets associated with the operation of the CHHA of Rosa Coplon Jewish Home and Infirmary CHHA
Assignment Fee:	\$10

License Agreement

Premises:	1,200sq. ft. located at 2700 North Forest Road, Getzville, New York
Licensor:	2700 North Forest Road Operating Company, LLC
Licensee:	Elderwood Certified Home Health Agency, LLC
Term:	Indefinite
Rent:	\$9,163.83 per month, including utilities, taxes and maintenance.

The lease arrangement is a non-arm's length agreement. The applicant submitted an original affidavit attesting to the relationship between the landlord and the operating entity.

Administrative Services Agreement

Provider:	Elderwood Administrative Services, LLC
Company:	Elderwood Certified Home Health Agency, LLC dba Elderwood Certified Home Health Agency
Services Provided:	Assistance including: accounts receivable; billing; accounts payable; payroll; budgets; financial reporting; regulatory reports; bookkeeping; human resources; information technology; marketing and business development; reimbursement; ancillary and other services; insurance and risk management; and corporate compliance.
Term:	From Effective Date until December 31, with automatic 1-year renewals for the period January 1-December 31.
Fee:	\$5,352 per month with periodic adjustments based on a consideration of the fees, scope of operations, changes in purchasing power, services being performed, size of non-professional workforce and the expenses of the provider, reflecting the fair market value.

Elderwood Administrative Services, LLC is owned by Warren Cole and Jeffrey Rubin, each at 50%. The administrative services provider submitted an attestation acknowledging that there are statutory and regulatory requirements that cannot be delegated and that Elderwood Certified Home Health Agency, LLC dba Elderwood Certified Home Health Agency will maintain responsibility and authority over the daily management and operations of the facility.

Operating Budget

The applicant has submitted the CHHA's current results for 2017, and the projected first and third year operating budgets, in 2018/19 dollars, as summarized below:

	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>			
Medicare FFS	\$528,630	\$599,505	\$692,421
Medicare MC	\$359,343	\$536,777	\$619,994
Medicaid MC	\$77,554	\$102,482	\$118,353
Commercial MC	\$7,945	\$6,492	\$7,494
Private/Other	\$24,904	\$23,451	\$27,097
Bad Debt	\$0	(\$3,060)	(\$3,121)
Total Revenues	\$998,376	\$1,265,647	\$1,462,238
<u>Expenses</u>			
Operating	\$1,156,223	\$924,340	\$998,812
Capital	\$35,759	\$138,640	\$139,213
Total Expenses	\$1,191,982	\$1,062,980	\$1,138,025
Net Income (Loss)	<u>(\$193,606)</u>	<u>\$202,667</u>	<u>\$324,213</u>
Utilization: (Visits)*	8,054	5,874	6,462
Utilization: (Hours)**	5,232	10,257	11,283
	<i>* Nursing, PT, OT, SP, and Medical Social Service visits</i>		
	<i>**Home Health Aid hours</i>		

The significant change between visits and hours from Current Year and Years One and Three is due to the applicant's plan to provide more lower acuity services in the community. This new approach requires more Home Health Aid hours and fewer visits. This Home Care services plan is consistent with services provided by home care agencies affiliated with the applicant's members.

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

<u>Visits</u>	<u>Year One</u>	<u>Year Three</u>	<u>Hours</u>	<u>Year One</u>	<u>Year Three</u>
Medicare FFS	30.65%	30.66%	Medicare FFS	30.65%	30.65%
Medicare MC	54.80%	54.80%	Medicare MC	54.79%	54.80%
Medicaid MC	10.22%	10.21%	Medicaid MC	10.22%	10.21%
Commercial MC	.61%	.60%	Commercial MC	.60%	.60%
Private/Other	1.72%	1.72%	Private/Other	1.74%	1.73%
Charity Care	2.00%	2.01%	Charity Care	2.00%	2.01%

Charity care is expected to be 2%. The applicant states their policy is to assess individual based on income to determine eligibility fee reduced fees and/or charity care. Their commitment includes providing uncompensated services to uninsured patients lacking the financial resources to pay.

Capability and Feasibility

PAP will acquire the CHHA's operations for \$750,000. The purchase price will be met with members' equity. PAP will assign its rights and title to the CHHA operations to Elderwood Certified Home Health Agency, LLC for \$10. There are no project costs associated with this proposal.

The working capital requirement is estimated at \$189,671 based on two months of third year expenses. The full amount will be funded from the members' equity. BFA Attachment A is the net worth statements for the proposed members of Elderwood Certified Home Health Agency, LLC, which reveals sufficient resources to meet both the purchase price and the working capital equity requirements. BFA Attachment D is the pro forma balance sheet, which shows the entity will start with \$939,665 in equity.

The submitted budget projects gain of \$202,667 and \$324,213 in the first and third year, respectively. The submitted budget is reasonable.

BFA Attachment C is the 2017 and the internal 1/1/2018-9/30/2018 financial statements of Rosa Coplon Jewish Home and Infirmary Certified Home Health Agency. The facility achieved a positive net asset and working capital position for 2017 and for the period 1/1/2018-9/30/2018. The entity achieved a net loss from operations of \$128,316 in 2017 and a net loss from operations of \$256,152 for the period 1/1/2018-9/30/2018. The net loss shown is due to higher staffing attributed to campus shared services and nursing agency staffing. The applicant plans to bring staffing in-house consistent with its clinical staffing model, which will reduce current staffing expenses attributable to a contract staffing model.

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

Attachments

BFA Attachment A	Personal Net Worth Statement- Proposed Members of Elderwood CHHA
BFA Attachment B	Organizational Chart
BFA Attachment C	2017 certified and the 1/1/2018-9/30/2018 Internal financial statements for Rosa Coplon Jewish Home and Infirmary Certified Home Health Agency
BFA Attachment D	Pro Forma Balance Sheet of Elderwood CHHA

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 14th day of February, 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to establish Elderwood Certified Home Health Agency, LLC as the new operator of Rosa Coplon Jewish Home and Infirmary Certified Home Health Agency, a certified home health agency located at 2700 North Forest Road, Getzville, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

181331 E

Elderwood Certified Home Health Agency, LLC

APPROVAL CONTINGENT UPON:

1. Submission of an executed building license agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed Assignment of Rights, acceptable to the Department of Health. [BFA]

APPROVAL CONDITIONED UPON:

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

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



Project # 182125-B
Everett Road Surgery Center

Program: Diagnostic and Treatment Center
Purpose: Establishment and Construction
County: Albany
Acknowledged: September 21, 2018

Executive Summary

Description

Everett Road ASC, LLC d/b/a Everett Road Surgery Center, an existing New York limited liability company, requests approval to establish and construct a multi-specialty, Article 28 freestanding ambulatory surgery center (FASC) to be located in leased space at 123 Everett Road, Albany (Albany County). The proposed FASC will occupy approximately 22,200 square feet of space on the second floor of a 54,000-square foot, two-story medical office building that is currently under construction with an estimated completion date of June 2019. The building's first floor will house the private medical practice of Albany ENT & Allergy Services, P.C., which is relocating from its current location upon completion of construction. The proposed Center will consist of four operating rooms (ORs) at the onset, with space available to accommodate two additional ORs for future expansion.

Ownership of the operations will be as follows:

Table with 2 columns: Proposed Operator, Members. Rows include Ortho NY ASC Holdings, LLC (52%), AENT ASC Holdings, LLC (28%), and St. Peter's Hospital of the City of Albany (20%).

The members of Ortho NY ASC Holdings, LLC are orthopedic surgeons affiliated with Orthopedics NY, LLP (OrthoNY) and the members of AENT ASC Holdings, LLC are surgeons affiliated with Albany ENT & Allergy Services, P.C. All member surgeons are on the medical staff of St. Peter's Hospital of the City of Albany. Frank Conquista, M.D., who is Board-Certified in orthopedic surgery and a partner at

OrthoNY, will be the Medical Director of the Center. The applicant submitted an executed Transfer Agreement with St. Peters Hospital for back-up and emergency support services to be effectuated upon operating certification of the FASC.

OPCHSM Recommendation

Contingent Approval

Need Summary

The number of projected procedures is 4,415 in Year One and 4,648 in Year Three, with Medicaid at approximately 10% and Charity Care at approximately 2% each year.

Program Summary

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

Financial Summary

Total Project Cost for the center is \$11,523,767. Total reimbursable cost (total project cost less shell space) is \$8,551,067, to be funded via \$1,000,423 equity from the members of Everett Road Ambulatory Surgery Center, LLC, a \$4,050,000 construction loan at 5.45% interest for a ten-year term (self-amortizing), and a \$3,500,644 equipment loan at 5.45% interest for a seven-year term (self-amortizing). Berkshire Bank provided a letter of interest for the construction and equipment loans. The landlord is providing \$2,972,700 for construction of the second-floor shell space funded via \$2,167,173 equity, with the balance funded from the

proceeds of the \$8,200,000 building construction loan previously secured from Liberty Bank. The building's construction is underway with an estimated completion date of June 2019, at which time, with appropriate approvals, the build-out of the second-floor ASC can commence. The proposed budget is as follows:

Revenues	\$9,375,430	\$9,950,333
Expenses	<u>\$7,239,978</u>	<u>\$7,466,458</u>
Gain/(Loss)	\$2,135,452	\$2,483,875

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed equipment loan commitment (ASC), acceptable to the Department of Health. [BFA]
4. Submission of an executed construction loan commitment (ASC), acceptable to the Department of Health. [BFA]
5. Submission of an executed building lease agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of final, complete, executed and filed articles of organization of applicant, acceptable to the Department. [CSL]
8. Submission of a photocopy of final, complete, executed and filed articles of organization of each of (a) OrthoNY ASC Holdings, LLC and (b) AENT ASC Holdings, LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of final, executed operating agreements of each of (a) OrthoNY ASC Holdings, LLC and (b) AENT ASC Holdings, LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of a complete, final, dated and executed Lease Agreement between 123 Everett Road Real Estate Group LLC and applicant, acceptable to the Department. [CSL]
11. Submission of a photocopy of a complete, final, dated and executed Administrative Services and Billing Agreement between the applicant and OrthopedicsNY, LLC, acceptable to the Department. [CSL]
12. Submission of evidence, acceptable to the Department, of the consent of all Members of the applicant authorizing the establishment, leasing and administrative services actions provided for under this application. [CSL]
13. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
14. 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 two years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
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]
3. Construction must start on or before July 1, 2019 and construction must be completed by March 1, 2020, 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]
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

February 14, 2019

Need Analysis

Analysis

The applicant states the expected service area is Albany and Rensselaer Counties. However, given the location, the Department considered at Albany, Rensselaer, and Schenectady Counties. The table below shows the number of patient visits at ambulatory surgery centers in Albany County for 2016 and 2017. There are no ASCs operating in Rensselaer or Schenectady Counties.

Facility Name	Type	Patient Visits	
		2016	2017*
Albany Regional Eye Surgery Center	Single	11,663	13,128
OrthoNY Ambulatory Surgery Center - Albany	Single	4,732	4,760
New England Laser & Cosmetic Surgery Center	Multi	766	759
Capital Region Ambulatory Surgery Center	Single	8,884	8,944
St. Peter's Surgery and Endoscopy Center	Multi	18,477	18,061
Totals		44,522	45,652

(Source: SPARCS 2017 data is annualized based upon 9 months of information)

From 2016 to 2017, Albany County is estimated to have a 2.5% increase in ambulatory surgery center visits. The number of projected procedures is 4,415 in Year One and 4,648 in Year Three. The applicant estimates that over 70% of the projected cases will migrate from St. Peter's Hospital or its affiliated facilities. The table below shows the projected payor source utilization for Years One and Three.

Projections	Year One		Year Three	
	Volume	%	Volume	%
Medicaid MC	457	10.35%	480	10.33%
Medicare FFS	980	22.20%	1,025	22.05%
Comm Ins- FFS	2,731	61.86%	2,887	62.11%
Private Pay	36	0.82%	38	0.82%
Charity Care	87	1.97%	90	1.94%
Other	124	2.80%	128	2.75%
Total	4,415	100%	4,648	100%

To serve the underinsured population, the Center intends to obtain contracts with the following Medicaid Managed Care plans: CDPHP, Fidelis, MVP, WellCare, UHC, UHS Community Care and BSNENY. The Center will contact the Whitney M. Young Health Center and Hudson Headwaters Health Network, both FQHC's, to provide service to the under-insured. The Center will adopt a financial assistance policy with a sliding fee scale. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

Conclusion

Approval of this project will allow for additional access to multi-specialty ambulatory surgery services for the communities of Albany, Rensselaer, and Schenectady Counties.

Program Analysis

Program Description

Proposed Operator	Everett Road ASC, LLC
Doing Business As	Everett Road Surgery Center
Site Address	123 Everett Road Albany, NY 12205
Surgical Specialties	Multi-Specialty, to include: Orthopedic Surgery and Otolaryngologic Surgery
Operating Rooms	4
Procedure Rooms	0
Hours of Operation	Monday through Friday from 7:00 am - 3:00 pm
Staffing (1st / 3rd Year)	29.0 FTEs / 29.0 FTEs
Medical Director	Frank Congiusta, M.D.
Emergency, In-Patient & Back-up Support Services Agreement and Distance	St. Peter's Hospital 4 miles / 14 minutes
After-hours access	Patient may call his or her surgeon's service and will be directed to the surgeon or to another surgeon of the same specialty on call.

Character and Competence

Everett Road ASC is a physician-hospital joint venture whose members are OrthoNY ASC Holdings, LLC; AENT ASC Holdings, LLC; and St. Peter's Hospital of the City of Albany. The members of OrthoNY ASC Holdings, LLC are orthopedic surgeons who are members of the medical staff at St Peter's Hospital. The members of AENT ASC Holdings, LLC are surgeons who are members of St. Peter's Hospital staff.

Member Name	Interest
OrthoNY ASC Holdings, LLC <i>Members each hold a 5.8823% membership interest--</i> J. David Abraham, MD; James Alfandre, MD; Charles Buttaci, DO; Frank Congiusta, MD; Samuel Dellenbach, MD; David Dixon, MD; Fred Fletcher, MD; Kyle Flik, MD; Leonard Goldstock, MD; Lee Kaback, MD; Richard Katz, MD; William Montgomery, MD; Amar Parikh, MD; Luke Rigolosi, MD; W. James Smith, MD; Adam Suslak, MD; and John Whalen, MD	52%
AENT ASC Holdings, LLC <i>Members each hold a 12.5% membership interest--</i> Robert Adelson, MD; Robert Engle, MD; John Gavin, MD; Lawrence Kaufman, MD; Siobhan Kuhar, MD; Nora Perkins, MD; Jessica Riccio, MD; and Gavin Setzen, MD	28%
St. Peter's Hospital of the City of Albany <i>Officers and Directors--</i> Gary Dake, Chair; Beverly Karpiak, Vice-Chair; James K. Reed, MD, President; Ronald Guzior, Treasurer; Harold Gordon, Esq., Immediate Past Chair; Robert Swidler, Board Secretary; Robert Bylancik; Barbara Cottrell; AnnDiSarro; John Filippone, MD; George Hearst III; Sr. Phyllis Herbert; Robert Johnson, III, Esq.; Michael Keegan; Sr. Mary Ann LoGiudice; Norman Massry; Robert McCormick; Sr. Kathleen Natwin; Curtis Powell; Dan Roth, MD; James Slavin, MD; and Lisa Thorn, MD	20%
Total	100%

Everett Road ASC, LLC will be managed by a Board of Manager consisting of five managers, two managers each from OrthoNY ASC Holdings, LLC and AENT ASC Holdings, LLC, and one manager from St. Peter's Hospital. The proposed managers are: Frank Congiusta, MD; Samuel Dellenbaugh, MD; Gavin Setzen, MD; Lawrence Kaufman, MD; and Michael Finegan.

A Character and Competence Review was conducted on the sole representative of the St. Peter's Hospital Board of Managers, each of the 22 Officers and Directors of St. Peter's Hospital, and each of the 17 physician members of OrthoNY ASC Holdings, LLC and eight physician members of AENT ASC Holdings, 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.

Dr. Abraham disclosed one settled malpractice case. The patient alleged an improperly fitting prosthesis during total hip replacement surgery which resulted in a significant limb length discrepancy, difficulty ambulating and loss of enjoyment of life. The case was settled for \$50,000 in November 2017.

Dr. Buttaci disclosed one pending malpractice case that is currently in litigation and relates to an injection that was given in September 2014 at OrthoNY.

Dr. Congiusta disclosed one pending malpractice claim. The claim alleges negligent surgery for a patient who underwent an open reductions/internal fixation for a fracture. A fracture occurred during surgery that necessitated additional surgery.

Dr. Fletcher disclosed two pending malpractice cases. One case (2013) involves a post-operative hematoma. The other case (2014) alleges nerve injury (foot drop) following a total knee replacement.

Dr. Katz disclosed one pending malpractice case alleging delay in diagnosis of a knee infection in 2017.

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.

St. Peter's Board of Directors disclosed the following civil and administrative actions:

Catholic Health East (CHE) and 13 of its affiliated hospitals, including St. Peter's Hospital, were among many hospitals investigated in a nationwide U.S. Department of Justice (DOJ) investigation which grew out of a qui tam action commenced in the United States District Court for the Southern District of Florida in January 2008. The investigation related to the procedures being followed by hundreds of hospitals and hospital systems regarding their compliance with the requirements of the Medicare National Coverage Determination applicable to implantable cardioverter defibrillators (ICDs). Ultimately, in March 2015, CHE settled the action on behalf of itself and its affiliates for \$11,025,000.00. The settlement included no admission of wrongdoing, and St. Peter's hospital was not required to enter into a corporate integrity agreement.

Regarding St. Peter's-affiliated facilities:

- On August 16, 2010, the Department issued a Stipulation and Order (S&O) and a \$2,000 fine to **Our Lady of Mercy Life Center** for a deficient practice related to Quality of Care identified on a survey concluded on June 1, 2009. Specifically, the facility did not ensure that a resident with an open fracture of two bones in the lower leg was sent to the hospital for evaluation in a timely manner or received adequate assessment of pain or pain management. In addition, the facility did not provide prescribed medications on admission.
- On August 17, 2010, the Department issued a S&O and \$3,500 fine to **Eddy Visiting Nurse and Rehab Association** for deficient practices identified (on multiple dates) related to the following State Regulation deficiency categories:

- *764.4(h) Policies and procedures of service delivery* – Failure to provide care in accordance with the plan of care; and Failure to ensure assessments reflect current condition and that physician is consulted when changes in plan of care are needed.
- *763.6(a) Patient assessment and plan of care* - Failure to ensure initial assessment is complete and addresses all patient needs; and Failure to ensure plan of care is sufficient in scope to meet those needs.
- *763.6 (b) Patient assessment and plan of care* - Failure to ensure effective communication among clinical supervisors and skilled nurses and among all personnel and/or disciplines involved in the patient’s care; Failure to ensure case management/coordination of care; Failure to follow agency’s policy and procedure for making appropriate referrals to other disciplines/ community services
- *763.11(b) Failure of governing body to assume responsibility for the overall management of the agency* (as it relates to the aforementioned findings).
- On August 18, 2016, the Department issued a S&O and \$2,000 fine against **St. Peter’s Hospital** for deficient practices noted on a validation survey concluded on January 7, 2016 which related to their food service/kitchen. Specifically, an Immediate Jeopardy situation was identified when three out of four solutions used to clean food preparation surfaces were below required concentrations to assure proper sanitization. Additionally, testing strips used to measure the effectiveness of the sanitizing solution were not readily available for staff use and food preparation staff lacked knowledge of the testing required.
- On March 27, 2017, the Department issued a S&O and a \$2,000 against the **Eddy Village Green** for deficient practices noted on a survey concluded on August 17, 2016 related to Quality of Care. Specifically, the facility was cited for failure to provide care and services for highest practicable potential when it was discovered that a resident had a fall which resulted in a hip fracture and review of house cameras and interviews revealed that the resident’s chair alarm had not been placed according to the plan of care and the facility’s fall investigation did not identify the care planned intervention to prevent injury had not been followed. Additionally, a Civil Money Penalty (CMP) was imposed in the amount of \$3,963.
- In August 2018, the Department issued a S&O and \$2,000 fine against **Eddy Village Green at Beverwyck** for deficient practice noted. Specifically, the facility did not ensure interventions were implemented to protect a resident from the effects of high outdoor temperatures on July 15, 2018, resulting in a transfer to the hospital and treatment for heat exhaustion. In addition, a Civil Money Penalty (CMP) was assessed in the amount of \$6,893.

Integration with Community Resources

The Applicant has indicated that outreach to serve the underinsured population will include negotiation of contracts with several Medicaid Managed Care plans and development of referral arrangements with area federally qualified health centers (FQHCs). The Applicant will adopt a sliding fee schedule and is committed to treating all patients on the basis of need without discrimination due to any personal characteristics or ability to pay.

The Applicant plans on using an electronic medical record system and will consider participating in one or more Accountable Care Organizations (subject to its eligibility to do so) and may also consider participating in a regional health information organization and/or Health Information Exchange.

Conclusion

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

Financial Analysis

Lease Building Agreement

The applicant has submitted a draft Lease Rental Agreement for the site, the terms of which are summarized below:

Premises:	22,020 sq. ft. of space on the second floor of a two-story medical building containing 53,897 rentable sq. ft. located at 123 Everett Road, Albany, New York, 12205
Landlord:	123 Everett Road Real Estate Group, LLC
Lessee:	Everett Road ASC, LLC d/b/a Everett Road Surgery Center
Term:	Initial term of 15 years and the right to two five-year extensions
Rental:	\$462,420.00 (\$21.00 per sq. ft.) per year
Provisions:	Tenant pays a pro rata share of real estate taxes and operating expenses based on rentable square footage, with operating expenses fixed at 40.9% and pro rata operational increases over the base year unless the tenant is solely responsible then tenant responsible for 100% of increase.

The applicant provided letters from two New York State licensed realtors attesting to the reasonableness of the per square foot rental amount. The lease agreement is non-arm's length. The applicant provided an affidavit stating that the landlord and tenant are affiliated entities by common membership.

The members of 123 Everett Road Real Estate Group, LLC are as follows:

- Albany ENT Real Estate Group, LLC – 58% (membership includes five of the eight members of AENT ASC Holdings, LLC, a 28% member of Everett Road ASC, LLC);
- 123 Real Estate Holdings, LLC – 22% (owned by 16 of the 17 members of Ortho NY ASC Holdings, LLC, a 52% member of Everett Road ASC, LLC); and
- Schuyler Hills Realty II, LLC – 20%.

BFA Attachment E shows the realty entity members and ownership percentages.

Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, summarized below:

Service Provider:	Orthopedics NY, LLP ("OrthoNY")
Facility Operator:	Everett Road ASC, LLC ("Operator")
Services Provided:	Finance and Accounting; Billing and Collection; Administrative Services, and Human Resources support services
Exclusions:	OrthoNY shall not provide clinical services under this Agreement.
Term:	Three years with automatically renewals for additional one-year terms unless either party delivers written notice of termination not less than 90 days prior to expiration of the then-current term, or terminated at any time upon mutual written agreement of Operator and OrthoNY, or termination by either party upon 90 days written notice in the event of material breach, provided that the party alleged to be in breach has been given not less than 30 days written notice and opportunity to cure. This Agreement terminates automatically and without notice if OrthoNY is excluded from participation in Medicare, Medicaid or any other federal health care program.
Compensation:	\$400,000 per year payable in equal monthly installments of \$33,333.33

OrthoNY is an affiliate of Ortho NY ASC Holdings, LLC, a 52% member of the applicant. The draft agreement provides that the Facility Operator retains ultimate authority, responsibility and control in all final decisions associated with the services and acknowledges the reserve powers that must not be delegated. The applicant has submitted an executed attestation acknowledging understanding of the reserve powers that cannot be delegated, and that they will not willingly engage in any such illegal delegations of authority.

Total Project Cost and Financing

Total project costs for allocated to the 2nd Floor construction is estimated at \$11,523,767 as follows:

	<u>Article 28</u>	<u>Bldg. Shell</u>	<u>Total Cost</u>
New Construction	\$3,445,825	\$2,972,700	\$6,418,525
Design Contingency	344,583	0	344,583
Construction Contingency	172,291	0	172,291
Architect /Engineering Fees	287,000	0	287,000
Construction Manager Fees	213,000	0	213,000
Moveable Equipment	3,889,605	0	3,889,605
Financing Costs	40,000	0	40,000
Interim Interest Expense	110,000	0	110,000
CON Application Fee	2,000	0	2,000
Additional Fees	<u>\$46,763</u>	<u>0</u>	<u>\$46,763</u>
Total Project Cost	\$8,551,067	\$2,972,700	\$11,523,767

Project costs for the fit-out are based on an estimated construction start date of July 1, 2019, and an eight-month construction period. The approved reimbursable project cost is \$8,551,067. Everett Road ASC's financing plan is as follows:

2nd Floor Buildout by Tenant Everett Road Ambulatory Center, LLC

Cash Equity	\$1,000,423
Construction Bank Loan (5.45%,10-yr. term and amortization)	4,050,000
Equipment Bank Loan (5.45%, 7- yr. term and amortization)	<u>3,500,644</u>
Total	\$8,551,067

2nd Floor Shell Construction by Landlord-123 Everett Road Real Estate Group, LLC

Cash Equity	\$2,167,173
Proceeds from Building Construction Bank Loan (\$8,200,000)	<u>805,527</u>
Total	\$2,972,000

Operating Budget

The applicant has submitted the first and third year projected operating budgets, in 2019 dollars, summarized below:

<u>Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
Medicaid MC	\$1,138	\$520,028	\$1,131	\$543,088
Medicare FFS	\$1,407	\$1,378,376	\$1,399	\$1,434,474
Commercial FFS	\$2,612	\$7,134,236	\$2,639	\$7,617,579
Private Pay	\$1,817	\$65,402	\$1,812	\$68,856
All other	\$2,237	<u>\$277,388</u>	\$2,237	<u>\$286,336</u>
Total Revenues		\$9,375,430		\$9,950,333
 <u>Expenses</u>				
Operating	\$1,235	\$5,454,224	\$1,245	\$5,786,168
Capital	<u>\$404</u>	<u>\$1,785,754</u>	<u>\$362</u>	<u>\$1,680,290</u>
Total Expenses	\$1,640	\$7,239,978	\$1,606	\$7,466,458
Net Income		<u>\$2,135,452</u>		<u>\$2,483,875</u>
 Utilization				
Cost/Procedure		4,415		4,648
		\$1,640		\$1,606

Utilization by payor source for year one and three is as follows:

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Proc.</u>	<u>%</u>	<u>Proc.</u>	<u>%</u>
Medicaid MC	457	10.35%	480	10.33%
Medicare FFS	980	22.20%	1,025	22.05%
Commercial FFS	2,731	61.86%	2,887	62.11%
Private Pay	36	0.82%	38	0.82%
Charity Care	87	1.97%	90	1.94%
All other	<u>124</u>	<u>2.80%</u>	<u>128</u>	<u>2.75%</u>
Total	4,415	100%	4,648	100%

Expense and utilization assumptions are based on the historical experience of other ambulatory surgery centers in the geographical area. The applicant provided physician referral letters in support of their utilization projections.

Capability and Feasibility

Total project costs of \$11,523,767 will be met by Everett Road Ambulatory Surgery Center, LLC via equity of \$1,000,423, bank financing of a construction loan of \$4,050,000 at 5.45% with a 10-year term and amortization, and an equipment loan of \$3,500,644 at 5.45% with a 7-year term and amortization. A letter of interest has been provided from Berkshire Bank for the respective loans. The landlord, 123 Everett Road Real Estate Group, LLC, is funding the second-floor shell cost of \$2,972,700 via equity of \$2,167,173 and \$805,527 from the proceeds from their \$8.2 million building construction loan.

The working capital requirement is estimated at \$1,244,409 based on two months of third-year expenses. The applicant will fund \$622,205 via members' equity and finance the \$622,204 balance via a loan at 5.45% interest for a 5-year term (self-amortizing). BFA Attachments A and B are the net worth statements of the proposed members of the applicant (Everett Road Ambulatory Surgery Center LLC), and 2017 certified financial statements and internals as of August 31, 2018 of St. Peter's Hospital, which indicates adequate funds for the equity and working capital contributions. The applicant has provided an affidavit indicating the Schuyler Hills Realty II, LLC has already provided their equity share. BFA Attachment D is the pro forma balance sheet of Everett Road Ambulatory Surgery Center, LLC, which indicates a positive net asset position of \$1,622,003 as of the first day of operation.

The submitted budget projects net income of \$2,135,452 and \$2,483,875 in the first and third years of operation, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services. The submitted budget appears reasonable.

BFA Attachment B is the latest 2018 periodic internal financial statements of St. Peter's Hospital, which shows the entity has a positive working capital position and a positive net asset position, and achieved an operating income of \$8,269,000 through August 31, 2018.

BFA Attachment C is the 2016 and 2017 certified financial statements of St. Peter's Hospital. As shown, the hospital had an average positive working capital position and an average positive net asset position from 2016 through 2017. Also, the hospital achieved an average operating income of \$12,400,500 from 2016 through 2017.

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

Attachments

BFA Attachment A	Net worth summary statement of the members of Everett Road Ambulatory Surgery Center LLC and the landlord 123 Everett Road Real Estate Group, LLC
BFA Attachment B	2018 internal financial statements of St. Peters Hospital
BFA Attachment C	2016 and 2017 certified financial statements of St. Peters Hospital
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	Proposed members of AENT ASC Holdings LLC.
BFA Attachment F	Proposed members of Ortho NY ASC Holdings, LLC.
BFA Attachment G	Organization Charts AENT ASC Holdings, LLC & ORTHO NY ASC Holdings, LLC
BPNR Attachment A	Map

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 14th day of February 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a multi-specialty free-standing ambulatory surgery center to be located at 123 Everett Road, Albany, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

182125 B

Everett Road Surgery Center

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed equipment loan commitment (ASC), acceptable to the Department of Health. [BFA]
4. Submission of an executed construction loan commitment (ASC), acceptable to the Department of Health. [BFA]
5. Submission of an executed building lease agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of final, complete, executed and filed articles of organization of applicant, acceptable to the Department. [CSL]
8. Submission of a photocopy of final, complete, executed and filed articles of organization of each of (a) OrthoNY ASC Holdings, LLC and (b) AENT ASC Holdings, LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of final, executed operating agreements of each of (a) OrthoNY ASC Holdings, LLC and (b) AENT ASC Holdings, LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of a complete, final, dated and executed Lease Agreement between 123 Everett Road Real Estate Group LLC and applicant, acceptable to the Department. [CSL]
11. Submission of a photocopy of a complete, final, dated and executed Administrative Services and Billing Agreement between the applicant and OrthopedicsNY, LLC, acceptable to the Department. [CSL]
12. Submission of evidence, acceptable to the Department, of the consent of all Members of the applicant authorizing the establishment, leasing and administrative services actions provided for under this application. [CSL]
13. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
14. 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 two years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
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]
3. Construction must start on or before July 1, 2019 and construction must be completed by March 1, 2020, 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]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

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



Project # 182205-B Wehrle Drive ASC

Program: Diagnostic and Treatment Center County: Erie
Purpose: Establishment and Construction Acknowledged: November 5, 2018

Executive Summary

Description

Wehrle Drive ASC, LLC, an existing New York limited liability company, requests approval to establish and construct a multi-specialty, Article 28 freestanding ambulatory surgery center (FASC) to be located at 50 George Karl Boulevard, Amherst (Erie County). The FASC will be housed in a 27,546-square foot, one-story building to be constructed by a developer. There is no relationship between the developer and the proposed operator. The applicant will lease the entire building from Wehrle Neuro1, LLC via an arm's length lease arrangement. The FASC will initially provide neurosurgery and pain management services. The Center will consist of four operating rooms (ORs), two procedure suites, pre-op/recovery areas, and related support space. Initially, only two of the ORs will be equipped and utilized leaving the remaining two for future needs.

Ownership of the operations is as follows:

Table with 2 columns: Members, %
Proposed Operator: Wehrle Drive ASC, LLC
Members: Douglas Moreland, M.D. (12.5%), Elad Levy, M.D. (12.5%), John Pollina, Jr., M.D. (12.5%), Michael Stoffman, M.D. (12.5%), John Fahrbach, M.D. (12.5%), Jafar Siddiqui, M.D. (12.5%), Andrea Wong, M, D. (12.5%), Michael Courneyea (12.5%), Total (100%)

Douglas Moreland, M.D., who is Board-Certified in Neurological Surgery, will be the Center's

Medical Director. The applicant has a Transfer Agreement for backup and emergency services with Kaleida Health's Millard Fillmore Suburban Hospital, which is located four miles (11 minutes travel time) from the proposed Center.

OPCHSM Recommendation

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

Need Summary

The number of projected procedures is 6,208 in Year One and 6,586 in Year Three, with Medicaid at 16.20% and Charity Care at 2.00% each year.

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 are \$16,815,726 for the building's construction and ASC fit-out. The applicant's portion, \$7,821,055, will be funded via \$2,000,000 in members' equity, a seven-year equipment loan for \$2,182,650 at 5.86%, and a fifteen-year loan for \$3,638,405 at 5.86% interest. The building's shell and a \$50 per square foot allowance for the tenant's improvements, 8,9945,671, will be funded by the landlord via a ten-year loan with a 30-year amortization period and variable interest (during

construction) based on the 30-Day Libor Rate plus 225 basis points, estimated at 4.76% as of December 31, 2018. Upon completion of construction, the ten-year loan will be converted to a fixed-rate interest based upon the five-year United States Treasury Securities (TCM) plus 215 basis points, estimated at 5.04% as of December 31, 2018. During the construction period, repayment terms are interest only for all

loans. Northwest Bank has provided a letter of interest for the respective loans.

The projected budget is:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$6,293,689	\$6,676,975
Expenses	<u>4,825,917</u>	<u>5,119,167</u>
Gain/(Loss)	\$1,467,772	\$1,557,808

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 of an executed project loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed equipment loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of the two executed personal loan commitments, acceptable to the Department of Health. [BFA]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03. [AER]
6. 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]
7. 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]
8. 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; and
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
9. Submission of a photocopy of the applicant's fully executed lease, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's Certificate of Amendment to the Articles of Organization, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before September 1, 2019 and construction must be completed by September 30, 2020 presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date, this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from 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 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]

Council Action Date

February 14, 2019

Need Analysis

Analysis

The service area consists of Erie County. The table below shows the number of patient visits for ambulatory surgery centers in Erie County for 2016 and 2017.

ASC Type	Facility Name	Total Patient Visits	
		2016	2017*
Multi	ASC of Western NY	11,515	11,024
Multi	Buffalo Ambulatory Surgery Center	12,300	11,852
Dual	Buffalo Surgery Center, LLC	7,557	13,936
Multi	Center for Ambulatory Surgery, LLC	11,578	11,080
Multi	Endoscopy Center of Western NY	10,427	11,063
Single	Eye Health Associates Inc.	4,181	3,944
Multi	Millard Fillmore Surgery Center, LLC	4,898	4,005
Multi	Southtowns Surgery Center (opened 7/26/16)	346	1,733
Multi	Sterling Surgical Center	5,511	5,783
Multi	WNY Medical Management	1,736	2,132
Total Visits		70,049	76,552

Source: SPARCS, *2017 data is annualized based upon 9 months of information.

From 2016 to 2017, Erie County experienced a 9.3% increase in ambulatory surgery visits. The applicant projects 6,208 procedures in Year One and 6,586 procedures in Year Three. These projections are based on the current practices of participating surgeons. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Medicaid MC	1,006	16.20%	1,067	16.20%
Medicare FFS	931	15.00%	988	15.00%
Medicare MC	1,516	24.42%	1,607	24.41%
Commercial MC	2,147	34.58%	2,278	34.59%
Workers Comp	484	7.80%	514	7.80%
Charity Care	124	2.00%	132	2.00%
Total	6,208	100.0%	6,586	100.0%

The Center initially plans to obtain contracts with the following Medicaid Managed care plans: Blue Cross Blue Shield, Independent Health Association, Fidelis, and YourCare Health Plan. The Center intends to collaborate with Neighborhood Health Center and Jericho Road Community Health Center, both FQHC's, to provide service to the under-insured in their service area. The Center has developed a financial assistance policy with a sliding fee scale to be utilized when the Center is operational.

Conclusion

This project will provide increased access to freestanding ambulatory surgery services in Erie County.

Program Analysis

Program Description

Proposed Operator	Wehrle Drive ASC, LLC
Doing Business As	Wehrle Drive ASC
Site Address	50 George Karl Boulevard Amherst, NY 14221 (Erie County)
Surgical Specialties	Multi-Specialty
Operating Rooms	4 (Class C)
Procedure Rooms	2
Hours of Operation	Monday through Friday from 8:00 am - 4:30 pm
Staffing (1 st / 3 rd Year)	14.0 FTEs / 14.0 FTEs
Medical Director	Douglas Moreland, M.D.
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Will be provided by: Kaleida Health/Millard Fillmore Suburban Hospital 4 miles/11 minutes
After-hours access	After-hours access to surgical providers using a call service to provide patients access to an on-call provider for urgent/emergent issues

Character and Competence

The membership of Wehrle Drive ASC, LLC is comprised by seven physicians and a program administrator, as detailed in the chart below:

Member	%
Douglas Moreland, M.D., Medical Director *	12.5%
Elad Levy, M.D.	12.5%
John Pollina, Jr., M.D.	12.5%
Michael Stoffman, M.D. *	12.5%
John Fahrback, M.D.	12.5%
Jafar Siddiqui, M.D.	12.5%
Andrea Wong, M.D.	12.5%
Michael Courneyea *	12.5%
Total	100%

* Managers

A full Character and Competence Review was conducted on all proposed members. Of the seven physician members, five specialize in Neurosurgery (Moreland, Levy, Pollina, Stoffman and Fahrback), one specializes in Physical Medicine and Rehabilitation (Siddiqui), and one specializes in Anesthesiology (Wong). The eighth member, Mr. Courneyea, holds a Master's in Business Administration (MBA) from Niagara University and, since 2013, has served as the Chief Executive Officer of University at Buffalo Neurosurgery, Inc., a physician group consisting of roughly 50 providers and 200 employees in seven locations.

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 U.S. Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Dr. Siddiqui disclosed one open malpractice case involving a patient with spina bifida who alleged malpractice related to a fall incurred at home in 2013 several hours after undergoing an epidural steroid injection.

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

When a patient presents to the surgery center and a primary care provider has not been identified, the center will refer the patient to their health insurer in an effort to identify an in-network provider. For uninsured patients, the center will collaborate with the Neighborhood Health Center and Jericho Road Community Health Center, organizations that serve a broad geographic area in and around Buffalo. The center also plans to contract with at least two Medicaid managed care plans (i.e., Blue Cross Blue Shield, Independent Health Association, Fidelis, and YourCare Health Plan). Outreach to the underserved will be accomplished through relationships built with local healthcare and social service organizations in the community. The Applicant has expressed a commitment to providing health care services to patients regardless of personal characteristics or their ability to pay and is developing a Financial Assistance Policy that includes a sliding fee scale.

The Applicant plans on using an Electronic Medical Record (EMR) program and is evaluating systems. Once established, they will consider participating in one or more Accountable Care Organizations and intends on integrating into HEALTHeLINK, the Regional Health Information Organization (RHIO) for Western New York.

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.

Financial Analysis

Lease Rental Agreement

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

Date:	October 1, 2018
Premises:	27,546 sq. ft. building at 50 George Karl Boulevard, Amherst, NY 14221
Owner/Landlord:	Wehrle Neuro1, LLC
Lessee/Tenant:	Wehrle Drive ASC, LLC
Term:	15 years plus one (1) 3-year renewal term
Payment *:	\$716,250 (\$30.00 per sq. ft.) plus 5% of gross rent as property management fee. 2% increase in years 2-15 and 3% increase in years 16-18
Provisions:	Triple Net

** Per Paragraph 38 of the lease, the applicant will initially use only 23,875 sq. ft. of the total 27,546 rentable sq. ft. The applicant has control of the additional 3,671 sq. ft. but will not pay rent on it until put into use at a future date.*

The applicant has provided an affidavit stating the lease is an arms-length agreement. Letters from two NYS licensed realtors have been provided attesting to the rental rate being of fair market value.

Total Project Cost and Financing

Total project costs for new construction (landlords and applicants) and the acquisition of moveable equipment is estimated at \$16,815,726 broken down as follows:

New Construction	\$11,666,667
Design Contingency	1,166,667
Construction Contingency	1,166,667
Planning Consultant Fees	10,000
Architect/Engineering Fees	500,000
Movable Equipment	2,182,650
Financing Costs	29,105
CON Application Fee	2,000
CON Processing Fee	<u>91,970</u>
Total Project Cost	\$16,815,726

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

The applicant's financing plan appears as follows:

Applicant - Cash Equity (members)	\$2,000,000
Applicant - Equipment loan (5.86% interest, 7-year term) *	2,182,650
Applicant -Bank Loan (5.86% int. 15-year term, self-amortizing) *	3,638,405
Landlord- Bank Loan (5.04% int. 10-year term, 30-year amortization **)	<u>8,994,671</u>
Total	\$16,815,726

* The 5.86% fixed rate of interest is based upon the weekly average yield on the United States Treasury Securities adjusted to maturity, which was 3.36% as of November 9, 2018, plus 250 BP.

** During construction, interest is based upon 30-Day Libor plus 225 basis points, estimated at 4.76% as of December 31, 2018. Upon completion of construction, the remainder of the ten-year loan will be converted to a fix rate interest based upon the five-year United States Treasury Securities (TCM) plus 215 basis points, estimated at 5.04% as of December 31, 2018.

The loans are interest only during construction period. Northwest Bank has provided a letter of interest for all loans.

BFA Attachment A is the members' net worth summaries, which shows sufficient resources overall to meet the equity requirement. Jafar Siddiqui, M.D. and Andrea Wong, M.D. have insufficient liquid resources, however, both have provided a \$375,000 personal loan letter of interest from Northwest Bank with a 5-year term at 5.5% interest to fund their equity requirement.

