NEW YORK STATE OF OPPORTUNITY. | Department of Health

Public Health and Health Planning Council

Project # 182060-E
Buena Vida SNF LLC d/b/a Buena Vida Rehabilitation and Nursing Center

Program:	Residential Health Care Facility	*County:*	Kings
Purpose:	Establishment	*Acknowledged:*	August 15, 2018

Executive Summary

Description

Buena Vida SNF LLC, a Delaware limited liability company authorized to do business in New York State, requests approval to be established as the new operator of Buena Vida Continuing Care & Rehab Center, a 240-bed, voluntary not-for-profit, Article 28 residential health care facility (RHCF) located at 48 Cedar Street, Brooklyn (Kings County). Upon approval, the facility will be known as Buena Vida Rehabilitation and Nursing Center. Buena Vida Corp., a New York not-for-profit corporation, is the current operator of the facility and the real property owner. There will be no change in beds or services provided.

On May 16, 2018, Buena Vida Corp. and Buena Vida SNF LLC entered into an Asset Purchase Agreement (APA) for the sale and acquisition of the operations of the RHCF and certain other assets from Buena Vida Corp., to be effective upon approval by the Public Health and Health Planning Council (PHHPC). The APA provides that the purchase price for the assets is the assumption of certain liabilities by Buena Vida SNF LLC. Concurrent with the APA, Buena Vida Corp. and 48 Cedar Street LLC entered into a Purchase and Sale Agreement (PSA) for the sale and acquisition of the RHCF's property for $54,500,000. Upon PHHPC approval, 48 Cedar Street LLC will lease the facility to Buena Vida SNF LLC for a term of ten years. There is a relationship between Buena Vida SNF LLC and 48 Cedar Street LLC in that the entities have common ownership.

The proposed ownership is as follows:

Buena Vida SNF LLC	
Members	%
Eliezer Jay Zelman	10%
Zevi Kohn	40%
FBH Healthcare Group, LLC:	50%
Sarah Rosenfeld (100%)	

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no change in beds in Kings County through completion of this project. This is a change in ownership with no impact on existing need or utilization in this area.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants 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 proposal. The purchase price for the assets is the assumption by Buena Vida SNF, LLC of certain liabilities amounting to $13,079,377. The proposed budget is as follows:

	Year One	Year Three
Revenues	$29,037,010	$31,531,618
Expenses	28,647,415	28,760,094
Gain:	$389,595	$2,771,524

Recommendations

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

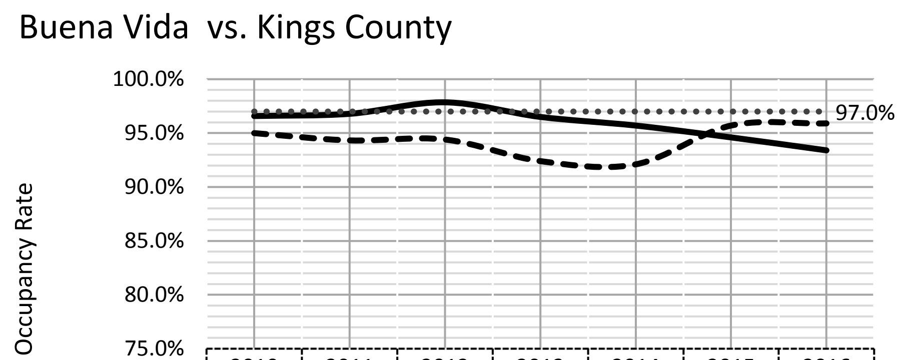
Office of Primary Care and Health Systems Management
Approval contingent upon:
1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
3. Submission of a commitment for a permanent mortgage for the real property to be provided from a recognized lending institution at a prevailing rate of interest that is determined to be acceptable by the Department of Health. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of documentation for a loan commitment for the assumed liabilities, acceptable to the Department of Health. [BFA]
5. Submission of a photocopy of the applicant's executed Lease Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's amended Limited Liability Certificate of Formation, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's amended Limited Liability Company Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the amended Limited Liability Company Certificate of Formation for FBH Healthcare Group LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of the amended Limited Liability Company Agreement of FBH Healthcare Group, LLC, acceptable to the Department. [CSL]

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

Council Action Date
April 11, 2019

Need Analysis

Analysis
The planning optimum for RHCF occupancy is 97% in New York State. The overall occupancy was 95.9% for Kings County and 93.4% for Buena Vida Continuing Care & Rehabilitation Center for the latest certified year of data.



