

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
ANNUAL MEETING

AGENDA

April 11, 2019

*Immediately following the Committee on Codes, Regulations and Legislation meeting
(Codes scheduled to begin at 10:00 a.m.)*

Empire State Plaza, Concourse Level, Meeting Room 6, Albany

I. INTRODUCTION OF OBSERVERS

Jeffrey Kraut, Chair

II. ELECTION OF OFFICERS

Election of Vice Chairperson

III. APPROVAL OF MINUTES

December 13, 2018 Meeting Minutes

February 14, 2019 Meeting Minutes

IV. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

Sally Dreslin, Executive Deputy Commissioner

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 Health Insurance Programs

Donna Frescatore, Medicaid Director and Executive Director, NY State of Health

D. Report of the Office of Public Health Activities

Brad Hutton, Deputy Commissioner, Office of Public Health

V. REGULATION

Report of the Committee on Codes, Regulations and Legislation

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

For Emergency Adoption

19-02 Addition of Section 16.70 and Amendment of Part 89 of Title 10 NYCRR (Body Scanners in Local Correctional Facilities)

For Adoption

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)

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

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

CON Applications

Acute Care Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	182246 C	Cortland Regional Medical Center Inc (Cortland County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

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

Acute Care Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	182147 C	University Hospital SUNY Health Science Center (Onondaga County)	Contingent Approval

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	182302 B	Regency SC, LLC d/b/a Regency Surgery Center (Bronx County)	Contingent Approval

Diagnostic and Treatment Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	191009 B	KAHR Health, LLC (Rockland County)	Contingent Approval

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	182209 E	Morris Park Nursing and Rehab Center, LLC (Bronx County)	Contingent Approval
2.	182221 E	Leroy Operating LLC d/b/a Leroy Village Green Nursing and Rehabilitation Center (Genesee County)	Contingent Approval
3.	182271 E	Union Plaza Care Center (Queens County)	Contingent Approval

Certified Home Health Care Agencies – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	182175 E	FSNR CHHA, LLC d/b/a Four Seasons Nursing and Rehabilitation Certified Home Health Agency (Kings County)	Contingent Approval

Certificates

Certificate of Dissolution

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
FASC Foundation	Approval
Foxhall Ambulatory Surgery Center	Approval
Cabrini Care at Home, Inc.	

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>E.P.R.C. Recommendation</u>
1.	182124 E	John T. Mather Memorial Hospital of Port Jefferson New York, Inc. (Suffolk County) Mr. Kraut – Recusal	Contingent Approval

Residential Health Care Facilities – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 182060 E	Buena Vida SNF LLC d/b/a Buena Vida Rehabilitation and Nursing Center (Kings County) Mr. LaRue - Recusal	Contingent Approval

Hospice Services – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 182160 E	Lifetime Care/Hospice of Rochester/Hospice of Wayne & Seneca Counties (Monroe County) Mr. Robinson – Interest Mr. Thomas - Recusal	Contingent Approval

Certified Home Health Care Agencies – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 182159 E	Lifetime Care (Monroe County) Mr. Robinson – Interest Mr. Thomas - Recusal	Contingent Approval

HOME HEALTH AGENCY LICENSURES

Changes in Ownership with Consolidation

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 182163 E	Genesee Region Home Care of Ontario County, Inc. d/b/a Home Care Plus (Monroe County) Mr. Robinson- Interest Mr. Thomas – Recusal	Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

CON Applications

Dialysis Services – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	181420 E	Rogosin Auburndale, LLC d/b/a Rogosin Kidney Center- Auburndale (Queens County) 2 Members opposed at EPRC	Contingent Approval

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	172415 E	The Pearl Nursing Center of Rochester, LLC (Monroe County) 2 Members opposed at EPRC	Contingent Approval
2.	182272 E	EN Operations Acquisitions, LLC d/b/a The Grand Rehabilitation and Nursing at Delaware Park (Erie County) 1 Member opposed at EPRC	Contingent Approval
3.	181110 E	ISLRNC, LLC d/b/a Ideal Commons Rehabilitation and Nursing Center (Broome County) 1 Member opposed at EPRC	Contingent Approval

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

HOME HEALTH AGENCY LICENSURES

Affiliated with Assisted Living Programs (ALPs)

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	181115 E	ISLACF, LLC d/b/a The Pavilion at Ideal Commons (Broome County)	Contingent Approval
2.	182100 E	Pine Haven Assisted Living, LLC d/b/a Pine Haven Home Care (Columbia County)	Contingent Approval
3.	182244 E	The Sentinel of Rockland, LLC (Rockland County)	Contingent Approval
4.	182289 E	Rosewood of Auburn, LLC d/b/a Ridgewood Senior Living (Cayuga County)	Contingent Approval

Changes in Ownership with Consolidation

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	182249 E	South Shore Home Health Service, Inc. (Suffolk County)	Approval

VII. NEXT MEETING

May 16, 2019 – NYC

June 6, 2019 – NYC

VIII. 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 applicants household income must be equal to or less than 435 percent of the federal poverty level and the applicants 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
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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
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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.

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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 drunk 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.

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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

NYSDOH20181213-PHHPC-Council-1
1hr 45min

- 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, ...

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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...

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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?

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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.

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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]

State of New York
Public Health and Health Planning Council

Minutes
February 14, 2019

The meeting of the Public Health and Health Planning Council was held on Thursday, February 14, 2019 at the New York State Department of Health Offices, 90 Church Street, 4th Floor CR 4A/4B. Dr. Jo Ivey Boufford presided.

COUNCIL MEMBERS PRESENT

Dr. Howard Berliner	Mr. Peter Robinson
Dr. Jo Ivey Boufford	Dr. John Ruge
Dr. Lawrence Brown	Dr. Theodore Strange
Mr. Thomas Holt	Mr. Hugh Thomas
Mr. Harvey Lawrence	Dr. Kevin Watkins
Dr. Glenn Martin	Dr. Patsy Yang
Ms. Ellen Rautenberg	Commissioner Zucker/Ms. Sally Dreslin – Ex-officio

DEPARTMENT OF HEALTH STAFF PRESENT

Dr. Jeanne Alicandro – via video Albany	Mr. George Macko
Mr. Alex Damiani – via video Albany	Ms. Marthe Ngwashi
Ms. Barbara DelCogliano – via video Albany	Mr. Mark Noe – via video Albany
Ms. Alejandra Diaz	Mr. Daniel Sheppard
Ms. Shelly Glock	Mr. George Stathidis – via video Albany
Mr. Darby Greco – via video Albany	Ms. Lisa Thomson
Dr. Marcus Friedrich	Mr. John Walters – via video Albany
Mr. Mark Furnish – via video Albany	Mr. Richard Zahnleuter
Mr. Mark Hennessey – via video Albany	
Mr. Brad Hutton – via video Albany	
Mr. Richard Kortright – via video Albany	
Ms. Colleen Leonard	

INTRODUCTION

Dr. Boufford called the meeting to order and welcomed Council members, meeting participants and observers.

Dr. Boufford introduced Mr. Robinson to give the Report of the Committee on Establishment and Project Review.

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

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

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 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 Care Agency - Construction

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
182216 C	St. Joseph's Hospital Health Center CHHA (Onondaga County)	Approval

Mr. Robinson called application 182216 and motioned for approval. Dr. Watkins seconded the motion. The motion to approve carried. Please see pages 5 and 6 of the transcript.

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

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

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

Ambulatory Surgery Centers – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
182125 B	Everett Road Surgery Center (Albany County) Dr. Bennett – Recusal (not present at meeting)	Contingent Approval
182205 B	Wehrle Drive ASC (Erie County) Ms. Baumgartner – Interest (not present at meeting)	Contingent Approval

Residential Health Care Facilities – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
181059 E	2700 North Forest Road Operating Company, LLC d/b/a Elderwood at Getzville (Erie County) Ms. Baumgartner – Interest (not present at meeting) Dr. Gutiérrez – Recusal (not present at meeting)	Contingent Approval
182218 E	Westgate Operations Associates, LLC d/b/a Rochester Center For Rehabilitation and Nursing (Monroe County) Dr. Kalkut - Interest	Contingent Approval

Mr. Robinson called applications 182125, 182205, 181059, and 182218 and motions for approval. Dr. Watkins seconds the motion, the motion to approve carries. Please see pages 6 through 8 of the transcript.

Certified Home Health Agencies – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
181331 E	Elderwood Certified Home Health Agency, LLC (Erie County) Ms. Baumgartner – Recusal (not present at the meeting) Dr. Gutiérrez – Recusal (not present at the meeting)	Contingent Approval

Mr. Robinson introduced application 181331 and motioned for approval. Dr. Watkins seconded the motion. The motion to approve passed. Please see pages 8 and 9 of the transcript.

Certificates

Certificate of Dissolution

<u>Applicant</u>	<u>Council Action</u>
Community Care Organization, Inc. Dr. Kalkut – Recusal (not present at the meeting)	Approval

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

CON Applications

Certified Home Health Agencies – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
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>Council Action</u>
182214 E	Buffalo Surgery Center, LLC (Erie County)	Contingent Approval

Certificate of Dissolution

<u>Applicant</u>	<u>Council Action</u>
The Foundation of New York-Presbyterian/Lawrence Hospital	Approval
The Foundation of New York-Presbyterian/Queens	Approval

Mr. Robinson called Certificate of Dissolution of Community Care Organization, 182220, 182214 and Certificate of Dissolutions of The Foundation of New York-Presbyterian/Lawrence Hospital and the Foundation of New York-Presbyterian/Queens and motioned for approval. Dr. Berliner seconded the motion. The motion to approved passed. Please see pages 9 through 11 of the transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

CON Application

Ambulatory Surgery Centers – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
182183 E	Endoscopy Center of Niagara, LLC (Niagara County) Ms. Baumgartner – Recusal (not present at meeting)	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

182015 E	Lincare of New York, Inc. (Albany County)	Contingent Approval
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Affiliated with Assisted Living Programs (ALPs)

181303 E	2680 North Forest Road Operating Company, LLC d/b/a Elderwood Home Care at Getzville (Erie County) Dr. Gutiérrez – Recusal (not present at the meeting)	Approval
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182187 E	Danforth Home Care Services Agency (Rensselaer County)	Contingent Approval
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Mr. Robinson called applications 182183, 182015, 181303, and 182187 and motioned for approval. Dr. Berliner seconded the motion. The motion to approve carried. See pages 11 and 12 of the attached transcript.

REGULATION

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

Report of the Committee on Codes, Regulation and Legislation

For Emergency Adoption

19-2 Addition of Section 16.70 and Amendment of Part 89 of Title 10 NYCCR (Body Scanners in Local Correctional Facilities)

Mr. Holt began his report and introduced Mr. Damiani to present for emergency adoption and for information for the proposed Addition of Section 16.70 and Amendment of Part 89 of Title 10 NYCCR (Body Scanners in Local Correctional Facilities). Mr. Holt motioned for emergency adoption, Dr. Brown seconded the motion. The motion to adopt failed with one member opposing. Please see pages 12 through 16 of the transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Next, Dr. Boufford introduced Mr. Sheppard to give a report on the Department of Health report.

Office of Primary Care and Health Systems Management Activities

Mr. Sheppard began his report by updating the members on the Capital Awards and encouraged the members to look at the Department of Health's website for a listing of the projects.

Mr. Sheppard also spoke on the topic of long term care planning project which is a joint effort with the New York State Office of the Aging to hold a series of meetings and information sessions that are designed to better understand and respond to the projected and desired needs of older adults.

Lastly, Mr. Sheppard advised that along with Dr. Ruge they announced in November 2018 an agenda for policy topics through September 2020.

Mr. Sheppard concluded his report. To read the complete report, please see pages 16 through 26 of the attached transcript.

Office of Public Health Activities

Dr. Boufford introduced Mr. Hutton who was participating via video from Albany to give the Office of Public Health report.

Mr. Hutton began his report and spoke on the topics of tobacco and lead proposals that were included in the Executive Budget. New York is at the lowest smoking rates on record which is due to important legislation and policy initiatives. E-cigarettes use among youth is increasing and to address it included in the Executive Budget is a proposal to raise the minimum age for tobacco and e-cigarette products from 18 to 21.

Mr. Hutton advised that included in the proposed Executive Budget is a proposed change to lower the definition of an elevated blood lead level in children from 10 to 5 micrograms per deciliter. Also included is a proposal that aims to prevent children from ever having a level of 5 micrograms per deciliter or higher by establishing an actual standard for the maintenance of lead based paint in residential rent housing.

Lastly, Mr. Hutton discussed best practices for the use of buprenorphine for the treatment of opioid use disorder and that the Department along with other State agencies has in place a comprehensive set of strategies.

Mr. Hutton concluded his report. To view Mr. Hutton's report and questions from members please see pages 26 through 39 of the transcript.

A. APPLICATIONS FOR 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

Acute Care Services - Construction

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
182128 C	NYU Langone Hospitals (New York County) Dr. Boufford – Recusal Dr. Kalkut – Recusal (not present at meeting)	Contingent Approval

Mr. Robinson called application 182128 and noted for the record that Dr. Boufford has a conflict and has exited the meeting room. Mr. Robinson motions for approval, Dr. Watkins seconds the motion. The motion to approve carries with Dr. Boufford’s noted recusal. Please see page 41 of the transcript.

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 Agency – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
182158 E	NYU Langone Hospitals (Nassau County) Dr. Boufford - Recusal Dr. Kalkut – Recusal (not present at the meeting)	Contingent Approval

Mr. Robinson called application 182158 and noted for the record that Dr. Boufford has a conflict and has remained outside the meeting room. Mr. Robinson motions for approval. Dr. Watkins seconds the motion. The motion to approve carries with Dr. Boufford’s noted recusal. Dr. Boufford returns to the meeting room. Please see pages 41 and 42 of the transcript.

Residential Health Care Facilities – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
181390 E	Warren Center for Rehabilitation and Nursing (Warren County) Dr. Kalkut – Interest (not present at the meeting) Dr. Rugge – Recusal	Contingent Approval

Lastly, Mr. Robinson calls application 181390 and notes for the record that Dr. Rugge has a conflict and has exited the meeting room. Mr. Robinson motions for approval, Dr. Watkins seconds the motion. The motion to approve carries with Dr. Rugge’s recusal. Dr. Rugge returns to the meeting room. Please see page 42 of the transcript.

REGULATION

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

Report of the Committee on Codes, Regulation and Legislation

For Emergency Adoption

19-2 Addition of Section 16.70 and Amendment of Part 89 of Title 10 NYCCR (Body Scanners in Local Correctional Facilities)

Mr. Holt began his report and called for emergency adoption Addition of Section 16.70 and Amendment of Part 89 of Title 10 NYCCR (Body Scanners in Local Correctional Facilities). Mr. Holt motioned for emergency adoption, Mr. Robinson seconded the motion. The motion to adopt passed with one members opposing. Please see pages 42 and 43 of the transcript.

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)

Mr. Holt called for adoption Addition of Section 405.34 to Title 10 NYCRR (Stroke Services). Mr. Holt motioned for adoption, Dr. Watkins seconded the motion. The motion to adopt passed. Please see pages 44 and 45 of the attached transcript.

Next, Mr. Holt called for adoption Amendment of Part 14 of Title 10 NYCRR (Food Service Establishment). Mr. Holt motioned for adoption, Dr. Watkins seconded the motion. The motion to adopt passed. See page 45 of the transcript.

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)

Mr. Holt described for information proposed Amendment of Sections 709.14 and 405.29 of Title 10 NYCRR (Cardiac Catheterization Laboratory Centers) and Amendment of Parts 69, 400 & 405 and Addition of Part 795 to Title 10 NYCRR (Midwifery Birth Center Services). See page 46 of the attached transcript.

Mr. Holt concluded his report. Dr. Boufford thanked Mr. Holt for his report. She then introduced Dr. Rugge to give the Report on the Activities of the Health Planning Committee.

HEALTH POLICY

Request for Stroke Center Designation

Applicant

Olean General Hospital

Dr. Rugge introduced for approval a Request for Stroke Center Designation for Olean General Hospital. Dr. Rugge motions for approval, Mr. Robinson seconds the motion. The motion to approve carries. Please see page 46 of the transcript.

Dr. Boufford notes for the record that the members will be going into Executive Session. The members were in executive session for the Report of the Committee on Health Personnel and Interprofessional Relations.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

The Full Council meeting reconvenes. Dr. Boufford introduced Dr. Zucker to give a report on the Department of Health report.

Flu

Dr. Zucker began his report and spoke on the topic of the flu. In preparation for the flu, the Department launched a flu tracker which is on the New York State Health Connector website that keeps the public informed about rates of influenza in their individual county. The dashboard displays the number of laboratory confirmed influenza cases that New York has had by date, by county, and by type for both the current and the three previous seasons. As of February 7, 2017, there were 35,043 laboratory confirmed cases of influenza reported, and 6,618 hospital admissions across the State. Dr. Zucker also advised that there are ample amount of the flu vaccine available.

Measles

Dr. Zucker stated that the Department is making strong and steady progress on the measles issue and lower Hudson Valley outbreak that started late last September. There has been 225 reported cases in New York State since 2018. 135 cases in Rockland County, 10 Cases in Orange County, 73 in Kings County in Brooklyn, 6 in Monroe County, and 1 in Erie County. Containing these outbreaks has really been a success story. The Department rapidly mobilized to help prevent secondary cases. The Department's team has worked incredibly diligently on this end working very closely with the county as well as the city but working with Rockland County. The staff has helped identify those who have potentially exposed, the Wadsworths Laboratory has tested the specimens, the Department has assisted the community outreach, contacted individuals, conducted investigations, provided information on all the importance of vaccinations, provided 15,000 MMR vaccines. The Department has analyzed the state school vaccination exemptions in light of the disturbing anti-vaccination trends nationwide. The Department is considering initiatives to narrow the exemptions to better protect community health.

Woman's Health Issues

Dr. Zucker advised that the Governor stressed in his State of the State address that this will be an historic year for New York in regards to public health and wellness and this promise is being born out in the first months of 2019. One of those is the reproductive rights and women's health issues. Critical issues that have already become law, on January 24, 2019, Governor Cuomo signed the Reproductive Health Act, enshrining Roe v. Wade that vulnerable Supreme Court decision given what is going on in Washington and it is been assigned into the New York State Constitution. Governor Cuomo also signed the Comprehensive Contraceptive Coverage Act laying a strong foundation for women's reproductive health and affirming New York's commitment to these fundamental rights.

Health Care Facility Transformation

Dr. Zucker noted that Governor Cuomo announced the allocation of \$204 million in funding to support 95 projects that will improve patient care while protecting the New York State's healthcare system. This is the first distribution of funding statewide from the statewide healthcare facility transformation program which was enacted in the fiscal year budget 2018. This investment will help each of the State's 10 regions develop high quality medical facilities and programs serving the inpatient, primary care, mental health, substance use disorders, and long term care needs to local communities.

Health Insurance

Dr. Zucker advised that in 2018, the Department enabled a record number of New Yorkers to enroll in high quality health insurance options through the New York State of Health. There were a record of 4.8 million New Yorkers signed up for healthcare through the Department's state exchange, that is a 10 percent increase from last year. In fact in the last couple days of sign up, over 10,000 people per day signed up. Protecting the right to quality healthcare for all New Yorkers is more critical than ever. Governor Cuomo is working to pass legislation in 2019 to codify key provisions of the Federal Affordable Care Act into State law and state regulatory protections.

Maternal Mortality

Dr. Zucker stated that another big issue is maternal mortality. The Department is constantly working to address the racial disparities in health outcomes in one of the most devastating outcomes to reduce is maternal mortality. Dr. Zucker noted that he had an opportunity to travel around the state and particularly here across the city listening to many of the women who shared their stories about this issue. He said that he and Lt. Governor Kathy Hockle helped launch and guide that taskforce on maternal mortality and disparate racial outcomes. The Governor's healthcare agenda for 2019 includes initiatives based on a maternal mortality taskforce recommendations. This was a team of about 20-25 people and they worked very hard on this and committed much time and effort on this. Their recommendations include establishing a statewide maternal mortality review board, expanding the community health worker programs, creating a data warehouse to provide near realtime information on maternal mortality as well as morbidity, convening an expert workgroup on post-partum care, and developing implicit bias training to be used in healthcare facilities. The stories the Department heard about some of the disparities and what happens is really upsetting and the Department will tackle this and be the first in the nation to improve and resolve this problem.

Opioids

Dr. Zucker discussed the opioids initiative. The opioid epidemic continues to devastate our communities and cause pain and suffering for our families. In 2017, 3,224 New Yorkers died as a result of an overdose involving opioids and that was a 200 percent increase from 2010. The Governor's 2019 budget increase is access to medication assisted treatment which is the gold standard of care for treating opioid use disorder. It also eliminates insurance barriers to accessing care, empowering all New Yorkers to combat the epidemic and this is truly, this is truly a challenge. Dr. Zucker expressed that he was especially excited about the provisions to aggressively expand the access to buprenorphine which is an important advance in MAT both by increasing the number of medical professionals who are designed to prescribe it, and by also expanding the number of settings in which it's prescribed.

Tobacco

Dr. Zucker spoke on the topic of tobacco on e-cigarettes and some of the other budget initiatives. The CDC said the number of teen tobacco users in the United States increased by 1.3 million from 2017 to 2018. Essentially wiping out the recent progress in declining tobacco use. The Governor and the Department are doubling down on our efforts to safeguard the health of our youth and vulnerable populations in regard to the use of both tobacco as well as e-cigarettes. The 2019 budget proposes greater controls on tobacco and e-cigarettes including raising the minimum sales age for tobacco and e-cigarette products up to 21. Prohibiting the sale in pharmacies, codifying the Department's right to ban the sale of certain flavored e-cigarette vapor liquid.

2019-20 Budget

Lastly, Dr. Zucker advised that other budget provisions will protect New Yorkers from exposure to toxic chemicals, reduce childhood lead exposure, strengthen suicide prevention, expand community-based support for seniors and services for New Yorkers with asthma as well as autism. The Department stands ready to deliver on the Governor's promises to make all New Yorkers in their communities healthier, safe, more resilient and truly a changing world.

ADJOURNMENT:

Dr. Boufford announced the upcoming PHHPC meetings and adjourned the meeting.

1 NEW YORK STATE DEPARTMENT OF HEALTH
2 PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

3 FEBRUARY 14, 2019

4 90 CHURCH STREET, CR 4 A/B, NYC

5 TRANSCRIPT

6
7 JO BOUFFORD: I'm Jo Boufford. I'm the vice-chair of the
8 Council and I'm delighted to call the meeting of the Public
9 Health and Health Planning Council to order. Commissioner Zucker
10 will be joining us about 11:00 and I'd also like to welcome
11 other participants and observers. A few of the rules of the road
12 for webcasting, to remind everyone that the subject to the open
13 meetings law and is broadcast over the internet. Webcasts are
14 access the Department of Health's website NYHEALTH.GOV. The on-
15 demand webcast will be available no later than seven days after
16 the meeting and for 30 days and then there'll be available
17 through the Department for four months after that. Because
18 there's synchronized captioning, we ask people not to speak over
19 each other which makes it difficult. Secondly, when you first
20 speak could you please state your name and whether you're a
21 council member or staff member to assist with the broadcasting,
22 and to remember that the mics are hot, so any side conversations
23 are likely to be transmitted to the public. And as a reminder
24 for the audience, there's a form that you need to fill out

1 before you enter the meeting room, should have filled out that
2 are outside on the table to record your attendance. This is
3 required by the joint commission on public ethics. And the form
4 is posted in advance. For those of you who in future will be
5 attending, they're on the table as I said, for today and under
6 certificate of need you would need to fill them out going
7 forward. So thanks for your cooperation.

8 We have a quorum, tight quorum situation today so we're
9 going to shift the agenda and vote on the action items first and
10 then move to the reports after. As I said, the Commissioner will
11 join us at 11. We have one item on the Establishment Committee,
12 two items on the Establishment Committee where because of
13 recusals we will need his vote, so Peter may move those around
14 as well, so everybody will stay on your toes so you know what
15 we're voting on. The other thing to remember as we're going
16 through the meeting today is that we do batch the applications
17 as per some new rules. So any member of the commission,
18 council, who wants to pull an item out of a batch, speak now or
19 forever hold your peace. Anyone identify something they wish to
20 pull out? No? So we'll just proceed.

21 So, let me first of all just speak slightly social to thank
22 everyone for coming in on Valentines Day. I know some of you
23 have serious family obligations. I had many meetings canceled
24 because people had to do certain things. So thanks to Colleen

1 and Lisa for their nice little gift even though the dental folks
2 may not be happy with it. The rest of us certainly enjoy it
3 later as the day moves on.

4 So, let's see... without further ado, then let's begin with
5 the Codes Committee. Mr. Holt. You're on again. I'm sorry?...
6 Oh, maybe we should've had a five minute bio break for those
7 that have been sitting here. It's an action item. What about
8 planning? You have an action item too. Please. Mr. Zahnleuter is
9 going to introduce his new colleague who is joining us for the
10 first time. We know how to vamp here if we have to.

11

12 RICHARD ZAHNLEUTER: Thank you. This is my best attempt at
13 dancing while the show must go on. In the past for probably
14 three or four years I've had a colleague sitting at my right
15 whose name is Mark Furnish who has been an attorney in the
16 division of legal affairs and who has provided a lot of sound
17 legal advice to this council and Mark is, now as you can see on
18 the video screen sitting at the table in Albany. And he's
19 waving. And that's because he has left the division of legal
20 affairs and is taking a position with the Office of Primary Care
21 and Health Systems Management. So I wanted to acknowledge Mark's
22 contribution to our efforts and thank him profusely. And now
23 sitting to my right is Mart Ngwashi who is an attorney who has
24 joined our office after a lot of rich legal history in the

1 Syracuse area. And she will be helping us with providing advice
2 to the Public Health and Health Planning Council. And also
3 available for questions and inquiries that may come in about
4 whether to recuse or abstain or whatever it might be. So Mart,
5 welcome to PHHPC.

6

7 JO BOUFFORD: Thank you. Welcome very much. Glad to have
8 you.

9 I'm being advised as we go along about which things we can
10 act on and not with the numbers of folks we have around the
11 table so we're going to go directly to the Establishment
12 Committee and I'll turn the mic over to Peter Robinson.

13

14 PETER ROBINSON: Thank you. Dear members, we have 13
15 people in the room. We need 13 people to even take a vote. So,
16 let's coordinate bathroom breaks if we can so that there's sort
17 of a rhythm to the work that we're going to do here, shall we
18 say. Tracy, do you have an introduction before I kick off?

19

20 TRACY RALEIGH: Thank you so much. This is Tracy Raleigh and
21 I just wanted to follow up from Rick and introduce Shelly Glock
22 who is sitting next to me. Shelly has joined the Center for
23 Planning and Licensure and Finance as my deputy director and
24 comes with a wealth of experience. She was heading up our

1 division of nursing home surveillance for five years and
2 previous to that has been a licensed nursing home administrator
3 as well as other experience in consulting for healthcare
4 facilities. So we are pleased to have Shelly join us and want to
5 welcome her.

6

7 PETER ROBINSON: Well, welcome to both of our new
8 colleagues. We're delighted to have you here and look forward to
9 working with you. I am going to batch applications. I'm also
10 going out of order because where we have a recusal, and we do in
11 a couple of instances, we're going to need the commissioner's
12 vote, which means we're going to wait until the 11:00 time frame
13 to put those back on. So, if this seems to be running a little
14 bit out of order, I wanted you to understand why. And we will
15 batch as appropriate.

16 So I'm beginning here with category three applications
17 recommended for approval and this is application 182216C, St.
18 Joseph's Hospital Center, CHHA, in Onondaga County. To expand
19 services to include Oswego, Cayuga, Madison, Oneida, and Lewis
20 Counties. The Department is recommending approval for five years
21 from September 7, 2018, the date of the Public Health 2805X
22 regulatory waiver and a condition is recommended. The committee
23 also recommended approval for five years from that same date.
24 And for the same reasons. I would note at the committee meeting

1 we did have one member who opposed the application. And ... I'm
2 going to call that. And I so move.

3

4 JO BOUFFORD: Second? Dr. Watkins, second. Is there any
5 discussion from the council members? All in favor?

6

7 [Aye]

8 Any opposed? Any abstentions? Motion passes.

9

10 PETER ROBINSON: You've got a recusal here... ok. So these
11 applications are being batched. Application 182125B, Everett Rd.
12 Surgery Center Albany County. This is to establish and construct
13 a multispecialty freestanding ambulatory surgery center to be
14 located at 123 Everett Road in Albany. The Department recommends
15 approval with conditions and contingencies as did the committee.

16 Application 182205B, Worley Drive, ASC in Erie County.
17 Noting an interest by Ms. Baumgartner. To establish and
18 construct a multispecialty ambulatory surgery center to be
19 located at 50 George Carl Blvd. in Amherst. The Department is
20 recommending approval with conditions and contingencies and with
21 an expiration of the operating certificate five years from the
22 date of issuance. The committee similarly made that
23 recommendation for approval.

1 Application 181059E, 2700 North Forest Road Operating
2 Company LLC, d/b/a Elderwood at Gettsville in Erie County.
3 Noting an interest again by Ms. Baumgartner. To establish 2700
4 North Forest Road Operating Company LLC as the new operator of a
5 180 bed residential healthcare facility located at 2700 North
6 Forest Road in Gettsville, currently operated by Rose Coplan
7 Jewish Home and Infirmary. The Department is recommending
8 approval with a condition and contingencies. And as did the
9 committee. And OK.

10 And then application 182218E. Westgate operations
11 associates, LLC, d/b/a Rochester Center for Rehabilitation and
12 Nursing in Monroe County. To Establish Westgate Operations
13 Associates LLC d/b/a Rochester Center for Rehabilitation and
14 Nursing as the new operator of Creekview Nursing and
15 Rehabilitation Center, an existing 124 bed residential
16 healthcare facility with both the Department and the Committee
17 recommending approval with contingencies. I make a motion on
18 those applications.

19

20 JO BOUFFORD: Can I have a second? Dr. Watkins. Do we
21 have discussion of any of the items in this batch? Dr. Rugge I
22 have to ask you to leave the room before we vote.

23

1 PETER ROBINSON: No, I skipped him. I skipped his
2 application.

3

4 JO BOUFFORD: Oh, I'm sorry. OK.

5

6 PETER ROBINSON: We can't have anybody leave the room.

7

8 JO BOUFFORD: I thought I heard you say it. I thought I
9 was paying attention. We have no recusals for the subset of this
10 batch that are being voted on again. So all in favor?

11 [Aye]

12 Any opposed? Any abstentions? Motion passes.

13

14 PETER ROBINSON: OK.

15

16 JO BOUFFORD: Just make sure everyone knows what you're
17 doing. That's the most important part.

18

19 PETER ROBINSON: Here we go. Thank you both. 181331E,
20 Elderwood Certified Home Health Agency LLC in Erie County. This
21 is to establish Elderwood Certified Home Health Agency LLC as
22 the new operator of Rosa Coplan Jewish Home and Infirmary
23 Certified Home Health Agency, located at 2700 North Forest Road

1 in Gettsville. The Department is recommending approval with a
2 condition and contingencies, as does the committee.

3 Then I'm moving to 18220... no I did that one. I'm sorry.

4 Let's do that one, and I make a motion on that application.
5 I'm losing my own place here.

6

7 JO BOUFFORD: This is 1810598?...We're down in which
8 section? Just for orientation... they always say when one person
9 doesn't know what's going on there's probably the whole group
10 has some questions. Page four top of the page. We are under... ok.
11 Certified home health care. The second application. Is that
12 right? We did these right? The second application under the
13 first grouping of home health agencies. So 181331 Elderwood. We
14 have a motion and a second. All in favor?

15

16 [Aye]

17 Opposed? Abstentions? Motion passes.

18

19 PETER ROBINSON: Thank you. The following items will
20 also be batched beginning with a certificate of dissolution for
21 Community Care Organization Inc. which the Department recommends
22 an approval for. And then application 182220E, Good Samaritan
23 Hospital Homecare Department in Rockland County. To establish
24 WMC Health Network Rockland Inc., and Westchester County

1 Healthcare Corporation as the new controlling entities of the
2 Good Samaritan Hospital Homecare Department, a certified home
3 health agency. The Department recommends approval with
4 conditions and contingencies as did the committee.

5 Application 182214E, Buffalo Surgery Center LLC in Erie
6 County. This is to transfer 4.34 percent ownership from existing
7 owners to each of three new members. The Department recommends
8 approval with a condition and contingencies, as did the
9 committee.

10 And then certificates of dissolution. The Foundation of New
11 York Presbyterian Lawrence Hospital and the Foundation of New
12 York Presbyterian Queens Hospital. The Department and the
13 committee both recommend approval and I so move that batch.

14

15 JO BOUFFORD: Second from Dr. Berliner. I just have one
16 question; it says Community Care Organization dissolution, Dr.
17 Kalkut recusal. Does that mean we can't include him in that?

18

19 PETER ROBINSON: No, he's not here.

20

21 JO BOUFFORD: Just cause he's absent. Fine. very good. Any
22 discussion of these items? Alright, all in favor?

23

24 [Aye]

1 Opposed? Any abstention? The items pass.

2

3 PETER ROBINSON: Ok. Now continuing to batch here.

4 Application 182183E, Endoscopy Center of Niagara.

5

6 JO BOUFFORD: This is category four.

7

8 PETER ROBINSON: Thank you. LLC. In Niagara County. This
9 is a request for indefinite life for certificate of need number
10 121140. The Department is recommending approval as did the
11 committee with one member opposed. And in category six, changes
12 of ownership with consolidation under home health agency
13 licensures. 182015E, and affiliated with assisted living
14 programs or ALPS, application 181303E, which is 2680 North
15 Forest Road Operating Company LLC d/b/a Elderwood Homecare at
16 Gettsville in Erie County. And 182187E, Danforth Homecare
17 Services Agency in Rensselaer County. And these the Department
18 is recommending approval with condition and contingencies. As
19 did the committee, and I so move.

20

21 JO BOUFFORD: Second? Dr. Berliner. Any discussion from
22 members of the council? No. Alright. All in favor?

23

24 [Aye]

1 Opposed? Any abstentions? Motion passes.

2

3 PETER ROBINSON: Ok, so I think at this point Dr.
4 Boufford, I'm going to turn it back over to you maybe for
5 Departmental reports until Dr. Zucker arrives. Thank you.

6

7 JO BOUFFORD: Alrighty. Thank you. I can do codes? Ok,
8 fine. We'll now do the Codes Committee. Mr. Holt, you're still
9 here. You're in charge. Please move ahead.

10

11 THOMAS HOLT: I think I'm keeping track of this. Good
12 morning. At today's meeting of the Codes, Regulations and
13 Legislation committee, the committee reviewed five proposals;
14 one for emergency adoption and information, two for adoption,
15 and then two for information. The first one that we entertained
16 was for emergency adoption and information. It was body scanners
17 in local correctional facilities. And that comes forward from
18 the committee with no recommendation. Alex Damiani in the
19 Department is available to answer any questions from the council
20 members who may have them.

21

22 JO BOUFFORD: Should we have a motion to approve? No
23 recommendation. So we start with the discussion. Yes, Alex, you
24 want to say something? Mr. Damiani?

1

2 ALEX DAMIANI: Yes, if I may address some of the previous
3 discussion we had just to clarify. The Department does have a
4 process to inspect the facilities on a routine basis, do
5 additional inspection, require external physics testing. And we
6 will do continuous inspections on the facilities. The equipment
7 has manufacturing standards from the federal government that
8 will prevent the overexposure and the body scanning equipment
9 itself does not allow for individuals in this case, sheriffs,
10 corrections officers, to actually adjust the output. They are
11 preconfigured, very specific low dose arrangements. So I know
12 there were concerns about an individual getting larger exposure
13 than normal. That is, for this type of equipment, prevented by
14 the operational controls built into the equipment. That's in the
15 federal rules, we did not address it at the state level.

16

17 JO BOUFFORD: Thank you. Dr. Martin you were... those of us
18 who were here in Codes, you were concerned...

19

20 GLENN MARTIN: Ok, so can you confirm the missing piece
21 then, you said there are actually federal regs involved around
22 something called a body scanner that uses radiation. Is there
23 anything in the regs that said you have to buy a body scanner
24 for this as compared to another radiologic device?

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ALEX DAMIANI: Yeah, so we use the term in the regulations, we do define body image scanning equipment. We don't specify a make or manufacturer, but we would have to classify it as such. We would not deviate from the federal standards.

JO BOUFFORD: So it is a type of body image scanner.

ALEX DAMIANI: I mean, if we went into a place and they're using dental equipment or they're using a CT ... we would fail the facility and say no, we can't do that. That would be a cease and desist. Wouldn't allow that.

GLENN MARTIN: OK, I'm reassured that you wouldn't allowed that. I just wouldn't expected to see it written in something. But that's ok. Thank you.

JO BOUFFORD: I mean, we cut directly to the issue that had been at hand in the discussion of codes. Would other members of the council want to hear something more comprehensive from having looked at the materials and hearing this interchange? They're satisfied they have enough information to vote? Not seeing any concerns there. In which case...

1 THOMAS HOLT: Dr. Boufford, I need to make a motion for
2 adoption of that emergency code.

3

4 JO BOUFFORD: Is there a second? Thank you Dr. Brown. Any
5 further discussion? All in favor?

6 [aye]

7 All opposed? Dr. Martin is opposed? Any abstentions? No.
8 the motion passes.

9

10 [the motion fails. Because we don't have enough votes.]

11

12 JO BOUFFORD: I'm sorry. We were out of order. I guess
13 we're informed now about what will come up on codes again. Maybe
14 we'll move to reports. I thought when we started we had a
15 quorum. I was advised no.

16

17 PETER ROBINSON: We DO have a quorum. We have 13 people,
18 but we need 13 affirmative votes.

19

20 JO BOUFFORD: Got it. Got it. Dr. Ruge. Well go back to
21 the action items when Dr. Zucker arrives. OK. So, shall we have
22 Mr. Sheppard do as much of his report as he can until the
23 Commissioner arrives. He's stuck in traffic. Yes, Dr. Martin.

24

1 GLENN MARTIN: INAUDIBLE.

2

3 JO BOUFFORD: It didn't pass. So with an error of the
4 chair, I should not have called for a vote, perhaps we can just
5 pretend like it didn't happen? Advise please. Alright. Can we
6 get a motion to bring it up later than? Just be admitting it
7 was a mistake to call it, then that's not enough. OK. Fine. Mr.
8 Robinson and Dr. Watkins second. So we'll take this up for
9 reconsideration when the Commissioner arrives. Apologies.

10 Alright. Let's try again. Mr. Sheppard.

11 Oh, I'm sorry. All in favor of the motion to reconsider the
12 item under Codes when we have a quorum, please say aye.

13

14 [Aye]

15 Opposed? Any abstentions. The motion carries. We'll start
16 over again when we have a quorum. Mr. Sheppard.

17

18 DAN SHEPPARD: Thank you Dr. Boufford, and Mr. Kraut owes
19 you a great debt of gratitude for filling in.

20

21 JO BOUFFORD: I should've had a tutorial. Who knew!

22

23 DAN SHEPPARD: It's a challenging day and you're doing
24 great. Speaking of ... I have three items I was going to cover.

1 One of them was really playing off of something that the
2 Commissioner will be talking to you about briefly.

3

4 JO BOUFFORD: Maybe you can give us a preview of coming
5 attractions.

6

7 DAN SHEPPARD: Preview of coming attractions. Just really a
8 couple of things here. Mute please.

9 Thank you. So, first item I want to talk about the Dr.
10 Zucker will mention briefly but I will give you a little more
11 depth on, just doing it backwards is the Capital Awards. We,
12 earlier, actually earlier this month or late in January, one or
13 the other, we announced 95 healthcare transformation, healthcare
14 facility transformation grants totaling about \$204 million. We
15 received 549 applications totaling \$2.5 billion for that \$204
16 million. So it was a challenging process, but as it turned out
17 the award parameters resulted in a greater focus on smaller
18 projects. And so community-based healthcare providers and long
19 term care providers did well in that process. There were \$125
20 million of the \$204 went to community-based healthcare
21 providers, and \$55 million went to long term care projects. Many
22 of the projects involved telehealth to address among other
23 things, access to specialty physicians, and also putting
24 technology in people's homes and in residential healthcare

1 facilities to reduce the need for both emergency department and
2 inpatient hospitalizations. We also saw amongst the community-
3 based and long term care providers a number of electronic health
4 records projects to better position these providers to
5 participate in value-based payment arrangements. Also there were
6 a number of grants for inpatient and outpatient substance use
7 disorder treatment programs, as well as several projects, one
8 large telehealth project actually in particular that focused on
9 ambulatory services for the developmental disabilities
10 population. Would encourage you all to ...

11

12 JO BOUFFORD: Could we ask the folks in Albany to put your
13 mics on mute?

14

15 DAN SHEPPARD: It might actually be the empty room.

16

17 JO BOUFFORD: If somebody's working near one of the empty
18 rooms that's being held for the PHHPC meeting. Thank you.

19

20 DAN SHEPPARD: So we'd encourage you all, if you're
21 interested to get on the website and check out the projects.
22 They're broken down by region with a couple sentence
23 descriptions of each, and if you can't find it, we'll send you
24 the link. Now, I think importantly as I mentioned, the amount of

1 money, the amount of money we had to allocate, the size of the
2 demand, creates some challenges and so they were many good
3 projects, particularly as a number of hospital projects that
4 couldn't be accommodated in the available funds. So in the
5 Governor's executive budget, there is a provision that would
6 allow up to \$300 million of our next round of capital healthcare
7 restructuring dollars, transformation dollars, to be used for
8 applications that we received for this round, so essentially
9 allowing the process to go on, and that language requires those
10 be announced by May 1, 2019. So, assuming enactment of that
11 language, we'll have an opportunity to go deeper into the list
12 of quite good projects that we received.

13 Next topic I wanted to mention is something that in
14 January, late January department announced what we're calling a
15 long term care planning project. And this is a joint effort with
16 the New York State Office for the Aging, and it's essentially a
17 series of meetings, of information sessions that are designed to
18 better understand and respond to the projected and desired needs
19 of older adults in New York by doing a very holistic examination
20 of the State's long term care system, and not just the regulated
21 parts of it, but the unregulated parts, the more organic parts
22 of it as well, to really get a holistic sense of how people are
23 accessing or not accessing long term care in New York. It's
24 going to bring together experts who will analyze, evaluate and

1 identify existing service gaps, determine the most cost-
2 effective evidence-based interventions and prepare strategic
3 plan to meet the emerging needs of New York's aging population
4 over the next decade. The first public meeting was held on
5 February 4th in Albany and focused on improving coordination,
6 family care-giving support, workforce needs, and financing
7 alternatives to public programs. One of the big take-aways from
8 that meeting really had to do with communication and not just
9 getting information out in ways of getting information out to
10 people, but also linkages within the system and making sure that
11 finding better ways of different parts of the care support
12 services both medical and non-medical can communicate with each
13 other for the benefit of the individual.

14 So, there are going to be four other meetings of this
15 initiative. Research and public input will be collected all
16 along the way, and if there's any council member that's
17 interested in participating or learning more about this
18 initiative you can contact me or Mark Kissinger who is leading
19 this effort, and we'd be happy to fill you in and engage you to
20 the greatest extent you would like to be engaged.

21 Finally, not to step on Dr. Ruge's planning committee
22 report, but maybe I will, but back in November Dr. Ruge
23 announced an agenda of policy topics through September 2020 and
24 that agenda is up on our website from that late November

1 meeting. We assigned each topic an approximate timeframe, about
2 a quarter, and we're going to let you know along the way the
3 specific dates that each topic is going to be taken up at the
4 planning committee. So particularly for members who are not on
5 the planning committee, if the topic is something you want to
6 participate in or at least listen into, you'll know a date and a
7 time when that can be. So with that, on March 28 which is the
8 next regular committee day in Albany, we'll be taking up two
9 topics; facility and operational standards for we call basic or
10 ancillary primary care clinics, so this is how to better offer
11 primary care services in settings that aren't necessarily
12 traditional clinic settings. This could be public shelters or
13 other places where people seek care, particular people with
14 multiple co-morbidities. So that's one. And then the second that
15 we'll be taking up is homecare and hospice service need
16 methodologies. Both on the 28th of March. And again, if you're
17 not on the planning committee and you want to participate,
18 please do. End of my report.