Operating Budget

The applicant has submitted the first and third year projected operating budgets, in 2019 dollars:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid - MC	\$790.26	\$795,002	\$790.46	\$843,417
Medicare - FFS	\$843.24	785,054	\$842.98	832,864
Medicare - MC	\$924.31	1,401,247	\$925.07	1,486,584
Commercial - MC	\$1,303.46	2,798,530	\$1,303.32	2,968,960
Workers Comp.	\$1,061.69	<u>513,856</u>	\$1,060.60	<u>545,150</u>
Total Revenues		\$6,293,689		\$6,676,975
<u>Expenses</u>				
Operating	\$482.73	\$2,996,800	\$499.00	\$3,286,386
Capital	<u>\$294.64</u>	<u>\$1,829,117</u>	<u>\$278.28</u>	<u>\$1,832,781</u>
Total Expenses	\$777.37	\$4,825,917	\$777.28	\$5,119,167
Net Income		<u>\$1,467,772</u>		<u>\$1,557,808</u>

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Procedures		6,208		6,586
Cost Per Procedure		\$777.37		\$777.28

Utilization by payor source for years one and three is summarized below:

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Medicaid - MC	1,006	16.20%	1,067	16.20%
Medicare - FFS	931	15.00%	988	15.00%
Medicare – MC	1,516	24.42%	1,607	24.41%
Commercial – MC	2,147	34.58%	2,278	34.59%
Workers Comp.	484	7.80%	514	7.80%
Charity Care	124	2.00%	132	2.00%
Total	6,208	100%	6,586	100%

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

- All managed care rates are based upon conversations with managed care organizations. Medicare fee-for-service rates are based on Ambulatory Patient Group reimbursements rates for the mix of procedures to be performed at the Center. Workers Compensation rates are based upon their fee schedule.
- Expense assumptions are based upon locally competitive wage rates, staffing models, volume, medical supplies, and supporting costs.
- Utilization assumptions are supported by letters from the seven participating physicians based on their current experience. The proposed operator is committed to providing 2% to charity care patients and 16.20% to Medicaid patients.

Capability and Feasibility

Total project costs of \$16,815,726 will be funded by two parties. The applicant's \$7,821,055 portion will be funded via \$2,000,000 in members' equity, a seven-year equipment loan for \$2,182,650, and a fifteen-year loan for \$3,638,405 at stated terms. The building's shell and a \$50 per square feet allowance for tenant's improvements will be funded by the landlord. The landlord's \$8,994,671 portion will be funded via ten-year loan for \$8,994,671 with a 30-year amortization period at the stated terms. During the construction period repayment terms are interest only. Northwest Bank has provided a letter of interest for all loans.

The working capital requirement is estimated at \$853,195 based on two months of third year expenses. The members will provide \$1,000,000 in working capital, approximately \$146,805 more than required. Review of BFA Attachment A and the personal loan documents reveals sufficient resources to meet all equity requirements. BFA Attachment B is Wehrle Drive ASC, LLC's pro forma balance sheet, which shows operations will start with \$3,000,000 in equity.

Wehrle Drive ASC, LLC projects a net operating income of \$1,467,772 and \$1,557,808 in the first and third years of operation, respectively. The budget appears reasonable.

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

Supplemental Information

Surrounding Hospital Responses

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

Millard Fillmore Suburban Hospital -- **Letter of Support**
1540 Maple Road
Amherst, New York 14221

Sisters of Charity Hospital -- **No Objection Letter**
2605 Harlem Road
Cheektowaga, New York 14225

Erie County Medical Center -- **Letter of Support**
462 Grider Street
Buffalo, New York 14215

DOH Comment

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

Attachments

BFA Attachment A	Wehrle Drive ASC, LLC members net worth summary
BFA Attachment B	Pro Forma Balance Sheet of Wehrle Drive ASC, LLC
BHFP Attachment	Map

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 14th day of February 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a multi-specialty ambulatory surgery center to be located at 50 George Karl Boulevard, Amherst, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

182205 B

Wehrle Drive ASC

APPROVAL CONTINGENT UPON:

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed project loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed equipment loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of the two executed personal loan commitments, acceptable to the Department of Health. [BFA]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03. [AER]
6. 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]
7. 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]
8. 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; and
 - h. A description of the progress of contract negotiations with Medicaid managed care plans.[RNR]

9. Submission of a photocopy of the applicant's fully executed lease, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's Certificate of Amendment to the Articles of Organization, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before September 1, 2019 and construction must be completed by September 30, 2020 presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date, this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from 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 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]

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



Project # 181059-E
2700 North Forest Road Operating Company, LLC
d/b/a Elderwood at Getzville

Program: Residential Health Care Facility
Purpose: Establishment

County: Erie
Acknowledged: February 1, 2018

Executive Summary

Description

2700 North Forest Road Operating Company, LLC d/b/a Elderwood at Getzville, a New York limited liability company, requests approval to be established as the new operator of Rosa Coplon Jewish Home and Infirmary (Rosa Coplon), a 180-bed, voluntary not-for-profit, Article 28 residential health care facility (RHCF) located at 2700 North Forest Road, Getzville (Erie County). Rosa Coplon Jewish Home and Infirmary Inc., a not-for-profit corporation whose sole member is Menorah Campus, Inc., is the current operator and real property owner of the facility. There will be no change in beds or services provided.

On November 22, 2017, Post Acute Partners Acquisition, LLC (PAP), a Delaware limited liability company licensed to do business in New York State (NYS), entered into an Asset Purchase Agreement (APA) with Menorah Campus, Inc. for the sale and acquisition of the RHCF's operating interests and real property. The APA includes the sale of the following: Rosa Coplon Jewish Home and Infirmary Certified Home Health Agency; Menorah Campus Adult Home, Inc. Licensed Home Care Services Agency; Dosberg Manor Adult Home; The Meadows, an enriched and independent living facility; Garden House, an assisted living residence; and senior living apartments known as Forest Creek Commons. Separate applications are being submitted for the sale of these entities, all of which are on the RHCF campus. The aggregate purchase price for the assets is \$46,750,000 of which \$18,850,000 is allocated to the sale of the RHCF (\$4,850,000

for the operations and \$14,000,000 for the real property).

PAP is equally owned by Warren Cole and Jeffery Rubin, D.D.S. Upon Public Health and Health Planning Council (PHHPC) approval, PAP will assign its rights under the APA to 2700 North Forest Road Operating Company, LLC (operations) and 2700 North Forest Road, LLC (realty). 2700 North Forest Road, LLC will lease the real property to 2700 North Forest Road Operating Company, LLC. There is a relationship between the proposed operating and realty entities in that they have common membership.

The proposed operator is as follows:

Table with 2 columns: Member Name and Percentage. Row 1: 2700 North Forest Road Operating Company, LLC (100%). Row 2: Members. Row 3: 2700 North Forest Road Operating Holdco, LLC (100%). Row 4: Warren Cole (50%). Row 5: Jeffrey Rubin, D.D.S. (50%).

The seller indicated that rapid changes in the nursing home marketplace have made it difficult for an independent, not-for-profit entity to survive. Many have consolidated with larger operators, including facilities in Rosa Coplon's market. The RHCF has been experiencing losses over prior years, and projections for the future were no better. The Board believes selling the RHCF to a larger operator offers the greatest opportunity to preserve access to nursing home care in the Western NY

community. In the sale process, they sought an operator with a reputation for delivering quality care, and one that had financial and operational resources to invest in and improve the property. They hired a Chicago-based firm with experience brokering nursing home sales to market the facility and received offers from 11 potential buyers. On evaluation of the offers, the Board selected PAP taking into consideration PAP's experience, history and reputation preserving quality nursing home services in the service area, the likelihood of certainty of the transaction given the other facilities operated by PAP in the region, and the overall ability to achieve Rosa Coplon's economic objectives. The sale proceeds will be used to pay amounts owed on the existing mortgage, employee salary and benefit accruals, various accounts payable, NYSDOH cash receipts assessments, other creditors, and closing cost. Any remaining surplus funds will be deposited into a restricted fund at the Foundation for Jewish Philanthropies, for the exclusive purpose of supporting services to the vulnerable and frail elderly in the community.

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

The purchase price for the RHCf operations and real property is \$18,850,000, which will be financed via a loan for the total amount at 6% interest for a ten-year term. Capital Funding, LLC has provided a letter of interest. PAP will assign its rights and title of the RHCf operations and real property to 2700 North Forest Road Operating Company, LLC and 2700 North Forest Road, LLC, respectively, for \$10. There are no project costs associated with this proposal. The proposed budget is as follows:

	<u>First Year</u>	<u>Third Year</u>
Revenues	\$19,499,743	\$19,499,743
Expensed	<u>\$19,049,246</u>	<u>\$19,024,914</u>
Gain/(Loss)	\$450,497	\$474,829

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 an executed loan agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed Assignment of Rights, acceptable to the Department of Health. [BFA]
5. Submission of an executed Health Care Center Facility Lease, acceptable to the Department of Health. [BFA]
6. Submission of an executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
7. Submission of the applicant's executed Restated Articles of Organization, acceptable to the Department. [CSL]
8. Submission of the applicant's executed Amended Operating Agreement, acceptable to the Department. [CSL]
9. Submission of the applicant's executed and amended Lease Agreement, acceptable to the Department. (CSL)
10. Submission of the applicant's executed and amended Administrative Services Agreement, acceptable to the Department. [CSL]
11. Submission of the executed Application of Authority to Do Business in the State of New York for the 2700 North Forest Road Operating Holdco, LLC, acceptable to the Department. [CSL]
12. Submission of the executed Operating Agreement of 2700 North Forest Road Operating Holdco, LLC, acceptable to the Department. (CSL)
13. Submission of the applicant's executed Asset Purchase Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

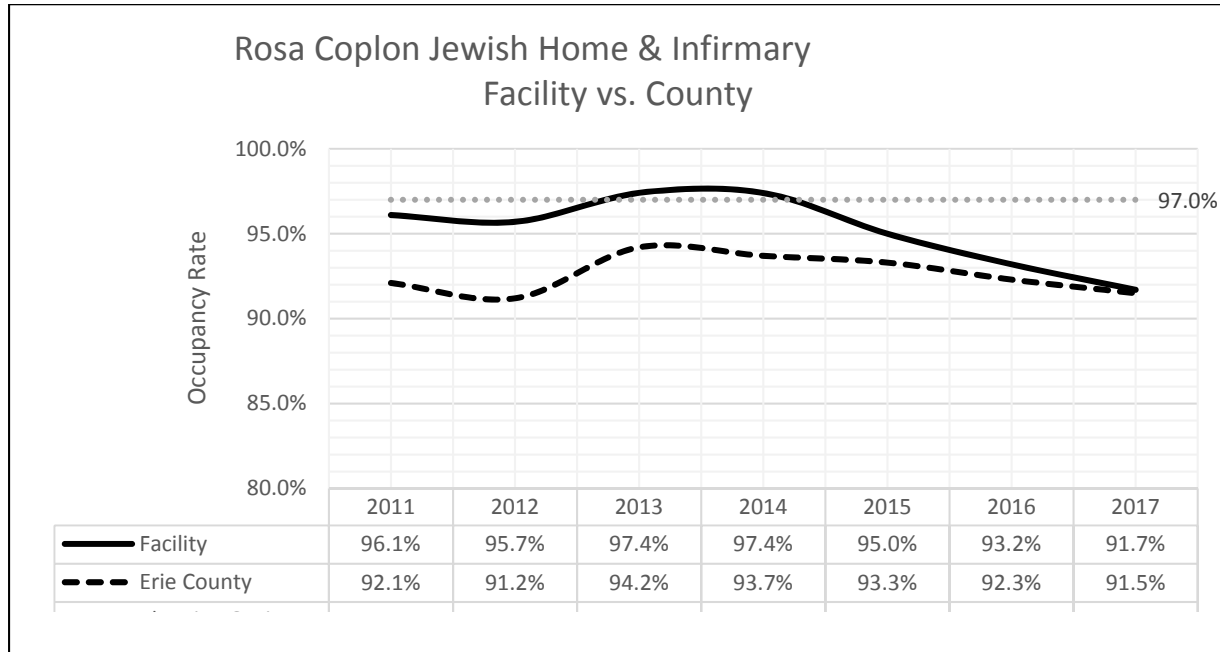
1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

February 14, 2019

Need Analysis

Utilization



Though the RHCf’s occupancy rate declined to 91.71% in 2017, the facility’s average occupancy from 2013-2016 was 95.2%. The applicant indicated that occupancy was 96.1% as of January 31, 2018, and 95.0% as of November 21, 2018, which supports the applicant’s belief that 95% occupancy can be sustained going forward.

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.

Rosa Coplon Jewish Home and Infirmiry’s Medicaid admissions rate was below 75% of the Erie County rate, as indicated in the table below. Therefore, the applicant will be required to improve access to care for Medicaid residents, as well as commit to meeting the County threshold within two years of approval, as outlined in the contingencies.

Percent of New RHCf Admissions that are Medicaid	2015	2016	2017
Erie County 75% Threshold	21.6%	20.6%	21.7%
Rosa Coplon Jewish Home & Infirmiry	0.4%	1.5%	7.9%

The new operators plan to increase Medicaid admissions by taking several steps to strengthen the admissions process at the facility. The facility plans to develop community outreach programs to surrounding hospitals, home health agencies, assisted living facilities, adult care facilities, representatives

of local social services district, other community leaders, Erie County Department of Aging and affiliated senior centers to inform them of the change in ownership and new admissions policy of this facility. The new admission policy includes:

- Provide priority admission to Medicaid recipients
- Offer services to difficult to place residents
- Institute weekend admission process and an accelerated admission determination process
- Implement one-on-one meetings with discharge planners of area hospitals to determine needs of the discharge planners in obtaining timely admission decisions on potential patients.

Conclusion

There will be no change in beds or services in Erie County through completion of this application.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Rosa Coplon Jewish Home and Infirmary	Elderwood at Getzville
Address	2700 North Forest Road Getzville, NY 14068	Same
RHCF Capacity	180	Same
ADHC Program Capacity	N/A	Same
Type of Operator	INC	Limited Liability Corporation
Class of Operator	Not for Profit Corporation	Proprietary
Operator	Rosa Coplon Jewish Home and Infirmary INC	2700 North Forest Road Operating Company, LLC 2700 North Forest Road Operating Holdco, LLC 100% *Warren Cole (50%) Jeffrey Rubin (50%) *managing member

Character and Competence

Experience

Warren Cole is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospitals, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States.

Jeffrey Rubin is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospitals, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millennium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive.

Mr. Cole and Dr. Rubin have/had joint ownership interest in the following facilities:

NYS Nursing Homes
Elderwood at Hamburg
Elderwood at Liverpool

07/2013 to present
07/2013 to present

Elderwood at Amherst	07/2013 to present
Elderwood at Grand Island	07/2013 to present
Elderwood at Wheatfield	07/2013 to present
Elderwood at Lancaster	07/2013 to present
Elderwood at Cheektowaga	07/2013 to present
Elderwood at Williamsville	07/2013 to present
Elderwood of Uihlein at Lake Placid	10/2016 to present
Elderwood at Waverly	07/2013 to present
Elderwood at Hornell	04/2016 to present
Elderwood of Lakeside at Brockport	01/2018 to present
Elderwood at Ticonderoga	04/2018 to present
Elderwood at Lockport	01/2018 to present
Elderwood at North Creek	01/2018 to present

NYS Adult Home/Enriched Housing Program

Elderwood Village at Ticonderoga	04/2018 to present
Elderwood Village at Williamsville	07/2013 to present
Elderwood Assisted Living at Wheatfield	07/2013 to present
Elderwood Assisted Living at West Seneca	07/2013 to present
Elderwood Assisted Living at Cheektowaga	07/2013 to present
Elderwood Assisted Living at Hamburg	07/2013 to present
Elderwood Assisted Living at Waverly	07/2013 to present
Elderwood Assisted Living at Tonawanda	04/2016 to present

NYS Licensed Home Care Agency

Elderwood Assisted Living at West Seneca	07/2013 to present
Elderwood Assisted Living at Cheektowaga	07/2013 to present
Elderwood Assisted Living at Hamburg	07/2013 to present
Elderwood Assisted Living at Waverly	07/2013 to present

NYS Pharmacy

Woodmark Pharmacy of New York, LLC	07/2013 to present
------------------------------------	--------------------

Alabama

Laurelton Rehabilitation and Nursing Center	SNF	10/2006-5/2008
---	-----	----------------

California

Care Alternatives of California	HOS	06/2008-10/2009
---------------------------------	-----	-----------------

Connecticut

Danbury Health Care Center	SNF	06/2008-10/2009
Darien Health Care Center	SNF	06/2003- 2007
Golden Hill Health Care Center	SNF	06/2008-10/2009
Long Ridge of Stamford	SNF	06/2008-10/2009
Newington Health Care Center	SNF	06/2008-10/2009
River Glen Health Care Center	SNF	06/2008-10/2009
The Highlands Health Care Center	SNF	06/2008-10/2009
West River Health Care Center	SNF	06/2008-10/2009
Westport Health Care Center	SNF	06/2008-10/2009
Wethersfield Health Care Center	SNF	06/2008-10/2009
Partners Pharmacy of Connecticut	RX	06/2008-10/2009

Kansas

Care Alternatives of Kansas	HOS	06/2008-10/2009
-----------------------------	-----	-----------------

Maryland

Montgomery Village Health Care Center	SNF	06/2008-10/2009
---------------------------------------	-----	-----------------

Massachusetts

Brookline Health Care Center	SNF	06/2008-10/2009
Calvin Coolidge Nursing & Rehab Center	SNF	06/2008-10/2009
Cedar Hill Health Care Center	SNF	06/2008-10/2009
Concord Health Care Center	SNF	06/2008-10/2009
Essex Park Rehabilitation & Nursing Center	SNF	06/2008-10/2009
Holyoke Health Care Center	SNF	06/2008-10/2009
Lexington Health Care Center	SNF	06/2008-10/2009
Lowell Health Care Center	SNF	06/2008-10/2009
Milbury Health Care Center	SNF	06/2008-10/2009
New Bedford Health Care Center	SNF	06/2008-10/2009
Newton Health Care Center	SNF	06/2008-10/2009
Peabody Glen Health Care Center	SNF	06/2008-10/2009
Redstone Health Care Center	SNF	06/2008-10/2009
Weymouth Health Care Center	SNF	06/2008-10/2009
Wilmington Health Care Center	SNF	06/2008-10/2009
Care Alternatives of Massachusetts	HOS	06/2008-10/2009
Partners Pharmacy of Massachusetts	RX	06/2008-10/2009
Woodmark Pharmacy of Massachusetts	RX	06/2014- present

Michigan

Grand Blanc Rehabilitation & Nursing Center	SNF	06/2008-10/2009
---	-----	-----------------

Missouri

Cliffview at Riverside Rehab & Nursing Center	SNF	10/2006-05/2008
Care Alternatives of Missouri	HOS	06/2008-10/2009
Partners Pharmacy of Missouri	RX	06/2008-10/2009

New Jersey

Care One at Dunroven	SNF	06/2008-10/2009
Care One at East Brunswick	SNF	06/2008-10/2009
Care One at Evesham	SNF	06/2008-10/2009
Care One at Ewing	SNF	06/2008-10/2009
Care One at Hamilton	SNF	06/2008-10/2009
Care One at Holmdel	SNF	06/2008-10/2009
Care One at Jackson	SNF	06/2008-10/2009
Care One at King James	SNF	06/2008-10/2009
Care One at Livingston	SNF	06/2008-10/2009
Care One at Madison Avenue	SNF	06/2008-10/2009
Care One at Moorestown	SNF	06/2008-10/2009
Care One at Morris	SNF	06/2008-10/2009
Care One at Pine Rest	SNF	06/2008-10/2009
Care One at Teaneck	SNF	06/2008-10/2009
Care One at The Highlands	SNF	06/2008-10/2009
Care One at Valley	SNF	06/2008-10/2009
Care One at Wall	SNF	06/2008-10/2009
Care One at Wayne	SNF/ALF	06/2008-10/2009
Care One at Wellington	SNF	06/2008-10/2009
Oradell Health Care Center	SNF	06/2008-10/2009
Somerset Valley Rehabilitation and Nursing	SNF	10/2008-10/2009
South Jersey Health Care Center	SNF	06/2008-10/2009
Woodcrest Health Care Center	SNF	06/2008-10/2009
Care One at Livingston Assisted Living	ALF	06/2008-10/2009
Care One at Moorestown	ALF	06/2008-10/2009
Care One at Morris Assisted Living	ALF	06/2008-10/2009
Care One Harmony Village at Moorestown	ALF	06/2008-10/2009
Care One at The Cupola	ALF	06/2008-10/2009
Care One at Evesham Assisted Living	ALF	10/2008-10/2009

Care Alternatives of New Jersey	HOS	06/2008-10/2009
Bergen Care Home Health	HHA	06/2008-10/2009
Bergen Care Personal Touch	HHA	06/2008-10/2009
Care One at Raritan Bay MC	LTA	06/2008-10/2009
Partners Pharmacy of New Jersey	RX	06/2008-10/2009

North Carolina

Blue Ridge Health Care Center	SNF	06/2008-10/2009
-------------------------------	-----	-----------------

Ohio

Bellbrook Health Care Center	SNF	06/2008-10/2009
The Rehabilitation & Nursing Center at Elm Creek	SNF	06/2008-10/2009
The Rehabilitation & Nursing Center at Firelands	SNF	06/2008-10/2009
The Rehabilitation & Nursing Center at Spring Creek	SNF	06/2008-10/2009

Pennsylvania

Presque Isle Rehabilitation and Nursing Center	SNF	06/2008-10/2009
The Rehab and Nursing Center at Greater Pittsburg	SNF	06/2008-10/2009
Pediatric Specialty Care at Point Pleasant	ICF	02/2011-present
Pediatric Specialty Care at Doyleston	ICF	02/2011-present
Pediatric Specialty Care at Quakertown	ICF	02/2011-present
Pediatric Specialty Care at Lancaster	ICF	02/2011-present
Pediatric Specialty Care at Hopewell	ICF	02/2011-present
Pediatric Specialty Care at Philadelphia	ICF	02/2011-present
Elderwood Senior Living at Lancaster	HOM	02/2011-present
Care Alternatives of Pennsylvania	HOS	06/2008-10/2009

Puerto Rico

Medicare Y Mucho Mas	Medicare Advantage Plan	06/2008-11/2009
----------------------	-------------------------	-----------------

Rhode Island

Elderwood at Riverside	SNF	02/2014-present
Elderwood at Scallop Shell at Wakefield	SNF	12/2010-present

Virginia

Colonial Heights Health Care Center	SNF	06/2008-10/2009
Glenburnie Rehabilitation	SNF	06/2008-10/2009
Hopewell Health Care Center	SNF	06/2008-10/2009
Valley Health Care Center	SNF/ALF	06/2008-10/2009
Westport Health Care Center	SNF	06/2008-10/2009
Care Alternatives of Virginia	HOS	06/2008-10/2009
Partners of Virginia, LLC	RX	06/2008-10/2009

Vermont

Elderwood at Burlington	SNF	12/2018-present
-------------------------	-----	-----------------

KEY

ACU acute care/hospital	ICF intermediate care facility/group home
ALF assisted living facility	IRF intermediate rehab facility
HHA home health agency	LTA long term acute care hospital
HOM homecare	RX pharmacy
HOS hospice	SNF skilled nursing facility/nursing home

Healthcare Consulting Companies

Elderwood Administrative Services, LLC
 Post-Acute Partners Management, LLC

Quality Review

Evaluation of the quality of care for facilities currently owned by Mr. Cole and Dr. Rubin is presented below. This evaluation relies on the CMS five-star quality rating system ratings and survey findings. The star rating chart below shows each facility's current rating as well as the ratings at the time of acquisition, unless noted otherwise.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Elderwood of Uihlein at Lake Placid	Current	*	*	***	***
	10/2016	**	**	***	***
Elderwood at Grand Island	Current	**	*	*****	****
	07/2013 Data 09/2013	*****	****	*****	***
Elderwood at Waverly	Current	***	***	****	***
	07/2013 Data 09/2013	****	***	***	****
Elderwood at Hornell	Current	***	**	****	****
	04/2016	**	**	****	***
Elderwood at Liverpool	Current	***	**	*****	***
	07/2013 Data 09/2013	****	****	****	****
Elderwood at Hamburg	Current	****	**	*****	****
	07/2013 Data 09/2013	****	****	****	****
Elderwood at Wheatfield	Current	****	***	**	*****
	07/2013 Data 09/2013	*****	****	*****	****
Elderwood at Cheektowaga	Current	****	***	***	****
	07/2013 Data 09/2013	***	***	***	***
Elderwood at Williamsville	Current	****	****	****	****
	07/2013 Data 09/2013	****	****	****	***
Elderwood at Amherst	Current	*****	****	***	*****
	07/2013 Data 09/2013	*****	*****	*****	***
Elderwood at Lancaster	Current	*****	*****	*****	****
	07/2013 Data 09/2013	***	***	***	***
Elderwood of Lakeside at Brockport	01/2018	*****	***	*****	****
Elderwood at Lockport	01/2018	**	**	***	***
Elderwood at Ticonderoga	04/2018	***	**	****	****

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Elderwood at North Creek	01/2018	*****	***	*****	****

RHODE ISLAND

Elderwood of Scallop Shell at Wakefield	Current	*****	*****	*****	****
	12/2010	*****	*****	***	****
Elderwood at Riverside	Current	*****	*****	*****	****
	02/2014	*****	****	***	*****

VERMONT

Elderwood at Burlington	12/2018 Data 11/2018	****	***	***	****
-------------------------	-------------------------	------	-----	-----	------

Data: 12/2018

Note: Greyed out facilities are not applicable due to applicant's recent acquisition.

The applicants have stated that the CMS five-star quality rating system ratings (see below) for nursing facilities with 1 and 2 star overall ratings are attributable to several factors:

- Elderwood of Uihlein at Lake Placid: (1) facility was recently acquired and extensive renovations were required, (2) Administrator left in January 2017.
- Elderwood at Grand Island: (1) A 2016 G level citation reduced the health inspection rating, this impacts the overall rating, the health inspection domain was “froze” for a year, effective November 27, 2017, so the overall rating will not increase until the health inspection domain is updated.

The applicant states that the administrator returned in August 2017 to Elderwood of Uihlein at Lake Placid and instituted a quality assurance system and the administrator at Elderwood at Grand Island initiated changes in leadership.

Enforcement History

Elderwood at Ticonderoga:

- A federal CMP of \$6,633 was assessed for July 24, 2017 survey findings.
- A federal CMP of \$15,625 was assessed for July 24, 2017 survey findings.

Elderwood at Amherst:

- The facility was fined \$4,840 pursuant to Tag 686-G- Treatment/Services to prevent/Heal Pressure Ulcers. The facility had a Federal Comparative Survey on 05/11/18 with G level (Harm) deficiency plus D, E, and F level deficiencies. The CMP was for the Federal Comparative Survey only.

Elderwood at Grand Island:

- The facility was fined \$ 2,000 pursuant to a Stipulation and Order for survey ending November 2, 2018. A deficiency was found under NYCRR 483.12(b)(1) prohibit and prevent abuse, neglect and exploitation of residents and misappropriation of resident property. 483.12(b)(2) establish policies and procedures to investigate any such allegations.

Elderwood at Waverly:

- The facility was fined \$10,000 pursuant to a Stipulation and Order for survey ending November 19, 2018 for an Immediate Jeopardy (IJ) - F-678-Cardio-Pulmonary Resuscitation.

Elderwood at Williamsville:

- The Facility incurred a Civil Monetary Penalty of \$3,250 on 09/19/2017.

Elderwood Assisted Living at Waverly:

- The facility was fined \$2,800 pursuant to a Stipulation and Order. A deficiency was found under 18 NYCRR 487.7(f)(5), Resident Services, identified in two inspection reports dated 7/27/2016 and 11/21/2016.

Elderwood Assisted Living at Wheatfield:

- The facility was fined \$2,800 pursuant to Stipulation and Order ACF-17-029 issued July 5, 2017 for inspections dated 7/27/2016 and 11/11/2016. A deficiency was found under 18 NYCRR 487.7(f)(5), Resident Services.

Program Review

No changes in the program or physical environment are proposed in this application. The applicant will enter an administrative services agreement with Elderwood Administrative Services, LLC, which is jointly owned by Warren Cole and Jeffrey Rubin.

Conclusion

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

Financial Analysis

Asset Purchase Agreement

The applicant submitted an executed APA to acquire the RHCf operating and realty interests, to be effectuated upon PHHPC approval of this application. The terms are summarized below:

Date:	November 22, 2017
Purchaser:	Post Acute Partners Acquisition, LLC
Seller:	Menorah Campus, Inc.
Assets Transferred:	Inventory; right, title/interest of Seller to all furniture, furnishings, equipment, computers, machinery, mechanical/security systems, vehicles, office equipment; real property records; assumed contracts, all assumed admission agreements; facility licenses; trademarks, trade names, service marks, trade dress used in connection with operation of the facility; patient records, books and records; DOH settlement payments; all tangible and intangible personal property used in connection with operation/maintenance of the facility.
Excluded Assets:	Sellers bank accounts, cash, cash equivalents, securities, HUD replacement reserves, mortgage sinking fund, replacement/tax escrow reserves, accounts receivable, refunds/reimbursements; prepaid expenses, deposits; claims, disputes, litigation, insurance proceeds; employee benefit plans; non-transferrable or non-assignable permits/licenses; and seller's financial books/records.
Assumed Liabilities:	Accrued paid time off for employees transitioning to the new operator.
Purchase Price: *	\$18,850,000 (operation for \$4,850,000 and real property for \$14,000,000)
Payment of Purchase Price:	\$1,500,000 deposit held in escrow (applicable to the APA in total, which includes acquisitions other than the RHCf) to be applied to the overall purchase price at closing. Balance due at closing.

**The aggregate purchase price for the assets is \$46,750,000 of which \$18,850,000 is allocated to the sale of the RHCf operations and real property. The purchase price for the RHCf will be met with an \$18,850,000 loan at 6% interest for a ten-year term. Capital Funding, LLC has provided a letter of interest.*

The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement 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 December 6, 2018, the facility had no outstanding Medicaid overpayment liabilities.

Assignment of Rights

The applicant submitted a draft Assignment of Rights for the assignment of the RHCf’s assets associated with the APA, shown below:

Assignor:	Post Acute Partners Acquisition, LLC
Assignee/Operator:	2700 North Forest Road Operating Company, LLC
Assignee/Real Property:	2700 North Forest Road, LLC
RHCf Operating Assets Transferred:	Assets associated with the operation of the skilled nursing facility of Rosa Coplon Jewish Home and Infirmary, Inc.
Real Estate Assets Transferred:	Assets associated with the real property with respect to the facility located at 2700 North Forest Road, Getzville, NY
Assignment Fee:	\$10

Health Care Facility Lease Agreement

Premises:	80-bed skilled nursing facility located at 2700 North Forest Road, Getzville, NY
Landlord:	2700 North Forest Road, LLC
Tenant:	2700 North Forest Road Operating Company, LLC
Term:	10 years with four (4) extension terms of five (5) years each at tenant’s discretion.
Rent:	An amount not less than the amounts necessary to cover any debt service of the landlord, its affiliates, or parent, and related to the property, estimated at \$2,495,120 per year.
Provisions:	Triple Net

The lease arrangement is a non-arm’s length agreement. The applicant submitted an original affidavit attesting to the relationship between the landlord and the operating entity.

Administrative Services Agreement

Provider:	Elderwood Administrative Services, LLC
Company:	2700 North Forest Road Operating Company, LLC d/b/a Elderwood at Getzville
Services Provided:	Assistance including: accounts receivable; billing; accounts payable; payroll; budgets; financial reporting; regulatory reports; bookkeeping; human resources; information technology; marketing and business development; reimbursement; ancillary and other services; insurance and risk management; and corporate compliance.
Term:	From Effective Date with automatic 1-year renewals.
Fee:	\$82,009 per month with periodic adjustments based on a consideration of the fees, scope of operations, changes in purchasing power, services being performed, size of non-professional workforce and the expenses of the provider, reflecting the fair market value.

Elderwood Administrative Services, LLC is owned by Warren Cole and Jeffrey Rubin, each at 50%. The administrative services provider provided an attestation acknowledging that there are statutory and regulatory requirements that cannot be delegated and that 2700 North Forest Road Operating Company, LLC will maintain responsibility and authority over the daily management and operations of the facility.

Operating Budget

The applicant provided the current year (2017), and first and third year operating budgets after the change in ownership, in 2018/19 dollars, summarized below:

Inpatient Revenue	Current Year		Year One		Year Three	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Medicaid-FFS	\$243.97	\$5,913,111	\$198.08	\$2,964,267	\$198.08	\$2,964,267
Medicaid-MC	\$200.14	\$2,305,614	\$191.12	\$3,488,010	\$191.12	\$3,488,010
Medicare-FFS	\$592.54	\$1,871,849	\$555.05	\$3,646,707	\$555.05	\$3,646,707
Medicare-MC	\$369.59	\$2,332,838	\$0	\$0	\$0	\$0
Commercial-FFS	\$256.04	\$932,484	\$387.22	\$3,816,019	\$387.22	\$3,816,019
Private/Other	\$343.93	\$3,915,686	\$384.47	\$4,911,572	\$384.47	\$4,911,572
Other *		<u>\$86,654</u>		<u>\$604,096</u>		<u>\$604,096</u>
Subtotal Inpatient		\$17,358,236		\$19,430,671		\$19,430,671
Outpatient Rev.		<u>\$56,136</u>		<u>\$69,072</u>		<u>\$69,072</u>
Total Revenue		\$17,414,372		\$19,499,743		\$19,499,743
<u>Inpatient Expense</u>						
Operating	\$293.32	\$17,673,760	\$247.80	\$15,466,249	\$247.41	\$15,441,917
Capital	<u>\$27.55</u>	<u>\$1,660,027</u>	<u>\$56.41</u>	<u>\$3,520,686</u>	<u>56.41</u>	<u>\$3,520,686</u>
Subtotal Inpatient	\$320.87	\$19,333,787	\$304.21	\$18,986,935	\$303.82	\$18,962,603
Outpatient Exp.		<u>\$119,469</u>		<u>\$62,311</u>		<u>\$62,311</u>
Total Expense		\$19,453,256		\$19,049,246		\$19,024,914
Net Income/(Loss)		<u>(\$2,038,884)</u>		<u>\$450,497</u>		<u>\$474,829</u>
Patient Days		60,255		62,415		62,415
Occupancy		91.71%		95.00%		95.00%

* Other revenue includes: NYS Cash Receipts Assessment of \$510,414 (discretely identified) in years one and three, with the remaining \$93,682 attributable to TV Rental, Medical Records, Barber & Beauty, Cafeteria, Guest Meals, Misc. Revenue, and Meals on Wheels.

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on the applicant's experience operating other NYS RHCs. Medicaid revenue is based on the facility's July 1, 2017 Medicaid rate. All other rates are based on the facility's current rates of payment by payor.
- Outpatient Clinic relates to the provision of therapy services, which are part of the overall operations of the nursing home.
- Staff reductions are anticipated for the following categories: LPNs (6.34 FTEs), Aides/Orderlies (1.29 FTEs), Housekeeping/Food (7.55 FTEs), Clinic (0.35 FTEs). Staff increases are budgeted for the following: RNs (6.32 FTEs), Social Workers/Psychologists (3.01 FTEs), PT/OT/Speech Therapists and Assistants (8.15 FTEs), Clerical and Other Administrative (4.58 FTEs), Management and Supervision (1.79 FTEs).
- Expenses are based on current operations, the experience of applicant members and adjusted for anticipated increases related to rent, medical supply and utilities costs. Operating expenses were adjusted down to reflect decreases in wages and benefits cost for FTE reductions, professional fees, purchased services and interest expense.
- Breakeven utilization is projected at approximately 93.08% for Year One.

- Utilization by payor source is as follows:

<u>Payor</u>	<u>Current</u>	<u>Years One & Three</u>
Medicaid-FFS	40.22%	23.98%
Medicaid-MC	19.12%	29.24%
Medicare FFS	5.24%	10.53%
Medicare MC	10.48%	0.00%
Commercial	6.04%	15.79%
Private Pay/Other	<u>18.90%</u>	<u>20.46%</u>
Total	100%	100%

Capability and Feasibility

PAP will acquire the RHCf operating interest and real property for \$18,850,000. The purchase price will be met with an \$18,850,000 loan from Capital Funding, LLC at the above stated terms. PAP will assign its rights and title to the RHCf operations and real property to 2700 North Forest Road Operating Company, LLC and 2700 North Forest Road, LLC, respectively, for \$10. There are no project costs associated with this proposal.

The working capital requirement is estimated at \$3,174,874 based on two months of first year expenses. The applicant will finance \$1,587,437 via a working capital loan for a five-year term at 4% interest. Capital Funding, LLC has provided a letter of interest. The remaining \$1,587,437 will be provided via equity from the personal resources of the proposed members of PAP. BFA attachment A, the proposed members' net worth, shows sufficient resources to meet all equity requirements.

The submitted budget projects a net income of \$450,497 and \$474,829 for the first and third years, respectively. BFA attachment H is a sensitized budget based on the current year occupancy and the proposed rates by payor with Medicare Managed Care held to current year rate as utilization under this payor is not anticipated going forward. Based on the sensitized budget, the operation would experience a net loss of \$1,463,404 and \$1,439,071 for the first and third years, respectively. Though the RHCf's occupancy rate declined to 91.71% in 2017, the facility's average occupancy from 2013-2016 was 95.2%. The applicant indicated that occupancy was 96.1% as of January 31, 2018, and 95.0% as of November 21, 2018, which supports the applicant's belief that 95% occupancy can be sustained going forward.

BFA attachment D is 2700 North Forest Road Operating Company, LLC d/b/a Elderwood at Getzville's pro forma balance sheet, which shows the operating entity will start with \$1,587,437 in equity. BFA attachment E presents 2700 North Forest Road, LLC pro forma balance sheet, which shows the realty entity will start with \$0 in equity.

BFA attachment F is Rosa Coplon Jewish Home and Infirmary's 2015-2017 certified and their internal financial statements as of September 30, 2018. As shown, the facility generated both average negative working capital and net asset positions and had an average net loss of \$1,260,839 for the period 2015-2016. In 2017, the facility had a negative working capital position, a negative net asset position and generated a loss of \$2,038,884. In 2018 the facility had a positive working capital position (resulting from the reclassification of a "Due to Parent/Subsidiary/Affiliate" liability from current to long-term liability status), a negative net asset position, and generated a net loss of \$1,201,591. The losses were due to Rosa Coplon's expense structure primarily related to higher staffing due to campus shared services and contracted third party labor cost allocations, transaction related fees such as legal and professional fees, nursing agency staffing, and corporate overhead. To generate positive income going forward, PAP intends to remove agency and contract labor costs by bringing staffing in-house (including dietary, housekeeping and maintenance), eliminate corporate overhead by utilizing PAP's existing management company to provide corporate level services, and remove one-time and non-recurring transactional expenses (e.g., professional and legal fees will be eliminated and general liability insurance will be transitioned to PAP's corporate-wide plan).

The 2015-2017 negative working capital positions and the negative net asset positions for all periods shown were caused by a "Due to Parent/Subsidiary/Affiliate" liability related to servicing corporate-wide debt and funding operating shortfalls at other facilities on the campus. The liability grew to \$17.3 as of September 2018 and was reclassified as a long-term liability. This liability will not be acquired by PAP

upon change of ownership. PAP will fund cash on the balance sheet at closing, which will result in a positive net asset position.

BFA attachment G, a financial summary of affiliated RHCs, shows the facilities maintained positive net income from operations for 2015 through September 30, 2018, except for the following:

- Elderwood at Grand Island (2850 Grand Island Boulevard Operating Company, LLC) demonstrates average negative working capital for the period shown but has achieved a positive working capital position for the period January 1, 2018 through September 30, 2018. The applicant attributes the negative working capital to the timing of short-term working capital needs due to the timing of payroll and collections. The facility had a nominal loss for the period shown, attributed to increased prescription drug costs. The applicant anticipates improved results by calendar year end.
- Elderwood at Cheektowaga (225 Bennett Road Operating Company, LLC) showed an average negative working capital as of September 30, 2018. The applicant attributes the negative working capital to the timing of short-term working capital needs due to the timing of payroll and collections. While Elderwood at Cheektowaga demonstrates positive operating income through September 30, 2018, the facility experienced a net loss in 2015, which was attributed to a lower than normal census.
- Elderwood at Wheatfield (2600 Niagara Falls Boulevard Operating Company, LLC) shows average positive net income, a negative net asset position and negative working capital. Working capital and Net assets were negative from reclassifying the mortgage from long term to current.
- Elderwood of Uihlein at Lake Placid (185 Old Military Road Operating Company, LLC) shows positive net assets, negative working capital and net income positions. The facility was acquired in late 2016. There are extensive plans to renovate the facility and improve operations. The facility experienced a loss in 2017 and 2018 due to the construction timing and time to ramp up short-term to achieve a higher quality census.
- Elderwood at Hornell (1 Bethesda Drive Operating Company, LLC) shows average positive net income and net asset positions and a negative working capital position for 2017 through September 30, 2018. The negative working capital was due to the temporary shut-down of the sub-acute unit in early 2017 due to a leaking roof, which resulted in lower than expected occupancy. The January 1, 2018 through September 30, 2018 negative working capital position is related to the timing of short-term needs, such as the timing of when payroll is paid and insurance payments received.

The applicant notes the facilities have access to revolving credit lines that cover temporary negative working capital balances.

Financial statements for Elderwood of Lakeside at Brockport, Elderwood at Lockport, Elderwood at Ticonderoga and Elderwood at North Creek were not evaluated as the applicant was not established as the operator of the facilities until 2017 or later.

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

Attachments

BFA attachment A	Net worth summary, members of Post Acute Partners Acquisition, LLC
BFA attachment B	Organizational Chart
BFA attachment C	Real Property Members of 2700 North Forest Road, LLC
BFA attachment D	Pro Forma Balance Sheet, 2700 North Forest Road Operating Company, LLC
BFA attachment E	Pro Forma Balance Sheet, 2700 North Forest Road, LLC
BFA attachment F	Financial Summary, 2015-9/30/2018 Rosa Coplon Jewish Home and Infirmary
BFA attachment G	Financial Summary, 2015-9/30/2018 affiliated nursing home facilities
BFA attachment H	Sensitized Years One and Three Budget

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 14th day of February 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish 2700 North Forest Road Operating Company, LLC as the new operator of a 180-bed residential health care facility located at 2700 North Forest Road, Getzville, currently operated by Rosa Coplon Jewish Home and Infirmary, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

181059 E

2700 North Forest Road Operating Company,
LLC d/b/a Elderwood at Getzville

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 an executed loan agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed Assignment of Rights, acceptable to the Department of Health. [BFA]
5. Submission of an executed Health Care Center Facility Lease, acceptable to the Department of Health. [BFA]
6. Submission of an executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
7. Submission of the applicant's executed Restated Articles of Organization, acceptable to the Department. [CSL]
8. Submission of the applicant's executed Amended Operating Agreement, acceptable to the Department. [CSL]
9. Submission of the applicant's executed and amended Lease Agreement, acceptable to the Department. (CSL)
10. Submission of the applicant's executed and amended Administrative Services Agreement, acceptable to the Department. [CSL]
11. Submission of the executed Application of Authority to Do Business in the State of New York for the 2700 North Forest Road Operating Holdco, LLC, acceptable to the Department. [CSL]
12. Submission of the executed Operating Agreement of 2700 North Forest Road Operating Holdco, LLC, acceptable to the Department. (CSL)
13. Submission of the applicant's executed Asset Purchase Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



Project # 181390-E
Warren Center for Rehabilitation and Nursing

Program: Residential Health Care Facility
Purpose: Establishment

County: Warren
Acknowledged: June 1, 2018

Executive Summary

Description

Warren Operations Associates LLC d/b/a Warren Center for Rehabilitation and Nursing, a New York limited liability company that operates the 80-bed, proprietary, Article 28 residential health care facility (RHCF) located at 42 Gurney Lane, Queensbury (Warren County), requests approval to transfer 51% ownership interest in the company from one existing member to one new member. The current members of Warren Operations Associates LLC are David Greenberg (95%) and Shira Greenberg (5%). Upon approval of this application, David Greenberg will transfer 51% of his ownership interest to new member Kenneth Rozenberg. There will be no change in beds or services provided, and the lease agreement and consulting services agreement will remain unchanged. The realty will also remain unchanged.