	2010	2011	2012	2013	2014	2015	2016
Buena Vida Continuing Care & Rehab Center	96.6%	96.8%	97.9%	96.5%	95.7%	94.6%	93.4%
Kings County	95.0%	94.3%	94.4%	92.4%	92.1%	95.7%	95.9%

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.

Buena Vida Continuing Care & Rehabilitation Center's Medicaid admissions for 2016, 48.3%, exceeded Kings County threshold of 29.0%. In 2017 Buena Vida Continuing Care & Rehabilitation Center saw 43.9% Medicaid admissions which also exceeded the counties threshold of 27.7%.

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

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Buena Vida Continuing Care and Rehab Center	Buena Vida Rehabilitation and Nursing Center
Address	48 Cedar Street Brooklyn, NY 11221	Same
RHCF Capacity	240	Same
ADHC	N/A	N/A
Type of Operator	Voluntary	Limited Liability Company
Class of Operator	Not-for-profit	Proprietary
Operator	Buena Vida Corp.	Buena Vida SNF LLC Membership: FBH Healthcare Group 50.0% *Sarah Rosenfeld (100.0%) *Zevi Kohn 40.0% Eliezer Jay Zelman 10.0% *Managing Member

Experience:

Sarah Rosenfeld is currently employed as Chief Financial Officer of Fortis Business Holdings, LLC. This is identified as an investment holding company. She has held this position since 2005. Ms. Rosenfeld discloses no health facility interests.

Zevi Kohn is currently employed as the Chief Financial Officer of TL Management, LLC. TL Management, LLC is a privately-held company that owns the real property of several skilled nursing facilities. Mr. Kohn discloses the following health facility interests:

The Sands at South Beach Rehabilitation and Nursing Center [4.5%] [FL]	5/1/18 – present
<u>Assisted Living Facilities</u>	
Harmony House of Ocala [100%] [FL]	9/1/18 – present
Langdon Hall of Bradenton [100%] [FL]	9/1/18 – present
Seaside Manor of Ormond Beach [100%] [FL]	9/1/18 – present

Elizer Jay Zelman is currently employed at Riverdale SNF, LLC d/b/a Schervier Nursing Care Center as CEO since June of 2017. He is also employed as VP of LTC Division of Compass Home Dialysis located in PA since April 2018. Mr. Zelman is employed as the Director of Operations at Vintage Health Care Management since April 2018. He is responsible for providing operational oversight to NYS skilled nursing facilities. Prior to its acquisition by Vintage Healthcare Mr. Zelman had worked for Global Healthcare services group as Director of Operations and oversaw operational oversight of NYS and PA skilled nursing facilities. Mr. Zelman discloses the following health facility interests:

Achieve Rehab and Nursing Center [10%]	01/05 – present
Schervier Nursing Care Center [9.9%]	06/17 – present
<u>Dialysis Facilities</u>	
Freedom Home Dialysis, LLC d/b/a Compass Home Dialysis [7%] [PA]	03/17 – present

(This ownership interest is through 100% ownership in EJZ Health Mgt LLC)

Quality Review

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Buena Vida Continuing Care & Rehab Center	Subject facility	*****	*****	*****	*
Schervier Nursing Care Center	Current	*****	*****	*****	*
	07/2017	*****	****	*****	***
Achieve Rehab and Nursing Facility	Current	***	***	***	***
	01/2005 Data 01/2009	***	**	***	****
Florida					
Sands at South Beach Care Center	Current	***	**	*****	***
	05/2018 Data 04/2018	****	**	*****	****