19

20 JO BOUFFORD: Questions. Yes, Dr. Berliner.

21

22 HOWARD BERLINER: Dan, I don't know if you're prepared to
23 discuss this now, but we were sent before the last committee

1 meeting information on dialysis units by county in New York. We
2 can have a discussion of that report?

3

4 DAN SHEPPARD: I'm going to look down the table at Tracy
5 Raleigh, and see if she can answer that question.

6

7 TRACY RALEIGH: Generally was the updated need numbers for
8 the dialysis. Yeah. We can pre... I'm not prepared today but be
9 happy to bring back. I don't know if there were specific
10 questions.

11

12 HOWARD BERLINER: Well, there was one specific question
13 which is there are several counties in New York which have no
14 dialysis facilities. No units. And that just seems, wrong. And
15 just want to know what we're going to do about it.

16

17 TRACY RALEIGH: Like I said, I think that we appreciate that
18 comment. I'd take that back and be happy to report back.

19

20 JO BOUFFORD: Other comments or questions for Mr.
21 Sheppard? I have one. First of all, I want to... really pleased to
22 hear about the look at the sort of long term care needs work
23 both broadly and holistically as we had talked about earlier. I
24 wanted to raise two, maybe they're connect the dots questions

1 that are there, but just to make sure they are. One of them
2 relates to the implementation of the Governor's order on age-
3 friendly New York State which has different implications than
4 truly the care system. But I think it makes a lot of sense to
5 try to bring those elements of improving community conditions
6 along with this conversation, because one of the goals is
7 preventing the disabilities that result in either institutional
8 care or some kind of intensive home care. And that would include
9 the... I think that was a goal of age friendly hospitals in terms
10 of really looking at the style within hospitals that make it
11 easier for older people to navigate institutions. I just want to
12 make sure those two pieces are being included of individuals
13 representing those initiatives. I know Mark is overseeing all of
14 them, but they'll be part of the conversation.

15

16 DAN SHEPPARD: So, Absolutely. I think this is, if it would
17 help, if it would please the council, maybe having Mark do a
18 report at some future meeting that ties all this together, would
19 be helpful. Mark, all of these initiatives are related and there
20 are a number of things that his office is doing. Working very
21 closely with the Commissioner, big and little with respect to
22 tying together all the pieces of the... so I think, the age
23 friendly New York and this initiative are definitely tied

1 together. And again, if it'd be helpful to engage in a
2 discussion about it, I'd be happy to ...

3

4 JO BOUFFORD: When will your five meetings be over?

5

6 DAN SHEPPARD: I don't know if Mark... My eyes aren't good
7 enough to see if Mark Kissinger is there, but I don't think so.
8 I think over the course of 2019.

9

10 JO BOUFFORD: During the whole year.

11

12 DAN SHEPPARD: During the whole year.

13

14 JO BOUFFORD: Maybe sort of mid-term might be useful to
15 hear if there are issues that come up that the council is
16 interested in, they could be included. The other issue is, you
17 didn't mention workforce - long term care workforce - as an
18 issue. Maybe I didn't hear it.

19

20 DAN SHEPPARD: Maybe I just fuzzed over it. Absolutely.
21 That was one of the topics on the February 4 item agenda was
22 workforce. That's, I think both from a policy development but
23 also from boots on the ground oversight standpoint that
24 workforce is the ... I would say many of you directly in the long

1 term care field here it is particularly upstate New York, the
2 major issue, and it's at the root of a lot of quality issues.
3 And it's a matter of keeping and retaining CNAs, LPNs, and RNs.
4 It's a very important issue and it's one that we are very
5 focused on.

6

7 JO BOUFFORD: And just the last, maybe this would be
8 appropriate, I think it's been about a little over a year or so,
9 looking at the CONs for long term care facilities. We had talked
10 about beginning to develop an approach to that and now that the
11 acute hospital reports are coming in on the prevention agenda I
12 think it would be good to go back and perhaps include that, at
13 least maybe it's parallel not necessarily for this committee but
14 to come back, be able to come back for some suggestions.

15

16 DAN SHEPPARD: I want to make sure I'm understanding and
17 responding to what you're asking. So, we, on Dr. Rugge's
18 planning committee agenda in the last quarter of 2019 we have
19 scheduled to come to the committee and the council with, looking
20 at CON process for long term care with respect to how to
21 incorporate quality and refine the character and competence
22 process. Is that what you're...

23

24 JO BOUFFORD: And age friendliness

1

2 DAN SHEPPARD: And age friendliness.

3

4 JO BOUFFORD: That was part of the conversation in the
5 retreat. And similarly presumably the involvement of the
6 ambulatory care DTCs and specialized ambulatory care facilities
7 as well, the other, the CON process for them. Those were the
8 next two on the list. So, if they're included that's great.
9 Thank you very much.

10 OK. Any other questions, concerns? OK, thank you Mr.
11 Sheppard. Dr. Hutton, are you uptown or up in Albany? Are you
12 there?

13

14 BRAD HUTTON: I'm up town.

15

16 JO BOUFFORD: There you go. Sorry about that. Why don't
17 you give your report, this update on the office of public
18 health? And we'll press ahead. If the Commissioner arrives, then
19 we'll interrupt you and come back.

20

21 BRAD HUTTON: Sounds good. Happy to give you a brief
22 update on a few items that are of interest in the office of
23 public health. Two are proposals in the executive budget that
24 I'd especially like to feature in the area of tobacco and lead

1 poisoning prevention. And then I'd also like to briefly share
2 with you a new product that we've completed and are
3 disseminating in collaboration with the New York State Office of
4 Alcohol and Substance Abuse Services which is best practices for
5 prescribing of buprenorphine. So first on the tobacco proposals
6 in the executive budget, New York State Health Department with
7 the support of this council has had a long and proud tradition
8 of implementing policy initiatives that help to reduce the
9 percentage of the population that smoke and use other product.
10 Cigarette smoking continues to be the leading cause of
11 preventable death in New York and in the nation. We have the
12 lowest smoking rates on record with a little bit over 14 percent
13 of adults reporting current smoking. However, we do have some
14 counties in New York State with higher rates, as high as 23 to
15 29 percent in some counties. Much of this progress is due to
16 some important legislation and policy initiatives such as clean
17 indoor air act, which has covered 100 percent of this state for
18 some time. The highest cigarette excise tax in the nation which
19 has certainly contributed in reducing smoking rates and
20 initiation of use by youth in particular, so that now we have
21 very low levels of use by high schoolers - 4.8 percent report
22 smoking. However a troubling epidemic that I'm sure you're all
23 very aware of is the emergence of e-cigarette use amount youth.
24 Our most recent data show that 27.4 percent of high schoolers

1 report recent e-cigarette use. That number is even higher, 40
2 percent, amongst 12 graders. So in the executive budget we have
3 some proposals to work to address that. In particular, a
4 proposal to raise the minimum sale age for both tobacco and e-
5 cigarette products from 18 to 21. Research shows that many of
6 those high schoolers get the items that they use from young
7 members of their cohort that are in the age group from 18-21. A
8 proposal to require the e-cigarettes be sold only through
9 licensed retailers which would allow us to better enforce their
10 adherence to the age requirements, a proposal to tax electronic
11 liquid which would especially disincentivize e-cigarette use,
12 especially among youth, and then also a proposal to clarify that
13 the department has the authority to prohibit the sale of
14 flavorings. The evidence shows that flavorings in particular are
15 directly marketing to youth and a large factor for contributing
16 towards their increased use. In the area of tobacco, also some
17 comprehensive and really important meaningful proposals
18 including a proposal to end the sale of tobacco and e-cigarette
19 products in pharmacies. One that would restrict the use of
20 available discounts by tobacco and e-cigarette manufacturers at
21 the retail level. This is a strategy which is often used to
22 circumvent the impact the tax has. Proposal to have a display
23 ban on tobacco and e-cigarette product displays in non-adult
24 only retail stores, and then finally a proposal to prohibit

1 smoking in facilities overseen by the office of mental health.
2 So, individually each of these are very important but together
3 this is a really important comprehensive package that we think
4 will work to address the assisting with continued progress in
5 reducing cigarette use and hopefully begin to reverse the trend
6 in the increase in e-cigarette use.

7 Second proposal I'd like to address relates to lead
8 poisoning. There are two aspects to the executive budget
9 proposal. The first is a proposed change to lower the definition
10 of an elevated blood lead level in children from 10 micrograms
11 per deciliter to five micrograms per deciliter. You're hopefully
12 aware that we've had a tremendous public health accomplishment
13 here over the last several decades in the nation with
14 comprehensive set of strategies to reduce the amount of lead
15 that we're all exposed to and this includes taking it out of
16 gasoline, efforts to prohibit it from being in paint products,
17 in water, in occupational restrictions etc., and as a result the
18 average and the 90th percentile levels that we find among
19 children who are tested have dropped pretty dramatically such
20 that the Centers for Disease Control has been able to continue
21 to drop their recommended definition of blood lead levels. Most
22 recently to five micrograms per deciliter. Both this proposal
23 which amend public health law to follow that recommended
24 definition and as a result, there would be a new group of

1 children who would be required to have interventions if they're
2 found to have levels that are five and above, including nurse
3 case management to identify the potential sources or exposure
4 and reduce them, and also an environmental assessment of their
5 home and other places where they spend a meaningful amount of
6 time to identify whether or not there are sources of lead there
7 chipping paint, etc., that need to be addressed. Second aspect
8 of this proposal aims to prevent children from ever having a
9 level of five micrograms per deciliter or higher and that's
10 being done by establishing an actual standard for the first time
11 for the maintenance of lead-based paint in residential rent
12 housing. So, currently there's authority in public health law
13 when there's a residence that's identified poor children with
14 elevated blood lead level, but what this does is actually
15 establish a statewide housing base standard that would prevent
16 lead exposures from actually occurring. It's a proactive
17 proposal that's intended to eliminate the potential for exposure
18 in residential rental settings.

19 Third and final I mention was this best practices for the
20 use of buprenorphine for the treatment of opioid use disorder,
21 we have a comprehensive set of strategies, not just in the
22 Department of Health but other agencies to combat the opioid
23 epidemic. In particular, an important component of that is
24 expanding the use of medication assisted treatment, in

1 particular, buprenorphine which is difficult because of some
2 barriers at the federal level and so this document which we're
3 especially proud of and are working to disseminate widely
4 clarifies some important points that we see are often
5 misunderstood by prescribers. The first is that prescribers
6 should ensure continued access to bup, even in the absence of
7 counseling. There were some recommendations that came under the
8 federal law that counseling should occur but all too often we
9 see the prescribers have misunderstood that buprenorphine should
10 not be used in the absence of counseling. Second is that
11 prescribers should not discharge patients just solely based on
12 the continued use of other prescribed or unprescribed
13 substances. We often see that there's a misconception that is
14 there's continued use of opioids that it's not appropriate to
15 prescribe bup. And just another final few examples on what the
16 best practices address are the issues of diversion of
17 buprenorphine and then also how to handle issues like duration
18 of treatment and what to do to facilitate the transfer of
19 patients to an alternative prescriber if care is going to be
20 terminated for any reason. So, again, we think this is an
21 important document that will help to expand the capacity of
22 prescribers of buprenorphine statewide and also hopefully get
23 more individuals who are impacted by opioid use disorder who are
24 regularly prescribed bup.

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JO BOUFFORD: Thank you very much. Questions for Mr. Hutton? Dr. Brown. Then Ms. Rautenberg.

LAWRENCE BROWN: My name is Lawrence Brown, I'm a member of the council. And I want to recommend that our colleague there had a lot of items on his radar there, and I want to salute him for the fact that the he and the New York State Department of Health are so engaged in a comprehensive arrange of items. I have just one question, I should say one issue that I'd like to have some sense about. I think there was certainly a lot of merit with respect to addressing how prescribers make available buprenorphine. I do from time to time wonder how the New York State Department of Health is getting and receiving guidance with respect to doing so. Because when we've had the conversation with respect to the expansion of diagnoses for which to treat for using for example medical marijuana for the treatment of opiate use disorder, it's sort of suggested to me that there might be some gap between the resources that Department of Health has and the availability of resources in the good state of New York. For example, calling upon the medical societies to seek their input with respect to issues that are going to look at how prescribers behave as well as the issue about buprenorphine itself and how prescribers can get

1 support from the State for example, with the prescription
2 monitoring program that has limitations because the prescribers
3 can really not see when a patient is also enrolled in a
4 medication assisted treatment program for methadone. So that
5 prescribers that are prescribing buprenorphine might not be able
6 to provide the patient a full scope of care when that
7 information is unavailable to them for not just state reasons
8 but also federal reasons. So I think it would seem to me that it
9 would be useful to hear, and I apologize for my long windedness
10 Chair, but it would be useful to hear how the New York State
11 Department of Health is utilizing the resources in the good
12 state with respect to physician societies to help to actually
13 inform some of the things that they are suggesting for changing
14 the practice of medicine with respect to medication for the
15 treatment of opiate use disorders.

16

17 JO BOUFFORD: Very important questions. Mr. Hutton, would
18 you like to respond.

19

20 BRAD HUTTON: Sure. Appreciate the opportunity to. So in
21 the area of buprenorphine we actually have a very active
22 buprenorphine working group that meets quarterly if not more
23 regularly basis, have subcommittees on issues like prescriber
24 pharmacy issues, insurance coverage. We have quite a few

1 prescribers who are actively involved in that group. Im not, I
2 can look to see specifically if NYSNY is represented or not, but
3 a lot of the activities that we have to increase the use and
4 access to bup have come directly out of that workgroup which is
5 represented by physicians and other prescribers.

6

7 LAWRENCE BROWN: So if you can get back to us to share
8 with us whether NYSNY or the New York State Society of Addiction
9 Medicine are included in that group, that would be useful.

10

11 BRAD HUTTON: Will do.

12

13 JO BOUFFORD: Great. Thank you. Important questions. Other
14 comments or questions? Ms. Rautenberg.

15

16 ELLEN RAUTENBERG: Hi Brad, Ellen Rautenberg. You really
17 highlighted the positives in the Governor's executive budget for
18 the health department. What are the negatives?

19

20 BRAD HUTTON: It sounded like a rhetorical question. Do
21 you have something that you wanted to highlight or are concerned
22 about?

23

1 ELLEN RAUTENBERG: No, I'm probing you. Are there cuts in
2 there for the Health Department recommended by the Governor?

3

4 BRAD HUTTON: I think that the Department stands by
5 everything in the executive budget proposal.

6

7 ELLEN RAUTENBERG: OK. How about article six? Where do we
8 stand on article six? Article six is the match that the state
9 gives to local health departments on a dollar for dollar basis
10 in terms of their investment, the locals investment in public
11 health and the state matches it. It's been going down for a
12 number of years. So where does it stand this year?

13

14 BRAD HUTTON: This year in the executive budget there's an
15 proposal to reduce the percentage of reimbursement that's made
16 to New York City from 36 percent to 25, 23 percent. Sorry, 20
17 percent. That's 36 percent to 20 percent. The rationale for this
18 is that New York City receives direct federal funding for many
19 programs. It has other resources available, and so it's really
20 an issue of equity and it's one in a continued effort to address
21 issues with the general public health works reimbursement
22 program.

23

1 ELLEN RAUTENBERG: Does that mean that New York City gets
2 a different match than other counties?

3

4 BRAD HUTTON: Yes, instead of 36 percent it would be 20
5 percent.

6

7 ELLEN RAUTENBERG: On a dollar basis? What's the
8 difference for New York City?

9

10 BRAD HUTTON: I don't have that with me right now, Ellen,
11 but we can definitely get back to you on that.

12

13 ELLEN RAUTENBERG: I'd appreciate that. Thanks so much.

14

15 BRAD HUTTON: Just let me out a question around the PHIPS
16 which we had also heard were being cut from the Governor's
17 budget. I'd be interested in hearing. These were the entities
18 around the State which actually have been quite important to the
19 advancement of the prevention agenda, I have to say, and to the
20 primary care development since the resources for both of those
21 things are pretty minimal. Go ahead.

22

23 DAN SHEPPARD: I'm sorry. You asking me a question?

24

1 JO BOUFFORD: Yeah, can you tell us the status of it, of
2 the conversation or what's been proposed or whether there's any
3 new news.

4
5 DAN SHEPPARD: Well, the executive budget I think as many
6 executive budgets, a lot of difficult choices and one of the
7 difficult choices was the elimination of the PHIP program which
8 is a five year program that's in it's fourth year. I said, it's
9 a challenging budget I think only made more challenging by the
10 recent post budget release that there's a growing, a significant
11 revenue gap with the State. I think we've been with that
12 proposal, the Department's been challenged to look at the
13 various other programs within the Department that also focus on
14 convening and data collection and data reporting and see if we
15 can fill the gaps left by the PHIPs. I said, they've done very
16 good work, the recommendation is not a reflection on the work
17 they've done or the value to the stakeholders that they've,
18 needs their filling. Just a function of difficult choices.

19

20 JO BOUFFORD: I think it's very... I mean, one of the things
21 that's challenging in general, I appreciate what you're saying
22 about the challenging in the budget, but the sort of marginal
23 investment in public health programs has very high leverage and
24 the fact that they tend to be some of the first that are looked

1 at for things that are hardly rounding errors and the rest of
2 the budget is always disappointing.

3

4 DAN SHEPPARD: No, I appreciate that. Again, I can just
5 speak for the world of programs that my office administers. It's
6 also includes core licensure and surveillance functions as well
7 and some choices are difficult.

8

9 JO BOUFFORD: Any other questions, comments. Yes, Dr.
10 Berliner.

11

12 HOWARD BERLINER: A question about the lead poisoning
13 standard. It's my understanding, and I may be wrong about this
14 that there are several different lead poisoning standards. So to
15 what extent is the CDC standard, the five deciliters? The major
16 standard or the most prevalent standard? And the second
17 question is if we shift to that standard, how many kids do we
18 actually expect to now be at risk from high lead levels?

19

20 BRAD HUTTON: Let me try to address that. So, CDC is
21 technically not a standard. It's a reference level that they
22 recommend. I think everyone agrees that there's no safe level of
23 exposure for lead. There are some other "standards" out there,
24 federal HUD has through it's funded properties required

1 different levels over time, and now most recently I believe it's
2 also been reduced down to five. This proposal brings the level
3 that defines elevated blood lead level in public health law to
4 the one that is the referenced level for CDC. Just so you know,
5 CDC is based upon the 97.5 percentile in the US population as
6 per... that's continuing to drop. So it's expected that in the
7 future that will be reduced even further. That reference level.
8 So I don't know if that helps address your question? Sorry the
9 number of children, it's expected to go up four to six fold from
10 roughly 4000 to 18,000 as far as the number of children that we
11 then identify as having an elevated blood lead level who then
12 need either nurse case management and/or environmental health
13 assessment.

14

15 JO BOUFFORD: Thanks very much. Are there any other
16 questions for Mr. Hutton? Let me just as the Chair of the Public
17 Health Committee mention two things. One of them is we're
18 delighted there is a population health summit on the 28th of
19 February which is being held in Albany to really with the
20 spotlight on the prevention agenda and the accomplishments
21 especially the engagement of other agencies in addition to the
22 health department and the incorporation of age friendly into the
23 broader population health activity. Two weeks out, we have 725
24 people registered for the conference from all over the state.

1 We've very excited about that and about 15, 16 different
2 organizations that had previously been involved in supporting
3 the conference when it's being held in New York City the last
4 few times have stepped forward. And so we're very pleased with
5 that including the hospital associations and others. So we want
6 to thank those for their support. And the second thing is that
7 one of the new emphasis in conjunction with adopting the
8 prevention agenda that the public health committee decided they
9 wish to take on as we've had a history of having an issue we
10 worked on in parallel to the prevention agenda oversight. It was
11 maternal mortality, and we intend to have a sort of wrap up
12 report on that at our next meeting if we can make committee day
13 March 28. If not, we'll schedule that soon on them, because
14 there has been a Governor's commission on maternal mortality and
15 other sets of activities that have been a spin off from I think
16 that initial set of conversations that the committee had. And
17 the new issue that we agree we want to take up is violence
18 prevention, which is now embedded as one of the important issues
19 in the new prevention agenda. So again, we'll have a meeting
20 hopefully again on the March 28 committee day to begin to get
21 report from the Department about their current efforts in the
22 area of violence prevention and then see where we want to go
23 from there. So I just want to close out the report with those
24 two items.

1 OK. Thank you very much. I think Ms. Dreslin has joined us
2 at the table in Albany so we can proceed now. And let's go back
3 to Codes and wrap up Codes. I'm sorry, go back to Establishment.

4
5 PETER ROBINSON: So, may I ask you now to leave the
6 room. Thank you.

7 So I'm going back to a couple of applications that we had
8 to skip over. The first is 182128C which is NYU Langone
9 Hospitals in New York County. Noting the conflict and recusal by
10 Dr. Boufford. To certify NYU Winthrop Hospital located at 259
11 First Street in Mineola as a division of NYU Langone Hospitals.
12 This is a companion to application 182158. The Department is
13 recommending approval with conditions and contingencies as does
14 the committee and I need a motion. Thank you Mr. Holt. And I
15 have a second from Dr. Watkins. Any questions from the members
16 of the council? Call the question. All in favor?

17
18 [Aye]

19 Any opposed? That motion carries. Thank you.

20 We do have a quorum because Ms. Dreslin is voting for the
21 commissioner in Albany, so yes.

22 Now calling application 182158... ok, 158E, NYU Langone
23 Hospitals in Nassau County. Also noting the conflict and recusal
24 by Dr. Boufford on this application. This is a change of

1 ownership of the certified home healthcare agency currently
2 operated by NYU Winthrop Hospital. This is the companion to
3 application 182128. The Department is recommending approval with
4 condition and contingencies as did the committee, and I need a
5 motion? Thank you Dr. Watkins. A second? Thank you Mr. Thomas.
6 Any questions from the council? Hearing none, I'll call the
7 question. All in favor?

8

9 [Aye]

10 Any opposed? That motion carries. Thank you.

11 And I think now I need Dr. Rugge to leave the room please.
12 So the final item from the Establishment and Project Review
13 Committee is 181390E, Warren Center for Rehabilitation and
14 Nursing in Warren County. Noting the conflict and recusal by Dr.
15 Rugge. This is to transfer 51 percent interest in Warren
16 Operations Associates LLC from one existing member to one new
17 member. The Department is recommending approval with a condition
18 as does the committee. And I so move.

19

20 JO BOUFFORD: Second? Dr. Watkins. Any discussion? All in
21 favor?

22

23 [Aye]

24 Opposed? Any abstentions? Motion passes.

1

2 PETER ROBINSON: That concludes the report of the
3 Establishment and Project Review Committee.

4

5 JO BOUFFORD: Thank you very much. And Mr. Holt. Code
6 Committee please.

7

8 THOMAS HOLT: OK. Here we go again. So, just as a
9 refresher the Codes committee did review five proposals this
10 morning. One for emergency adoption and information, two for
11 adoption and then two for information. First item on our agenda
12 was for the emergency adoption of body scanners in local
13 correctional facilities. Dr. Yang had declared an interest. And
14 that came forward with no recommendation from the committee, but
15 I would make a motion for adoption?

16

17 JO BOUFFORD: Second from Mr. Robinson. Is that sufficient
18 to move ahead at this point after the previous error? Any
19 discussion of this recommendation? All in favor?

20

21 [aye]

22 Opposed? Dr. Martin is opposed. Any abstentions? Motion
23 passes. Thank you.

24

1 THOMAS HOLT: Next for adoption stroke center designation.
2 This proposal add new section 405.34 of title 10 relating to
3 stroke center designations. The new section would create a
4 voluntary stroke center designation program and stroke system of
5 care for hospitals in New York State. The committee voted to
6 recommend adoption to the full council, and I so move.

7

8 JO BOUFFORD: Have a second? Dr. Watkins. Is there any
9 staff presentation or discussion around this issue or not?
10 Doctor.

11

12 MARCUS FREIDRICH: I presented to the Codes committee. Do
13 you want me to ...

14

15 JO BOUFFORD: No, not in detail. I didn't know. Just
16 wondered if you had anything to say at all.

17

18 MARCUS FREIDRICH: Marcus Freidrich from the Department of
19 Health. We are asking for adoption of this regulation that would
20 establish like a three tiered stroke system in New York to
21 actually align with current guidelines and improving the care
22 that stroke patients in New York would be given. And that's it
23 in a nutshell.

24

1 JO BOUFFORD: That's great. That's really helpful. Thank
2 you. All in favor?

3

4 [Aye]

5 Opposed? Any abstentions? Ok, the motion passes.

6

7 THOMAS HOLT: Next for adoption relates to food service
8 establishments. In this proposal would amend part 14 of title 10
9 and would restrict the use of liquid nitrogen and dry ice in
10 food preparation. And the committee voted to recommend for
11 adoption to the full council, and I so move.

12

13 JO BOUFFORD: Dr. Watkins, second. Any discussion? All in
14 favor?

15

16 [Aye]

17 Opposed? Any abstentions? Motion passes thank you.

18

19 THOMAS HOLT: The next two items were for information.
20 First being cardiac services. In this proposal would update the
21 current certificate of need regulations for PCI consistent with
22 the recommendations of the Department's regulatory modernization
23 initiative and since this proposal was presented for information
24 there was no vote.

1 And then last for information was midwifery birth centers.
2 This proposal would create a new part 795 of title 10
3 establishing regulations for midwifery birth centers and since
4 again this proposal was presented for information there was not
5 vote. And this concludes the committee's report.

6

7 JO BOUFFORD: Thank you very much. Alright. We'll go to
8 the planning committee. Dr. Rugge.

9

10 JOHN RUGGE: Yes. The planning committee also met this
11 morning. On behalf of the committee want to thank Mr. Sheppard
12 for filling out agenda for the planning committee and
13 modernizing our understanding of primary care among others. We
14 did consider a proposal to extend the stroke designation to
15 Olean General Hospital which was approved unanimously by
16 committee and I would so move.

17

18 JO BOUFFORD: OK. Second? Second from Mr. Robinson. Any
19 discussion? All in favor?

20 [Aye]

21 Opposed? Any abstentions? Motion passes. Thank you Dr.
22 Rugge, very much. We are due to go into executive session. The
23 Commissioner has not arrived. I don't know if Ms. Dreslin has

1 any comments she's like to make as deputy commissioner since
2 she's here?

3

4 SALLY DRESLIN: Thank you. I think the Dr. Zucker is looking
5 forward to presenting his remarks when he arrives. I'm happy to
6 answer any questions though.

7

8 JO BOUFFORD: OK. What do we... alright. So then let me
9 then, we'll move... I think all the business has been conducted
10 that we need to conduct except for hearing from the
11 Commissioner. So, the public portion of the meeting is now
12 adjourned. The next committee day is March 28 in Albany and the
13 next Council meeting will be April 11 in Albany. And then last I
14 guess the Council can go next door for those of you in the
15 public that wish to wait until the Commissioner arrives then
16 we'll come back in when he arrives and hear his remarks. So
17 everyone could please take your materials with you for this
18 executive discussion and move into the room behind us.

19 [end of audio]

20 JO BOUFFORD: We are still under the same rules we were under
21 before which I won't revisit and we're delighted to have
22 Commissioner Zucker here to address us.

23

1 HOWARD ZUCKER: I am sorry I was late. It took two hours and
2 fifteen minutes to go from mid-town Manhattan to here. Like,
3 FDR Drive closed, the ... boy, I would take my blood pressure but
4 I actually don't want to know what it is. It's like,... no, no,
5 all the other police escorts were there. I mean, saw them sly
6 by. Couldn't get on the FDR Drive, that was traffic, had to go
7 across town, Times Square was closed, it's like, unbelievable.
8 Nobody understands New York unless you live in New York.

9 So anyway, thank you, and happy Valentine's Day to
10 everybody. So since our last meeting, a couple of things that
11 have happened. The Department's been really busy. We've had the
12 Governor Cuomo's 2019-2020 budget. Monitoring both flu season,
13 I'll talk a little bit about that, and what turned out to be one
14 of our largest measles outbreaks in history, or in decades I
15 should say. Last time we met I talked about the preparation for
16 the flu, but I didn't mention that the New York State flu
17 tracker that we launched in 2018. So this is a dashboard. It's
18 really worth going on this. It's really very impressive. It's on
19 the New York State Health Connector website that keeps the
20 public informed about rates of influenza in their individual
21 county. We update weekly during the flu season. The dashboard
22 displays the number of laboratory confirmed influenza cases that
23 we've had by date, by county, and by type for both the current
24 and the three previous seasons. As of February 7, we've had

1 35,043 laboratory confirmed cases of influenza reported. We've
2 had 6618 hospital admissions across the State. The updated
3 surveillance reports will be available later this afternoon so
4 any other numbers that we had will change will come out on
5 Thursdays which is today. Anyone who has been using the flu
6 tracker will note that flu season is far from over and it's not
7 too late to get vaccinations, so I hope people will do that.
8 There's ample amount of time and ample amount of vaccine
9 available.

10 On the measles front, so we're making strong and steady
11 progress on this issue and lower Hudson Valley outbreak that
12 started late last September, still going on. Let me give you the
13 updates on the numbers. We've had 225 reported cases in New York
14 State since 2018. 135 cases in Rockland County, 10 Cases in
15 Orange County, 73 in Kings County in Brooklyn, 6 in Monroe
16 County, and 1 in Erie County. Containing these outbreaks has
17 really been a success story. I really do believe that if we
18 didn't jump on what we did early the numbers would be
19 dramatically higher. We rapidly mobilized to help prevent
20 secondary cases. The team has really worked incredibly
21 diligently on this end working very closely with the county as
22 well as the city but working with Rockland County where many of
23 the cases have been. They've helped identify those who have
24 potentially exposed. They've, the lab, Wadsworth Lab has tested

1 the specimens, we've assisted the community outreach, we've
2 contacted individuals, we've done investigations on it, we've
3 provided information on all the importance of vaccinations,
4 we've provided 15,000 MMR vaccines, we had some issues with
5 obviously having kids out of school and had 6000 children out of
6 school or daycare to prevent the spread. The Department's
7 analyzed the state school vaccination exemptions in light of the
8 disturbing anti-vaccination trends nationwide. This is a big
9 issue. And we're considering initiatives in this year to narrow
10 the exemptions to better protect community health. The Governor
11 stressed in last month's State of the State address that this
12 will be an historic year for New York in regards to public
13 health and wellness and this promise is being born out in the
14 first months of 2019 with what we're doing. And one of those is
15 the reproductive rights and women's health issues. So critical
16 issues that have already become law January 24, Governor Cuomo
17 signed the reproductive health act, so that's enshrining Roe v.
18 Wade that vulnerable Supreme Court decision given what's going
19 on in Washington and it's been assigned into the New York State
20 Constitution. He also signed the comprehensive contraceptive
21 coverage act laying a strong foundation for women's reproductive
22 health and affirming New York's commitment to these fundamental
23 rights. Regarding the health care facility transformation, last
24 week Governor Cuomo announced the allocation of \$204 million in

1 funding to support 95 projects that will improve patient care
2 while obviously protecting the New York State's healthcare
3 system. This is the first distribution of funding statewide from
4 the statewide healthcare facility transformation program which
5 was obviously enacted in the fiscal year budget 2018. This
6 investment will help each of the State's 10 regions develop high
7 quality medical facilities and programs serving the inpatient,
8 primary care, mental health, substance use disorders, and long
9 term care needs to local communities.

10 Regarding codifying the ACA, in 2018 we enabled a record
11 number of New Yorkers to enroll in high quality health insurance
12 options through the New York State of Health. We had some
13 incredible numbers during the open enrollment period that ended
14 January 31. We had a record 4.8 million New Yorkers signed up
15 for healthcare through our state exchange and that's a 10
16 percent increase from last year. In fact in the last couple days
17 of sign up unbelievable over 10,000 people per day signed up.
18 Protecting the right to quality healthcare for all New Yorkers
19 is more critical than ever. Given what's going on in the federal
20 government that contains the shift to healthcare funding
21 priorities. That's why Governor Cuomo is working to pass
22 legislation in 2019 to codify key provisions of the Federal
23 Affordable Care Act into State law and to hand state regulatory
24 protections.

1 Another big issue is the maternal mortality. Listening
2 sessions and more about them. The Department's constantly
3 working to address the racial disparities in health outcomes in
4 one of the most devastating outcomes we want to reduce is
5 maternal mortality. I had an opportunity to travel around the
6 state and particularly here across the city listening to many of
7 the women who shared their stories about this issue. Lt.
8 Governor Kathy Hockle I helped launch and guide that taskforce
9 on maternal mortality and disparate racial outcomes. The
10 Governor's healthcare agenda for 2019 includes initiatives based
11 on a maternal mortality taskforce recommendations. This was a
12 team of about 20-25 people and we really worked very hard on
13 this and they really committed a lot of time and effort on this.
14 their recommendations include establishing a statewide maternal
15 mortality review board, expanding the community health worker
16 programs, creating a data warehouse to provide near realtime
17 information on maternal mortality as well as morbidity,
18 convening an expert workgroup on post-partum care, and
19 developing implicit bias training to be used in healthcare
20 facilities. The stories we've heard about some of the
21 disparities and what happens really upsetting and we will tackle
22 this and be the first in the nation to improve this, resolve
23 this problem.

1 On the opioids initiative, the opioid epidemic continues to
2 devastate our communities and cause pain and suffering for our
3 families. In 2017 the numbers that we have, we have 3224 New
4 Yorkers die as a result of an overdose involving opioids and
5 that was a 200 percent increase from 2010. Governor's 2019
6 budget increase is access to medication assisted treatment which
7 is the gold standard of care for treating opioid use disorder.
8 It also eliminates insurance barriers to accessing care,
9 empowering all New Yorkers to combat the epidemic and this is
10 truly, this is truly a challenge. I'm especially excited about
11 the provisions to aggressively expand the access to
12 buprenorphine. It's an important advance in MAT both by
13 increasing the number of medical professionals who are designed
14 to prescribe it, and by also expanding the number of settings in
15 which it's prescribed. So it's both, it's two pronged approach.

16 On tobacco on e-cigarettes and some of the other budget
17 initiatives, so you probably saw the sobering report from the
18 CDC this week that said the number of teen tobacco users in the
19 United States increased by 1.3 million from 2017 to 2018.
20 Essentially wiping out the recent progress in declining tobacco
21 use. The Governor and Department are doubling down on our
22 efforts to safeguard the health of our youth and vulnerable
23 populations in regard to the use of both tobacco as well as e-
24 cigarettes. So the 2019 budget proposes greater controls on

1 tobacco and e-cigarettes including raising the minimum sales age
2 for tobacco and e-cigarette products up to 21. Prohibiting the
3 sale in pharmacies, codifying the Department's right to ban the
4 sale of certain flavored e-cigarette vapor liquid, and we will
5 tackle these issues. There's always new things that pop up, but
6 we recognize this is a really important issue, and particularly
7 when you hear some of the stories from the schools of principles
8 who are basically getting these devices and collecting them in
9 their drawer, how many kids are using this in the schools is
10 really upsetting.

11 Other budget provisions will protect New Yorkers from
12 exposure to toxic chemicals, reduce childhood lead exposure,
13 strengthen suicide prevention, expand community-based support
14 for seniors and services for New Yorkers with asthma as well as
15 autism. And the New York State Department of Health stands ready
16 to deliver on the Governor's promises to make all New Yorkers in
17 their communities healthier, safe, more resilient and truly a
18 changing world. And I look forward to updating you next time we
19 meet on some of the other initiatives that we have and happy to
20 answer any questions. We're making a lot of progress. A lot of
21 different issues that come up and tackle them as they surface.
22 And some of them are New York-centric but some of them are
23 really national and New York has always lead and we will
24 continue to lead on a lot of these issues, and a lot of other

1 states do turn to us and ask and I do get calls from some of the
2 other commissioners around the country as to what is New York
3 doing? So we are always looked at as the pace-setter on so many
4 things, and I'm happy to answer any questions and it's a
5 pleasure always to serve all of you.

6

7 PETER ROBINSON: So Commissioner, this is turning out to
8 be a tougher budget year than we had hoped with the declines in
9 revenue, probably compounded by the SALT issue that the Governor
10 continues to highlight. What's the impact on the health
11 department... I mean obviously you've got to make tough choices
12 and I'm sure the rest of the administration does as well. So
13 what things should we look at as potential cuts or things that
14 have to be kind of paired back?

15

16 HOWARD ZUCKER: Sure, so we as you know, the Governor was
17 down with the President the other day talking about the whole
18 SALT issue and I've sure we've read about that. The challenges
19 that we don't want, clearly we want to make sure we provide as
20 much public health and necessary public health to everyone in
21 the community, and we're trying to tackle this and figure out
22 how we could do the best job possible and we're pretty
23 efficient, we'll be even more efficient about this and we don't

1 want to compromise any of the programs, and so we're going to
2 try to figure out how we can move this forward. And I know some
3 of the, there's a lot of concerns that come forward, but it's a
4 tough budget year.

5

6 HOWARD BERLINER: Commissioner, given that most of the
7 measles cases are recurring in religious communities, what
8 actually can be done in terms of the law?

9

10 HOWARD ZUCKER: So, that's a great question. I spent a fair
11 number of hours talking to some of the leadership up there and
12 I've met with the rabbis several times about this and try to
13 figure out how to tackle this issue. Some of the things we're
14 looking at is whether to remove some of the exemptions that are
15 in place and that would be one step forward that we could
16 tackle. The community has an immunization rate some parts as low
17 as 60 percent. Some 80 percent. The state itself is at 96
18 percent which is excellent. We're trying to figure out, another
19 issue is to get people more aware of public education about
20 this. I think there's a complacency, people feel it's just
21 measles, kid will get better. And we've heard stories of people
22 exposing some others saying let them have the measles and be
23 over like we used to do with chicken pox years ago. So, I think

1 that once they start to recognize the severity of what could
2 happen with measles, I think it will change. And the fact that
3 we have 15,000... that was what we did, the 15,000 because also
4 the pediatricians did what they did. So I think we'll move it
5 forward. We'll get it done.

6

7 ELLEN RAUTENBERG: About the budget again, Brad and I had
8 a little interchange before you got here about the budget and we
9 talked about the article 6 bifurcation between New York City and
10 every other health department. And he talked about the logic
11 behind that being that the city health department has access to
12 CDC funds that other local health departments don't have. Given
13 that logic it would seem that the savings that would be taken
14 out of New York City would then be allocated to the other health
15 departments around the state. Is that what's going to happen?

16

17 HOWARD ZUCKER: So what we have as he may have mentioned, 63
18 percent going to the City with ... 63 percent of the money going
19 to the city which is only 41 percent of the population, so we do
20 have monies, but we have to figure out how we're going to
21 allocate some of the funds. I know some of the other counties
22 obviously will when they need assistance, we provide it, and I
23 think measles was a great example because Rockland County, that

1 support from us whether it's just staff people, vaccines and
2 whatever we can provide to them. So we'll have to figure out how
3 to get, make sure there's available resources to the rest of the
4 county. And I can get you the exact numbers of how the other
5 monies will go elsewhere. I understand what you're saying, is
6 the money going to get cut back or is it going to get
7 reallocated to the other counties.

8

9 ELLEN RAUTENERG: But I would then suggest given that
10 this is an emergency, the measles, it's really the public health
11 infrastructure that's going to be important to shoring up the
12 health of the populations as opposed to the outbreak
13 investigations.

14

15 HOWARD ZUCKER: I know, I agree, and I agree and JO and I
16 have spoken a lot about this, is on the front line, public
17 health on the front line and the communities and by the time
18 people end up on the hospital we've...

19

20 ELLEN RAUTENBERG: We've failed.

21

1 HOWARD ZUCKER: Well, not on all things, but on some things.
2 If you didn't end up that way, we didn't do what we need to do
3 up front.

4

5 LAWRENCE BROWN: I want to really tell you how much we
6 appreciate the dedication by you and members of the New York
7 State Department of Health and when you shared with us your
8 trials and tribulations of how to get to this meeting, we
9 appreciate it even more so.

10

11 HOWARD ZUCKER: Wanted to get here sooner. I just couldn't
12 fly.

13

14 LAWRENCE BROWN: So I wanted to share with you that
15 given the focus on the pandemic about the opiate pandemic itself
16 and the issue about access to care that there still remains a
17 disconnect in the sense of those who have inability to get to
18 receive care and particularly use transportation system to get
19 there and medication assisted treatment programs they cannot get
20 reimbursed in the same way for their transportation for persons
21 who are Medicaid eligible and the same way persons who receive
22 treatment for addiction and other modalities or other areas of

1 healthcare. So following a visit by the doctor or many areas of
2 healthcare and many modalities, a patient can receive
3 reimbursement for transportation to be able to come to the
4 clinic. And medication assisted treatment program for whatever
5 reason that is not available. And I wondered if you might have
6 some of your team to look at that.

7

8 HOWARD ZUCKER: We'll look at that. That's a good point. We
9 will look at that and find out. I get what you're saying. We've
10 heard a lot... the other day I had a meeting with nursing homes
11 and some of the discussion, transportation is a really big issue
12 on so many different aspects of providing care and I can see
13 just with me today running around, it's tough. Moving around is
14 really tough and we have to help people on that. So I hear you.

15

16 HARVEY LAWRENCE: And just to bring to a closure to tell
17 you how much this really hits at your heartstrings, when a
18 patient tells you, Dr. Brown, I'd like to come, but if I don't
19 have the car to come I'm going to need to do something else
20 different. And I don't want to do that something else. So, ...

21

22 HOWARD ZUCKER: Right. I hear you.

1

2 GLENN MARTIN: I feel the pain of the drive. For some
3 reason people have been crashing in front of LaGuardia Airport
4 on the Grand Central this week in an increased frequency.

5 On something that really is, it's kind of minor but I just
6 want to bring it to your attention, I expected it would've been
7 in the budget but I don't believe it was, and it's really
8 esoteric but it's actually important. The federal government
9 recently changed the research rules that went into effect on the
10 21 of January which makes it sort of a disconnect with New York
11 state research rules, that generally are trumped by the federal
12 government, but the federal government has made it more
13 difficult to document whether or not they're... that's where it
14 gets rather esoteric... but there's a way to make this all work
15 and I know that Mr. Carmel and others in the DOH have been
16 looking at it. I was just wondering if there is expectation that
17 there would be movement from DOH to try to take care of this, or
18 is this something that others should be picking up the mantle
19 and pushing, or whatever to get aware of it on it's fine now.
20 But it's an issue that we have to address sooner rather than
21 later.

22

1 RICK ZAHNLEUTER: Dr. Martin, we have legislation that's
2 proposed and I'm not sure if it's in the budget or if it's in a
3 different category of program bill, but we're trying to address
4 it by legislation. So we hope that by the end of this session it
5 will be resolved. And I know through Jonathan Carmel who you
6 mentioned, we're trying to put together interim procedures to
7 help and provide guidance while we're in the period between
8 resolution and the enactment of the federal rule.

9

10 GLENN MARTIN: And again, if you could just let me know,
11 I'd appreciate it. The IRBs in the state are the academics
12 realize it's the issue, and would be very supportive, I suspect,
13 of a solution and so thank you.

14

15 JO BOUFFORD: Any other questions? I have two if I may.
16 One is just to thank you for keynoting, leading off our upcoming
17 population health summit on February 28. We have 725 registrants
18 so far and we're still out about 10 days, so we really
19 appreciate that and the support for shining a light on the
20 prevention agenda. And then secondly just to indicate, again, I
21 think appreciatively this public health committee and just to
22 give you a little bit of a historic sequence, I know you have so
23 many things to remember, but the public health committee of this

1 council had sort of kicked off attention to maternal mortality
2 about four years ago, three or four years ago and so the fact of
3 the Governor's maternal mortality commission and a lot of the
4 work that the State has done has really been sort of began with
5 the public health committee deciding to focus on it in addition
6 to the oversight of the prevention agenda. So I want to thank
7 you for taking it up and having that happen and to close the
8 circle, we're hoping to have a public health committee meeting
9 perhaps in April now to get a report on what's happened in
10 maternal mortality which as you say is a lot and I think the
11 structure is there to continue working in the areas where we
12 haven't been able to get success yet, but we're delighted but
13 also as part of the prevention agenda the public health
14 committee decided to take on again, as a special interest area
15 in addition to the overall prevention agenda, focus on violence
16 prevention in the context of the prevention agenda. And I know
17 it's been discussed within the Department after that decision
18 was made, and we appreciate the support from moving ahead with
19 that. So our hope would be to couple an update on maternal
20 mortality with the sort of report from the Department about
21 what's going on in the violence prevention area and then seeing
22 if we want to involve other agencies and others. But anyway, I
23 think this is really exciting. Challenging but exciting. So
24 maybe another area of that. New York could be a leader.