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

Table with 2 columns: Name, Percentage. Rows: Kenneth Rozenberg (51%), David Greenberg (44%), Shira Greenberg (5%).

Kenneth Rozenberg has ownership interest in numerous New York State RHCFS. BFA Attachment E provides a financial summary of his affiliated RHCFS, and BFA Attachment F provides a listing of his recently acquired nursing homes and pending RHCF acquisitions.

OPCHSM Recommendation

Approval

Need Summary

There will be no Need recommendation of this application.

Program Summary

The individual background review indicates the proposed member has met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Summary

There are no project costs associated with this application. The applicant will purchase 51% membership interest at \$10 for the assignment. The Year One budget is as follows:

Table with 2 columns: Category, Amount. Rows: Revenues (\$7,731,810), Expenses (7,685,111), Gain/(Loss) (\$46,699).

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval conditional upon:

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

Council Action Date

February 14, 2019

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Warren Center for Rehabilitation and Nursing	Same
Address	42 Gurney Lane Queensbury NY 12804	Same
RHCF Capacity	80	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Proprietary	Same
Class of Operator	Voluntary	Same
Operator	Warren Operations Associates, LLC	Same
	David Greenberg 95%	David Greenberg 44%
	Shira Greenberg 5%	Shira Greenberg 5%
		*Kenneth Rozenberg 51%
		<i>*Managing member</i>

Character and Competence – Assessment

Experience

Kenneth Rozenberg is a New York licensed nursing home administrator, in good standing, and licensed paramedic, in good standing. He is employed as CEO of Bronx Center for Rehabilitation and Health Care since January 1998, and the CEO of Centers Health Care since 2005. Mr. Rozenberg discloses the following health facility interests:

Wartburg Lutheran Home for the Aging (Acquired as receiver)	06/2008 to 05/2011
Wartburg Nursing Home (Acquired as receiver)	06/2008 to 05/2011
Stonehedge Health and Rehabilitation Center – Rome	07/2008 to 04/2011
The Grand Rehabilitation and Nursing at Rome	05/2011 to 03/2017
Stonehedge Health and Rehabilitation Center – Chittenango	07/2008 to 04/2011
The Grand Rehabilitation and Nursing at Chittenango	05/2011 to 07/2017
Holliswood Care Center	11/2010 to 04/2013
Waterfront Health Care Center (Acquired as receiver)	08/2011 to 12/2012
Ellicott Center for Rehabilitation and Nursing	12/2012 to present
Williamsbridge Manor	11/1996 to present
Bronx Center for Rehabilitation & Health Care	10/1997 to present
University Nursing Home	08/2001 to present
The Grand Rehabilitation and Nursing at Pawling	08/2004 to 03/2016
Brooklyn Center for Rehabilitation and Healthcare	05/2007 to present
Cooperstown Center for Rehabilitation and Nursing	01/2018 to present
The Grand Rehabilitation and Nursing at Queens	10/2004 to 03/2016
Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bushwick Center for Rehabilitation and Health Care	05/2011 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	04/2013 to present
Corning Center for Rehabilitation and Healthcare	07/2013 to present
Washington Center for Rehabilitation and Healthcare	02/2014 to present
Essex Center for Rehabilitation and Healthcare	03/2014 to present
Steuben Center for Rehabilitation and Healthcare	07/2014 to present
Daughters of Jacob Nursing Home (Acquired as receiver)	08/2013 to 09/2015
Triboro Center for Rehabilitation and Nursing	09/2015 to present
Indian River Rehabilitation and Nursing Center	12/2014 to 09/2017

Granville Center for Rehabilitation and Nursing	10/2017 to present
Delaware Nursing & Rehabilitation (Acquired as receiver)	06/2014 to 12/2015
Buffalo Center for Rehabilitation and Nursing (12/2015 to present
Hope Center for HIV and Nursing Care	04/2015 to present
Northwoods Rehabilitation and Nursing Center at Moravia	11/2014 to 03/2016
Beth Abraham Center for Rehabilitation and Nursing	03/2017 to present
Martine Center for Rehabilitation and Nursing	03/2017 to present
Far Rockaway Center for Rehabilitation and Nursing	04/2017 to present
Troy Center for Rehabilitation and Nursing	09/2017 to present
Carthage Center for Rehabilitation and Nursing	09/2017 to present
Schenectady Center for Rehabilitation and Nursing	09/2017 to present
Slate Valley Center for Rehabilitation and Nursing	09/2017 to present
Onondaga Center for Rehabilitation and Nursing	09/2017 to present
New Paltz Center for Rehabilitation and Nursing	09/2017 to present
Glens Falls Center for Rehabilitation and Nursing	09/2017 to present
Utica Center for Rehabilitation and Nursing	01/2018 to present
 <u>Rhode Island Nursing Homes</u>	
Bannister Center for Rehabilitation and Health Care	02/2016 to present
Park View Center for Rehabilitation and Healthcare	05/2016 to 07/2018
Kingston Center for Rehabilitation and Nursing	10/2016 to present
Oak Hill Center for Rehabilitation and Healthcare	07/2017 to present
 <u>Ambulance Company</u>	
Senior Care Emergency Ambulance Services, Inc. (EMS)	06/2005 to present
 <u>Licensed Home Care Services Agency</u>	
Amazing Home Care (LHCSA)	05/2006 to present
 <u>Managed Long Term Care Company</u>	
Centers Plan for Healthy Living (MLTC)	01/2013 to present
 <u>Dialysis Centers</u>	
Bronx Center for Renal Dialysis	01/2011 to present
Bushwick Center for Renal Dialysis	06/2014 to present
 <u>Adult Homes</u>	
Argyle Center for Independent Living (60%)	02/2014 to present
 <u>Certified Home Health Agencies</u>	
Centers Home Health Revival-Bronx	07/2008 to present
Centers Home Health Revival-Buffalo	09/2016 to present
 <u>Approved but not yet completed acquisitions</u>	
Nanuet Center for Rehabilitation and Nursing	Pending
Haverstraw Center for Rehabilitation and Nursing	Pending
Monsey Center for Rehabilitation and Nursing	Pending
 <u>Healthcare consulting companies</u>	
Centers Health Care	Centers Medical Supply
Centers Skilled Nursing	Centers Business Office
Centers Managed Care	Centers Care Management
Centers Home Care	Centers Urgent Care
Centers Care Solutions	Center for Allied Health Education

Quality Review

Evaluation of the quality of care for facilities currently owned by Mr. Rozenberg (proposed new member of Warren Center) is presented below. This evaluation relies on the CMS five-star quality rating system ratings and survey findings.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Fulton Center for Rehabilitation and Healthcare	Current	*	*	****	***
	04/2012 Data 08/2012	**	*	**	****
Corning Center for Rehabilitation and Healthcare	Current	*	*	**	***
	07/2013 Data 09/2013	**	*	***	****
Ellicott Center for Rehabilitation and Nursing	Current	*	*	****	***
	12/2012	**	*	**	****
Buffalo Center for Rehabilitation and Nursing	Current	*	*	****	***
	12/2015	*	*	****	**
Richmond Ctr for Rehab and Specialty Healthcare	Current	**	*	*****	****
	04/2012 Data 06/2012	****	****	***	****
Washington Center for Rehab and Healthcare	Current	**	*	****	****
	02/2014	**	*	***	****
Steuben Center for Rehabilitation and Healthcare	Current	**	**	****	**
	07/2014	*	*	***	***
Essex Center for Rehabilitation and Healthcare	Current	***	**	*****	***
	03/2014	**	**	****	**
Holliswood Ctr for Rehabilitation and Healthcare	Current	***	***	*****	*
	11/2010	*****	*****	*****	*
Bronx Center for Rehabilitation & Health Care	Current	***	**	*****	**
	10/1997 Data 12/2009	**	***	****	*
Triboro Center for Rehabilitation and Nursing	Current	***	**	*****	***
	08/2013	**	***	****	*
Beth Abraham Center for Rehabilitation and Nursing	Current	***	**	*****	**
	03/2017	****	****	*****	*

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Far Rockaway Center for Rehabilitation and Nursing	Current	***	**	*****	**
	04/2017	*	*	***	**
Carthage Center for Rehabilitation and Nursing	Current	***	**	*****	**
	09/2017 Data 01/2018	**	**	****	***
Glens Falls Center for Rehabilitation and Nursing	Current	***	**	*****	***
	09/2017	*	**	****	*
Williamsbridge Manor for Rehabilitation and Nursing	Current	****	***	*****	**
	11/1996 Data 12/2009	*	**	**	*
Brooklyn Center for Rehab and Residential Health Care	Current	****	****	*****	*
	05/2007 Data 05/2009	**	***	***	*
Bushwick Center for Rehabilitation and Health Care	Current	*****	***	*****	****
	05/2011	**	*	*****	***
Troy Center for Rehabilitation and Nursing	Current	****	***	****	***
	09/2017	****	***	****	****
Schenectady Center for Rehabilitation and Nursing	Current	****	***	*****	***
	09/2017	***	***	*****	*
Slate Valley Center for Rehabilitation and Nursing	Current	****	***	*****	***
	09/2017	*	*	**	**
New Paltz Center for Rehabilitation and Nursing	Current	****	***	****	****
	09/2017	***	***	****	***
University Center for Rehabilitation and Nursing	Current	*****	*****	*****	**
	08/2001	*****	*****	*****	**
Boro Park Center for Rehabilitation and Healthcare	Current	*****	*****	*****	***
	05/2011	*****	*****	*****	***
Hope Center for H I V and Nursing Care	Current	*****	****	*****	***
	04/2015	*****	*****	*****	***
Martine Center for Rehabilitation and Nursing	Current	*****	*****	*****	***
	03/2017	*****	*****	*****	*

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Onondaga Center for Rehabilitation and Nursing	Current	**	*	***	****
	09/2017	**	*	***	****
Granville Center for Rehabilitation and Nursing	Current	**	**	****	***
	12/2014	*	*	***	***
Cooperstown Center for Rehabilitation and Nursing	Current	*	*	***	***
	Date 09/2017	*	*	***	*
Oneida Center for Rehabilitation and Nursing	01/2018	**	*	****	****

Rhode Island

Bannister Center for Rehabilitation and Health Care	Current	*	*	***	***
	02/2016	*	*	****	*
Kingston Center for Rehabilitation and Health Care	Current	**	*	****	****
	10/2016	**	**	**	***
Oak Hill Health & Rehabilitation Center	Current	**	*	**	****
	07/2017	*	*	*	*****

Data date: 12/2018

Notes: Greyed out facility reflects recent acquisition.

Special Focus Facilities

Cooperstown Center for Rehabilitation and Nursing was designated a special focus facility (SFF) on 11/29/2016 and remains in this status. As of December 2018, CMS indicates this facility has been in special focus for 25 months, was last surveyed 8/22/2018, and is listed as having shown improvement. In February 2017 the previous owner hired Centers Health Care to provide consulting services. Mr. Rozenberg acquired ownership in January 2018 and implemented the following measures to improve the facility: hired an experienced DON; provided Centers Health Care clinical and operational support; and improved staffing recruitment.

Oak Hill Center for Rehabilitation (Rhode Island) was designated a SFF in June 2017 and remains in this status. As of December 2018, CMS indicates this facility has been in special focus for 18 months, was last surveyed 6/18/2018, and is listed as having not shown improvement. Mr. Rozenberg acquired ownership in July 2017.

Granville Center for Rehabilitation and Nursing recently graduated from being designated a Special Focus Facility. The issues surrounding its designation as a SFF predated the ownership disclosed in the CON.

Low CMS Overall Star Ratings (1 or 2 stars)

The applicant has stated that the CMS five-star quality rating system ratings for nursing facilities with 1 and 2 star overall ratings are attributable to several factors, including:

- (1) The proposed member has a minority ownership in the Rhode Island nursing homes and states that he does not have any control over the day-to-day operations.
- (2) The proposed member states that some of the facilities, Granville Center, Onondaga Center, Oneida Center, and Cooperstown Center, were recently acquired and the ratings reflect prior operator performance. However, it should be noted that Mr. Rozenberg acquired a 9% membership interest in the predecessor operator of Granville Center prior to becoming an 85% member in the current operator.
- (3) The applicant encountered other factors, including a lack of qualified staff in geographic location proximate to some of the facilities.

The applicant states that while overall star ratings are low, quality measure ratings are not, and that the overall rating does not accurately reflect quality of care. The applicant also indicates that “investments” have been made in facility clinical staff, and that Mr. Rozenberg’s Centers Health Care company has provided clinical “investments” in these facilities as well.

Enforcement History

Bannister Center for Rehabilitation and Healthcare (Rhode Island):

- A federal CMP of \$13,627 was assessed for July 19, 2017 survey findings.

Oak Hill Center for Rehabilitation and Health Care (Rhode Island) - Special Focus Facility:

- An Immediate Jeopardy and Substandard Quality of Care finding was issued on December 29, 2017.
 - A federal CMP of \$144,978 was assessed for December 29, 2017 survey findings.
- A Substandard Quality of Care finding was issued on January 11, 2018.

Bronx Center for Rehabilitation and Health Care:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-07-079 issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined \$4,000 pursuant to Stipulation and Order NH-11-047 issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.
 - A federal CMP of \$36,450 was assessed for the April 16, 2010 survey findings.

Essex Center for Rehabilitation and Health Care:

- The facility was fined \$20,000 pursuant to Stipulation and Order NH-18-039 issued September 17, 2018 for surveillance findings on June 14, 2018. Deficiencies were found under 10 NYCRR 415.3(e)(2)(ii)(b) Residents’ Right: Right to Clinical Care and Treatment and 415.12(i)(1) Quality of Care: Nutrition.
- The facility incurred a Civil Monetary Penalty of \$13,395.25 from 03/04/18 to 03/23/18.
- The facility had an Immediate Jeopardy from a complaint survey on 08/15/2015 for which resulted in a fine \$6,000 pursuant to a Stipulation and Order NH-16-116 issued March 9, 2016 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.

Cooperstown Center for Rehabilitation and Nursing, Special Focus Facility:

- A federal CMP of \$21,459 was assessed for August 22, 2017 survey findings.

Fulton Center for Rehabilitation and Healthcare:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2013, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
 - A federal CMP of \$975 was assessed for the June 11, 2012 survey findings.
 - A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
 - A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-12-39 issued on September 17, 2012 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

Northwoods Rehabilitation and Nursing Center at Moravia:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-066 issued January 13, 2016 for surveillance findings on February 6, 2015. Deficiencies were found under 10 NYCRR 415.26 Administration.

New Paltz Center for Rehabilitation and Nursing:

- A federal CMP of \$6,845 was assessed for January 29, 2018 survey findings.

Onondaga Center for Rehabilitation and Nursing:

- The facility was fined \$22,000 pursuant to Stipulation and Order NH 18-025 issued on June 28, 2018 for surveillance findings on February 9, 2018. Deficiencies were found under 415.12(c)(1)(2), Quality of Care: Pressure Sores 415.12(j) Quality of Care Hydration and 415.12(m)(2) Quality of Care: Medication Error
 - A federal CMP of \$26,393 was assessed for February 9, 2018 survey findings.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH 18-046 issued on November 23, 2018 for surveillance findings on August 3, 2018. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.
- The facility was fined \$ 2,000 pursuant to Stipulation and Order NH 18-047 issued on November 23, 2018 for surveillance findings on August 31, 2018. Deficiencies were found under 10 NYCRR 415.12 Quality of Care(h)(1): Accidents

Richmond Center for Rehabilitation and Specialty Healthcare:

- The facility was fined \$18,000 pursuant to Stipulation and Order NH-16-201 issued October 24, 2016 for surveillance findings on April 27, 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 27, 2012 survey findings.
- The facility was fined \$2,000 pursuant to 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 March 9, 2016 for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12 and 415.12(b)(2)(iii) Quality of Care: Accidents.
- The facility was fined \$12,000 pursuant to Stipulation and Order NH-17-051 issued September 11, 2017 for surveillance findings on June 9, 2017. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential and 415.12(h)(2) Resident Assessment.
- The facility incurred a Civil Monetary Penalty of \$7,803.25 from 06/09/2017 to 06/09/2017.

The Grand Rehabilitation and Nursing at Chittenango:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-10-053 issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision and 415.26(b)(3)(4) Governing Body.
 - A federal CMP of \$5,200 was assessed for the October 22, 2009 survey findings.
- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-12-010 issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) and Quality of Care: Catheters.
- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.

The Grand Rehabilitation and Nursing at Rome:

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

Washington Center for Rehabilitation and Healthcare:

- 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.

Waterfront Center for Rehabilitation and Healthcare:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-13-014 issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.
 - A federal CMP of \$1,625 was assessed for the September 27, 2011 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued for surveillance findings on May 23, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(2) Quality of Care: Pressure Sores.
- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-17-046 issued August 16, 2017 for surveillance findings on May 11, 2017. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.
 - A federal CMP of \$11,053 was assessed for May 11, 2017 survey findings.

Williamsbridge Manor Nursing Home:

- The facility was fined \$1,000 pursuant to a Stipulation and Order NH-08- issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

Alpine Home Health Care

- A fine of \$1,000 was issued on February 3, 2015 for not responding to Emergency Preparedness survey.

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 violations and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

Project Review

No changes in the program or physical environment are proposed in this application. The facility contracts for administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services with Centers Health Care, Inc. Kenneth Rozenberg is CEO and 50% owner of Centers Health Care. Centers Health Care utilizes a regional office type approach with central corporate and local resources in order to provide services and clinical staff to their clients.

Conclusion

No changes in the program or physical environment are proposed in this application. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Assignment of Membership Interests Agreement

The applicant has submitted an executed Assignment of Membership Interests Agreement::

Date:	May 9, 2018
Company:	Warren Operations Associates LLC
Assignor:	David Greenberg
Assignee:	Kenneth Rozenberg
Assignment:	51% of all the issued and outstanding membership and ownership interests in Warren Operations Associates LLC, free and clear of all liens and encumbrances.
Assignment Price:	\$10

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and 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 the liability and responsibility. As of September 14, 2018, there are no outstanding Medicaid liabilities or assessments.

Operating Budget

The applicant has submitted an operating budget, in 2018 dollars:

	<u>Current Year</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total (2017)</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues</u>				
Commercial FFS	\$454.54	\$40,909	\$454.54	\$40,909
Medicaid FFS	\$207.92	2,719,977	\$221.98	2,916,595
Medicaid MC	\$371.12	43,050	\$371.12	43,792
Medicare FFS	\$505.66	1,385,006	\$505.66	1,390,565
Medicare MC	\$385.77	923,544	\$385.77	927,777
Private Pay	\$371.07	994,084	\$371.07	998,549
Medicaid (MLTC)	\$206.67	1,407,199	\$206.67	1,413,623
Other Revenue		<u>1,995</u>		<u>0</u>
Total Revenue		\$7,515,764		\$7,731,810
<u>Expenses</u>				
Operating	\$243.71	\$6,801,802	\$242.64	\$6,801,802
Capital	<u>21.78</u>	<u>607,887</u>	<u>31.50</u>	<u>883,309</u>
Total	\$265.49	\$7,409,689	\$274.14	\$7,685,111
Net Income		<u>\$106,075</u>		<u>\$46,699</u>

	<u>Current Year</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total (2017)</u>	<u>Per Diem</u>	<u>Total</u>
Patient Days		27,909		28,033
Occupancy		95.58%		96.0%

The following is noted with respect to the submitted budget:

- Medicaid revenue is based on the facility's current 2018 Medicaid Regional Pricing rate.
- The Private Pay, Medicare, Medicaid Managed Care, MLTC and commercial rates are based on the facility's actual 2017 rates.
- The current year reflects the facility's 2017 revenues and expenses.
- Breakeven utilization in the first year is projected at 95.42% or 27,864 patient days.
- Utilization by payor source for the current and first year is as follows:

<u>Payor</u>	<u>Current & Year One</u>
Medicaid FFS	46.87%
Medicaid MC	0.42%
Medicare FFS	9.81%
Medicare MC	8.58%
Medicaid(MLTC)	24.40%
Commercial FFS	0.32%
Private Pay	9.60%

Capability and Feasibility

There are no project costs associated with this application. The applicant will purchase 51% membership interest at \$10 for the assignment. The working capital requirement of \$1,280,852, based on two months of the first year's expenses, will be satisfied from existing facility funds and proposed members' equity. BFA Attachment C shows that as of June 30, 2018, cash plus accounts receivables totals \$2,028,061, minus accounts payable and accrued expenses of \$1,625,976 results in \$402,085 available to cover working capital needs. The remaining \$878,767 will be provided from proposed members' equity. Kenneth Rozenberg has sufficient equity to meet the equity requirements for this project as shown on BFA Attachment A.

BFA Attachment D shows the pro forma balance sheet as of the first day of operation, which indicates a positive equity position of \$1,700,340.

The submitted budget indicates a net income of \$46,699 for the first year subsequent to the change in membership interest. The budget appears reasonable.

BFA Attachment B provides a financial summary of Warren Center for Rehabilitation and Nursing for 2015 through 2017. The facility had a positive equity position and a negative working capital position in 2017, which was due to accrued payroll. Also, the facility had a net operating income of \$104,081 for 2017. BFA Attachment C is a financial summary of Warren Center for Rehabilitation and Nursing as of June 30, 2018, which shows the facility had a positive equity position, working capital position and a net operating income of \$192,775.

BFA Attachment E is the financial summary of the affiliated RHCs, which indicates the facilities maintained a positive income from operations for the periods shown except for Waterfront Center for Rehab that had a 2017 net operating loss due to prior year negative rate adjustments.

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

Attachments

BFA Attachment A	Personal Net Worth Statement of Proposed Member
BFA Attachment B	2015-2017 Financial Summary – Warren Center for Rehabilitation and Nursing
BFA Attachment C	Warren Center for Rehabilitation and Nursing as of June 30, 2018
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	Financial Summary - Affiliated RHCs
BFA Attachment F	Summary of Kenneth Rozenberg's newly acquired RHCs

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of section 2801-a of the Public Health Law, on this 14th day of February 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby approves the following application to transfer 51 percent interest in Warren Operations Associates LLC from one existing member to one new member, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

181390 E

FACILITY/APPLICANT:

Warren Center for Rehabilitation
and Nursing

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]



Project # 182218-E
Westgate Operations Associates, LLC d/b/a Rochester Center for Rehabilitation and Nursing

Program: Residential Health Care Facility
Purpose: Establishment

County: Monroe
Acknowledged: November 7, 2018

Executive Summary

Description

Westgate Operations Associates, LLC d/b/a Rochester Center for Rehabilitation and Nursing, a New York limited liability company, requests approval to be established as the new operator of Creekview Nursing and Rehabilitation Center (Creekview), a 124-bed, proprietary, Article 28 residential health care facility (RHCF) located at 525 Beahan Road, Rochester (Monroe County). Westgate Nursing Home, Inc. is the current operator of the RHCF. Westgate Building, LLC, whose sole member is Philip Friedman, is the real property owner. There will be no change in beds or services provided.

On October 15, 2018, Westgate Nursing Home, Inc. entered into an Asset Purchase Agreement (APA) with Westgate Operations Associates, LLC for the sale and acquisition of the operating interests in the RHCF for a purchase price of \$1,000,000. Concurrently, Westgate Realty Associates, LLC, whose members are Daryl Hagler and Jonathan Hagler, entered into a Real Property Purchase Agreement (RPPA) with Westgate Building, LLC for the sale and acquisition of the RHCF's real property for a purchase price of \$9,000,000. The APA and RPPA will close simultaneously upon Public Health and Health Planning Council (PHHPC) approval of this application. The applicant will lease the premises from Westgate Realty Associates, LLC for site control of the facility. The managing member of the applicant has submitted an affidavit acknowledging that there is a relationship between Westgate Operations Associates, LLC and Westgate Realty Associates, LLC in that the members of each

entity have previous business relationships involving real estate transactions of other nursing homes.

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

Table with 2 columns: Members, Ownership Percentage. Includes Westgate Nursing Home, Inc., Dennis J. Christiano, Sr. (91%), and David Guinta (9%).

Table with 2 columns: Members, Ownership Percentage. Includes Westgate Operations Associates, LLC, Kenneth Rozenberg (70%), Amir Abramchik (5%), Aaron Gittleson (5%), Nathan Goldman (5%), David Greenberg (5%), Maxwell Mase (5%), and Yisroel Wolff (5%).

The proposed members have ownership interest in various New York State (NYS) RHCFs. BFA Attachments D is the percentage ownership and financial summaries of the proposed members' NYS affiliated nursing homes.

OPCHSM Recommendation
Contingent Approval

Need Summary

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

Program Summary

No changes in the program or physical environment are proposed in this application. The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Summary

There are no project costs associated with this application. The purchase price for the RHCf operations is \$1,000,000 and will be funded via members' equity of \$250,000 and a bank loan for \$750,000 at 5% interest for a ten-year term

and 25-year amortization period. Greystone has provided a letter of interest for the loan at the stated terms. The purchase price for the RHCf realty is \$9,000,000 and will be funded via members' equity of \$750,000 and a bank loan for \$8,250,000 at 5% interest for a ten-year term and 25-year amortization period. Greystone has provided a letter of interest for the realty loan at the stated terms.

The projected budget is as follows:

Revenues	\$10,440,801
Expenses	<u>9,552,945</u>
Gain/(Loss)	\$887,856

Recommendations

Health Systems Agency

The Finger Lakes HSA recommends approval.

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 bank loan commitment for the operations, acceptable to the Department of Health. (BFA)
3. Submission of an executed bank loan commitment for the real estate, acceptable to the Department of Health. (BFA)
4. Submission of an executed Lease Agreement, acceptable to the Department of Health. (BFA)
5. Submission of an executed Consulting Service Agreement, acceptable to the Department of Health. (BFA)
6. 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)
7. Submission of a photocopy of the applicant's executed Lease Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed Certificate of Amendment to the Articles of Organization, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's fully executed Consulting Services Agreement and affidavit, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's fully executed Land Sale Contract, acceptable to the Department. [CSL]

Approval conditional upon:

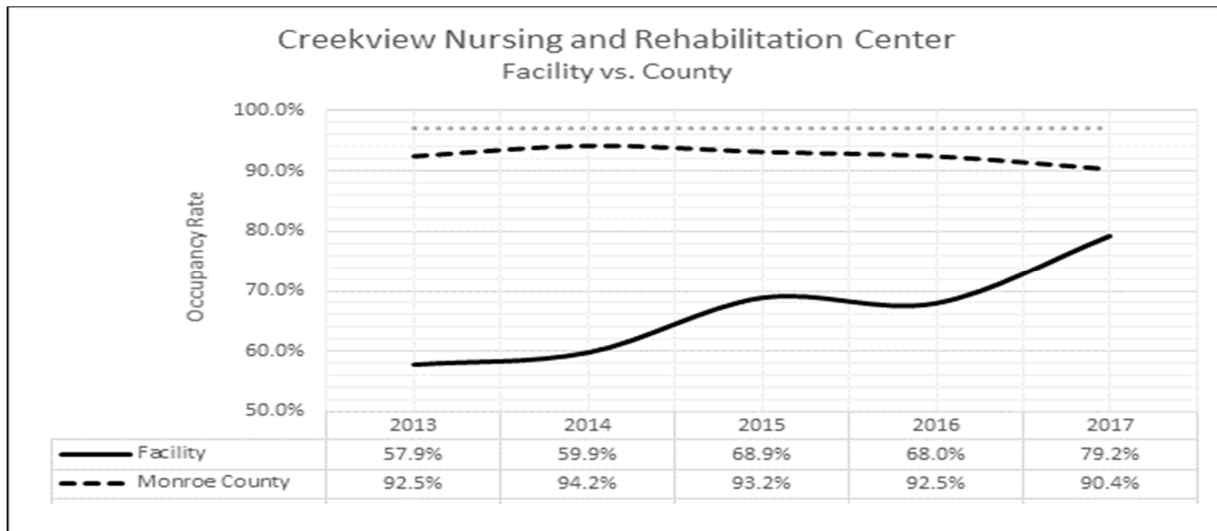
1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

February 14, 2019

Need Analysis

Utilization



Creekview Nursing and Rehabilitation Center's utilization was 79.2% in 2017. Based upon weekly census data, current occupancy, as of December 26, 2018 is 91.9% for the facility and 88.7% for Monroe County. During 2018, the occupancy remained between 70% and 75% through the month of October. Since the beginning of November, the occupancy has improved, rising to 85.5% for November and 90.3% for the month of December. The applicant states that the lower rate of occupancy is attributable to a lack of engaged leadership at all levels and operational deficiencies within the facility.

The applicant intends to improve occupancy in the following ways:

- strengthen relationships with hospital discharge planners and referral sources;
- staff training, development and support;
- acceptance of clinically complex residents;
- implementation of staff recruitment and retention initiatives;
- development of a dedicated short-term rehabilitation unit;
- engagement in community outreach;
- implementation of the following new programs to serve a more diverse resident population: tracheostomy care, cardiac rehabilitation, enhanced wound care, IV therapy, and complex clinical care.

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.

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

Percent of New RHCFC Admissions that are Medicaid	2015	2016	2017
Monroe County 75% Threshold	10.7%	12.3%	11.3%
Creekview Nursing and Rehabilitation Center	55.7%	62.4%	41.2%

Conclusion

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

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Creekview Nursing and Rehab Center	Rochester Center for Rehabilitation and Nursing
Address	525 Beahan Rd Rochester, NY, 14624	Same
RHCFC Capacity	124	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Proprietary	Same
Operator	Westgate Nursing Home Inc.	Westgate Operations Associates, LLC *Kenneth Rozenberg 70% Amir Abramchik 5% Maxwell Mase 5% Aaron Gittleson 5% Nathan Goldman 5% David Greenberg 5% Yisroel Wolff 5% *managing member

Character and Competence – Assessment

Experience

Kenneth Rozenberg is a New York licensed nursing home administrator, in good standing, and licensed paramedic, in good standing. He is employed as CEO of Bronx Center for Rehabilitation and Health Care since January 1998, and the CEO of Centers Health Care since 2005. Mr. Rozenberg discloses the following health facility interests:

Wartburg Lutheran Home for the Aging (Acquired as receiver)	06/2008 to 05/2011
Wartburg Nursing Home (Acquired as receiver)	06/2008 to 05/2011
Stonehedge Health and Rehabilitation Center – Rome	07/2008 to 04/2011
The Grand Rehabilitation and Nursing at Rome	05/2011 to 03/2017
Stonehedge Health and Rehabilitation Center – Chittenango	07/2008 to 04/2011
The Grand Rehabilitation and Nursing at Chittenango	05/2011 to 07/2017
Holliswood Care Center	11/2010 to 04/2013
Waterfront Health Care Center (Acquired as receiver)	08/2011 to 12/2012
Ellicott Center for Rehabilitation and Nursing	12/2012 to present
Williamsbridge Manor	11/1996 to present
Bronx Center for Rehabilitation & Health Care	10/1997 to present
University Nursing Home	08/2001 to present
The Grand Rehabilitation and Nursing at Pawling	08/2004 to 03/2016
Brooklyn Center for Rehabilitation and Healthcare	05/2007 to present

Cooperstown Center for Rehabilitation and Nursing	01/2018 to present
The Grand Rehabilitation and Nursing at Queens	10/2004 to 03/2016
Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bushwick Center for Rehabilitation and Health Care	05/2011 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	04/2013 to present
Corning Center for Rehabilitation and Healthcare	07/2013 to present
Washington Center for Rehabilitation and Healthcare	02/2014 to present
Essex Center for Rehabilitation and Healthcare	03/2014 to present
Steuben Center for Rehabilitation and Healthcare	07/2014 to present
Daughters of Jacob Nursing Home (Acquired as receiver)	08/2013 to 09/2015
Triboro Center for Rehabilitation and Nursing	09/2015 to present
Indian River Rehabilitation and Nursing Center	12/2014 to 09/2017
Granville Center for Rehabilitation and Nursing	10/2017 to present
Delaware Nursing & Rehabilitation (Acquired as receiver)	06/2014 to 12/2015
Buffalo Center for Rehabilitation and Nursing (12/2015 to present
Hope Center for HIV and Nursing Care	04/2015 to present
Northwoods Rehabilitation and Nursing Center at Moravia	11/2014 to 03/2016
Beth Abraham Center for Rehabilitation and Nursing	03/2017 to present
Martine Center for Rehabilitation and Nursing	03/2017 to present
Far Rockaway Center for Rehabilitation and Nursing	04/2017 to present
Troy Center for Rehabilitation and Nursing	09/2017 to present
Carthage Center for Rehabilitation and Nursing	09/2017 to present
Schenectady Center for Rehabilitation and Nursing	09/2017 to present
Slate Valley Center for Rehabilitation and Nursing	09/2017 to present
Onondaga Center for Rehabilitation and Nursing	09/2017 to present
New Paltz Center for Rehabilitation and Nursing	09/2017 to present
Glens Falls Center for Rehabilitation and Nursing	09/2017 to present
Utica Center for Rehabilitation and Nursing	01/2018 to present
 <u>Rhode Island Nursing Homes</u>	
Bannister Center for Rehabilitation and Health Care	02/2016 to present
Park View Center for Rehabilitation and Healthcare	05/2016 to 07/2018
Kingston Center for Rehabilitation and Nursing	10/2016 to present
Oak Hill Center for Rehabilitation and Healthcare	07/2017 to present
 <u>Ambulance Company</u>	
Senior Care Emergency Ambulance Services, Inc. (EMS)	06/2005 to present
 <u>Licensed Home Care Services Agency</u>	
Amazing Home Care (LHCSA)	05/2006 to present
 <u>Managed Long Term Care Company</u>	
Centers Plan for Healthy Living (MLTC)	01/2013 to present
 <u>Dialysis Centers</u>	
Bronx Center for Renal Dialysis	01/2011 to present
Bushwick Center for Renal Dialysis	06/2014 to present
 <u>Adult Homes</u>	
Argyle Center for Independent Living (60%)	02/2014 to present
 <u>Certified Home Health Agencies</u>	
Centers Home Health Revival-Bronx	07/2008 to present
Centers Home Health Revival-Buffalo	09/2016 to present

Approved but not yet completed acquisitions

Nanuet Center for Rehabilitation and Nursing	Pending
Haverstraw Center for Rehabilitation and Nursing	Pending
Monsey Center for Rehabilitation and Nursing	Pending

Healthcare consulting companies

Centers Health Care
Centers Skilled Nursing
Centers Managed Care
Centers Home Care
Centers Care Solutions
Centers Medical Supply
Centers Business Office
Centers Care Management
Centers Urgent Care
Center for Allied Health Education

Amir Abramchik is a licensed nursing home administrator in good standing in New York, New Jersey and Rhode Island. Mr. Abramchik has been employed by Centers Health Care since 2007; his current position is Chief Operating Officer. Mr. Abramchik discloses the following health facility interests:

Chittenango Center for Rehabilitation and Health Care	05/2011 to 07/2016
Rome Center for Rehabilitation and Health Care	05/2011 to 08/2016
Fulton Center for Rehabilitation and Health Care	04/2012 to present
Richmond Center for Rehab and Specialty Health Care	04/2012 to present
Corning Center for Rehabilitation and Health Care	06/2013 to present
Ontario Center for Rehabilitation and Healthcare	11/2014 to present
Schenectady Center for Rehabilitation and Nursing	09/2017 to present
Slate Valley Center for Rehabilitation and Nursing	09/2017 to present
Troy Center for Rehabilitation and Nursing	09/2017 to present
Onondaga Center for Rehabilitation and Nursing	09/2017 to present

Maxwell Mase is the Director of Revenue Cycle at Centers Health Care since 2010. Mr. Mase discloses no other employment prior to 2010. Mr. Mase discloses the following health facility interests:

Granville Center for Rehabilitation and Nursing	10/2017 to present
Butler Center for Rehabilitation and Healthcare (MO)	06/2018 to present
Kansas City Center for Rehabilitation and Healthcare (MO)	06/2018 to present
Overland Park Center for Rehab (KS)	06/2018 to present

Aaron Gittleson is the Finance Director at Centers Health Care since 2011. Mr. Gittleson discloses no ownership interests.

Nathan Goldman is currently licensed as a New York nursing home administrator in good standing. He was licensed as a nursing home administrator in New Jersey and Illinois; those licenses have expired. Mr. Goldman is an administrator at an RHCF, Triboro Center for Rehabilitation. Mr. Goldman discloses the following health facility interests:

Granville Center for Rehabilitation and Nursing	10/2017 to present
Butler Center for Rehabilitation and Healthcare (MO)	06/2018 to present
Kansas City Center for Rehabilitation and Healthcare (MO)	06/2018 to present
Overland Park Center for Rehab (KS)	06/2018 to present

David Greenberg is a licensed nursing home administrator in good standing in New York, and New Jersey. Mr. Greenberg has been employed as the administrator of record at Boro Park Center for Rehabilitation and Health Care in Brooklyn since 2011. Previously he was employed as administrator of Wartburg Lutheran Home. Mr. Greenberg discloses the following nursing home ownership interests:

Corning Center for Rehabilitation and Health Care	06/2013 to present
Steuben Center for Rehabilitation and Health Care	07/2014 to present
Warren Center for Rehabilitation and Nursing	01/2016 to present

Yisroel Wolff is employed as the Director of Financial Operations of Centers Health Care since 2010. Mr. Wolff was the CEO of HBS Professional Services a Health Care Recruitment business from 10/2004 to 05/2010. Mr. Wolff discloses the following health facility interests:

Essex Center for Rehabilitation and Health Care	03/2014 to present
Butler Center for Rehabilitation and Healthcare (MO)	06/2018 to present
Kansas City Center for Rehabilitation and Healthcare (MO)	06/2018 to present
Overland Park Center for Rehab (KS)	06/2018 to present

Quality Review

Evaluation of the quality of care for facilities currently owned by the proposed members is presented below. This evaluation relies on the CMS five-star quality rating system ratings and survey findings.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Fulton Center for Rehabilitation and Healthcare	Current	*	*	****	***
	04/2012 Data 08/2012	**	*	**	****
Corning Center for Rehabilitation and Healthcare	Current	*	*	**	***
	07/2013 Data 09/2013	**	*	***	****
Ellicott Center for Rehabilitation and Nursing	Current	*	*	****	***
	12/2012	**	*	**	****
Buffalo Center for Rehabilitation and Nursing	Current	*	*	****	***
	12/2015	*	*	****	**
Richmond Ctr for Rehab and Specialty Healthcare	Current	**	*	*****	****
	04/2012 Data 06/2012	****	****	***	****
Washington Center for Rehab and Healthcare	Current	**	*	****	****
	02/2014	**	*	***	****
Steuben Center for Rehabilitation and Healthcare	Current	**	**	****	**
	07/2014	*	*	***	***
Essex Center for Rehabilitation and Healthcare	Current	***	**	*****	***
	03/2014	**	**	****	**
Holliswood Ctr for Rehabilitation and Healthcare	Current	***	***	*****	*
	11/2010	*****	*****	*****	*
Bronx Center for Rehabilitation & Health Care	Current	***	**	*****	**
	10/1997 Data 12/2009	**	***	****	*
Triboro Center for Rehabilitation and Nursing	Current	***	**	*****	***
	08/2013	**	***	****	*

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Beth Abraham Center for Rehabilitation and Nursing	Current	***	**	*****	**
	03/2017	****	****	*****	*
Far Rockaway Center for Rehabilitation and Nursing	Current	***	**	*****	**
	04/2017	*	*	***	**
Carthage Center for Rehabilitation and Nursing	Current	***	**	*****	**
	09/2017 Data 01/2018	**	**	****	***
Glens Falls Center for Rehabilitation and Nursing	Current	***	**	*****	***
	09/2017	*	**	****	*
Williamsbridge Manor for Rehabilitation and Nursing	Current	****	***	*****	**
	11/1996 Data 12/2009	*	**	**	*
Brooklyn Center for Rehab and Residential Health Care	Current	****	****	*****	*
	05/2007 Data 05/2009	**	***	***	*
Bushwick Center for Rehabilitation and Health Care	Current	*****	***	*****	****
	05/2011	**	*	*****	***
Troy Center for Rehabilitation and Nursing	Current	****	***	****	***
	09/2017	****	***	****	****
Schenectady Center for Rehabilitation and Nursing	Current	****	***	*****	***
	09/2017	***	***	*****	*
Slate Valley Center for Rehabilitation and Nursing	Current	****	***	*****	***
	09/2017	*	*	**	**
New Paltz Center for Rehabilitation and Nursing	Current	****	***	****	****
	09/2017	***	***	****	***
University Center for Rehabilitation and Nursing	Current	*****	*****	*****	**
	08/2001	*****	*****	*****	**
Boro Park Center for Rehabilitation and Healthcare	Current	*****	*****	*****	***
	05/2011	*****	*****	*****	***
Hope Center for H I V and Nursing Care	Current	*****	****	*****	***
	04/2015	*****	*****	*****	***

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Martine Center for Rehabilitation and Nursing	Current	*****	*****	*****	***
	03/2017	*****	*****	*****	*
Onondaga Center for Rehabilitation and Nursing	Current	**	*	***	****
	09/2017	**	*	***	****
Granville Center for Rehabilitation and Nursing	Current	**	**	****	***
	12/2014	*	*	***	***
Cooperstown Center for Rehabilitation and Nursing	Current	*	*	***	***
	Data 09/2017	*	*	***	*
Ontario Center for Rehabilitation and Healthcare	Current	*	*	***	**
	11/2014	****	***	****	*****
Warren Center for Rehabilitation and Nursing	Current	**	**	**	***
	01/2016	****	***	**	****
Oneida Center for Rehabilitation and Nursing	01/2018	**	*	****	****

Rhode Island

Bannister Center for Rehabilitation and Health Care	Current	*	*	***	***
	02/2016	*	*	****	*
Kingston Center for Rehabilitation and Health Care	Current	**	*	****	****
	10/2016	**	**	**	***
Oak Hill Health & Rehabilitation Center	Current	**	*	**	****
	07/2017	*	*	*	*****

MISSOURI

Butler Center for Rehabilitation and Health Care	Current	**	*	***	****
	06/2018	**	*	****	****
Kansas Center for Rehabilitation and Healthcare	Current	*	*	*	****
	06/2018	**	*	**	****

KANSAS

Overland Park Center for Rehabilitation and Health Care	Current	****	***	***	****
	06/2018	**	*	***	****

Data date: 12/2018

Notes: Greyed out facility reflects recent acquisition.