Data Date: *02/2019*
Note*:The health inspection star rating is based on two years of inspections occurring before November 28, 2017.*

The applicant has stated that the one star staffing rating for Schervier Nursing Care Center was primarily due to an underreporting of nursing hours during January of 2019. Since that time, the facility has corrected the errors. Mr. Zelman states that the facility's plan to increase its Staffing ratings is also based on the following initiatives:

- Developing a more comprehensive approach to improve staff retention;
- Developing ways to attract new nursing staffing;
- Changed staffing scheduling software, which may improve managing staff;
- Contracted with an outside recruitment agency that regularly holds open house recruitment drives specifically for the facility.

Enforcement History
Bureau of Quality Assurance and Surveillance indicates that there were no enforcements for the NY facilities under review. The applicant has submitted affidavits regarding out of state facility interests of Mr. Kohn and Mr. Zelman, indicating no areas of concern.

Project Review
No changes in the program or physical environment are proposed in this application. The applicant has indicated there will be no administrative services or consulting agreements.

Conclusion
No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. 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 has submitted an executed APA for the operating interests of the RHCF. The agreement will become effectuated upon PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	May 16, 2018
Purchaser:	Buena Vida SNF LLC
Seller:	Buena Vida Corp.
Purchased Assets:	All assets used in the operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents. All rate increases and/or lump sum payments resulting from rate appeals, audits with respect to third party payments, from any source, which become effective or paid on or after the Contract Date for services rendered by the facility, including Universal Settlement payments.
Excluded Assets:	Any tax returns, tax records and financial statements of the sellers, excluded property of the seller and intellectual property rights to the name Buena Vida Continuing Care & Rehab Center and the Real Estate Asset Purchase Agreement purchase price.
Assumed Liabilities:	All accounts payable of seller, liabilities of seller arising under the assigned contracts, business assets, all liabilities not covered by insurance, all healthcare program liabilities and accrued employee benefits.
Excluded Liabilities:	Any liabilities not disclosed by seller, unrelated to the operation or seller's failure to perform any covenant or breach of any of its representations.
Purchase Price:	The assumption of certain liabilities of the seller at the time of closing, approximately in the amount of $13,079,377 as follows: Accounts Payable and Accrued Payroll ($7,941,815); Due to Third Parties ($4,900,032); and Resident Funds ($237,530).
Payment of Purchase Price:	Cash at Closing

The applicant has submitted a letter of interest from HHC Finance for a loan in the amount of $13,079,377 for a five-year term with interest at Libor plus 3.5% (one-month was 2.49% as of February 27, 2019) to cover the assumed liabilities.

It is noted that §6.10 of the APA indicates that a working capital loan was provided by 48 Cedar Street LLC, the realty entity, to the Seller in the amount of $3,971,175 (as of October 15, 2018). An executed Promissory Note between the Seller and realty entity has been provided indicating that repayment of this working capital loan is due at closing of the APA.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of February 15, 2019, the facility had no outstanding Medicaid overpayment liabilities.

Purchase and Sale Agreement

The applicant has submitted an executed PSA for the sale of the RHCF's real property. The terms are summarized below:

Date:	May 16, 2018
Seller:	Buena Vida Corp.
Purchaser:	48 Cedar Street LLC
Purchase Price:	$54,500,000
Property Purchased:	Premises located at 48 Cedar Street, Brooklyn, New York 11221

Pursuant to §9.04 of the PSA, the $54,500,000 purchase price for the real estate will be reduced by the amount of the liabilities ($13,079,377) that will be assumed by the proposed operator. This results in an adjusted purchase price for the real estate of $41,420,623. The members of the realty entity have already paid $1,000,000 as a deposit to the seller, resulting in an amount due of $40,420,623 at closing. People's United Bank has provided a letter of interest in the amount of up to $40,000,000 with interest at the 30-day Libor rate (2.49% as of February 27, 2019) plus 3.0% for a ten-year term and 25-year amortization. The remaining $420,623 will be provided from the proposed realty members' equity.