1

2 HOWARD ZUCKER: Ties it a little bit to the health across
3 all policies issue. That's how we could put it.

4

5 JO BOUFFORD: Absolutely. So, anything else at all? We
6 thank you for struggling to be here. It was well worth it and I
7 hope it was worth it to you. So thanks very much and I'll
8 declare the meeting of the Public Health Council adjourned.

9

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by sections 201, 225, and 3502 of the Public Health Law, Parts 16 and 89 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended, to be effective upon filing with the Secretary of State, to read as follows:

New section 16.70 is added to Part 16 to read as follows:

16.70 Use of Body Scanning.

- (a) This section shall not apply in cities having a population of two million or more.
- (b) Practitioners licensed under Article 35 of the Public Health Law and unlicensed personnel employed at a local correctional facility may utilize body imaging scanning equipment that applies ionizing radiation to humans for purposes of screening inmates committed to such facility, solely in connection with the implementation of such facility's security program and in accordance with the provisions of this Part.
- (c) Definitions
 - (1) "Body imaging scanning equipment" or "equipment" means equipment that is specifically manufactured for security screening purposes and utilizes a low dose of ionizing radiation, with a maximum exposure per scan equal to or less than 10 μ Sv (1 mrem), to produce an anatomical image capable of detecting objects placed on, attached to or secreted within a person's body. The utilization of body imaging scanning equipment is for purposes of screening inmates committed to such facility, in connection with the implementation of such facility's security program.

(2) "Local correctional facility" shall mean a local correctional facility as defined in Correction Law section 2(16).

(3) "Equipment operator" or "operator" means personnel employed at the local correctional facilities that have successfully completed a training course approved by the Department.

(4) "Screening" means the sum of radiation exposures or scans necessary to image objects concealed on all sides of the body as intended by the system design under normal conditions.

(d) Equipment use and installation requirements

(1) Prior to the equipment's first use on humans at a specific physical location or upon any major repairs that could influence image quality or exposure:

(i) body imaging scanning equipment purchased or installed at a local correctional facility must be registered with the Department, in accordance with § 16.50 of this Part; and

(ii) radiation protection survey, shielding evaluation and verification of image usefulness for detecting foreign objects must be completed by a licensed medical physicist.

(2) Equipment must have a clearly marked restricted area and one or more indicators when a scan is in process that is clearly visible to all security screening system operators and anyone approaching the restricted area.

(3) Equipment must be periodically inspected by the Department as described in § 16.10 of this Part.

(4) Equipment must be tested by a licensed medical physicist annually to verify the equipment is operating as designed.

(5) The facility must maintain a policy and procedure manual describing equipment operations, body scanning procedures, records and associated facility policies shall be maintained and

available upon request by the Department. The policy and procedure manual must include the following items:

- (i) operating procedures appropriate for the specific equipment and intended scan types;
- (ii) policy prohibiting the use of the equipment on individuals who are not inmates;
- (iii) policy regarding the determination of pregnancy that has been approved by the jail physician;
- (iv) emergency contact information in the event the equipment overexposes any individual or there is equipment related failure that potentially requires service prior to scanning other inmates;
- (v) requirements for exposure records to be provided to an inmate upon release or transfer to another facility; and
- (vi) exposure per scan for each scan protocol used.

(6) Records and documentation of the program operation shall be maintained in accordance with § 16.14 of this Part and shall include, at a minimum, the following:

- (i) the number of times the equipment was used on inmates upon intake, after visits, and upon the suspicion of contraband, as well as any other event that triggers the use of such equipment;
- (ii) the average, median, and highest number of times the equipment was used on any inmate, with corresponding exposure levels;
- (iii) the number of times the use of the equipment detected the presence of drug contraband, weapon contraband, and any other illegal or impermissible object or substance; and
- (iv) the number of times an inmate has been scanned.

(e) Exposure limits and reporting requirements

(1) No person other than an inmate of a local correctional facility shall be exposed to the useful beam and then only by an individual that has met the provisions of subdivision (e) of this section.

(2) Limits on the use of equipment and exposure to inmates are:

(i) no more than fifty percent of the annual exposure limits for non-radiation workers as specified by applicable regulations, not to exceed 0.5 mSv (50 mrem);

(ii) inmates under the age of eighteen shall not be subject to more than five percent of such annual exposure limits, not to exceed 0.05 mSv (5 mrem); and

(iii) pregnant women shall not be subject to scanning at any time.

(3) The following events shall be reported to the Department in writing within 30 days:

(i) incidents or any injuries or illness resulting from the use of such equipment or reported by persons scanned by such equipment; and

(ii) exposure that exceeds the limits set forth in this Part.

(f) Training Requirements

(1) Every equipment operator shall receive initial operator training, to be provided by the equipment manufacturer or their approved representative, or another source approved by the Department.

(2) The contents of the initial operator training must include radiation safety, equipment operations, exposure and exposure limits for occupational exposed staff and inmates; applicable regulations; and facility policies and procedures.

(3) Initial operator training must be documented and available for review by the Department upon request. Such documentation must include the names of the presenter or sources, attendees, dates and contents of the training.

(4) Every equipment operator shall receive refresher training, to be provided by the equipment manufacturer or their approved representative, or another source approved by the Department. Such training shall meet the requirements listed in paragraphs (1), (2) and (3) of this subdivision and include any changes to the policies and procedures manual or updates to the regulations.

Section 89.30 is amended by adding a new subdivision (c) to read as follows:

(c) A person employed at a local correctional facility, as defined by Correction Law section 2(16), is exempt from licensure as a radiologic technologist when operating body imaging scanning equipment that applies ionizing radiation to humans for purposes of screening inmates committed to such facility, in connection with the implementation of such facility's security program.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The Department of Health (Department) is required by Public Health Law (PHL) § 201(1)(r) to supervise and regulate the public health aspects of ionizing radiation. PHL § 225(4) authorizes the Public Health and Health Planning Council (PHHPC) to establish, amend and repeal provisions of the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. PHL §§ 225(5)(p) and (q) and 201(1)(r) authorize PHHPC to establish regulations in the SSC to protect the public from the adverse effects of ionizing radiation.

PHL § 3502 authorizes personnel employed at local correctional facilities to utilize body imaging scanning equipment that applies ionizing radiation to humans for purposes of screening inmates as part of the facilities' screening program, provided that the use of such equipment is in accordance with regulations promulgated by the Department.

Legislative Objectives:

The legislative intent of PHL §§ 201(1)(r) and 225(5)(p) and (q) is to protect the public from the adverse effects of ionizing radiation. Establishing regulations to ensure safe and effective use of radiation producing equipment is consistent with this legislative objective.

The legislative intent of Article 35 of the PHL is to ensure that when radiation is applied to a human being it is being done appropriately and by a qualified individual. Although in general radiation should only be applied to humans for medical reasons, PHL § 3502 allows correctional facilities to utilize very low dose x-ray equipment for security screening of inmates, while protecting the health of screened inmates.

Needs and Benefits:

Effective January 30, 2019, PHL § 3502(6) permits unlicensed personnel working at local correctional facilities to utilize body imaging scanning equipment that applies ionizing radiation to humans, for purposes of screening inmates committed to such facilities, in connection with the implementation of a facility's security program. Such equipment can be an efficient method of detecting contraband, such as knives, other weapons, and illegal drugs including heroin and opioids, and will enhance the safety of both inmates and correction officers.

These regulations provide protections to the inmates and staff by establishing requirements and controls to ensure appropriate operation of the body scanning imaging equipment. These include testing of the equipment by a licensed medical physicist prior to use and annually thereafter; annual training for equipment operators to ensure proper operation and application; establishment of policies and procedures for use of the equipment; and documentation and inspection requirements to monitor and ensure that inmates are not overexposed to radiation based on the dose limits set forth in the law. The regulations will permit local correctional facilities to take advantage of the enhanced security that body imaging scanning equipment can provide, while minimizing the risk to inmates posed by exposure to ionizing radiation.

Costs:**Costs for the Implementation of, and Continuing Compliance with the Regulation to the Regulated Entity:**

The regulations will impose little or no cost to regulated entities. The regulations would only apply to local correctional facilities that voluntarily choose to use body imaging scanning

equipment as part of the facility's security program. Local correctional facilities that choose to utilize body imaging scanning equipment will be subject to equipment purchase costs; costs to hire a licensed medical physicist to test the body scanning imaging equipment annually, at a cost of approximately \$500 per test; administrative costs associated with maintaining records of the use of the equipment; and annual staff training costs. County facilities must register their new x-ray equipment, but they are fee-exempt and will not be charged by the Department for registration or inspections.

Costs to State and Local Governments:

These regulations apply only to local correctional facilities operated by county governments that voluntarily choose to use body imaging scanning equipment as part of the facility's security program. Such facilities will be subject to the costs described above.

Costs to the Department of Health:

This regulation will require an increase in inspections of no more than 60 additional facilities out of a total of approximately 11,000 currently registered facilities that are inspected by the Department's Bureau of Environmental Radiation Protection. The Department will incur costs through preparing and disseminating guidance to the New York State Commission of Correction (NYSCOC) and the NYS Sheriffs Association as well as any local correctional facilities that wish to utilize body imaging scanning equipment. Staff time for registering, inspecting and providing guidance is expected to be handled using existing resources and staff.

Local Government Mandates:

The regulation does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district. The regulations apply only to local correctional facilities that voluntarily choose to use body imaging scanning equipment as part of the facility's security program. Such facilities will be subject to the costs described above.

Paperwork:

Local correctional facilities that voluntarily choose to use body imaging scanning equipment as part of the facility's security program will be required to register the equipment and maintain records related to the policies, procedures and utilization of the equipment.

Duplication:

The regulations do not duplicate, overlap or conflict with any existing federal or state rules or regulations.

Alternatives:

There are no suitable alternatives to the regulations that would meet the requirements of PHL § 3502 while adequately protecting the health of inmates.

Federal Standards:

Not applicable. The operation of radiation producing equipment is regulated by the State only.

Compliance Schedule:

There is no compliance schedule imposed by these regulations, which shall be effective upon filing with the Secretary of State.

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

Effect of Rule:

The regulation will only apply to local correctional facilities, operated by county governments, that voluntarily choose to use body imaging scanning equipment as part of the facility's security program. This regulation will not impact local governments unless they operate such facilities. The regulation will have no impact on small businesses.

Compliance Requirements:

A local correctional facility that chooses to use body imaging scanning equipment as part of the facility's security program will need to ensure that equipment is installed properly and is operating as designed through licensed medical physicist verification. In addition, the local correctional facility must develop and maintain policies and a procedure manual; provide all personnel who will utilize the equipment with required training; and maintain records of the utilization.

Professional Services:

A local correctional facility that chooses to use body imaging scanning equipment as part of the facility's security program will be required to have equipment installed by qualified installers for the specific brand of body imaging scanning equipment being used. At facilities with female inmates, the jail physician will be required to develop policies regarding the determination of pregnancy and to update those policies over time as needed. Body scanning

imaging equipment will require annual testing by a licensed medical physicist with an estimated cost of approximately \$500; such testing is also required prior to use of the equipment.

Compliance Costs:

A local correctional facility that chooses to use body imaging scanning equipment as part of the facility's security program will acquire the equipment based on their own requirements. Annual compliance costs are expected to be minimal, and will consist of the costs of refresher training, annual testing by a licensed medical physicist, and record keeping of the inmates scanned.

Economic and Technology Feasibility

This regulation is economically and technically feasible, as these regulations only impose requirements on local correctional facilities that choose to use body imaging scanning equipment as part of the facility's security program. Such facilities will acquire equipment based on their own requirements and, as described above, ongoing compliance costs are minimal.

Minimizing Adverse Impact:

The impact of this regulation is expected to be minimal as these regulations only impose requirements on local correctional facility that choose to use body imaging scanning equipment as part of the facility's security program. To assist such facilities in minimizing any adverse impact, the Department will provide guidance to NYSCOC and the NYS Sheriffs Association as well as any local correctional facilities that wish to utilize body imaging scanning equipment.

Small Business and Local Government Participation:

The Department has consulted with the NYS Sheriffs' Association and the New York City Department of Health and Mental Hygiene during the development of the regulations.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement under the proposed regulation. This regulatory amendment governing the utilization of body imaging scanning equipment by local correctional facilities does not mandate that local correctional facilities use such equipment. Hence, no cure period is necessary.

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	

Every county in NYS operates a local corrections facility, except Greene and Schoharie counties where the local corrections facilities are currently out of commission. They anticipate

eventually being back in operational status. Approximately 77% of local correctional facilities are in rural areas.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

A local correctional facility that chooses to use body imaging scanning equipment as part of the facility's security program will need to ensure that equipment is installed properly and is operating as designed through licensed medical physicist verification. In addition, the local correctional facility must develop and maintain policies and a procedure manual; provide all personnel who will utilize the equipment with required training; and maintain records of the utilization.

Costs:

A local correctional facility that chooses to use body imaging scanning equipment as part of the facility's security program will acquire the equipment based on their own requirements. Annual compliance costs are expected to be minimal, and will consist of the costs of refresher training and record keeping of the inmates scanned.

Minimizing Adverse Impact:

The impact of this regulation is expected to be minimal as these regulations only impose requirements on local correctional facility that choose to use body imaging scanning equipment as part of the facility's security program. To assist such facilities in minimizing any adverse

impact, the Department will provide guidance to NYSCOC and the NYS Sheriffs association as well as any local correctional facilities that wish to utilize body imaging scanning equipment.

Rural Area Participation:

The Department consulted with the NYS Sheriffs' Association during the development of the regulation. Sheriff's operate all the local correctional facilities in NYS except for Westchester County and New York City. They indicated that there were no specific issues in this rule that would impact the use body scanning equipment at rural facilities.

**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.

EMERGENCY JUSTIFICATION

Compliance with the requirements of the State Administrative Procedure Act for filing of a regulation on a non-emergency basis including the requirement for a period of time for public comment cannot be met because to do so would be detrimental to the health and safety of inmates in local correctional facilities.

Effective January 30, 2019, Public Health Law § 3502(6) permits unlicensed personnel working at local correctional facilities to utilize body imaging scanning equipment that applies ionizing radiation to humans for purposes of screening inmates committed to such facility, in connection with the implementation of such facility's security program. Such equipment is intended to be used as an efficient method of detecting contraband, such as knives and other weapons, as well as illegal drugs including heroin and opioids, and will enhance the safety of both inmates and correction officers.

The regulations provide protections to the inmates and staff by establishing requirements and controls to ensure appropriate operation of the body scanning imaging equipment. These include testing of the equipment by a licensed medical physicist prior to use and annually thereafter; annual training for operators of the equipment to ensure proper operation and application; establishment of policies and procedures to guide use of the equipment; and documentation and inspection requirements to monitor and ensure that inmates are not overexposed to radiation based on the dose limits in the law.

Delaying these regulations would prevent local correctional facilities from enhancing security programs through the use of body imaging scanning equipment while minimizing the risks posed to inmates by exposure to ionization.

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) of the Public Health Law, a new section 415.32 is added to Part 415 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, to be effective upon publication of a Notice of Adoption in the New York State Register:

415.32 Weekly bed census data survey.

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

(1) “Communications Directory” (Directory) shall mean a listing of all organizations with access to the HCS, ordered by type, and including the identity of and contact information for individuals at each organization who: (i) perform specific job functions identified by the Department; and/or (ii) have access to perform certain data exchange functions on the HCS.

(2) “HCS Coordinator” shall mean the individual designated by each organization with access to the HCS to be responsible for authorizing and managing accounts and maintaining other key information about the organization’s HCS users.

(3) “Health Commerce System” (HCS) shall mean the Department’s secure Internet portal used for communications and information exchange with organizations including nursing homes and other health care providers or any successor system used for such information exchange as required by the Department.

(4) “Health Electronic Reporting Data System” (HERDS) shall mean the data reporting application on the HCS that houses the Survey or any successor system used for such

reporting as required by the Department.

(5) “Nursing Home Data Reporter” shall mean the name of the role in the Directory that provides access to an individual designated by a nursing home to use HERDS.

(6) “Nursing Home Weekly Bed Census Survey” (Survey) shall mean an electronic survey used by each nursing home to report its bed census to the Department using HERDS.

(7) “Role” shall mean the term used to indicate in the Directory the specific job functions and HCS data exchange functions assigned to individuals by each organization.

(b) Submission of Surveys.

(1) Each nursing home shall complete the Survey on HERDS on a weekly basis by indicating, for each category of bed, the total number of certified or approved beds and the number of those beds that are available. The Survey shall be submitted on a weekly basis by individuals at the nursing home who are assigned to the Nursing Home Data Reporter role within the Directory.

(2) Nursing homes shall report bed census data reflecting the weekly census taken every Wednesday at 12:00 a.m. The nursing home’s designated Nursing Home Data Reporter shall enter and transmit the survey census data to the Department between Wednesday at 12:01 a.m. and the following Tuesday at 11:59 p.m. Instructions for the Survey will be available on the HCS.

(c) Designation of Nursing Home Data Reporters. Nursing homes shall, through their HCS Coordinators, designate a sufficient number of Nursing Home Data Reporters to ensure that the Survey is submitted to the Department in a timely manner.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (PHL) section 2803(2)(a)(v) provides that the Public Health and Health Planning Council shall adopt rules and regulations, subject to the approval of the Commissioner of Health, governing the standards and procedures followed by nursing homes which, at a minimum, must meet federal standards.

Legislative Objectives:

The legislative objective of PHL Article 28, as set forth in PHL section 2800, includes the protection of the health of the residents of New York State through the efficient provision and proper utilization of health services of the highest quality at a reasonable cost. This proposal, which requires nursing homes to submit weekly bed census data to the Department of Health (Department) through the Department's Health Commerce System, is consistent with that objective. Having current and accurate nursing home bed occupancy data is important in the event of natural disasters and to alert the Department to significant changes in nursing home occupancy, improving the Department's ability to take appropriate action. While facilities have already been advised administratively that they must submit this data, including the requirement in regulation will improve compliance.

Current Requirements:

The Health Commerce System (HCS), previously known as the Health Provider Network (HPN), is a highly secure, Internet-based, electronic portal for communications and critical data sharing with organizations including nursing homes and other health care providers. Section 400.10 of Title 10 (Health) of the New York Compilation of Codes, Rules and Regulations (NYCRR) requires providers, including nursing homes, to maintain and keep updated an active HPN account.

DAL #09-02, effective April 8, 2009, was issued by the Department to require nursing homes to report weekly bed census data electronically to the Department through the HPN. The DAL provided for such data to be reported each week between Wednesday 8:00 a.m. and Friday 5:00 p.m. In 2013, via a notice sent through the HCS, the Department informed nursing homes that such data should be reported between Wednesday 12:01 a.m. and the following Tuesday at 11:59 p.m.

Needs and Benefits:

It is critical that the Department have accurate nursing home census data including occupancy and availability data by bed type. Natural events such as hurricanes and floods and other emergency events such as extended power outages could cause situations in which some nursing homes may have to transfer their residents to other facilities to ensure their safety. In those situations, the Department must be able to quickly assess the number and location of nursing home residents across the affected area, as well as the number of available beds. Furthermore, the ability to monitor a facility's current occupancy data

improves the Department's ability to identify a declining census and proactively take appropriate action.

Despite the current requirement for bed census data reporting, communicated via a DAL and a subsequent HCS notice, the Department often finds itself in the position of having to call some nursing homes repeatedly to obtain this information. This proposed regulation will add a new section 415.32 to Title 10 of the NYCRR to require that nursing homes submit bed census data on a weekly basis by electronically filing the Nursing Home Weekly Bed Census Survey (Survey). This will promote compliance and ensure that the Department has access to essential, current occupancy data as necessary to protect residents.

Accordingly, the proposed regulation provides that the Survey must be submitted via the HCS Health Electronic Response Data System (HERDS) application by a facility staff person assigned a Nursing Home Data Reporter role within the HCS Communications Directory. Nursing homes shall report bed census data reflecting the weekly census taken every Wednesday at 12:00 a.m. The facility's designated Nursing Home Data Reporter shall enter and transmit the survey census data to the Department between Wednesday at 12:01 a.m. and the following Tuesday at 11:59 p.m. Instructions for the Survey will be available on the HCS. The proposal further requires nursing homes, through their HCS Coordinators, to designate enough Nursing Home Data Reporters to ensure that the facility can submit surveys to the Department as required.

COSTS:

Costs to Private Regulated Parties:

New York State health care facilities are already required by section 400.10 of the NYCRR to have an HCS account to exchange electronic information with the Department. Moreover, nursing homes are already expected to send bed census information to the Department as communicated in the DAL. Therefore, nursing homes should not incur any additional costs related to the electronic submission of bed census information to comply with the proposed regulation.

Costs to Local Government:

This proposal will not impact local governments unless they operate a nursing home, in which case they will be impacted to the same extent as other nursing homes. As previously noted, nursing homes are not expected to incur any additional costs related to the electronic submission of bed census information.

Costs to the Department of Health:

The Department is not expected to incur any additional administrative costs as a result of the proposed regulation. The statewide HCS infrastructure and the mechanisms for nursing home bed census data collection are already in place.

Costs to Other State Agencies:

The proposed regulatory changes will not result in any additional costs to other State agencies.

Local Government Mandates:

This proposed regulation does not impose any new mandates on local governments.

Paperwork:

Nursing homes are already expected to submit bed census information via the HCS. Accordingly, the proposal should not increase paperwork.

Duplication:

This proposed regulation reiterates and strengthens the existing requirement, set forth in the DAL, that nursing homes report census data on a weekly basis to the Department. Moreover, while federal regulations require submission of bed census data to the federal Centers for Medicare and Medicaid Services (CMS) on a quarterly basis, this regulation will ensure that the Department receive this information directly and more frequently.

Alternatives:

There are no other alternatives for the Department to reliably secure current bed census data from nursing homes.

Federal Standards:

Federal regulations require nursing homes to submit quarterly census data to CMS.

Compliance Schedule:

These regulations will be effective upon publication of a Notice of Adoption in the New York State Register. The statewide HCS infrastructure and the mechanisms for bed census reporting for nursing homes are already in place. Consequently, regulated parties should be able to comply with the proposed regulation as of its effective date.

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

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed rule will not have a substantial adverse impact on small businesses or local governments. Nursing homes that constitute small businesses and local health departments that operate nursing homes, like all other nursing homes, are already required to have an HCS account to exchange electronic information with the Department and report bed census data.

**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 rule will not have an impact on nursing homes located in rural areas any differently than in any other areas. Such nursing homes are already required to have an HCS account to exchange electronic information with the Department and report bed census data.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 3605(7) of the Public Health Law, sections 766.9 and 766.12 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York are hereby amended to be effective upon publication of a Notice of Adoption in the New York State Register.

Subdivision (n) of § 766.9 is amended to read as follows:

(n) ensure that any franchise agreement complies with the following:

* * *

(4) An agreement which contains elements of both a franchise agreement and a management contract shall be subject to the applicable provisions of this subdivision and subdivision (m) of this section[.]; and

A new subdivision (o) is added to § 766.9 to read as follows and existing subdivision (o) re-lettered (p):

(o) ensure registration of the licensed home care services agency with the commissioner through submission of annual registration forms included in the annual statistical report;

(1) no licensed home care services agency shall be operated, provide nursing services, home health aide services, or personal care services, or receive reimbursement from any source for the provision of such services during any period of time on or after January 1, 2019, unless it has registered for the current period;

(2) a licensed home care services agency that fails to submit a complete and accurate set of all required registration materials by the annual deadline of November 16th is required to pay a fee of \$500 for each month or part thereof that the licensed home care services agency is not registered;

(3) a licensed home care services agency that fails to register in the prior year by the deadline of the current year shall not be permitted to register for the upcoming registration period unless it submits any and all unpaid late fees;

(4) the department shall publish a listing of all licensed home care services agencies and their current registration status on its public website;

(5) the department shall institute proceedings to revoke the license of any licensed home care services agency that fails to register for two annual registration periods, whether or not such periods are consecutive; and

(6) the department shall pursue revocation of the license of a licensed home care services agency if it evidences a pattern of late registration over the course of multiple years without justification acceptable to the commissioner.

Subdivision (c) of § 766.12 is amended to read as follows:

(c) The home care services agency shall furnish annually to the department a copy of:

(1) statistical summaries of all health care services, including the type, frequency and reimbursement for services provided, including reimbursement from federal and state governmental agencies, on forms provided by the department;

(2) if a for-profit corporation, a list of the principal stockholders and the number and percent of the total issued and outstanding shares of the corporation held by each, duly certified by the

secretary of the corporation as to completeness and accuracy;

(3) if a not-for-profit corporation, a list of directors, officers and corporate members, if such members number 10 or fewer;

(4) the agency's registration in a manner prescribed by the department; and

(5) other such records and reports as may be legally required by the department.

* * *

REGULATORY IMPACT STATEMENT

Statutory Authority:

This proposal will implement amendments to Public Health Law (PHL) §§ 3605-a and 3605-b requiring registration of licensed home care services agencies pursuant to Article 36.

Legislative Objective:

Public Health Law Article 36 was intended to promote the quality of home care services provided to residents of New York State and to assure adequate availability as a viable alternative to institutional care. The proposed regulation furthers this objective by developing a system for the Department of Health (Department) to identify agencies that are non-operational and aligns state regulations with the Department's strategic plan.

Needs and Benefits:

The proposed changes to 10 NYCRR §§ 766.9 and 766.12(c)(4) implement amendments to PHL §§ 3605-a and 3605-b made by Chapter 57 of the Laws of 2018, Part B, §§ 9-c and 9-d, requiring registration of licensed home care services agencies pursuant to PHL.

Annual registration of licensed home care services agencies will allow the Department, on an annual basis, to confirm operational entities in all regions of the state. The registration will confirm the number of agencies providing services in the defined services area and the types of services provided. The information will assist the Department in identifying potential gaps in provider capacity and consumer access to services, and is important as the Department develops a need methodology for licensed home care services agencies. It will also be useful to the Department's oversight and surveillance functions.

This will be integral in improving the overall quality of services provided to individuals who are receiving home care services.

Just as important, the information obtained from the licensed home care services agency registration will improve consumer access to information about licensed home care services agency availability. The information collected from the registration process will improve the currency and accuracy of provider-related information on the DOH public website, giving consumers meaningful information that can help them identify available options for home care services. Additionally, the public website will identify those agencies who are registered with the Department and those agencies who are not registered with the department, indicating their compliance with 10 NYCRR § 766.9.

To comply with the registration requirement, licensed home care services agencies will need to complete a section that will be added to the existing annual statistical report. These must be submitted during the annual data collection period, which commences in August of the preceding year of the registration deadline and ends by November 16th.

The proposed changes will provide a benefit to current licensed home care services agencies who complete the registration as required, as they will be listed on the public website as being currently registered and active.

Costs to Regulated Parties:

The regulated parties (providers) are not expected to incur any additional costs as a result of the proposed rule change. There are no additional costs to local governments for the implementation of and continuing compliance with this amendment. There are no additional costs to the Department of Health as a result of the proposed rule change.

Local Government Mandates:

The proposed amendment does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district. The registration will be incorporated as part of the annual statistical reports already required to be submitted by licensed home care services agencies. Therefore, the new state regulation will require county operated agencies to complete one additional form.

Paperwork:

The registration will be incorporated as part of the annual statistical reports already required to be submitted by licensed home care services agencies. Therefore, the new state regulation will require one additional form to be completed.

Duplication:

The proposed rule is not duplicative of any known rules or regulations.

Alternatives:

There are no alternatives to this proposal, which is necessary to implement a legislative enactment requiring licensed home care services agencies to register annually with the Department.

Federal Standards:

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

Compliance Schedule:

There are no significant actions which are required by the affected providers to comply with the amendments, as the amendments ensure conformance with expectations that were already in effect. Those licensed home care services agencies who are operational should already be in compliance with the required annual statistical reports and should be readily able to comply. The registration will be incorporated as part of the annual statistical reports already required to be submitted by licensed home care services agencies. Therefore, the new state regulation will require one additional form to be completed. A licensed home care services agency that fails to submit a complete and accurate set of all required registration materials by the annual deadline of November 16th, established by the Commissioner of Health, is required to pay a fee of \$500 for each month or part thereof that the licensed home care services agency is not registered. No licensed home care services agency shall be operated, provide nursing services, home health aide services, or personal care services, or receive reimbursement from any source for the provision of such services during any period of time on or after January 1, 2019, unless it has registered for the current period. The regulations will be effective upon publication of a Notice of Adoption in the New York State Register.

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REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect of Rule:

Licensed home care services agencies, including those operated by county health departments, provide health services in the home pursuant to Public Health Law Article 36. There are currently 1,083 licensed operators providing home care services at 1,475 licensed sites. Local governments will not be affected by this rule except to the extent that they operate licensed home care services agencies; nor will small businesses be impacted in their routine cost of conducting business.

Compliance Requirements:

Regulated parties are expected to be in compliance beginning on and after January 1, 2019. The proposed regulations will implement the new registration requirement for licensed home care services agencies, which will be carried out through existing reporting mechanisms. The registration process is a new requirement; however, the registration process will be incorporated with existing statistical data collection requirements for licensed home care services agencies which are required annually. Therefore, compliance requirements are minimal.

The Department does not intend to publish a small business regulation guide in connection with this regulation. Although a number of licensed home care services agencies are small businesses, the impact is expected to be minimal. Additional guidance will be posted on the web as needed after the regulation is promulgated.

Professional Services:

No additional professional staff are expected to be needed as a result of the regulations. Record keeping and compliance requirements could be handled by existing staff, as it is the expectation that the administrator complete the registration.

Compliance Costs:

There are no capital costs associated with these proposed rules. Any costs are already incurred by agencies under the existing regulations.

Economic and Technological Feasibility:

The Department has considered feasibility and believes there will be minimal, if any, economic and technological impact. The registration will be incorporated as part of the annual statistical reports already required to be submitted by licensed home care services agencies. Therefore, the new state regulation should not affect the routine cost of doing business, unless agencies have been non-compliant with existing requirements.

Minimizing Adverse Impact:

While the Department has considered the options of State Administrative Procedure Act (SAPA) § 202-b(1) in developing this rule, flexibility does not exist for any particular entity since the new requirements are consistent with requirements that are already in effect.

Small Business and Local Government Participations:

The Department will meet the requirements of SAPA § 202-b(6) in part by publishing a

notice of proposed rulemaking in the State register with a comment period. The Department has not solicited input prior to publication as the proposed amendments are required by statute, do not change existing procedures in any substantive manner and will, therefore, have no deleterious effect on small businesses and local governments.

Rules that Either Establish or Modify a Violation or Penalties Associated with a Violation:

A licensed home care services agency which fails to submit a complete and accurate set of all required registration materials by the deadline established by the Commissioner shall be required to pay a fee of \$500 for each month or part thereof that the licensed home care services agency is in default. The statute allows for the LHCSA to register at any time, however, the fines will continue to be incurred.

A licensed home care services agency that failed to register in the prior year by the deadline of the current year shall not be permitted to register for the upcoming registration period unless it submits any unpaid late fees.

A licensed home care services agency is prohibited from providing nursing services, home health aide services, or personal care services, or receive reimbursement from any source for the provision of such services during any period of time on or after January 1, 2019, unless it has registered with the Department.

The Department shall institute proceedings to revoke the license of any licensed home care services agency that fails to register for two annual registration periods, whether or not such periods are consecutive. The Department shall have the discretion to pursue revocation of the license of a licensed home care services agency on grounds that it evidences a pattern of late registration over the course of multiple years.

The registration will be incorporated as part of the annual statistical reports already required to be submitted by licensed home care services agencies. Therefore, the new state regulation will require one additional form to be completed. A licensed home care services agency that fails to submit a complete and accurate set of all required registration materials by the annual deadline of November 16th is required to pay a fee of \$500 for each month or part thereof that the licensed home care services agency is not registered. No licensed home care services agency shall be operated, provide nursing services, home health aide services, or personal care services, or receive reimbursement from any source for the provision of such services during any period of time on or after January 1, 2019, unless it has registered for the current period.

STATEMENT IN LIEU OF RURAL AREA FLEXIBILITY ANALYSIS

All counties in New York State (NYS) have rural areas with the exception of seven (7) downstate counties. Approximately 80% of licensed home care services agencies are licensed to serve counties with rural areas. No rural area flexibility analysis is required pursuant to § 202-bb(4)(a) of SAPA. The proposed amendment does not impose an adverse impact on facilities in rural areas and it does not impose additional reporting, record keeping or other compliance requirements on facilities in rural areas. The proposed amendment to require licensed home care agencies to complete registration seeks information regarding operational agencies and to assure home care availability in rural areas as an alternative to institutional care.

**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.

Pursuant to the authority vested in the Public Health and Health Planning Council and Commissioner of Health by sections 2803(2)(a) and 2805-y(4) of the Public Health Law, sections 405.9, 405.18, 405.19, 405.20, 407.5, and 751.5 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) are hereby amended, to be effective upon filing of a Notice of Adoption in the New York State Register:

Subparagraph (ii) of paragraph (11) of subdivision (b) of section 405.9 of Title 10 is amended to read as follows:

(ii) If a patient eligible for transfer to a hospital operated by the Veteran's Administration requests such transfer, hospital staff shall make such arrangements. Transfer shall be effected in accordance with paragraph [(g)(7)] (h)(7) of this section.

Subdivision (g) is relettered as (h) and a new subdivision (g) is added to section 405.9 of Title 10 to read as follows:

(g) Human Trafficking. The hospital shall provide for the identification, assessment, and appropriate treatment or referral of individuals who are suspected to be human trafficking victims, as that term is defined in section 483-aa of the Social Services Law and used in Article 10-D of the Social Services Law. The hospital shall establish and implement written policies and procedures, which shall apply to all service units of the hospital and, at a minimum, shall meet the following requirements:

(1) Policies and procedures shall provide for the identification, assessment, and appropriate treatment or referral of individuals who are suspected to be human trafficking victims;

(2) In the case of individuals who are suspected to be human trafficking victims and are under eighteen years old, policies and procedures shall provide for the reporting of such persons as an abused or maltreated child if required under Title 6 of Article 6 of the Social Services Law;

(3) The hospital shall inform individuals who are suspected to be human trafficking victims of services that may be available, including those referenced in Article 10-D of the Social Services Law. Referrals also may be made to other health care providers, appropriate state agencies, and/or other providers of services as appropriate. Such information may be provided verbally and/or in writing as appropriate;

(4) The hospital shall post the human trafficking hotline poster issued by the National Human Trafficking Resources Center, or a variation of such poster created by the Office of Temporary and Disability Assistance (OTDA) consistent with section 483-ff of the Social Services Law, whichever OTDA makes available on its website. Posters shall be placed in conspicuous locations near primary public entrances and where other posters and notices are posted; and

(5) The hospital shall establish and implement training, which may be incorporated into current training programs, for all individuals licensed or certified pursuant to Title 8 of the Education Law who provide direct patient care, and for all security personnel, regarding the policies and procedures established pursuant to this subdivision. Such training shall include training in the

recognition of indicators of a human trafficking victim and the responsibilities of such personnel in dealing with persons suspected as human trafficking victims.

Subdivision (h) of section 405.9 of Title 10 is relettered as (i) and subparagraph (ii) of paragraph (7) of the former subdivision (g), now relettered as subdivision (h), of section 405.9 of Title 10 is amended to read as follows:

(ii) Patients discharged from the hospital by their attending practitioner shall not be permitted to remain in the hospital without the consent of the chief executive officer of the hospital except in accordance with provisions of subdivision [(h)] (i) of this section.

Subparagraph (vi) of paragraph (2) of subdivision (b) of section 405.18 of Title 10 is amended to read as follows:

(vi) In accordance with the provisions of section [405.9(g)] 405.9(h) of this Part, rehabilitation therapy staff shall work with the attending practitioner, the nursing staff, other health care providers and agencies as well as the patient and the family, to the extent possible, to assure that all appropriate discharge planning arrangements have been made prior to discharge to meet the patient's identified needs.

New paragraph (6) is added to subdivision (c) of section 405.19 of Title 10 to read as follows, and existing paragraphs (6) through (10) are renumbered (7) through (11):

(6) The emergency service shall provide for the identification, assessment, and appropriate treatment or referral of individuals who are suspected to be human trafficking victims, as described in subdivision (g) of section 405.9 of this Part.

Paragraph (5) of subdivision (c) of section 405.20 of Title 10 is amended, paragraph (6) is renumbered (7) and a new paragraph (6) is added to read as follows:

(5) identification, assessment, and referral of individuals with documented substance use disorders or who appear to have or be at risk for substance use disorders, as that term is defined in section 1.03 of the Mental Hygiene Law, as described in subdivision (f) of section 405.9 of this Part; [and]

(6) compliance with the human trafficking provisions pertaining to the identification, assessment, and appropriate treatment or referral of individuals who are suspected to be human trafficking victims, as described in subdivision (g) of section 405.9 of this Part; and

Paragraph (6) of subdivision (b) of section 407.5 of Title 10 is amended to read as follows:

(6) Discharge/transfer. Hospitals shall comply with the provisions of paragraph (1) of subdivision [(h)](i) of section 405.9 of this Title concerning discharge/transfer. In addition, PCHs and CAHs shall comply with the following:

* * *

A new paragraph (8) is added to subdivision (a) of section 751.5 of Title 10, and paragraphs (8) through (16) are renumbered (9) through (17), to read as follows:

(8) the identification, assessment, and appropriate treatment or referral of individuals who are suspected to be human trafficking victims, as that term is defined in section 483-aa of the Social Services Law and used in Article 10-D of the Social Services Law; training in the recognition of indicators of a human trafficking victim and the responsibilities of such personnel in dealing with persons suspected as human trafficking victims, the reporting of individuals who are suspected to be human trafficking victims and are under eighteen years old as abused or maltreated children if required under Title 6 of Article 6 of the Social Services Law; and the posting of the human trafficking hotline poster issued by the National Human Trafficking Resources Center, or a variation of such poster created by the Office of Temporary and Disability Assistance (OTDA) consistent with section 483-ff of the Social Services Law, whichever OTDA makes available on its website, in conspicuous locations near primary public entrances and where other posters and notices are posted;

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (PHL) § 2803(2)(a) authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner of Health (Commissioner), to implement PHL Article 28 and establish minimum standards for health care facilities.

PHL § 2805-y(4) authorizes the Commissioner to issue regulations, in consultation with the Office of Temporary and Disability Assistance (OTDA) and the Office of Children and Family Services (OCFS), to implement the section, which requires “subject facilities” (general hospitals, public health centers, diagnostic centers, treatment centers, or outpatient departments) to develop, maintain, and train staff in policies and procedures for the identification, assessment, treatment, and referral of human trafficking victims.

Legislative Objectives:

This proposal will implement PHL § 2805-y, added by Chapter 408 of the Laws of 2016, to require general hospitals and diagnostic and treatment centers (D&TCs), which encompass the entities referenced as “subject facilities” in the statute, to establish policies and procedures for the identification, assessment, treatment, and referral of human trafficking victims and to train staff in such policies and procedures. The policies and procedures must include the posting of a human trafficking hotline poster consistent with the objectives of Social Services Law (SSL) § 483-ff, added by Chapter 311 of the Laws of 2016.

As explained below, a 2007 law established new crimes related to human trafficking and made various health and social services available to victims. More recent enactments reflect a

legislative desire to combat this growing issue by requiring that general hospitals and D&TCs adopt procedures to identify victims, treat and/or refer them for other services as appropriate, and post a hotline number in public areas where victims may be present.

Needs and Benefits:

The scale of the human trafficking problem constitutes a public health crisis impacting people and their families throughout New York. Legislation enacted in 2007 greatly expanded the tools available to address the issue, but human trafficking nevertheless remains prevalent. A recent study found that 69 percent of survivors surveyed indicated they had accessed health care services at some point during their trafficking. Chapter 408 of the Laws of 2016 recognized this additional opportunity to support human trafficking victims by requiring general hospitals and D&TCs to establish and implement policies to identify, assess, and treat or refer individuals suspected of being victims. Similarly, Chapter 311 of the Laws of 2016 sought to publicize information about resources for human trafficking victims in public areas where victims are likely to be present, including hospitals and clinics.

The New York State Anti-Trafficking Statute, Chapter 74 of the Laws of 2007, was enacted in light of the growing problem of human trafficking for “forced labor, involuntary domestic servitude, or sexual exploitation.” The sponsor’s memorandum noted that victims – frequently children – may be trafficked within or into the United States and New York often serves as a hub of such activity. Among other things, the law added Penal Law §§ 135.35 and 230.34 to establish the crimes of labor trafficking and sex trafficking, respectively.

The 2007 enactment, as amended in 2015, also added SSL Article 10-D providing for services to human trafficking victims. SSL § 483-aa(a) defines a “human trafficking victim” as a

victim of sex trafficking or labor trafficking under the above-referenced Penal Law sections. SSL § 483-bb provides that OTDA may contract with non-governmental entities to make available services, including case management, emergency temporary housing, health care, mental health counseling, and drug addiction screening and treatment, to “pre-certified” human trafficking victims. SSL § 483-aa(b) defines “pre-certified victim of human trafficking” as a person with a pending application for federal certification as a victim of a severe form of trafficking in persons as defined in section 7105 of title 22 of the United States Code (Trafficking Victims Protection) but has not yet obtained such certification, or a person who has reported a crime to law enforcement and it reasonably appears to law enforcement that the person is such a victim.

SSL § 483-cc sets forth procedures for confirming an individual’s status as a human trafficking victim. Under that section, a law enforcement agency or district attorney’s office that encounters a person who reasonably appears to be a human trafficking victim must notify OTDA and the Division of Criminal Justice Services (DCJS) that the individual may be eligible for services under SSL Article 10-D. To activate this process, a law enforcement agency or district attorney’s office must use the *New York State Referral of Human Trafficking Victim Form* available on the OTDA website at <http://otda.ny.gov/programs/bria/trafficking.asp>. Providers of social or legal services designated by an applicable state agency (OTDA, the Office for the Prevention of Domestic Violence, or the Office of Victim Services) that encounter a person who reasonably appears to be a human trafficking victim may submit the form if the individual consents.

Upon receipt of the form, DCJS, in consultation with OTDA and the referring agency or office, assesses whether the person meets the criteria for certification as a victim of a severe form

of trafficking in persons as defined in 22 U.S.C. § 7105 or appears to be otherwise eligible for any federal, state or local benefits and services. If so, OTDA reports such finding to the victim and the referring entity and may assist the victim in receiving services. This finding is referred to as “confirmation” as a victim of human trafficking.

Chapter 311 of the Laws of 2016 added a new SSL § 483-ff requiring OTDA to make available on its website the hotline poster issued by the National Human Trafficking Resources Center (NHTRC) or a version created by OTDA. The section provides for OTDA to consult with other state agencies to encourage that the posters be placed where human trafficking victims may be present, including hospitals and urgent care centers, in conspicuous places near primary public entrances or where posters and notices are customarily placed.

Chapter 408 of the Laws of 2016 added new PHL § 2805-y to require “subject facilities” to establish and implement policies and procedures pertaining to victims of human trafficking. New PHL § 2805-y(1) defines key terms such as “subject facilities,” defined to mean general hospitals, public health centers, diagnostic centers, treatment centers or outpatient departments, and provides that the requirements of PHL § 2805-y applies to all service units that include emergency services, pediatrics, obstetrics and gynecology, orthopedics, internal medicine, family medicine, radiology, surgery, psychiatry and dental services to the extent the facility maintains a dental clinic, center, or department on site of the facility.

New PHL § 2805-y(2) requires subject facilities to establish and implement written policies and procedures for the identification, assessment, and appropriate treatment or referral of persons suspected of being human trafficking victims, as that term is defined by SSL § 483-aa. Further, policies and procedures must provide for referral of human trafficking victims under the

age of 18 to the Statewide Central Register of Child Abuse and Maltreatment (SCR) established pursuant to SSL Title 6, Article 6 if required by that law.