Butler Center for Rehabilitation is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Butler; Kansas City Center for Rehabilitation is currently listed on Medicare.gov as Serenity Rehabilitation and

Nursing Kansas City; Overland Park Center for Rehab is currently listed on Medicare.gov as Serenity Rehabilitation and Nursing Overland Park

Special Focus Facilities

Cooperstown Center for Rehabilitation and Nursing was designated a special focus facility (SFF) on 11/29/2016 and remains in this status. As of December 2018, CMS indicates this facility has been in special focus for 25 months, was last surveyed 8/22/2018, and is listed as having shown improvement. In February 2017 the previous owner hired Centers Health Care to provide consulting services. Mr. Rozenberg acquired ownership in January 2018 and implemented the following measures to improve the facility: hired an experienced DON; provided Centers Health Care clinical and operational support; and improved staffing recruitment.

Oak Hill Center for Rehabilitation (Rhode Island) was designated a SFF in June 2017 and remains in this status. As of December 2018, CMS indicates this facility has been in special focus for 18 months, was last surveyed 6/18/2018, and is listed as having not shown improvement. Mr. Rozenberg acquired ownership in July 2017.

Granville Center for Rehabilitation and Nursing recently graduated from being designated a Special Focus Facility. The issues surrounding its designation as a SFF predated the ownership disclosed in the CON.

Low CMS Overall Star Ratings (1 or 2 stars)

The applicant has stated that the CMS five-star quality rating system ratings for nursing facilities with 1 and 2 star overall ratings are attributable to several factors, including:

- (1) The proposed members have a minority ownership in some of the out-of-state nursing homes and state they do not have any control over the day-to-day operations.
- (2) The applicant states that some of the facilities, Granville Center, Onondaga Center, Oneida Center, and Cooperstown Center, were recently acquired and the ratings reflect prior operator performance. However, it should be noted that Mr. Rozenberg acquired a 9% membership interest in the predecessor operator of Granville Center prior to becoming an 85% member in the current operator.
- (3) The applicant encountered other factors, including a lack of qualified staff in geographic location proximate to some of the facilities.

The applicant states that while overall star ratings are low, quality measure ratings are not, and that the overall rating does not accurately reflect quality of care. The applicant also indicates that “investments” have been made in facility clinical staff, and that Mr. Rozenberg’s Centers Health Care company has provided clinical “investments” in these facilities as well.

Enforcement History

Bannister Center for Rehabilitation and Healthcare (Rhode Island):

- A federal CMP of \$13,627 was assessed for July 19, 2017 survey findings.

Oak Hill Center for Rehabilitation and Health Care (Rhode Island) - Special Focus Facility:

- An Immediate Jeopardy and Substandard Quality of Care finding was issued on December 29, 2017.
 - A federal CMP of \$144,978 was assessed for December 29, 2017 survey findings.
- A Substandard Quality of Care finding was issued on January 11, 2018.

Bronx Center for Rehabilitation and Health Care:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-07-079 issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined \$4,000 pursuant to Stipulation and Order NH-11-047 issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.
 - A federal CMP of \$36,450 was assessed for the April 16, 2010 survey findings.

Essex Center for Rehabilitation and Health Care:

- The facility was fined \$20,000 pursuant to Stipulation and Order NH-18-039 issued September 17, 2018 for surveillance findings on June 14, 2018. Deficiencies were found under 10 NYCRR 415.3(e)(2)(ii)(b) Residents' Right: Right to Clinical Care and Treatment and 415.12(i)(1) Quality of Care: Nutrition.
- The facility incurred a Civil Monetary Penalty of \$13,395.25 from 03/04/18 to 03/23/18.
- The facility had an Immediate Jeopardy from a complaint survey on 08/15/2015 for which resulted in a fine \$6,000 pursuant to a Stipulation and Order NH-16-116 issued March 9, 2016 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.

Cooperstown Center for Rehabilitation and Nursing, Special Focus Facility:

- A federal CMP of \$21,459 was assessed for August 22, 2017 survey findings.

Fulton Center for Rehabilitation and Healthcare:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2013, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
 - A federal CMP of \$975 was assessed for the June 11, 2012 survey findings.
 - A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
 - A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-12-39 issued on September 17, 2012 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

Northwoods Rehabilitation and Nursing Center at Moravia:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-066 issued January 13, 2016 for surveillance findings on February 6, 2015. Deficiencies were found under 10 NYCRR 415.26 Administration.

New Paltz Center for Rehabilitation and Nursing:

- A federal CMP of \$6,845 was assessed for January 29, 2018 survey findings.

Onondaga Center for Rehabilitation and Nursing:

- The facility was fined \$22,000 pursuant to Stipulation and Order NH 18-025 issued on June 28, 2018 for surveillance findings on February 9, 2018. Deficiencies were found under 415.12(c)(1)(2), Quality of Care: Pressure Sores 415.12(j) Quality of Care Hydration and 415.12(m)(2) Quality of Care: Medication Error
 - A federal CMP of \$26,393 was assessed for February 9, 2018 survey findings.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH 18-046 issued on November 23, 2018 for surveillance findings on August 3, 2018. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.
- The facility was fined \$ 2,000 pursuant to Stipulation and Order NH 18-047 issued on November 23, 2018 for surveillance findings on August 31, 2018. Deficiencies were found under 10 NYCRR 415.12 Quality of Care(h)(1): Accidents

Richmond Center for Rehabilitation and Specialty Healthcare:

- The facility was fined \$18,000 pursuant to Stipulation and Order NH-16-201 issued October 24, 2016 for surveillance findings on April 27, 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 27, 2012 survey findings.
- The facility was fined \$2,000 pursuant to 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 March 9, 2016 for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12 and 415.12(b)(2)(iii) Quality of Care: Accidents.
- The facility was fined \$12,000 pursuant to Stipulation and Order NH-17-051 issued September 11, 2017 for surveillance findings on June 9, 2017. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential and 415.12(h)(2) Resident Assessment.
- The facility incurred a Civil Monetary Penalty of \$7,803.25 from 06/09/2017 to 06/09/2017.

The Grand Rehabilitation and Nursing at Chittenango:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-10-053 issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision and 415.26(b)(3)(4) Governing Body.
 - A federal CMP of \$5,200 was assessed for the October 22, 2009 survey findings.
- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-12-010 issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) and Quality of Care: Catheters.
- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.

The Grand Rehabilitation and Nursing at Rome:

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

Washington Center for Rehabilitation and Healthcare:

- 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.

Waterfront Center for Rehabilitation and Healthcare:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-13-014 issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.
 - A federal CMP of \$1,625 was assessed for the September 27, 2011 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued for surveillance findings on May 23, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(2) Quality of Care: Pressure Sores.
- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.

- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-17-046 issued August 16, 2017 for surveillance findings on May 11, 2017. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.
 - A federal CMP of \$11,053 was assessed for May 11, 2017 survey findings.

Williamsbridge Manor Nursing Home:

- The facility was fined \$1,000 pursuant to a Stipulation and Order NH-08- issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

Warren Center for Rehabilitation and Nursing:

- A federal CMP of \$7,803 was assessed for December 11, 2017 survey findings.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-18-007 issued February 21, 2018. Multiple Deficiencies found

Ontario Center for Rehabilitation and Healthcare:

- The facility was fined \$12,000 pursuant to a Stipulation and Order NH-16-093 issued January 13, 2016. Multiple Deficiencies found

Alpine Home Health Care

- A fine of \$1,000 was issued on February 3, 2015 for not responding to Emergency Preparedness survey.

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 violations and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

Project Review

No changes in the program or physical environment are proposed in this application. The facility will contract for administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services with Centers Health Care, Inc. Kenneth Rozenberg is CEO and 50% owner of Centers Health Care. Centers Health Care utilizes a regional office type approach with central corporate and local resources in order to provide services and clinical staff to their clients.

Conclusion

No changes in the program or physical environment are proposed in this application. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Asset Purchase Agreement

The applicant submitted an executed APA to acquire the RHCf's operating interests:

Date:	October 15, 2018
Seller:	Westgate Nursing Home, Inc
Buyer:	Westgate Operations Associates, LLC
Assets Acquired (Operations):	All assets of every kind, character and description, whether tangible, intangible, real or personal, owned by the Seller and used in connection with the operation of the Facility, including, but not limited to, all rights, title and interest in and to all Tangible Personal Property and Intangible Personal Property used in operation of the Facility.
Excluded Assets (Operations):	The furniture, furnishings and office equipment of Dennis J. Christiano, Sr. located in his office at 525 Beahan Road, Rochester, New York 14624, and the tractor with pull behind mower.
Assumed Liabilities:	None [#]
Purchase Price:	\$1,000,000 (subject to adjustments, see # below)
Payment of the Purchase Price:	\$1,000,000 due at closing.

Per Article 2.1 of the APA, the agreed upon purchase price shall be paid by the Buyer's assumption at closing, subject to adjustments and credits due the Buyer under the APA, of specific liabilities solely attributable to those specific Medicaid audit and unpaid cash receipts assessment liabilities, up to an aggregate total amount assumed for all such liabilities of \$1,000,000. No other amounts or liabilities or obligations of the Seller shall be assumed by or be the obligation of the Buyer. The Buyer shall be responsible for and shall have the authority to negotiate the final payment terms under the settlement amounts owed in connection with such liabilities assumed by the Buyer. If the aggregate total settlement amount exceeds \$1,000,000 (or such lesser amount due to adjustments and credits due the Buyer under the APA), the Buyer will not be required to pay or assume such excess and such excess shall be paid by the Seller, or as otherwise agreed upon between the Seller and Westgate NY Management LLC.

The applicant's financing plan is as follows:

Equity	\$250,000
Mortgage (5% interest, 10-year term, 25-year amortization)	<u>\$750,000</u>
Total	<u>\$1,000,000</u>

Greystone has provided a letter of interest for the loan at the stated terms. Mr. Rozenberg has provided an affidavit attesting to fund the balloon payment if acceptable refinancing is not available when the loan becomes due after the ten-year period. BFA Attachment A indicates sufficient resources to fund the balloon payment.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement 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 January 3, 2019, the facility had an outstanding Medicaid liability in the amount of \$4,578,376.

Sale of Real Property Agreement

The applicant submitted a draft RPPA to acquire the RHCF real property, as summarized below:

Date:	October 15, 2018
Seller:	Westgate Building, LLC
Buyer:	Westgate Realty Associates, LLC
Assets Acquired (Real Estate):	All seller's right, title and interest in and to the Real Property (land, buildings and improvements) located at 525 Beahan Road, Rochester, NY (Monroe County).
Excluded Assets (Real Estate):	N/A
Purchase Price:	\$9,000,000
Payment of the Purchase Price:	\$750,000 deposited and held in escrow; \$8,250,000 due at closing.

The realty financing plan is as follows:

Equity (paid)	\$750,000
Mortgage (5% interest, 10-year term, 25-year amortization)	<u>\$8,250,000</u>
Total	\$9,000,000

A bank letter of interest at the stated terms has been provided. Daryl Hagler, who is the majority owner and managing member of the real estate entity, has submitted an affidavit attesting to fund the balloon payment if acceptable refinancing is not be available. To assure that purchase of the premises is fully funded, Mr. Hagler has also submitted an affidavit attesting to contribute equity disproportionate to his ownership interest to cover any realty member's equity shortfall. BFA Attachment A includes the net worth statement of Daryl Hagler, which reveals sufficient resources for the stated levels of equity and to fund the balloon payment.

The RPPA provides that the purchase price is subject to the following: The Buyer shall only assume or payoff certain debts owed by the Seller (detailed in BFA Attachment E) for which the Buyer shall receive a dollar for dollar credit against the price equal to the aggregate amount existing as of the date thereof of such debt. The Buyer shall also receive a credit against the price for any other matters set forth in this Agreement for which Buyer is entitled to a credit.

Lease Rental Agreement

Premises:	A 124-bed nursing home located at 525 Beahan Road, Rochester, NY (Monroe County)
Lessor:	Westgate Realty Associates, LLC
Lessee:	Westgate Operations Associates, LLC
Term:	10-year term (Lease expires at the end of the month in which the 10 th anniversary of the date of commencement of the Lease occurs, unless sooner terminated).
Rental:	\$800,000 per year
Provisions:	Lessee shall pay, as additional rent before any fine, penalty, interest or cost may be added for nonpayment thereof, all taxes, assessments, water/sewer rents, rates and charges, charges for public utilities, excises, levies, license/permit fees and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity in that the members of each have previous business relationships involving real estate transactions of other RHCFs. Westgate Realty Associates, LLC members are Daryl Hagler (99%) and Jonathan Hagler (1%).

Consulting Service Agreement

Contractor:	Centers for Care, LLC d/b/a Centers Health Care (CHC)
Facility/Operator:	Rochester Center for Rehabilitation and Nursing
Administrative Services:	Oversight of all functions related to Accounts Receivables, Accounts Payables and Payroll; coordinate billing & collections systems; assure personnel are up-to-date on licensure requirements; assistance with the following: updating policy and procedure manual, regulatory monitoring, compliance/quality assurance, on-going education, ensuring staff follows procedures and regulatory requirements, training curriculum, accounting, budgeting, developing reports, audits, purchasing, pharmacy assistance, and clinical consulting services.
Term:	One Year with automatic one-year renewals.
Startup Fee:	-0-
Administrative Fee:	The fees for the Services shall, to the maximum extent possible, represent the actual costs incurred by CHC in providing the services. Common costs, including, but not limited to, utilities, rent, and the salaries of the Corporate Compliance Liaison, shall be allocated to each facility, including the facility that is the subject of this Agreement, that CHC provides the Services to in proportion to each facility's bed count. CHC has no intention of profiting from this agreement.

CHC also provides consulting services to the other RHCs owned and operated by Kenneth Rozenberg. Mr. Rozenberg is affiliated with CHC in that he has an ownership interest in the company. The draft Consulting Service Agreement provides that the established operator retains ultimate authority, responsibility and control in all the final decisions associated with the services. In accordance with the Department's Administrative Service Agreement 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 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 the current year (2017) operations and an operating budget, in 2019 dollars, for the first year after the change in operator, summarized below:

	<u>Current Year</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid FFS	\$225.22	\$5,378,813	\$186.01	\$5,328,256
Medicaid MC	\$196.22	\$298,058	\$186.01	\$339,096
Medicare FFS	\$310.56	\$554,658	\$620.43	\$1,328,341
Medicare MC	\$352.33	\$406,941	\$419.39	\$580,855
Commercial FFS	\$230.64	\$1,450,746	\$317.50	\$2,394,585
Private Pay/Other	\$539.87	\$328,780	\$357.50	\$261,333
Other	\$211.53	<u>\$129,035</u>	\$285.00	<u>\$208,335</u>
Total Revenues		\$8,547,031		\$10,440,801
<u>Expenses</u>				
Operating	\$240.36	\$8,617,302	\$198.64	\$8,540,943
Capital	\$24.14	\$865,392	\$23.54	\$1,012,002
Total Expenses	\$264.50	<u>\$9,482,694</u>	\$222.17	<u>\$9,552,945</u>
Net Income/(Loss)		(935,663)		887,856
Utilization (Days)		35,852		42,998
Occupancy		79.2%		95.0%

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

- Medicaid revenue is based on the facility's current 2018 Medicaid Regional Pricing rate plus assessments. The current year Medicare rates (FFS and Managed Care) reflect the actual daily rate experienced by the facility during 2017. The forecasted Year One Medicare rates are based on the facility's actual daily rate experience for 2018. The Private Pay rates were based on the current operator's average rates for 2017.
- The facility's projected utilization for Year One is 95% occupancy. It is noted that utilization for the past four years (2014-2017) has averaged around 69%. The applicant anticipates increased utilization by implementing a number of measures.
- The breakeven utilization is projected at 86.9% in the first year.
- Utilization by payor source for the current year (2017) and the first year after the change in ownership is summarized below:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>
Medicaid FFS	66.62%	66.62%
Medicaid MC	4.24%	4.24%
Medicare FFS	4.98%	4.98%
Medicare MC	3.22%	3.22%
Commercial FFS	17.54%	17.54%
Commercial MC	0.00%	0.00%
Private Pay/Other	1.70%	1.70%
Other	1.70%	1.70%

Capability and Feasibility

The purchase price for the RHCF operations is \$1,000,000 and will be financed via members' equity of \$250,000 and a \$750,000 bank loan at 5% interest for a ten-year term and 25-year amortization period. The purchase price for the RHCF realty is \$9,000,000 and will be financed via members' equity of \$750,000 and a \$8,250,000 bank loan at 5% interest for a ten-year term and 25-year amortization period. Greystone has provided a letter of interest for the respective loans at the stated terms. Mr. Rozenberg and Mr. Hagler have each provided an affidavit attesting to fund the balloon payment on their respective loan if acceptable refinancing terms are not available when the balloon payment become due.

The working capital requirement is estimated at \$1,592,158 based on two months of first year expenses, to be funded with a \$796,079 working capital loan at 5% interest with a 5-year term and 5-year payout, and proposed member's equity of \$796,079. Greystone has submitted a letter of interest for the loan. Kenneth Rozenberg has submitted an affidavit attesting that he will contribute resources to meet any working capital shortfall for the first year of operations.

The submitted budget projects net income from operations of \$887,856 in the first year. The budget appears reasonable.

BFA Attachment B is the pro forma balance sheet of Rochester Center for Rehabilitation and Nursing, which indicates positive members' equity of \$776,130.

BFA Attachment C, the Financial Summary of Creekview Nursing and Rehabilitation Center, indicates that for the 2016 – 2017 certified period, the facility had average negative working capital of \$3,728,936, an average negative equity position of \$8,208,942, and average net losses of \$1,224,499. As of September 30, 2018, the facility experienced increasing negative working capital (\$13.78 million) and shows a loss of close to \$2 million. Facility occupancy has been low (79.2% in 2017, average rate of 69% for 2014-2017), which has contributed to the facility's poor financial performance. The applicant plans to increase occupancy by accepting more clinically complex residents and implementing the above stated measures. The applicant intends to reduce expenses by analyzing staff expenses and re-working staff schedules to keep overtime expenses down, re-negotiating vendor contracts, and reducing bad debt expenses through an accounts receivable collection plan.

BFA Attachment D provides the percentage ownership and financial summaries of the proposed members' NYS affiliated nursing homes. As shown, all facilities had average positive net income and average positive net asset positions from 2014 through December 31, 2017. Warren Center Rehabilitation had a loss of \$2.4 million in 2015 when the facility was operated by the County of Warren.

Mr. Greenberg acquired 95% ownership interest in the RHCf effective January 1, 2016. The facility's operations have since improved showing positive income for operations by 2017. Also, all facilities achieved an average positive working capital position except for the following: Brooklyn Center, University Nursing Home, Bushwick Center for Rehabilitation, Williamsbridge Manor, Warren Center for Rehabilitation and Richmond Center for Rehabilitation. The applicant indicated that the average negative working capital positions are attributable to accrued payroll and the continued positive net from operations of each facility enables the operator to satisfy all current obligations as they become due. During 2017 Brooklyn Center, University Nursing Home and Bushwick Center for Rehabilitation showed improvement in working capital position compared to the previous two years.

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

Attachments

BFA Attachment A	Westgate Operations Associates, LLC – Proposed Members Net Worth
BFA Attachment B	Westgate Realty Associates, LLC – Proposed Members Net Worth
BFA Attachment C	Westgate Operations Associates, LLC – Pro Forma Balance Sheet
BFA Attachment D	Creekview Nursing and Rehabilitation Center – Financial Summary 2015-2017
BFA Attachment E	Proposed Member's – Affiliated RHCf Financial Summary 2015-2017
FLHSA	RPPA Exhibit B – Debts
	Recommendation Memo

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 14th day of February 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Westgate Operations Associates, LLC, d/b/a Rochester Center for Rehabilitation and Nursing as the new operator of Creekview Nursing and Rehab Center, an existing 124-bed residential health care facility, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

182218 E

Westgate Operations Associates, LLC
d/b/a Rochester Center for Rehabilitation and
Nursing

APPROVAL CONTINGENT UPON:

1. Submission of an executed working capital loan commitment, acceptable to the Department of Health. (BFA)
2. Submission of an executed bank loan commitment for the operations, acceptable to the Department of Health. (BFA)
3. Submission of an executed bank loan commitment for the real estate, acceptable to the Department of Health. (BFA)
4. Submission of an executed Lease Agreement, acceptable to the Department of Health. (BFA)
5. Submission of an executed Consulting Service Agreement, acceptable to the Department of Health. (BFA)
6. 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)
7. Submission of a photocopy of the applicant's executed Lease Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed Certificate of Amendment to the Articles of Organization, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's fully executed Consulting Services Agreement and affidavit, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's fully executed Land Sale Contract, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter
General Counsel

Date: December 12, 2018

Subject: Certificate of Dissolution of Community Care Organization, Inc.

Community Care Organization, Inc. (CCO) closed operations and surrendered its Article 36 license on August 17, 2018. As such, they are requesting a formal dissolution. CCO does not have any assets or liabilities.

Pursuant to §1002 (c) of the New York State Not-for-Profit Corporation Law, PHHPC approval of the dissolution must be received.

The documents submitted by the Corporation have been reviewed. There is no legal objection to the Certificate of Incorporation, the Plan of Dissolution and the Proposed Certificate of Dissolution.

Attachments

BY-LAWS
OF
COMMUNITY CARE ORGANIZATION, INC.

ARTICLE I
NAME, SEAL AND OFFICES

Section 1. Name. The name of this corporation shall be Community Care Organization, Inc. (the "Corporation").

Section 2. Seal. The Board of Directors of the Corporation (the "Board") may, at its pleasure, obtain a seal for the Corporation which may be in whatever form is desired by the Board.

Section 3. Offices. The Corporation may have offices in such places as the Board may from time to time determine or the purposes of the Corporation may require.

ARTICLE II
MEMBERSHIP

Section 1. Qualification. The Members of the Corporation shall be those individuals who serve as members of the Board of Directors of the Corporation.

Section 2. Meetings. There shall be an annual meeting of the Members, which shall be held on such date and at such time and place as are designated by the Chairperson of the sole member. Special meetings of the Members may be called at any time by the Members or by the President of the Corporation or the Secretary upon the written request of a majority of the entire number of directors of the Corporation.

Section 3. Action by the Members Without a Meeting. Whenever under provision of law, the Certificate of Incorporation or these By-Laws, the Members are required or permitted to take action by vote, such action may be taken without a meeting, upon the consent of the Members, which consent shall set forth the action so taken. Such consent may be written or electronic. If written, the consent must be executed by the Members or the Members' authorized corporate officer, director, employee or agent by signing such consent or causing his signature to be affixed to such waiver by any reasonable means including but not limited to facsimile signature. If electronic, the transmission of the 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 Members. Consent thus given by the Members shall have the same effect as a unanimous vote of Members, and any certificate with respect to authorization or taking of any such action that is delivered to the Department of State of the State of New York shall recite that the authorization was by unanimous written or electronic consent.

ARTICLE III

BOARD OF DIRECTORS

Section 1. Powers and Duties. The Board shall manage and control the affairs and property of the Corporation. All corporate powers, except such as are otherwise provided for in the Certificate of Incorporation, these By-Laws, or the laws of the State of New York, shall be and hereby are vested in and shall be exercised by the Board. The Board may, except as otherwise provided by the laws of the State of New York, delegate to committees of its own number, or to officers of the Corporation, such powers as it may see fit.

Section 2. Number and Election; Term of Office; Removal; and Resignation.

a. Number and Election. The Board shall consist of at least three (3) but no more than five (5) directors. The number of directors shall be fixed from time to time by the Members. No decrease in the number of directors shall serve to diminish the term of any director then in office. The directors shall be elected at the annual meeting of the Members. A vacancy on the Board arising at any time and from any cause may be filled by the Members.

b. Qualification. Directors shall be at least eighteen (18) years of age. Directors shall, at all times, be limited to individuals who are either (1) directors of the Lutheran Medical Center Community Foundation, Inc. or NYU Langone Health System (the "System"), (2) officers of Lutheran Medical Center Community Foundation, Inc. or the System, (3) members or employees of Lutheran Medical Center Community Foundation, Inc. or the System, or individuals approved by the System, or (4) a member or staff person of a not-for-profit community based service agency in the System catchment area located in the Borough of Brooklyn, State of New York. However, a majority of the directors must be from categories 1, 2 and 3 noted above. In the event that a director of the Corporation ceases to be a director, officer or employee of Lutheran Medical Center Community Foundation, Inc., the System, or ceases to be a member or staff person of a not-for-profit community based service agency, or approval of the individual by the System is withdrawn, then such termination shall constitute automatic resignation as a director of the Corporation.

c. Term of Office. The terms of office of all directors shall expire at the next annual meeting of the Members following their election and, in any event, each director shall continue in office until his or her successor shall have been elected and qualified or until his or her death, resignation or removal. All directors are eligible for unlimited reelection.

d. Removal. Any director may be removed, with cause, by a majority vote of the directors then in office, provided there is a quorum of not less than a majority present at the meeting of directors at which such action is taken. Any director may be removed with or without cause by the Members.

e. Resignation. Any director may resign at any time by giving written notice of such resignation to the Chairperson of the Corporation.

Section 3. Meetings of the Board of Directors. Meetings of the Board of Directors, annual, regular or special, may be held at any place within or without the State of New York as may be fixed by the Board of Directors from time to time or as shall be specified in the respective notice or waivers of notice thereof. The Board of Directors may fix times and places for regular meetings of the Board of Directors and no notice of such meetings need be given. Special meetings of the Board of Directors may be called at any time as determined by the Board of Directors.

Notice of a meeting need not be given to a director or alternate director who submits a waiver of notice, in signed writing, via facsimile with a facsimile signature, or via electronic mail, whether before or after the meeting; who orally waives notice at the meeting; or who attends a meeting, in person or by proxy, without protesting lack of due notice. A notice or waiver of notice need not specify the purpose of any regular or special meeting of the Board of Directors.

A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of any adjournment of a meeting of the Board of

Directors to another time or place shall be given to the directors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other directors.

Section 4. Quorum. At all meetings of the Board, a majority of the entire Board shall constitute a quorum for the transaction of business unless a greater proportion is required by applicable law or these By-Laws. As used in these By-Laws, the terms "entire Board" or "entire Board of Directors" shall mean the total number of directors which the Corporation would have if there were no vacancies.

Section 5. Action of the Board. The action of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as otherwise provided by applicable law or these By-Laws. Any member of the Board may participate in a meeting thereof by means of a conference telephone or similar device by which all persons can hear all other persons participating in the meeting at the same time. Any Board action may be taken without a meeting if all members of the Board consent in writing.

Section 6. Adjournment. At any meeting of the Board, whether or not a quorum is present, a majority of the directors present may adjourn the meeting to another time and place without further notice to any absent director. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

Section 7. Organization. At all meetings of the Board, the President of the Corporation, or, in his or her absence, the Vice-President, if one has been elected, shall preside. The Secretary

shall act as secretary at all meetings of the Board. In the absence of the Secretary, the presiding officer shall appoint any person to act as secretary of the meeting.

Section 8. Compensation. Directors shall serve without compensation for their services as such. Directors shall be allowed reimbursement for reasonable expenses, on resolution of the Board. The Board shall have the power, in its sole discretion, to contract with any director for services rendered to the Corporation (not including services rendered in his or her capacity as director) and to pay said director compensation appropriate to the value of such services.

ARTICLE IV

OFFICERS

Section 1. Officers. The officers of the Corporation shall be the President, one or more Vice-Presidents, as the Board may from time to time deem necessary, the Secretary, the Treasurer, and the Board may by resolution designate and appoint such other officers with powers and duties not inconsistent with these By-Laws as the Board may from time to time determine. Any two or more offices may be held by the same individual, except the offices of President and Secretary. No instrument to be signed by more than one officer may be signed by one person in more than one capacity.

Section 2. Election, Term of Office, Qualifications and Removal. The President, all Vice-Presidents, the Secretary, and the Treasurer shall be elected at the annual meeting of the Board from among the directors of the Corporation. Each shall be elected for a term fixed by the Board, unless otherwise specified in these By-Laws, and each shall serve until his or her successor shall have been elected and qualified, or until his or her death, resignation or removal.

Any officer of the Corporation may be removed, with or without cause, by a vote of a majority of the directors then in office.

Section 3. Vacancies. Any vacancy in any office arising at any time from any cause may be filled for the unexpired term by a majority vote of the directors then in office.

Section 4. President: Powers and Duties. The President shall be the Chief Executive Officer of the Corporation and, subject to the control of the Board, shall have general care, supervision and direction of its affairs. The President shall sign contracts and other instruments in the name of the Corporation when so authorized or directed by the Board. The President shall have such authority, and shall perform all duties, ordinarily required of an officer in like position, and such other authority and duties as may be assigned by the Board.

Section 5. Vice President: Powers and Duties. At the request of the President, or in the event of his or her absence or disability, the Vice-President, if one has been elected, shall perform the duties and exercise the powers of the President and shall have and exercise general charge and supervision of the affairs of the Corporation subject to the control of the Board, and shall have such other powers as the Board may determine and perform such other duties as may be assigned to him or her by the Board.

Section 6. Secretary: Powers and Duties. The Secretary shall have charge of such books, documents and papers as the Board may determine, and shall have custody of the corporate seal, if any then exists. He or she shall attend and keep the minutes of all the meetings of the Board. He or she may affix the corporate seal, if any then exists, when so authorized or ordered by the

Board. The Secretary shall have such authority, and shall perform all duties, ordinarily required of an officer in like position.

Section 7. Treasurer: Powers and Duties. The Treasurer shall receive and have custody of all funds, money, property and securities of the Corporation and shall deposit the same in such depository or depositories as the Board shall designate. The Treasurer shall keep or cause to be kept complete and accurate accounts of receipts and disbursements of the Corporation. The Treasurer shall have such authority, and shall perform such duties, ordinarily required of an officer in like position, and such other authority and duties as may be assigned by the Board. Whenever required by the Board, the Treasurer shall render a statement of his or her accounts. The Treasurer shall at all reasonable times exhibit his or her books and accounts to any officer or director of the Corporation. The Treasurer will annually at a meeting of the Board of Directors present a report showing in appropriate detail the reports required by the New York Not-For-Profit Corporation Law ("N-PCL") § 172-b. The report shall be filed with the minutes of the meeting of the Board.

Section 8. Chair of the Board of Directors. The Chair of the Board of Directors (if any) shall preside at all meetings of the Members and of the Board of Directors at which the Chair is present and shall perform such other duties as the Board of Directors may designate. In the absence or inability of the President to act, the Chair of the Board of Directors shall perform the duties and may exercise the powers of the President. No employee of the Corporation shall serve as Chair of the Board.

Section 9. Compensation. Officers shall serve without compensation for their services as such. Officers shall be allowed reimbursement for reasonable expenses upon resolution of the

Board. The Board shall have the power, in its sole discretion, to contract with any officer for services rendered to the Corporation (not including services rendered in his or her capacity as director) and to pay said officer compensation appropriate to the value of such services.

ARTICLE V

COMMITTEES

Section 1. Executive Committee and Other Standing Committees of the Board. The Board, by resolution adopted by a majority of the entire Board, may designate from among its members an Executive Committee and other Standing Committees to consist of at least three directors. Each member of the Executive Committee and any Standing Committees shall serve at the pleasure of the Board, which shall also have full discretion in determining the number of members of the Executive Committee and Standing Committees. The Executive Committee shall have and may exercise all of the powers and authority of the Board, to the extent allowed by applicable New York law. The Executive Committee shall notify the full Board of any actions it takes or decisions made within a reasonable time thereafter. Standing Committees shall have the powers specifically provided in the resolutions creating them which are not inconsistent with New York law, except that no such committee shall have the authority as to the following matters:

- a. submission to the Members of any action requiring the Members' approval under the N-PCL;
- b. filling vacancies in any committee;
- c. amending or repealing the By-Laws or adoption of new By-Laws; and
- d. amending or repealing any resolution of the Board of Directors which by its terms shall not be so amended or repealed.

Section 2. Committees of the Corporation. The Board may, from time to time and by a majority vote of the directors then in office, appoint committees for any purpose and may delegate to each such committee such powers as the Board may deem appropriate and which are not inconsistent with New York law. In appointing a committee of the Corporation, the Board shall appoint the chair of the committee, shall specify the term of the committee's existence, and shall define the committee's powers and duties. Each committee shall consist of at least one director and shall have the power to further delegate such powers if the Board so provides in appointing the committee. No such committees shall have the authority to bind the Board.

Section 3. Audit Committee. The Board of Directors shall establish an audit committee (the "Audit Committee"), which shall consist of at least three (3) independent directors (as defined in N-PCL § 102), and the President and Chief Executive Officer of the Corporation shall not be an ex officio member of the Audit Committee. The Audit Committee shall have responsibility for the functions set forth under N-PCL § 712-a.

Section 4. Quorum. A majority of all of the members of the Executive Committee, Audit Committee any Standing Committees, or any other committees established by the Board shall constitute a quorum at any meeting thereof.

Section 5. Procedures. Procedures of the Executive Committee, Audit Committee, any Standing Committees, and any other committees shall be governed by rules fixed by the Board. All committee members shall serve at the pleasure of the Board.

ARTICLE VI

AGENTS AND REPRESENTATIVES

The Board may appoint such agents and representatives of the Corporation with such powers and to perform such acts or duties on behalf of the Corporation as the Board may see fit, so far as may be consistent with these By-Laws, and to the extent authorized or permitted by law.

ARTICLE VII

CONTRACTS, LOANS, CHECKS, BANK ACCOUNTS, AND INVESTMENTS

Section 1. Contracts. The Board, except as otherwise provided in these By-Laws, may authorize any officer or agent to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to a specific instance. Unless authorized by the Board pursuant to this Article VII, Section 1, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement, or to pledge its credit, or render it liable pecuniarily, for any purpose or to any amount.

Section 2. Loans. The Corporation shall not borrow money, whether by issuing notes, bonds or otherwise, except with the approval of the Board.

Section 3. Banks; Checks. The Board shall from time to time and as necessary select such banks or depositories as it shall deem proper for the funds of the Corporation. The Board shall determine who shall be authorized from time to time on the Corporation's behalf to sign checks, drafts or other orders for the payment of money.

Section 4. Investments. The funds of the Corporation, as directed by the Board, may be retained in whole or in part in cash, or may be invested and reinvested from time to time in such property, real, personal or otherwise, or stocks, bonds or other securities.

ARTICLE VIII

INDEMNIFICATION

The Corporation shall indemnify each director and each officer in a manner and to the fullest extent now or hereafter permitted by the Not-For-Profit Corporation Law of the State of New York (including the advancement of expenses).

ARTICLE IX

FISCAL YEAR

The fiscal year of the Corporation shall be the calendar year.

ARTICLE X

AMENDMENTS

The Members shall have the sole power to make, alter, amend and repeal the By-Laws of the Corporation.

ARTICLE XI

CONFLICTS OF INTEREST

Section 1. Policy and Procedures. The Board of Directors shall adopt and maintain a conflict of interest policy (the "COI Policy") that complies with applicable New York State law and Internal Revenue Service requirements for Section 501(c)(3) organizations, and that adheres to requirements of N-PCL §§ 715-a–715-b, prohibiting transactions that create conflicts of

interest on the part of directors, officers and an employee of the Corporation with substantial influence over the affairs of the Corporation and who is notified of such status by the Corporation (“key employees”), with the interests of the Corporation and the fiduciary and corporate responsibilities of the directors, officers, and key employees. The COI Policy shall be reviewed at least every three (3) years and updated to reflect evolving practices and law in the area.

* * * *

Amended: January 1, 2016

**CERTIFICATE OF DISSOLUTION OF
COMMUNITY CARE ORGANIZATION, INC.**

Pursuant to § 1003 of the Not-for-Profit Corporation

I, Bret Rudy, MD, President of Community Care Organization, hereby certify:

1. The name of the corporation is Community Care Organization, Inc. (the "Corporation").
2. The Corporation was incorporated pursuant to New York Not-for-Profit Corporation Law on November 20, 1989.
3. The names and addresses of the directors and officers of the Corporation are as follows:

<u>Name</u>	<u>Title</u>	<u>Address</u>
Bret Rudy, MD	President	315 7 th Avenue, NY, NY 10001
Daniel Widawsky	Treasurer	88 Lexington Avenue, NY, NY 10016
Richard Donoghue	Secretary	7604 Charles Place Drive, Kernersville, NC 27284

4. Dissolution of the Corporation was authorized by unanimous written consent of the Board of Directors.
5. The Corporation elects to dissolve.
6. At the time of dissolution, the Corporation is a charitable corporation.
7. The Corporation will file with the Attorney General a petition for Approval of the Certificate of Dissolution with the original certified Plan of Dissolution.
8. When the Board of Directors of the Corporation approved the Plan of Dissolution, the Corporation had no assets or liabilities and did not hold any assets required to be used for a restricted purpose.
9. Prior to the filing of this Certificate with the Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of Community Care Organization, Inc. this _____ day of _____, 2018.

Bret Rudy, MD
President

CERTIFICATE OF DISSOLUTION
OF
COMMUNITY CARE ORGANIZATION, INC.

Pursuant to § 1003 of the Not-for-Profit Corporation Law

Filed by: Sheila Eisenberg, Esq.
Senior Counsel (Corporate)
NYU Langone Health
1 Park Avenue, 3rd fl.
New York, NY 10016

**UNANIMOUS WRITTEN CONSENT OF THE BOARD OF DIRECTORS
OF COMMUNITY CARE ORGANIZATION, INC.**

THE UNDERSIGNED, constituting all of the members of the Board of Directors (the "Board") of Community Care Organization, Inc. (the "Corporation"), do hereby adopt, consent to, confirm, approve and ratify the following resolutions in lieu of a meeting of the Board of Directors pursuant to Section 708(b) of the New York State Not-for-Profit Corporation Law:

WHEREAS, the Corporation closed the support services agency it operated as Lutheran Care at Home on August 17, 2018 in accordance with a closure plan approved by the New York State Department of Health; and

WHEREAS, as the Corporation has no intention of resuming operations, the Board of Directors has determined that it is in the best interest of the Corporation to dissolve.

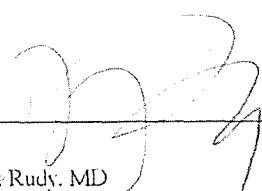
NOW, THEREFORE, BE IT:

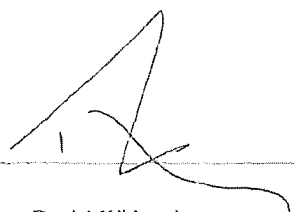
RESOLVED, that the Board hereby authorizes and directs that Corporation be dissolved in accordance with the Plan of Dissolution attached hereto, which Plan of Dissolution is hereby approved; and it is further

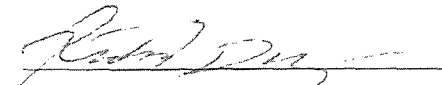
RESOLVED, that the President and the Treasurer of the Corporation (each, an "Authorized Officer") are each authorized to take any and all such actions that such Authorized Officer deems necessary, appropriate or advisable to effect the dissolution, including, without limitation, preparing and submitting any and all governmental, regulatory, judicial and/or third party filings necessary to obtain consents or approvals required to consummate the dissolution, including filing with the New York Secretary of State a Certificate of Dissolution.

RESOLVED, that this Written Consent may be executed in counterparts.

IN WITNESS WHEREOF, the undersigned directors have executed this Consent as of November 16, 2018.


Bret Rudy, MD


Daniel Widawsky


Richard Donoghue

**PLAN OF DISSOLUTION OF
COMMUNITY CARE ORGANIZATION, INC.**

Under Section 1001 of the New York Not-For-Profit Corporation Law

The Board of Directors of Community Care Organization, Inc. (the "Corporation") does hereby resolve that the Corporation be dissolved, and hereby authorize this Plan of Dissolution, pursuant to a Unanimous Written Consent dated November 15, 2018, wherein they adopted the following Plan of Dissolution:

1. There being no members of the Corporation, no vote of membership is required to approve this dissolution, and action of the Board of Directors is sufficient.
2. Approval of the dissolution of the Corporation is required of the New York State Department of Health, whose approval is attached hereto.
3. The Corporation has no assets or liabilities.
4. Within two hundred seventy days after the date on which the York State Office of the Attorney General approves the Plan of Dissolution, the Corporation shall carry out the Plan.

CERTIFICATION

I, Richard Donoghue, Secretary of Community Care Organization, Inc., hereby certify under penalties for perjury that the Plan of Dissolution was duly submitted and authorized by a unanimous vote of the Board of Directors.


Secretary

Dated: 11/19, 2018

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.state.ny.us

December 7, 2018

Sheila M. Eisenberg
Senior Counsel (Corporate)
NYU Langone Health
New York, NY 10016

Re: Certificate of Dissolution of Community Care Organization, Inc.

Dear Ms. Eisenberg:

I have received your letter dated December 6, 2018, regarding the Certificate of Dissolution of Community Care Organization, Inc. for approval under Section 1003 of the Not-For-Profit Corporation Law of the State of New York. Your letter has been forwarded to the Division of Legal Affairs, Bureau of Health Facility Planning and Development for review and approval.

You will be notified when this request has been approved, or if additional information is required. Division of Legal Affairs staff may be reached at (518) 473-3303 if you have any questions.

Sincerely,

Colleen M. Leonard
Colleen M. Leonard
Executive Secretary

cc: DLA

/cl

**PLAN OF DISSOLUTION OF
COMMUNITY CARE ORGANIZATION, INC.**

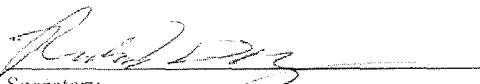
Under Section 1001 of the New York Not-For-Profit Corporation Law

The Board of Directors of Community Care Organization, Inc. (the "Corporation") does hereby resolve that the Corporation be dissolved, and hereby authorize this Plan of Dissolution, pursuant to a Unanimous Written Consent dated November 15, 2018, wherein they adopted the following Plan of Dissolution:

1. There being no members of the Corporation, no vote of membership is required to approve this dissolution, and action of the Board of Directors is sufficient.
2. Approval of the dissolution of the Corporation is required of the New York State Department of Health, whose approval is attached hereto.
3. The Corporation has no assets or liabilities.
4. Within two hundred seventy days after the date on which the York State Office of the Attorney General approves the Plan of Dissolution, the Corporation shall carry out the Plan.

CERTIFICATION

I, Richard Donoghue, Secretary of Community Care Organization, Inc., hereby certify under penalties for perjury that the Plan of Dissolution was duly submitted and authorized by a unanimous vote of the Board of Directors.