The applicant states that any future refinancing will be dependent upon the realty entity's borrowing ability, the overall amount of time required to improve operations at the facility, and future market conditions. After expiration of the ten-year loan term for the realty purchase, the realty entity members will examine all viable refinancing sources at that time, including commercial financing and HUD financing.

Promissory Note

The applicant has submitted an executed promissory note for a working capital loan as stated in §6.10 of the APA. The terms are summarized below:

Borrower:	Buena Vida Corp.
Lender:	48 Cedar Street LLC
Purpose:	Working Capital
Terms:	To be paid in full upon closing of the asset purchase agreement
Amount:	$3,971,175 as of October 15, 2018

Lease Agreement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Premises:	A 240-bed RHCF located at 48 Cedar Street, Brooklyn, New York 11221.
Landlord:	48 Cedar Street LLC
Tenant:	Buena Vida SNF LLC
Terms:	10 years commencing on execution of the lease.
Rental:	$3,600,000 annually ($300,000/month) with a 3% increase each year after the third year.
Provisions:	Triple Net

The applicant has stated that there will be no additional supplementary rent expense included in the proposed lease arrangement.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity.

Operating Budget

The applicant has provided an operating budget, in 2019 dollars, for the first year subsequent to the change of ownership. The budget is summarized below:

	Current Year (2017)		Year One		Year Three	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Revenues						
Commercial-FFS	$240.18	$1,534,020	$240.00	$1,532,880	$240.00	$1,656,240
Medicaid-FFS	$290.94	20,691,529	$285.00	18,461,445	$285.00	16,378,095
Medicare-FFS	$619.75	1,830,744	$763.00	8,881,277	$726.78	13,263,707
Private Pay	$324.70	131,178	$388.00	161,408	$388.00	233,576
Other Op. Rev.		416,620		0		0
Total Op. Rev.		$24,604,091		$29,037,010		$31,531,618
Non-Op. Rev.		521,319		0		0
Total Revenues		$25,125,410		$29,037,010		$31,531,618
Expenses						
Operating	$334.75	$27,069,714	$300.98	$25,047,415	$302.33	$25,160,094
Capital	24.16	1,953,543	43.26	3,600,000	43.26	3,600,000
Total Expenses	$358.91	$29,023,257	$344.24	$28,647,415	$345.59	$28,760,094
Net Income (Loss)		($3,897,847)		$389,595		$2,771,524
Patient Days		80,865		83,220		83,220
Occupancy %		92.31%		95.00%		95.00%

The following is noted with respect to the submitted budget:

- Other operating revenue in the current year represents dietary sales and miscellaneous income.
- The current year reflects the facility’s 2017 payor and 2017 RHCF-4 cost report information. Historical utilization for base year 2017 was 92.31%.
- For budget Year One, Medicaid revenues are projected based on the current operating and capital components of the facility’s 2018 Medicaid FFS rate plus assessments. Medicare rates are based on the 2016 average of comparable facilities and include Part B revenues for the first budgeted year. Private Pay rates are based on average per diems experienced during 2017. The Commercial rate is based on the 2017 average rate trended.
- Operating expenses are projected to decrease by $2,022,299. The decrease includes a reduction of $392,157 for interest expense of the current owner (not related to patient care) that is not being assumed. Due to the applicant assuming various liabilities, this interest expense will be eliminated. Fiscal service contracts decrease by $916,973 as the applicant intends to provide this service in house. Dietary savings of $969,013, salary and fringe benefits savings of $143,821, and workers compensation savings of $278,912 are anticipated, but will be offset by an increase of $500,000 in real estate taxes and $178,577 for inflation (estimated at 1.5% for non-salary and fringe operating costs). The applicant plans to increase the number of therapists (2 FTE PTs, 3 FTE OTs in year one) to support an emphasis on rehabilitation services, while decreasing the nursing administrators and administrative staff that will not affect patient care.
- The forecasted increase in Medicare utilization is due to the applicant's plan to increase rehabilitation services via community outreach and collaboration with local hospitals, such as Wyckoff Heights Medical Center, which will bring a higher level of Medicare utilization to the facility than has been experienced previously.
- Utilization by payor source is as follows:

Payor	Current Year	First Year	Third Year
Commercial	7.90%	7.67%	8.29%
Medicaid	87.95%	77.84%	69.05%
Medicare	3.65%	13.99%	21.93%
Private/Other	0.50%	0.50%	0.73%

- Breakeven utilization is 93.72% and 86.31% for the first and third year, respectively.