New PHL § 2805-y(3) also requires subject facilities to require all “subject facility personnel” – defined as nursing, medical, social work and other clinical care personnel as well as security personnel – to complete training regarding such policies and procedures. This must include training in the recognition of indicators of a human trafficking victim and the responsibilities of such personnel in dealing with persons suspected of being victims.

Finally, new PHL § 2805-y(4) authorizes the Commissioner to identify organizations or providers that could provide training for general hospitals consistent with the new provisions. The subdivision also authorizes the issuance of regulations, in consultation with OTDA and OCFS, as necessary to carry out the new section.

Consistent with these requirements, this proposal will amend 10 NYCRR §§ 405.9, 405.19, 405.20, and 751.5 to require general hospitals and D&TCs to establish written policies and procedures for the identification, assessment, and appropriate treatment or referral of individuals who are or appear to be a human trafficking victim and train staff in such policies and procedures. Referrals may be provided verbally and/or in writing as appropriate. Policies, procedures and training must include information about the referral process overseen by OTDA and DCJS. While the proposed regulations do not mandate that hospitals and D&TCs use the *New York State Referral of Human Trafficking Victim Form*, they are strongly encouraged to do so when they can secure the victim’s consent.

In addition, there are other sources of assistance that the victim can be referred to, such as the NHTRC hotline, that provide confidential assistance to those victims who do not feel comfortable being referred to OTDA and DCJS. Further, the proposed regulation requires

posting of the NHTRC hotline poster or other variation developed by OTDA in conspicuous locations, which is consistent with the objectives of SSL § 483-ff. The poster designated for such purpose by OTDA is available at <http://otda.ny.gov/programs/bria/trafficking.asp>.

Under the law, policies and procedures and training must also include the reporting of human trafficking victims under 18 years of age to the SCR if required under SSL Title 6, Article 6. Medical and hospital personnel already serve as mandated reporters who are required to make reports to the SCR if they suspect child abuse or maltreatment. As reiterated by Chapter 408, if an individual appears to be a human trafficking victim under the age of 18, mandated reporters in hospitals and D&TCs must make a report if required under SSL Title 6, Article 6.

COSTS:

Costs to Private Regulated Parties:

While current regulations do not specifically refer to individuals who are human trafficking victims, general hospitals and D&TCs are already required to have written policies and procedures for various operational requirements, train staff in such policies and procedures, and refer patients to appropriate follow-up care. The proposed regulations do require additional effort to ensure that the policies and training include the identification, assessment, and appropriate treatment or referral of individuals who are suspected victims of human trafficking, consistent with PHL § 2805-y. However, the additional costs are expected to be minimal given the existing training infrastructure in general hospitals and D&TC's. In addition, these efforts are expected to assist individuals in obtaining treatment critical for their overall health and well-being and could help such individuals avoid future emergency room visits and hospital admissions. Therefore, the cost of implementing the proposed regulations is likely to be offset

by a reduction in care provided at no, or low, cost to victims of human trafficking.

Costs to Local Government:

This proposal will not impact local governments unless they operate a general hospital or a D&TC, in which case the impact would be the same as outlined above for private parties.

Costs to the Department of Health:

The proposed regulatory changes will not result in any additional costs to the Department.

Costs to Other State Agencies:

The proposed regulatory changes may result in additional costs to other state agencies if referrals increase and more victims access available services, but this would be consistent with the objectives of the statute. OTDA, OCFS, and DCJS have existing materials related to human trafficking available on their websites.

Local Government Mandate:

The proposed regulations do not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district, unless such local government operates a hospital or D&TC.

Paperwork:

General hospitals and D&TCs are already required to establish written policies and procedures related to various operational requirements, train staff, and refer patients. Therefore, the proposed regulations should not significantly increase their paperwork.

Duplication:

Existing regulations require hospitals to make appropriate referrals for patients to a variety of services, but do not specifically reference human trafficking victims. There otherwise are no relevant State or federal regulations which duplicate, overlap or conflict with the proposed regulations.

Alternatives:

There are no alternatives to the proposed regulations related to hospital policies and procedures, which are necessary to implement the provisions of PHL § 2805-y, added by Chapter 408 of the Laws of 2016, and SSL § 483-ff, added by Chapter 311 of the Laws of 2016.

Federal Standards:

There are currently no federal requirements for hospitals to adopt policies and procedures for the identification, assessment, treatment, and referral of human trafficking victims.

Compliance Schedule:

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

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REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect of Rule:

The proposed regulatory provisions related to human trafficking will apply to all general hospitals and diagnostic and treatment centers (D&TCs) in New York State. This proposal will not impact local governments or small business unless they operate a general hospital or D&TC, in which case the requirements will be the same as for those entities.

Compliance Requirements:

These regulations will require general hospitals and D&TCs to develop, maintain and disseminate written policies and procedures for the identification, assessment, and appropriate treatment or referral of victims of human trafficking. These facilities will be required to train their licensed and certified clinical staff members as well as security staff members in such policies and procedures. In addition, the policies must incorporate the posting of a poster with human trafficking hotline information, available on the Office of Temporary and Disability Assistance website, in conspicuous places.

Professional Services:

While the current regulations do not specifically refer to individuals who are human trafficking victims, general hospitals and D&TCs are already required to establish written policies and procedures related to various operational requirements, train staff in such policies and procedures and refer patients to appropriate follow-up care. As such, the Department

anticipates that no additional professional services will be required for general hospitals and D&TCs to comply with this proposed regulation.

Compliance Costs:

While the current regulations do not specifically refer to individuals who are or may be victims of human trafficking, general hospitals and D&TCs are already required to have written policies and procedures related to various operational requirements, train staff in such policies and procedures and refer patients to appropriate follow-up care. The proposed regulations do require additional effort to ensure that the policies and training include the identification, assessment and referral of individuals who are suspected victims of human trafficking, consistent with the requirements of PHL § 2805-y. However, the additional costs are expected to be minimal given the existing training infrastructure in general hospitals and D&TC's. In addition, these efforts are expected to assist individuals in obtaining treatment critical for their overall health and well-being and could help such individuals avoid future emergency room visits and hospital admissions. Therefore, the cost of implementing the proposed regulations is likely to be offset by a reduction in care provided at no, or low, cost to victims of human trafficking.

Economic and Technological Feasibility:

This proposal is economically and technically feasible. Although existing regulations do not specifically refer to human trafficking victims, general hospitals and diagnostic and treatment centers are already required to establish written policies and procedures related to various operational requirements, train staff in such policies and procedures and refer patients to appropriate follow-up care.

Minimizing Adverse Impact:

The impact of this proposal is expected to be minimal as general hospitals and D&TCs are already required to have written policies and procedures related to various operational requirements, train staff in such policies and procedures and refer patients to appropriate follow-up care.

To assist hospitals and D&TCs with the development of their policies, procedures and training materials, several state agencies have provided resources that are free of charge to the public. For example:

- A course entitled "NYSDOH Human Trafficking Awareness Training," available on the Department's NYLearnsPH.com Learning Management System at [https://www.nylearnsph.com/public](https://www.nylearnsph.com/public;);
- Materials on human trafficking on the OTDA website at <https://otda.ny.gov/programs/bria/trafficking.asp>;
- Materials on human trafficking on the OCFS website at <http://ocfs.ny.gov/main/humantrafficking/default.asp>;
- Materials on human trafficking on the website of the Division of Criminal Justice Services <http://www.criminaljustice.ny.gov/pio/humantrafficking/humantrafficking.htm>

In addition, these efforts are expected to assist individuals in obtaining treatment critical for their overall health and well-being and could help such individuals avoid future emergency room visits and hospital admissions. Therefore, the cost of implementing the proposed regulations is likely to be offset by a reduction in care provided at no, or low, cost to victims of human trafficking.

Small Business and Local Government Participation:

Organizations representing health care providers and other stakeholders, including organizations whose members include general hospitals or diagnostic and treatment centers that

are operated by local governments or that constitute small businesses, were consulted on the proposed regulations.

Cure Period:

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

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>).

Approximately 17% of small health care facilities are located in rural areas.

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 47 general hospitals, approximately 90 diagnostic and treatment centers, 159 nursing homes, and 92 certified home health agencies in rural areas.

Reporting, Recordkeeping, Other Compliance Requirements and Professional Services:

The proposed regulation is applicable to those general hospitals and diagnostic and treatment centers located in rural areas and is expected to impose only minimal costs upon hospitals, which are already required to establish written policies and procedures related to various operational requirements, train staff in such policies and procedures and refer patients to appropriate follow-up care. Because the proposed regulatory requirements can be incorporated into existing processes, they are not expected to substantially increase the administrative burden on these entities.

Costs:

While the current regulations do not specifically refer to individuals who may be victims of human trafficking, general hospitals and diagnostic and treatment centers (D&TCs) are already required to have written policies and procedures related to various operational requirements, train staff in such policies and procedures and refer patients to appropriate follow-up care. The proposed regulations do require additional effort to ensure that the policies and training include the identification, assessment and referral of individuals who are suspected victims of human trafficking, as well as the provision of information related to appropriate services, consistent with the requirements of the statute. However, the additional costs are expected to be minimal given the existing training infrastructure in general hospitals and D&TC's. In addition, these efforts are expected to assist individuals in obtaining treatment

critical for their overall health and well-being and could help such individuals avoid future emergency room visits and hospital admissions. Therefore, the cost of implementing the proposed regulations is likely to be offset by a reduction in care provided at no, or low, cost to victims of human trafficking.

Minimizing Adverse Impact:

The impact of this proposal is expected to be minimal as general hospitals and D&TCs are already required to have written policies and procedures related to various operational requirements, train staff in such policies and procedures and refer patients to appropriate follow-up care.

To assist hospitals and D&TCs with the development of their policies, procedures and training materials, several state agencies have provided resources that are free of charge to the public. For example:

- A course entitled "NYSDOH Human Trafficking Awareness Training," available on the Department's NYLearnsPH.com Learning Management System at <https://www.nylearnsph.com/public>;
- Materials on human trafficking on the OTDA website at <https://otda.ny.gov/programs/bria/trafficking.asp>;
- Materials on human trafficking on the OCFS website at <http://ocfs.ny.gov/main/humantrafficking/default.asp>;
- Materials on human trafficking on the website of the Division of Criminal Justice Services <http://www.criminaljustice.ny.gov/pio/humantrafficking/humantrafficking.htm>

In addition, these efforts are expected to assist individuals in obtaining treatment critical for their overall health and well-being and could help such individuals avoid future emergency room visits and hospital admissions. Therefore, the cost of implementing the proposed regulations is likely to be offset by a reduction in care provided at no, or low, cost to victims of

human trafficking.

Rural Area Participation:

Organizations that include as members general hospitals and D&TCs located in rural areas were consulted on the proposed regulations.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

No job impact statement is required pursuant to section 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.

SUMMARY OF EXPRESS TERMS

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 573 of the Public Health Law, Part 19 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, as follows:

Section 19.1 is amended to include definitions for “assistant director,” “board certified,” “earned doctoral degree,” “training,” and “experience.” The definitions of “acceptable laboratory” and “category” are also revised and clarified. Section 19.1 is further revised to expressly recognize physicians and dentists who are licensed in the countries in which they practice as being able to qualify as directors or assistant directors of clinical laboratories or blood banks.

Section 19.2 is amended to recognize additional accrediting boards for purposes of certifying that applicants meet the educational and training requirements needed to be a director or assistant director of a clinical laboratory or blood bank.

Section 19.3 is amended to provide the Department more flexibility in updating the certificate of qualification categories. Amendments to this section will also allow the Department to issue certificates of qualification with limitations based on an applicant’s specific experience. In addition, this section is amended to include additional director responsibilities, such as ensuring staff competency, specifying in writing the responsibilities and duties of all laboratory personnel, having standard operating procedure manuals, and participating in acceptable proficiency testing.

Section 19.4 is amended for clarity and to remove references to New York City laboratory permits, which are obsolete.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 573 of the Public Health Law, Part 19 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, as follows:

19.1 Definitions.

(a) [Clinical laboratory director] Director means the individual responsible for administration of the technical and scientific operation of a clinical laboratory or blood bank, including supervision of test procedures, the reporting of results, and the duties and responsibilities specified in section 19.3 of this Part. If a clinical laboratory or blood bank employs more than one director, the laboratory owner(s) shall designate in writing one such individual as the director of record for the laboratory.

(b) Assistant director means a director who has been designated by the owner(s) of the laboratory as having shared responsibility with a director for the technical and scientific operation of the clinical laboratory or blood bank in one or more categories and/or subcategories.

[(b)] (c) Acceptable laboratory means [a clinical laboratory or blood bank of a hospital, health department, university, medical research institution, independent clinical laboratory or blood bank, or other facility providing equivalent training and/or experience in patient specimen testing, which has a director who meets or would meet the requirements of this Part and which meets or would meet the commissioner's standard as outlined in Part 58 of this Title.] a facility, operating lawfully, that meets the definition of a clinical laboratory or blood bank as defined in Section 571 of the Public Health Law and which has a director who meets or would meet the

requirements of this Part, including the anatomic and clinical pathology facilities of a hospital or health department, a clinical testing unit of a university or medical research institution, an independent clinical laboratory or blood bank, a privately operated forensic testing laboratory, or a facility providing training and/or experience in the testing of human specimens.

[(c)] (d) Accredited means having the approval (accreditation) conferred on schools, institutions or programs by an accrediting agency or association recognized by the United States Secretary of Education and verified as such by the [commissioner] department.

[(d)] (e) Physician means a physician who is licensed and currently registered to practice medicine in New York State or in the state or the country in which he or she practices and is not subject to any disciplinary or non-disciplinary order by the applicable state or country except as otherwise allowed by the department.

[(e)] (f) Dentist means a dentist who is licensed and currently registered to practice dentistry in New York State or in the state or the country in which he or she practices and is not subject to any disciplinary or non-disciplinary order by the applicable state or country except as otherwise allowed by the department.

[(f)] (g) Certificate of qualification means a credential issued by the department to applicants [meeting] determined by the department to meet the requirements set forth in this Part.

[(g)] (h) Grandfathered laboratory director means a laboratory director who qualified for and received a certificate of qualification in one or more categories of testing prior to the amendment of this regulation which became effective January 25, 1988.

[(h)] (i) Category means an area, [procedure, or specialty of laboratory medicine specified in section 19.3(d) of this Part.] field, or discipline of laboratory medicine or laboratory science in

which a certificate of qualification is issued. The department may issue certificates of qualification in a specified subpart of a category, including, but not limited to, a subcategory, technology, method, or specific procedure, based on the applicant's education, training, and experience and the applicant's ability to demonstrate that tests performed under their direction generate reliable results. The department shall make available a list of: categories and subcategories in which certificates of qualification are issued; minimum qualifications for each category; and the corresponding categories of testing authorized by a laboratory permit.

(i) Blood banking-collection means collection of blood or blood components, or processing of blood or blood products.

(j) Referring physician means a physician or other person authorized by law to order laboratory tests and receive reports, as specified in Subpart 58-1 of this Title.

(k) Virology means isolation and other characterization of virus.

(l) Diagnostic immunology means application of immunologic techniques to detect the presence of antigens in biologic fluids and determine host-antibody responses.

(m) Transfusion service means a service which issues blood or blood components for administration into a person, but does not include a limited transfusion service, as defined in section 58-2.1(k) of this Title.

(n) Genetic testing means enzyme, substrate, and DNA-based analyses, or qualitative and/or quantitative measurement of other body analytes, undertaken to determine the genetic status (carrier or disease) of a person.]

(j) Department means the New York State Department of Health.

(k) Board certified means having completed all requirements set forth by an accrediting board

acceptable to the department, including a passing score on any qualifying examination and completion of all the requirements for recertification whenever the certifying board mandates recertification, provided such requirements are determined by the department to provide the applicant with the ability to effectively discharge the responsibilities described in Parts 10 and 58 of this title.

(l) Earned doctoral degree means a doctor of philosophy, doctor of science, or equivalent degree as determined by the department.

(m) Training includes participation in a residency, fellowship, or post-doctoral position, or participation in a training course approved by a board acceptable to the department.

(n) Experience includes post-doctoral employment or voluntary participation in an acceptable laboratory where the applicant performed, supervised or directed testing of human clinical specimens. Teaching experience directly related to a medical technology program, clinical laboratory sciences program, or a clinical laboratory section of a residency program is also considered acceptable experience.

19.2 Clinical laboratory or blood bank; qualifications of laboratory director.

[The] A director and any assistant director of a clinical laboratory or blood bank [must] shall possess training and/or experience acceptable to the department, obtained within the previous six years, [in generally accepted and currently used methods and techniques] in one or more categories, [listed in section 19.3(d) of this Part, and] Additionally, the applicant must meet one of the following requirements:

(a) be a physician who is currently certified by [the American Board of Pathology in]:

(1) the American Board of Pathology in:

[(1)](i) clinical pathology; or

[(2)](ii) anatomic pathology; or

[(3) An area of special competence relevant to the certificate of qualification sought; or] (iii) dermatopathology; or

(2) the American Osteopathic Board of Pathology in:

(i) laboratory medicine; or

(ii) anatomic pathology; or

(iii) dermatopathology; or

(b) be a physician in the State of New York who:

(1) is currently certified by the American Board of Pathology in Blood Banking and Transfusion Medicine; or

(2) is currently certified by the American Board of Pathology in Clinical Pathology or the American Board of Internal Medicine in Hematology, and possesses six months of training and/or experience in transfusion services; or

(3) possesses four years of training and/or experience in an acceptable laboratory including two or more years of training and/or experience in transfusion services and in general laboratory management.

[(b)](c) be a dentist who is currently certified by the American Board of Oral and Maxillofacial Pathology; or

[(c)](d) be a physician, or hold an earned doctoral degree from an accredited institution with a relevant chemical, physical or biological science major, and:

(1) is currently certified by one of the following boards and meets any supplemental requirements for experience as specified by the department:

- (i) [the American Board of Medical Microbiology] the American Board of Bioanalysis as a High Complexity Laboratory Director, provided the applicant has obtained a minimum of four years of post-doctoral experience equivalent to paragraph (2) of this subdivision; or
- (ii) the American Board of Clinical Chemistry in clinical chemistry; or
- (iii) the American Board of Clinical Chemistry in toxicological chemistry; or
- (iv) the American Board of Dermatology; or
- [(iv)](v) the American Board of Forensic Toxicology, provided the applicant has an earned doctoral degree; or
- [(v) the American Board of Medical Laboratory Immunology; or]
- (vi) the American Board of Internal Medicine in hematology or hematology and medical oncology; or
- (vii) the American Board of Medical Laboratory Immunology; or
- (viii) the American Board of Medical Microbiology; or
- (ix) dual certification by the American Board of Pathology in either Anatomic Pathology or Clinical Pathology, and Molecular Genetic Pathology; or
- (x) the American Board of Pathology in Medical Microbiology; or
- (xi) the National Registry for Certified Chemists, provided the applicant has obtained a minimum of four years of post-doctoral experience equivalent to paragraph (2) of this subdivision; or
- (2) subsequent to receiving a doctor of medicine, doctor of [osteopathy] osteopathic medicine or earned doctoral degree has had, and has documented to the department, four years of training and/or experience in an acceptable laboratory, including two or more years of training and/or experience in methods and techniques currently in use in the certificate category or categories

sought and in general laboratory management, or an equivalent combination of training and/or experience as verified by the [commissioner] department.

[(d) A transfusion facility director shall be a physician licensed to practice medicine in the State of New York.]

19.3 Director of a clinical laboratory or blood bank; certificate of qualification issuance, duties and responsibilities.

(a) Certificate required. [A]An individual serving as a director or assistant director of a clinical laboratory or blood bank must hold a certificate of qualification issued after the [commissioner] department has determined that the applicant meets the requirements specified in sections 19.2 and 19.3[(e)] of this Part, and has demonstrated, in accordance with subdivision (c) of this section and section 19.4(a) of this Part, that he or she possesses the character, competence, training, and ability to direct the technical and scientific operation of a clinical laboratory or blood bank, and ensure the proper supervision or performance of test procedures, adherence to the department's quality control standards, and accurate reporting of findings of tests.

(b) An applicant for a certificate of qualification must submit a complete, original, signed, and sworn application in such form and manner as may be required by the department, and must supply such additional information as may be required by the department. An individual seeking renewal of a certificate of qualification must submit an application no later than 90 days prior to expiration of the current certificate.

(c) [To function effectively in fulfilling his or her duties and responsibilities,] To qualify for, and maintain, a certificate of qualification, a laboratory director and any assistant director [should

possess a] shall demonstrate that he or she possesses knowledge of basic clinical laboratory sciences and operations, and [should] shall have the training and/or experience and physical capability to discharge the following responsibilities:

(1) provide advice to referring [physicians] health care providers regarding the significance of laboratory findings and ensure that reports of test results include pertinent information required for the interpretation of laboratory data;

* * *

(3) define, implement, and monitor standards of performance [in quality control and quality assurance] for the laboratory and for other ancillary laboratory testing programs in conformance with the department's clinical laboratory standards of practice;

* * *

(5) assure that the laboratory participates in monitoring and evaluating the quality and appropriateness of services rendered, within the context of [the quality assurance program] a quality management system, regardless of where the testing is performed;

* * *

(7) [set goals and develop and allocate resources within the laboratory] ensure that policies and procedures are established for monitoring staff to assess competency and, whenever necessary, to provide remedial training to improve skills;

(8) [provide effective and efficient administrative direction of the laboratory, including budget planning and controls in conjunction with the individual(s) responsible for financial management of the laboratory] specify in writing the responsibilities and duties of all laboratory personnel;

(9) provide [educational direction] continuing education to laboratory staff;

(10) [select all reference laboratories; and] ensure that a current and complete procedure manual

is available to all personnel;

(11) [promote a safe laboratory environment for personnel and the public.] set goals, develop and allocate resources within the laboratory;

(12) provide effective administrative direction of the laboratory, in conjunction with the individual(s) responsible for financial management of the laboratory, to ensure adequate resources are available to operate the laboratory in a manner consistent with all state and federal requirements;

(13) select all reference laboratories for services not offered by the laboratory;

(14) promote a safe laboratory environment for personnel and the public; and

(15) ensure that the laboratory, when applicable, is enrolled in a proficiency testing program acceptable to the department for the testing performed and that the laboratory adheres to the proficiency testing program's administrative and technical requirements.

[(d) Certification. Certificates of qualification are issued in one or more of the following categories, procedures or specialties:

(1) one or more of the subspecialties of microbiology: bacteriology, virology, mycology, mycobacteriology, diagnostic immunology, and parasitology;

(2) hematology;

(3) immunohematology, excluding testing performed solely for transfusion purposes;

(4) one or more of the subspecialties of clinical biochemistry: clinical chemistry, blood pH and gases, endocrinology, and therapeutic substance monitoring/quantitative toxicology;

(5) histopathology, and/or the subspecialties: oral pathology and dermatopathology;

(6) cytopathology;

- (7) cytogenetics;
- (8) histocompatibility;
- (9) cellular immunology;
- (10) oncofetal antigens, and/or the subspecialties: tumor markers, maternal serum, and amniotic fluid;
- (11) genetic testing;
- (12) transfusion services, including all pre-transfusion testing;
- (13) blood banking collection-comprehensive, including all tests required in Subpart 58-2 of this Title;
- (14) blood banking collection-limited, including collection of autologous blood for transfusion and excluding testing for transmissible disease markers;
- (15) one or more of the subspecialties of clinical toxicology: drug analysis, blood lead, erythrocyte protoporphyrin, and chlorinated hydrocarbons;
- (16) forensic toxicology; or
- (17) other specific categories, procedures, or specialties designated by the department.]

[(e)](d) Required qualifications.

(1) Applicants for a certificate of qualification in bacteriology, mycobacteriology, mycology, and/or parasitology must qualify under section 19.2[(a)(1), (c)(1)(i), or (c)(2)](a)(1)(i), (a)(2)(i), (d)(1)(i), (d)(1)(viii), (d)(1)(x) or (d)(2) of this Part.

(2) Applicants for a certificate of qualification in virology must qualify under section 19.2[(c)(1)(i) or (c)(2)](d)(1)(viii), (d)(1)(x) or (d)(2) of this Part. Applicants for a certificate of qualification in virology limited to antigen detection and molecular methods must qualify under

section 19.2(a)(1)(i), (a)(2)(i) or (d)(1)(i) of this Part.

(3) Applicants for a certificate of qualification in diagnostic immunology must qualify under section 19.2[(a)(1), (c)(1)(i), (c)(2), or (c)(1)(v)](a)(1)(i), (a)(2)(i), (d)(1)(i), (d)(1)(vii), (d)(1)(viii), (d)(1)(x) or (d)(2) of this Part.

(4) Applicants for certificate of qualification in hematology must qualify under section 19.2[(a)(1), (c)(1)(vi), or (c)(2)](a)(1)(i), (a)(2)(i), (d)(1)(vi) or (d)(2) of this Part. Applicants qualifying under section 19.2[(c)(1)(vi)](d)(1)(vi) of this Part must document that the required training and/or experience includes or is supplemented by six months' training and/or experience in an acceptable laboratory.

(5) Applicants for a certificate of qualification in immunohematology must qualify under section 19.2[(a)(1) or (c)(2)](a)(1)(i), (a)(2)(i), or (d)(2) of this Part.

(6) Applicants for a certificate of qualification in [one or more of the subspecialties of clinical biochemistry] clinical chemistry, blood pH and gases, endocrinology, or therapeutic substance monitoring - quantitative toxicology must qualify under section 19.2[(a)(1), (c)(1)(ii), or (c)(2)](a)(1)(i), (a)(2)(i), (d)(1)(i), (d)(1)(ii), (d)(1)(xi) or (d)(2) of this Part.

(7) Applicants for a certificate of qualification in histopathology and/or cytopathology must qualify under section 19.2[(a)(2)](a)(1)(ii) or (a)(2)(ii) of this Part.

(8) Applicants for a certificate of qualification in oral pathology must qualify under section 19.2[(a)(2) or (b)](a)(1)(ii), (a)(2)(ii), or (c) of this Part.

(9) Applicants for a certificate of qualification in dermatopathology must qualify under section 19.2[(a)(2) or (a)(3)](a)(1)(ii), (a)(1)(iii), (a)(2)(ii), (a)(2)(iii) or (d)(1)(iv) of this Part.

(10) Applicants for a certificate of qualification in cytogenetics, histocompatibility, cellular immunology, [oncofetal antigens, and/or] genetic testing, fetal defect markers, forensic identity,

oncology, parentage/identity testing, trace elements, and/or transplant monitoring must qualify under section 19.2[(c)(2)](d)(2) of this Part.

(11) Applicants for a certificate of qualification in transfusion services must be physicians and must qualify under section 19.2[(a)(3) or (c)(2)](b)(1), (b)(2) or (b)(3) of this Part[, or under section 19.2(a)(1) or (c)(1)(vi) of this Part including or supplemented by at least six months' training and/or experience in transfusion services].

(12) Applicants for a certificate of qualification in blood banking collection-comprehensive must qualify under section 19.2[(c)(2)](d)(2) of this Part. Required experience in blood services must include at least one year's training and/or experience in collection and testing of blood for [homologous]allogeneic transfusion.

(13) Applicants for a certificate of qualification in blood banking collection-limited must qualify under section 19.2[(a)(1), (c)(1)(vi) or (c)(2)](a)(1)(i), (b)(1)(i), or (d)(1)(vi) of this Part.

(14) Applicants for a certificate of qualification in [one or more of the subspecialties of] clinical toxicology must qualify under section 19.2[(a)(1), (c)(1)(iii), (c)(1)(iv), or (c)(2)](a)(1)(i), (b)(1)(i), (d)(1)(i), (d)(1)(ii), (d)(1)(iii), (d)(1)(xi), or (d)(2) of this Part.

(15) Applicants for a certificate of qualification in forensic toxicology must qualify under section 19.2[(c)(1)(iii), (c)(1)(iv), or (c)(2)](d)(1)(iii), (d)(1)(v), or (d)(2) of this Part.

(16) Applicants for a certificate of qualification in andrology must qualify under section 19.2(d)(1)(i) or (d)(2) of this Part; or under section 19.2(a)(1)(i) or (b)(1)(i) of this Part including or supplemented by at least six months' training and/or experience in andrology.

(17) Applicants for a certificate of qualification in blood lead must qualify under section 19.2(a)(1)(i), (b)(1)(i), (d)(1)(i), (d)(1)(iii), (d)(1)(v), (d)(1)(xi), or (d)(2) of this Part.

[(f)] (e) Scope and limitations.

(1) The requirements for qualification set forth in section 19.2 of this Part shall apply to all laboratory directors, regardless of prior grandfathered status, upon expiration of current certificates of qualification[,] if the laboratory director is no longer employed in a laboratory or in the field of laboratory medicine.

(2) Additional categories of testing may not be added to a certificate of qualification issued on a grandfathered basis. Such a certificate [may] will not be renewed if allowed to lapse[, unless extenuating circumstances prevent timely reapplication and specific departmental approval is obtained].

19.4 Denial of an application for a certificate of qualification.

(a) In determining whether to deny an application for a certificate of qualification in whole or in part, the department shall consider: the applicant's education, experience, and licensure as required in sections 19.2 and 19.3 of this Part; the applicant's demonstrated ability to discharge the responsibilities set forth in section 19.3(c) of this Part; the character and competence of the applicant and the laboratory or laboratories directed; and any other factors the department considers relevant, including, but not limited to:

* * *

(3) false representation or omission of any material fact in making an application in any state or city of the United States for any license, permit, certificate, or registration related to a profession or business, or in making an application for a certificate of qualification or laboratory permit to New York State [or New York City];

* * *

(6) on the part of any laboratory, category, or subcategory directed by the applicant, a pattern of

repetitive failures of required proficiency testing performance in one or more proficiency testing categories, excluding failure for administrative reasons such as late result submission;

(7) on the part of any laboratory, category, or subcategory directed by the applicant, a pattern of deficiencies on onsite inspection, especially in areas of quality control, quality assurance, laboratory management, and handling of regulated medical waste and radioactive materials, including refusal or inability to produce records as requested by department employees, which deficiencies are not corrected from inspection to inspection or which recur at each [annual] inspection despite written notice of violations by a state or Federal licensing or auditing agency and which jeopardize the quality of test results and resulting patient care, even if interim corrections have occurred;

(8) on the part of any laboratory, category, or subcategory directed by the applicant, performance of any laboratory procedures not authorized by the laboratory permit issued pursuant to article 5, Title V of the Public Health Law; or operation or direction of a laboratory without a permit; or continuing operation or failure to notify the department after a change in director, ownership, or location has voided the permit;

[(9) unless the laboratory is owned and operated by the State of New York, performance of tests on specimens collected in New York City while the laboratory directed by the applicant lacks a New York City permit to perform such tests;]

[(10)](9) on the part of any laboratory, category, or subcategory directed by the applicant, referral of specimens collected in New York State [outside of New York City] to laboratories which do not possess a New York State permit;

[(11)](10) on the part of any laboratory, category, or subcategory directed by the applicant, knowing acceptance of specimens or requisitions for laboratory examination from, or issuance of

reports to, a person or persons not authorized by law to submit such specimens or requisitions, or receive such reports;

[(12)](11) on the part of any laboratory, category, or subcategory directed by the applicant, issuance of reports on laboratory work, including both patient samples and proficiency testing, actually performed in another laboratory, without designating the fact that the examinations or procedures were performed in another laboratory; and/or testing and reporting results on unsatisfactory specimens as defined by the department, including unlabeled specimens or specimens of insufficient quantity to conduct the analyses requested;

[(13)](12) on the part of any laboratory, category, or subcategory directed by the applicant, failure to establish and ensure that employees follow procedures for disposal or handling of specimens or infectious or radioactive medical waste, in violation of applicable state and Federal laws, rules and regulations, or in a manner which endangers the public, the laboratory's employees, or the environment;

[(14)](13) employment of unqualified or unlicensed technical personnel or an insufficient number of such personnel;

[(15)](14) failure of the [laboratory director] applicant to be responsible for adequately supervising laboratory personnel to ensure the proper performance of all tests conducted in the laboratory; and

[(16)](15) any other factor having a direct bearing on the applicant's ability to provide or supervise the provision of high quality laboratory services, or to ensure compliance with statutory and regulatory requirements.

* * *

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (PHL) section 573 establishes the authority of the Department to promulgate criteria for the issuance of a certificates of qualification. PHL section 573(2) specifically states that the Department shall issue a certificate of qualification to any person who meets such minimum qualifications and who otherwise demonstrates to the Department that he or she possesses the character, competence, training and ability to administer properly the technical and scientific operation of a clinical laboratory or blood bank, including supervision of procedures and reporting of findings of tests.

Legislative Objectives:

The legislature enacted PHL section 573 to protect the health and safety of the public by requiring that only properly educated and experienced individuals be issued certificates of qualification and subsequently assigned responsibility as clinical laboratory directors. Such directors are responsible for the proper operation of clinical laboratories to ensure accurate and reliable results for clinical testing. Part 19 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), in its original adoption and all subsequent revisions, has been crafted to ensure that applicants have the necessary education, training and experience to effectively direct a laboratory. The proposed amendment is consistent with this legislative objective as it will include the recognition of additional accrediting boards that have been developed since the last regulatory amendment, in response to changes and advances in clinical laboratory testing.

Needs and Benefits:

Part 19 regulates the issuance of certificates of qualification. An individual must hold such certificate to be a clinical laboratory director or assistant director at a clinical laboratory or blood bank permitted by New York under the authority of PHL section 572. The intent of these regulations is to ensure that individuals who are granted certificates of qualification have the necessary education, experience, and training to effectively operate a clinical laboratory. Successful applicants for a certificate of qualification must demonstrate both experience in laboratory management, such as management of resources (e.g. budget allocation, staffing), implementation of a quality management system, development of standard operating procedures; and experience specific to a category of testing defined in Part 19.

Several revisions to the regulatory definitions are proposed. Most notable are the inclusion of a definition for assistant director and revision to the definition of category. Assistant directors are jointly accountable with the laboratory director for the categories of testing on the laboratory permit. In many instances, however, the assistant director may be the only individual qualified to supervise testing in a specific category on the laboratory permit.

Language is proposed in sections 19.2 and 19.3 that clarifies the role and responsibilities of assistant directors of clinical laboratories. With these revisions, assistant directors will be held to the same standards as laboratory directors.

The definition of “category” was revised to strengthen the Department’s authority to limit the approval of a certificate of qualification to a subcategory, technology, method or specific

procedure based on the applicant's documented experience. Extensive experience in a single method of testing does not necessarily translate to breadth of knowledge across an entire category of testing. Indeed, as innovations in laboratory medicine continue, an individual's experience in a proven technology may quickly become obsolete without continued education and training. The proposed revisions to the definition of category allow the Department to ascertain an individual's specific breadth of experience upon each application and re-application for a certificate of qualification.

The definitions of the following terms are being proposed for the first time; board certified, earned doctoral degree, training, and experience.

A review of the accrediting boards currently recognized in Part 19 and those included in the proposed revisions was performed to ensure that the requirements for each board were consistent with the rules set forth in federal regulation. This included a review of both the educational and training requirements for the accrediting board. As noted in the proposed revisions, certain boards mandate the appropriate educational requirement of a doctoral degree, but do not specify that the candidate for the board demonstrate the required four years of post-doctoral experience. Therefore, language clarifying the post-doctoral degree experience required by the Department has been proposed for these boards (American Board of Bioanalysts High Complexity Laboratory Director and the National Registry of Clinical Chemists) to ensure that the requirements for all applicants are consistent.

The duties and responsibilities of laboratory directors and assistant directors set forth in subdivision 19.3(c) were revised to provide clarity and introduce new responsibilities. Of note are the added responsibilities of ensuring the availability of procedures for monitoring staff competency and improvement of skills. These new responsibilities are currently included in the New York State Clinical Laboratory Standards of Practice; however, formal codification in regulation is desired.

Finally, subdivision 19.3(d) has been removed since the certificate of qualification categories are repeated in the current subdivision 19.3(e), and therefore 19.3(d) was considered redundant. The Department currently maintains a list of certificate of qualification categories on its publicly accessible website, and revisions were made in proposed subdivision 19.1(i) to outline the necessary contents of this list.

Costs:

Costs to Regulated Parties:

The proposed amendment will not impose costs on regulated parties. The current regulation already requires clinical laboratories and blood banks to have directors who hold certificates of qualification.

Costs to the Agency, State and Local Governments:

The proposed amendment will not impose additional costs to the New York State Department of Health, the program responsible for oversight of clinical laboratories, or to local governments. The program responsible for the oversight of clinical laboratories is a well-established program

operated at the State level and the new language does not impact the costs of the oversight program.

Local Government Mandates:

The proposed regulations impose no new mandates on any county, city, town or village government; or school, fire or other special district.

Paperwork:

The proposed revisions to Part 19 do not require any additional forms or paperwork from applicants. All candidates are required under the current rule to provide a complete application, a curriculum vitae, and proof of licensure for physicians or granting of an earned doctoral degree. Additionally, candidates must submit proof of any accreditation by a recognized board and/or letters from third parties attesting to the candidate's training and experience. The proposed revisions expand the list of recognized accrediting boards, which may in fact reduce the paperwork needed for candidates holding those accreditations.

Duplication:

The federal government also recognizes clinical laboratory directors. The Department has applied and been approved for an exemption from the federal government continuously since 1995 that grants the Department the authority to act as the primary accrediting body for clinical laboratories and clinical laboratory directors operating in New York.

Alternatives:

The alternative to this proposal would be to maintain the existing regulatory requirements. However, the proposed amendments are necessary to update the regulations to include new definitions, update the list of acceptable accrediting boards, and clarify and expand the responsibilities of laboratory directors and assistant directors.

Federal Standards:

The Federal Code of Regulations (CFR) sets forth rules for the education and experience of clinical laboratory directors (CFR 493.1443). The proposed revisions to Part 19 will incorporate several of the accrediting boards that are already recognized under the federal rule.

Compliance Schedule:

Regulated parties are expected to comply with the proposed regulation by its effective date.

Contact Person:

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

No regulatory flexibility analysis is required. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments. At present the regulations require clinical laboratories and blood banks to be directed by individuals who hold a certificate of qualification. This proposed amendment would update and expand the list of acceptable accrediting boards for obtaining a certificate of qualification and is therefore anticipated to have a positive impact by increasing the number of individuals who may qualify for a certificate of qualification.

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.



Project # 182246-C
Cortland Regional Medical Center Inc

Program: Hospital
Purpose: Construction

County: Cortland
Acknowledged: November 21, 2018

Executive Summary

Description

Guthrie Cortland Medical Center (GCMC), a 162-bed, voluntary not-for-profit, Article 28 acute care hospital located at 134 Homer Avenue, Cortland (Cortland County), requests approval to certify an extension clinic to be located across the street at 126 Homer Avenue to provide cancer care services. The project involves construction of a new one-story, 10,100 square foot Cancer Center building on a 3.3-acre parcel of land owned by GCMC that is located immediately south of the main hospital building. The Cancer Center will house radiation and medical oncology services, including chemotherapy. Currently, there are no Article 28 linear accelerators (LINAC) in Cortland County.

No radiation oncology services are currently provided at the main hospital building. However, there is an existing Medical Oncology Suite (Infusion Services) with seven infusion stations located on the hospital's first floor. The Medical Oncology Suite will be relocated and expanded to eight infusion stations at the new Cancer Center. The Cancer Center will provide the following:

- A Medical Oncology Unit for outpatient use with seven treatment cubicles, one private/isolation room, and support spaces;
A Radiation Oncology Unit for outpatients and inpatients with one state-of-the-art LINAC and support spaces;
Shared clinical and patient support services (for both units); outpatient access, waiting room registration, interview consultation,

- CT Scanner, exam rooms, and public/patient toilets;
Common support services and facilities (offices, conference room, clean storage, soiled room, and janitor room); and
Building support areas, mechanical and electrical room.

The Guthrie Clinic System (Guthrie) was established as the active parent of Cortland Regional Medical Center, Inc., now known as GCMC, on January 9, 2019 (CON 181279). The applicant noted that the construction of the Cancer Center is not part of Guthrie's capital commitment to the hospital under the active parent transaction.

OPCHSM Recommendation

Contingent Approval

Need Summary

CRMC proposes to certify an extension clinic in Cortland County for the following services: Medical Services – Other Medical Specialties and Radiology-Therapeutic which includes one linear accelerator. The proposed extension clinic is in the Central NY region, which currently has 15 approved or existing LINAC machines and has a determined need for 20 LINAC machines. The number of projected visits is 6,645 in Year One and 7,667 in Year Three.

Program Summary

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

Financial Summary

Total project costs of \$10,587,653 will be met via \$6,665,653 of equity and a \$3,922,000 equipment lease. First American Healthcare Finance has provided a capital lease proposal (to the existing Master Lease Agreement) for the lease of a CT scanner and LINAC. The projected budget is:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$9,664,494	\$11,287,438
Expenses	<u>8,453,344</u>	<u>9,911,892</u>
Net Income	\$1,211,150	\$1,375,546

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed Lease Line Proposal to the Master Lease Agreement (equipment), acceptable to the Department of Health. [BFA]
3. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
4. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before March 1, 2020 and construction must be completed by March 1, 2021, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

April 11, 2019

Need and Program Analysis

Background and Analysis

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

	LINAC Need in Central NY Region	Total
1	# of Cancer Cases/Year	8,703
2	60% will be Candidates for Radiation Therapy	5,222
3	50% of (2) will be Curative Patients	2,611
4	50% of (2) will be Palliative Patients	2,611
5	Course of Treatment for Curative Patients is 35 Treatments	91,386
6	Course of Treatment for Palliative patients is 15 Treatments	39,165
7	The Total Number of Treatments [(5) +(6)]	130,551
8	Need for LINAC Machine [(7)/6,500]	20
9	Existing/Approved Resources (Upon Approval of CON 182246)	16
10	Remaining Need for LINAC Machines [(8) -(9)]	4

The Central NY health planning region has a total of 10 facilities - six hospitals and four hospital extension clinics - providing linear accelerator services as follows:

Current Resources	# Facilities with LINAC Services				# LINAC Machines		
	Hospitals	Hospital Clinics	Total		Hospitals	Hospital Clinics	Total
Central NY Region							
Cayuga	0	0	0		0	0	0
Cortland	0	0	0		0	0	0
Herkimer	0	0	0		0	0	0
Jefferson	1	0	1		1	0	1
Lewis	0	0	0		0	0	0
Madison	0	1	1		0	1	1
Oneida	1	1	2		2	1	3
Onondaga	1	1	2		4	1	5
Oswego	0	1	1		0	1	1
St Lawrence	2	0	2		3	0	3
Tompkins	1	0	1		1	0	1
Total Central NY Region	6	4	10		11	4	15

This project will provide improved access to radiation therapy services for residents of Cortland County. The opportunity to create a comprehensive cancer center at CRMC that will include medical oncology and infusion therapy as well as new radiation oncology services will benefit the cancers patients residing in Cortland County and the surrounding region.

Compliance with Applicable Codes, Rules and Regulations

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

Prevention Agenda

Per the applicant, the priorities reported in the CON are consistent with those reported in their Community Service Plan. CRMC reports the following chosen Prevention Agenda Priorities: Chronic Disease, Healthy Babies, Mothers and Children and Mental Health and Substance Abuse. CRMC says that they are implementing the following evidence-based interventions to support Cortland County Prevention Agenda goals:

- Adapting tobacco-free outdoor policies,
- Other preventing chronic disease intervention diabetes prevention efforts including increasing availability accessibility and use of evidence-based interventions in self-care management in clinical and community settings.
- Promoting the NYS Smokers Quit line
- Promoting smoking cessation benefits among MA beneficiaries
- Implementing Complete Streets policies, plans and practices
- focusing on increasing the number of babies exclusively breastfed while in the hospital and decreasing smoking among pregnant women
- prescriber education of evidence-based guidelines for opiates

CRMC reports that it collaborates with the Cortland County Health Department and the Seven Valleys Health Coalition along with numerous clinical and community-based partners. Cortland provided some of the measures they are using to track MA members who are smokers and pursuing tobacco cessation. For other interventions they did not provide measures. A review of their most recent CSP update suggests they could use intermediate measures to assess progress in their efforts. CRMC will monitor ER prescribing efforts

The hospital did not report any spending in Community Health Improvement Services in the 2016 Schedule H filing or in their most recent Schedule H form submitted to IRS.