Secretary

Dated: 11/19, 2018

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
November 14, 2018.

Whitney Clark

Whitney Clark
Deputy Secretary of State for Business and
Licensing Services

CERTIFICATE OF INCORPORATION

OF

IWO

COMMUNITY CARE ORGANIZATION, INC.

APPROVED
AS TO FORM
CLERK *AC*
I.A.S. - 72

PURSUANT TO SECTION 402 OF THE NOT FOR PROFIT CORPORATION LAW

0078266

We, the undersigned, for the purpose of forming a corporation pursuant to NOT-FOR-PROFIT CORPORATION LAW, of the State of New York, hereby certify:

I

The name of the proposed corporation is

COMMUNITY CARE ORGANIZATION, INC.

00123

and is hereinafter referred to as the "Corporation".

II

The purpose for which the Corporation is formed and the business and object to be carried on and promoted by it, are as follows:

0078266

(a) To provide elderly persons, handicapped persons, the ill and convalescent with home health care, housekeeping, food services and eating facilities, and such other support services as may from time to time be necessary to meet their physical needs, to promote their health, happiness and usefulness in longer living, and to promote

their ability to remain in their home or to make a smooth transition to institutional living. The charges for such services are to be predicated upon the provision, maintenance and operation thereof on a non profit basis.

(b) The Corporation is irrevocably dedicated to and operated exclusively for, nonprofit purposes, and no part of the income or assets of the corporation shall be distributed to, nor inure to the benefit of, any individual.

(c) The corporation is a corporation as defined in the subparagraph (a) (5) of Section 102 of the NOT-FOR-PROFIT CORPORATION LAW. The Corporation is a type B NOT-FOR-PROFIT CORPORATION under section 201 of the NOT-FOR-PROFIT CORPORATION LAW. Pursuant to 404(a) of the NOT-FOR-PROFIT CORPORATION LAW, approval of a justice of the Supreme Court is attached.

III

The Corporation is empowered:

(a) To take and hold, by bequest, devise, grant, gift, purchase, exchange, lease, transfer or any other lawful means, funds and property of every kind and nature, without limitation as to amount or value, except such limitation, if any, as shall be specifically prescribed by law, and to hold, invest, reinvest, assign, loan, administer, use, expend, contribute, convey, sell, mortgage, lease or otherwise dispose of or devote the same or any part thereof, including income or capital, or both, for the advancement,

promotion, fostering or accomplishment of the aforesaid objects and a purposes, or any of them.

(b) To do and perform all acts reasonably necessary to accomplish the purposes of the Corporation, including the execution of a Regulatory Agreement or agreements with any Federal, State, City or local municipality or any subdivision thereof, hereinafter referred to as "Governmental Body" and of such other instruments and undertakings as may be necessary to enable the Corporation to secure the benefits of financing governmental grants or subsidy to carry out its purposes. Such Regulatory Agreement and other instruments and undertakings shall remain binding upon the Corporation, its successors, and assignees, so long as a mortgage on the Corporation's property is held by such governmental body.

(c) In the event of the dissolution of the Corporation or the winding up of its affairs, or other liquidation of its assets, the Corporation's property shall not be conveyed to any organization created or operated for profit or to any individual for less than the fair market value of such property, and all assets remaining after the payment of the Corporation's debts shall be conveyed or distributed only to an organization or organizations created and operated for nonprofit purposes similar to those of the Corporation as shall qualify under Section 501 (c) (3) of the Internal Revenue Code: PROVIDED, however, that the Corporation shall

at all times have the power to convey any or all of its property to any governmental body to which it may then be indebted or otherwise obligated, upon approval of a Justice of the Supreme Court of this State of New York.

IV

If the Corporation receives a temporary loan or advance from any Governmental Body, as established by Law, it shall be authorized to enter into an agreement with the Secretary, Commissioner, or other authorized representative of such governmental body, providing for regulation with respect to rents, profits, dividends and disposition of property or franchises.

V

Nothing contained in the Certificate of Incorporation shall authorize the Corporation:

(a) to carry on propaganda or otherwise attempt to influence legislation, or to participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

(b) to carry on any other activity not permitted to be carried on by a corporation exempt from taxation under Section 501 (c) (3) of the Internal Revenue Code as now in effect or hereafter amended or a corporation contributions to which are deductible under Section 170 (c) (2) of the

Internal Revenue Code as now in effect or hereafter amended.

(c) to engage in or include among its purposes, any of the activities mentioned NOT-FOR-PROFIT CORPORATION LAW, Section 404 (b-t).

VI

The office of the Corporation is to be located in the County of Kings.

VII

The duration of the Corporation shall be perpetual.

VIII

By-Laws of the Corporation may be adopted by the Directors at any regular meeting or at any special meeting called for that purpose, so long as they are not inconsistent with the provisions of this Certificate, of any Regulatory Agreement between the Corporation and any Governmental Body, or the By-Laws of the organization. By-Laws adopted by the directors shall not become effective until approved by such Governmental Body where required.

IX

The number of directors of the Corporation shall be not less than three nor more than fifteen and they shall serve without compensation. They shall be elected by the original directors of the Corporation. The original directors (trustees) and the term for which each will serve, are set as follows:

<u>NAME ADDRESS</u>	<u>TERM</u>
Robert J. Walsh 452 - 54th Street Brooklyn, New York 11220	3 years
Ma Maakestad, R.N. 890 Shore Road Brooklyn, New York 11209	3 years
Rev. Norman L. Sindlesperger 882 Schuman Place Baldwin, New York 11510	3 years
Bonnie Klima-Olsen 730 - 67th Street Brooklyn, New York 11228	3 years
Miles Kucker 1845 East 31st Street Brooklyn, New York 11234	3 years

X

Directorship in the Corporation shall, at all times be limited to individuals who are either (1) Directors of the Foundation for Human Ecology, Brooklyn, New York, or Lutheran Medical Center, Brooklyn, New York, (2) Officers of

the Foundation for Human Ecology or Lutheran Medical Center, or (3) Members or Employees of the Foundation for Human Ecology or Lutheran Medical Center, or (4) a Member or Staff person of a not-for-profit community based service agency in the Lutheran Medical Center catchment area located in the Borough of Brooklyn, State of New York. However, a majority of the Board of Directors shall be from categories, 1, 2 and 3 noted above. In the event that a Director of the Corporation ceases to be a Director, Officer or Employee of the Foundation for Human Ecology or Lutheran Medical Center, or ceases to be a Member or Staff person of a Not-For-Profit community based service agency, then, such termination shall constitute automatic resignation as a Director of the Corporation.

The annual meeting shall be held on the 1st day of June of each year or as soon thereafter as the Board of Directors shall determine.

XI

By-Laws of the Corporation may be adopted by the Directors at any regular meeting or any special meeting called for that purpose, so long as they are not inconsistent with the provisions of these Articles or of the Regulatory Agreement between the Corporation and any Governmental Body pursuant to Article III hereof.

XII

The names and residences of the subscribers to this Certificate of Incorporation are:

Robert J. Walsh
452 -54th Street
Brooklyn, N.Y. 11220

Miles Kuckèr
1845 - East 31st Street
Brooklyn, N.Y. 11234

Martha Maakestad, R.N.
8901 Shore Road
Brooklyn, N. Y. 11209

Bonnie Klima-Olsen
730 - 67th Street
Brooklyn, New York 11228

Rev. Norman L. Gindlesperger
882 Schuman Place
Baldwin, N. Y. 11510

XIII

All of the subscribers to this Certificate of Incorporation are of full age; all are citizens of the United States, and all of the persons named as a director of the Corporation are citizens of the United States and residents of the State of New York.

XIV

The Secretary of the State of the State of New York is hereby designated the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him as agent of the Corporation is 437 Bay Ridge Parkway, Brooklyn, New York, 11209

IN WITNESS WHEREOF we have made, subscribed and
acknowledged this Certificate of Incorporation, in
triplicate this 9th day of June 1989.

NAME AND ADDRESS

SIGNATURE

Robert J. Walsh
452 - 54th Street
Brooklyn, New York 11220

Robert J. Walsh

Martha Maakestad, R.N.
8901 Shore Road
Brooklyn, New York 11209

Martha Maakestad

Rev. Norman L. Gindlesperger
882 Schuman Place
Baldwin, New York 11510

Norman L. Gindlesperger

Bonnie Klima-Olsen
730 - 67th Street
Brooklyn, New York 11228

Bonnie Klima Olsen

Miles Kucker
1845 East 31st Street
Brooklyn, New York 11234

Miles Kucker

AFFIRMATION OF ATTORNEY

JOSEPH M. SUSSILLO, an attorney duly admitted to practice in the State of New York, under the penalty of perjury affirms:

That he is the attorney for the subscribers to the annexed Certificate of Incorporation of COMMUNITY CARE ORGANIZATION, INC., and

That no previous application for the approval of such Certificate by a Justice of the Supreme Court has ever been made.

DATED:

June 9, 1989

Joseph M. Sussillo
JOSEPH M. SUSSILLO

HON. ELLIOTT GOLDEN

, a Justice of the Supreme Court of the State of New York, Second Judicial District, do hereby approve the foregoing Certificate of Incorporation of COMMUNITY CARE ORGANIZATION, INC. and consent that same be filed.

DATED: OCT 24 1989

Elliott Golden

I.A.S.

Supreme Court: Kings County
~~Special Term~~, Part ~~II~~ 72
Brooklyn, New York

June 26, 1989
THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON AND WAIVES STATUTORY NOTICE.

ROBERT ARSANS, ATTORNEY GEN.
STATE OF NEW YORK

10

Howard Holt
HOWARD HOLT
Associate Attorney



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

David Axelrod, M.D.
Commissioner

October 18, 1989

Lawrence A. Kirsch, Esq.
Gerald Weinberg, P.C.
90 State Street
Albany, New York 12207

RE: Certificate of Incorporation of
Community Care Organization, Inc.
Home Care Services Agency Licensure
Application #496

Dear Mr. Kirsch:

This is in response to your recent request for the Department of Health's consent to the filing of the Certificate of Incorporation for the above referenced corporation.

The proposed Certificate of Incorporation of Community Care Organization, Inc., dated June 9, 1989, has been given careful consideration as part of the Department of Health's review of the corporation's application for licensure as a home care services agency pursuant to Article 36 of the Public Health Law.

The proposed language of the corporation's purposes, as set forth in the subject Certificate of Incorporation, includes the following:

"To provide elderly persons, handicapped persons, the ill and convalescent with home health care, housekeeping, food services and eating facilities, and such other support services as may from time to time be necessary to meet their physical needs; to promote their health, happiness and usefulness in longer living, and to promote their ability to remain in their home or to make a smooth transition to institutional living."

The subject Certificate of Incorporation was submitted to the Department in order to comply with the Department's home care services agency licensure regulation at 10 NYCRR §765-1.10. The certificate meets this agency's requirements and we do not object to the original Certificate being filed with the Secretary of State at this time. You may submit this letter together with the executed original Certificate of Incorporation at the time you file such certificate with the Secretary of State.

This letter is not to be construed as an approval of the corporation's home care services agency licensure application nor shall it be construed as granting the corporation the approval to actually operate a home care services agency. The corporation must obtain all required approvals and be issued a home care services agency license by the Department, pursuant to Article 36 of the Public Health Law.

Very truly yours,

Richard N. Coutant

Richard N. Coutant
Attorney

tlh

NOTICE OF ENTRY

Sir: Please take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

JOSEPH M. SUSSILLO, J.D.

Attorney for

Office and Post Office Address
437 BAY RIDGE PARKWAY
BROOKLYN, N.Y. 11209

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir: Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on,

19

at

M.

Dated,

Yours, etc.,

JOSEPH M. SUSSILLO, J.D.

Attorney for

Office and Post Office Address
437 BAY RIDGE PARKWAY
BROOKLYN, N.Y. 11209

To

Attorney(s) for

0078266

Index No.

Year 19

-13

COMMUNITY CARE ORGANIZATION, INC.

CERTIFICATE OF INCORPORATION

JOSEPH M. SUSSILLO, J.D.

Attorney for

Office and Post Office Address, Telephone
437 BAY RIDGE PARKWAY
BROOKLYN, N.Y. 11209
(718) 836-8312 (718) SH-5-5850

To

Attorney(s) for

Service of a copy of the within is hereby admitted.

Dated,

Attorney(s) for

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED NOV 20 1989
AMT. OF CHECK \$ 30
FILING FEE \$
TAX \$
COUNTY FEE \$ 30
COPY \$
CERT. REFUND \$
SPEC. HANDLE \$

FILED

I W G

OK King 4/26/89

OPR
T. J. B.

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
November 14, 2018.

Whitney Clark

Whitney Clark
Deputy Secretary of State for Business and
Licensing Services

NCR-26

080606000057

RESTATED CERTIFICATE OF INCORPORATION
OF
COMMUNITY CARE ORGANIZATION, INC.

Under Section 805 of the Not-for-Profit Corporation Law

- FIRST: The name of the corporation is Community Care Organization, Inc. (the "Corporation").
- SECOND: The Certificate of Incorporation of the Corporation was filed with the Department of State on November 20, 1989.
- THIRD: The Certificate of Incorporation is amended to effect one or more amendments authorized by the Not-For-Profit Corporation Law. The amendments effected by this Restated Certificate of Incorporation are as follows:
1. Article III (specifying the Corporation's powers) is hereby amended to add a new Subsection (b) to read as follows:

"(b) To do and perform any and all lawful acts and things which may be necessary or proper in connection with its objects and purposes either alone or in association with other corporations, associations, firms, governmental offices or agencies, political divisions or subdivisions, or individuals, all in such manner, except as otherwise provided by law, as in the judgment of the Corporation's directors will promote its objects and purposes."
 2. Articles IV (authorizing the Corporation to enter into a regulatory agreement if it receives a temporary loan from a governmental body), VII (providing that the duration of the Corporation is to be perpetual), VIII (providing for the adoption of by-laws), X (providing for the qualification of directors of the Corporation and the date of the annual meeting of the Corporation), XI (providing for the adoption of by-laws), XII (naming the subscribers to the certificate of incorporation) and XIII (confirming the age and citizenship of the incorporators and the citizenship of the initial directors) are hereby deleted in their entirety, and the remaining Articles are renumbered accordingly.
 3. Former Article V (specifying the activities that the certificate of incorporation does not authorize the Corporation to undertake), which has been renumbered Article IV, is hereby amended and restated to correct the reference to Section 404 of the Not-For-Profit Corporation Law in subparagraph (c), such that subparagraph (c) shall read in its entirety as follows:

"(c) To engage in or include among its purposes, any of the activities mentioned in Not-For-Profit Corporation Law, Section 404 (b-w)."

080606000057

4. Former Article VI (specifying the location of the Corporation's office), which has been hereby renumbered Article V, is hereby amended and restated in its entirety to read as follows:

"The office of the Corporation is to be located in the City of New York, County of Kings and State of New York.

5. Former Article IX (specifying the number of the Corporation's directors, the manner of their election and the names and addresses of the original directors), which has been hereby renumbered Article VI, is hereby amended and restated in its entirety to read as follows:

"The number of directors of the Corporation shall be not less than three nor more than fifteen and they shall serve without compensation."

6. Former Article XIV (designating the Secretary of State as the Corporation's agent for service of process and providing a post office address to which the Secretary of State shall mail a copy of any process served), which has been hereby renumbered Article VII, is hereby amended and restated in its entirety to read as follows:

"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 is:

c/o Lutheran Medical Center
Office of the General Counsel
150 55th Street
Brooklyn, NY 11220"

FOURTH: The text of the Restated Certificate of Incorporation of the Corporation is hereby restated, as amended, to read as follows:

I

The name of the proposed corporation is COMMUNITY CARE ORGANIZATION, INC. and is hereinafter referred to as the "Corporation".

II

The purpose for which the Corporation is formed and the business and object to be carried on and promoted by it, are as follows:

(a) To provide elderly persons, handicapped persons, the ill and convalescent with care, housekeeping, food services and eating facilities, and such other support services as may from

time to time be necessary to meet their physical needs, to promote their health, happiness and usefulness in longer living, and to promote their ability to remain in their home or to make a smooth transition to institutional living. The charges for such services are to be predicated upon the provision, maintenance and operation thereof on a non profit basis.

(b) The Corporation is irrevocably dedicated to and operated exclusively for, nonprofit purposes; and no part of the income or assets of the corporation shall be distributed to, nor inure to the benefit of, any individual.

(c) The Corporation is a corporation as defined in the subparagraph (a) (5) of section 102 of the NOT-FOR-PROFIT CORPORATION LAW. The Corporation is a type B NOT-FOR-PROFIT CORPORATION under section 201 of the NOT-FOR-PROFIT CORPORATION LAW.

III

The Corporation is empowered:

(a) To take and hold, by bequest, devise, grant, gift, purchase, exchange, lease, transfer or any other lawful means, funds and property of every kind and nature, without limitation as to amount or value, except such limitation, if any, as shall be specifically prescribed by law, and to hold, invest, reinvest, assign, loan, administer, use, expend, contribute, convey, sell, mortgage, lease or otherwise dispose of or devote the same or any part thereof, including income or capital, or both, for the advancement, promotion, fostering or accomplishment of the aforesaid objects and purposes, or any of them.

(b) To do and perform any and all lawful acts and things which may be necessary or proper in connection with its objects and purposes either alone or in association with other corporations, associations, firms, governmental offices or agencies, political divisions or subdivisions, or individuals, all in such manner, except as otherwise provided by law, as in the judgment of the Corporation's directors will promote its objects and purposes.

(c) In the event of the dissolution of the Corporation or the winding up of its affairs, or other liquidation of its assets, the Corporation's property shall not be conveyed to any organization created or operated for profit or to any individual for less than the fair market value of such property, and all assets remaining after the payment of the Corporation's debts shall be conveyed or distributed only to an organization or organizations created and operated for nonprofit purposes similar to those of the Corporation as shall qualify under Section 501 (c) (3) of the Internal Revenue Code; PROVIDED, however, that the Corporation shall at all times have the power to convey any or all of its property to any governmental body to which it may then be indebted or otherwise obligated, upon approval of a Justice of the Supreme Court of this State of New York.

IV

Nothing contained in the Certificate of Incorporation shall authorize the Corporation:

(a) To carry on propaganda or otherwise attempt to influence legislation, or to participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

(b) To carry on any other activity not permitted to be carried on by a corporation exempt from taxation under Section 501 (c) (3) of the Internal Revenue Code as now in effect or hereafter amended or a corporation contributions to which are deductible under Section 170 (c) (2) of the Internal Revenue Code as now in effect or hereafter amended.

(c) To engage in or include among its purposes, any of the activities mentioned in Not-For-Profit Corporation Law, Section 404 (b-w).

V

The office of the Corporation is to be located in the City of New York, County of Kings and State of New York.

VI

The number of directors of the Corporation shall not be less than three nor more than fifteen and they shall serve without compensation.


VII

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 is:

c/o Lutheran Medical Center
Office of the General Counsel
150 55th Street
Brooklyn, NY 11220

FIFTH: This Restated Certificate of Incorporation was authorized by the unanimous written consent of the members of the Corporation dated as of May 8, 2008.

IN WITNESS WHEREOF, the Corporation has caused this certificate to be signed by
Claudia Caine, its President, this 9th day of May, 2008.


COMMUNITY CARE ORGANIZATION, INC.

Name: Claudia Caine

Title: President

NCR-26

080606000057

RESTATED
CERTIFICATE OF INCORPORATION

OF

COMMUNITY CARE ORGANIZATION, INC.

UNDER SECTION 805 OF THE
NOT-FOR-PROFIT CORPORATION LAW

2008 JUN -6 AM 9:11

RD

icc

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JUN 06 2008

TAX \$ _____

BY: mmr

Kuniga

mmr

Manatt, Phelps & Phillips, LLP
7 Times Square
New York, New York 10036

2008 MAY 15 AM 10:15

Drawdown RECEIVED

-6-

076



**Department
of Health**

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

March 5, 2018

Jeanne Lee, VP, Senior Care and Home Care
Lutheran Care at Home
5407 Second Avenue
Brooklyn, NY 11220

RE: Closure Plan for Lutheran Care at Home

Dear Ms. Lee,

The New York State Department of Health has reviewed the revised closure plan submitted on February 8, 2018 for Lutheran Care at Home, Operating Certificate # 7001644. The plan satisfactorily meets the criteria set forth by the Department. It assures the appropriate disposition of patients to other care providers.

The Department approves the implementation of the closure plan toward successful transfer of all patients by May 12, 2018. At that time, you are required to relinquish your operating certificate to the Metropolitan Area Regional Office.

Staff from the Metropolitan Area Regional Office will work with you to monitor activities as the closure plan commences. Please contact Mr. Mikhail Pankov at 212-417-4921, if you have any questions or require assistance during this time. Thank you for your cooperation in ensuring the health and safety of your agency's patients throughout the transition period.

Sincerely,

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

cc: C. Johnson
M. Pankov
M. Hennessey
R. Gray
G. Macko

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 14th day of February 2019, approves the filing of the Certificate of Dissolution of Community Care Organization, Inc., dated November 16, 2018.



Project # 182220-E
Good Samaritan Hospital Home Care Department

Program: Certified Home Health Agency
Purpose: Establishment

County: Rockland
Acknowledged: November 9, 2018

Executive Summary

Description

Good Samaritan Hospital of Suffern (the Hospital) requests approval for a change in the controlling entity of the Good Samaritan Hospital Home Care Department, a voluntary not for profit, Article 36 certified home health agency (CHHA) operated by the Hospital. The controlling entity, Bon Secours Charity Health System, Inc. (BSCHS), received approval to be established as the sole corporate member and controlling entity of the CHHA under CON 001146. Through this application, WMC Health Network-Rockland, Inc. and Westchester County Health Care Corporation (WCHCC) will be established as controlling entities of the CHHA. WMC Health Network-Rockland, a wholly-owned, not-for-profit subsidiary of WCHCC, will become the majority corporate member of BSCHS. BFA Attachment A presents the organizational chart before and after the change in corporate membership.

There are no costs associated with this project. There will be no change in the authorized services or service area of the CHHA as a result of the proposed change in the controlling entity, and there are no projected changes in the utilization, revenues or expenses of the CHHA as a direct result of this project.

WCHCC has also entered into a management agreement with BSCHS, which was approved by the New York State Department of Health, whereby WCHCC provides oversight of the day-to-day operation of BSCHS and all of its entities through a Chief Executive Officer employed by WCHCC. They also perform certain management support services.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no Need recommendation of this project.

Program Summary

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

Financial Summary

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

Table with 2 columns: Category (Revenues, Expenses, Net Loss) and Year One values (\$19,367,164, 19,613,437, (\$246,273)).

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 an amended and restated certificate of incorporation of WMC Health Network-Rockland, Inc., acceptable to the Department. [CSL]
2. Submission of a photocopy of an amended and executed Management 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. Submission of a copy of the fully executed Certificate of Assumed Name for Good Samaritan Hospital of Suffern, Inc. d/b/a Good Samaritan Hospital Home Care Department at the time of project completion. [CHA]

Council Action Date

February 14, 2019

Program Analysis

Program Description

Good Samaritan Hospital of Suffern, Inc. d/b/a Good Samaritan Hospital Home Care Department, a not-for-profit corporation, requests approval to establish WMC Health Network – Rockland, Inc. and Westchester County Health Care Corporation as new controlling entities of an existing Certified Home Health Agency (CHHA) under Article 36 of the Public Health Law.

Good Samaritan Hospital Home Care Department is a Certified Home Health Agency (CHHA) serving Rockland, Orange, Bronx, New York and Westchester counties. Currently, the sole corporate member of Good Samaritan Hospital of Suffern, Inc. is Bon Secours Charity Health System, Inc. The corporate membership of Bon Secours Charity Health System, Inc. is comprised of Bon Secours Health System, Inc. which has 100% economic interest and Sisters of Charity of Saint Elizabeth. This project seeks to establish WMC Health Network-Rockland, Inc., a wholly owned not-for-profit subsidiary of Westchester County Health Care Corporation, a public benefit corporation, as a third member of Bon Secours Charity Health System, Inc. At the close of this transaction, Bon Secours Health System, Inc. will hold 40% economic interest in Bon Secours Charity Health System, Inc. and WMC Health Network – Rockland, Inc. will become the majority member with 60% economic interest. Please refer to BFA Attachment A – Before and After Organizational Charts for more detail regarding this transaction.

Westchester County Health Care Corporation has ownership in the following facilities:

- Westchester Medical Center (Hospital)
- MidHudson Regional Hospital (Division of Westchester Medical Center)
- HealthAlliance Hospital Broadway Campus
- HealthAlliance Hospital St. Mary's Avenue Campus
- Margaretville Hospital
- Mountainside Residential Care Center (RHCF)
- North Road LHCSA, Inc.
- Westchester County Health Care Corporation d/b/a MidHudson Valley Division of WMC Certified Home Health Services (CHHA)

This project will have no impact on the services provided or counties served by Good Samaritan Hospital Home Care Department.

Character and Competence Review

Westchester County Health Care Corporation is a public benefit corporation pursuant to Title 1, Article 10-C, Chapter 43-A of the Public Authorities Law of the State of New York. The board of Westchester County Health Care Corporation is comprised of fifteen (15) voting members, eight of which are appointed by the New York State governor, with the remaining seven being appointed by the legislature of Westchester County. The board of Westchester County Health Care Corporation also includes four non-voting members, consisting of one chief executive officer appointed by the fifteen (15) voting board members, one appointed by the Westchester County executive, one appointed by the majority leader of the Westchester County legislature, and one appointed by the minority leader of the Westchester County legislature. A public benefit corporation is a government agency, and pursuant to 10 NYCRR 760.3(c)(1) – (4), character and competence review of the governing body of any government subdivision shall consider the governing body as a whole, rather than the individual elected or appointed members of the governing body. In accordance with 10 NYCRR 760.3(c)(1) – (4), the individual board members of Westchester County Health Corporation were not reviewed as part of this project.

The Board of Directors of WMC Health Network – Rockland, Inc. is as follows:

<p>Gary F. Brudnicki – Director Senior EVP, Westchester Medical Center <u>Affiliations</u></p> <ul style="list-style-type: none"> • Westchester Medical Center • Bon Secours Charity Health System, Inc. • Health Alliance, Inc. 	<p>Mitchell C. Hochberg – Director President, Lightstone</p>
<p>Michael D. Israel – Director President & CEO, Westchester Medical Center <u>Affiliations</u></p> <ul style="list-style-type: none"> • Westchester Medical Center • Bon Secours Charity Health System, Inc. • Health Alliance, Inc. 	<p>Zubeen P. Shroff – Director Managing Director, Galen Partners</p>
<p>Julie A. Switzer, Esq. – Director EVP & General Counsel, Westchester Medical Center Health Network <u>Affiliations</u></p> <ul style="list-style-type: none"> • Westchester Medical Center • Bon Secours Charity Health System, Inc. • Health Alliance, Inc. 	<p>Mark S. Tulis, Esq. – Director Lawyer, Mark S. Tulis, P.C./Tulis Wilkes, LLP <u>Affiliations</u> Westchester Medical Center (Hospital)</p>

In November 2011, Westchester Medical Center received a Civil Investigative Demand (CID) from the United States Attorney’s Office for the Southern District of New York regarding inpatient and outpatient mental health services furnished at Westchester Medical Center’s Behavioral Health Center. The investigation stemmed from a qui tam complaint. The matter was settled in October 2012.

In March 2015, Westchester Medical Center settled a qui tam complaint related to contractual agreements between physicians on its staff.

In July 2015, Westchester Medical Center received a Civil Investigative Demand (CID) related to claims submitted to the Medicaid and Medicare programs during clinical trials. The CID is still pending.

Mitchell C. Hochberg disclosed he was named in a civil suit on February 21, 2018 regarding an employment dispute.

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A search of the individuals named above on the New York State Unified Court System revealed that the individuals are currently registered and have no disciplinary actions taken against them.

A seven-year compliance review of the following providers was performed as part of this project:

- Good Samaritan Hospital of Suffern
- Bon Secours Community Hospital
- St. Anthony Community Hospital
- Westchester Medical Center (Hospital)
- MidHudson Regional Hospital (Division of Westchester Medical Center)
- HealthAlliance Hospital Broadway Campus
- HealthAlliance Hospital St. Mary’s Avenue Campus
- Margaretville Hospital
- St. Anthony’s Sleep Disorder Institute (Extension Clinic)
- Women’s Imaging Center (Extension Clinic)
- Center for Physical Rehabilitation (Extension Clinic)
- Bon Secours Sleep Disorder Institute (Extension Clinic)
- Mountainside Residential Care Center (RHCF)

- Schervier Pavilion (RHCF)
- St. Joseph's Place (RHCF)
- Mount Alverno Center (ACF/ALP)
- Westchester County Health Care Corporation d/b/a MidHudson Valley Division of WMC Certified Home Health Services (CHHA)
- Good Samaritan Hospital of Suffern, Inc. d/b/a Good Samaritan Hospital Home Care Department (CHHA)
- North Road LHCSA, Inc.

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The Information provided by the 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.

CHHA Quality of Patient Care Star Ratings as of January 2, 2019	
New York Average: 3 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
Good Samaritan Hospital of Suffern, Inc. d/b/a Good Samaritan Hospital Home Care Department	3.5 out of 5 stars
Westchester County Health Care Corporation d/b/a Mid-Hudson Valley Division of Westchester Medical Center Certified Home Health Services	3 out of 5 stars

The review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a certified home health agency.

Financial Analysis

Operating Budget

The applicant submitted their current year and first year operating budgets, in 2018 dollars, as shown below:

	<u>Current Year</u>	<u>Year One</u>
<u>Revenues</u>		
Medicaid FFS	\$162,016	\$162,016
Medicaid MC	761,982	761,982
Medicare FFS	9,923,818	9,923,818
Medicare MC	2,508,742	2,508,742
Commercial FFS	4,736,374	4,736,374
Commercial MC	1,170,199	1,170,199
Private Pay	<u>104,033</u>	<u>104,033</u>
Total Revenue	\$19,367,164	\$19,367,164
<u>Expenses</u>		
Operating	\$19,105,935	\$19,105,935
Capital	<u>507,502</u>	<u>507,502</u>
Total Expenses	\$19,613,437	\$19,613,437
Net Loss	<u>(\$246,273)</u>	<u>(\$246,273)</u>
<u>Utilization</u>		
Visits	81,177	81,177
Hours	12,589	12,589

Utilization by payor during the current year and the first year after change in controlling entity:

	<u>Current Year</u>	<u>Year One</u>
Medicaid FFS	1.2%	1.2%
Medicaid MC	3.8%	3.8%
Medicare FFS	52.6%	52.6%
Medicare MC	12.4%	12.4%
Commercial FFS	23.5%	23.5%
Commercial MC	5.7%	5.7%
Private Pay	<u>0.8%</u>	<u>0.8%</u>
Total	100%	100%

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

Capability and Feasibility

There are no project costs associated with this application. The submitted budget projects a \$246,273 net loss in Year One after the change in corporate structure. Revenues are based on current reimbursement methodologies. The applicant has indicated that the losses will be offset via operations of Westchester County Health Care Network. The submitted budget appears reasonable.

BFA Attachment B is a summary of Westchester County Health Care Corporation's 2016-2017 certified financial statements. As shown, the entity had an average positive working capital position and an average negative net asset position from 2016 through 2017. The average negative net asset position is due to mandatory accounting adoptions of the non-cash GASB 75 (\$237.3 million) and GASB 68 (9.4 million), plus the unanticipated DSH reduction (\$40.0 million) in 2017. Subsequent to the issuance of the 2017 financial statements, the Federal Government restored Medicaid DSH funding for both 2017 and 2018 and Westchester Medical Center ultimately received the \$40 million, which is being recorded in 2018. The entity had net losses in 2016 and 2017.

HealthAlliance and its subsidiaries were included in the financial statements of WCHCC in 2016 and 2017, and there was an adjustment due to the temporary impact of the Medicaid DSH reduction. WCHCC has taken steps to bring HealthAlliance into profitability, including working to consolidate the two Kingston hospitals into one single location with the assistance of a new hospital construction project funded, in large part, by a Capital Restructuring Finance Program (CRFP) grant from the New York State Department of Health. Of the total \$88.7 million CRFP grant, \$75 million is apportioned to the hospital construction project.

BFA Attachment C is the 2017 certified financial statements of Bon Secours Health Care System. As shown, the entity had an average positive working capital position and an average positive net asset position in 2016 and 2017. The entity had positive net income in 2016 and 2017.

BFA Attachment D is the internal financial statements of Bon Secours Charity Health System as of March 31, 2018. As shown, the entity had a positive working capital position and a positive net asset position. The entity achieved an operating income of \$8,676,000 through March 31, 2018.

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

Attachments

BFA Attachment A	Organizational Chart- Before and After
BFA Attachment B	Financial Summary- 2016-2017 certified financial statements Westchester County Health Care Corporation.
BFA Attachment C	Financial Summary- 2017 Certified Financial Statements of Bon Secours Charity Health System
BFA Attachment D	Financial Summary- March 31, 2018 Internal Financial Statements of Bon Secours Charity Health System.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 14th day of February, 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to establish WMC Health Network-Rockland, Inc. and Westchester County Health Care Corporation as new controlling entities of the Good Samaritan Hospital Home Care Department, a Certified Home Health Agency, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

182220 E

Good Samaritan Hospital Home Care
Development

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of an amended and restated certificate of incorporation of WMC Health Network-Rockland, Inc., acceptable to the Department. [CSL]
2. Submission of a photocopy of an amended and executed Management Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONED UPON:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Submission of a copy of the fully executed Certificate of Assumed Name for Good Samaritan Hospital of Suffern, Inc. d/b/a Good Samaritan Hospital Home Care Department at the time of project completion. [CHA]

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



Project # 182214-E

Buffalo Surgery Center, LLC

Program: Diagnostic and Treatment Center
Purpose: Establishment

County: Erie
Acknowledged: November 9, 2018

Executive Summary

Description

Buffalo Surgery Center, LLC, an existing proprietary, Article 28 freestanding ambulatory surgery center (FASC) located at 3921 Sheridan Drive, Amherst (Erie County), requests approval to transfer 4.34% ownership from existing members to each of three new members for a total transfer of 13.02% ownership interest in the FASC. The transfer is being effectuated via the issuance of 100 units of ownership to each of the three new physician members in accordance with the Center's Fourth Amended and Restated Operating Agreement and under the terms of the applicable Purchase, Sale, and Joinder Agreements. Upon Public Health and Health Planning Council (PHHPC) approval of this application, each new physician member will own 4.34% membership interest in Buffalo Surgery Center, LLC. The proposed new members are David Pula, M.D., Ryan Wilkins, M.D. and Daniel Leberer, M.D., all of whom are currently performing procedures at the Center. The proposed new members have each executed a Purchase, Sale and Joinder Agreement pursuant to the terms of the Center's Fourth Amended and Restated Operating Agreement. The purchase price for each 4.34% membership interest is \$205,000 for a total

purchase price of \$615,000 for the 13.02% ownership transfer.

The FASC is licensed to provide three single-specialty services (gastroenterology, ophthalmology, and orthopedics) and serves patients from across all of Western New York, but primarily from Erie and Niagara counties.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no Need recommendation for this project.

Program Summary

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

Financial Summary

There are no project costs associated with this application and no change in services or business model.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of the executed personal loan commitments for Drs. Pula and Leberer, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the applicant's unredacted Board Meeting Minutes of October 2, 2018, 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

February 14, 2019

Program Analysis

Program Description

Buffalo Surgery Center, LLC, an existing Article 28 Diagnostic and Treatment Center certified for three single surgical specialties (Gastroenterology, Ophthalmology, and Orthopedics), located at 3921 Sheridan Drive in Amherst (Erie County), requests approval to transfer a total of 13.02% ownership from existing owners to three new physician members— Drs. David Pula, Ryan Wilkins, and Daniel Leberer— each of whom are all currently performing procedures at the center. Upon approval, each of the new members will own a 4.34% membership interest in Buffalo Surgery Center, LLC.

The table below details the proposed change in ownership:

Member Name	Current Membership Interest	Proposed Membership Interest
Lisa Daye, MD, <i>Medical Director</i>	5.00%	4.349%
Andrew Stoeckl, MD	5.00%	4.349%
Paul Paterson, MD	5.00%	4.349%
John Callahan, MD	5.00%	4.349%
Peter Shields, MD	5.00%	4.349%
David Bagnall, MD	5.00%	4.349%
James Slough, MD	5.00%	4.349%
James Kelly, DO	5.00%	4.349%
Jafar Siddiqui, MD	5.00%	4.349%
Bryan Butler, MD	5.00%	4.349%
Matthew Cywinski, MD	5.00%	4.349%
Mohammad Fayyaz, MD	5.00%	4.349%
Alok Gupta, MD	5.00%	4.349%
Joseph Leberer, MD	5.00%	4.349%
Jehad Miqdadi, MD	5.00%	4.349%
James Piscatelli, MD	5.00%	4.349%
Jeffrey Visco, MD	5.00%	4.349%
Nicholas Violante, DO	5.00%	4.349%
Timothy McGrath, MD	5.00%	4.349%
Kory Reed, MD	5.00%	4.349%
*David Pula, MD	----	4.340%
*Ryan Wilkins, MD	----	4.340%
*Daniel Leberer, MD	----	4.340%
Total	100%	100%

****Subject to Character and Competence Review***

The BSC Board of Directors will consist of: Drs. John Callahan, Lisa Daye, James Slough, Joseph Leberer and Matthew Cywinski

Character and Competence

Dr. Pula, a board-certified orthopedic surgeon, has been practicing medicine for 15 years. Since October 2016, he has been employed by Excelsior Orthopaedics. Prior to that, he operated a private practice. Dr. Pula is a graduate of Tulane Medical School and has completed an orthopedic residency at Tripler Army Medical Center and a sports medicine fellowship at SUNY Buffalo School of Medicine.

Dr. Wilkins is also a board-certified orthopedic surgeon employed by Excelsior Orthopaedics since April 2016. Prior to that, he was employed by Joint Reconstruction Orthopedics in Amherst. He initially earned a degree in physical therapy from the University at Buffalo, however, after working briefly in that field, he enrolled in medical school. Upon earning his medical degree from the SUNY Buffalo School of Medicine, he went on to complete both an orthopedic surgery residency and a fellowship in sports medicine at SUNY Buffalo.

Dr. Leberer is a board-certified colon and rectal surgeon who graduated from the University at Buffalo School of Medicine and Biomedical Science. He completed a general surgical residency at Riverside Methodist Hospital and a Colon Rectal Fellowship at SUNY Buffalo.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted for the three (3) proposed individual members regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Conclusion

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

Financial Analysis

Purchase, Sale and Joinder Agreement

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

Date:	October 10, 2018
Description:	Purchase of 4.34% membership interest for each new member
Company:	Buffalo Surgery Center, LLC
Purchasers:	David Pula, M.D., Ryan Wilkins, M.D. and Daniel Leberer, M.D.
Purchase Price:	\$205,000 per proposed new member
Payment of Purchase Price:	\$615,000 total balance due at closing.

Drs. David Pula and Daniel Leberer will fund their purchase price via the proceeds of a \$205,000 personal loan each physician will obtain. M&T Bank has provided the respective physician's letter of interest for a \$205,000 loan with a seven-year term at 5.75% interest. Payment of the purchase price due from Dr. Ryan Wilkins will be paid from his personal assets. BFA Attachment A is a summary of the proposed members' net worth statements. The net worth statement of Dr. Wilkins shows sufficient resources for the transaction.

Capability and Feasibility

There are no project costs associated with this application and no change in services or business model. BFA Attachment C is the 2017 certified financial statements of Buffalo Surgery Center, LLC and their internal financial summary of as of September 30, 2018, which shows the entity has maintained a positive working capital position, net equity position, and experienced a net income of \$3,406,600 in 2017 and \$3,260,498 as of September 30, 2018.

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

Attachments

- BFA Attachment A Personal Net Worth Statements of Proposed Members of Buffalo Surgery Center, LLC
- BFA Attachment B Current and Proposed Membership interest in Buffalo Surgery Center, LLC
- BFA Attachment C Buffalo Surgery Center, LLC. – 2017 Certified Financial Statements and Internal Financial Statements as of September 30, 2018

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 14th day of February 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 4.34 percent ownership from existing owners to each of three new members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

182214 E

Buffalo Surgery Center, LLC

APPROVAL CONTINGENT UPON:

1. Submission of the executed personal loan commitments for Drs. Pula and Leberer, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the applicant's unredacted Board Meeting Minutes of October 2, 2018, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



MEMORANDUM

To: Public Health and Health Planning Council

From: Richard J. Zahnleuter, General Counsel

Date: January 8, 2019

Subject: Proposed Dissolution of The Foundation of NewYork – Presbyterian/
Lawrence Hospital

The Foundation of NewYork – Presbyterian/Lawrence Hospital requests Public Health and Health Planning Council (PHHPC) approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law sections 1002(c) and 1003, as well as 10 NYCRR Part 650.

The Foundation of NewYork – Presbyterian/Lawrence Hospital was formed with PHHPC approval in 2016 for the sole purpose of supporting the Lawrence Hospital Center and its charitable affiliates through fund-raising and other like charitable activities. With the full asset merger of NewYork – Presbyterian/Lawrence Hospital with and into The New York and Presbyterian Hospital (NY-P Hospital) on April 1, 2018, the corporation has become redundant to NY-P Hospital's Development Committee that supports NY-P Hospital and all its campuses. As such, the corporation now proposes to wind-up and dissolve.

The required documents: a Verified Petition to the Attorney General, Plan of Dissolution and Distribution of Assets, and a proposed Certificate of Dissolution, with supporting organizational documents of the corporation and resolutions of the Board of Directors of the corporation and of the corporation's sole member authorizing the dissolution, are included for PHHPC's review. A letter from Anita R. Golbey, Vice President and Deputy General Counsel of NY-P Hospital, counsel to the applicant corporation, explaining the need and desire for the dissolution has been received and is enclosed. Lastly, please note the Verified Petition and Plan of Dissolution indicate that the applicant has never been funded, has never had any assets and, on the date of this application, has no assets or liabilities.

There is no legal objection to the proposed dissolution, Verified Petition, Plan of Dissolution, and Certificate of Dissolution.

Attachments



Anita R. Golbey, Esq.
Vice President and
Deputy General Counsel

Office of Legal Affairs
New York-Presbyterian Hospital
466 Lexington Avenue, Box 36
New York, NY 10017

TEL 212 746-1387
FAX 212 746-8603
golbeya@nyp.org

December 20, 2018

Ms. Colleen M. Leonard, Executive Secretary
Public Health and Health Planning Council
New York State Department of Health
Corning Tower, Room 1805
Empire State Plaza
Albany, New York 12237

Re: ***Dissolution of The Foundation of New York-Presbyterian/Lawrence Hospital***

Dear Ms. Leonard:

I am writing on behalf of The Foundation of New York-Presbyterian/Lawrence Hospital (the "Corporation"), which is seeking Public Health and Health Planning Council's approval to proceed with a voluntary dissolution. The Corporation has no assets or liabilities.