Capability and Feasibility
There are no project costs associated with this application. The purchase price for the assets is the assumption by Buena Vida SNF LLC of certain liabilities at the time of closing amounting to $13,079,377, which are as follows: Accounts Payable and Accrued Payroll ($7,941,815); Due to Third Parties ($4,900,032); and Resident Funds ($237,530). HHC Finance has submitted a letter of interest for a loan in the amount of $13,079,377 for a five-year term at Libor (2.49% as of February 27, 2019) plus 3.5% interest to cover the assumed liabilities.

The working capital requirement of $4,774,569, based on two months of the first year's expenses, will be satisfied from the proposed members' equity. BFA Attachment A, proposed members' net worth of Buena Vida SNF LLC, reveals sufficient resources exist for stated levels of equity. BFA Attachment D provides the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of $5,000,000.

The submitted budget indicates that net income of $389,595 will be generated for the first year. BFA Attachment E is the budget sensitivity analysis based on current utilization of the facility as of October 31, 2018, which was 91.31%, and shows the budgeted revenues would decrease by $4,902,895 resulting in a net loss in year one of $4,513,300. The proposed members have submitted an affidavit stating that they will cover the first-year operating losses. BFA Attachment A shows they have sufficient funds.

BFA Attachment B, financial summary of Buena Vida Continuing Care & Rehab Center, indicates the facility has experienced negative working capital, negative equity position and generated an average annual net loss of $3,075,389 for the 2015-2017 period shown. The 2015-2017 operating loss and the negative working capital are due to higher than expected accounts payable.

The proposed new operator will bring substantial resources, both from a financial and operational perspective, to implement an efficient model of operation that includes increased rehabilitation services, which should generate additional revenues to support continuing operations. Proposed initiatives include:
- centralized and coordinated management;
- modern billing and receivables collection systems;
- community outreach and collaboration with local hospitals to increase Medicare utilization;
- revenue and occupancy enhancements through the development of census and enhancement of quality mix.
- Implementation of a 24-hour-per-day, 7-day-per-week admissions protocol to ensure that hospital discharge planners have easy access to the facility when making discharge decisions;
- plans to renovate portions of the facility to improve the cosmetic appeal and function of the building;
- marketing initiatives, including a new website and plans to hire two new marketing liaisons to help inform the community of the services provided by the facility; and
- bringing experienced staff to the facility to help stabilize operations.

BFA Attachment F, financial summary of Affiliated Nursing Homes for Eliezer Zelman, indicates the following:
- Schervier Rehabilitation and Nursing Center has experienced negative working capital and a negative equity position and generated a net operating income of $27,697 for 2018. The reason for the negative working capital and equity position is due to high accounts payables in 2016 and 2017, whereas the facilities' landlord has worked with them by forgiving the rent due temporarily to decrease their accounts payable into 2019.
- Achieve Rehabilitation and Nursing Center has experienced negative working capital, maintained positive equity position and a net operating loss of $295,531 due to low occupancy levels for 2018. The 2016 and 2017 negative working capital and net operating losses was due to Medicaid overpayment liabilities and lower than expected occupancy levels. The facility states that the Medicaid overpayment liabilities will go away in 2019.

Based on the preceding and subject to noted contingencies and condition, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A	Buena Vida SNF LLC, Proposed Members Net Worth
BFA Attachment B	Financial Summary, Buena Vida Rehabilitation and Nursing Center
BFA Attachment C	Organizational Chart
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	Budget Sensitivity Analysis
BFA Attachment F	Financial Summary of Affiliated Homes