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 is still a need for 4 linear accelerators in the Central NY planning region. Approval of this project will provide for the improved access to care for cancer patients in the region.

Financial Analysis

Lease Line Proposal (Equipment) to the Master Lease Agreement

The applicant has submitted a draft Lease Line Proposal to their existing Master Lease Agreement. The terms are summarized below:

Equipment:	CT Scanner, Linear Accelerator, FF&E
Lessor:	First American Healthcare Finance
Lessee:	Guthrie Cortland Medical Center
Term:	Options include: 60 months (0.01920 monthly lease rate factor (MLRF)), 84 months (0.01460 MLRF), or 120 months (0.01125 MLRF)
Rent:	60 months: \$62,850.67/month (\$61,666.67 + \$1,184 MLRF); 84 months: \$44,690.72/month (\$44,047.62 + \$643.10 MLRF); 120 months: \$31,180.21 (\$30,833.33 + \$346.88 MLRF). This also includes a \$1 buyout at end of the lease term.

CRMC will secure an addition to its existing Master Lease Agreement with First American Healthcare Finance to finance the equipment portion of the total project cost.

Total Project Cost

The total project cost for construction and equipment related to the Article 28 extension clinic is estimated at \$10,587,653, broken down as follows:

New Construction	\$4,547,500
Site Development	535,000
Design Contingency	454,750
Construction Contingency	227,375
Fixed Equipment	3,180,000
Planning Consultant Fees	227,375
Architect/Engineering Fees	454,750
Movable Equipment	742,000
Telecommunications	159,000
Application Fee	2,000
Processing Fee	<u>57,903</u>
Total Project Cost	<u>\$10,587,653</u>

Costs are based on a construction start date of March 1, 2020, and a 12-month construction period.

GCMC will fund the total project costs of \$10,587,653 via \$6,665,653 of equity and a \$3,922,000 equipment lease. First American Healthcare Finance has provided a capital lease line proposal for a CT scanner and linear accelerator.

Operating Budget

The applicant submitted their current year financial performance (oncology only) ending December 31, 2017, and their first-year and third-year operating budget (oncology & radiation), in 2019 dollars, as shown below:

<u>Revenues</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial - FFS	\$2,100.51	\$1,281,312	\$1,454.08	\$1,913,569	\$1,472.27	\$2,234,912
Commercial - MC	\$2,113.06	103,540	\$1,458.79	154,632	\$1,480.32	180,599
Medicare - FFS	\$2,101.00	2,827,947	\$1,454.33	4,223,384	\$1,471.98	4,932,611
Medicare - MC	\$2,102.62	1,248,956	\$1,454.95	1,865,247	\$1,472.94	2,178,476
Medicaid - FFS	\$2,115.62	110,012	\$1,453.96	164,297	\$1,476.05	191,887
Medicaid - MC	\$2,100.46	880,093	\$1,453.95	1,314,371	\$1,471.80	1,535,091
Private Pay	\$1,941.40	<u>19,414</u>	\$1,449.70	<u>28,994</u>	\$1,410.92	<u>33,862</u>
Total Revenue		\$6,471,274		\$9,664,494		\$11,287,438
 <u>Expenses</u>						
Operating	\$1,797.24	\$5,810,465	\$1,179.87	\$8,025,509	\$1,205.24	\$9,484,057
Capital	<u>26.29</u>	<u>85,000</u>	<u>62.90</u>	<u>427,835</u>	<u>54.37</u>	<u>427,835</u>
Total	\$1,823.53	\$5,895,465	\$1,242.77	\$8,453,344	\$1,259.61	\$9,911,892
 Net Income						
		<u>\$575,809</u>		<u>\$1,211,150</u>		<u>\$1,375,546</u>
 Patient Visits						
		3,233		6,802		7,869

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

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial - FFS	18.9%	19.3%	19.3%
Commercial - MC	1.5%	1.6%	1.6%
Medicare - FFS	41.6%	42.7%	42.6%
Medicare - MC	18.4%	18.8%	18.8%
Medicaid - FFS	1.6%	1.7%	1.7%
Medicaid - MC	13.0%	13.3%	13.3%
Private Pay	0.3%	0.3%	0.3%
Charity	<u>4.7%</u>	<u>2.3%</u>	<u>2.6%</u>
Total	100.0%	100.0%	100.0%

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

- Revenue, expense, and utilization projections are based on GCMC's experience in serving its existing oncology patients and the growth of chemotherapy infusion services at the hospital.
- Utilization projections are based on the number of new patients listed on the cancer registry for Cortland County and the assumed market share (65% and 75% for years one and three, respectively).
- Projected revenues are based on the average treatment costs per case (\$21k for oncology/hematology and \$15k for radiation). The decrease in the cost per visit/treatment is due to the high cost oncology/chemotherapy drugs being spread over a much larger visit/treatment volume resulting from the addition of the radiation oncology program in years one and three.
- Projected expenses are based on the additional staffing needs and inflation. The staffing projections were determined based on GCMC's staffing experience with its existing oncology-related services. The projected increase in capital expenses is attributable to the equipment lease and depreciation related to the construction costs.
- The hospital provides charity care to patients who meet certain criteria under its charity care policy without charge or at amounts less than established rates. Because the hospital does not pursue collection of amounts determined to qualify as charity care, they are not reported as net patient service revenue. There were 153 visits that qualified for charity care in the current year with the expectation of 157 and 202 qualifying charity care visits for years one and three, respectively.

Capability and Feasibility

The total project costs of \$10,587,653 will be met via \$6,665,653 of equity and a \$3,922,000 master lease agreement (equipment).

The working capital requirement is estimated at \$1,651,982 based on two months of projected Year Three expenses. The applicant indicated they will utilize existing cash and will fund working capital needs through ongoing operations.

The submitted budget projects an excess of revenues over expenses of \$1,211,150 and \$1,375,546 during the first and third year of operations, respectively. Revenue, expense, and utilization projections are based on GCMC's experience in serving its existing oncology patients and the growth of chemotherapy infusion services at the hospital. Utilization projections are based on the number of new patients listed on the cancer registry for Cortland County and the assumed market share, 65% and 75% for years one and three, respectively. Projected revenues are based on the average treatment costs per case (\$21k for oncology/hematology and \$15k for radiation). The decrease in the cost per visit/treatment is due to the high cost oncology/chemotherapy drugs being spread over a much larger visit/treatment volume resulting from the addition of the radiation oncology program in years one and three. Projected expenses are based on additional staffing needs and inflation. The staffing projections were determined based on GCMC's staffing experience with its existing oncology-related services. The projected increase in capital expenses is attributable to the equipment lease and depreciation related to the construction costs. The budget appears reasonable.

BFA Attachment A is a summary of Cortland Regional Medical Center, Inc.'s 2016-2017 Certified Financial Statements and their Internal Financial Statements as of November 30, 2018. As shown, the entity maintained an average positive working capital position, an average positive net asset position, but generated an average operating loss for the periods shown. The applicant indicated that the operating loss in 2018 was due to the following: (1) Loss of surgical providers at the beginning of 2018, which impacted volumes/surgical revenues and an anesthesia subsidy expense (\$3,168,000); (2) Premiums paid for agency nursing and ancillary services staff (\$906,000); and (3) One-time nonrecurring fees for various projects (\$673,000). GCMC's affiliation with Guthrie as of January 9, 2019 (CON 181279), is expected to bring more physicians to the Cortland service area along with capital investment in the surgical facilities, resulting in growth in surgical volumes and revenues. Through support of the New York State Vital Access Provider (VAP) funding, GCMC contracted DCCS Consulting in late 2017 to perform a nursing services assessment and develop a plan to make improvements in acute hospital nursing services, restructure the model of care, and reduce the use of agency nurses. The use of RN agency staff has declined from 19 to nine at the end of November.

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

Attachments

BFA Attachment A Financial Summary of Cortland Regional Medical Center, Inc. 2016 – 2017
Certified Financial Statements and Internal Financial Statements as of November
30, 2018

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University Hospital SUNY Health Science Center

To Be Distributed Under Separate Cover



Project # 182302-B
Regency SC, LLC d/b/a/ Regency Surgery Center

Program: Diagnostic and Treatment Center **County:** Bronx
Purpose: Establishment and Construction **Acknowledged:** December 28, 2018

Executive Summary

Description

Regency SC, LLC d/b/a/ Regency 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 at 3250 Westchester Avenue, Bronx (Bronx County). The FASC will initially provide orthopedic, pain management and podiatry services. The FASC will be housed in approximately 7,665 sq. ft. on the ground floor of an existing commercial high-rise building that is the location of a now closed multi-specialty FASC that was constructed about 20 years ago. The space will be renovated to upgrade the facility for compliance with current FGI guidelines. 3250 Pelham Bay LLC as landlord and Regency SC, LLC as tenant will enter into a lease agreement with for site control. An affidavit has been submitted attesting that there is no relationship between the landlord and tenant. The FASC will have three operating rooms, three pre-operative bays and five post-operative bays, patient waiting areas and the requisite support spaces.

Robert Haar, M.D., who is Board-Certified in Orthopedic Surgery, will be the Center's Medical Director. Regency SC, LLC expects to enter into a Transfer and Affiliation Agreement with St. Barnabas Hospital for back-up and emergency services.

OPCHSM Recommendation

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

Need Summary

The center will have three operating rooms. The number of projected procedures is 3,000 in Year One and 3,564 in Year Three, with Medicaid at 10.0% and Charity Care at 2.0% 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 of \$2,613,885 will be met with members' equity of \$522,777 and a 10-year loan for \$2,091,108 at 5.5% interest. JP Morgan Chase & Co. has provided a letter of interest for the financing terms stated. The proposed budget is as follows:

The proposed ownership is as follows:

<u>Regency SC, LLC</u>	
<u>Members</u>	<u>%</u>
ADBG Management	75.10%
Robert Haar, M.D. (50%)	
Andrew Dowd, M.D (50%)	
Robert Haar, M.D.	12.45%
Andrew Dowd, M.D.	12.45%
Total	100%

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$4,112,599	\$4,729,493
Expenses	<u>3,990,042</u>	<u>4,505,905</u>
Gain/(Loss)	\$122,557	\$223,588

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the centers commitment to meet the health care needs of the community, including the provision of services to those in need, regardless of ability to pay. The statement shall also include a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a 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]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of an executed loan commitment for project cost, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
8. Submission of photocopy of final, complete, fully-executed articles of organization of applicant, acceptable to the Department. [CSL]
9. Submission of a photocopy of applicant's final, complete and fully-executed operating agreement, acceptable to the Department. [CSL]
10. Submission of photocopy of final, complete, fully-executed articles of organization of ADBH Management, LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of the final, complete and fully-executed operating agreement of ADBH Management, LLC, acceptable to the Department. [CSL]
12. Submission of a photocopy of a complete, current, executed counterpart of the agreement of lease with respect to the facility premises between 3250 Pelham Bay LLC as landlord and applicant as tenant, acceptable to the Department. [CSL]
13. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]

Approval conditional upon:

1. The project must be completed within 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. Construction must start on or before September 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]
3. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
4. The staff of the facility must be separate and distinct from the staff of other
5. 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]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]
7. 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

April 11, 2019

Need Analysis

Analysis

The service area consists of Bronx County. The table below shows the number of patient visits for ambulatory surgery centers in Bronx County for 2016 and 2017.

Spec Type	Facility Name	Total Patient Visits	
		2016	2017*
Gastroenterology	Advanced Endoscopy Center	12,157	10,851
Multi	Downtown Bronx ASC (opened 12/5/16)	N/A	223
Multi	Ambulatory Surgery Center of Greater New York	9,450	8,657
Multi	Avicenna ASC, Inc	2,777	3,859
Multi	East Tremont Medical Center	1,378	3,392
Multi	Empire State Ambulatory Surgery Center	3,748	4,051
Ophthalmology	Eye Surgery Center of New York	2,323	2,896
Gastroenterology	Mid-Bronx Endoscopy Center (opened 8/11/17)	N/A	N/A
Gastroenterology	New York GI Center, LLC	9,251	9,339
Total Visits		41,084	43,268

Source: SPARCS-2018- *2017 data is annualized based upon 9 months of information.

From 2016 to 2017, multi-specialty ASC's are projected to have a 16.3% increase in the number of surgery visits.

The number of projected procedures is 3,000 in Year One and 3,564 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 FFS	150	5.0%	178	5.0%
Medicaid MC	150	5.0%	178	5.0%
Medicare MC	780	26.0%	927	26.0%
Commercial FFS	690	23.0%	820	23.0%
Commercial MC	1,050	35.0%	1,247	35.0%
Private Pay	120	4.0%	143	4.0%
Charity Care	60	2.0%	71	2.0%
Total	3,000	100.0%	3,564	100.0%

The Center initially plans to obtain contracts with the following Medicaid Managed care plans: Affinity, Age Well New York, Cigna and Health First. The Center plans to contact St Barnabas Hospital, Bronx Lebanon Hospital, Urban Health Plan, The Institute for Family Health, Acacia Health Network and Doctors United to develop collaborate relationships 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

Approval of this project will provide increased access to orthopedics and pain management services in an outpatient setting for the residents of Bronx County.

Program Analysis

Proposed Operator	Regency SC, LLC
Doing Business As	Regency Surgery Center
Site Address	3250 Westchester Avenue Bronx, New York 10461 (Bronx County)
Surgical Specialties	Multi-Specialty
Operating Rooms	3
Procedure Rooms	0
Hours of Operation	Monday through Friday from 8:00 am - 6:00 pm; Hours expanded as needed.
Staffing (1st / 3rd Year)	11.25 FTEs / 15.25 FTEs
Medical Director	Robert Haar, M.D.
Emergency, In-Patient & Backup Support Services Agreement and Distance	Expected to be provided by: St. Barnabas Hospital 4.4 miles/19 minutes
After-hours access	Surgeon contact information will be provided in the patient's discharge instructions.

Character and Competence

The membership of Regency SC, LLC is as follows:

<u>Name</u>	<u>Percentage</u>
ADBH Management, LLC	75.10%
Robert Haar, M.D. (50%)	
Andrew Dowd, M.D. (50%)	
Robert Haar, M.D.	12.45%
Andrew Dowd, M.D.	12.45%
Total	100.00%

The participating physicians are board-certified and have medical practices in the proposed service area. 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. Haar disclosed one medical malpractice case that was initiated in February 2015 alleging a burn during a surgical procedure. The case was closed in December 2016 with a settlement of \$95,000.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities, except where other states only provided a shorter-term compliance history. 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

Should a patient present him or herself to the Center in need of primary care services, the Applicant plans to work with St. Barnabas Hospital to make primary and other specialty service referrals, as needed. The Center also plans to participate in community health events and local religious institutions to make sure that all are aware of the Center's services and their relationship with the local hospital.

The Center aims to serve all persons in need of surgical services regardless of personal characteristics or ability to pay. To that effect, it will develop and maintain a policy for serving persons who are uninsured/underinsured and develop a sliding fee scale considerate of the means of such persons.

Currently, the Center does not anticipate becoming part of any Accountable Care Organization or Medical Home, however, it does anticipate using an Electronic Medical Record (EMR) and will participate in a Bronx-based Regional Health Information Organization (RHIO).

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 a draft Lease Agreement for the proposed site, the terms of which are summarized below:

Premises:	9,257 sq. ft. building at 3250 Westchester Avenue, Bronx NY
Owner/Landlord:	3250 Pelham Bay, LLC
Lessee/Tenant:	Regency SC, LLC
Term:	11 years plus one (1) 3-year renewal term
Rent:	\$351,766 (\$38 per sq. ft) 3% increase in years 2-11

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 are estimated at \$2,613,885 broken down as follows:

Renovation & Demolition	\$772,500
Design Contingency	77,250
Construction Contingency	77,250
Architect/Engineering Fees	77,250
Other Fees	206,000
Movable Equipment	1,330,870
Financing Costs	24,205
Interim Interest Expense	32,273
Application Fee	2,000
Processing Fee	<u>14,287</u>
Total Project Cost	\$2,613,885

Project costs are based on a construction start date of September 1, 2019, with a six-month construction period.

The applicant’s financing plan appears as follows:

Equity	\$522,777
Bank Loan (5.5% int. 10-year term)	<u>2,091,108</u>
Total	\$2,613,885

JP Morgan Chase & Co. has provided a letter of interest for the financing at the stated terms.

BFA Attachment A is the members’ net worth summaries, which shows sufficient resources overall to meet the equity requirement.

Operating Budget

The applicant has submitted the first and third year projected operating budgets, in 2019 dollars, as summarized below:

Revenues	Year One		Year Three	
	Per Proc.	Total	Per Proc.	Total
Commercial - FFS	\$1,904	\$1,313,493	\$1,784	\$1,462,761
Commercial - MC	\$1,593	1,672,935	\$1,530	1,907,949
Medicare - FFS	\$1,275	994,201	\$1,274	1,181,111
Medicaid - FFS	\$1,275	191,193	\$1,276	227,137
Medicaid - MC	\$1,275	191,193	\$1,276	227,137
Private Pay	\$1,020	122,363	\$1,017	145,368
All Other		<u>(372,779)</u>		<u>(421,970)</u>
Total Revenue		\$4,112,599		\$4,729,493
<u>Expenses</u>				
Operating	\$990.76	\$2,972,269	\$975.10	\$3,475,261
Capital	<u>\$339.26</u>	<u>1,017,773</u>	<u>\$289.18</u>	<u>1,030,644</u>
Total	\$1,330.01	\$3,990,042	\$1,264.28	\$4,505,905
Net Income (Loss)		<u>\$122,557</u>		<u>\$223,588</u>
Total Procedures		3,000		3,564

Utilization by payor source for Years One and Three is summarized below:

Payor	Year One	Year Three
Commercial - FFS	23.0%	23.0%
Commercial - MC	35.0%	35.0%
Medicare - FFS	26.0%	26.0%
Medicaid - FFS	5.0%	5.0%
Medicaid - MC	5.0%	5.0%
Private Pay	4.0%	4.0%
Charity	<u>2.0%</u>	<u>2.0%</u>
Total	100.0%	100.0%

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

- Revenue, expense and utilization assumptions are based upon the experience of the applicant physicians who participates in other ambulatory surgery centers, and historical data from cost reports of similar service ambulatory surgery centers.
- Commercial revenue is based on 150% of the Medicare rate for Fee-For-Service, and 125% for Managed Care.
- Medicaid and Medicare revenues are estimated based on a review of the Medicaid APG payment rates and Medicare fee schedule rates for the CPT-4 codes related to the surgical cases to be performed at the Center.
- Utilization assumptions are supported by letters from the three participating physicians based on their current experience. The proposed operator is committed to providing 2% to charity care patients.
- All other revenue consists of NYS Gross Receipts Tax and Bad Debt.

Capability and Feasibility

Total project costs of \$2,613,885 will be met with members' equity of \$522,777 and a 10-year loan for \$2,091,108 at 5.5% interest. JP Morgan Chase & Co. has provided a letter of interest for the financing at the terms stated.

The working capital requirement is estimated at \$751,590 based on two months of third year expenses. The members will fund the requirement with equity of \$375,795 and the remaining \$375,795 with a five-year working capital loan at 6% interest. BFA Attachment A reveals sufficient resources to meet all equity

requirements. BFA Attachment B is Regency SC, LLC's pro forma balance sheet, which shows operations will start with \$375,795 in equity.

The applicant projects a net operating income of \$122,557 and \$223,588 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

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

Calvary Hospital
1740-70 Eastchester Road
Bronx, New York 10461

Montefiore Medical Center
Montefiore Westchester Square
2475 St Raymond Avenue
Bronx, New York 10461

Montefiore Med Center
Jack D Weiler Hosp of A Einstein College Div
1825 Eastchester Road
Bronx, New York 10461

Jacobi Medical Center
1400 Pelham Parkway
Bronx, New York 10461

Lenox Hill Hospital
100 East 77th Street
New York, New York 10021

Mount Sinai Beth Israel
Fist Avenue at 16th Street
New York, New York 10003

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	Regency SC, LLC members' net worth summary
BFA Attachment B	Pro Forma Balance Sheet of Regency SC, 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 11th day of April 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 provide orthopedic, pain management and podiatry services located at 3250 Westchester Avenue, Bronx, 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:

182302 B

FACILITY/APPLICANT:

Regency SC, LLC,
d/b/a Regency Surgery Center

APPROVAL CONTINGENT UPON:

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the centers commitment to meet the health care needs of the community, including the provision of services to those in need, regardless of ability to pay. The statement shall also include a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a 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]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of an executed loan commitment for project cost, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
8. Submission of photocopy of final, complete, fully-executed articles of organization of applicant, acceptable to the Department. [CSL]
9. Submission of a photocopy of applicant's final, complete and fully-executed operating agreement, acceptable to the Department. [CSL]
10. Submission of photocopy of final, complete, fully-executed articles of organization of ADBH Management, LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of the final, complete and fully-executed operating agreement of ADBH Management, LLC, acceptable to the Department. [CSL]

12. Submission of a photocopy of a complete, current, executed counterpart of the agreement of lease with respect to the facility premises between 3250 Pelham Bay LLC as landlord and applicant as tenant, acceptable to the Department. [CSL]
13. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within 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. Construction must start on or before September 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]
3. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
4. The staff of the facility must be separate and distinct from the staff of other
5. 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]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf
Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]
7. 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 # 191009-B
KAHR Health, LLC

Program: Diagnostic and Treatment Center County: Rockland
Purpose: Establishment and Construction Acknowledged: January 10, 2019

Executive Summary

Description

KAHR Health, LLC, a New York limited liability company, requests approval to establish and construct a primary medical care Article 28 diagnostic and treatment center (D&TC) to be located at 421 Route 59, Monsey (Rockland County) through the conversion of a private medical practice. The D&TC will be certified for Medical Services-Primary Care with a focus on providing Family Practice, Internal Medicine, Ob/GYN and Pediatric services to the residents of two of the most populous zip code areas in Rockland County where nearly 30% of the residents live below the federal poverty level. The D&TC will be housed in approximately 4,302 square feet of leased space on the upper floor of an existing two-story building, and will consist of 11 exam rooms, a centrally located nurses' station, a phlebotomy room, clean and soiled utility rooms, and the requisite support spaces. Construction to make the space Article 28 compliant is currently being performed by KAHR Management, LLC, an entity related to the applicant (identical membership), prior to approval to be operated as a private practice of the physician member of the applicant until certification as an Article 28 D&TC is finalized.

The proposed members of KAHR Health, LLC are Seth D. Kurtz, M.D., FAAP, FACEP (57%), Uri Koenig (16.5%), Efraim Steif (16.5%) and Meir Adler (10%). Dr. Kurtz and Mr. Adler will be the managing members and Dr. Kurtz, who is Board-Certified in Pediatrics and Emergency Medicine, will serve as Medical Director. The Center expects to have a Transfer and Affiliation Agreement with Montefiore Nyack Hospital for back-up and emergency services. The Hospital has provided a letter of intent.

OPCHSM Recommendation

Contingent Approval

Need Summary

KAHR Health, LLC proposes to establish an Article 28 diagnostic and treatment center in Rockland County through the conversion of a private practice, for the provision of primary care services. The number of projected visits is 22,308 in Year One, and 52,052 in Year Three.

Program Summary

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

Financial Summary

Total project costs of \$391,573 will be met via the proposed members' personal resources. The proposed budget is as follows:

Table with 3 columns: Category, Year One, Year Three. Rows: Revenues (\$1,955,240), Expenses (\$2,027,303), Gain/(Loss) (\$72,063 / \$571,341).

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed building sublease agreement, acceptable to the Department of Health. [BFA]
4. Submission of photocopy of final, complete, fully-executed counterpart of applicant's operating agreement, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's final, complete, executed certificate of amendment to articles of organization, acceptable to the Department. [CSL]
6. Submission of a photocopy of the final, complete, fully-executed office sublease between applicant as tenant and KAHR Management, LLC, as landlord, with respect to the facility premises, together with a photocopy of the consent thereto of the prime landlord Wald Realty Co. # 5, each acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]
4. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes. [AER]

Council Action Date

April 11, 2019

Need and Program Analysis

Analysis

The primary service area comprises of the zip codes 10952 and 10977, which cover Monsey and Spring Valley. The secondary service area is Rockland County. The population of Rockland County in 2010 was 311,687. Per PAD projection data from the Cornell Program on Applied Demographics, the population of the county is estimated to grow to 346,928 by 2025, an increase of 11.3%.

There are two other Article 28 diagnostic and treatment centers providing primary care services operating in the primary service area, one approximately 1.5 miles and 5.5 miles away. The applicant is projecting a Medicaid utilization of 30% for the proposed center. The applicant is committed to serving all persons in need without regard to ability to pay or source of the payment. The number of projected visits is 22,308 for Year One and 52,052 for Year Three.

Program Description

Proposed Operator	KAHR Health, LLC
To Be Know As	KAHR Health
Site Address	421 Route 59 Monsey, New York 10952 (Rockland County)
Specialties	Medical Services – Primary Care
Hours of Operation	Sunday: 9 AM - 1 PM Monday, Tuesday, Thursday: 8 AM - 6 PM Wednesday: 8 AM - 9 PM Friday: 9 AM - 2 PM
Staffing (1st Year / 3rd Year)	12.83 FTEs / 25.79 FTEs
Medical Director(s)	Seth D. Kurtz, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Montefiore Nyack Hospital 12.5 miles / 20 minutes away

Character and Competence

The members of KAHR Health, LLC are:

Name	Interest
Seth D. Kurtz, M.D., <i>Manager & Medical Director</i>	57.0%
Uri Koenig	16.5%
Efraim Steif	16.5%
Meir Adler, PA-C, <i>Manager</i>	10.0%

Dr. Kurtz earned his medical degree from the SUNY Downstate College of Medicine in Brooklyn and completed an emergency medicine fellowship at Lincoln Medical Mental Health Center and a pediatrics fellowship at Maimonides Medical Center. He is board-certified in pediatrics and emergency medicine and has 12 years of experience operating primary care practices. Dr. Kurtz will serve as the center's medical director.

Mr. Steif is the President of FRS Healthcare Consultants. He is an owner/ operator of several health care facilities (including nursing homes, adult care facilities and a dialysis center) and has prior experience as a Nursing Home Administrator.

Mr. Koenig is a Certified Public Accountant with over 20 years of experience. Additionally, he is an owner/operator of several health care facilities, including nursing homes, adult care facilities and a dialysis center.

Mr. Adler is a Physician's Assistant who has over 10 years of experience working in healthcare. Since 2012, he has been employed by Elite Healthcare providing clinical assessments and treatment to patients.

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

Mr. Steif disclosed that he is a defendant in civil suits which stemmed from his career as a Nursing Home Administrator at Van Duyn Center for Rehabilitation and Nursing. There are two pending personal injury cases that have been referred to insurance counsel.

Mr. Koenig disclosed that he is the defendant in civil suits which stemmed from his membership interest in Van Duyn Center for Rehabilitation and Nursing. There are two pending personal injury cases that have been referred to insurance counsel.

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.

Messrs. Steif and **Koenig** disclosed ownership interest in multiple nursing homes. The Department has imposed recent enforcement actions on the following entities:

Beechtree Center for Rehabilitation and Nursing:

- Fined \$10,000 pursuant to a Stipulation and Order dated June 14, 2016 for surveillance findings set forth in the reports of inspection dated August 21, 2012. Deficiencies were found under Resident Behavior and Facility Practices: Abuse; Resident Behaviors and Facility Practices: Staff Treatment of Residents; Quality of Care: Accidents; Administration: Administration; Administration: Quality Assessment and Assurance.

Bridgewater Rehabilitation and Nursing, LLC:

- Fined \$4,000 pursuant to a Stipulation and Order dated May 29, 2013 for surveillance findings set forth in the reports of inspection dated July 6, 2011. Deficiencies were found under Written Plans for Emergency/Disasters and Emergency Procedure/Drills.

Central Park Rehabilitation and Nursing Center:

- Fined \$4,000 pursuant to a Stipulation and Order dated May 14, 2018 for surveillance findings set forth in the reports of inspection dated July 20, 2015. Deficiencies were found under Free of Accidents and Hazards/Supervision/ Devices and Effective Administration/Resident Well-Being.
- Fined \$12,000 pursuant to a Stipulation and Order dated March 9, 2016 for surveillance findings set forth in the reports of inspection dated March 2, 2015. Deficiencies were found under Quality of Care Highest Practicable Potential and Quality of Care: Pressure Sores, Prevention, Pressure Sores w/ Admission.
- Fined \$2,000 pursuant to a Stipulation and Order dated December 6, 2010 for surveillance findings set forth in the reports of inspection dated May 26, 2009. Deficiencies were found under Quality of Care: Infection Control.

Crown Park Rehabilitation and Nursing Center:

- Fined \$2,000 pursuant to a Stipulation and Order dated September 17, 2018 for surveillance findings set forth in the reports of inspection dated January 18, 2018. Deficiencies were found under Free from Abuse and Neglect.

Highland Park Rehabilitation and Nursing Center:

- Fined \$2,000 pursuant to a Stipulation and Order dated January 3, 2017 for surveillance findings set forth in the reports of inspection dated July 14, 2016. Deficiencies were found under Environment Comfortable and Safe Temperature Level.
- Fined \$10,000 pursuant to a Stipulation and Order dated January 5, 2016 for surveillance findings set forth in the reports of inspection dated October 25, 2013. Deficiencies were found under Notify of Changes.

Hudson Park Rehabilitation and Nursing Center:

- Fined \$14,000 pursuant to a Stipulation and Order dated June 28, 2016 for surveillance findings set forth in the reports of inspection dated September 20, 2013. Deficiencies were found under Resident Behavior & Facility Practices Staff Treatment of Residents; Quality of Care: Highest Practicable Potential; and Administration.
- Fined \$18,000 pursuant to a Stipulation and Order dated March 15, 2016 for surveillance findings set forth in the reports of inspections dated January 28, 2011; March 28, 2011; and December 17, 2012. Deficiencies were found on January 28, 2011 under Quality of Care: Highest Practicable Potential; Infection Control; Administrator: Administration. Deficiencies were found on March 28, 2011 under Quality of Care: Pressure Sores. Deficiencies were found on December 17, 2012 under Quality of Care: Highest Practicable Potential.
- Fined \$28,000 pursuant to a Stipulation and Order dated September 1, 2015 for surveillance findings set forth in the reports of inspections dated March 30, 2012, February 1, 2013, and May 7, 2013. Deficiencies were found on March 30, 2012 under Physician Services: Physician Visits. Deficiencies were found on February 1, 2013 under Quality of Care: Highest Practicable Potential; Quality of Care; Medication Errors; Administration; Administration; Quality Assessment and Assurance. Deficiencies were found on May 7, 2013 under Quality of Care: Accidents.

Riverside Center for Rehabilitation and Nursing:

- Fined \$10,000 pursuant to a Stipulation and Order dated July 25, 2018 for surveillance findings set forth in the reports of inspection dated March 15, 2018. Deficiencies were found under Nutrition/Hydration Status Maintenance.

Van Duyn Center for Rehabilitation

- Fined \$2,000 pursuant to a Stipulation and Order dated January 1, 2019 for surveillance findings set forth in the reports of inspection dated January 9, 2017, February 8, 2018, and October 5, 2018. Deficiencies were found under Free from Significant Medication Errors.
- Fined \$10,000 pursuant to a Stipulation and Order dated August 8, 2018 for surveillance findings set forth in the reports of inspection dated December 19, 2017. Deficiencies were found under Free from Abuse and Neglect.
- Fined \$14,000 pursuant to a Stipulation and Order dated June 6, 2016 for surveillance findings set forth in the reports of inspection dated October 14, 2015. Deficiencies were found under Dietary Services Food Storage; Quality of Care: Pressure Ulcers w/ Admission; Quality if Care: Highest Practicable Potential.

Conclusion

Approval of this project will provide for improved access to primary care medical services to the residents of Monsey and Spring Valley as well as the residents within the surrounding communities in Rockland County. 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 Analysis

Lease Rental Agreement

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

Date:	January 1, 2018
Premises:	Store # 1-6 (4,320 sq. ft.) in the real property known as the Pavilion III Mall located at 419 Route 59, Monsey, NY 10952.
Lessor:	Wald Realty Co #5
Lessee:	KAHR Management, LLC
Term:	5 years with three 5-year renewal periods
Rental:	\$172,800 annually (\$40 Per sq. Ft)
Provisions:	The lessee shall be responsible for insurance, taxes and utilities.

The applicant submitted an affidavit indicating that the lease is an arm's length lease arrangement. Letters from two New York licensed realtors have been provided attesting that the lease cost per square foot is at fair market value.

Sublease Rental Agreement

A draft sublease rental agreement for the site has been provided, summarized below:

Premises:	Store # 1-6 in the real property known as the Pavilion III Mall located at 419 Route 59, Monsey, NY 10952.
Lessor:	Wald Realty CO #5
Lessee/Sublessor:	KAHR Management, LLC.
Sublessee	KAHR Health, LLC
Term:	4 years with three 5-year renewal periods.
Rental:	\$232,800 annually (\$53.88 Per Sq. ft.)

The applicant submitted an affidavit indicating that the sublease arrangement will be a non-arm's length lease arrangement in that the members of the Sublessor and Sublessee entities are identical.

Total Project Cost and Financing

Total project cost of \$391,573 is broken down as follows:

Moveable Equipment	\$371,122
Misc. Consultant Fees	\$16,320
CON Fee	\$2,000
Additional Processing Fee	<u>\$2,131</u>
Total Project Cost	\$391,573

The applicant will finance the total project cost with equity.

Construction is currently being performed by KAHR Management, LLC, a related entity of the applicant. The site will be operated as a private practice until certification as an Article 28 D&TC.

Operating Budget

The applicant submitted an operating budget, in 2019 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
Medicare MC	\$72.25	\$402,938	\$72.25	\$940,189
Medicaid MC	\$97.76	\$654,182	\$97.75	\$1,526,425
Private Pay	\$30.01	\$33,462	\$30.00	\$78,078
Commercial MC	\$96.90	<u>\$864,658</u>	\$96.90	<u>\$2,017,536</u>
Total Revenues		\$1,955,240		\$4,562,228
<u>Expenses</u>				
Operating	\$76.93	\$1,716,089	\$70.42	\$3,665,495
Capital	<u>\$13.95</u>	<u>\$311,214</u>	<u>\$6.25</u>	<u>\$325,392</u>
Total Expenses	\$90.88	\$2,027,303	\$77.67	\$3,990,887
Net Income		<u>(\$72,063)</u>		<u>\$571,341</u>
Utilization (Visits)		22,307		52,053
Cost Per Visit		\$90.88		\$77.67

Reimbursement was calculated based on an assumption of \$85 per visit for Medicare fee-for-service (FFS). The commercial reimbursement rate is calculated as 95% of the Medicare FFS rate. The Medicare managed care rate is calculated at 115% of the Medicare FFS rate. The private pay/self-pay rate is estimated at \$30 per visit.

Expense assumptions are based on staffing FTEs calculated using a productivity standard of 5,000 visits per year for physicians and 3,000 visits per year for PA/NP. It is assumed that 70% of total visits would be physician and 30% would be PA/NP. Salaries are based on the experience of the members of the applicant in providing health care services. All other expenses were calculated on a per visit basis, except for malpractice insurance, which was calculated on a per physician FTE and per PA/NP FTE per year. Software licensing costs were calculated on a per month basis per provider FTE.

Utilization assumptions are based on an initial 30% of total capacity for Year One with an annual 20% increase in capacity for Years Two and Three.

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

<u>Payor</u>	<u>Years One and Three</u>
Medicare MC	25.00%
Medicaid MC	30.00%
Private Pay	5.00%
Commercial MC	40.00%

Capability and Feasibility

Total project cost of \$391,573 will be met via the proposed members personal resources. Working capital requirements are estimated at \$665,148 based on two months of third year expenses. The proposed members will provide equity from their personal resources to meet the working capital requirements. BFA Attachment A is the personal net worth statements of the proposed members of Kahr Health, LLC, which indicates the availability of sufficient funds for the project cost and working capital equity contributions. Mr. Adler is not required to contribute any resources toward the project; therefore, no net worth statement has been provided for him. Mr. Steif has provided a disproportionate share affidavit to cover any member that does not have sufficient resources for their equity and working capital requirements. BFA Attachment B is the pro forma balance sheet of Kahr Health, LLC, which indicates a positive members equity position of \$1,091,000 as of the first day of operation.

The submitted budget indicates a net loss of \$72,063 for the first year of operations and a net income of \$571,341 for the third year. Revenues are based on current reimbursement methodologies for D&TCs.

The submitted budget appears reasonable. The loss will be covered by the members of KAHR Health, LLC through their personal resources. BFA Attachment A indicates the members have significant resources to cover the equity and working capital requirements and the year one start-up loss.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statements of Proposed Members of KAHR Health, LLC
BFA Attachment B	Pro Forma Balance Sheet of KAHR Health, 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 11th day of April 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 new primary medical care diagnostic and treatment center to be located at 421 Route 59, Monsey through the conversion of a private practice, 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:

191009 B

FACILITY/APPLICANT:

KAHR Health, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed building sublease agreement, acceptable to the Department of Health. [BFA]
4. Submission of photocopy of final, complete, fully-executed certificate of amendment of articles of organization of applicant, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's final, complete, executed certificate of amendment to articles of organization, acceptable to the Department. [CSL]
6. Submission of a photocopy of the final, complete, fully-executed office sublease between applicant as tenant and KAHR Management, LLC, as landlord, with respect to the facility premises, together with a photocopy of the consent thereto of the prime landlord Wald Realty Co. # 5, each acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf.
Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]
4. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes. [AER]

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 # 182209-E
Morris Park Nursing and Rehab Center, LLC

Program: Residential Health Care Facility
Purpose: Establishment

County: Bronx
Acknowledged: November 13, 2019

Executive Summary

Description

Morris Park Nursing Home is a 191-bed, proprietary, Article 28 residential health care facility (RHCF) located at 1235 Pelham Parkway, North Bronx (New York County). Morris Berkowitz, the sole proprietor, requests approval to change the ownership of the facility to Morris Park Nursing and Rehab Center, LLC, an existing limited liability company in which he is the sole member, to add one new member to the LLC, and to transfer 99% economic interest in the LLC to the new member. There will be no change in number of beds or services provided and the real estate ownership will remain unchanged.

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

Table with 2 columns: Ownership, Percentage. Row 1: Current Ownership, Morris Park Nursing Home, Morris Berkowitz 100%

Table with 2 columns: Ownership, Percentage. Row 1: Proposed Ownership, Morris Park Nursing and Rehab Center, LLC. Row 2: Members, Leopold Berkowitz 99%, Morris Berkowitz 1%

The transfer of economic interest will be effectuated via the terms of a Sale of Membership Interest Agreement between the parties for a purchase price of \$7,000,000. The purpose of the ownership interest transfer is due to Morris Berkowitz's advanced age and his wish

to transfer his economic interests in the LLC to his son Leopold Berkowitz.

OPCHSM Recommendation

Contingent Approval

Need Summary

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

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

The purchase price for the transfer of economic interests is \$7,000,000 to be funded in total via a promissory note between Morris Berkowitz and Leopold Berkowitz with interest at 5.5% for a ten-year term. The proposed budget is as follows:

Table with 3 columns: Category, Year One, Year Three. Rows: Revenues (\$24,232,270 vs \$24,249,370), Expenses (20,304,012 vs 20,719,312), Net Income (\$3,928,258 vs \$3,530,058)

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 promissory note, acceptable to the Department of Health. [BFA]
4. Submission of an executed Sale of Membership Agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed lease assignment agreement, acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of the final, complete, fully-executed certificate of assumed name of applicant, acceptable to the Department. [CSL]
7. Submission of a photocopy of the final, complete, fully-executed certificate of amendment of articles of organization of applicant, acceptable to the Department. [CSL]
8. Submission of a photocopy of a complete counterpart of the indenture of lease dated June 22, 1972, between P.T.R. Company as landlord and Morris Berkowitz, d/b/a Morris Park Nursing Home, as tenant, with respect to the facility premises, 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]

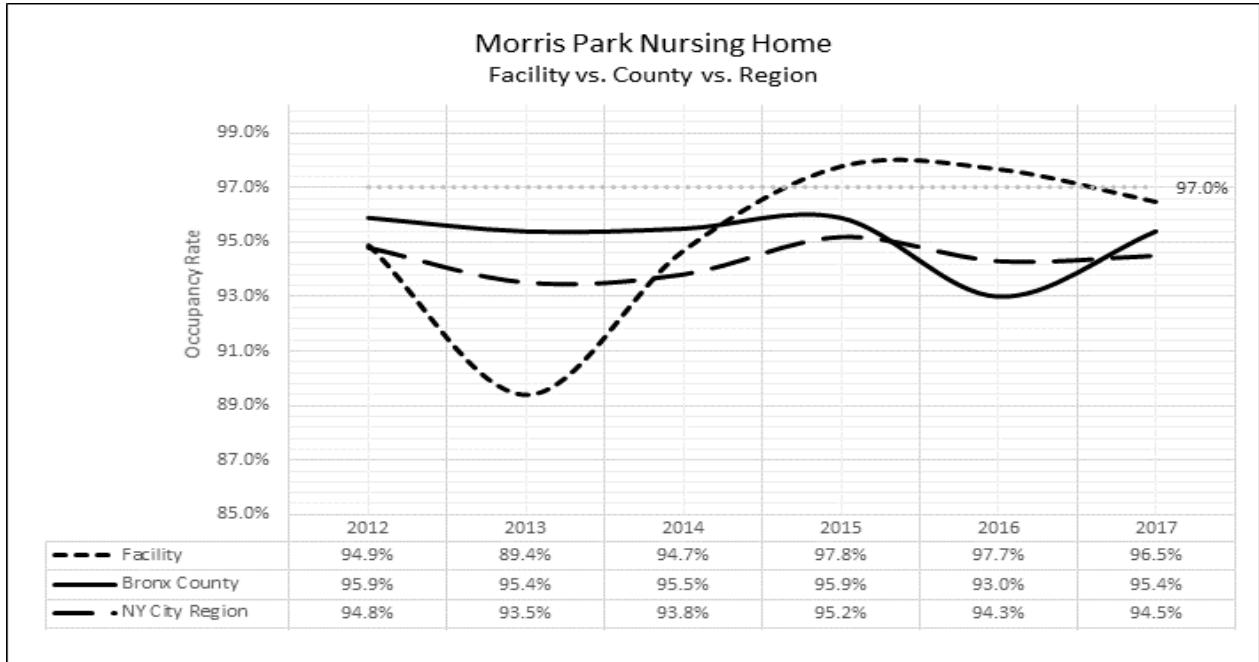
Council Action Date

April 11, 2019

Need Analysis

Background

The facility's occupancy has remained above 95% since 2014. The center's occupancy for 2018 (through November) was 95.3%, based upon weekly census data.



Access

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

Morris Park Nursing Home's Medicaid admissions rate has not exceeded the threshold of 75% of the Bronx County rate, as demonstrated in the table below.

Percent of New RHCf Admissions that are Medicaid	2015	2016	2017
Bronx County 75% Threshold	33.1%	31.7%	34.0%
Morris Park Nursing Home	31.2%	26.1%	25.4%

To strengthen the Medicaid admissions process at the facility, the applicant will implement a marketing program and an outreach effort to community organizations and healthcare provider organizations referring patients to the Center.

Conclusion

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

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Morris Park Nursing Home	Morris Park Rehabilitation and Health Care Center
Address	1235 4 th Street Bronx, NY 10469	Same
RHCF Capacity	191	Same
ADHC	N/A	N/A
Type of Operator	Voluntary	Voluntary
Class of Operator	Proprietary Individual	Proprietary Limited Liability Company
Operator	Morris Berkowitz	Morris Park Nursing and Rehab Center, LLC Membership: Leopold Berkowitz 99.0% Morris Berkowitz 1.0%

Experience

Leopold Berkowitz reports employment as Executive Director of Brooklyn-Queens Nursing home since 1994, and concurrent employment as Director of Operations at Morris Park Nursing Home since 1985. Mr. L Berkowitz is a licensed nursing home administrator and holds a license to practice law but does not currently practice. Mr. L Berkowitz discloses the following health facility interest:

Brooklyn Queens Nursing Home [100%] 07/98 to present

Morris Berkowitz reports that in 2016 he retired from the position of Administrator of Morris Park Nursing Home, a position that he held since 1971. Mr. M. Berkowitz discloses the following health facility interests:

Morris Park Nursing Home [100%] 1971 to present

Quality Review

Morris Park Nursing Home has had a CMS one star staff rating since 2009. The applicant states that staff data have been erroneously reported during this period, that changes to reporting have been made recently, and that the staff rating will improve to two stars when corrected data is used by CMS.