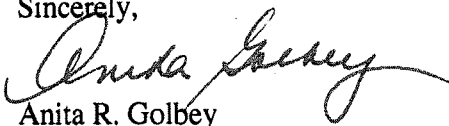
Please see the enclosed supporting documents:

- The Petition proposed to be submitted to the Attorney General in support of the Corporation's application for approval of the Plan of Dissolution
- The proposed Plan of Dissolution
- The proposed Certificate of Dissolution

The reason for the proposed dissolution is set forth in the enclosed Petition. With the full asset merger of New York-Presbyterian/Lawrence Hospital into The New York and Presbyterian Hospital ("NYP Hospital") on April 1, 2018, the Corporation is duplicative of the NYP Hospital's Development Committee that supports NYP Hospital and its campuses. By dissolving this Corporation, we are removing a redundancy.

If the Council should require any additional information, please do not hesitate to contact me by telephone (212) 746-1387 or e-mail golbeya@nyp.org.

Sincerely,



Anita R. Golbey

ARG:jmg
Enclosures

**VERIFIED PETITION TO THE ATTORNEY GENERAL FOR APPROVAL OF
CERTIFICATE OF DISSOLUTION WITHOUT ASSETS**

-----X
In the Matter of the Application of
The Foundation of
NewYork-Presbyterian/Lawrence Hospital
For Approval of Certificate of
Dissolution pursuant to
Section 1002 of the Not-for -Profit
Corporation Law.
-----X

VERIFIED PETITION

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
Charities Bureau
44 South Broadway, White Plains, NY 10601

Petitioner, The Foundation of NewYork-Presbyterian/Lawrence Hospital (the "Corporation") by Karen Westervelt, President of the Corporation, for its Verified Petition, respectfully alleges:

1. The Corporation, whose principal address is located in the county of Westchester, was incorporated pursuant to New York's Not-for-Profit Corporation Law on March 7, 2016. Copies of the Certificate of Incorporation and the complete and current By-laws of the Corporation are attached as Exhibit I.
2. The names, addresses and titles of the Corporation's directors and officers are as follows:

<u>Name</u>	<u>Title</u>	<u>Address</u>
Lisa Smith Barr	Director	8 Governors Road Bronxville, NY 10708
Mary Taylor Behrens	Director	303 Pondfield Road Bronxville, NY 10708
Michael Fosina	Director	55 Palmer Avenue Bronxville, NY 10708
Laura Forese, MD	Director	525 East 68 th Street New York, NY 10065

<u>Name</u>	<u>Title</u>	<u>Address</u>
Kimlee Roldan-Sanchez	Director	525 East 68 th Street New York, NY 10065
Karen Westervelt	President	466 Lexington Avenue New York, NY 10017
Gary Zuar	Treasurer	466 Lexington Avenue New York, NY 10017
Mary Braunsdorf	Secretary	525 East 68 th Street New York, NY 10065

3. The purposes for which the Corporation was organized are set forth in its Certificate of Incorporation at paragraph THIRD thereof and are as follows:

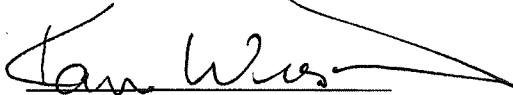
“The Corporation is organized and shall be operated exclusively for the charitable purposes of benefiting and supporting Lawrence Hospital Center, doing business as NewYork-Presbyterian/Lawrence Hospital (“NYP/Lawrence Hospital”), a New York State not-for-profit corporation exempt from federal income tax pursuant to Section 501(c)(3) and Section 509(a)(1) of the Internal Revenue Code of 1986, as the same may be amended from time to time and any successor statute thereto (the “Code”), and direct or indirect subsidiary entities of NYP/Lawrence Hospital that qualify as exempt from federal income tax under Section 501(a) of the Code as organizations described in Section 501(c)(3) and classified as other than a private foundation by reason of being described in Section 509(a)(1) or 509(a)(2) of the Code (collectively, with NYP/Lawrence Hospital, being referred to herein as the “Supported Organizations”), and of improving the public health and well-being of the community in which the Corporation functions, by:

1. soliciting, receiving, acquiring, investing, maintaining and administering cash, securities and other real and personal property (collectively “Funds”) by way of gifts, donations, grants or otherwise, and conveying, granting or otherwise distributing such Funds, together with the investment income and appreciation derived thereon, to the Supported Organizations to promote the charitable purposes thereof;
2. supporting, promoting and rendering assistance to the Supported Organizations in the community by interfacing with and serving as a liaison between the Supported Organizations and the community; and

3. subject to the limitations set forth herein, engaging in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, that are incidental to and in furtherance of accomplishing the foregoing charitable purposes.”
4. The Corporation is a charitable corporation as defined under the Not-for-Profit Corporation Law.
5. The Corporation plans to dissolve in accordance with the Plan of Dissolution attached hereto as Exhibit II (the “Plan”).
6. With the full asset merger of NewYork-Presbyterian/Lawrence Hospital with and into The New York and Presbyterian Hospital (“NYP Hospital”) on April 1, 2018, the Corporation has decided to dissolve because it deems its existence to be duplicative of the NYP Hospital’s Development Committee that supports NYP Hospital and its campuses. The Corporation’s dissolution will remove a redundancy.
7. The Board of Directors, by unanimous written consent dated September 26, 2018, adopted the Plan, and authorized the filing of a Certificate of Dissolution. The taking of such actions, certified by the Secretary, is attached as Exhibit III.
8. After the Board of Directors approved the Plan, the sole member received and reviewed it and by unanimous written consent dated December 7, 2018 approved adoption of the Plan. Such approval, certified by the Secretary, is attached as Exhibit IV.
9. The Corporation has no assets or liabilities as of the date hereof. Since the date of its incorporation on March 7, 2016, the Corporation has never been funded and has never had any assets.
10. The Corporation is not required to file a final financial report with the Charities Bureau because the organization is exempt from registration with the Charities Bureau.
11. Copies of any governmental approvals to the Plan, including the New York State Public Health and Health Planning Council, are set forth in the Plan and attached to the Certificate of Dissolution.
12. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003.

WHEREFORE, Petitioner requests that the Attorney General approve the Certificate of Dissolution of The Foundation of NewYork-Presbyterian/Lawrence Hospital, a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREFORE, the Corporation has caused this Petition to be executed this 17th day of December, 2018, by

A handwritten signature in black ink, appearing to read "Karen Westervelt", written over a horizontal line.

Signature

Karen Westervelt, President

**PLEASE NOTE - THE
SIGNATURE MUST BE
VERIFIED - SEE NEXT PAGE**

12.10.18

Verification and Certification

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

Karen Westervelt, being duly sworn, deposes and says:

I am the President of The Foundation of NewYork-Presbyterian/Lawrence Hospital, the Corporation named in the above Petition, and make this verification and certification at the direction of its Board of Directors. I have read the foregoing Petition and (i) I know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief, and as to those matters I believe them to be true and (ii) I hereby certify under penalties of perjury that the Plan was duly authorized and adopted by the Board of Directors and by the Corporation's sole member.



Signature

Sworn to before me this
17th day of December, 2018.


Notary Public

DIVYA S. SATYAPRIYA
Notary Public, State of New York
No. 01SA6322997
Qualified in New York County
Commission Expires April 13, 2019

EXHIBIT I

CSC 45
DRAW DOWN

160307000502

CERTIFICATE OF INCORPORATION
OF
THE FOUNDATION OF NEWYORK-PRESBYTERIAN/LAWRENCE HOSPITAL

Under Section 402 of the
New York Not-for-Profit Corporation Law

The undersigned, desiring to form a corporation pursuant to the provisions of the New York Not-for-Profit Corporation Law (the "NPCL"), does hereby certify (this "Certificate") as follows:

FIRST: The name of the corporation is The Foundation of NewYork-Presbyterian/Lawrence Hospital (hereinafter referred to as the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL. The Corporation is a charitable corporation under Section 201 of the NPCL.

THIRD: (A) The Corporation is organized and shall be operated exclusively for the charitable purposes of benefiting and supporting Lawrence Hospital Center, doing business as NewYork-Presbyterian/Lawrence Hospital ("NYP/Lawrence Hospital"), a New York State not-for-profit corporation exempt from federal income tax pursuant to Section 501(c)(3) and Section 509(a)(1) of the Internal Revenue Code of 1986, as the same may be amended from time to time and any successor statute thereto (the "Code"), and direct or indirect subsidiary entities of NYP/Lawrence Hospital that qualify as exempt from federal income tax under Section 501(a) of the Code as organizations described in Section 501(c)(3) and classified as other than a private foundation by reason of being described in Section 509(a)(1) or 509(a)(2) of the Code (collectively, with NYP/Lawrence Hospital, being referred to herein as the "Supported Organizations"), and of improving the public health and well-being of the community in which the Corporation functions, by:

1. soliciting, receiving, acquiring, investing, maintaining and administering cash, securities and other real and personal property (collectively "Funds") by way of gifts, donations, grants or otherwise, and conveying, granting or otherwise distributing such Funds, together with the investment income and appreciation derived thereon, to the Supported Organizations to promote the charitable purposes thereof;
2. supporting, promoting and rendering assistance to the Supported Organizations in the community by interfacing with and serving as a liaison between the Supported Organizations and the community; and
3. subject to the limitations set forth herein, engaging in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the

NPCL, that are incidental to and in furtherance of accomplishing the foregoing charitable purposes.

(B) The Corporation shall engage in activities in furtherance of the purposes described in paragraph (A) of this Article THIRD exclusively for charitable purposes within the meaning of Sections 170(c)(2)(B) and 501(c)(3) of the Code.

FOURTH: (A) Nothing in this Certificate of Incorporation shall authorize the Corporation within the State of New York, to: (i) provide hospital services or health related services, as such terms are defined in the New York State Public Health Law (the "PHL"); (ii) establish, operate or maintain a hospital, a home care services agency, a hospice, a managed care organization, or a health maintenance organization, as provided for by Articles 28, 36, 40, and 44, respectively, of the PHL and implementing regulations; (iii) establish or operate an independent practice association; (iv) establish, operate, construct, lease or maintain an adult home, an enriched housing program, a residence for adults or an assisted living program, as provided for by Article 7 of the New York State Social Services Law ("SSL"); (v) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL; or (vi) otherwise engage in or include among its purposes any of the activities mentioned in Section 404(a) through (n), (p), (q), (r), (u), (v) and (w) of the NPCL or Section 460-a of the SSL, in each case without the Corporation first having obtained consent or approval from the appropriate governmental authority with respect thereto. Additionally, nothing in this Certificate of Incorporation shall authorize the Corporation within the State of New York, to (a) hold itself out as providing or (b) provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law, or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physical therapy, or radiation technology.

(B) The Corporation shall not operate for the purpose of carrying on a trade or business for profit.

FIFTH: In furtherance of the foregoing purposes, the Corporation shall have all of the general rights, powers and privileges enumerated in the NPCL. The Corporation shall have the right to exercise all other powers which are, or hereafter may be, conferred by law upon a corporation organized for the above purposes or incidental to the conferred powers. Notwithstanding the foregoing, the Corporation shall not have the power to engage in any activities which are not in furtherance of its purposes as set forth in Article THIRD hereof.

SIXTH: No part of the Corporation's assets, net earnings, income or profit shall inure to the benefit of, or be distributable to, any member, trustee, director, officer or employee of the Corporation or other private person, except as permitted by law; provided, however, that the Corporation shall be authorized and empowered to pay reasonable compensation to any person for services rendered to or for the Corporation in furtherance of one or more of its purposes. No trustee, director, officer or employee of the Corporation or any private person shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

SEVENTH: No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except to the extent

permitted by Section 501(h) of the Code if the Corporation makes an election thereunder), and the Corporation shall not participate in or intervene in (including the publishing or the distributing of statements in connection with) any political campaign on behalf of or in opposition to any candidate for public office.

EIGHTH: Notwithstanding anything to the contrary in this Certificate, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status: (a) as a corporation that is exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code; or (b) as a corporation contributions to which are deductible under Sections 170(c)(2), 2055(a) or 2522(a) of the Code.

NINTH: In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to: (a) NYP/Lawrence Hospital and/or one or more subsidiaries or affiliates or successors thereof, as are then in good standing under Section 501(c)(3) of the Code; or (b) in the event that NYP/Lawrence Hospital, its subsidiaries and/or affiliates and successors have ceased to exist or are not then qualifying under Section 501(c)(3) of the Code, then to one or more charitable organizations as are then in existence and qualifying under Section 501(c)(3) of the Code, or to Federal, State and/or local governments for a related public purpose, in such proportions as the Board of Directors of the Corporation shall determine, in either case, subject to receipt of any and all approvals that may be required by applicable laws of the State of New York.

TENTH: The office of the Corporation shall be located in the County of Westchester within the State of New York.

ELEVENTH: The names and addresses of the initial Directors of the Corporation, each of whom is at least eighteen (18) years of age, are as follows:

Name	Address
Mary Taylor Behrens	303 Pondfield Road Bronxville, NY 10708
Michael Fosina	55 Palmer Avenue Bronxville, NY 10708
Laura L. Forese	525 East 68 th St. New York, NY 10065
Kimlee Roldan-Sanchez	525 East 68 th St. New York, NY 10065
Lisa A. Smith	8 Governors Road Bronxville, NY 10708

TWELFTH: In accordance with Section 508(e) of the Code, if in any taxable year the Corporation is a private foundation as defined in Section 509(a) of the Code, then in such year:

(a) The Corporation shall distribute such amounts for each taxable year at such time and in such manner so as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(b) The Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941(d) of the Code;

(c) The Corporation shall not retain any excess business holdings which are subject to tax under Section 4943(c) of the Code;

(d) The Corporation shall not make any investments in such manner so as to subject the Corporation to tax under Section 4944 of the Code; and

(e) The Corporation shall not make any taxable expenditures which are subject to tax under Section 4945 of the Code.

THIRTEENTH: The Secretary of State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation which is served upon him is:

The Foundation of New York-Presbyterian/Lawrence Hospital
c/o New York-Presbyterian/Lawrence Hospital
55 Palmer Avenue
Bronxville, New York 10708
Attention: President

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF this Certificate has been signed and the statements made herein affirmed as true under penalties of perjury this 11th day of September, 2015.

By: 
Name: Kimlee Roldan-Sanchez, Sole Incorporator

Address: 525 East 68th St.
New York, NY 10065



PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12180

(518) 402-0964
PHHPC@health.state.ny.us

REVISED *

February 24, 2016

Kimlee Roldan-Sanchez
Vice President and Chief Administrative Officer
525 East 68th Street, Box 208
New York, New York 10021

**Re: Certificate of Incorporation of The Foundation of New York-Presbyterian/Lawrence
Hospital**

Dear Ms. Roldan-Sanchez:

**AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a
meeting of the Public Health and Health Planning Council held on the 10th day of
December, 2015, I hereby certify that the Public Health and Health Planning Council
consents to the filing of the Certificate of Incorporation of The Foundation of New York-
Presbyterian/Lawrence Hospital, *dated September 11, 2015.**

Sincerely,

Colleen M. Leonard
Colleen M. Leonard
Executive Secretary

/cl

CSC 45
DRAW DOWN

160307000502

CERTIFICATE OF INCORPORATION
OF

THE FOUNDATION OF NEWYORK-PRESBYTERIAN/LAWRENCE HOSPITAL

Under Section 402 of the
New York Not-for-Profit Corporation Law

RECEIVED FILED

2016 MAR -4 PM 2:07 2016 MAR 07 PM 2:18

1cc
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAR 07 2016

TAXS _____

BY: McC

West

Filer: Anita Golbey
525 East 68th Street (Box 88)
New York, NY 10065

Cost Ret 042921ASC

537

**BYLAWS OF
THE FOUNDATION OF NEWYORK-PRESBYTERIAN/LAWRENCE HOSPITAL**

**BYLAWS OF
THE FOUNDATION OF NEWYORK-PRESBYTERIAN/LAWRENCE HOSPITAL**

These corporate Bylaws of The Foundation of NewYork-Presbyterian/Lawrence Hospital (these "Bylaws"), which are dated as of September 27, 2018 (the "Effective Date"), set out in their entirety the corporate Bylaws of The Foundation of NewYork-Presbyterian/Lawrence Hospital.

Whenever a personal pronoun is used, it should be interpreted to refer to persons of either gender.

**ARTICLE I
NAME AND PRINCIPAL OFFICE AND PURPOSES OF THE
CORPORATION**

Section 1. Name

The legal name of the corporation is The Foundation of NewYork-Presbyterian/Lawrence Hospital (the "Corporation" or the "Foundation").

Section 2. Principal Office

The principal office of the Corporation shall be located in the Village of Bronxville, County of Westchester, State of New York.

Section 3. Purposes

The Foundation is organized, and shall be operated, exclusively for charitable purposes within the meaning of Sections 170(c)(2)(B) and 501(c)(3) of the Internal Revenue Code (the "Code"), and in furtherance thereof, the Foundation shall:

(a) In accordance with applicable law, the Certificate of Incorporation and the provisions of these Bylaws, support, promote and further the charitable activities and purposes of its Member by receiving, maintaining and distributing funds and other assets and administering and applying the income and principal thereof for the charitable purposes of its Member or any subsidiary thereof, and, in furtherance thereof, take and hold by bequest, devise, gift, grant, contribution, purchase, lease or otherwise, any property, real or personal, or any interest therein, and

sell, convey or otherwise dispose of any such property and invest, reinvest or deal with the principal or the income thereof in such manner as will best promote the purposes of the Foundation and its Member;

(b) Promote the Member in the community; and

(c) Subject to the limitations set forth in these Bylaws, engage in any and all other lawful acts or activities, and exercise all such powers, rights and privileges applicable to nonprofit corporations organized under the New York Not-for-Profit Corporation Law ("NPCL") in furtherance of accomplishing the foregoing charitable purposes.

The Foundation shall not operate for the purpose of carrying on a trade or business for pecuniary profit or gain.

Section 4. Use of Income

No part of the Foundation's assets, net earnings, income or profit shall inure to the benefit of, or be distributable to, any director, trustee, officer, manager, or employee of the Foundation or any private person; provided, however, that the Foundation shall be authorized and empowered to pay reasonable compensation to any person for services rendered to the Foundation and to make distributions in furtherance of the Foundation's charitable purposes.

Section 5. Further Restrictions

No substantial part of the activities of the Foundation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except to the extent permitted by Section 501(h) of the Code if the Foundation makes an election thereunder) and the Foundation shall not participate in or intervene in (including the publishing or the distributing of statements in connection with) any political campaign on behalf of or in opposition to any candidate for public office.

Section 6. Business Without Profit

Notwithstanding anything to the contrary in these Bylaws, the Foundation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status (i) as a corporation which is exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code, or (ii) as a corporation contributions to which are deductible under Sections 170(c)(2), 2055(a) or 2522(a) of the Code.

ARTICLE II
MEMBER

Section 1. Member

The sole member of the Corporation shall be The New York and Presbyterian Hospital d/b/a NewYork-Presbyterian Hospital (the "Member" or the "Hospital") and its corporate successors by merger, consolidation or otherwise. There shall be no other member or classes of membership whatsoever.

Section 2. Power and Rights

In addition to such other rights, powers and authority as are vested in the Member in its capacity as the sole member of the Corporation by law or as may be set forth in the Certificate of Incorporation of the Corporation or these Bylaws, the Member shall have the following rights, powers and authorities with respect to the Corporation:

- (a) to approve a merger of, or consolidation by, the Foundation;
- (b) to approve any sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the Foundation's property and assets;
- (c) to approve any borrowing or the incurrence of debt by the Foundation;
- (d) to approve any acquisition, purchase, sale or other disposition of the assets of the Foundation;
- (e) to approve any budget of the Foundation;
- (f) to approve any restrictions on any contributions to the Corporation and any restrictions on the use of or the imposition of any other limitations or conditions in connection with grants, distributions or contributions of the Corporation;
- (g) to adopt or approve the adoption of any policies and procedures;
- (h) to approve the election of officers of the Corporation;
- (i) to approve the capital and other fundraising campaigns undertaken by the Corporation (including any advertising and use of media in connection therewith);
- (j) to approve any contracts for the management of the Corporation;
- (k) to approve settlements of administrative or other litigation or proceedings to which the Corporation is a party;

(l) to adopt, amend or repeal these Bylaws or the Certificate of Incorporation of the Foundation;

(m) to appoint and/or remove a Director of the Foundation;

(n) to require the Foundation to make grants, contributions or other distributions to the Member or its subsidiaries subject to any restriction imposed by donor interest;

(o) to require the transfer of assets from the Foundation to the Member or its subsidiaries, subject to any restrictions imposed by donor interest; and

(p) to approve a liquidation, dissolution, or winding up of the Foundation.

Section 3. Annual Meeting

The annual meeting of the Member shall be held as provided in the Amended and Restated Bylaws of the Member.

Section 4. Special Meetings

Special Meetings of the Member may be called pursuant to the Amended and Restated Bylaws of the Member.

Section 5. Notice of Meeting

Notice of all meetings of the Member shall be given in accordance with the Amended and Restated Bylaws of the Member.

Section 6. Action by the Member

Any action required or permitted to be taken by the Member in its capacity as the sole member of the Corporation shall be taken and evidenced pursuant to the Amended and Restated Bylaws of the Member.

Section 7. Quorum

Presence of the Member shall constitute a quorum for the transaction of business or of any specified item of business of the Member.

Section 8. Action Without a Meeting

Any action required or permitted to be taken by the Member may be taken without a meeting if the Member consents in writing or electronically, in either case as provided by the NPCL, to the adoption of a resolution approving such action.

Section 9. Minutes

The Corporation shall keep, at its office, correct and complete minutes of the proceedings of the Member.

Section 10. Termination of Member

The status of the Member as sole member of the Foundation shall not be terminated without the affirmative written consent of the Member, provided that the membership of the Member shall be terminated automatically and without further action on the part of the Foundation or the Member in the event that the Member is determined by the Internal Revenue Service not to be an organization qualifying for tax-exempt status under Section 501(c)(3) of the Code. In the event the membership of the Member is automatically terminated pursuant to this section, a successor section 501(c)(3) exempt organization shall be selected by the Member as member.

**ARTICLE III
BOARD OF DIRECTORS**

Section 1. Governance

(a) Subject to the rights of the Member set forth in Article II, Section 2 of these Bylaws, the governance of the Corporation is hereby vested in the Board of Directors, which shall have full legal authority and overall responsibility for the conduct of the activities of the Corporation and for management of the properties, affairs and operations of the Corporation in a manner consonant with the Corporation's objectives as set forth in these Bylaws and actions taken and resolutions duly adopted by the Member.

(b) Directors shall act in all matters as a Board and the power of the Board of Directors shall not reside in any Director individually.

Section 2. Composition of Board of Directors

(a) The number of Directors comprising the entire Board of Directors of the Corporation (each, a "Director" and, collectively, the "Directors") shall be set from time to time by the Member.

(b) The President of the Member shall serve as an ex-officio member of the Board, with vote.

(c) All members of the Board of Directors shall serve in accordance with, and be subject to, the provisions of these Bylaws and applicable law that pertain to persons who serve on the Board of Directors, including as to termination, removal and resignation.

Section 3. Term of Office of Board of Directors

Each Director shall be elected by the Member to a term of office of two (2) years, with the initial term of each Director to begin on the Effective Date. Directors shall, upon election by the Member, immediately enter upon the performance of their duties, and shall continue in office until their successors shall be duly elected and qualified.

Section 4. Qualifications and Nomination

(a) Each Director shall be at least eighteen (18) years of age or the minimum age prescribed by the NPCL

(b) Exclusive of ex-officio membership, the nominations and election of Directors shall be made by the Member..

Section 5. Election of Directors

(a) The Member shall elect Directors at the annual meeting of the Member or as otherwise determined by the Member.

(b) Voting for the election of Directors shall be in such form and manner as may be prescribed by the Member.

Section 6. Filling of Vacancies

Vacancies occurring on the Board of Directors, for any reason, may only be filled by the Member.

Section 7. Resignation and Removal of Directors

(a) Any Director may resign at any time by giving written notice of such resignation to the Secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Secretary.

(b) Any Director may be removed with or without cause by the Member.

(c) Resignation or removal as a Board Member also shall constitute resignation or removal as an officer.

Section 8. Meetings of the Board of Directors

(a) The annual meeting of the Board of Directors for the transaction of such business as may properly come before such meeting shall be held each year as soon as practicable after the annual meeting of the Member. Written notice of the time and place of the annual meeting of the Board of Directors shall be delivered to each Director not less than ten (10) days prior to the annual meeting.

(b) Regular business meetings of the Board of Directors shall be held as may be determined by the President or the Board of Directors, at such place within or without the State of New York as may be fixed by the notice of meeting. Written notice of the time and place of all regular meetings of the Board of Directors shall be delivered to each Director not less than ten (10) days prior to such regular meeting.

(c) Special Meetings of the Board of Directors may be called at any time by the President or Secretary of the Corporation. A special meeting called by the President shall be held at such time as deemed appropriate by the President. Notice of the time and place of any special meeting of the Board of Directors shall be delivered to each Director: (i) if by mail, not less than five (5) business days prior to such special meeting; or (ii) if by facsimile, telecommunications or electronic mail, one (1) business day prior to such special meeting. Notice of any special meeting of the Board of Directors shall state the purpose or purposes for which the meeting is called. No business other than specified in the notice of special meeting shall be transacted at such special meeting.

(d) A majority of the Directors present at any meeting, whether or not a quorum is present, may adjourn the meeting to another time and place. At least one (1) days' notice of any adjournment of a meeting of the Board of Directors to another time or place shall be given to the Directors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other Directors.

Section 9. Action Without a Meeting

(a) Any action required or permitted to be taken by the Board of Directors, or any committee thereof, may be taken without a meeting if all members of the Board or such committee, as the case may be, consent in writing or electronically, in either case as provided by the NPCL, to the adoption of a resolution approving such action.

(b) Any one (1) or more Directors who is not physically present at a meeting of the Board of Directors, or any committee thereof, may participate in such meeting by means of a conference telephone or similar communications equipment or by electronic video screen communication. Participation by such means shall constitute presence in person at a meeting as long as all persons participating in the meeting can hear each other at the same time and each Director can participate in all matters before the Board of Directors or such committee,

including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the Board of Directors or such committee.

Section 10. Minutes of Meetings

Minutes shall be maintained of all meetings of the Board of Directors, and any committee thereof, which minutes shall reflect all business conducted thereat, including findings, conclusions and recommendations. Such minutes shall regularly be distributed to the Directors.

Section 11. Quorum and Voting Requirements

(a) Except as otherwise required by law or in these Bylaws, a majority of the total number of Directors then in office shall constitute a quorum for the transaction of any business at any meeting of directors. In the absence of a quorum, a majority of those present may adjourn any meeting to another time and place, provided, that notice of the meeting shall be given to the Directors not present at the time of adjournment.

(b) Except as otherwise provided by law or in these Bylaws, all matters shall be decided by vote of a majority of the Directors present at the time of the vote, if a quorum is present at such time. Each Director shall be entitled to one (1) vote.

Section 12. Duties, Liabilities, Powers and Restrictions of Individual Directors and of the Board of Directors

(a) No Director shall receive compensation for any services performed as a Director. Nothing herein shall be construed to preclude any Director from serving the Corporation in any other capacity as an Officer, agent, or otherwise and receiving compensation therefor, as authorized by the Board of Directors, except no employee of the Corporation may serve as Chair of the Board of Directors or hold any other position with similar responsibilities.

(b) Directors shall discharge their duties in good faith and with that degree of diligence, care and skill which ordinarily prudent individuals would exercise under similar circumstances in like positions. In discharging their duties, Directors, when acting in good faith, may rely upon financial statements of the Corporation represented to them to be correct by the President or the Treasurer of the Corporation, or stated in a written report by an independent public or certified public accountant or firm of such accountants, fairly to reflect the financial condition of the Corporation.

(c) The liability of Directors, whether joint or several, shall be limited to the cases set forth in Section 719 of the NPCL and shall be subject to indemnification by the Corporation as set forth in Article VII of these Bylaws.

(d) The Board of Directors shall take reasonable steps to conform to all applicable federal, state and local laws, ordinances, codes and regulations.

Section 13. Policies

Subject to Article II, Section 2 of these Bylaws, the Board of Directors shall adopt such policies as it sees fit and from time to time, in order to facilitate the efficient administration of the Corporation's affairs, and in order to protect and promote the quality and integrity of the Corporation's pursuits.

**ARTICLE IV
OFFICERS**

Section 1. Officers

(a) The Officers shall include a President (who shall be the Chief Executive Officer), a Secretary, a Treasurer and such other officers as the Board of Directors may authorize. All other officers shall be elected by the Board of Directors at its annual meeting and all such officers shall serve for one (1) year, or until their successors shall be duly elected and qualify. No officers shall be employees of the Corporation and the Corporation shall otherwise have no employees.

(b) The President shall be the highest administrative officer of the Corporation and shall preside at all meetings of the Board of Directors, shall generally supervise the business of the Corporation, and shall execute documents as necessary to evidence actions of the Corporation. The President may also bear the title "Chief Executive Officer."

(c) The Secretary shall keep the minutes of Meetings of the Board of Directors, attend to the serving of notices of meetings of the Directors, have custody of all books and records of the Corporation and perform such other duties as are incidental to his or her office and such further duties as the Board of Directors shall direct or as may be required by law. Any Assistant Secretaries elected by the Board of Directors shall assist the Secretary with duties as directed by the Board of Directors of the Corporation. During the absence of the Secretary or

when the Secretary is otherwise unable to act, the Assistant Secretaries shall perform all duties usually devolving on the Secretary.

(d) The Treasurer shall have supervision and care of all receipts and monies of the Corporation, and shall be responsible to see that accurate accounts of all receipts and disbursements are kept. The Treasurer shall cause to be deposited all receipts in such banks as authorized by the Board of Directors. The Treasurer shall render a statement of accounts at each annual meeting of the Corporation and at each regular meeting of the Board of Directors. The Treasurer shall also perform such other duties as are incidental to the office, and such further duties as the Board of Directors may direct. Any Assistant Treasurers elected by the Board of Directors shall assist the Treasurer with duties as directed by the Board of Directors. During the absence of the Treasurer or when the Treasurer is otherwise unable to act, the Assistant Treasurers shall perform all duties usually devolving on the Treasurer.

ARTICLE V INDEMNIFICATION

Section 1. Indemnification

(a) Consistent with the restrictions set forth in the NPCL, the Corporation shall indemnify each person who is or was a Director or Officer of the Corporation against any and all liability and reasonable expenses that may be incurred in connection with or resulting from any action, claim, suit or proceeding, other than one which is brought by or in the right of the Corporation, whether civil or criminal, in which he may become involved by reason of his being or having been a Director or Officer of the Corporation, or by reason of any past or future action taken or not taken in his capacity as such Director or Officer, whether or not he continues to be such at the time that such liability or expenses are incurred; provided, however:

(i) such Director or Officer acted in good faith for a purpose which he or she reasonably believed to be in the best interest of the Corporation; and

(ii) in any criminal action or proceeding, such Director or Officer had no reasonable cause to believe that his or her conduct was unlawful.

(b) For the purposes of Article VI, Section 1(a), the phrase "liability and reasonable expenses" shall include, but shall not be limited to, attorneys' fees, reasonable expenses,

amounts of judgments, fines or penalties, and amounts paid in settlement by such Director or Officer of the Corporation.

(c) Consistent with the restrictions set forth in the NPCL, the Corporation shall indemnify each person who is or was a Director or Officer of the Corporation against any and all liability and reasonable expenses that may be incurred by him in connection with or resulting from any action, claim, suit, or proceeding, brought by or in the right of the Corporation to procure a judgment in its favor, in which he may become involved by reason of his being or having been a Director or Officer of the Corporation, or by reason of past or future action taken or not taken in his capacity as such Director or Officer, whether or not he or she continues to be such at the time that such liability or expenses are incurred, except in relation to matters as to which he is adjudged to have breached his duty to the Corporation to act in good faith and exercise that degree of diligence, care and skill which ordinarily prudent persons exercise under similar circumstances in like positions.

(d) For the purposes of Article VI, Section 1(c) of these Bylaws, the phrase "liability and reasonable expenses" shall include attorneys' fees, but shall in no case include amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval, or expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval

(e) In the event that a person is wholly successful in defending an action for which indemnification is available, the Corporation shall so indemnify him in accordance with Article VI, Sections 1(a)-(d) of these Bylaws. In any case where a person is less than wholly successful, indemnification shall only be made if authorized: (i) by the Board of Directors acting by a quorum consisting of Directors who are not involved in the claim, suit or proceeding, upon a finding that the Director or Officer has met the standard of conduct required in Article VI, Section 1(a) of these Bylaws or Article VI, Section 1(c) of these Bylaws; or (ii) if a quorum is not obtainable with due diligence, by the Board of Directors upon the written opinion of independent legal counsel selected by the Corporation that indemnification is proper because of the applicable standard of conduct contained in Article VI, Section 1(a) or Article VI, Section 1(c) of these Bylaws.

(f) If any action with respect to indemnification of any person described in Section 1(a) of this Article VI is taken by way of amendment of the Bylaws, resolution of Directors, or

by agreement, the Corporation will, not later than the next Annual Meeting of the Member or Members, unless such meeting is held within three (3) months from the date of such action, and in any event, within fifteen (15) months from the date of such action, mail to the Member or Members at the time entitled to vote for the election of Directors a statement specifying the action taken.

Section 2. Insurance

(a) Except as provided in Article VI, Section 2(b) of these Bylaws, the Corporation shall have the power to purchase and maintain insurance:

(i) to indemnify the Corporation for any obligation which it incurs as a result of the indemnification of Directors and Officers under the provisions of this Article VI;

(ii) to indemnify Directors and Officers in instances in which they may be indemnified by the Corporation under the provisions of this Article VI; and

(iii) to indemnify Directors and Officers in instances in which they may not otherwise be indemnified by the Corporation under the provisions of this Article VI under the conditions set forth in Section 726 of the NPCL.

(b) No insurance may provide for any payments other than the cost of defense, to or on behalf of any Director or Officer:

(i) if a judgment or other final adjudication adverse to the insured Director or Officer establishes that his acts of active and deliberate dishonesty were material to the cause of action so adjudicated, or that he personally gained, in fact, a financial profit or other advantage to which he was not legally entitled; or

(ii) in relation to any risk the insurance of which is prohibited under the Insurance Law of the State of New York.

(c) The Corporation shall, within the time and to the persons provided in Article VI, Section 1(f) of these Bylaws, mail a statement specifying any insurance it has purchased or renewed for the indemnification of Directors or Officers, setting forth the insurance carrier, date of contract, cost of the insurance, corporate positions insured and a statement explaining all sums, not previously reported in a statement to the Member or Members, paid under any indemnification insurance contract.

Section 3. Right Not Exclusive

The foregoing right of indemnification shall not be deemed exclusive of any other right to which such Director or Officer may be entitled apart from this Article VI.

**ARTICLE VI
FISCAL YEAR**

The fiscal year of the Corporation shall be from the 1st day of January to the 31st day of December, inclusive, each year, or such other twelve (12) consecutive months as the Board of Directors may from time to time designate.

**ARTICLE VII
EFFECT OF AMENDMENT OF BYLAWS**

These Bylaws shall supersede all former Bylaws of the Corporation, which are hereby revoked, canceled and rendered null and void.

**ARTICLE VIII
WRITTEN NOTICE; WAIVER OF NOTICE**

(a) Whenever written notice is required to be delivered to any person under these Bylaws, it may be given to such person either personally or by sending a copy thereof by mail, or by facsimile, telecommunications or electronic mail, to the address, fax number or email address as it appears on the records of the Corporation or as filed with the Secretary of the Corporation..

(b) The giving of any notice pursuant to these Bylaws may be waived pursuant to the provisions set forth in the NPCL.

**ARTICLE IX
CONSTRUCTION OF BYLAWS**

The determination of the Member shall be conclusive with respect to all questions of construction of these Bylaws.

ARTICLE X
AMENDMENTS

The Member shall have the sole right to adopt, amend or repeal these Bylaws.

EXHIBIT II

EXHIBIT II

Plan of Dissolution

The Foundation of NewYork-Presbyterian/Lawrence Hospital

The Board of Directors and Sole Member of The Foundation of NewYork-Presbyterian/Lawrence Hospital (the "Corporation") have considered the advisability of voluntarily dissolving the Corporation and have determined that dissolution is in the best interests of the Corporation.

1. The Corporation is a charitable corporation, as defined under the New York Not-for-Profit Corporation Law, and has no assets or liabilities.
2. Since the date of its incorporation on March 7, 2016, the Corporation has never been funded and has never had any assets.
3. In addition to the New York State Attorney General approval, the following governmental approvals of the Plan are required and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General.
 - New York State Public Health and Health Planning Council
4. A Certificate of Dissolution shall be signed by an authorized director or officer of the Corporation and all required approvals shall be attached thereto before filing it with the New York Department of State.



Karen Westervelt, President
The Foundation of NewYork-
Presbyterian/Lawrence Hospital

December 17, 2018
(Date)

EXHIBIT III

**CERTIFICATE OF THE SECRETARY OF THE
FOUNDATION OF NEWYORK-PRESBYTERIAN/LAWRENCE HOSPITAL**

I, Mary Braunsdorf, a member of the Bar of the State of New York, certify that the following is true:

1. I am the duly elected, qualified and acting Secretary of The Foundation of New York-Presbyterian/Lawrence Hospital (the "Foundation"), a corporation duly organized and existing under the laws of the State of New York.
2. On September 26, 2018, the Board of Directors of the Foundation took the following action by unanimous written consent:
 - A. Approved the dissolution of the Foundation pursuant to the Plan of Dissolution, substantially in the form attached as Exhibit A, in accordance with the New York Not-for-Profit Corporation Law ("NPCL"); and
 - B. In connection therewith, authorized and directed the Officers of the Foundation to take all such further action that they deem necessary, appropriate or advisable in order to consummate the Dissolution.

IN WITNESS WHEREOF, I have set my hand on this 17th day of December, 2018.


Mary Braunsdorf

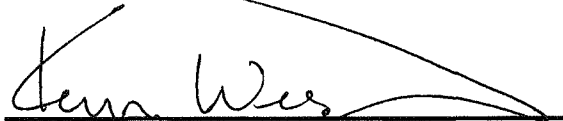
EXHIBIT A

Plan of Dissolution

The Foundation of NewYork-Presbyterian/Lawrence Hospital

The Board of Directors and Sole Member of The Foundation of NewYork-Presbyterian/Lawrence Hospital (the "Corporation") have considered the advisability of voluntarily dissolving the Corporation and have determined that dissolution is in the best interests of the Corporation.

1. The Corporation is a charitable corporation, as defined under the New York Not-for-Profit Corporation Law, and has no assets or liabilities.
2. Since the date of its incorporation on March 7, 2016, the Corporation has never been funded and has never had any assets.
3. In addition to the New York State Attorney General approval, the following governmental approvals of the Plan are required and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General.
 - New York State Public Health and Health Planning Council
4. A Certificate of Dissolution shall be signed by an authorized director or officer of the Corporation and all required approvals shall be attached thereto before filing it with the New York Department of State.



Karen Westervelt, President
The Foundation of NewYork-
Presbyterian/Lawrence Hospital

December 17, 2018
(Date)

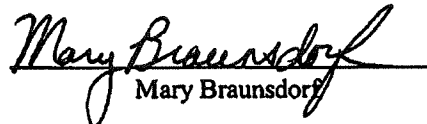
EXHIBIT IV

**CERTIFICATE OF THE SECRETARY OF THE
FOUNDATION OF NEWYORK-PRESBYTERIAN/LAWRENCE HOSPITAL**

I, Mary Braunsdorf, a member of the Bar of the State of New York, certify that the following is true:

1. I am the duly elected, qualified and acting Secretary of The Foundation of New York-Presbyterian/Lawrence Hospital (the "Foundation"), a corporation duly organized and existing under the laws of the State of New York.
2. On December 7, 2018, the sole member of the Foundation, New York-Presbyterian Hospital, took the following action by unanimous written consent:
 - A. Authorized and approved the dissolution of the Foundation pursuant to the Plan of Dissolution, substantially in the form attached as Exhibit A, in accordance with the New York Not-for-Profit Corporation Law ("NPCL"); and
 - B. In connection therewith, authorized and directed the Officers of the Foundation to take all such further action that they deem necessary, appropriate or advisable in order to consummate the Dissolution.

IN WITNESS WHEREOF, I have set my hand on this 7th day of December, 2018.

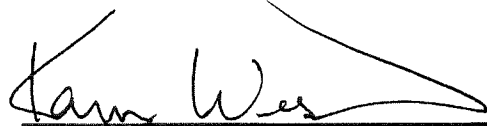

Mary Braunsdorf

Plan of Dissolution

The Foundation of New York-Presbyterian/Lawrence Hospital

The Board of Directors and Sole Member of The Foundation of New York-Presbyterian/Lawrence Hospital (the "Corporation") have considered the advisability of voluntarily dissolving the Corporation and have determined that dissolution is in the best interests of the Corporation.

1. The Corporation is a charitable corporation, as defined under the New York Not-for-Profit Corporation Law, and has no assets or liabilities.
2. Since the date of its incorporation on March 7, 2016, the Corporation has never been funded and has never had any assets.
3. In addition to the New York State Attorney General approval, the following governmental approvals of the Plan are required and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General.
 - New York State Public Health and Health Planning Council
4. A Certificate of Dissolution shall be signed by an authorized director or officer of the Corporation and all required approvals shall be attached thereto before filing it with the New York Department of State.



Karen Westervelt, President
The Foundation of New York-
Presbyterian/Lawrence Hospital

December 17, 2018

(Date)



**CERTIFICATE OF DISSOLUTION
OF**

THE FOUNDATION OF NEWYORK-PRESBYTERIAN/LAWRENCE HOSPITAL

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is

THE FOUNDATION OF NEWYORK-PRESBYTERIAN/LAWRENCE HOSPITAL

If the name of the corporation has been changed, the name under which it was formed is

SECOND: The certificate of incorporation was filed with the Department of State on

March 7, 2016

THIRD: The name and address of each officer and director of the corporation is:

- Lisa Smith Barr, 8 Governors Road, Bronxville, NY 10708
- Mary Taylor Behrens, 303 Pondfield Road, Bronxville, NY 10708
- Michael Fosina, 55 Palmer Avenue, Bronxville, NY 10708
- Laura Forese, MD, 525 East 68th Street, New York, NY 10065
- Kimlee Roldan-Sanchez, 525 East 68th Street, New York, NY 10065

FOURTH: The corporation is a *(check the appropriate box)*

- charitable corporation
- non-charitable corporation.