Brooklyn Queens Nursing Home has a CMS one star staff rating, the applicant indicated that the facility maintains staff at a level which is consistent with the census and acuity level of the residents.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Brooklyn Queens Nursing Home	Current	***	***	*****	*
	07/1998 Data 01/2009	**	***	****	*
Morris Park Nursing Home	Current	****	****	*****	*
	1971 Data 01/2009	*	*	****	*

Data date: 02/2019

Notes: The health inspection star rating is based on two years of inspections occurring before November 28, 2017.

Enforcement History

A review of the operations of Morris Park Nursing Home for the period identified above reveals the following:

- The facility was fined \$10,000 pursuant to Stipulation and Order NH-12-028 for surveillance findings on 3/8/11. Deficiencies were found under 10 NYCRR 415.12(h)(2) Free of Accident Hazards/Supervision/Devices.
- The facility was fined \$4,000 pursuant to Stipulation and Order NH-11-041 for surveillance findings on 7/13/09. Deficiencies were found under 10 NYCRR 415.12 Provide Care/Services for Highest Well-Being, and 10 NYCRR 415.189(c) Pharmacy Services Drug Regimen Review, Report Irregular

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

Sale of Membership Interest Agreement

The applicant has submitted a draft sale of membership interest agreement, summarized below:

Purpose:	Sale of 99% ownership interest in Morris Park Nursing and Rehab Center, LLC
Purchaser:	Leopold Berkowitz
Seller:	Morris Berkowitz
Purchase Price:	\$7,000,000
Payment of Purchase Price:	\$7,000,000 via a promissory note between the parties bearing an interest rate of 5.50% for a ten-year term.

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

Lease Rental Agreement

The applicant has submitted the current lease, which will be assigned to the new entity. The current lease is summarized below:

Date:	November 28, 2018
Premises:	The RHCF premises located at 1235 Pelham Parkway, North Bronx, NY
Lessor:	1235 Pelham Parkway Realty, LLC
Lessee:	Morris Berkowitz d/b/a Morris Park Nursing Home
Term:	The lease term will expire on June 30, 2032.
Rental:	\$325,020 annually through 2018 and 2019 \$650,000 annually from January 2020 through 2032

The members of 1235 Pelham Parkway Realty, LLC are as follows: Israel Berkowitz (33.33%), Leopold Berkowitz (33.33%), and Morris Berkowitz as trustee FBO Frady Zyskind (33.33%). As a result, the lease is and will continue to be a non-arm's length lease arrangement upon approval of this application. The applicant has indicated that the reason for the increase in rent expense in 2020 is the result of a construction project that will be completed by April 1, 2019. The real estate entity will refinance the current mortgage plus the renovation project.

Lease Assignment and Assumption Agreement

The applicant has provided a draft lease assignment, summarized as follows:

Premises:	The RHCf and leasehold improvements at 1235 Pelham Parkway, North Bronx, NY
Assignor:	1235 Pelham Parkway Realty, LLC
Assignee	Morris Park Nursing and Rehab Center, LLC
Assignment:	All the rights, title and interest in and to the lease rental agreement
Fee	\$10 (acknowledged as paid)

Operating Budget

The applicant has submitted the current year (2017) operations and an operating budget, in 2019 dollars, for the first and third years after the change in operator, summarized below:

	Current 2017		Year One		Year Three	
Revenues	Per Diem.	Total	Per Diem	Total	Per Diem	Total
Medicaid FFS	\$280.14	\$13,038,764	\$300.45	\$14,165,100	\$296.16	\$14,165,100
Medicaid MC	\$283.43	3,613,749	\$314.93	1,721,400	\$314.93	1,721,400
Medicare FFS	\$786.99	3,624,883	\$604.52	6,608,600	\$604.52	6,608,600
Medicare MC		0	\$526.48	719,700	\$526.48	719,700
Comm. FFS	\$381.66	1,212,926	\$377.71	774,300	\$377.71	774,300
Private Pay	\$414.07	69,563	\$170.73	232,700	\$340.79	249,800
Other		47,830		10,470		10,470
Total Revenues		\$21,607,715		\$24,232,270		\$24,249,370
<u>Expenses</u>						
Operating	\$272.91	\$18,352,112	\$268.66	\$18,352,112	\$274.47	\$18,767,412
Capital	18.49	1,243,521	28.57	1,951,900	28.46	1,951,900
Total Expenses	\$291.40	\$19,595,633	\$297.23	\$20,304,012	\$302.93	\$20,719,312
Net Income		<u>\$2,012,082</u>		<u>\$3,928,258</u>		<u>\$3,530,058</u>
Patient Days		67,246		68,328		68,378
Occupancy		96.46%		98.01%		98.08%
Breakeven Occ				82.97%		83.80%

Utilization by payor for the current year and first and third years after the ownership change is as follows:

Payor	Current Year	Year One	Year Three
Medicaid FFS	69.21%	70.00%	69.95%
Medicaid MC	18.96%	8.00%	7.99%
Medicare FFS	6.85%	16.00%	15.99%
Medicare MC	0.00%	2.00%	2.00%
Commercial FFS	4.73%	3.00%	3.00%
Private Pay	0.25%	1.00%	1.07%

The following is noted with respect to the submitted budget:

- The projected decrease in Medicaid MC revenue and the increase in Medicaid FFS revenue is due to the applicant modeling future performance per the facility's 2016 Medicaid MC utilization.
- The increase in Medicare FFS utilization is related to a recent construction, renovation and modernization project the facility undertook to enhance its resident environment and improve the rehabilitative space allowing the Center to provide / expand restorative services to the residents.

Going forward, this will allow the Center to provide care to sicker residents in need of restorative therapies and treatments covered by Medicare. Therefore, a higher Medicare census is expected.

- The increase in Medicaid FFS and Medicaid MC reimbursement rates are the result of the added depreciation and interest expense due to recent construction. The applicant received approval for a limited review application in 2016 to perform renovations to construct a new wing and a roof deck parking area, and make improvements to the basement, mechanical systems and grounds. The project is anticipated to be completed by April 1, 2019.
- The increase in patient days is the result of the 2017 levels being depressed due to construction.

Capability and Feasibility

The purchase price for the transfer of economic interests is \$7,000,000 to be funded in total via a promissory note between the parties bearing an interest rate of 5.50% for a ten-year term.

Working capital requirements are estimated at \$3,453,219 based on two months of Year Three expenses. Leopold Berkowitz will provide equity to meet working capital requirement. Leopold Berkowitz submitted an affidavit indicating that he will provide equity disproportionate to his ownership interest. BFA Attachment A is the net worth statements for the proposed members of Morris Park Nursing and Rehab Center, LLC, which indicates the availability of sufficient funds to meet the working capital requirement. Leopold Berkowitz submitted an affidavit indicating that his stocks/bonds are liquid and can be used for this project. BFA Attachment E is the pro forma balance sheet of Morris Park Nursing and Rehab Center, LLC, which indicates a positive net asset position of \$3,806,143 as of the first day of operation.

The submitted budget projects \$3,928,258 and \$3,530,058 of net income in Year One and Year Three after the change in ownership. Revenues are based on current reimbursement methodologies. The budget appears reasonable.

BFA Attachment B is a financial summary of Morris Park Nursing Home from 2015 through 2017. As shown, the entity had an average negative working capital position, average positive net asset position, and an average net income of \$2,346,804. The applicant indicated that the reasons for the negative working capital position is there a line of credit balance due to Morris Berkowitz, which totaled \$1,346,035 on December 31, 2018.

BFA Attachment C is the internal financial statements of Morris Park Nursing Home as of December 31, 2018. As shown, the entity had a negative working capital position and a positive net asset position through December 31, 2018. The reason for the negative working capital position is due to a line of credit balance due to Morris Berkowitz, of which the balance totaled \$1,346,035 on December 31, 2018. Also, the entity achieved a net income of \$1,828,111 through December 31, 2018.

BFA Attachment D is a 2015 - 2017 financial summary of Brooklyn Queens Nursing Home, the NYS RHC that Leopold Berkowitz has 100% ownership interest in. As shown, the facility had an average negative working capital position and an average negative net asset position. Brooklyn Queens Nursing Home experienced negative working capital from 2015 through 2017 due to the following reason: in May 2014, the facility was damaged by floods and as a result couldn't admit patients and needed to conduct major repairs to renovate the Center. The cost of the damage was estimated to be in excess of \$1 million. Also, the facility achieved an average net income of \$731,027 from 2015 through 2017.

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
BFA Attachment B	Financial Summary- Morris Park Nursing Home
BFA Attachment C	December 31, 2018 internal financial statements of Morris Park Nursing Home
BFA Attachment D	Financial Summary- Brooklyn Queens Nursing Home
BFA Attachment E	Pro Forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 11th day of April 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 Morris Park Nursing and Rehab., LLC as the new operator of Morris Park Nursing Home, a 191-bed residential health care facility located at 1235 Pelham Parkway North, Bronx, 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:

182209 E

Morris Park Nursing and Rehab Center, LLC

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 promissory note, acceptable to the Department of Health. [BFA]
4. Submission of an executed Sale of Membership Agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed lease assignment agreement, acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of the final, complete, fully-executed certificate of assumed name of applicant, acceptable to the Department. [CSL]
7. Submission of a photocopy of the final, complete, fully-executed certificate of amendment of articles of organization of applicant, acceptable to the Department. [CSL]
8. Submission of a photocopy of a complete counterpart of the indenture of lease dated June 22, 1972, between P.T.R. Company as landlord and Morris Berkowitz, d/b/a Morris Park Nursing Home, as tenant, with respect to the facility premises, 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 # 182221-E
Leroy Operating LLC d/b/a
Leroy Village Green Nursing and Rehabilitation Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Genesee
Acknowledged: November 15, 2018

Executive Summary

Description

Leroy Operating LLC d/b/a Leroy Village Green Nursing and Rehabilitation Center (Leroy Village), a New York limited liability company, is requesting to be established as the new operator of Leroy Village Green Residential Health Care Facility, Inc., a 140-bed, proprietary, Article 28 residential health care facility (RHCF) located at 10 Munson Street, Leroy (Genesee County). There will be no change in beds or services provided.

On July 14, 2017, the current operator, Leroy Village Green Residential Health Care Facility, Inc., entered into an Asset Purchase Agreement (APA) with Leroy Operating LLC for the sale and acquisition of the operating interest of the RHCF for a purchase price of \$2,800,000 less Workers Compensation liabilities valued at \$1,677,561 as of October 15, 2018. The assumed Workers Compensation liabilities will be paid off at closing.

There will be no change in the ownership of the RHCF's real property as a result of this application. The property is currently owned by Ten Munson Street Realty, LLC who closed on the property on October 30, 2017. The current operator has executed a lease agreement with Ten Munson Street Realty, LLC for site control of the facility. Upon PHHPC approval of this application, the existing lease will be assigned to the new operator. There is a relationship between Ten Munson Street Realty, LLC and Leroy Operating LLC in that there is common membership.

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

Table with 2 columns: Shareholders and %*. Includes Current Operator Leroy Village Green Residential Health Care Facility, Inc. and list of shareholders: A. John Bartholomew, Sr. (51.00%), Janice Durfee (8.16%), Robert Brady (8.16%), Martha Mooney (8.17%), David Springett (8.17%), Thomas McAfee (8.17%), Diane Bosco (8.17%).

*Rounding

Table with 2 columns: Members and %. Includes Proposed Operator Leroy Operating LLC and list of members: Jonathan Bleier * (45%), Jacob Sod * (45%), Joel Schwartz (10%).

* Managing Members

Jonathan Bleier and Jacob Sod have ownership interest in various New York State (NYS) RHCFs. BFA Attachment B presents the ownership interest and financial summary of the proposed members' NYS affiliated RHCFs.

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. No administrative services or consulting agreements are proposed in this application. The applicant does not intend to utilize any staffing agencies upon their assumption of ownership. 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's operating interest is \$2,800,000 less Workers' Compensation liabilities assumed at closing. The liabilities were valued at \$1,677,561 as of October 15, 2018 and will be paid by the proposed members at closing via equity. The estimated purchase price balance due of \$1,122,439 will be funded via equity from the proposed members. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$12,082,500	\$12,082,500
Expenses	<u>10,865,801</u>	<u>10,845,514</u>
Net Income	\$1,216,699	\$1,236,986

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

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

Approval conditional upon:

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

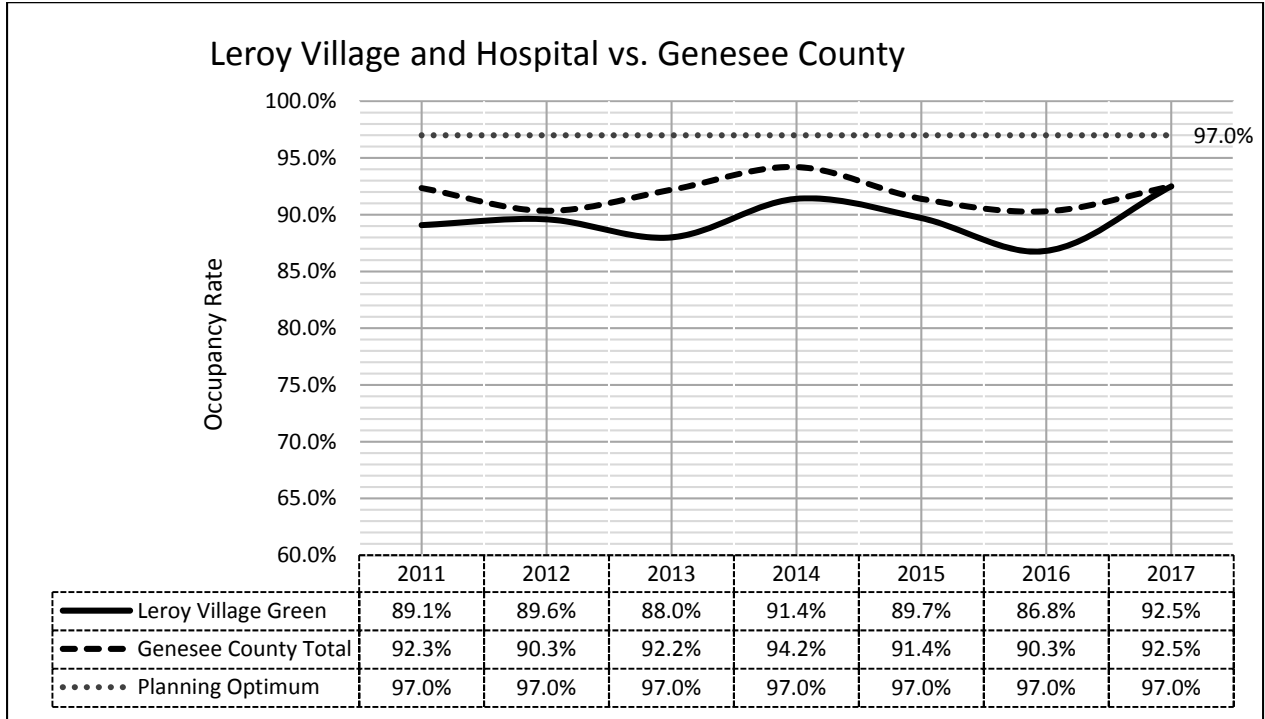
Council Action Date

April 11, 2019

Need Analysis

Analysis

For 2017, the overall occupancy for Genesee County was 92.5%, and Leroy Village Green Residential Health Care Facility's was 92.5%. The most current year of certified data is 2017.



Medicaid Admissions

Leroy Village Green Residential Health Care Facility's Medicaid admissions were 4.7% in 2016 and 8.5% in 2017 and below Genesee County's thresholds of 8.1% and 20.6% in 2016 and 2017, respectively.

The applicant indicated that while the Primary Payor at the time of admission does not appear to support the Medicaid 75% threshold, when a resident is admitted to the facility they may be classified as Medicare/Private Pay pending Medicaid application approval. As there is no option to list the "Medicaid Pending" resident as a category on the cost report, on the surface it is assumed that the facility is not meeting the 75% threshold. However, the facility has had a Medicaid utilization in excess of 50% for the past three full calendar years, including 2017.

Conclusion

There will be no change in beds in Genesee County as a result of this application.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Leroy Village Green Residential Health Care Facility, Inc.	Leroy Village Nursing and Rehabilitation Center
Address	10 Munson Street Leroy, NY 14482	Same
RHCF Capacity	140	Same
ADHC	N/A	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Leroy Village Green Residential Health Care Facility, Inc.	Leroy Operating LLC <u>Members</u> *Jonathan Bleier 45.0% *Jacob Sod 45.0% Joel Schwartz 10.0% *Managing Member

Background

This project was originally submitted as CON 172198, this project was disapproved by EPRC. At the July 19, 2018 EPRC meeting members had questions for the applicants. See PA Attachment A - Response to Member Questions from the July 19, 2018 EPRC Meeting, CON 172198 Establish Leroy Operating LLC. See also the full response from the applicant, PA Attachment B - Updated Summary of Five-Star Ratings for Overall and Staffing Ratings.

Character and Competence

Jonathan Bleier lists employment as the Chief Financial Officer at Highfield Gardens Care Center, a skilled nursing facility located in Great Neck, NY. He has been employed at this facility in positions of increasing responsibility since June of 2005. Mr. Bleier has a First Rabbinic Degree (BA equivalent) from Tiferes Yisrel Rabbinical College. Mr. Bleier discloses the following health facility ownership interests:

Highfield Gardens Care Center of Great Neck	[16.00%]	09/2010 to present
Westchester Center for Rehabilitation and Nursing	[54.96%]	05/2013 to present
Greene Meadows Nursing and Rehabilitation Center	[23.50%]	12/2015 to present
Pine Haven Home	[47.50%]	07/2016 to present
Premier Genesee Center for Nursing and Rehab	[50.00%]	01/2017 to present
Sunnyview Nursing and Rehabilitation Center (PA)	[33.25%]	05/2014 to present
Deer Meadows Rehabilitation Center (PA)	[40.50%]	12/2014 to present
Rosewood Rehabilitation and Nursing Center (PA)	[37.50%]	09/2015 to present
Meadowview Rehabilitation and Nursing Center (PA)	[37.25%]	03/2016 to present
Wyomissing Health and Rehabilitation Center (PA)	[33.33%]	05/2016 to present
Premier Armstrong Rehabilitation & Nursing Facility (PA)	[50.00%]	07/2017 to present
Premier Washington Rehabilitation and Nursing Center (PA)	[50.00%]	10/2017 to present
Brigham Health & Rehab Center (MA)	[33.33%]	06/2016 to present
Country Gardens Skilled Nursing & Rehab Ctr (MA)	[33.33%]	06/2016 to present
Crawford Skilled Nursing & Rehab Ctr (MA)	[33.33%]	06/2016 to present
Blue Hills Health & Rehab Ctr (MA)	[33.33%]	06/2016 to present
Franklin Health & Rehab Ctr (MA)	[33.33%]	06/2016 to present
Kathleen Daniel Nursing & Rehab Ctr (MA)	[33.33%]	06/2016 to present
Charlwell House (MA)	[33.33%]	06/2016 to present
Kimwell Nursing & Rehab (MA)	[33.33%]	06/2016 to present
Timberlyn Nursing and Rehabilitation Center (MA)		12/2014 to 09/2017
Great Barrington Rehabilitation and Nursing Center (MA)		08/2015 to 09/2017
Hanover Terrace Health & Rehab Ctr (NH)	[33.33%]	06/2016 to present
Premier Cadbury at Cherry Hill (NJ)	[30.00%]	07/2016 to present

Fort Myers Rehab (FL)	[45.00%]	01/2016 to present
Manatee Springs Rehabilitation and Nursing Center (FL)	[46.50%]	04/2017 to present
Citywide Mobile Response (EMS)	[9.00%]	06/2004 to present
Genesee Adult Home	[50%]	01/2017 to present

Yaakov (Jacob) Sod lists employment as Manager at Premier Healthcare Management, LLC since 2014. He lists additional employment at Milrose Capital, an investment group located in Lakewood, New Jersey since 2008. Mr. Sod left his position as VP of Acquisitions at Fairview Healthcare Management in December 2017. Mr. Sod has a BA in Talmudic Law from Midrash Shmuel Talmudic College. Mr. Sod discloses the following health facility ownership interests:

Greene Meadows Nursing and Rehabilitation Center	[23.50%]	12/2015 to present
Pine Haven Nursing Home	[47.50%]	7/2016 to present
Premier Genesee Center for Nursing and Rehab	[50%]	1/2017 to present
Fairview Health of Greenwich (CT)		10/2012 to 02/2018
Fairview Health of Southport (CT)		10/2012 to 02/2018
Sunnyview Nursing and Rehabilitation Center (PA)	[39.00%]	05/2014 to present
Deer Meadows Retirement Community (PA)	[40.50%]	12/2014 to present
Rosewood Rehabilitation and Nursing Center (PA)	[37.50%]	09/2015 to present
Meadowview Nursing and Rehabilitation Center (PA)	[37.25%]	01/2016 to present
Wyomissing Health and Rehabilitation Center (PA)	[33.34%]	05/2016 to present
Premier Armstrong Rehabilitation & Nursing Facility (PA)	[50.00%]	05/2016 to present
Brigham Health & Rehab Center (MA)	[33.34%]	06/2016 to present
Country Gardens Skilled Nursing & Rehab Ctr (MA)	[33.34%]	06/2016 to present
Crawford Skilled Nursing & Rehab Ctr (MA)	[33.34%]	06/2016 to present
Blue Hills Health & Rehab Ctr (MA)	[33.34%]	06/2016 to present
Franklin Health & Rehab Ctr (MA)	[33.34%]	06/2016 to present
Kathleen Daniel Nursing & Rehab Ctr (MA)	[33.34%]	06/2016 to present
Charlwell House (MA)	[33.34%]	06/2016 to present
Kimwell Nursing & Rehab (MA)	[33.34%]	06/2016 to present
Timberlyn Nursing and Rehabilitation Center (MA)		12/2014 to 09/2017
Great Barrington Rehabilitation and Nursing Center (MA)		08/2015 to 09/2017
Hanover Terrace Health & Rehab Ctr (NH)	[33.34%]	06/2016 to present
Premier Cadbury at Cherry Hill (NJ)	[30.00%]	07/2016 to present
Fort Meyers Rehabilitation and Nursing Center (FL)	[45.00%]	12/2015 to present
Manatee Springs Rehab & Nursing Ctr(FL)	[46.50%]	04/2017 to present
Page Rehabilitation and Healthcare Center (FL)	[45%]	01/2019 to present
Crystal Care Center (MN)	[18.00%]	12/2013 to 01/2015
Angels Care Center (MN)	[18.00%]	12/2013 to 01/2015

Yaakov (Jacob) Sod Ownership held by a trust:

Sterling Care At Frostburg Village (MD)	[100.00%]	01/2018 to present
Sterling Care At South Mountain (MD)	[100.00%]	01/2018 to present

Joel Schwartz lists employment since 2016 at The Schwartz Group NY, LLC, a Healthcare business which facilitates nursing home sales. Prior to this he was employed as the General Manager for Medfast Billing, Inc., a medical billing company between September 2008 and May 2016. He indicates he has a high school diploma. Mr. Schwartz discloses the following health facility ownership interest:

Woods of Manatee Springs (FL)	[7%]	04/2017 to present
Page Rehabilitation and Healthcare Center (FL)	[10%]	01/2019 to present

Quality Review

<i>Facility</i>	<i>Ownership Since</i>	<i>Overall</i>	<i>Health Inspection</i>	<i>Quality Measures</i>	<i>Staffing</i>
Greene Meadows Nursing & Rehabilitation Center	Current	**	*	*****	***
	12/2015	*	*	**	*
Pine Haven Home	Current	*	*	***	**
	07/2016	*	*	**	**
Premier Genesee Center for Nursing and Rehab	Current	*	*	**	***
	01/2017	*	*	****	*
Westchester Center for Rehabilitation & Nursing	Current	**	**	*****	*
	05/2003 Data 01/2009	****	****	****	**
Highfield Gardens Care Center of Great Neck	Current	***	**	*****	**
	09/2010	****	***	****	****

Pennsylvania

Willow Terrace	Current	*	*	***	***
	05/2018	**	*	*****	***
Chestnut Hill Lodge Health and Rehabilitation Center	Current	*	*	*	***
	01/2018	*	*	**	***
Rosewood Rehabilitation & Nursing Center	Current	**	**	**	***
	09/2015	*	*	*	*
Meadow View Nursing Center	Current	*	*	****	*
	03/2016	*	**	****	*
Pleasant Acres Nursing and Rehabilitation Center	Current	*	*	***	*
	10/2018	*	***	****	***
Sunnyview Nursing and Rehabilitation Center	Current	****	***	*****	**
	05/2014	****	***	*****	****
Deer Meadows Rehabilitation Center	Current	****	***	*****	***
	12/2014	****	****	****	****
Wyomissing Health and Rehabilitation Center	Current	***	***	***	**
	05/2016	****	***	*****	***
Premier Armstrong Rehabilitation and Nursing Fac	Current	***	***	**	***
	07/2017	***	***	***	***

Facility	Ownership Since	Overall	Health Inspection	Quality Measures	Staffing
Premier Washington Rehabilitation and Nursing Center	Current	*****	*****	**	***
	10/2017	****	****	***	****

Massachusetts

Crawford Skilled Nursing and Rehabilitation Center	Current	**	*	***	****
	06/2016	****	***	***	****
Country Gardens Skilled Nrsg & Rehabilitation Ctr	Current	*	*	****	***
	06/2016	*	*	**	***
Franklin Health and Rehabilitation Center LLC	Current	**	*	***	****
	06/2016	**	**	**	***
Kathleen Daniel Nursing and Rehabilitation	Current	*	*	*	****
	06/2016	****	**	*****	****
Charlwell House	Current	****	***	***	****
	06/2016	****	****	****	****
Kimwell Nursing and Rehabilitation	Current	***	***	****	***
	06/2016	**	**	***	**
Brigham Health and Rehabilitation Center LLC	Current	****	***	*****	***
	06/2017	**	***	*	**
Blue Hills Health and Rehabilitation Center LLC	Current	*****	***	*****	****
	06/2016	**	*	***	****

Florida

Manatee Springs Rehabilitation and Nursing Center	Current	**	*	*****	***
	04/2017	*	*	***	***
Fort Myers Rehabilitation and Nursing Center	Current	****	****	***	****
	01/2016	**	*	***	****
Rehabilitation and Healthcare Center of Tampa	Current	**	*	****	****
	01/2019	**	*	****	****
Page Rehabilitation and Healthcare Center	Current	**	*	*****	****
	01/2019	**	*	*****	****

Facility	Ownership Since	Overall	Health Inspection	Quality Measures	Staffing
New Hampshire					
Hanover Terrace Health & Rehabilitation Center	Current	****	***	*****	**
	06/2016	*	*	*	***
Premier Cadbury at Cherry Hill	Current	**	*	*****	****
	07/2016	**	*	***	****

Data date: 02/2019

Notes: Greyed out facilities reflects recent acquisition. The health inspection star rating is based on 2 years of inspections occurring before November 28, 2017.

Ownership Held in Trust

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Maryland					
Sterling Care at Frostburg Village	Current	*	*	***	***
	01/2018	*	*	*	*
Sterling Care at South Mountain	Current	**	**	***	**
	01/2018	**	*	**	****

Data date: 02/2019

Notes: Greyed out facilities reflects recent acquisition. The health inspection star rating is based on 2 years of inspections occurring before November 28, 2017.

The applicant states that some of the facilities they own have had challenges submitting payroll based journal (PBJ) staff data, which is one possible reason for low staff ratings prior to 2018. The applicant also states that the problem with staff ratings may have attenuated the overall star rating of some facilities. To resolve PBJ problems, an audit of data submissions was conducted in all facilities, and regional staff have been supervising the submissions, as needed. Therefore, current staff ratings presented in the table, released by CMS in February 2019, are believed to be an accurate reflection of staff levels at the facilities.

Additional explanations for low overall CMS ratings include the freeze on health inspection ratings, which may be preventing the facilities from increasing overall star ratings, and ratings being based on the facility performance of previous owners. Specific steps taken to improve the quality of care of residents and the performance on CMS star ratings include transitioning facilities with high percentages of CNA agency staff to full time facility staff, implementing new recruitment programs for new hires with actions to improve retention of current staff, and replacing leadership teams when necessary. Improvements in monitoring potential resident problems have been put in place and include conducting weekly at-risk meetings, using CASPER reports to identify issues, and conducting mock surveys and in-house audits. The applicant states that these improvements appear to be improving the quality of care being delivered to residents, and they note that in facilities with recent surveys they are not experiencing harm level deficiencies. See PA Attachment B - Updated Summary of Five-Star Ratings for Overall and Staffing Ratings, for more information.

Enforcement History

Green Meadows

- Fined \$10,000 pursuant to Stipulation & Order # 17-036 for surveillance findings on July 21, 2016. Deficiencies were found under 10NYCRR 415.12 Quality of Care Highest Practicable Potential.

Premier Genesee Center

- Fined \$10,000 pursuant to Stipulation & Order # 17-058 for surveillance findings on August 17, 2017. Deficiencies were found under 415.12 Quality of Care Highest Practicable Potential
- Civil Money Penalty of \$9,428.25 regarding the above issue.

Citywide Mobile Response

- Fined \$7,000 pursuant to Stipulation & Order EMS # 18-004 for an incident on May 2, 2018. Deficiencies were found under 10 NYCRR §800.22(h) Requirements for certified ambulance vehicle construction and 800.23(a) General requirements related to equipment.
- Information provided by the Bureau of Emergency Services indicates that they have had 10 Statements of Deficiency (SODs) with accompanying Plans of Correction (POCs) over the past ten years for vehicle and equipment related issues.

Genesee Adult Home

- Fined \$3,286.00 pursuant to Stipulation & Order # ACF 19-03 for surveillance findings on May 22, 2018 and November 20, 2018. Deficiencies were found under 10NYCRR § 1001.7(k)(4) Admission/Retention Standards, §1001.10(l)(3) and 18 NYCRR §487.7(f)(5) Resident Services, and 18 NYCRR §487.8(e)(8) Food Service regulations.
- Fined \$1,332.00 pursuant to Stipulation & Order # ACF 18-048 for surveillance findings on June 30, 2017 and November 10, 2017. Deficiencies were found under 10NYCRR § 1001.12(b)(1-7) Records and reports.

Fairview Health in Greenwich, Connecticut

- Fined \$360.00 for surveillance findings on May 12, 2014 class B violation of section 19a-527-1(b)(3).
- Fined \$12,285 for a finding with a scope and severity level of G, at \$450 per day from 3/31/15 – 5/15/15.
- Fined \$760 for surveillance findings on April 12, 2017. Deficiencies were for Tags F 309 (Quality of Care) and F 323 (Accident Prevention and Resident Supervision)

Fairview Health of Southport, Connecticut

- Fined \$710.00 pursuant to a Consent Order dated May 4, 2015 for an inspection of the facility concluded on January 20, 2015.
- Fined \$260 for surveillance findings on January 20, 2015 related to smoking program violations.
- Fined \$2,958 for surveillance findings on September 22, 2015 for findings related to Tag F 323 (Accident Prevention and Resident Supervision).
- Fined \$3,363 for survey findings on August 29, 2016 for findings related to Tag F 323 (Accident Prevention and Resident Supervision).
- Fined \$6,821 for survey findings on August 8, 2017 related to Tag F441 (Laundry & Infection Control),
- The facility had a payment denial, penalty date August 22, 2017, payment denial start date November 22, 2017, payment denial duration was seven days

Sunnyview Nursing and Rehabilitation Center in Pennsylvania

- Fined \$14,250.00 for Tag F 323 G level for surveillance findings on 1/12/2017.
- CMP in the amount of \$9,298 assessed on January 2017.

Premier Armstrong County Health Center in Pennsylvania

- CMP for 1 deficiency at \$250 per deficiency per day for 21 days noncompliance + 7 deficiencies at \$500 per deficiency per instance + 4 deficiencies at \$250 per deficiency per instance. For

failure to enforce the rules necessary to ensure the health and safety of the residents. The survey date was 11/14/18.

Pleasant Acres Nursing and Rehabilitation Center in Pennsylvania

- CMP in the amount \$19,750.00 for \$250/ day x 2 deficiencies x 30 days + 500/per deficiency x 9 deficiencies x 30 days of noncompliance + 250/per deficiency x 1 deficiency for surveillance findings on 7/19/18

Willow Terrace Nursing and Rehabilitation Center in Pennsylvania

- Fined \$21,750.00 for a G level enforcement for Tag F692

Premier Cadbury at Cherry Hill Adult Home in New Jersey

- Fined of \$11,250 for surveillance findings on January 31, 2017.

Premier Cadbury Cherry Hill in New Jersey

- Fined \$5,850 CMP for surveillance findings on June 23, 2017 related to a repeat deficiency for a dietary Tag. The previous citation was associated with prior owners.

Angels Care Center in Minnesota

- Fined \$1,001.60 and there was also a fine of \$27,494 for surveillance findings on November 12, 2014.

Country Gardens Skilled Nursing and Rehabilitation in Massachusetts

- Fined \$8,076 for surveillance findings on February 13, 2017. Deficiencies were for F Tag 225 (Investigate/Reporting) and F Tag 323 (Accident Prevention and Resident Supervision).
- Fined \$56,652 for surveillance findings on April 26, 2017. Deficiencies were for F Tag 323 (Accident Prevention and Resident Supervision) and F Tag 152 (Residents right to designate a representative).

It is noted that there was a repeat citation for Tag F323 which were enforced. The applicants gave details which indicated these were not repetitive incidents. Since these enforcements are not recurrent in nature, the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

Skilled Nursing and Rehabilitation Center in Massachusetts

- Fined \$66,812 for surveillance findings on August 26, 2016. Deficiencies were for F Tag 411 (Dental Services) and F Tag 309 (Quality of Care).
- Fined \$57,025 for surveillance findings on December 8, 2017.

Blue Hills Health and Rehabilitation Center in Massachusetts

- Fined \$23,679 for surveillance findings on March 26, 2017. Deficiencies were for F Tag 248 (Activities) and F Tag 498 (Proficiency of Nurses Aides).
- Fined \$478 for surveillance findings on March 7, 2018

Franklin Health and Rehabilitation Center in Massachusetts

- Fined \$1,950 for surveillance findings on June 22, 2016.
- Fined \$32,697 for surveillance findings on August 23, 2017. Deficiencies were for F Tag 319 (Mental/Psychosocial Treatment) and Tag F323 (Accident Prevention and Resident Supervision).
- Fined \$7,803 for surveillance findings on May 31, 2018.

Kathleen Daniel Nursing and Rehabilitation Center in Massachusetts

- Fined \$27,346 for surveillance findings on January 13, 2017. Deficiencies were for F Tag 203 (Documentation transfer/discharge), Tag 204 (Preparation safe/orderly transfer discharge), Tag 225 (Investigate/report allegations), Tag 226 (Develop/Implement Abuse/Neglect Policies) and Tag 353 (Nursing Services).

Conclusion

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 asset purchase agreement for the operating interests of the RHC. The terms of the agreement are summarized below:

Date:	July 14, 2017
Seller:	Leroy Village Green Residential Health Care Facility, Inc.
Buyer:	Leroy Operating LLC
Asset Acquired:	NH business and operations, all furniture/fixtures, equipment, appliances, tools, instruments, machinery, computers (equipment and hardware), office equipment; trucks, vehicles/other transportation equipment, parts, supplies, and other intangible property; all inventory and supplies; all assignable contracts, leases and other arrangements, menus, policies/procedure manuals, operating manuals, training materials; marketing, sales and promotional materials and intellectual property; all administrative records, financial books and records, employee and payroll records, licenses, certificates, permits, waivers, consents, authorizations, variances, accreditations, certificates of occupancy, utility lease agreements, covenants, commitments, warranties, deposits and reserves, resident medical records, payroll records, assignable warranties, Medicare/Medicaid provider agreements and provider numbers, and all licenses held.
Excluded Assets:	Cash, accounts receivable, non-transferable licenses, marketable securities, any grant awarded by a Governmental Authority related to operation of the facility prior to closing date, funds from all rate adjustments and appeals relating to dates of service prior to Closing regardless of whether funds are received after the Closing Date.
Purchase Price:	\$2,800,000 less assumed workers compensation liabilities estimated at \$1,677,561.
Payment of Purchase Price:	\$5,000 deposit held in escrow; \$1,677,561 Workers Compensation liabilities (estimated) payable at closing; \$1,117,439 (estimated) balance due at closing.

The purchase price will be paid as follows:

Members' Equity	\$1,122,439
Assumed Workers Compensation Liabilities*	<u>\$1,677,561</u>
Total paid at closing by Proposed Members' Equity	\$2,800,000

* Estimated at October 15, 2018. To be paid via equity from the proposed members at closing.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. The facility has no outstanding Medicaid overpayment liabilities as of February 21, 2019.

Master Lease Agreement

The applicant has provided the current lease agreement, which will be assigned to Leroy Operating LLC upon PHHPC approval of this application. The terms are summarized as follows:

Date:	July 14, 2017
Premises:	140-bed RHCF located at 10 Munson Street, Leroy, New York 14482
Landlord:	Ten Munson Street Realty, LLC
Tenant:	Leroy Village Green Health Care Facility, Inc
Terms:	10 Years from November 1, 2017 under Commencement Date Rider in Lease Agreement (Exhibit C of agreement)
Amount:	\$202,500 per annum base rent (\$16,875 per month)
Provision:	Triple net (real estate taxes, insurance, maintenance, utilities)

Assignment and Assumption Agreement - Lease

A draft Assignment and Assumption Agreement has been submitted for assignment of the current lease related to the RHCF as follows:

Assignor:	Leroy Village Green Residential Health Care Facility, Inc.
Assignee:	Leroy Operating LLC d/b/a Leroy Village Green Nursing and Rehabilitation Center
Rights assigned:	All rights assigned under the master lease agreement

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

Operating Budget

The applicant has provided an operating budget, in 2019 dollars, for the Years One and Three after the change of ownership. The budget is summarized below:

Revenue	Current Year		Year One		Year Three	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Commercial-FFS	\$424.39	\$1,563,014	\$400.02	\$1,982,900	\$400.02	\$1,982,900
Medicare-FFS	\$617.11	\$1,358,262	\$0.00	\$0.00	\$0.00	\$0.00
Medicare-MC	\$0.00	\$0.00	\$430.02	\$1,065,600	\$430.02	\$1,065,600
Medicaid-FFS	\$194.51	\$5,988,440	\$0.00	\$0.00	\$0.00	\$0.00
Medicaid-MC	\$0.00	\$0.00	\$186.09	\$6,595,200	\$186.09	\$6,595,200
Private Pay	\$280.76	\$2,976,303	\$359.98	\$2,409,000	\$359.98	\$2,409,000
Other Oper.		<u>\$67,616</u>		<u>\$29,800</u>		<u>\$29,800</u>
Total Revenue		\$11,953,635		\$12,082,500		\$12,082,500
Expenses						
Operating	\$237.35	\$11,219,991	\$209.24	\$10,371,400	\$209.24	\$10,845,514
Capital	<u>\$6.85</u>	<u>\$323,700</u>	<u>\$9.97</u>	<u>\$494,401</u>	<u>\$9.56</u>	<u>\$474,114</u>
Total Expenses	\$244.20	\$11,543,691	\$219.21	\$10,865,801	\$218.80	\$10,845,514
Net Income		<u>\$409,944</u>		<u>\$1,216,699</u>		<u>\$1,236,986</u>
Patient Days		47,272		49,568		49,568
Occupancy		93%		97%		97%

The following is noted with respect to the submitted budget:

- The applicant provided utilization data through to November 30, 2018, which indicates facility occupancy has remained at approximately 93% overall for the eleven-month period, consistent with the current year 2017 occupancy. There are no proposed reductions to FTEs. The applicant intends to incorporate a marketing and community outreach program to leverage existing relationships with upstream and downstream healthcare providers to increase occupancy in Year One.
- The average Private Pay rate for the current year 2017 included Medicaid Pending Days that had not been approved by Medicaid for payment, and days billed at the lower Medicaid Rate rather than the

higher Private Pay rate. The projected days/revenues in Years One and Three include only true Private Pay days billed at the correct Private Pay rate.

- In the historical 2017 data, the current operator included both Medicare Part A and Medicare Part B in the Medicare Line. The projection for Years One and Three includes Medicare Part A Revenue only. The proposed operator’s policy is to record Medicare Part B revenue based on actual cash receipts due to tax considerations and collectability issues.
- Medicaid is projected based on the reimbursement methodology under Statewide Pricing, which remains the benchmark rate for Medicaid Managed Care.
- Operating expenses are based on the current year, reflect the average per diems experienced during 2017, and include a \$408,085 reduction in professional fees and a \$483,874 reduction in other direct expenses that the proposed new operator will not need to incur. Staffing is expected to remain at the current level.

- Utilization by payor source is as follows:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial-FFS	7.8%	10.0%	10.0%
Medicare-FFS	4.7%	0%	0%
Medicare-MC	0%	5.0%	5.0%
Medicaid-FFS	65.1%	0%	0%
Medicaid-MC	0%	71.5%	71.5%
Private Pay	22.4%	13.5%	13.5%

- Breakeven utilization is 87.23% for the first year.

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the RHCF’s operating interest is \$2,800,000 less Workers’ Compensation liabilities currently estimated at \$1,677,561. The total purchase price is being funded via equity from the proposed members. The Workers’ Compensation liabilities will be paid at closing. BFA Attachment A is a summary of the proposed members’ net worth, which reveals sufficient resources exist overall for the equity contribution. Proposed members Jonathan Bleier and Jacob Sod have provided disproportionate share affidavits attesting to cover any member’s equity shortfall for the acquisition of the RHCF operations.

The working capital requirement of \$1,810,967, based on two months of the first year’s expenses, will be satisfied via \$907,174 equity from the proposed members and financing of \$903,793 at 6% for a five-year term. Milrose Capital has provided a letter of interest at the stated terms. BFA Attachment A reveals sufficient resources exist for stated levels of equity, given that disproportionate share affidavits have been provided to cover member shortfalls.

The submitted budget indicates that net income of \$1,216,699 will be generated for the first year after the change in ownership. Revenues are estimated to increase from the current year (2017) by approximately \$128,865 based on the increase in occupancy (going from 93% to 97%). The applicant has provided actual 2018 utilization data through to November 30, 2018, which indicates occupancy has remained consistent with 2017 overall (at 93.32% for the eleven-month period). However, utilization by payor mix has shifted somewhat with private pay now accounting for 19.5% of total (down from 22.4% in 2017) and Medicaid increasing to 71.6% of total utilization (up from 65.1% in 2017). BFA Attachment E is the budget sensitivity analysis based on the current utilization experience of the facility, which shows that budgeted revenues would decrease by \$711,182 resulting in a net income of \$505,517.

BFA Attachment D is the pro forma balance sheet of Leroy Operating LLC, which shows the operation will start with members’ equity of \$3,705,236 as of the first day of operations. Assets include goodwill of \$2,198,950, which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill were eliminated from the equation, the total net assets would be \$1,506,286.

BFA Attachment C, Financial Summary of Leroy Village Green Residential Health Care Facility, Inc., indicates positive working capital of \$949,223 and an operating gain of \$351,791 in 2017. As of November 30, 2018, the entity had negative working capital (due to the classification of the Workers Compensation liability as a current liability) and net income of \$1,894,388.

BFA Attachments B, Financial Summary of the proposed members' affiliated RHCfs, shows the facilities have maintained positive working capital, net equity, and net income from operations for the periods shown, except for Premier Genesee Center for Nursing and Rehabilitation (Premier). Premier was previously a county-owned RHCf that Jacob Sod and Jonathan Bleier acquired as members of Genesee Center Operating, LLC effective January 1, 2017. The facility's first full year of operation under the new ownership indicates an improvement from a net loss of \$2.52 million in 2014 to a net income of \$5,801 in 2017. The facility is showing a net income of \$2.45 million through November 30, 2018.

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

Attachments

BFA Attachment A	Leroy Operating LLC, Proposed Members Net Worth
BFA Attachment B	Financial Summary and ownership interest of the proposed members affiliated RHCfs
BFA Attachment C	Financial Summary, Leroy Village Green Residential Health Care Facility, Inc.
BFA Attachment D	Pro-forma Leroy Operating LLC
BFA Attachment E	Budget Sensitivity Analysis
PA Attachment A	Response to Member Questions from the July 19, 2018 EPRC Meeting, CON 172198
PA Attachment B	Establish Leroy Operating LLC
	Updated Summary of Five-Star Ratings for Overall and Staffing Ratings

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 11th day of April 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 Leroy Operating LLC as the new operator of Leroy Village Green Residential Health Care Facility, an existing 140-bed residential health care facility located at 10 Munson Street, Leroy, 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:

182221 E

Leroy Operating LLC d/b/a Leroy Village Green
Nursing and Rehabilitation Center

APPROVAL CONTINGENT UPON:

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

APPROVAL CONDITIONAL UPON:

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

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 # 182271-E
Union Plaza Care Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Queens
Acknowledged: December 3, 2018

Executive Summary

Description

Union Plaza Nursing Home, Inc., a proprietary business corporation that operates Union Plaza Care Center, a 280-bed, Article 28 residential health care facility (RHCF) located at 33-23 Union Street, Flushing (Queens County), requests approval to transfer 50% interest from three withdrawing members to two new members and one existing member. The transfer of ownership is necessitated, in part, due to the death of two shareholders, Jack Friedman and Shlomo (Steve) Zakheim, whose shares are to be transferred to their wives in accordance with the terms of the respective decedents' wills. Neither of the decedents' spouses are current shareholders in the corporation. Jack Friedman's 25 shares (25% stock interest) will be transferred to his wife, Esther Friedman, and Shlomo Zakheim's 16.67 shares (16.67% stock interest) will be transferred to his wife, Suzanne Fay Zakheim.

In addition, pursuant to a Sale and Purchase Agreement, existing shareholder Judy Glaser agreed to sell her 16.67 shares (16.67% stock interest) to Simon Pelman and Esther Friedman. Mr. Perlman and Mrs. Friedman agreed to purchase Judy Glaser's 16.67 shares (8.335 shares each) for a totaling purchase price of \$600,000 (\$300,000 each). Payment for the transaction was made on January 29, 2018, in accordance with the terms of the Sale and Purchase Agreement. There will be no change in beds or services provided.

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

Table with 2 columns: Stockholders, % (Current Ownership). Rows include Simon Pelman (25.00%), Jack Friedman (25.00%), Shlomo Zakheim (16.67%), Judy Glaser (16.67%), Hannah Weiss (8.33%), Neuman Family (8.33%), Total (100.00%).

Table with 2 columns: Stockholders, % (Proposed Ownership). Rows include Simon Pelman (33.335%), Esther Friedman (33.335%), Suzanne Fay Zakheim (16.670%), Hannah Weiss (8.330%), Neuman Family (8.330%), Total (100.000%).

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no Need recommendation of this project.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicant identified as a new member. No changes in the program or physical environment are proposed in this application. No administrative services or consulting services agreements are proposed in this application.

Financial Summary

There are no project costs associated with this application. The purchase price for the 16.67 shares in Union Plaza Care Center, Inc. is \$600,000 and will be met via personal equity of \$300,000 from each purchaser. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$34,505,620	\$34,489,300
Expenses	<u>32,391,182</u>	<u>32,520,834</u>
Gain	\$2,114,438	\$1,968,466

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 fully executed General Release, 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

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Union Plaza Nursing Home, Inc	Union Plaza Care Center
Address	33-23 Union St Flushing, NY 11354	Same
RHCF Capacity	280	Same
ADHC	N/A	Same
Type of Operator	Corporation	Same
Class of Operator	Proprietary	Same
Operator	Union Plaza Nursing Home Inc. % Simon Pelman 25.00% Jack Friedman 25.00% Shlomo Zakheim 16.67% Judy Glaser 16.67% Hannah Weiss 8.33% Neuman Family 8.33% 100%	Same % Simon Pelman* 33.335% Esther Friedman** 33.335% Suzanne Zakheim 16.67% Hannah Weiss 8.33% Neuman Family 8.33% 100% *Chairman of the Board ** Secretary

Experience

Suzanne Zakheim is currently employed as an Assistant Professor-Adjunct at New York University (NYU). She has been employed there since 1997. Ms. Zakheim discloses the following ownership interests:

Meadowbrook Care Center [4.17%]	06/96 – current
Gamzel NY, Inc d/b/a Revival Home Health Care [100%] (CHHA)	01/06 – 2013

Esther Friedman is currently employed at Union Plaza Nursing Home, Inc as an Executive Director. She has held this position since 2005. Ms. Friedman also indicates that she is employed at Meadowbrook Care Center since January 2017. Applicant states she is in charge of Patient Services. Mrs. Friedman has an active NYS Nursing Home Administrator license and is registered in good standing.

Quality Review

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Union Plaza Care Center	Subject Facility	****	****	*****	*
Meadowbrook Care Center	Current	****	***	*****	***
	1996 Data 01/2009	*	**	***	*

Data Date: 02/2019

Note: The health inspection rating is based on two years of inspections occurring before November 28, 2017.

Esther Friedman indicates management responsibility at the subject facility, which has a long history of one-star staff rating. The applicant states that staff data have been erroneously reported to CMS for many years, the problem has been recognized but only recently analyzed and addressed, and that the staff rating will improve when corrected data is used by CMS.

Enforcement History

Union Plaza Care Center

- An Immediate Jeopardy and Substandard Quality of Care was issued on September 25, 2009 for F tags 0323 and 0490 Potential for serious harm to residents' health and safety.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-10-056 issued November 15, 2010 for surveillance findings on September 25, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accidents and Supervision.
- The facility incurred a Civil Monetary Penalty of \$31,297.50 from 09/22/2009 thru 10/27/2009. Paid and Closed.

Programmatic Review

No changes in the program or physical environment are proposed in this application.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicant identified as a new member. No changes in the program or physical environment are proposed in this application. No administrative services or consulting services agreements are proposed in this application.

Financial Analysis

Sale and Purchase Agreement

The applicant has submitted an executed Sale and Purchase Agreement (SPA) to acquire the stock interests of the RHCF. The agreement will become effectuated upon PHHPC approval of this CON. The terms are summarized below:

Date:	January 29, 2018
Seller:	Judy Glaser
Purchaser(s):	Simon Pelman and Esther Friedman
Terms:	Seller transfers 16.667% of total issued and outstanding shares in Union Plaza Nursing Home, Inc. to Purchasers, equally, on January 29, 2018.
Purchase Amount:	\$600,000 (\$300,000 per purchaser) paid at closing on January 29, 2018

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of January 18, 2019, the facility had no outstanding Medicaid overpayment liabilities.

Operating Budget

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

	<u>Current Year (2017)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues</u>						
PP/Other	\$1,216.52	\$2,068,079	\$439.29	\$2,062,881	\$452.46	\$2,124,767
Medicare - FFS	\$559.26	3,796,827	\$772.35	6,286,192	\$772.35	6,286,192
Medicaid - FFS	\$311.52	14,509,243	\$294.27	12,764,798	\$294.27	12,764,798
Medicaid - MC	\$281.66	<u>11,299,552</u>	\$353.20	<u>13,196,576</u>	\$353.20	<u>13,196,576</u>
Net Patient Rev.		\$31,673,701		\$34,310,447		\$34,372,333
Other Misc. Rev.		113,560		85,468		116,967
Prior Year Rev.		<u>674,250</u>		<u>109,705</u>		<u>0</u>
Total Revenue		\$32,461,511		\$34,505,620		\$34,489,300

<u>Expenses</u>						
Operating	\$285.61	\$27,184,989	\$306.85	\$28,714,212	\$306.85	\$28,714,213
Capital	<u>\$40.08</u>	<u>3,815,031</u>	<u>\$39.29</u>	<u>3,676,970</u>	<u>\$40.68</u>	<u>3,806,621</u>
Total Expenses	\$325.69	\$31,000,020	\$346.14	\$32,391,182	\$347.53	\$32,520,834
Net Income (Loss)		<u>\$1,461,492</u>		<u>\$2,114,438</u>		<u>\$1,968,466</u>
Patient Days		95,181		93,576		93,576
Occupancy %		93.13%		91.56%		91.56%

The following is noted with respect to the submitted budget:

- Current year rates were not reflected properly due to misclassification of patients who convert from private pay to other insurances as time progresses.
- Private pay revenue in the 2017 certified financial statements included commercial and managed care payor sources, whose reimbursement rates differ from private pay payor rates.
- Medicaid revenue is based on the facility's current 2019 Medicaid Regional Pricing rate.
- Other Miscellaneous revenues include vending machine income, phone rentals and real estate tax refund.
- The Medicare, Medicaid managed care, and private pay/ other rates are based on the facility's actual 2017 rates.
- The current year reflects the facility's 2017 revenues and expenses.
- Breakeven utilization is projected at 85.95% or 87,841 patient days for year one, and 85.92% or 87,810 patient days for year three.
- Utilization by payor source for the current, first and third years is as follows:

<u>Payor</u>	<u>Current Year</u>	<u>Year One and Three</u>
PP/Other	1.8%	5.0%
Medicare FFS	7.1%	8.7%
Medicaid FFS	48.9%	46.4%
Medicaid MC	42.2%	39.9%
- The facility's Medicaid admissions of 6.2% in 2016 and 7.1% in 2017 did not exceed Queens County 75% threshold rates of 23.2% for 2016 and 23.8% in 2017. To ensure continued access to Medicaid recipients the facility:
 - Regularly engages with hospital discharge planners to make them aware of the facility's Medicaid access program;
 - Communicates with local hospital discharge planners on a regular basis regarding bed availability at the facility; and
 - Informs 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 program.

Capability and Feasibility

The purchase price for the 16.67 shares in Union Plaza Care Center, Inc. is \$600,000 and was paid through the execution and closing of the Sale and Purchase Agreement on January 29, 2018. There are no project costs associated with this transaction.

The working capital requirement of \$5,398,530, based on two months of the first year's expenses, will be satisfied from the facility's existing operations and additional members' equity. Net cash and accounts receivable of \$5,092,965, minus notes payable and accounts payable of \$2,583,814, equaled \$2,509,151 available resources for working capital as of September 30, 2018, resulting in a need for additional equity of \$2,889,379 from proposed members. BFA Attachment A, the net worth of proposed members, shows sufficient equity.

The submitted budget indicates a net income of \$2,114,438 and \$2,123,348 for the first and third years, respectively, subsequent to the change in membership interest. BFA Attachment D is a budget sensitivity analysis based on current utilization of the facility as of September 30, 2018, which was 91.81%, and a more realistically attainable Medicare rate held to their historical 2017 Medicare rate of payment. The sensitivity analysis shows the budgeted revenues would decrease by \$1,650,434 resulting in a net operating income in year one of \$464,004.

BFA Attachment B is Union Plaza Care Center, Inc.'s financial summary. The facility maintained a positive working capital position, a positive net asset position, and an average net operating income of \$1,144,861 for the years 2015 through 2017. As of September 30, 2018, the facility had a net operating income of \$1,285,746.

BFA Attachment C is the financial summary of Meadowbrook Care Center, Inc., Suzanne Zakheim's affiliated home. The facility maintained a positive working capital position, a positive net asset position, and a net operating income of \$3,189,800 as of December 31, 2017. The 2015 net operating loss was due to lower Medicaid and Medicare rates based on lower Case Mix Indexes. The facility has redirected their revenue streams through marketing, a referral liaison, advertising and enhanced contracted services showing positive net income results to date.

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

Attachments

- BFA Attachment A Net Worth Statement of Proposed Members
- BFA Attachment B Union Plaza Care Center, financial Summary
- BFA Attachment C Affiliated Nursing Home-Meadow Brook Care Center
- BFA Attachment D Budget Sensitivity Analysis

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 11th day of April 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 a total of 50 percent interest from three withdrawing members to two new members and one existing 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:

FACILITY/APPLICANT:

182271 E

Union Plaza Care Center

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of an amended and fully executed General Release, 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 # 182175-E
**FSNR CHHA, LLC d/b/a Four Seasons Nursing and
 Rehabilitation Certified Home Health Agency**

Program: Certified Home Health Agency
Purpose: Establishment

County: Kings
Acknowledged: October 12, 2018

Executive Summary

Description

FSNR CHHA, LLC d/b/a Four Seasons Nursing and Rehabilitation Certified Home Health Agency, a Delaware limited liability company authorized to do business in New York State, requests approval to be established as the new operator of Four Seasons Nursing and Rehabilitation Certified Home Health Agency, an Article 36 certified home health agency (CHHA) located at 1535 Rockaway Parkway, Brooklyn (Kings County). Parkshore Health Care, LLC (Parkshore) is the current operator of the CHHA. The agency is authorized to serve Bronx, Kings and Queens counties and is certified to provide Home Health Aide, Medical Social Services, Medical Supplies/Equipment and Appliances, Nursing, Nutritional, Occupational Therapy, Physical Therapy, and Speech-Language Pathology services. The applicant is requesting to decertify Nutritional services as part of this application. All other services will continue and there will be no other programmatic changes to the CHHA because of this transition. A separate entity, FSNR Acquisition Group, LLC, has previously acquired the real property.

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

<u>Current Operator</u>	
Parkshore Health Care, LLC	
<u>Members</u>	
Barry Friedman	90%
Jeffrey Goldstein	9%
Caroline Rich	1%

<u>Proposed Operator</u>	
FSNR CHHA, LLC	
<u>Members</u>	
Alexander Sherman	15%
Jeffrey Goldstein*	10%
Lea Sherman	40%
Michael Manela	20%
Sheryl Frankl	8%
Howard Pomerantz	5%
Hindy Amsel	2%

*Managing member

On May 1, 2014, FSNR SNF, LLC, an entity with identical membership to FSNR CHHA, LLC, entered into an Asset Purchase Agreement (APA) with Parkshore for the sale and acquisition of the operating interests and certain assets of the following: Four Seasons Nursing and Rehabilitation Center, a 270-bed residential health care facility (RHCF) located at 1555 Rockaway Parkway in Brooklyn; two off-site adult day health care programs (ADHCPs) operated by the RHCF; Four Seasons Nursing and Rehabilitation Certified Home Health Agency; and a registered pharmacy that Parkshore owned and operated. A separate application for the change of ownership of the RHCF and the ADHCPs received final Public Health and Health Planning Council (PHHPC) approval on November 15, 2017, and the change in operator becoming effective January 16, 2018 (CON 171109). The change of ownership of the pharmacy is being handled through the New York State Education Department. This application addresses the CHHA operation whereby FSNR SNF, LLC will

assign its operating interests and CHHA assets acquired under the APA to FSNR CHHA, LLC. There are no costs or purchase price related to the assignment.

Parkshore currently leases the CHHA office space from FSNR Acquisition Group, LLC and the applicant will sublease the space from Parkshore via an assignment agreement. The lease is non-arm's length in that there is a relationship between landlord and sub-lessee via common members

OPCHSM Recommendation

Contingent Approval

Need Summary

Other than the decertification of nutritional services, there will be no change to services provided or counties served 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 associated with this application. The proposed budget is as follows:

Revenues	\$3,162,000
Expenses	<u>\$3,108,323</u>
Net Income	\$53,677

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed Assignment and Assumption Agreement for the Lease Agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed Assignment of Rights for the CHHA operations, 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

April 11, 2019

Need and Program Analysis

Program Description

FSNR CHHA, LLC, a limited liability company formed in Delaware, requests approval to become the new operator of Four Seasons Nursing and Rehabilitation Certified Home Health Agency (CHHA) under Article 36 of the Public Health Law. As part of this project, Four Seasons Nursing and Rehabilitation Certified Home Health Agency will be decertifying nutrition services. No other changes will be made to the services being provided or the counties served by Four Seasons Nursing and Rehabilitation Certified Home Health Agency.

FSNR CHHA, LLC operates the following facilities within New York State:

- The Hamptons Center for Rehab and Nursing (RHCF)
- Niagara Rehabilitation & Nursing Center (RHCF)
- Humboldt House Rehabilitation and Nursing Center (RHCF)
- Fiddlers Green Manor Rehabilitation and Nursing Center (RHCF)
- Four Seasons Nursing and Rehabilitation (RHCF)
- Gateway Dialysis Center (D&TC)

FSNR CHHA, LLC operates the following facilities outside of New York State:

- Sweet Brook of Williamstown Rehabilitation & Nursing (RHCF, MA)
- Washington Square Healthcare Center (RHCF, OH)
- Concord Care of Cortland (RHCF, OH)
- Concord Care of Hartford (RHCF, OH)
- Concord Care of Sandusky (RHCF, OH)
- Concord Care of Toledo (RHCF, OH)
- Cardinal Woods Skilled Nursing and Rehab Center (RHCF, OH)
- Eagle Point Skilled Nursing and Rehab Center (RHCF, OH)
- Lake Point Nursing and Rehab Center (RHCF, OH)
- Addison Heights Health & Rehab (RHCF, OH)
- Edgewood Manor Lucasville I (RHCF, OH)
- Edgewood Manor Lucasville II (RHCF, OH)
- Piketon Nursing Center (RHCF, OH)
- Kenton Nursing & Rehabilitation (RHCF, OH)
- Edgewood Manor of Greenfield (RHCF, OH)
- Edgewood Manor of Wellston (RHCF, OH)
- Ridgewood Manor (RHCF, OH)
- Parkview Care Center (RHCF, OH)

Character and Competence

The membership of FSNR CHHA, LLC is as follows:

Michael Manela – Member, 20%
Owner, Mac Wealth Management

Affiliations

- Four Seasons Nursing and Rehabilitation
- Gateway Dialysis

Lea Sherman, SLP– Member, 40%

Self Employed, Speech Therapist

Affiliations

- Humboldt House Rehabilitation & Nursing
- Four Seasons Nursing and Rehabilitation
- Gateway Dialysis

Alexander M. Sherman, Esq. – Member, 15%

Assistant Administrator, Sunharbor Manor Skilled Nursing & Rehabilitation Center (SNF)

Legal Consultant, Absolut Care Facilities Management

Affiliations

- Niagara Rehabilitation & Nursing Center
- Humboldt House Rehabilitation & Nursing
- Four Seasons Nursing and Rehabilitation
- Sweet Brook of Williamstown Rehabilitation & Nursing Center (RHCF, MA)
- Washington Square Healthcare Center (RHCF, OH)
- Meadowbrook Manor (RHCF, OH)
- Concord Care of Hartford (RHCF, OH)
- Concord Care of Sandusky (RHCF, OH)
- Concord Care of Toledo (RHCF, OH)
- Cardinal Woods Skilled Nursing and Rehab Center (RHCF, OH)
- Eagle Point Skilled Nursing and Rehab Center (RHCF, OH)
- Lake Point Nursing and Rehab Center (RHCF, OH)
- Addison Heights Health & Rehab (RHCF, OH)
- Edgewood Manor Lucasville I (RHCF, OH)
- Edgewood Manor Lucasville II (RHCF, OH)
- Piketon Nursing Center (RHCF, OH)
- Kenton Nursing & Rehabilitation (RHCF, OH)
- Edgewood Manor of Greenfield (RHCF, OH)
- Edgewood Manor of Wellston (RHCF, OH)
- Ridgewood Manor (RHCF, OH)
- Parkview Care Center (RHCF, OH)

Sheryl H. Frankl, RN – Member, 8%

Residence RN, Women's League Community Residences, Inc.

Affiliations

- Four Seasons Nursing and Rehabilitation
- Gateway Dialysis

Jeffrey P. Goldstein, NHA – Managing Member, 10%

Member, IM Consulting LLC

Affiliations

- Niagara Rehabilitation & Nursing Center
- The Hamptons Center for Rehab and Nursing
- Fiddlers Green Manor Rehabilitation and Nursing Center
- Four Seasons Nursing and Rehabilitation
- Gateway Dialysis
- Humboldt House Rehabilitation & Nursing
- Sweet Brook of Williamstown Rehabilitation & Nursing (RHCF, MA)
- Washington Square Healthcare Center (RHCF, OH)
- Concord Care of Cortland (RHCF, OH)
- Concord Care of Hartford (RHCF, OH)
- Concord Care of Sandusky (RHCF, OH)
- Concord Care of Toledo (RHCF, OH)
- Cardinal Woods Skilled Nursing and Rehab Center (RHCF, OH)

- Eagle Point Skilled Nursing and Rehab Center (RHCF, OH)
- Lake Point Nursing and Rehab Center (RHCF, OH)
- Addison Heights Health & Rehab (RHCF, OH)
- Edgewood Manor Lucasville I (RHCF, OH)
- Edgewood Manor Lucasville II (RHCF, OH)
- Picketon Nursing Center (RHCF, OH)
- Kenton Nursing & Rehabilitation (RHCF, OH)
- Edgewood Manor of Greenfield (RHCF, OH)
- Edgewood Manor of Wellston (RHCF, OH)
- Ridgewood Manor (RHCF, OH)
- Parkview Care Center (RHCF, OH)

Chanania (Howard) Pomerantz – Member, 5%
President, H.P. Industries Inc.

Affiliations

- Four Seasons Nursing and Rehabilitation
- Gateway Dialysis

Hindy C. Amsel, OT – Member, 2%
Occupational Therapist, Challenge Early Intervention Center

Affiliations

- Humboldt House Rehabilitation & Nursing
- Four Seasons Nursing and Rehabilitation
- Gateway Dialysis

Alexander Sherman disclosed that he plead guilty to a disorderly conduct violation and received a sentence of seven days community service, which was completed without incident.

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.

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 Office of the Professions of the State Education Department indicates no issues with the licensure of the health professionals associated with this application.

The Bureau of Professional Credentialing has indicated that Jeffrey Goldstein NHA license 04821 holds an NHA license in good standing and the Board of Examiners of Nursing Home Administrators. In 2010 a referral was made to the Division of Legal Affairs for failure to apply and qualify for registration before January 1, 2010 and continuing to practice as an administrator of record without the required registration.

Facility Compliance/Enforcement

The Bureau of Quality and Surveillance has reviewed the compliance history of the above-mentioned Skilled Nursing Facilities and reports as follows:

- Niagara Rehabilitation & Nursing Center was fined \$14,000.00 pursuant to a stipulation and order dated April 4, 2016 for inspection findings during a complaint survey on August 13, 2015 for violations of Article 28 of the Public Health Law and 10 NYCRR Part 415.3(e)(2)(ii)(b)(c) Resident Rights: Notification of Changes, 10 NYCRR 415.12(m)(2) Quality of Care: Significant Medication Errors and 415.12 Quality of Care: Highest Practicable Potential.
- Niagara Rehabilitation & Nursing Center was fined \$10,000.00 pursuant to a stipulation and order dated June 28, 2016 for inspection findings during a recertification survey on January 21, 2016 for violations of Article 28 of the Public Health Law and 10 NYCRR 415.12, Quality of Care: Highest Practicable Potential.

- Niagara Rehabilitation & Nursing Center was fined \$10,000.00 pursuant to a stipulation and order dated August 23, 2017 for inspection findings during a complaint survey on June 13, 2017 for violations of Article 28 of the Public Health Law and 10 NYCRR 415.3(e)(2)(ii)(c). A Civil Money Penalty in the amount of \$8,908.25 was also imposed.
- Humboldt House Rehabilitation & Nursing Center was fined \$2,000.00 pursuant to a stipulation and order dated May 15, 2017 for inspection findings during a complaint survey on January 27, 2017 for violations of Article 28 of the Public Health Law and 10 NYCRR 415.12(m)(2) Quality of Care: Significant Medication Errors. A Civil Money Penalty in the amount of \$7,933.25 was also imposed.
- Humboldt House Rehabilitation & Nursing Center was fined a Civil Money Penalty in the amount of \$124,520.00 for findings during a complaint survey on October 29, 2018. The Civil Money Penalty has not yet been paid.
- Fiddlers Green Manor Rehabilitation and Nursing Center was fined \$12,000.00 pursuant to a stipulation and order dated July 12, 2016 for inspection findings during a complaint survey on January 5, 2016 for violations of Article 28 of the Public Health Law and 10 NYCRR 415.3(e)(2)(ii)(b)(c) Notification of Changes and 415.12 Quality of Care: Highest Practicable Potential.

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 Ohio Department of Health reviewed the compliance history of the above-mentioned health care facilities and reports as follows:

- Edgewood Manor of Greenfield was fined a \$20,000.00 Civil Money Penalty by the Centers for Medicare & Medicaid Services for noncompliance identified during a survey on May 22, 2017.
- Concord Care of Hartford was fined a Civil Money Penalty in the amount of \$14,587.00 for findings during a complaint survey on August 1, 2016. The facility was found to be in substantial compliance on August 15, 2016. This agency was also fined a Civil Money Penalty in the amount of \$62,936.00 for findings during a complaint investigation on April 8, 2016. Substantial compliance was achieved on April 9, 2016.
- Ridgewood Manor was fined a Civil Money Penalty in the amount of \$90,000.00, the facility was found to be in substantial compliance on September 10, 2018.
- Meadowbrook Manor was fined a Civil Money Penalty of \$68,000.00 for findings of immediate jeopardy during an April 8, 2016 survey. On August 1, 2016, a complaint survey was conducted which resulted in a Civil Money Penalty of \$22,442.00 being imposed.

The applicant submitted an affidavit attesting to the following enforcement actions imposed by the State of Massachusetts:

- Sweet Brook of Williamstown Rehabilitation & Nursing Center was fined a Civil Money Penalty in the amount of \$5354.05 for findings during a complaint investigation on April 11, 2017. The facility was found to be in substantial compliance on May 24, 2017.
- Sweet Brook of Williamstown Rehabilitation & Nursing Center was fined a Civil Money Penalty in the amount of \$288,267.19 for findings during a complaint investigation on September 7, 2017. The facility was found to be in substantial compliance on November 3, 2017.

CHHA Quality of Patient Care Star Ratings as of March 7, 2019	
New York Average: 3.5 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
Four Seasons Nursing & Rehabilitation CHHA	4.5 out of 5 stars

Conclusion

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a certified home health agency.

Financial Analysis

Master Purchase and Sale Agreement

The applicant submitted the executed Master Asset Purchase Agreement that enabled FSNR SNF, LLC to acquire the operating interests of the Article 28 and Article 36 entities. The APA was effectuated upon the PHHPC's approval of CON 171109. The terms are summarized below:

Date:	May 1, 2014
Seller:	Parkshore Health Care, LLC
Buyer:	FSNR SNF, LLC
Assets Acquired:	All rights, title and interest in the business assets lien free. The assets included the operating interest of the 270-bed Four Seasons RHCF and the off-site adult day health care programs located at 945 East 108 th Street and 9517 Avenue J & 95 th Street in Brooklyn; the Four Seasons CHHA, and a pharmacy operation. The assets included: accounts receivable, retroactive rate increases, and assumed contracts; cash & cash equivalents; leasehold improvements; vehicles; inventory, supplies; resident funds held in trust; all trade names, logos, trademarks and service marks including the name "Four Seasons Nursing and Rehabilitation Center;" all security deposits and prepayments for future services; all menus, policy/procedures manuals; computer software; all telephone numbers, telefax numbers and domain names; copies of all financial books and records relating to the operations; all resident/patient records; all employee and payroll records; the Seller's Medicare and Medicaid provider agreements and provider numbers; goodwill, licenses and permits.
Excluded Assets:	Retroactive rate increases for services prior to property closing date, accounts receivable prior to the property closing date (not yet collected as of the closing date), real estate tax funds prior to property closing date.
Assumed Liabilities:	Ongoing obligations on after the property closing date (including trade payables), cash assessment liabilities on purchase accounts receivable, outstanding OMIG liabilities per section 11.7. lease obligations as of property closing and property environmental conditions.
Purchase Price:	\$1,800,000

The purchase price for the operations was satisfied via \$500,000 equity from the members of FSNR SNF, LLC and \$1,300,000 provided by FSNR Acquisition Group, LLC, a related entity that purchased the realty associated with the operations. The APA transactions and related real estate purchases were finalized under CON 171109, which received final PHHPC approval on November 15, 2017. This application addresses the CHHA operation whereby FSNR SNF, LLC is assigning the CHHA operating interests and business assets acquired under the APA to FSNR CHHA, LLC. There is no purchase price related to the assignment.

Assignment of Rights

The applicant submitted a draft Assignment of Rights for the assignment of the CHHA assets associated with the APA, as shown below:

Assignor:	FSNR SNF, LLC
Assignee:	FSNR CHHA, LLC
Assets Transferred:	All rights, title and interest as Buyer under the APA to the Basic Assets that relate to the Four Seasons Nursing and Rehabilitation Certified Home Health Agency
Assignment Fee:	N/A

The applicant 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 February 19, 2019, the facility had no outstanding Medicaid liabilities.

Lease Agreement

The applicant submitted an executed lease agreement, the terms of which are summarized below:

Date:	January 1, 2018
Premises:	1535 Rockaway Parkway, Brooklyn, New York
Landlord:	FSNR Acquisition Group, LLC
Lessee:	Parkshore Health Care, LLC
Term:	5 years (1/1/18-12/31/22)
Rental:	Years 1-3 \$150,000 annual with a 3% increase for years 4 and 5.
Provisions:	Triple net lease

Assignment and Assumption Agreement

The applicant submitted a draft Assignment and Assumption Agreement for the site that they will occupy, summarized below:

Premises:	1535 Rockaway Parkway, Brooklyn, New York
Assignor:	Parkshore Health Care, LLC
Assignee:	FSNR CHHA, LLC
Term:	Remaining term of the Current loan which ends 12/31/22
Rent:	Years 1-3: \$150,000 annual with a 3% increase for years 4 and 5.

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

Operating Budget

The applicant 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>Years One & Three</u>
<u>Revenues</u>		
Medicare FFS	\$1,642,300	\$2,280,000
Medicaid MC	\$1,027,692	\$720,000
Commercial MC	\$148,924	\$162,000
Total Revenues	\$2,818,916	\$3,162,000
<u>Expenses</u>		
Operating	\$2,722,321	\$2,805,888
Capital	\$505,316	\$302,435
Total Expenses	\$3,227,637	\$3,108,323
Net Income (Loss)	<u>(\$408,721)</u>	<u>\$53,677</u>
Utilization - Visits*	7,525	7,643
Utilization - Hours**	22,924	23,460

* Nursing, PT, OT, SP, and Medical Social Service visits

**Home Health Aid hours

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

<u>Visits</u>	<u>Current</u>	<u>Years One & Three</u>
Medicare FFS	74.71%	72.46%
Medicaid MC	7.30%	7.47%
Commercial MC	17.99%	18.11%
Charity Care	0%	1.96%

<u>Hours</u>	<u>Current</u>	<u>Year One & Three</u>
Medicare FFS	43.29%	44.45%
Medicaid MC	49.09%	46.36%
Commercial MC	7.62%	7.23%
Charity Care	0%	1.96%

Revenue, expense and utilization are based on historical experience. Charity care is expected to be 2%. The applicant states their policy is to assess individuals based on income to determine eligibility for reduced fees and/or charity care. Their commitment includes providing uncompensated services to uninsured patients lacking the financial resources to pay.

Capability and Feasibility

FSNR SNF, LLC will assign its operating interests in Four Seasons Nursing and Rehabilitation Certified Home Health Agency, which it acquired via the Master APA finalized under CON 171109, to FSNR CHHA, LLC. There are no project costs or fees/purchase price associated with this transaction.

The working capital requirement, estimated at \$518,054 based on two months of third year expenses, will be met from operations. BFA Attachment D is the pro forma balance sheet of FSNR CHHA, LLC, which shows the entity will start with \$518,054 in equity.

The submitted budget projects a net income of \$53,677 for the first and third years. The submitted budget is reasonable.

BFA Attachment C is the 2017 consolidated certified financial statements of Four Seasons Nursing & Rehabilitation Center and their internal financial statements as of November 30, 2018. The accounts of the CHHA operation are included on the consolidated financial statements. In 2017, the entity had positive working capital and net asset positions and achieved positive net income from operations. The CHHA operation shows a net loss from operations of \$45,506 for the internal period ending November 30, 2018. The loss remains the responsibility of the current operator and will be covered from its positive equity.

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

Attachments

- BFA Attachment A Personal Net Worth Statement- Proposed Members of FSNR CHHA, LLC
- BFA Attachment B Organizational Chart
- BFA Attachment C 2017 certified financial statements for Parkshore Healthcare, LLC d/b/a Four Seasons Nursing & Rehabilitation Center and 1/1/2018-11/30/2018 Internal financial statements for FSNR CHHA, LLC
- BFA Attachment D Pro Forma Balance Sheet of FSNR CHHA, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 11th day of April 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 FSNR CHHA, LLC d/b/a Four Seasons Nursing and Rehabilitation Certified Home Health Agency as the new operator of the Four Seasons Nursing and Rehabilitation 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 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:

1/82175 E

FACILITY/APPLICANT:

FSNR CHHA, LLC d/b/a Four Seasons Nursing
and Rehabilitation Certified Home Health
Agency

APPROVAL CONTINGENT UPON:

1. Submission of an executed Assignment and Assumption Agreement for the Lease Agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed Assignment of Rights for the CHHA operations, 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]

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: February 6, 2019
Subject: Proposed Dissolution of the FASC Foundation

The FASC Foundation 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 FASC Foundation (the "Foundation") was formed with PHHPC approval on December 16, 2008, for the sole purpose of rendering assistance and making grants, through the solicitation of funds, for the Foxhall Ambulatory Surgery Center, a diagnostic and treatment center located in Kingston, New York (the "Foxhall Surgery Center"). The Foxhall Surgery Center ceased operations and executed a Plan of Closure, which was approved by the PHHPC, as of July 18, 2012. Pursuant to an order of the New York State Supreme Court, Ulster County, entered December 4, 2017, all the remaining assets of the Foxhall Surgery Center were transferred to an affiliated entity HealthAlliance Hospital Broadway Campus (formerly, the Kingston Hospital).

The FASC Foundation has no assets and no liabilities. With the closure of the Foxhall Surgery Center and its currently-proposed dissolution, the Foundation has no reason for continued existence. The Boards of Directors of the FASC Foundation and its sole member, HealthAlliance Hospital Broadway Campus, have determined that it is in the best interests of the Foundation to be formally wound up and dissolved.

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 Foundation and resolutions of the Boards of Directors of the Foundation and HealthAlliance Hospital Broadway Campus authorizing the dissolution, are included for PHHPC's review. A letter from Sandra M. Jensen, Esq., of Garfunkel Wild, P.C., counsel to the Foundation, explaining the need and desire for the dissolution of both the Foxhall Surgery Center and the Foundation, has been received and is enclosed. Lastly, please note the Verified Petition and the Certificate of Dissolution indicate that the Foundation has no assets or liabilities and holds no assets at the time of dissolution legally required to be used for a particular purpose.

There is no legal objection to the proposed dissolution, Verified Petition, Plan of Dissolution, and Certificate of Dissolution.

Attachments

GARFUNKEL WILD, P.C.

ATTORNEYS AT LAW

677 BROADWAY • ALBANY, NEW YORK 12207
TEL (518) 242-7582 • FAX (518) 242-7586

www.garfunkelwild.com

SANDRA M. JENSEN

Partner

Licensed in NY

Email: sjensen@garfunkelwild.com

Direct Dial: (518) 242-7582

November 30, 2018

Colleen M. Leonard
Executive Secretary
Public Health and Health Planning Council
NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

Re: Dissolution of Foxhall Ambulatory Surgery Center (FASC)
Dissolution of FASC Foundation (FASC Foundation)

Dear Ms. Leonard:

We represent FASC and FASC Foundation in the above referenced matter. Our clients respectfully request the Public Health and Health Planning Council's approval of their voluntary dissolution.

By way of background, FASC formerly provided medical health services as a diagnostic and treatment center under an operating certificate issued by the Public Health Council. FASC ceased operations and executed a Plan of Closure which was approved by the NYS Department of Health, effective July 18, 2012. By Order entered on December 4, 2017 by Judge Christopher E. Cahill (Index No. 17-3216, Supreme Court, Ulster Co.), FASC transferred all of its remaining assets, including its real property, to an affiliated entity, HealthAlliance Hospital Broadway Campus. FASC has no remaining assets.

The second entity seeking approval of its voluntary dissolution is FASC Foundation. FASC Foundation was formed primarily to render assistance and make grants to FASC. As set forth above, FASC ceased operations in 2012 and therefore, there is no need for FASC Foundation to continue. FASC Foundation has no assets.

In accordance with 10 NYCRR 650.1, we submit for each entity, the proposed petition and supporting documentation including the certificate of dissolution and the plan of dissolution. The public need for the dissolutions is to eliminate potential confusion by formally dissolving

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Colleen M. Leonard
November 30, 2018
Page 2

entities that no longer provide services or operate within the State. As set forth more fully above, neither entity has assets remaining at this time.

Should you require additional information, please feel free to contact me at (518) 242-7582.

Best regards,

A handwritten signature in cursive script that reads "Sandra M. Jensen".

Sandra M. Jensen

Encl.

GARFUNKEL WILD, P.C.

----- X
: In the Matter of the Application of:
: FASC FOUNDATION,
:

Petitioner, :

VERIFIED PETITION

:
: For Approval of Certificate of
: Dissolution pursuant to
: Section 1002 of the Not-for-Profit
: Corporation Law.
:----- X

_____, 2018

VIA FIRST CLASS MAIL

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
Beatrice Havranek
Ulster County, Attorney County Office Building,
6TH Floor
244 Fair Street
Kingston, NY 12401

Petitioner, FASC FOUNDATION (the "Petitioner"), by its attorneys, Garfunkel Wild, P.C., for its Verified Petition respectfully alleges

1. Petitioner, whose principal address is 741 Grant Avenue, Lake Katrine, NY 12449, was incorporated as a Corporation pursuant to New York's Not-for-Profit Corporation Law on December 16, 2008. A copy of the Certificate of Incorporation is attached as Exhibit A.
2. The names, addresses and titles of the Corporation's officers and directors are as follows:

<u>Name</u>	<u>Director/Title</u>	<u>Address</u>
Glenn L. Decker	President	320 Hook St. Hurley, NY 12443
Michael Kaminski	Vice-President	26 Ridgecrest Dr. Wingdale, NY 12954
Kathleen Keyser	Treasurer	770 Neighborhood Road Lake Katrine, NY 12449

3. The purposes for which the Corporation was organized are as follows:
 - 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 Foxhall Ambulatory Surgery Center, 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 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.
 - e. 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.

In accordance with the above, to have and exercise all powers available to corporations organized pursuant to the Not-for-Profit Corporation Law of the State of New York.

4. Petitioner is a charitable corporation.
5. Petitioner's purpose was primarily to render assistance and make grants to Foxhall Ambulatory Surgery Center ("FASC"). FASC formerly provided medical health services as a diagnostic and treatment center pursuant to an operating certificate issued by the New York State Department of Health's Public Health and Health Planning Council (formerly, The Public Health Council). FASC ceased operations and executed a Plan of Closure of the diagnostic and treatment center, which was approved by the New York State Department of Health, effective July 18, 2012. A copy of the approval of the Plan of Closure is attached hereto as Exhibit B.
6. The Board of Directors of Petitioner adopted by unanimous written consent on July 12, 2018, a Plan of Dissolution (the "Plan") and authorized the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. A

copy of the unanimous written consent of the Board of Directors is attached as Exhibit C. A certified copy of the Plan of Dissolution is attached as Exhibit D.

7. Petitioner's sole corporate member is HealthAlliance Hospital Broadway Campus (formerly known as The Kingston Hospital) ("Broadway"). The Board of Directors of Broadway approved the Plan, at a meeting duly called and held on May 3, 2018, the vote being 14 in favor, 0 opposed, 0 abstaining and 0 excused from the meeting and thus not voting on the resolution. There being a total of 17 voting members of the Board of Broadway, with 9 voting members constituting a quorum for the transaction of business and at least 2/3 of the voting members voting in favor of the resolution. A copy of the resolutions of the Board of Directors of Broadway approving the Plan is attached as Exhibit E.
8. The Corporation has no assets or liabilities and its final report showing zero assets has been filed with the Attorney General.
9. Approval of the dissolution of Petitioner is required from the New York State Department of Health's Public Health and Health Planning Council. A copy of such approval is attached as Exhibit F.
10. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003. A copy of the Certificate of Dissolution is attached as Exhibit G.

WHEREFORE, Petitioner requests that the Attorney General approve the Certificate of Dissolution of FASC Foundation, a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

Dated: Great Neck, New York
_____, 2018

GARFUNKEL WILD, P.C.
Attorneys for Petitioner

By: _____
Christina Van Vort
111 Great Neck Road
Great Neck, New York 11021
(516) 393-2200

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

----- X
:
:
In the Matter of the Application of: :
FASC FOUNDATION, :
:
Petitioner, :
:
For Approval of Certificate of :
Dissolution pursuant to :
Section 1002 of the Not-for-Profit :
Corporation Law. :
:
:
----- X

VERIFICATION
Index No. _____
Date Purchased:

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

Christina Van Vort, an attorney duly admitted to practice law in the courts of the State of New York, affirms to the following under penalty of perjury pursuant to CPLR 2106:

I am an attorney in the law firm of Garfunkel Wild, P.C., attorneys for the Petitioner FASC Foundation; I have read the foregoing Verified Petition and know the contents thereof; and the same is true to my own knowledge, except as to matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true. The grounds of my knowledge, information and belief are derived from my personal involvement in the events underlying this Verified Petition, general investigation of the facts therein, my review of the Petitioner's records, and conversations with employees and officers of the Petitioner. The reason this verification is made by me and not our clients is that they do not reside in Nassau County, where Garfunkel Wild, P.C. maintains its office.

Christina Van Vort

Sworn to before me this
___ day of _____, 2018

Notary Public

EXHIBIT A
CERTIFICATE OF INCORPORATION

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 the official seal of the
Department of State, at the City of Albany, on
December 17, 2008.

Paul LaPointe

Paul LaPointe
Special Deputy Secretary of State

E-12

081216000 776

CERTIFICATE OF INCORPORATION

OF

FASC FOUNDATION

**(Under Section 402 of the Not-for-Profit Corporation Law
of the State of New York)**

The undersigned, being a natural person over the age of 18 years, desiring to form a corporation pursuant to the provisions of the Not-for-Profit Corporation Law of the State of New York ("NFPCL"), does hereby certify:

FIRST: The name of the corporation is FASC Foundation (the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NFPCL and shall be a Type B corporation under Section 201 of the NFPCL.

THIRD: The purposes for which the Corporation is formed are exclusively 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 Foxhall Ambulatory Surgery Center, 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 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.
- (e) 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.

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FOURTH: In furtherance of the foregoing purposes, the Corporation shall have all of the general powers enumerated in Section 202 of the NFPCL, together with the power to maintain a fund or funds of real or personal property for any corporate purposes. The Corporation shall have the right to exercise such other powers as now are, or hereafter may be, conferred by law upon a corporation organized for the purposes herein above set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the limitations and condition that, notwithstanding any other provision of this Article **FOURTH**, the Corporation shall not have the power to carry on any activity not permitted to be carried on by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any successor statute (the "Code").

FIFTH: The Corporation is not formed for pecuniary profit or for financial gain and no part of its assets, income or profit shall be distributed to or inure to the benefit of any private individual. Reasonable compensation, however, may be paid for services rendered to or for the Corporation in furtherance of one or more of its purposes.

SIXTH: Nothing contained in this Certificate of Incorporation shall authorize the Corporation to establish, operate or maintain a hospital, a home care services agency, a hospice, a health maintenance organization, or a comprehensive health services plan, as provided for by Articles 28, 36, 40 and 44, respectively, of the Public Health Law, to provide hospital service or health related services or to establish, operate or maintain an adult care facility, as provided for by Article 7 of the Social Services Law.