FIFTH: At the time of authorization of the corporation's Plan of Dissolution and Distribution of Assets as provided in Not-for-Profit Corporation Law §1002, the corporation holds

(Check the appropriate statement)

- assets which are legally required to be used for a particular purpose.
- no assets which are legally required to be used for a particular purpose.


SIXTH: The corporation elects to dissolve.

SEVENTH: *(Check the appropriate statement)* The dissolution was authorized by

- a vote of a majority of the board of directors. The corporation has no members.
- the majority vote of the board of directors, followed by two-thirds vote of the members.

EIGHTH: *(Check the appropriate statement)*

- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by the Attorney General. A copy of the approval of the Attorney General is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by a Justice of the Supreme Court. A copy of the Court's Order is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing a copy of the Plan of Dissolution which contains the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law, has been duly filed with the Attorney General.
- The corporation is a non-charitable corporation. The corporation's Plan of Dissolution is not required to contain the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law and is not required to be filed with Attorney General.

x 
(Signature)

Karen Westervelt

(Print or Type Name of Signer)

President

(Capacity of Signer)



**Division of Corporations,
State Records and
Uniform Commercial Code**

New York State
Department of State
Division of Corporations,
State Records and
Uniform Commercial Code
One Commerce Plaza
99 Washington Avenue
Albany, NY 12231
www.dos.ny.gov

**CERTIFICATE OF DISSOLUTION
OF**

THE FOUNDATION OF NEWYORK-PRESBYTERIAN/LAWRENCE HOSPITAL

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

Filer's Name: Karen Westervelt
Address: 466 Lexington Avenue, Box 23
City, State and Zip Code: New York, New York 10017

NOTES:

1. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at www.dos.ny.gov.
2. This Certificate of Dissolution must be signed by an officer, director or duly authorized person.
3. Attach the consent of the New York State Department of Taxation and Finance.
4. Attach the consent of the New York City Department of Finance, if required.
5. Attach a copy of the approval of the Attorney General or Order of the Supreme Court, if required.
6. The Certificate of Dissolution must include the approval of the Attorney General if the corporation is a charitable corporation or if the corporation is a non-charitable corporation and holds assets at the time of dissolution legally required to be used for a particular purpose.
7. Attach any other consent or approval required by law.
8. The fee for filing this certificate is \$30, made payable to the Department of State.

For DOS Use Only

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 14th day of February 2019, approves the filing of the Certificate of Dissolution of The Foundation of New York-Presbyterian/Lawrence Hospital, dated December 17, 2018.



MEMORANDUM

To: Public Health and Health Planning Council
From: Richard J. Zahnleuter, General Counsel
Date: January 23, 2019
Subject: Proposed Dissolution of The Foundation of NewYork – Presbyterian/
Queens

The Foundation of NewYork – Presbyterian/Queens requests Public Health and Health Planning Council (PHHPC) approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law (NPCL) sections 1002(c) and 1003, as well as 10 NYCRR Part 650.

The Foundation of NewYork – Presbyterian/Queens was formed on February 25, 1987 as BMA Medical Foundation, Inc. for charitable, educational and scientific purposes, including clinical study, research, publication and teaching, and to solicit grants, contracts and funds from various sources, to advance knowledge regarding the prevention and treatment of disease. The applicant's certificate of incorporation was amended twice subsequently and its purposes focused on fund-raising to render assistance and make grants to The New York Hospital Medical Center of Queens, now known as NewYork – Presbyterian/Queens ("NY-P/Queens"). The foundation has become redundant to NY-P/Queens' Development Committee that supports NY-P/Queens. As such, the foundation now proposes to wind up and dissolve.

The required documents: a Verified Petition to the Attorney General, Plan of Dissolution and Distribution of Assets, and a proposed Certificate of Dissolution, with supporting organizational documents of the corporation and resolutions of the board of directors of the corporation and of the corporation's sole member authorizing the dissolution, are included for PHHPC's review. A letter from William P. Wissemann, Secretary of the applicant corporation, explaining the need and desire for the dissolution, has been received and is enclosed. Please note that, on the date of this application, the applicant has no assets or liabilities.

There is no legal objection to the proposed dissolution, Verified Petition, Plan of Dissolution, and Certificate of Dissolution.

Attachments.

December 10, 2018

Ms. Colleen M. Leonard, Executive Secretary
Public Health and Health Planning Council
New York State Department of Health
Coming Tower, Room 1805
Empire State Plaza
Albany, New York 12237

Re: *Dissolution of The Foundation of NewYork-Presbyterian/Queens*

Dear Ms. Leonard:

The Foundation of NewYork-Presbyterian/Queens (the "Corporation") is seeking Public Health and Health Planning Council's approval to proceed with a voluntary dissolution. The Corporation has no remaining assets or liabilities.

Please see the enclosed supporting documents:

- The Petition proposed to be submitted to the Attorney General in support of our application for approval of the Plan of Dissolution
- The proposed Plan of Dissolution
- The proposed Certificate of Dissolution

The reason for the proposed dissolution is set forth in the enclosed Petition. In brief, the Corporation deems its existence to be duplicative to the Development Committee that supports NewYork-Presbyterian/Queens. By dissolving this Corporation, we are removing a redundancy.

If the Council should require any additional information, please do not hesitate to contact me by telephone (718-670-1044) or e-mail (wpwissem@nyp.org).

Sincerely,



William P. Wissemann

Secretary

Proposed Petition

**VERIFIED PETITION TO THE ATTORNEY GENERAL FOR APPROVAL OF
CERTIFICATE OF DISSOLUTION W/OUT ASSETS**

-----X
In the Matter of the Application of
The Foundation of : VERIFIED PETITION
New York-Presbyterian/Queens
For Approval of Certificate of
Dissolution pursuant to :
Section 1002 of the Not-for -Profit
Corporation Law. :
-----X

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
Charities Bureau Transactions Section
28 Liberty Street
New York, NY 10005

Petitioner, The Foundation of New York-Presbyterian/Queens by Karen Westervelt, President of the corporation, for its Verified Petition alleges:

1. The Foundation of New York-Presbyterian/Queens, whose principal address is located in the county of Queens, was incorporated pursuant to New York's Not-for-Profit Corporation Law on February 25, 1987. A copy of the Certificate of Incorporation (and all amendments) and the complete and current By-laws are attached as Exhibit I.
2. The names, addresses and titles of the corporation's directors and officers are as follows:

Name	Title	Address
Karen Westervelt	Director/President	466 Lexington Ave., New York, NY 11017
Gary J. Zuar	Director/Treasurer	466 Lexington Ave., New York, NY 11017
Jaclyn Mucaria	Director	56-45 Main St., Flushing, NY 11355
William P. Wissemann	Secretary	56-45 Main St., Flushing, NY 11355

3. The purposes for which the corporation was organized are set forth in its Certificate of Incorporation [or relevant amendment] at paragraph Third thereof and are as follows:

“The purposes for which the Corporation is formed are charitable, educational and scientific in nature and more particularly:

- A. Through the solicitation, receipt and disbursement of funds, income and real or tangible personal property obtained by bequests, gifts, donations, or otherwise, subject to any limitations imposed by the NFPCL or any other law of the State of New York, to render assistance and make grants to The New York Hospital Medical Center of Queens (now known as NewYork-Presbyterian/Queens), a New York State not-for-profit corporation.
- B. To solicit and receive grants, contracts and funds from federal, state and local government agencies, foundations or any other sources, to further the purposes of the Corporation.
- C. To solicit, accept, receive and acquire by way of gift, devise, bequest, lease, purchase or otherwise, and to hold, invest and reinvest all property real or personal, including shares of stock, bonds and securities of other corporations and to dispose of property, real or personal, by gift, lease, sale or otherwise, all as may be necessary or desirable for the attainment of the purposes of the Corporation.
- D. To borrow money, contract, incur debt, issue notes and secure payment of the performances of its obligations and to do all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the Corporation.
- E. To further by clinical study, research, publication and teaching, the knowledge of disease and the application of such knowledge to prevention and treatment of disease.
- F. To do anything and everything reasonably and lawfully necessary, proper, suitable or convenient for the achievement of the foregoing purposes or for the furtherance of said purposes.”

4. The corporation is a charitable corporation.
5. The corporation plans to dissolve in accordance with the Plan of Dissolution attached hereto as Exhibit II (the “Plan”).
6. The corporation is dissolving because the corporation deems its existence to be duplicative to the Development Committee that supports NewYork-Presbyterian/Queens. By dissolving this corporation, we are removing a redundancy. The corporation is not aware of any ongoing or completed audit or inquiry by the Internal Revenue Service (“IRS”) in the past three years nor has the corporation paid any excise taxes or disclosed an excess benefit transaction or diversion of assets on its information returns to the IRS.
7. The Board of Directors by unanimous written consent dated October 17, 2018 adopted a

resolution approving the Plan, and authorizing the filing of a Certificate of Dissolution. Such resolution, certified by the Secretary, is attached hereto as Exhibit III.

8. After the Board of Directors approved the Plan, the sole member received and reviewed it and adopted a resolution approving the Plan. Such resolution, certified by the Secretary, is attached hereto as Exhibit IV.

9. The corporation has no assets or liabilities as of the date hereof.

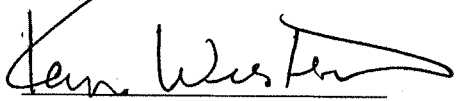
10. The corporation has filed a final financial report on form CHAR500, with all required attachments, with the Charities Bureau showing no assets or liabilities and attaching the appropriate registration fee, if required.

11. Copies of any governmental approvals to the Plan are set forth in the Plan and attached to the Certificate of Dissolution.

12. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003.

WHEREFORE, petitioner requests that the Attorney General approve the Certificate of Dissolution of The Foundation of New York-Presbyterian/Queens, a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed this 21st day of DECEMBER, 2018, by



Signature



Karen Westervelt

President

**PLEASE NOTE - THE
SIGNATURE MUST BE
VERIFIED - SEE NEXT
PAGE**

Verification and Certification

STATE OF NEW YORK)

SS.:

COUNTY OF NEW YORK)

Karen Westervelt, being duly sworn, deposes and says:

I am the President of The Foundation of NewYork-Presbyterian/Queens, the corporation named in the above Petition, and make this verification and certification at the direction of its Board of Directors. I have read the foregoing Petition and (i) I know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief, and as to those matters I believe them to be true and (ii) I hereby certify under penalties of perjury that the Plan was duly authorized and adopted by the Board of Directors and by the corporation's member.



Signature

Sworn to before me this

21 day of DECEMBER, 2018.


Notary Public

DIVYA S. SATYAPRIYA
Notary Public, State of New York
No. 01SA6322997
Qualified in New York County
Commission Expires April 13, 2019

1362L/01-27-87-RAW

CERTIFICATE OF INCORPORATION

OF

BMA MEDICAL FOUNDATION, INC.

(Pursuant to Section 402 of the Not-for-Profit
Corporation Law of The State of New York)

WE, the undersigned, natural persons over the age of
eighteen years, desiring to form a corporation pursuant to the
provisions of the Not-for-Profit Corporation Law of the State
of New York, hereby certify as follows:

FIRST: The name of the corporation is BMA MEDICAL
FOUNDATION, INC. (hereinafter sometimes referred to as 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 as defined in Section 201(b) of said law.

THIRD: The purposes for which the Corporation is
formed are charitable, educational and scientific in nature and

more particularly:

- A. To further by clinical study, research, publication and teaching, the knowledge of disease and the application of such knowledge to the prevention and treatment of disease.
- B. To solicit and receive grants, contracts and funds from federal, state and local government agencies, foundations or any other sources, to further the corporate purposes.
- C. To do anything and everything reasonably and lawfully necessary, proper, suitable or convenient for the achievement of the foregoing purposes or for the furtherance of said purposes.

FOURTH: In furtherance of the foregoing purposes, the Corporation shall have the following powers:

- A. To solicit, accept, receive and acquire by way of gift, devise, bequest, lease, purchase or otherwise, and to hold, invest and reinvest all property real or personal, in-

cluding shares of stock, bonds and securities of other corporations and to dispose of property, real or personal, by gift, lease, sale or otherwise, all as may be necessary or desirable for the attainment of the purposes of the Corporation.

B. To prepare for publication, publish or cause to be published, produce, manufacture, distribute, disseminate, exhibit, show or furnish for exhibition or showing, sponsor or otherwise promote or develop, directly or indirectly, such books, pictures, magazines, papers, pamphlets and other printed matter and such lectures, performances, exhibitions, motion pictures, radio programs, television programs and the like as may be necessary, suitable or convenient for carrying out the lawful purposes of the Corporation.

C. To borrow money, contract debts, issue notes and secure payment of the performances of its obligations and to do all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the Corporation.

D. In addition to the foregoing and in furtherance of its purposes as set forth above, the Corporation shall have all of the powers enumerated in Section 202 of the Not-for-Profit Corporation Law, together with the power to solicit grants and contributions for corporate purposes subject to any limitations provided in the Not-for-Profit Corporation Law or any other statute of the State of New York.

FIFTH: Nothing herein contained shall authorize or be construed as authorizing the Corporation to practice medicine as defined in Article 131 of the Education Law of the State of New York. Nothing herein contained shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Not-for-Profit Corporation Law, Section 404 (b-n); (p-s); (u). Nothing herein contained shall authorize the Corporation to operate a hospital or to provide hospital service or health related service as defined in Article 28 of the Public Health Law of the State of New York. Nothing herein shall authorize the Corporation to operate or maintain an institution of higher learning or to grant degrees or to do any other thing for which a license, certification or other similar approval is required under the Education Law of the State of New York.

SIXTH: The Corporation shall be empowered to solicit funds from the public.

SEVENTH: The Corporation is not to be organized for the pecuniary profit of its directors, officers or members nor may it issue stock or deliver dividends. All income and earnings of the Corporation shall be used exclusively for corporate purposes. No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director, officer of the Corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation), and no member, trustee, officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

EIGHTH: In the event of the dissolution of the Corporation or the winding up of its affairs, or other liquidation of its assets, the Corporation's property shall not be conveyed to any organization created or operated for profit or to any organization or individual for less than the fair market value of such property, and all assets remaining after the payment of the Corporation's debts shall be conveyed or distributed to such organization or organizations organized and operated exclusively for charitable, educational or health care purposes which shall, at that time, qualify as an exempt organ-

ization or exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended ("the Code"). All of the foregoing shall be subject to the approval of a Court of competent jurisdiction.

NINTH: No substantial part of the activities of the Corporation shall be devoted to carrying on propoganda, or otherwise attempting to influence legislation (except to the extent authorized by Section 501(h) of the Code as amended or the corresponding provision of any future United States Internal Revenue law, during any fiscal year or years in which the Corporation has chosen to utilize the benefits authorized by that statutory provision) and the Corporation shall not participate in or intervene (including the publishing or distributing of statements) in any political campaign on behalf of any candidate for public office.

TENTH: In any taxable year in which the Corporation is a private foundation as described in Section 509(a) of the Code, the Corporation shall distribute its income for each taxable year at such time and in such manner as not to subject it to tax under Section 4942 of the Code and the Corporation shall not (a) engage in any act of self-dealing as defined in Section 4941(d) of the Code; (b) retain any excess business holdings as defined in Section 4943(c) of the Code; (c) make any investments in such manner as to subject the Corporation to

such tax under Section 4944 of the Code or (d) make any taxable expenditures as defined in Section 4945(d) of the Code or corresponding provisions of any subsequent Federal Tax Laws.

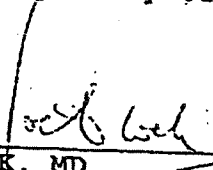
ELEVENTH: The principal office of the Corporation shall be located in the County of Queens, State of New York.

TWELFTH: The names and resident addresses of the initial directors of the Corporation, all of whom are citizens of the United States and residents of the State of New York are as follows:

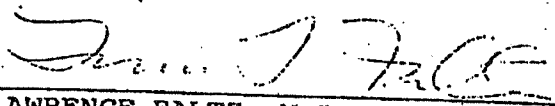
<u>NAME</u>	<u>ADDRESS</u>
Joe Dwek, M.D.	182-18 Henley Road Jamaica, New York 11432
Lawrence Faltz, M.D.	29 Maplewood Street Larchmont, New York 10538
Chaim Charytan, M.D.	85 Verdun Avenue New Rochelle, New York 10804

THIRTEENTH: The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address within the State of New York to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is c/o Garfunkel, Wild & Travis, P.C., 175 Great Neck Road, Great Neck, New York 11021, Attn: BMA.

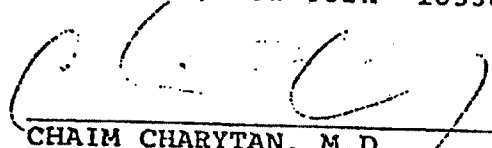
IN WITNESS WHEREOF, the undersigned incorporators
being all of full age and being all citizens of the United
States and residents of the State of New York have signed this
certificate the 3 day of November, 1986 and affirm that
the statements herein are true under the penalty of perjury.



JOE DWEK, MD.
182-18 Henry Road
Jamaica, New York 11432



LAWRENCE FALTZ, M.D.
29 Maplewood Street
Larchmont, New York 10538



CHAIM CHARYTAN, M.D.
85 Verdun Avenue
New Rochelle, New York 10804

CONSENT TO INCORPORATION

The undersigned, a Justice of the Supreme Court of the State of New York, of the ^{11th} ~~Tenth~~ Judicial District, wherein is located the principal office of the Corporation hereby approves the within Certificate of Incorporation of BMA MEDICAL FOUNDATION, INC. and the filing hereof.

Dated: 2/9 . 1987
JAMAICA . New York

Edwin Kassoff
JUSTICE OF THE SUPREME COURT
OF THE STATE OF NEW YORK 11th
~~TENTH~~ JUDICIAL DISTRICT

MON. EDWIN KASSOFF

Nov. 25, 1986

The undersigned has no objection to the granting of judicial approval hereon and waives statutory notice.

Attorney General

THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON AND WAIVES STATUTORY NOTICE.

ROBERT ABBAMS, ATTORNEY GEN.
STATE OF NEW YORK

by Howard Holt
Associate Attorney

461936

461936

CERTIFICATE OF INCORPORATION
OF
BMA MEDICAL FOUNDATION, INC

FILED

GARFUNKEL, WILD & TRAVIS, P.C.
ATTORNEYS AT LAW
175 GREAT NECK ROAD
GREAT NECK, N. Y. 11021
15161-466-3090

'87 FFR-6 P3:46

QUEEN'S COUNTY, N.Y.
EX-TRAJURIS OFFICE

892594

STATE OF NEW YORK

SECRETARY

RECORDED

INDEXED

FEB 25 1987

AMT. OF ...

...

...

...

...

...

...

...

...

...

...

...

...

Handwritten signature

Handwritten signatures and initials

FILED

120725000 516

E-12

CERTIFICATE OF AMBNDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
BMA MEDICAL FOUNDATION, INC.

(Under Section 803 of the Not-for-Profit Corporation Law of the State of New York)

WE, THE UNDERSIGNED, being the President and a Director of BMA Medical Foundation, Inc. hereby certify that:

- FIRST The name of the Corporation is BMA MEDICAL FOUNDATION, INC.
- SECOND The Certificate of Incorporation of the Corporation was filed by the New York State Secretary of State on February 25, 1987 pursuant to the Not-For-Profit Corporation Law of the State of New York (the "NFPCL").
- THIRD The Corporation is a corporation as defined in Section 102(a)(5) of the NFPCL. The Corporation is a Type B corporation under Section 201 of the NFPCL shall remain a Type B corporation after this amendment is effectuated.
- FOURTH Paragraph First of the Certificate of Incorporation relating to Corporation's name is amended and restated, in its entirety, as follows:
"FIRST: The name of the Corporation is New York Hospital Queens Foundation, Inc."
- FIFTH Paragraph Third of the Certificate of Incorporation relating to the purposes of the Corporation is amended and restated, in its entirety, as follows:
"THIRD: The purposes for which the Corporation is formed are charitable, educational and scientific in nature and more particularly:
A. Through the solicitation, receipt and disbursement of funds, income and real or tangible personal property obtained by bequests, gifts, donations, or otherwise, subject to any limitations imposed by the NFPCL or any other law of the State of New York, to render assistance and make grants to The New York Hospital Medical Center of Queens, a New York State not-for-profit corporation.
B. To solicit and receive grants, contracts and funds from federal, state and local government agencies, foundations or any other sources, to further the purposes of the Corporation.

1318732v.3

120725000516

- C To solicit, accept, receive and acquire by way of gift, devise, bequest, lease, purchase or otherwise, and to hold, invest and reinvest all property real or personal, including shares of stock, bonds and securities of other corporations and to dispose of property, real or personal, by gift, lease, sale or otherwise, all as may be necessary or desirable for the attainment of the purposes of the Corporation.
- D. To borrow money, contract, incur debt, issue notes and secure payment of the performances of its obligations and to do all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the Corporation.
- E. To further by clinical study, research, publication and teaching, the knowledge of disease and the application of such knowledge to prevention and treatment of disease.
- F. To do anything and everything reasonably and lawfully necessary, proper, suitable or convenient for the achievement of the foregoing purposes or for the furtherance of said purposes."

SIXTH The third sentence of Paragraph Fifth of the Certificate of Incorporation relating unauthorized activities is amended and restated, in its entirety, as follows:

"Nothing in the Certificate of Incorporation shall authorize the Corporation to either: (i) establish, operate, or maintain a hospital, or to provide hospital services or health related services or to operate a home care services agency, a hospice, or a health maintenance organization, or to provide a comprehensive health services plan, as provided for by Articles 28, 36, 40 and 44 respectively, of the Public Health Law of the State of New York, as amended; or (ii) establish, operate, construct, lease or maintain an adult home, enriched housing program, or residence for adults, as provided by Article 7 of the Social Services Law of the State of New York, as amended, or otherwise raise or obtain any funds, contributions or grants from any source for any such purpose."

SEVENTH Paragraph Eighth of the Certificate of Incorporation relating to the dissolution of the Corporation is amended and restated, in its entirety, as follows:

"**EIGHTH:** In the event of dissolution of the Corporation or the winding up of its affairs, or other liquidation of its assets, the assets and property of the Corporation remaining after payment of expenses and the satisfaction of all liabilities shall be distributed to The New York Hospital Medical Center of Queens to be used for substantially similar purposes, subject to the approval of a court of competent jurisdiction upon application of the Corporation's Board of Directors, provided that no such distribution shall be made to The New York Hospital Medical Center of Queens unless The New York Hospital Medical Center of Queens shall at that time qualify as an organization described in Section 501(c)(3) of the Code. Any of such assets not so distributed shall be distributed to such other charitable and educational organizations as shall

qualify under Section 501(c)(3) of the Code, subject to the approval of a Justice of the Supreme Court of the State of New York or such other court having jurisdiction over the Corporation."

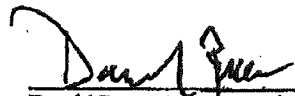
EIGHTH Paragraph Thirteenth of the Certification of Incorporation relating to service of process on the Corporation is amended and restated, in its entirety, as follows:

"THIRTEENTH: The Secretary of State of the State of New York is designated as the agent of the Corporation upon whom process against the Corporation may be served. The address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is c/o The New York Hospital Medical Center of Queens, 56-45 Main Street, Flushing, NY 11355."


NINTH The amendment was authorized by the unanimous written consent of the members of the Board of Directors, as prior to the amendment, the Corporation had no members.

TENTH The Secretary of State of the State of New York is designated as the agent of the Corporation upon whom process against the Corporation may be served. The address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is c/o The New York Hospital Medical Center of Queens, 56-45 Main Street, Flushing, NY 11355.

IN WITNESS WHEREOF, we have signed this certificate on November __, 2011, and do hereby affirm, under the penalties of perjury, that the statements contained herein have been examined by us and are true and correct.



David Rose, MD - President



Chaim Charytan, MD - Director



PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

433 River Street, 6th Floor
Troy, New York 12180

(518) 402-0964
PHHPC@health.state.ny.us

February 21, 2012

Lara Jean Ancona
Garfunkel, Wild, P.C.
111 Great Neck Road
Great Neck, New York 11021

Re: Certificate of Amendment of the Certificate of Incorporation of BMA Medical
Foundation, Inc.

Dear Ms. Ancona:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 2nd day of February 2, 2012, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of BMA Medical Foundation, Inc, dated November 8, 2011.

Sincerely,

A handwritten signature in black ink that reads "Colleen M. Frost".

Colleen M. Frost
Executive Secretary

/cf

I, HON. HOWARD G. LANE, a Justice of the Supreme Court of the State of
New York for the 11th Judicial District do hereby approve of the foregoing
Certificate of Amendment of the Certificate of Incorporation of BMA Medical Foundation, Inc. and
consent that the same be filed.

Date: JUL 12 2010



J.S.C.

HON. HOWARD G. LANE

THE ATTORNEY GENERAL HAS NO OBJECTION
TO THE GRANTING OF JUDICIAL APPROVAL
HEREON, ACKNOWLEDGES RECEIPT OF
STATUTORY NOTICE AND DEMANDS SERVICE
OF THE FILED CERTIFICATE SAID NO OBJECTION
IS CONDITIONED ON SUBMISSION OF THE
MATTER TO THE COURT WITHIN 60 DAYS HEREAFTER.

by Laura Werner
ASSISTANT ATTORNEY GENERAL, DATE
June 25, 2010 Laura Werner

120725000 516

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
BMA MEDICAL FOUNDATION, INC.

(Under Section 803 of the Not-for-Profit Corporation Law of the State of New York)

FILED BY:

GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
111 GREAT NECK ROAD
GREAT NECK, NY 11021

FILED
2012 JUL 25 PM 2:04

E-12

DRAWDOWN

FILED
2012 JUL 27 PM 1:30

loc
STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JUL 25 2012

TAKS _____
BY: par

Queens

(6)

560

FILING RECEIPT

=====

ENTITY NAME: NEW YORK HOSPITAL QUEENS FOUNDATION, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP) COUNTY: QUEE
PURPOSES PROCESS NAME PROVISIONS

=====

FILED:07/25/2012 DURATION:***** CASH#:120725000560 FILM #:120725000516

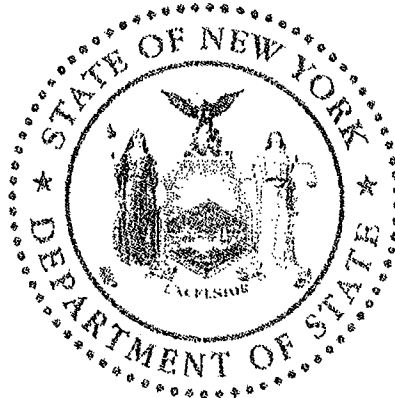
FILER:

GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
111 GREAT NECK ROAD
GREAT NECK, NY 11021

ADDRESS FOR PROCESS:

C/O THE NEW YORK HOSPITAL MEDICAL CENTER OF QUEENS
56-45 MAIN STREET
FLUSHING, NY 11355

REGISTERED AGENT:



=====

SERVICE COMPANY: EMPIRE CORPORATE & INFORMATION SERVICE SERVICE CODE: 12

FEEs	90.00	PAYMENTS	90.00
	-----		-----
FILING	30.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	90.00
HANDLING	50.00	OPAL	0.00
		REFUND	0.00

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on July 26, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State

160504000

055

CSC 45
Drawdown

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

NEW YORK HOSPITAL QUEENS FOUNDATION, INC.

(Under Section 803 of the Not-for-Profit Corporation Law of the State of New York)


The undersigned, Stephen S. Mills, certifies that he is the President of New York Hospital Queens Foundation, Inc. (the "Corporation"), a corporation formed and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify (this "Certificate") as follows:

1. The name of the Corporation is New York Hospital Queens Foundation, Inc. The name under which the Corporation was formed was BMA MEDICAL FOUNDATION, Inc.
2. The Certificate of Incorporation of the Corporation was filed by the New York State Secretary of State on February 25, 1987 pursuant to the Not-For-Profit Corporation Law of the State of New York (the "NPCL").
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.
4. Paragraph FIRST of the Certificate of Incorporation is hereby amended to effect a change in the name of the Corporation so that Paragraph FIRST reads in its entirety as follows:

"FIRST: The name of the Corporation is The Foundation of NewYork-Presbyterian/Queens."
5. This Amendment to the Certificate of Incorporation was authorized by the sole member of the Corporation entitled to vote thereon at a meeting duly held on October 1, 2015 in accordance with NPCL Section 802(a).
6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:

The Foundation of New York-Presbyterian/Queens
c/o New York-Presbyterian/Queens
56-45 Main Street
Flushing, New York 11355
Attention: President

IN WITNESS WHEREOF this Certificate has been signed and the statements made
herein affirmed as true under penalties of perjury this 7 day of October, 2015.

By: 
Name: Stephen S. Mills
Title: President



PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.ny.gov

April 15, 2016

Kimlee Roldan-Sanchez
Vice President and Chief Administrative Officer
New York Presbyterian/Weill Cornell
525 East 68th Street
Box 208
New York, New York 10021

Re: Certificate of Amendment of the Certificate of Incorporation of New York Hospital
Queens Foundation, Inc.

Dear Ms. Roldan-Sanchez:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 14th day of April, 2016, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of New York Hospital Queens Foundation, Inc., dated October 7, 2015.

Sincerely,

A handwritten signature in cursive script that reads 'Colleen M. Leonard'.

Colleen M. Leonard
Executive Secretary

/cl

CSC 45
DRAW DOWN

055

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

NEW YORK HOSPITAL QUEENS FOUNDATION, INC.

(Under Section 803 of the Not-for-Profit Corporation Law of the State of New York)

RECEIVED
2016 MAY -3 PM 3:03

Filed by:
New York-Presbyterian/Queens
56-45 Main Street
Flushing, NY 11355

Ctrl Rd 121022ASC

ba

RECEIVED
2016 APR 29 PM 12:06

Plus

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED MAY 04 2016
TAXS _____
BY: plw

(4)

057

FILING RECEIPT

=====

ENTITY NAME: THE FOUNDATION OF NEWYORK-PRESBYTERIAN/QUEENS

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)
PROCESS NAME

COUNTY: QUEE

=====

FILED:05/04/2016 DURATION:***** CASH#:160504000057 FILM #:160504000055

FILER:

NEWYORK-PRESBYTERIAN/QUEENS
56-45 MAIN STREET

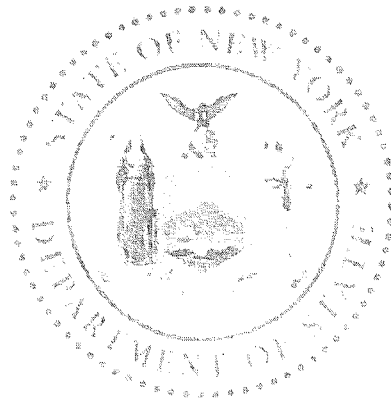
FLUSHING, NY 11355

ADDRESS FOR PROCESS:

C/O NEWYORK-PRESBYTERIAN/QUEENS
ATTENTION: PRESIDENT
FLUSHING, NY 11355

56-45 MAIN STREET

REGISTERED AGENT:



=====

SERVICE COMPANY: CORPORATION SERVICE COMPANY - 45

SERVICE CODE: 45

FEES 65.00

FILING 30.00
TAX 0.00
CERT 0.00
COPIES 10.00
HANDLING 25.00

PAYMENTS 65.00

CASH 0.00
CHECK 0.00
CHARGE 0.00
DRAWDOWN 65.00
OPAL 0.00
REFUND 0.00

121022AJC

=====

DOS-1025 (04/2007)

CORPORATION SERVICE COMPANY

www.cscglobal.com

CSC- New York
Suite 210
1180 Avenue OF the Americas
New York, NY 10036-8401
212-299-5600
212-299-5656 (Fax)

Matter# Not Provided
Project Id :

Order# 121022-5
Order Date 04/28/2016

Entity Name : NEW YORK HOSPITAL QUEENS FOUNDATION, INC.
Jurisdiction : NY-Department of State
Request for : Amendment/Correction/Restated/Designation Filing
File date : 05/04/2016
Result : Filed

Ordered by WILLIAM P. WISSEMAN at NEWYORK-PRESBYTERIAN/QUEENS

Thank you for using CSC. For real-time 24 hour access to the status of any order placed with CSC, access our website at www.cscglobal.com.

If you have any questions concerning this order or CSCGlobal, please feel free to contact us.

Jason Welch
jwelch1@cscinfo.com

The responsibility for verification of the files and determination of the information therein lies with the filing officer; we accept no liability for errors or omissions.

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on May 5, 2016.



Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

**BYLAWS OF
THE FOUNDATION OF NEWYORK-PRESBYTERIAN/QUEENS**

REVISED AND RESTATED AS OF OCTOBER 17, 2018

Original Version Approved October 1, 2015

Amended: Effective October 17, 2018

**BYLAWS OF
THE FOUNDATION OF NEWYORK-PRESBYTERIAN/QUEENS**

These corporate Bylaws of The Foundation of NewYork-Presbyterian/Queens (these “Bylaws”), which are revised and restated as of October 17, 2018 (the “Effective Date”), amend and restate in their entirety the corporate Bylaws of The Foundation of NewYork-Presbyterian/Queens.

Whenever a personal pronoun is used, it should be interpreted to refer to persons of either gender.

**ARTICLE I
NAME AND PRINCIPAL OFFICE AND PURPOSES OF THE
CORPORATION**

Section 1. Name

The legal name of the corporation is The Foundation of NewYork-Presbyterian/Queens (the “Corporation” or the “Foundation”).

Section 2. Principal Office

The principal office of the Corporation shall be located in the County of Queens, State of New York.

Section 3. Purposes

The Foundation is organized, and shall be operated, exclusively for charitable purposes within the meaning of Sections 170(c)(2)(B) and 501(c)(3) of the Internal Revenue Code of 1986, as amended from time to time (the “Code”), and in furtherance thereof, the Foundation shall, in accordance with applicable law, the Certificate of Incorporation and the provisions of these ByLaws:

(a) Through the solicitation, receipt and disbursement of funds, income and real or tangible personal property obtained by bequests, gifts, donations, or otherwise, subject to any limitations imposed by the Not-for-Profit Corporation Law of the State of New York (the “NFPCL”) or any other law of the State of New York, render assistance and make grants to NewYork-

Presbyterian/Queens (formerly known as The New York Hospital Medical Center of Queens), a New York State not-for-profit corporation;

(b) Solicit and receive grants, contracts and funds from federal, state and local government agencies, foundations or any other sources, to further the purposes of the Corporation.

(c) Solicit, accept, receive and acquire by way of gift, devise, bequest, lease, purchase or otherwise, and to hold, invest and reinvest all property real or personal, including shares of stock, bonds and securities of other corporations and to dispose of property, real or personal, by gift, lease, sale or otherwise, all as may be necessary or desirable for the attainment of the purposes of the Corporation.

(d) Subject to the limitations set forth in these Bylaws, engage in any and all other lawful acts or activities, and exercise all such powers, rights and privileges applicable to nonprofit corporations organized under the NPCL in furtherance of accomplishing the foregoing charitable purposes. This shall include, but not be limited to, promoting the Member in the community and functioning as a liaison between and among the Member, its affiliated organizations and the community.

The Foundation shall not operate for the purpose of carrying on a trade or business for pecuniary profit or gain.

Section 4. Use of Income

No part of the Foundation's assets, net earnings, income or profit shall inure to the benefit of, or be distributable to, any director, trustee, officer, manager, or employee of the Foundation or any private person; provided, however, that the Foundation shall be authorized and empowered to pay reasonable compensation to any person for services rendered to the Foundation and to make distributions in furtherance of the Foundation's charitable purposes.

Section 5. Further Restrictions

No substantial part of the activities of the Foundation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except to the extent permitted by Section 501(h) of the Code if the Foundation makes an election thereunder) and the Foundation shall not participate in or intervene in (including the publishing or the distributing of statements in connection with) any political campaign on behalf of or in opposition to any candidate for public office.

Section 6. Business Without Profit

Notwithstanding anything to the contrary in these Bylaws, the Foundation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status (i) as a corporation which is exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code, or (ii) as a corporation contributions to which are deductible under Sections 170(c)(2), 2055(a) or 2522(a) of the Code.

ARTICLE II

MEMBER

Section 1. Member

The sole member of the Corporation shall be NewYork-Presbyterian/Queens (the "Member" or the "Hospital") and its corporate successors by merger, consolidation or otherwise. There shall be no other member or classes of membership whatsoever.

Section 2. Power and Rights

In addition to such other rights, powers and authority as are vested in the Member in its capacity as the sole member of the Corporation by law or as may be set forth in the Certificate of Incorporation of the Corporation or these Bylaws, the Member shall have the following rights, powers and authorities with respect to the Corporation:

- (a) to approve a merger of, or consolidation by, the Foundation;
- (b) to approve any sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the Foundation's property and assets;
- (c) to approve any borrowing or the incurrence of debt by the Foundation;
- (d) to approve any acquisition, purchase, sale or other disposition of the assets of the Foundation;
- (e) to approve any budget of the Foundation;
- (f) to approve any restrictions on any contributions to the Corporation and any restrictions on the use of or the imposition of any other limitations or conditions in connection with grants, distributions or contributions of the Corporation;
- (g) to adopt or approve the adoption of any policies and procedures;
- (h) to approve the election of officers of the Corporation;
- (i) to approve the capital and other fundraising campaigns undertaken by the Corporation (including any advertising and use of media in connection therewith);

- (j) to approve any contracts for the management of the Corporation;
- (k) to approve settlements of administrative or other litigation or proceedings to which the Corporation is a party;
- (l) to adopt, amend or repeal these Bylaws or the Certificate of Incorporation of the Foundation;
- (m) to appoint and/or remove a Director of the Foundation;
- (n) to require the Foundation to make grants, contributions or other distributions to the Member or its subsidiaries subject to any restriction imposed by donor interest;
- (o) to require the transfer of assets from the Foundation to the Member or its subsidiaries, subject to any restrictions imposed by donor interest; and
- (p) to approve a liquidation, dissolution, or winding up of the Foundation.

Section 3. Annual Meeting

The annual meeting of the Member shall be held as provided in the Amended and Restated Bylaws of the Member.

Section 4. Special Meetings

Special Meetings of the Member may be called pursuant to the Amended and Restated Bylaws of the Member.

Section 5. Notice of Meeting

Notice of all meetings of the Member shall be given in accordance with the Amended and Restated Bylaws of the Member.

Section 6. Action by the Member

Any action required or permitted to be taken by the Member in its capacity as the sole member of the Corporation shall be taken and evidenced pursuant to the Amended and Restated Bylaws of the Member.

Section 7. Quorum

Presence of the Member shall constitute a quorum for the transaction of business or of any specified item of business of the Member.

Section 8. Action Without a Meeting

Any action required or permitted to be taken by the Member may be taken without a meeting if the Member consents in writing or electronically, in either case as provided by the NPCL, to the adoption of a resolution approving such action.

Section 9. Minutes

The Corporation shall keep, at its office, correct and complete minutes of the proceedings of the Member.

Section 10. Termination of Member

The status of the Member as sole member of the Foundation shall not be terminated without the affirmative written consent of the Member, provided that the membership of the Member shall be terminated automatically and without further action on the part of the Foundation or the Member in the event that the Member is determined by the Internal Revenue Service not to be an organization qualifying for tax-exempt status under Section 501(c)(3) of the Code. In the event the membership of the Member is automatically terminated pursuant to this section, a successor section 501(c)(3) exempt organization shall be selected by the Member as member.

**ARTICLE III
BOARD OF DIRECTORS**

Section 1. Governance

(a) Subject to the rights of the Member set forth in Article II, Section 2 of these Bylaws, the governance of the Corporation is hereby vested in the Board of Directors, which shall have full legal authority and overall responsibility for the conduct of the activities of the Corporation and for management of the properties, affairs and operations of the Corporation in a manner consonant with the Corporation's objectives as set forth in these Bylaws and actions taken and resolutions duly adopted by the Member.

(b) Directors shall act in all matters as a Board and the power of the Board of Directors shall not reside in any Director individually.

Section 2. Composition of Board of Directors

(a) The number of Directors comprising the entire Board of Directors of the Corporation (each, a "Director" and, collectively, the "Directors") shall be set from time to time by the Member.

(b) The President of the Member shall serve as an ex-officio member of the Board, with vote.

(c) All members of the Board of Directors shall serve in accordance with, and be subject to, the provisions of these Bylaws and applicable law that pertain to persons who serve

on the Board of Directors, including as to termination, removal and resignation.

Section 3. Term of Office of Board of Directors

(a) Each Director shall be elected by the Member to a term of office of two (2) years. Directors shall, upon election by the Member, immediately enter upon the performance of their duties, and shall continue in office until their successors shall be duly elected and qualified.

Section 4. Qualifications and Nomination

(a) Each Director shall be at least eighteen (18) years of age or the minimum age prescribed by the NPCL.

(b) Exclusive of ex-officio membership, the nominations and election of Directors shall be made by the Member.

Section 5. Election of Directors

(a) The Member shall elect Directors at the annual meeting of the Member or as otherwise determined by the Member.

(b) Voting for the election of Directors shall be in such form and manner as may be prescribed by the Member.

Section 6. Filling of Vacancies

Vacancies occurring on the Board of Directors for any reason including newly created positions, may only be filled by the Member.

Section 7. Resignation and Removal of Directors

(a) Any Director may resign at any time by giving written notice of such resignation to the Secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Secretary.

(b) Any Director may be removed with or without cause by the Member.

(c) Resignation or removal as a Board Member also shall constitute resignation or removal as an officer.

Section 8. Meetings of the Board of Directors

(a) The annual meeting of the Board of Directors for the transaction of such business as may properly come before such meeting shall be held each year as soon as practicable after the annual meeting of the Member. Written notice of the time and place of the annual meeting of the Board of Directors shall be delivered to each Director not less than ten (10) days prior to the annual meeting.

(b) Regular business meetings of the Board of Directors shall be held as may be determined by the President or the Board of Directors, at such place within or outside the State of New York as may be fixed by the notice of meeting. Written notice of the time and place of all regular meetings of the Board of Directors shall be delivered to each Director not less than ten (10) days prior to such regular meeting.

(c) Special Meetings of the Board of Directors may be called at any time by the President or Secretary of the Corporation. A special meeting called by the President shall be held at such time as deemed appropriate by the President. Notice of the time and place of any special meeting of the Board of Directors shall be delivered to each Director: (i) if by mail, not less than five (5) business days prior to such special meeting; or (ii) if by facsimile, telecommunications or electronic mail, one (1) business day prior to such special meeting. Notice of any special meeting of the Board of Directors shall state the purpose or purposes for which the meeting is called. No business other than specified in the notice of special meeting shall be transacted at such special meeting.

(d) A majority of the Directors present at any meeting, whether or not a quorum is present, may adjourn the meeting to another time and place. At least one (1) days' notice of any adjournment of a meeting of the Board of Directors to another time or place shall be given to the Directors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other Directors.

Section 9. Action Without a Meeting

(a) Any action required or permitted to be taken by the Board of Directors, or any committee thereof, may be taken without a meeting if all members of the Board or such committee, as the case may be, consent in writing or electronically, in either case as provided by the NPCL, to the adoption of a resolution approving such action.

(b) Any one (1) or more Directors who is not physically present at a meeting of the Board of Directors, or any committee thereof, may participate in such meeting by means of a conference telephone or similar communications equipment or by electronic video screen communication. Participation by such means shall constitute presence in person at a meeting as long as all persons participating in the meeting can hear each other at the same time and each Director can participate in all matters before the Board of Directors or such committee,

including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the Board of Directors or such committee.

Section 10. Minutes of Meetings

Minutes shall be maintained of all meetings of the Board of Directors, and any committee thereof, which minutes shall reflect all business conducted thereat, including findings, conclusions and recommendations. Such minutes shall regularly be distributed to the Directors.

Section 11. Quorum and Voting Requirements

(a) Except as otherwise required by law or in these Bylaws, a majority of the total number of Directors then in office shall constitute a quorum for the transaction of any business at any meeting of directors. In the absence of a quorum, a majority of those present may adjourn any meeting to another time and place, provided, that notice of the meeting shall be given to the Directors not present at the time of adjournment.

(b) Except as otherwise provided by law or in these Bylaws, all matters shall be decided by vote of a majority of the Directors present at the time of the vote, if a quorum is present at such time. Each Director shall be entitled to one (1) vote.

Section 12. Duties, Liabilities, Powers and Restrictions of Individual Directors and of the Board of Directors

(a) No Director shall receive compensation for any services performed as a Director. Nothing herein shall be construed to preclude any Director from serving the Corporation in any other capacity as an Officer, agent, or otherwise and receiving compensation therefor, as authorized by the Board of Directors, except no employee of the Corporation may serve as Chair of the Board of Directors or hold any other position with similar responsibilities.

(b) Directors shall discharge their duties in good faith and with that degree of diligence, care and skill which ordinarily prudent individuals would exercise under similar circumstances in like positions. In discharging their duties, Directors, when acting in good faith, may rely upon financial statements of the Corporation represented to them to be correct by the President or the Treasurer of the Corporation, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of the Corporation.

(c) The liability of Directors, whether joint or several, shall be limited to the cases set forth in Section 719 of the NPCL and shall be subject to indemnification by the Corporation as set forth in Article VI of these Bylaws.

(d) The Board of Directors shall take reasonable steps to conform to all applicable federal, state and local laws, ordinances, codes and regulations.

Section 13. Policies

(a) Subject to Article II, Section 2 of these Bylaws, the Board of Directors shall adopt a Conflict of Interest Policy of the Corporation, and shall review that policy from time-to-time to assure that it provides appropriate guidance and protections. The Conflict of Interest Policy of the Corporation shall include: (i) a definition of circumstances that constitute a conflict of interest; (ii) procedures for disclosing a conflict of interest to the Committee or the Board of Directors, as applicable; (iii) procedures for disclosing, addressing and documenting “related party transactions” (as defined in the NPCL); and (iv) such other matters as are required to be included or addressed in such Conflict of Interest Policy pursuant to Section 715-a(b) of the NPCL to the extent applicable to the Corporation.

(b) Subject to Article II, Section 2 of these Bylaws, the Board of Directors shall adopt additional policies, as it sees fit and from time to time, in order to facilitate the efficient administration of the Corporation’s affairs, and in order to protect and promote the quality and integrity of the Corporation’s pursuits.

**ARTICLE IV
OFFICERS**

Section 1. Officers

(a) The Officers shall include a President (who shall be the Chief Executive Officer), a Secretary, a Treasurer and such other officers as the Board of Directors may authorize. All other officers shall be elected by the Board of Directors at its annual meeting and all such officers shall serve for one (1) year, or until their successors shall be duly elected and qualify. No officers shall be employees of the Corporation and the Corporation shall otherwise have no employees.

(b) The President shall be the highest administrative officer of the Corporation and shall preside at all meetings of the Board of Directors, shall generally supervise the business of the Corporation, and shall execute documents as necessary to evidence actions of the Corporation. The President may also bear the title "Chief Executive Officer" .

(c) The Secretary shall keep the minutes of Meetings of the Board of Directors, attend to the serving of notices of meetings of the Directors, have custody of all books and records of the Corporation and perform such other duties as are incidental to his or her office and such further duties as the Board of Directors shall direct or as may be required by law. Any Assistant Secretaries elected by the Board of Directors shall assist the Secretary with duties as directed by the Board of Directors of the Corporation. During the absence of the Secretary or when the Secretary is otherwise unable to act, the Assistant Secretaries shall perform all duties usually devolving on the Secretary.

(d) The Treasurer shall have supervision and care of all receipts and monies of the Corporation, and shall be responsible to see that accurate accounts of all receipts and disbursements are kept. The Treasurer shall cause to be deposited all receipts in such banks as authorized by the Board of Directors. The Treasurer shall render a statement of accounts at each annual meeting of the Corporation and at each regular meeting of the Board of Directors. The Treasurer shall also perform such other duties as are incidental to the office, and such further duties as the Board of Directors may direct. Any Assistant Treasurers elected by the Board of Directors shall assist the Treasurer with duties as directed by the Board of Directors. During the absence of the Treasurer or when the Treasurer is otherwise unable to act, the Assistant Treasurers shall perform all duties usually devolving on the Treasurer.

ARTICLE V [INTENTIONALLY OMITTED]

ARTICLE VI INDEMNIFICATION

Section 1. Indemnification

(a) Consistent with the restrictions set forth in the NPCL, the Corporation shall indemnify each person who is or was a Director or Officer of the Corporation against any and all liability and reasonable expenses that may be incurred in connection with or resulting from any

action, claim, suit or proceeding, other than one which is brought by or in the right of the Corporation, whether civil or criminal, in which he may become involved by reason of his being or having been a Director or Officer of the Corporation, or by reason of any past or future action taken or not taken in his capacity as such Director or Officer, whether or not he continues to be such at the time that such liability or expenses are incurred; provided, however:

(i) such Director or Officer acted in good faith for a purpose which he or she reasonably believed to be in the best interest of the Corporation; and

(ii) in any criminal action or proceeding, such Director or Officer had no reasonable cause to believe that his or her conduct was unlawful.

(b) For the purposes of Article VI, Section 1(a), the phrase “liability and reasonable expenses” shall include, but shall not be limited to, attorneys’ fees, reasonable expenses, amounts of judgments, fines or penalties, and amounts paid in settlement by such Director or Officer of the Corporation.

(c) Consistent with the restrictions set forth in the NPCL, the Corporation shall indemnify each person who is or was a Director or Officer of the Corporation against any and all liability and reasonable expenses that may be incurred by him in connection with or resulting from any action, claim, suit, or proceeding, brought by or in the right of the Corporation to procure a judgment in its favor, in which he may become involved by reason of his being or having been a Director or Officer of the Corporation, or by reason of past or future action taken or not taken in his capacity as such Director or Officer, whether or not he or she continues to be such at the time that such liability or expenses are incurred, except in relation to matters as to which he is adjudged to have breached his duty to the Corporation to act in good faith and exercise that degree of diligence, care and skill which ordinarily prudent persons exercise under similar circumstances in like positions.

(d) For the purposes of Article VI, Section 1(c) of these Bylaws, the phrase “liability and reasonable expenses” shall include attorneys’ fees, but shall in no case include amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval, or expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval

(e) In the event that a person is wholly successful in defending an action for which indemnification is available, the Corporation shall so indemnify him in accordance with Article

VI, Sections 1(a)-(d) of these Bylaws. In any case where a person is less than wholly successful, indemnification shall only be made if authorized: (i) by the Board of Directors acting by a quorum consisting of Directors who are not involved in the claim, suit or proceeding, upon a finding that the Director or Officer has met the standard of conduct required in Article VI, Section 1(a) of these Bylaws or Article VI, Section 1(c) of these Bylaws; or (ii) if a quorum is not obtainable with due diligence, by the Board of Directors upon the written opinion of independent legal counsel selected by the Corporation that indemnification is proper because of the applicable standard of conduct contained in Article VI, Section 1(a) or Article VI, Section 1(c) of these Bylaws.

(f) If any action with respect to indemnification of any person described in Section 1(a) of this Article VI is taken by way of amendment of the Bylaws, resolution of Directors, or by agreement, the Corporation will, not later than the next Annual Meeting of the Member or Members, unless such meeting is held within three (3) months from the date of such action, and in any event, within fifteen (15) months from the date of such action, mail to the Member or Members at the time entitled to vote for the election of Directors a statement specifying the action taken.

Section 2. Insurance

(a) Except as provided in Article VI, Section 2(b) of these Bylaws, the Corporation shall have the power to purchase and maintain insurance:

(i) to indemnify the Corporation for any obligation which it incurs as a result of the indemnification of Directors and Officers under the provisions of this Article VI;

(ii) to indemnify Directors and Officers in instances in which they may be indemnified by the Corporation under the provisions of this Article VI; and

(iii) to indemnify Directors and Officers in instances in which they may not otherwise be indemnified by the Corporation under the provisions of this Article VI under the conditions set forth in Section 726 of the NPCL.

(b) No insurance may provide for any payments other than the cost of defense, to or on behalf of any Director or Officer:

(i) if a judgment or other final adjudication adverse to the insured Director or Officer establishes that his acts of active and deliberate dishonesty were material to the cause of

action so adjudicated, or that he personally gained, in fact, a financial profit or other advantage to which he was not legally entitled; or

(ii) in relation to any risk the insurance of which is prohibited under the Insurance Law of the State of New York.

(c) The Corporation shall, within the time and to the persons provided in Article VI, Section 1(f) of these Bylaws, mail a statement specifying any insurance it has purchased or renewed for the indemnification of Directors or Officers, setting forth the insurance carrier, date of contract, cost of the insurance, corporate positions insured and a statement explaining all sums, not previously reported in a statement to the Member or Members, paid under any indemnification insurance contract.

Section 3. Right Not Exclusive

The foregoing right of indemnification shall not be deemed exclusive of any other right to which such Director or Officer may be entitled apart from this Article VI.

ARTICLE VII

FISCAL YEAR

The fiscal year of the Corporation shall be from the 1st day of January to the 31st day of December, inclusive, each year, or such other twelve (12) consecutive months as the Board of Directors may from time to time designate.

ARTICLE VIII
WRITTEN NOTICE; WAIVER OF NOTICE

(a) Whenever written notice is required to be delivered to any person under these Bylaws, it may be given to such person either personally or by sending a copy thereof by mail, or by facsimile, telecommunications or electronic mail, to the address, fax number or email address as it appears on the records of the Corporation or as filed with the Secretary of the Corporation..

(b) The giving of any notice pursuant to these Bylaws may be waived pursuant to the provisions set forth in the NPCL.

ARTICLE IX
CONSTRUCTION OF BYLAWS

The determination of the Member shall be conclusive with respect to all questions of construction of these Bylaws.

ARTICLE X
AMENDMENTS

The Member shall have the sole right to adopt, amend or repeal these Bylaws.

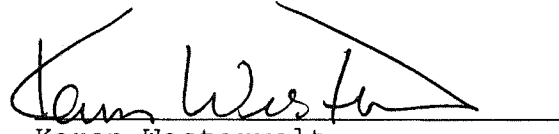
Plan of Dissolution

Plan of Dissolution

The Foundation of NewYork-Presbyterian/Queens

The Board of Directors and Sole Member of The Foundation of NewYork-Presbyterian/Queens (the "Corporation") have considered the advisability of voluntarily dissolving the Corporation and have determined that dissolution is in the best interests of the Corporation.

1. The Certificate of Incorporation of the Corporation was filed by the New York State Secretary of State on February 25, 1987 pursuant to the Not-For-Profit Corporation Law of the State of New York (the "NFPCL").
2. The Corporation has no assets or liabilities.
3. In addition to the New York State Attorney General approval, the following governmental approvals of the Plan are required and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General.
 - New York State Public Health and Health Planning Council
4. A Certificate of Dissolution shall be signed by an authorized director or officer of the Corporation and all required approvals shall be attached thereto before filing it with the New York Department of State.



Karen Westervelt
President

12/21/18

(Date)

Plan of Dissolution

The Foundation of NewYork-Presbyterian/Queens

The Board of Directors and Sole Member of The Foundation of NewYork-Presbyterian/Queens (the "Corporation") have considered the advisability of voluntarily dissolving the Corporation and have determined that dissolution is in the best interests of the Corporation.

1. The Certificate of Incorporation of the Corporation was filed by the New York State Secretary of State on February 25, 1987 pursuant to the Not-For-Profit Corporation Law of the State of New York (the "NFPCL").
2. The Corporation has no assets or liabilities.
3. In addition to the New York State Attorney General approval, the following governmental approvals of the Plan are required and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General.
 - New York State Public Health and Health Planning Council
4. A Certificate of Dissolution shall be signed by an authorized director or officer of the Corporation and all required approvals shall be attached thereto before filing it with the New York Department of State.



Karen Westervelt
President

12/21/18

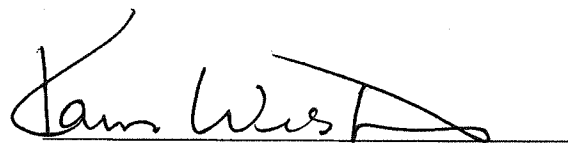
(Date)

Plan of Dissolution

The Foundation of NewYork-Presbyterian/Queens

The Board of Directors and Sole Member of The Foundation of NewYork-Presbyterian/Queens (the "Corporation") have considered the advisability of voluntarily dissolving the Corporation and have determined that dissolution is in the best interests of the Corporation.

1. The Certificate of Incorporation of the Corporation was filed by the New York State Secretary of State on February 25, 1987 pursuant to the Not-For-Profit Corporation Law of the State of New York (the "NFPCL").
2. The Corporation has no assets or liabilities.
3. In addition to the New York State Attorney General approval, the following governmental approvals of the Plan are required and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General.
 - New York State Public Health and Health Planning Council
4. A Certificate of Dissolution shall be signed by an authorized director or officer of the Corporation and all required approvals shall be attached thereto before filing it with the New York Department of State.



Karen Westervelt
President

12/21/18
(Date)

CERTIFICATION

I, William P. Wissemann, Secretary of The Foundation of NewYork-Presbyterian/Queens ("the Corporation"), do hereby certify that the following resolution and action were duly approved by the Board of Directors of the Corporation by unanimous written consent on October 17, 2018:

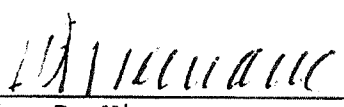
RESOLUTION

WHEREAS, it is the desire of The Foundation of NewYork-Presbyterian/Queens ("the Corporation") to dissolve the Corporation,

NOW, THEREFORE, BE IT RESOLVED that the Plan of Dissolution attached hereto as Exhibit A be approved, and

FURTHER RESOLVED that the officers of the Corporation are authorized to take all such further action that they deem necessary, appropriate or advisable in furtherance hereof.

This consent may be executed in counterparts.



William P. Wissemann
Secretary

CERTIFICATION

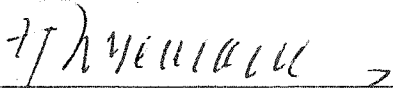
I, William P. Wissemann, Secretary of NewYork-Presbyterian/Queens, the sole Member ("the Member") of The Foundation of NewYork-Presbyterian/Queens ("the Corporation"), do hereby certify that the following resolution and action were duly approved by the sole Member of the Corporation in accordance with the bylaws of the sole Member on October 17, 2018:

RESOLUTION

WHEREAS, the Board of Directors of The Foundation of NewYork-Presbyterian/Queens ("the Corporation") has approved the Plan of Dissolution for the Corporation,

NOW, THEREFORE, BE IT RESOLVED that NewYork-Presbyterian/Queens, the sole Member of the Corporation, approves the Plan of Dissolution attached hereto as Exhibit A, and

FURTHER RESOLVED that the officers of the Corporation are authorized to take all such further action that they deem necessary, appropriate or advisable in furtherance hereof.



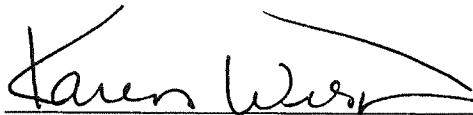
William P. Wissemann
Secretary

Plan of Dissolution

The Foundation of NewYork-Presbyterian/Queens

The Board of Directors and Sole Member of The Foundation of NewYork-Presbyterian/Queens (the "Corporation") have considered the advisability of voluntarily dissolving the Corporation and have determined that dissolution is in the best interests of the Corporation.

1. The Certificate of Incorporation of the Corporation was filed by the New York State Secretary of State on February 25, 1987 pursuant to the Not-For-Profit Corporation Law of the State of New York (the "NFPCCL").
2. The Corporation has no assets or liabilities.
3. In addition to the New York State Attorney General approval, the following governmental approvals of the Plan are required and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General.
 - New York State Public Health and Health Planning Council
4. A Certificate of Dissolution shall be signed by an authorized director or officer of the Corporation and all required approvals shall be attached thereto before filing it with the New York Department of State.



Karen Westervelt
President

12/21/18

(Date)

Certificate of Dissolution



**CERTIFICATE OF DISSOLUTION
OF**

THE FOUNDATION OF NEWYORK-PRESBYTERIAN/QUEENS

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is

THE FOUNDATION OF NEWYORK-PRESBYTERIAN/QUEENS

If the name of the corporation has been changed, the name under which it was formed is
BMA MEDICAL FOUNDATION, INC.

SECOND: The certificate of incorporation was filed with the Department of State on
FEBRUARY 25, 1987

THIRD: The name and address of each officer and director of the corporation is:

GARY J. ZUAR, 466 LEXINGTON AVENUE, NEW YORK, NY 11017
KAREN WESTERVELT, 466 LEXINGTON AVENUE, NEW YORK, NY 11017
JACLYN MUCARIA, 56-45 MAIN STREET, FLUSHING, NY 11355
WILLIAM P. WISSEMAN, 56-45 MAIN STREET, FLUSHING, NEW YORK 11355

FOURTH: The corporation is a *(check the appropriate box)*

charitable corporation non-charitable corporation.

FIFTH: At the time of authorization of the corporation's Plan of Dissolution and Distribution of Assets as provided in Not-for-Profit Corporation Law §1002, the corporation holds

(Check the appropriate statement)

assets which are legally required to be used for a particular purpose.
 no assets which are legally required to be used for a particular purpose.

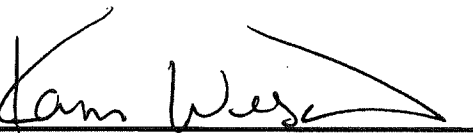
SIXTH: The corporation elects to dissolve.

SEVENTH: *(Check the appropriate statement)* The dissolution was authorized by

- a vote of a majority of the board of directors. The corporation has no members.
- the majority vote of the board of directors, followed by two-thirds vote of the members.

EIGHTH: *(Check the appropriate statement)*

- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by the Attorney General. A copy of the approval of the Attorney General is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by a Justice of the Supreme Court. A copy of the Court's Order is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing a copy of the Plan of Dissolution which contains the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law, has been duly filed with the Attorney General.
- The corporation is a non-charitable corporation. The corporation's Plan of Dissolution is not required to contain the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law and is not required to be filed with Attorney General.

x 
(Signature)

KAREN WESTERVELT

(Print or Type Name of Signer)

PRESIDENT

(Capacity of Signer)



**Division of Corporations,
State Records and
Uniform Commercial Code**

New York State
Department of State
Division of Corporations,
State Records and
Uniform Commercial Code
One Commerce Plaza
99 Washington Avenue
Albany, NY 12231
www.dos.ny.gov

**CERTIFICATE OF DISSOLUTION
OF**

THE FOUNDATION OF NEWYORK-PRESBYTERIAN/QUEENS

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

Filer's Name: KAREN WESTERVELT

Address: 466 LEXINGTON AVENUE

City, State and Zip Code: NEW YORK, NY 11017

NOTES:

1. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at www.dos.ny.gov.
2. This Certificate of Dissolution must be signed by an officer, director or duly authorized person.
3. Attach the consent of the New York State Department of Taxation and Finance.
4. Attach the consent of the New York City Department of Finance, if required.
5. Attach a copy of the approval of the Attorney General or Order of the Supreme Court, if required.
6. The Certificate of Dissolution must include the approval of the Attorney General if the corporation is a charitable corporation or if the corporation is a non-charitable corporation and holds assets at the time of dissolution legally required to be used for a particular purpose.
7. Attach any other consent or approval required by law.
8. The fee for filing this certificate is **\$30**, made payable to the Department of State.

For DOS Use Only

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 14th day of February 2019, approves the filing of the Certificate of Dissolution of The Foundation of New York-Presbyterian/Queens, dated December 21, 2018.



Project # 182183-E
Endoscopy Center of Niagara, LLC

Program: Diagnostic and Treatment Center
Purpose: Construction
County: Niagara
Acknowledged: October 18, 2018

Executive Summary

Description

Endoscopy Center of Niagara, LLC (The Center), a proprietary, Article 28 diagnostic and treatment center (D&TC) located at 6930 Williams Road, Niagara Falls (Niagara County), requests approval for indefinite life. The DTC was approved by the Public Health and Health Planning Council (PHHPC) under CON 121140 as a single-specialty freestanding ambulatory surgery center (FASC) specializing in gastroenterology services. PHHPC approval was for a conditional five-year limited life and the Center began operations effective February 24, 2014. The applicant notified the Department before their limited life expiration requesting indefinite life status. The applicant is not proposing to add or change any services, or expand or renovate the facility.

The Center is accredited by the Accreditation Association for Ambulatory Health Care (AAAHC) and provides gastroenterology surgical services utilizing two (2) procedure rooms. Yogesh Maheshwari, MD. is the Medical Director and will continue in this capacity after approval of this application. The FASC has a transfer and affiliation agreement with Niagara Falls Memorial Medical Center and Kaleida Health for backup services as needed.

OPCHSM Recommendation

Approval

Need Summary

The Center has made reasonable efforts to serve the under-insured population of Niagara County. Data submission by the applicant, a condition of CON 121140, has been completed. Based on CON 121140, Endoscopy Center of Niagara projected 4,850 procedures in Year One and 5,153 procedures in Year Three, with Medicaid procedures projected at 4.83% and Charity Care projected at 2.0% for Year Three. The total number of procedures was 4,072 in Year One (2015-1st full year) and 5,079 in Year Three (2017). Actual Medicaid in Year Three (2017) was 7.80% and Charity Care was 0.06%.

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.

Table with 2 columns: Budget, Year One. Rows: Revenues (\$4,295,140), Expenses (\$2,629,470), Net Income (\$1,665,670).

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

February 14, 2019

Need Analysis

Analysis

The primary service area is Niagara County. The table below provides information on projections and utilization by procedures for Year One (2015-1st full year) and Year Three (2017) based on CON 121140.

	Year 1 (2015)		Year 3 (2017)	
	Projected	Actual	Projected	Actual
Total	4,850	4,072	5,153	5,079

The table below provides Year Three utilization, projections and actual, by payor, for CON 121140, and projections for Year One following approval.

Payor	CON 121140 Projected Year 3 (2017)	CON 121140 Actual Year 3 (2017)	CON 182183 Projections Year 1
Medicaid FFS/MC	4.83%	7.80%	7.76%
Medicare FFS/ MC	39.24%	32.53%	32.37%
Commercial FFS/MC	53.93%	58.59%	58.34%
Private Pay	0.00%	0.06%	0.06%
Charity Care	2.00%	0.06%	0.51%
Other	0.00%	0.96%	0.96%
Total	100.0%	100.00%	100.00%

The Center's efforts to provide services to the underinsured of Niagara County include the following:

- Medicaid Managed Care contracts with BCBS, Fidelis, Independent Health, MVP, UHC, and Univera;
- Referral agreements with all four FQHCs in Niagara County and The NYS Cancer Services program. These organizations have provided a total of 77 patient referrals to the center from January 2016 through September 2018;
- Participation in annual events and health fairs to educate the public on colon cancer screenings.

Based upon data from the American Community Survey, the uninsured represented just 3.5% of Niagara County's estimated population of 209,820 in 2016. The number of Medicaid enrollees for 2016 was estimated at 17.2% of Niagara County's population. The center's Medicaid Utilization has been around 8% each year of operation. The applicant noted that hospitals and FQHCs now have patient navigators whose job it is to secure health insurance for patients who arrive at their location needing care.

Conclusion

The Center's Medicaid utilization has been approximately 8% each year of its existence which is above the original combined Medicaid and Charity Care projections of 6.8%. The center's outreach efforts resulting in referral agreements with the regional FQHCs and their Medicaid utilization indicate reasonable efforts are being made to provide service to the under-insured in Niagara County.

Program Analysis

Program Description

The Center provides gastroenterological surgical services utilizing two procedure rooms and is accredited by the Accreditation Association for Ambulatory Health Care (AAAHC). Hours of operation are Monday through Friday from 7:00 am to 6:00 pm with hours extended as necessary to accommodate patient need. The Center is not proposing any additional services at this time.

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.

Financial Analysis

Operating Budget

The applicant has submitted their current year (2017) results, and their first and third year operating budgets, in 2019 dollars, as shown below:

	<u>Current 2017</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Proc</u>	<u>Total</u>	<u>Per Proc</u>	<u>Total</u>	<u>Per Proc</u>	<u>Total</u>
<u>Revenues</u>						
Medicaid FFS	\$618.48	\$236,259	\$811.31	\$316,410	\$812.44	\$322,540
Medicaid MC	\$634.07	8,877	\$828.28	11,596	\$807.20	12,108
Medicare FFS	\$618.68	652,711	\$812.28	874,016	\$812.34	891,133
Medicare MC	\$619.01	369,551	\$812.42	494,763	\$812.42	504,510
Commercial FFS	\$618.78	1,841,496	\$813.85	2,470,855	\$814.10	2,519,639
Private Pay	\$689.67	2,069	\$891.07	2,673	\$895.10	2,685
All other	\$605.51	<u>31,477</u>	\$834.75	<u>41,737</u>	\$833.82	<u>42,525</u>
Total Revenues		\$3,142,440		\$4,212,050		\$4,295,140
 <u>Expenses</u>						
Operating	\$341.37	\$1,733,825	\$416.70	\$2,168,502	\$411.61	\$2,184,000
Capital	<u>84.33</u>	<u>428,337</u>	<u>83.96</u>	<u>436,904</u>	<u>83.96</u>	<u>445,470</u>
Total Expenses	\$425.71	\$2,162,162	\$500.65	\$2,605,406	\$495.57	\$2,629,470
 Net Income		<u>\$980,278</u>		<u>\$1,606,644</u>		<u>\$1,665,670</u>
Procedures		5,079		5,204		5,306

Anesthesia income is included in Years One and Three as the Center began providing anesthesia services directly in 2018. Prior to 2018, the Center utilized conscious sedation, which is a mild form of sedation that was administered by the Center's physicians and nurses. Due to patient preference and comfort, the Center began providing deeper sedation during certain procedures beginning in 2018, which requires the services of an anesthesiologist. There are no salaried anesthesiologists employed by the Center. The Center utilizes a third-party anesthesia provider (Purchased Services) for this service.

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

<u>Payor</u>	<u>Current Year</u>		<u>Years One</u>		<u>Year Three</u>	
	<u>Proc.</u>	<u>%</u>	<u>Proc.</u>	<u>%</u>	<u>Proc.</u>	<u>%</u>
Medicaid FFS	382	7.52%	390	7.49%	397	7.48%
Medicaid MC	14	.28%	14	.27%	15	.28%
Medicare FFS	1,055	20.78%	1,076	20.68%	1,097	20.67%
Medicare MC	597	11.75%	609	11.70%	621	11.70%
Commercial FFS	2,976	58.59%	3,036	58.34%	3,095	58.34%
Private Pay	3	.06%	3	.06%	3	.06%
Charity Care	3	.06%	26	.50%	27	.51%
All other	49	.96%	50	.96%	51	.96%
Total	5,079	100%	5,204	100%	5,306	100%

Utilization and expense assumptions are based on the historical experience of the Center. Commercial revenues are based on the Center's recent renegotiation of several commercial payor agreements. Medicare revenues are based on the Medicare allowable rate.

Capability and Feasibility

There are no project costs associated with this application. The submitted budgets indicate a net income of \$1,606,644 and \$1,665,670 in the first and third years. Revenues are based on current reimbursement methodologies. The submitted budgets are reasonable.

BFA Attachment B is the 2017 certified financial statements of Endoscopy Center of Niagara. As shown, the entity had a positive working capital position and a positive net asset position in 2017. Also, the entity achieved a net income of \$980,278 in 2017.

BFA Attachment C is the internal financial statements of Endoscopy Center of Niagara as of May 31, 2018. As shown, the entity had a positive working capital position and a positive net asset position through the period and achieved a net income of \$400,157 through May 31, 2018.

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

Attachments

- BFA Attachment A Current and original ownership of Endoscopy Center of Niagara
- BFA Attachment B 2017 certified financial statements of Endoscopy Center of Niagara
- BFA Attachment C May 31, 2018 internal financial statements of Endoscopy Center of Niagara.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of section 2801-a of the Public Health Law, on this 14th day of February 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby approves the following application for indefinite life for CON #121140, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

182183 E

FACILITY/APPLICANT:

Endoscopy Center of Niagara, LLC

Application Number: 182015
Name of Agency: Lincare of New York, Inc.
Address: Albany
County: Albany
Structure: For-Profit Corporation

Description of Project

The applicant requests approval for an Asset Purchase of Anthem Health Services, Inc., a licensed home care services agency under Article 36 of the Public Health Law. The applicant seeks to operate the LHCSA business through its wholly-owned subsidiary; Lincare of New York, Inc. Lincare of New York, Inc., a business corporation, is currently approved as an operator of three LHCSAs (9338L002, 9338L003 and 9388L004). The applicant will merge the operations of Anthem Health Services, Inc. into their LHCSA.

Anthem Health Services, Inc. was previously approved as a home care services agency by the Public Health Council at its May 19, 1995 meeting and subsequently licensed 9721L001 effective July 06, 1995. Lincare Inc. acquired the assets of Anthem Health Services Inc. on September 12, 2013, and seeks to operate the LHCSA business through its wholly-owned subsidiary Lincare of New York, Inc.

The applicant authorized 100 shares of stock which are owned as follows:
Lincare Inc. – 100 shares

The Board of Directors of Lincare of New York, Inc. comprises the following individuals:
Crispin Teufel, CPA – Director
CEO, CFO, Secretary, Treasurer, Lincare, Inc.
Gregory G. McCarthy – Director
COO, Lincare, Inc.

Lincare Inc. authorized 1,000 shares of common stock and 1,000 shares of preferred stock, which are owned as follows:
Lincare Holdings Inc. – 500 Shares of Common Stock
500 Shares of Common Stock Unissued
1,000 Shares of Preferred Stock Unissued

500 shares of common stock and 1,000 shares of preferred stock remain unissued

Lincare Inc. d/b/a Anthem Health Services and Lincare Holdings, Inc. have mirror Board of Directors. The Board of Directors of Lincare Inc. d/b/a Anthem Health Services and Lincare Holdings, Inc. comprises the following individuals:
Crispin Teufel, CPA – Director
(Previously Disclosed)
Gregory G. McCarthy – Director
(Previously Disclosed)

Jens Luehring – Director
President, Chief Executive Officer, Chief
Financial Officer, Linde North America, Inc.

The Lincare Holdings Inc. has authorized 51,000 shares of stock which are owned as follows:
Linde North America Holdings Ltd – 50,100 Shares
900 Shares Unissued

An attestation was submitted by the applicant indicating that the none of the following entities, which either directly or indirectly own Linde North American Holdings, Ltd., has any direct control over the healthcare operations of Lincare of New York, Inc.: Linde PLC, Linde Holding GmbH, Linde Intermediate Holding AG, Linde AG, Linde UK Holdings Ltd., Commercium Immobilien and Beteiligungs – GmbH, The BOC Group Limited, Medispeed, Linde Canada Holdings Limited, BOC Holdings, Linde North American, Inc. and Linde Delaware Investments, Inc.

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to continue to serve (9338L002) the residents of the following counties from an office located at 8181 Seneca Tpk, Ste 2, Clinton, New York 13323.

- Broome
- Cayuga
- Chenango
- Cortland
- Herkimer
- Jefferson
- Lewis
- Madison
- Oneida
- Onondaga
- Oswego
- St Lawrence
- Tioga
- Tompkins

The applicant proposes to continue to serve (9338L003) the residents of the following counties from an office located at 922 Spencer St., Syracuse, New York 13204.

- Cayuga
- Cortland
- Madison
- Onondaga
- Oswego
- Tompkins

The applicant proposes to continue to serve (9338L004) the residents of the following counties from an office located at 1160 Pittsford-Victor Road, Bldg K, Fl 1, Pittsford, New York 14534.

- Chemung
- Genesee
- Livingston
- Monroe
- Ontario
- Schuyler
- Seneca
- Stueben
- Wayne
- Yates

The applicant proposes to serve the residents of the following counties from an office located at 57 Karner Road, Suite B, Albany, New York 12205.

- Albany
- Clinton
- Columbia
- Delaware
- Essex
- Franklin
- Fulton
- Greene
- Hamilton
- Montgomery
- Otsego
- Rensselaer
- Saratoga
- Schenectady
- Schoharie
- Warren
- Washington
- Ulster

The applicant proposes to provide the following health care service:

- Nursing
- Durable Medical Supplies and Equipment

The 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

1. Submission of a copy of the bylaws of the applicant, acceptable to the Department. [CSL]

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 14th day of February, 2019, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER:

FACILITY:

182015 E

Lincare of New York, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a copy of the bylaws of the applicant, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON

N/A

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

Application Number: 181303
Name of Agency: 2680 North Forest Road Operating Company, LLC d/b/a Elderwood Home Care at Getzville
Address: Getzville
County: Erie
Structure: Limited Liability Company

Description of Project

2680 North Forest Road Operating Company, LLC d/b/a Elderwood Home Care at Getzville, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Menorah Campus Adult Home, Inc. was previously approved by the Public Health Council at its November 19, 1993 meeting and subsequently assigned license number 9460L001 effective March 1, 1994. The applicant is requesting approval to establish 2680 North Forest Road Operating Company, LLC as the new operator. This LHCSA will be associated with an Assisted Living Program to be operated by 2680 North Forest Road Operating Company, LLC. The LHCSA and the ALP will have identical ownership.

The single member of 2680 North Forest Road Operating Company, LLC is 2700 North Forest Road Operating Holdco, LLC. The members of 2700 North Forest Road Operating Holdco, LLC are:

Warren Cole, Treasurer – 50%
Partner, Post Acute Partners, LLC

Dr. Jeffrey Rubin, President – 50%
Partner, Post Acute Partners, LLC

A search of the individuals and entity named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant will be restricted to serving the residents of the associated Assisted Living Program in Erie County from an office located at 2700 North Forest Road, Getzville, New York 14068.

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

- Nursing
- Home Health Aide
- Personal Care
- Homemaker
- Housekeeper

Experience

The ownership interests of Warren Cole and Dr. Jeffrey Rubin are identical. A seven-year review of the operations of the following affiliations was performed as part of this review (unless otherwise noted):

<u>NYS Nursing Homes</u>	
Elderwood at Hamburg	07/2013 to present
Elderwood at Liverpool	07/2013 to present
Elderwood at Amherst	07/2013 to present
Elderwood at Grand Island	07/2013 to present
Elderwood at Wheatfield	07/2013 to present
Elderwood at Lancaster	07/2013 to present
Elderwood at Cheektowaga	07/2013 to present
Elderwood at Williamsville	07/2013 to present
Elderwood of Uihlein at Lake Placid	10/2016 to present
Elderwood at Waverly	07/2013 to present
Elderwood at Hornell	04/2016 to present
Elderwood of Lakeside at Brockport	01/2018 to present
Elderwood at Ticonderoga	04/2018 to present
Elderwood at Lockport	01/2018 to present
Elderwood at North Creek	01/2018 to present

NYS Adult Home/Enriched Housing Program

Elderwood Village at Ticonderoga		04/2018 to present
Elderwood Village at Williamsville		07/2013 to present
Elderwood Assisted Living at Wheatfield		07/2013 to present
Elderwood Assisted Living at West Seneca		07/2013 to present
Elderwood Assisted Living at Cheektowaga		07/2013 to present
Elderwood Assisted Living at Hamburg		07/2013 to present
Elderwood Assisted Living at Waverly		07/2013 to present
Elderwood Assisted Living at Tonawanda		04/2016 to present

NYS Licensed Home Care Agency

Elderwood Assisted Living at West Seneca		07/2013 to present
Elderwood Assisted Living at Cheektowaga		07/2013 to present
Elderwood Assisted Living at Hamburg		07/2013 to present
Elderwood Assisted Living at Waverly		07/2013 to present

NYS Pharmacy

Woodmark Pharmacy of New York, LLC		07/2013 to present
------------------------------------	--	--------------------

Massachusetts

Woodmark Pharmacy of Massachusetts	RX	06/2014- present
------------------------------------	----	------------------

Pennsylvania

Pediatric Specialty Care at Point Pleasant	ICF	02/2011-present
Pediatric Specialty Care at Doyleston	ICF	02/2011-present
Pediatric Specialty Care at Quakertown	ICF	02/2011-present
Pediatric Specialty Care at Lancaster	ICF	02/2011-present
Pediatric Specialty Care at Hopewell	ICF	02/2011-present
Pediatric Specialty Care at Philadelphia	ICF	02/2011-present
Elderwood Senior Living at Lancaster	HOM	02/2011-present

Rhode Island

Elderwood at Riverside	SNF	02/2014-present
Elderwood at Scallop Shell at Wakefield	SNF	12/2010-present

Vermont

Elderwood at Burlington	SNF	12/2018-present
-------------------------	-----	-----------------

KEY

ACU acute care/hospital	ICF intermediate care facility/group home
ALF assisted living facility	IRF intermediate rehab facility
HHA home health agency	LTA long term acute care hospital
HOM homecare	RX pharmacy
HOS hospice	SNF skilled nursing facility/nursing home

Healthcare Consulting Companies

Elderwood Administrative Services, LLC
Post-Acute Partners Management, LLC

Mr. Warren Cole and Dr. Jeffrey Rubin have submitted signed affidavits indicating that they each hold 50% ownership interest in the out-of-state healthcare facilities located in Massachusetts, Pennsylvania and Rhode Island. The affidavits state that all noted deficiencies had been corrected to the satisfaction of the agency in question within the prescribed time frames. The affidavits further confirm that none of these health care entities have received any material fines or civil monetary penalties during the past ten years or the time of ownership interest.

Enforcement History

Elderwood at Ticonderoga:

- A federal CMP of \$6,633 was assessed for July 24, 2017 survey findings.
- A federal CMP of \$15,625 was assessed for July 24, 2017 survey findings.

Elderwood at Amherst:

- The facility was fined \$4,840 pursuant to Tag 686-G- Treatment/Services to prevent/Heal Pressure Ulcers. The facility had a Federal Comparative Survey on 05/11/18 with G level (Harm) deficiency plus D, E, and F level deficiencies. The CMP was for the Federal Comparative Survey only.

Elderwood at Grand Island:

- The facility was fined \$ 2,000 pursuant to a Stipulation and Order for survey ending November 2, 2018. A deficiency was found under NYCRR 483.12(b)(1) prohibit and prevent abuse, neglect and exploitation of residents and misappropriation of resident property. 483.12(b)(2) establish policies and procedures to investigate any such allegations.

Elderwood at Waverly:

- The facility was fined \$10,000 pursuant to a Stipulation and Order for survey ending November 19, 2018 for an Immediate Jeopardy (IJ) - F-678-Cardio-Pulmonary Resuscitation.

Elderwood at Williamsville:

- The Facility incurred a Civil Monetary Penalty of \$3,250 on 09/19/2017.

Elderwood Assisted Living at Waverly:

- The facility was fined \$2,800 pursuant to a Stipulation and Order. A deficiency was found under 18 NYCRR 487.7(f)(5), Resident Services, identified in two inspection reports dated 7/27/2016 and 11/21/2016.

Elderwood Assisted Living at Wheatfield:

- The facility was fined \$2,800 pursuant to Stipulation and Order ACF-17-029 issued July 5, 2017 for inspections dated 7/27/2016 and 11/11/2016. A deficiency was found under 18 NYCRR 487.7(f)(5), Resident Services.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated the remaining facilities have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The Information provided by the Bureau of Quality and Surveillance has indicated that the remaining residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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, conditional upon:

1. The Agency is restricted to serving the residents of the associated Assisted Living Program.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 14th day of February, 2019, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER:

FACILITY:

181303 E

2680 North Forest Road Operating Company, LLC
d/b/a Elderwood Home Care at Getzville

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON

1. The Agency is restricted to serving the residents of the associated Assisted Living Program.

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

Application Number: 182187
Name of Agency: Danforth Assisted Living Program LLC
d/b/a Danforth Home Care Services Agency
Address: Hoosick Falls
County: Rensselaer
Structure: Limited Liability Company

Description of Project:

Danforth Assisted Living Program LLC d/b/a Danforth Home Care Services Agency, a limited liability company, requests approval for a change of ownership under Article 36 of the Public Health Law.

Glenn Mazula d/b/a Danforth Home Care Service Agency was previously approved by the Public Health Council on January 21, 2000, and subsequently assigned license number 0815L001, effective February 4, 2000. At that time Glenn Mazula was the sole proprietor of Danforth Home Care Service Agency.

This LHCSA is associated with the Assisted Living Program (ALP) change of ownership for Danforth Adult Care Center. The membership of the ALP and the LHCSA is identical.

The membership of Danforth Assisted Living Program LLC d/b/a Danforth Home Care Services Agency comprises the following individuals:

- **Jasna E. Chapman**, Member– 50%
Accountant, Glenn Mazula d/b/a Danforth Adult Care Center
- **Heather Merrills**, Member– 50%
Administrator, Glenn Mazula d/b/a Danforth Adult Care Center

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of Rensselaer county from an office located at 19 Danforth Street, Hoosick Falls, New York 12090.

The applicant proposes to provide the following health care services:

- Nursing
- Home Health Aide
- Personal Care Aide

A seven-year review of the operations of Danforth Home Care Services, Inc. (LHCSA) was performed as part of this review. The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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

Contingencies:

1. Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department. [LTC]

Conditions:

1. The Agency is restricted to serving the residents of the associated Assisted Living Program.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 14th day of February, 2019, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER:

FACILITY:

182187 E

Danforth Home Care Services Agency

APPROVAL CONTINGENT UPON:

1. Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department. [LTC]

APPROVAL CONDITIONAL UPON

1. The Agency is restricted to serving the residents of the associated Assisted Living Program.

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