SEVENTH: Nothing herein shall authorize the Corporation, directly or indirectly, to engage in, or include among its purposes, any of the activities mentioned in the NFPCL, Section 404(a-n), (p-s) and (u-v). No substantial part of the activities of the Corporation shall consist in carrying on propaganda or otherwise attempting to influence legislation (except to the extent authorized by Section 501(h) of the Code during any fiscal year or years in which the Corporation has chosen to utilize the benefits authorized by that statutory provision). The Corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office.

EIGHTH: The office of the Corporation shall be located in the County of Ulster, State of New York.

NINTH: The names and addresses of the initial directors of the Corporation, each of whom is at least 18 years of age and will serve until their successors are appointed, are as follows:

<u>Name</u>	<u>Address</u>
Cynthia Lowe	43 Sherry Lane Kingston, New York 12401
Lucille Pritchard, Ed.D.	105 Fair Street Kingston, New York 12401

Name

Robert Rich, Esq.

Address

Feldman, Kleidman and Coffey
995 Main Street
P.O. Box A
Fishkill, New York 12524

TENTH: In the event of dissolution, the assets and property of the Corporation remaining after payment of expenses and the satisfaction of all liabilities shall be distributed to Kingston Regional Health Care Foundation ("Kingston Foundation") 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 Kingston Foundation unless Kingston Foundation 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.

ELEVENTH: In the event that the Corporation shall at any time be a private foundation within the meaning of Section 509 of the Code (or the corresponding provision of any subsequent law) the Corporation, so long as it shall be such a private foundation, shall distribute such income as may be necessary in each taxable year at such time and in such manner as not to subject the Corporation to tax under Section 4942 of the Code, and shall be absolutely prohibited from and shall refrain from engaging in any of the following activities:

- (a) any act of self-dealing as defined in Section 4941(d) of the Code;
- (b) retaining any excess business holdings as defined in Section 4943(c) of the Code;
- (c) making any investment in such manner as to subject the Corporation to tax under Section 4944 of the Code; and
- (d) making any taxable expenditures, as defined in Section 4945(d) of the Code.

TWELFTH: The sole corporate member of the Corporation shall be The Kingston Hospital, a New York not-for-profit corporation (the "Member"). With respect to the Corporation, the Member shall have, in addition to the powers granted to members under the NFPCL, the power to approve the addition or deletion of clinical services performed by any corporation of which the Corporation is a member.

THIRTEENTH: The Secretary of State 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:

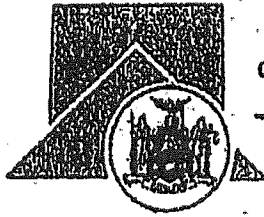
PASC Foundation
64 Janson Avenue
Kingston, New York 12401
Attn: President

FOURTEENTH: Prior to delivering this Certificate to the Secretary of State for filing, all approvals or consents to the filing of this Certificate that are required by the NFPCL or any other statute of the State of New York will be endorsed hereon or annexed hereto.

IN WITNESS WHEREOF, this Certificate has been signed and the statements made herein are affirmed as true under the penalties of perjury **this 26th day of February, 2008.**



Christina Van Vort, Esq.
Garfunkel, Wild & Travis, P.C.
111 Great Neck Road, Suite 503
Great Neck, NY 11021



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

December 10, 2008

Ms. Cynthia Rozenberg
Vice President Strategic Planning
Foxhall Ambulatory Surgery Center
741 Grant Avenue
Lake Katrine, New York 12449

Re: Certificate of Incorporation of FASC Foundation

Dear Ms. Rozenberg:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 25th day of January, 2008, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of FASC Foundation, dated February 26, 2008.

Sincerely,

Colleen M. Frost
Executive Secretary

/cf

081216000 476

CERTIFICATE OF INCORPORATION

OF

FASC FOUNDATION

~~UNDER SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION~~
LAW

Filer:

GARFUNKEL WILD & TRAVIS
111 GREAT NECK ROAD
GREAT NECK, NY 10021

1cc

STATE OF NEW YORK
DEPARTMENT OF STATE

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DRAWDOWN

FILED DEC 16 2008

TAX \$

BY:

Wst

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RECEIVED

EXHIBIT B

NYS DEPARTMENT OF HEALTH APPROVAL OF CLOSURE



**Department
of Health**

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

August 12, 2015

Mr. David Scarpino
President and Chief Executive Officer
Health Alliance of Hudson Valley
396 Broadway
Kingston, New York 12401

Re: Decertification of operator and closure of site
Foxhall Ambulatory Surgery Center
64 Jansen Avenue, Kingston
Operating Certificate: 5501211R
Facility ID: 9010

Dear Mr. Scarpino:

In response to your request of June 18, 2015, staff from the Division of Hospitals and Diagnostic & Treatment Centers and the New York Metropolitan Area Regional Office reviewed the closure plan for the site listed above.

The closure plan is approved effective July 18, 2012. The operating certificate should be surrendered immediately to the New York Metropolitan Area Regional Office.

If you have any questions concerning this matter please contact Ms. Annmay Hoyte-Nelson at 212-417-5990.

Thank you.

Sincerely,

Ruth Leslie
Director
Division of Hospitals and Diagnostic & Treatment
Centers

cc: Ms. Celeste Johnson
Ms. Annmay Hoyte-Nelson
Closure File 1125

EXHIBIT C
UNANIMOUS WRITTEN CONSENT
OF BOARD OF DIRECTORS OF FASC FOUNDATION



**UNANIMOUS WRITTEN CONSENT OF
THE BOARD OF DIRECTORS
OF
FASC FOUNDATION**

The undersigned, being all of the members of the Board of Directors (the "Board") of FASC Foundation do hereby consent, pursuant to Section 708 of the Not-for-Profit Corporation Law of the State of New York, to the adoption of the following resolutions and the taking of the following actions in lieu of a meeting, with the same force and effect as if they had been approved and adopted at a duly commissioned meeting of the Board of FASC Foundation:

WHEREAS, FASC Foundation's purpose is primarily to render assistance and make grants to Foxhall Ambulatory Surgery Center ("FASC"). FASC ceased operations as a diagnostic and treatment center, and executed a Plan of Closure which was approved by the New York State Department of Health, effective July 18, 2012;

WHEREAS, the Board considered the advisability of voluntarily dissolving FASC Foundation, and has determined that dissolution is advisable and in the best interests of FASC Foundation;

WHEREAS, in furtherance of dissolution, FASC Foundation has drafted a Plan of Dissolution (the "Plan") for its voluntary dissolution. A copy of the Plan is attached hereto as Attachment A;

WHEREAS, FASC Foundation has no assets, liabilities or operations.

NOW, THEREFORE, BE IT RESOLVED, by the Board of FASC Foundation:

RESOLVED, that the attached Plan of Dissolution is hereby adopted and an Authorized Representative(s) (as defined herein) of FASC Foundation be and they hereby are, authorized and directed to take such action as necessary to cause FASC Foundation to be dissolved in accordance with the Plan; and be it further,

RESOLVED, that the Plan shall be recommended for approval to FASC Foundation's sole corporate member, HealthAlliance Hospital Broadway Campus, formerly, The Kingston Hospital;

RESOLVED, that all actions heretofore taken, and all documents, agreements, obligations and undertakings heretofore executed and delivered, by FASC Foundation in connection with the dissolution are hereby ratified and confirmed in all respects; and be it further

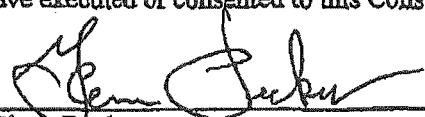
RESOLVED, that each member of the Board of Directors of FASC Foundation and each officer of FASC Foundation and any designee of any of the foregoing (each an "Authorized Representative") is hereby authorized to take such action, and to execute and deliver any and all documents, agreements, obligations and undertakings, as may be useful or appropriate to carry out the purposes and intent of these Resolutions including, without limitation, the execution and delivery of

all documents necessary to effect the dissolution of FASC Foundation; and be it further

RESOLVED, that all of the documents, agreements, obligations and other undertakings executed and delivered by FASC Foundation in furtherance of dissolution shall be and are valid, binding and enforceable in accordance with their terms; and be it further

RESOLVED, that this Resolution shall take effect immediately

IN WITNESS WHEREOF, the undersigned have executed or consented to this Consent as of the ___ day of _____, 2018



Glenn Decker

Michael Kaminski

Kathleen Keyser


all documents necessary to effect the dissolution of FASC Foundation; and be it further

RESOLVED, that all of the documents, agreements, obligations and other undertakings executed and delivered by FASC Foundation in furtherance of dissolution shall be and are valid, binding and enforceable in accordance with their terms; and be it further

RESOLVED, that this Resolution shall take effect immediately

IN WITNESS WHEREOF, the undersigned have executed or consented to this Consent as of the 17 day of JULY, 2018

Glenn Decker


Michael Kaminski

Kathleen Keyser

all documents necessary to effect the dissolution of FASC Foundation; and be it further

RESOLVED, that all of the documents, agreements, obligations and other undertakings executed and delivered by FASC Foundation in furtherance of dissolution shall be and are valid, binding and enforceable in accordance with their terms; and be it further

RESOLVED, that this Resolution shall take effect immediately

IN WITNESS WHEREOF, the undersigned have executed or consented to this Consent as of the ____ day of _____, 2018

Glenn Decker

Michael Kaminski

Kathleen Keyser

Kathleen Keyser

EXHIBIT D
PLAN OF DISSOLUTION

PLAN OF DISSOLUTION
OF
FASC FOUNDATION.

The Board of Directors (the "Board") of FASC Foundation does hereby resolve and recommend to its member for approval that FASC Foundation be dissolved. The Board having considered the advisability of voluntarily dissolving FASC Foundation, and it being the unanimous opinion of the Board that dissolution is advisable and in its best interests. The Board having adopted by unanimous written consent, the voluntary dissolution of FASC Foundation, does hereby recommend to its sole member, HealthAlliance Hospital Broadway Campus, formerly The Kingston Hospital, (the "Member"), for approval, that FASC Foundation be dissolved in accordance with the following Plan:

1. Upon resolution of the Board adopting a Plan of Dissolution, the Board shall submit the plan to a vote of the Member for approval.
2. Approval of the dissolution must be obtained from the New York State Department of Health's Public Health and Health Planning Council.
3. FASC Foundation has no assets or liabilities.
4. A Certificate of Dissolution shall be executed by an authorized officer, and all required approvals shall be attached hereto.

CERTIFICATION

I, Glenn L. Decker, President of FASC Foundation, hereby certifies under penalty of perjury that the within Plan of Dissolution was duly submitted and passed by unanimous written consent of the Board of Directors of FASC Foundation on July 12, 2018.



Name: Glenn L. Decker

Title: President

Dated the 24th day of July,
2018

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EXHIBIT E
RESOLUTION OF BOARD OF DIRECTORS OF
HEALTHALLIANCE HOSPITAL BROADWAY CAMPUS

**RESOLUTION OF
THE BOARD OF DIRECTORS
OF
HEALTHALLIANCE HOSPITAL BROADWAY CAMPUS**

WHEREAS, HealthAlliance Hospital Broadway Campus (the "Corporation"), is the sole member of FASC Foundation; and

WHEREAS, FASC Foundation's purpose is primarily to render assistance and make grants to Foxhall Ambulatory Surgery Center ("FASC") and FASC ceased operations as a diagnostic and treatment center and executed a Plan of Closure, which was approved by the New York State Department of Health, effective July 18, 2012; and

WHEREAS, the Board of Directors of the FASC Foundation determined that its dissolution is advisable and in its best interests, and adopted a Plan of Dissolution (the "Plan") for the voluntary dissolution of FASC Foundation. A copy of the Plan is attached hereto as Attachment A; and

WHEREAS, the Board has reviewed the Plan and has determined that it is in its best interest to dissolve FASC Foundation in accordance with the procedures outlined in the Plan; and

WHEREAS, FASC Foundation has no assets, liabilities or operations.

NOW, THEREFORE, BE IT

RESOLVED, that the attached Plan of Dissolution is hereby approved and an Authorized Representative(s) (as defined herein) of FASC Foundation be and they hereby are, authorized and directed to take such action as necessary to cause FASC Foundation to be dissolved in accordance with the Plan; and

RESOLVED, that all actions heretofore taken, and all documents, agreements, obligations and undertakings heretofore executed and delivered by FASC Foundation in connection with the dissolution are hereby ratified and confirmed in all respects; and

RESOLVED, that each member of the Board of Directors of FASC Foundation and each officer of FASC Foundation and any designee of any of the foregoing (each an "Authorized Representative") is hereby authorized to take such action, and to execute and deliver any and all documents, agreements, obligations and undertakings, as may be useful or appropriate to carry out the purposes and intent of these Resolutions including, without limitation, the execution and delivery of all documents necessary to effect the dissolution of FASC Foundation; and

RESOLVED, that all of the documents, agreements, obligations and other undertakings executed and delivered by FASC Foundation in furtherance of dissolution shall be and are valid, binding and enforceable in accordance with their terms; and be it further

RESOLVED, that this Resolution shall take effect immediately.

ATTACHMENT A

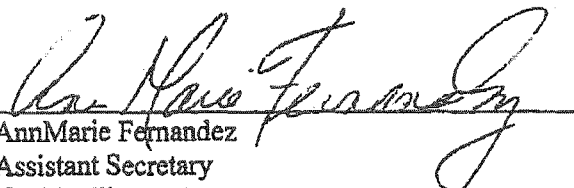
PLAN OF DISSOLUTION

STATE OF NEW YORK)
)ss:
WESTCHESTER COUNTY)

I HEREBY CERTIFY that I have compared the foregoing Resolution with the original Resolution on file in my office, which was duly adopted by the Governing Board of HealthAlliance Hospital - Broadway at a legally convened meeting held on the 3rd day of May, 2018 and that the same is a true and complete copy therefrom and the whole of the said original.

I further certify that the full Governing Board consists of 17 voting directors and that 14 of such voting directors were present at such meeting and that 14 of such voting directors voted in favor of the above Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand on this 3rd day of May, 2018.


AnnMarie Fernandez
Assistant Secretary
HealthAlliance, Inc.

CERTIFICATION

I, Thomas Collins, Chair of the Board of HealthAlliance Broadway Campus, formerly The Kingston Hospital, hereby certifies under penalty of perjury that, at a meeting of the member, held at 9 o'clock on May 3, 2018 at Mary's Avenue, Kingston, NY (place), the within Plan of Dissolution was duly submitted and approved by at least a two-thirds vote with a quorum present.



Name: Thomas Collins
Title: Chair

Dated the 20th day of July,
2018

EXHIBIT F

NYS DEPARTMENT OF HEALTH APPROVAL

EXHIBIT G
CERTIFICATE OF DISSOLUTION

**CERTIFICATE OF DISSOLUTION
OF**

FASC FOUNDATION

(Insert Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is:

FASC FOUNDATION

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:

December 16, 2008

THIRD: The name and address of each officer and director of the corporation is:

<u>Name</u>	<u>Director/Title</u>	<u>Address</u>
Glenn L. Decker	President	320 Hook St. Hurley, NY 12443
Michael Kaminski	Vice President	26 Ridgecrest Dr. Wingdale, NY 12954
Kathleen Keyser	Treasurer	770 Neighborhood Road Lake Katrine, NY 12449

FOURTH: At the time of dissolution, the corporation is a Type B corporation.
(A,B,C or D)

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: The dissolution was authorized by:

(Check the appropriate statement)

- 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.
- Unanimous written consent of the Corporation's Board of Directors. Dissolution was then approved by the Corporation's sole member, HealthAlliance Hospital Broadway Campus (formally known as The Kingston Hospital) (the "Member"), a New York not-for-profit corporation. The Board of Directors of the Member authorized dissolution of the Corporation by at least two-thirds vote.

EIGHTH:

(Check the appropriate statement)

- The Plan of Dissolution and Distribution of Assets has been approved by a Justice of the Supreme Court. A copy of the Court's order is attached hereto.
- 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 Type A corporation and has no assets at the time of dissolution legally required to be used for a particular purpose.

x 
(Signature)

Glenn L. Decker

(Print or Type Name of Signer)

President

(Print or Type Title of Signer)

CERTIFICATE OF DISSOLUTION OF

FASC FOUNDATION

(Insert Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

Filer's Name: Christina Van Vort, Esq

Company Name: Garfunkel Wild, PC

Address: 111 Great Neck Road

City, State and Zip Code: Great Neck, New York 11021

NOTES:

1. The name of the corporation and its date of incorporation must be exactly as they appear on 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 must be signed by an officer, director or duly authorized person.
3. Attach the consent of the NYS Department of Taxation and Finance.
4. Attach the consent of the New York City Department of Finance, if required.
5. Consent of the Attorney General is required for all Type B, C and D corporations and Type A corporations that holds assets at the time of dissolution legally required to be used for a particular purpose.
6. Attach any other consent or approval required by law.
7. 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 11th day of April 2019, approves the filing of the Certificate of Dissolution of FASC Foundation, dated as attached.



MEMORANDUM

To: Public Health and Health Planning Council

From: Richard J. Zahnleuter, General Counsel 

Date: March 18, 2019

Subject: Proposed Dissolution of Foxhall Ambulatory Surgery Center

The Foxhall Ambulatory Surgery Center (the Corporation) requests Public Health and Health Planning Council 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 Corporation was initially formed on November 25, 2008, under the NPCL, "to develop, establish, construct, operate and maintain, on a not-for-profit basis, an ambulatory surgery center..., which shall be multi-specialty and shall include abortions, sterilizations and other ambulatory procedures." The Corporation ceased operations and executed a Plan of Closure which was approved by the Department of Health, Division of Hospitals and Diagnostic & Treatment Centers, effective July 18, 2012. By order entered on December 4, 2017, by Judge Christopher E. Cahill of the Supreme Court, Ulster County, the Corporation transferred all its remaining assets to an affiliated entity, the HealthAlliance Hospital Broadway Campus (formerly the Kingston Hospital). Accordingly, the Corporation now has no assets or liabilities, and holds no property legally required to be used for a specific purpose.

The Board of Directors of the Corporation adopted a Plan of Dissolution by unanimous written consent in May 2018. The two corporate members of the Corporation, FASC Foundation and the HealthAlliance Foundation (formerly the Kingston Hospital or Kingston Regional Health Care Foundation), approved the Plan of Dissolution by unanimous written consent dated November 5, 2018, and unanimously at a meeting of the board of directors duly called and held on May 10, 2018, at which a quorum was present and acting throughout, respectively.

The required documents: a Verified Petition to the Attorney General, a Plan of Dissolution, and a proposed Certificate of Dissolution, with supporting organizational documents of the Corporation and resolutions of the boards of directors of the Corporation and its two members authorizing the dissolution, are included for PHHPC's review. A letter from Sandra M. Jensen, Esq. of Garfunkel Wild, P.C., counsel to the applicant, explaining the need and desire for the dissolution, has been received and is enclosed. Lastly, please note that the Verified Petition and the Certificate of Dissolution indicate that, on the date of this application, the Corporation has no assets or outstanding liabilities, and holds no assets required to be used for a specified purpose.

There is no legal objection to the proposed dissolution, Verified Petition, Plan of Dissolution, and Certificate of Dissolution.

Attachments.

GARFUNKEL WILD, P.C.

ATTORNEYS AT LAW

677 BROADWAY • ALBANY, NEW YORK 12207

TEL. (518) 242-7582 • FAX (518) 242-7586

www.garfunkelwild.com

SANDRA M. JENSEN

Partner

Licensed in NY

Email: sjensen@garfunkelwild.com

Direct Dial: (518) 242-7582

November 30, 2018

Colleen M. Leonard
Executive Secretary
Public Health and Health Planning Council
NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

Re: Dissolution of Foxhall Ambulatory Surgery Center (FASC)
Dissolution of FASC Foundation (FASC Foundation)

Dear Ms. Leonard:

We represent FASC and FASC Foundation in the above referenced matter. Our clients respectfully request the Public Health and Health Planning Council's approval of their voluntary dissolution.

By way of background, FASC formerly provided medical health services as a diagnostic and treatment center under an operating certificate issued by the Public Health Council. FASC ceased operations and executed a Plan of Closure which was approved by the NYS Department of Health, effective July 18, 2012. By Order entered on December 4, 2017 by Judge Christopher E. Cahill (Index No. 17-3216, Supreme Court, Ulster Co.), FASC transferred all of its remaining assets, including its real property, to an affiliated entity, HealthAlliance Hospital Broadway Campus. FASC has no remaining assets.

The second entity seeking approval of its voluntary dissolution is FASC Foundation. FASC Foundation was formed primarily to render assistance and make grants to FASC. As set forth above, FASC ceased operations in 2012 and therefore, there is no need for FASC Foundation to continue. FASC Foundation has no assets.

In accordance with 10 NYCRR 650.1, we submit for each entity, the proposed petition and supporting documentation including the certificate of dissolution and the plan of dissolution. The public need for the dissolutions is to eliminate potential confusion by formally dissolving

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Colleen M. Leonard
November 30, 2018
Page 2

entities that no longer provide services or operate within the State. As set forth more fully above, neither entity has assets remaining at this time.

Should you require additional information, please feel free to contact me at (518) 242-7582.

Best regards,

A handwritten signature in cursive script that reads "Sandra M. Jensen".

Sandra M. Jensen

Encl.

GARFUNKEL WILD, P.C.

----- X
:
In the Matter of the Application of: :
FOXHALL AMBULATORY SURGERY :
CENTER, :
:

Petitioner, :
:

VERIFIED PETITION

For Approval of Certificate of
Dissolution pursuant to
Section 1002 of the Not-for-Profit
Corporation Law.

----- X
_____, 2018

VIA FIRST CLASS MAIL

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

Beatrice Havranek
Ulster County, Attorney County Office Building,
6TH Floor
244 Fair Street
Kingston, NY 12401

Petitioner, FOXHALL AMBULATORY SURGERY CENTER (the "Petitioner"), by its attorneys, Garfunkel Wild, P.C., for its Verified Petition respectfully alleges:

1. Petitioner, whose principal address is 741 Grant Avenue, Lake Katrine, NY 12449, was incorporated as a corporation pursuant to New York's Not-for-Profit Corporation Law on November 25, 2008. A copy of the Certificate of Incorporation is attached as Exhibit A.

2. The names, addresses and titles of the Petitioner's officers and directors are as follows:

<u>Name</u>	<u>Office</u>	<u>Residence Address</u>
Glenn L. Decker	President	320 Hook St. Hurley, NY 12443
Michael Kaminski	Vice President	26 Ridgcrest Dr. Wingdale, NY 12954
Kathleen Keyser	Treasurer	770 Neighborhood Road Lake Katrine, NY 12449

Barbara Sorkin	506 Mountain View Ave. Hurley, NY 12443
Jason Fredenberg	218 Windsor Dr. Hurley, NY 12443
Ruth Ellen Blodgett	178 Church St. Poughkeepsie, NY 12601
Thomas A. Collins	411 Washington Ave., Ste. 201 Kingston, NY 12401
Cynthia Lowe	340 Maplemere Lane Bluffton, SC 22909

3. The purposes for which the Petitioner was organized are as follows:
- a. To develop, establish, construct, operate and maintain, on a not-for-profit basis, an ambulatory surgery center pursuant to Article 28 of the Public Health Law, which shall be multi-specialty and shall include abortions, sterilizations and other ambulatory procedures; provided, however, that the Corporation shall not establish or operate such ambulatory surgery center without the prior written approval of the Public Health Council.
 - b. To acquire or lease real property to be used for healthcare and related services, provided that the Corporation shall not operate a healthcare facility without approval of the regulatory agencies with jurisdiction over such facility.
 - c. To receive and administer funds and to take and hold by bequest, devise, gift, grant, purchase, lease or otherwise, either absolutely or jointly or in any other manner or form with any other person, persons, or corporations, any property, real, personal, tangible, or intangible or any undivided interest therein, without limitation as to amount or value; to formulate, manage and control directly or indirectly other entities, firms, corporations and the like as may be deemed necessary or desirable to carry out the purposes of the Corporation; to sell, convey, or otherwise dispose of any property and to invest, reinvest or deal with the principal or the income thereof in such manner as in the judgment of the Corporation will best promote the purposes of the Corporation without limitation, except such limitations, if any, as may be contained in the instrument under which such property is received, this Certificate of Incorporation, the bylaws of the Corporation or any laws applicable thereto.

- d. 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.
- e. To coordinate and support activities of not-for-profit organizations engaged in health care activities for the betterment of the general health of the communities served by them.
- f. To promote and advance relationships between health care institutions, health care providers and the communities they serve.

In accordance with the above, to have and exercise all powers available to corporations organized pursuant to the Not-for-Profit Corporation Law of the State of New York.

- 4. Petitioner formerly provided medical health services as a diagnostic and treatment center pursuant to an operating certificate issued by the New York State Department of Health's Public Health and Health Planning Council (formerly, The Public Health Council). Petitioner ceased operations and executed a Plan of Closure of the diagnostic and treatment center, which was approved by the New York State Department of Health, effective July 18, 2012. A copy of the approval of the Plan of Closure is attached hereto as Exhibit B.
- 5. The Petitioner is a charitable corporation.
- 6. The Board of Directors of the Petitioner adopted by unanimous consent dated May 22, 2018, a Plan of Dissolution (the "Plan") and authorized the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. A copy of the unanimous written consent of the Board of Directors of Petitioner, is attached as Exhibit C. A certified copy of the Plan of Dissolution is attached as Exhibit D.
- 7. The Petitioner has two corporate members, FASC Foundation ("FASC Foundation") and HealthAlliance Foundation, formerly known as "The Kingston Hospital Foundation". The Board of Directors of FASC Foundation approved the Plan by unanimous written consent dated November 5, 2018. A copy of the unanimous written consent of the Board of Directors of FASC Foundation approving the Plan is attached as Exhibit E.
- 8. The Plan was further approved by HealthAlliance Foundation, at a meeting duly called and held on May 10, 2018, the vote being 17 in favor, 0 opposed, 0 abstaining and 0 excused from the meeting and thus not voting on the resolution. There being a total of twenty-four (24) voting members of the Board of HealthAlliance Foundation, with 13 voting members constituting a quorum for the transaction of business and at least 2/3 of the voting members voting in favor of the resolution. A copy of the resolutions of the Board of Directors of HealthAlliance Foundation approving the Plan is attached as Exhibit F.
- 9. The Corporation has no assets or liabilities and its final report showing zero assets has been filed with the Attorney General.

10. Approval of the dissolution of Petitioner is required from the New York State Department of Health's Public Health and Health Planning Council. A copy of such approval is attached as Exhibit G.
11. 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. A copy of the Certificate of Dissolution is attached as Exhibit H.

WHEREFORE, Petitioner requests that the Attorney General approve the Certificate of Dissolution of Foxhall Ambulatory Surgery Center, a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

Dated: Great Neck, New York
_____, 2018

GARFUNKEL WILD, P.C.
Attorneys for Petitioner

By: _____
Christina Van Vort
111 Great Neck Road
Great Neck, New York 11021
(516) 393-2200

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

----- x
:
:
In the Matter of the Application of: :
FOXHALL AMBULATORY SURGERY :
CENTER, :
:
Petitioner, :
:
For Approval of Certificate of :
Dissolution pursuant to :
Section 1002 of the Not-for-Profit :
Corporation Law. :
:
----- x

VERIFICATION
Index No. _____
Date Purchased:

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

Christina Van Vort, an attorney duly admitted to practice law in the courts of the State of New York, affirms to the following under penalty of perjury pursuant to CPLR 2106:

I am an attorney in the law firm of Garfunkel Wild, P.C., attorneys for the Petitioner Foxhall Ambulatory Surgery Center; I have read the foregoing Verified Petition and know the contents thereof; and the same is true to my own knowledge, except as to matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true. The grounds of my knowledge, information and belief are derived from my personal involvement in the events underlying this Verified Petition, general investigation of the facts therein, my review of the Petitioner's records, and conversations with employees and officers of the Petitioner. The reason this verification is made by me and not our clients is that they do not reside in Nassau County, where Garfunkel Wild, P.C. maintains its office.

Christina Van Vort

Sworn to before me this
___ day of _____, 2018

Notary Public

EXHIBIT A
CERTIFICATE OF INCORPORATION

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 25, 2008.



Paul LaPointe

Paul LaPointe
Special Deputy Secretary of State

E-12

081125000(2)

CERTIFICATE OF INCORPORATION

OF

FOXHALL AMBULATORY SURGERY CENTER

(Under Section 402 of the Not-for-Profit Corporation Law)

The undersigned, being a natural person 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 ("NFPCL"), does hereby certify:

FIRST: The name of the corporation is **FOXHALL AMBULATORY SURGERY CENTER** (the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NFPCL and shall be a Type B corporation under Section 201 of the NFPCL.

THIRD: The purposes for which the Corporation is formed are exclusively charitable, educational and scientific in nature and more particularly:

- (a) To develop, establish, construct, operate and maintain, on a not-for-profit basis, an ambulatory surgery center pursuant to Article 28 of the Public Health Law, which shall be multi-specialty and shall include abortions, sterilizations and other ambulatory procedures; provided, however, that the Corporation shall not establish or operate such ambulatory surgery center without the prior written approval of the Public Health Council.
- (b) To acquire or lease real property to be used for healthcare and related services, provided that the Corporation shall not operate a healthcare facility without approval of the regulatory agencies with jurisdiction over such facility.
- (c) To receive and administer funds and to take and hold by bequest, devise, gift, grant, purchase, lease or otherwise, either absolutely or jointly or in any other manner or form with any other person, persons, or corporations, any property, real, personal, tangible, or intangible or any undivided interest therein, without limitation as to amount or value; to formulate, manage and control directly or indirectly other entities, firms, corporations and the like as may be deemed necessary or desirable to carry out the purposes of the Corporation; to sell, convey, or otherwise dispose of any property and to invest, reinvest or deal with the principal or the income thereof in such manner as in the judgment of the Corporation will best promote the purposes of the Corporation without limitation, except such limitations, if any, as may be contained in the instrument under which such property is received, this Certificate of Incorporation, the bylaws of the Corporation or any laws applicable thereto.

- (d) 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.
- (e) To coordinate and support activities of not-for-profit organizations engaged in health care activities for the betterment of the general health of the communities served by them.
- (f) To promote and advance relationships between health care institutions, health care providers and the communities they serve.

FOURTH: In furtherance of the foregoing purposes, the Corporation shall have all of the general powers enumerated in Section 202 of the NFPCL together with the power to solicit grants and contributions for any corporate purpose and the power to maintain a fund or funds of real or personal property for any corporate purposes. The Corporation shall have the right to exercise such other powers as now are, or hereafter may be, conferred by law upon a corporation organized for the purposes hereinabove set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the limitation and condition that, notwithstanding any other provision of this Article **FOURTH**, the Corporation shall not have the power to carry on any activity not permitted to be carried on by a corporation exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any successor statute (the "Code").

FIFTH: The Corporation shall be authorized and empowered to:

- (a) solicit funds from the public.
- (b) accept subventions from members or non-members on terms and conditions consistent with the NFPCL and to issue certificates therefor.

SIXTH: All income and earnings of the Corporation shall be used exclusively for its corporate purposes. The Corporation is not formed for pecuniary profit or for financial gain of its directors or officers or of its members, if any, and no part of its net income or net earnings shall be distributed to or inure to the benefit or profit of any private individual, firm or corporation. Reasonable compensation, however, may be paid for services rendered to or for the Corporation in furtherance of one or more of its purposes. No part of the net income or net earnings of the Corporation shall inure to the benefit or profit of any private individual, firm or corporation.

SEVENTH: Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Section 404(a-n), (p-s) and (u-v) of the NFPCL.

EIGHTH: No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation (except to the extent authorized by Section 501(h) of the Code 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.

NINTH: The office of the Corporation will be located in the County of Ulster, State of New York.

TENTH: The names and addresses of the initial directors of the Corporation are as follows:

<u>Name</u>	<u>Address</u>
Michael Kaminaki	c/o The Kingston Hospital 396 Broadway Kingston, New York 12401
Cynthia Lowe	43 Sherry Lane Kingston, New York 12401
Lucille Pritchard, Ed.D.	105 Fair Street Kingston, New York 12401
Robert Rich, Esq.	Feldman, Klaidman and Coffey 995 Main Street P.O. Box A Fishkill, New York 12524

ELEVENTH: 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 by the Board of Directors to Kingston Regional Health Care Foundation ("Kingston Foundation"), subject to the approval of a court of competent jurisdiction upon application of the Board of Directors, provided that no such distribution shall be made to Kingston Foundation unless Kingston Foundation shall at that time qualify as an exempt organization under Section 501(c)(3) of the Code. Any assets of the Corporation not distributed to Kingston Foundation shall be disposed of as directed by a Justice of the Supreme Court of the State of New York or such other court having jurisdiction over the Corporation.

TWELFTH: The Secretary of State is designated as the agent of the Corporation under whom process against the Corporation may be served, and the address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

Foxhall Ambulatory Surgery Center
64 Jansen Avenue
Kingston, New York 12401
Attn: President

THIRTEENTH: The Corporation shall have two (2) members, which shall be FASC Foundation, a New York not-for-profit corporation and Kingston Regional Health Care Foundation ("Kingston Foundation") (collectively, the "Members"). With respect to the Corporation, the Members shall have, in addition to the powers granted to members under the NFPCL, the power to:

- (a) Elect to a full-term an equal number of the Directors of the Corporation and fill vacancies therein, and to remove such Directors if in the best interest of the Corporation.
- (b) Appoint the officers of the Corporation.
- (c) Approve expressly all amendments to the Corporation's Certificate of Incorporation and Bylaws before they may become effective.
- (d) Promote, by donation, loan or otherwise, the interests of any not-for-profit and federally tax-exempt organizations which are affiliated with the Corporation, other than Benedictine Hospital, The Kingston Hospital, and Health Alliance, Inc. or their affiliates, the purposes of which are not inconsistent with those of the Corporation.
- (e) Approve all plans of merger, consolidation, or voluntary dissolution of the Corporation.
- (f) Approve the creation of controlled or owned subsidiaries or affiliates by the Corporation.
- (g) Approve the incurrence of debt by the Corporation, other than debt necessary to finance the cost of compliance with operational or physical plant standards required by law.
- (h) Approve the sale, lease, pledge or other disposition of real property owned by the Corporation or the imposition of a mortgage on any real property owned by the Corporation.

FOURTEENTH: 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 investment in such manner as to subject the Corporation to such tax under Section 4944 of the Code; or (d) make any taxable expenditure as defined in Section 4945(d) of the Code.

FIFTEENTH: Notwithstanding any other provision of this Certificate of Incorporation, the Corporation shall not have the power to carry on any activity not permitted to be carried on by (a) an organization exempt from federal income taxation under Section 501(c)(3) of the Code, or (b) by an organization contributions to which are deductible under

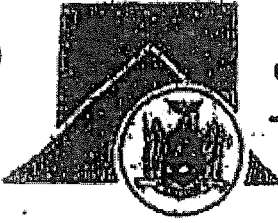
Section 170(c)(2) of the Code. This organization is organized exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Code.

IN WITNESS WHEREOF, this Certificate has been signed and the statements made herein are affirmed as true under the penalties of perjury this 26th day of February, 2008.

Incorporator:



Christina Van Vort, Esq.
Gatfunkel, Wild & Travis, P.C.
111 Great Neck Road, Suite 503
Great Neck, New York 11021



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CURNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

November 24, 008

Ms. Cynthia Rozenberg
Vice President Strategic Planning
Foxhall Ambulatory Surgery Center
741 Grant Avenue
Lake Katline, New York 12449

Re: Certificate of Incorporation of Foxhall Ambulatory Surgery Center

Dear Ms. Rozenberg:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 25th day of January, 2008, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Foxhall Ambulatory Surgery Center, dated February 26, 2008.

Sincerely,

Colleen M. Frost
Executive Secretary

/cf

081125000 027

CERTIFICATE OF INCORPORATION

OF

FOXHALL AMBULATORY SURGERY CENTER

UNDER SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION
LAW

Filer:

GARFUNKEL WILD & TRAVIS
111 GREAT NECK ROAD
GREAT NECK, NY 10021

100
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED NOV 25 2008

TAXS

BY: *[Signature]*
WLS

E12
DRAWDOWN

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EXHIBIT B

DEPARTMENT OF HEALTH APPROVAL OF PLAN OF CLOSURE



**Department
of Health**

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

August 12, 2015

Mr. David Scarpino
President and Chief Executive Officer
Health Alliance of Hudson Valley
396 Broadway
Kingston, New York 12401

Re: Decertification of operator and closure of site
Foxhall Ambulatory Surgery Center
64 Jansen Avenue, Kingston
Operating Certificate: 5501211R
Facility ID: 9010

Dear Mr. Scarpino:

In response to your request of June 18, 2015, staff from the Division of Hospitals and Diagnostic & Treatment Centers and the New York Metropolitan Area Regional Office reviewed the closure plan for the site listed above.

The closure plan is approved effective July 18, 2012. The operating certificate should be surrendered immediately to the New York Metropolitan Area Regional Office.

If you have any questions concerning this matter please contact Ms. Annmay Hoyte-Nelson at 212-417-5990.

Thank you.

Sincerely,

Ruth Leslie
Director
Division of Hospitals and Diagnostic & Treatment
Centers

cc: Ms. Celeste Johnson
Ms. Annmay Hoyte-Nelson
Closure File 1125

EXHIBIT C

UNANIMOUS WRITTEN CONSENT OF BOARD OF FASC

**UNANIMOUS WRITTEN CONSENT OF
THE BOARD OF DIRECTORS
OF
FOXHALL AMBULATORY SURGERY CENTER**

The undersigned, being all of the members of the Board of Directors (the "Board") of Foxhall Ambulatory Surgery Center ("FASC") do hereby consent, pursuant to Section 708 of the Not-for-Profit Corporation Law of the State of New York, to the adoption of the following resolutions and the taking of the following actions in lieu of a meeting, with the same force and effect as if they had been approved and adopted at a duly commissioned meeting of the Board of FASC:

WHEREAS, FASC ceased operations as a diagnostic and treatment center, and executed a Plan of Closure which was approved by the New York State Department of Health, effective July 18, 2012;

WHEREAS, FASC has no assets, liabilities or operations;

WHEREAS, the Board considered the advisability of voluntarily dissolving FASC, and has determined that dissolution is advisable and in the best interests of FASC;

WHEREAS, in furtherance of dissolution, FASC has drafted a Plan of Dissolution (the "Plan"), a copy of which is attached hereto as Attachment A.

NOW, THEREFORE, BE IT RESOLVED, by the Board of FASC:

RESOLVED, that the attached Plan of Dissolution is hereby adopted and an Authorized Representative(s) (as defined herein) of FASC be and they hereby are, authorized and directed to take such action as necessary to cause FASC to be dissolved in accordance with the Plan; and be it further;

RESOLVED, that the Plan shall be recommended for approval to FASC's two corporate members, FASC Foundation and HealthAlliance Foundation, formerly The Kingston Hospital Foundation;


RESOLVED, that all actions heretofore taken, and all documents, agreements, obligations and undertakings heretofore executed and delivered, by FASC in connection with the dissolution are hereby ratified and confirmed in all respects; and be it further

RESOLVED, that each member of the Board of Directors of FASC and each officer of FASC and any designee of any of the foregoing (each an "Authorized Representative") is hereby authorized to take such action, and to execute and deliver any and all documents, agreements, obligations and undertakings, as may be useful or appropriate to carry out the purposes and intent of these Resolutions including, without limitation, the execution and delivery of all documents necessary to effect the dissolution of FASC; and be it further

RESOLVED, that all of the documents, agreements, obligations and other undertakings executed and delivered by FASC in furtherance of dissolution shall be and are valid, binding and enforceable in accordance with their terms; and be it further

RESOLVED, that these Resolutions shall take effect immediately

IN WITNESS WHEREOF, the undersigned have executed or consented to this Consent as of the 10th day of May, 2018.



Glenn L. Decker

Michael Kaminski

Kathleen Keyser

Ruther Ellen Blodgett

Thomas A. Collins

Jason Fredenberg

Cynthia Lowe

Barbara Sorkin

RESOLVED, that all of the documents, agreements, obligations and other undertakings executed and delivered by FASC in furtherance of dissolution shall be and are valid, binding and enforceable in accordance with their terms; and be it further

RESOLVED, that these Resolutions shall take effect immediately

IN WITNESS WHEREOF, the undersigned have executed or consented to this Consent as of the 22nd day of MAY, 2018.

Glenn L. Decker

Michael Kaminski

Michael Kaminski

Kathleen Keyser

Ruth Ellen Blodgett

Thomas A. Collins

Jason Fredenberg

Cynthia Lowe

Barbara Sorkin

RESOLVED, that all of the documents, agreements, obligations and other undertakings executed and delivered by FASC in furtherance of dissolution shall be and are valid, binding and enforceable in accordance with their terms; and be it further

RESOLVED, that these Resolutions shall take effect immediately

IN WITNESS WHEREOF, the undersigned have executed or consented to this Consent as of the 10th day of May, 2018.

Glenn L. Decker

Michael Kaminski

Kathleen Keyser

Kathleen Keyser

Ruther Ellen Blodgett

Thomas A. Collins

Jason Fredenberg

Cynthia Lowe

Barbara Sorokin

RESOLVED, that all of the documents, agreements, obligations and other undertakings executed and delivered by FASC in furtherance of dissolution shall be and are valid, binding and enforceable in accordance with their terms; and be it further

RESOLVED, that these Resolutions shall take effect immediately

IN WITNESS WHEREOF, the undersigned have executed or consented to this Consent as of the 10th day of May, 2018.

Glenn L. Decker

Michael Kaminski

Kathleen Keyser

Ruth Ellen Blodgett

Ruth Ellen Blodgett

Thomas A. Collins

Jason Fredenberg

Cynthia Lowe

Barbara Sorkin

RESOLVED, that all of the documents, agreements, obligations and other undertakings executed and delivered by FASC in furtherance of dissolution shall be and are valid, binding and enforceable in accordance with their terms; and be it further

RESOLVED, that these Resolutions shall take effect immediately

IN WITNESS WHEREOF, the undersigned have executed or consented to this Consent as of the 10th day of May, 2018.

Glenn L. Decker

Michael Kaminski

Kathleen Keyser

Ruth Ellen Blodgett



Thomas A. Collins

Jason Fredenberg

Cynthia Lowe

Barbara Sorkin

RESOLVED, that all of the documents, agreements, obligations and other undertakings executed and delivered by FASC in furtherance of dissolution shall be and are valid, binding and enforceable in accordance with their terms; and be it further

RESOLVED, that these Resolutions shall take effect immediately

IN WITNESS WHEREOF, the undersigned have executed or consented to this Consent as of the 15th day of May, 2018.

Glenn L. Decker

Michael Kaminski

Kathleen Keyser

Ruth Ellen Blodgett

Karyn Patrice Macdonald
KARYN PATRICE MACDONALD
Notary Public, State of New York
No. 01MA6233645
Qualified in Greene County
Commission Expires January 03, 2019

Thomas A. Gollins

[Signature]

Jason Fredenberg

Cynthia Lowe

Barbara Sorkin

RESOLVED, that all of the documents, agreements, obligations and other undertakings executed and delivered by FASC in furtherance of dissolution shall be and are valid, binding and enforceable in accordance with their terms; and be it further

RESOLVED, that these Resolutions shall take effect immediately

IN WITNESS WHEREOF, the undersigned have executed or consented to this Consent as of the 10th day of May, 2018.

Glenn L. Decker

Michael Kaminski

Kathleen Keyser

Ruther Ellen Blodgett

Thomas A. Collins

Jason Fredenberg



Cynthia Lowe

Barbara Sorkin

RESOLVED, that all of the documents, agreements, obligations and other undertakings executed and delivered by FASC in furtherance of dissolution shall be and are valid, binding and enforceable in accordance with their terms; and be it further

RESOLVED, that these Resolutions shall take effect immediately

IN WITNESS WHEREOF, the undersigned have executed or consented to this Consent as of the 10th day of May, 2018.

Glenn L. Decker

Michael Kaminski

Kathleen Keyser

Ruth Ellen Blodgett

Thomas A. Collins

Jason Fredenberg

Cynthia Lowe

Barbara Sorkin
Barbara Sorkin

Attachment A
Plan of Dissolution

EXHIBIT D
PLAN OF DISSOLUTION

**PLAN OF DISSOLUTION
OF
FOXHALL AMBULATORY SURGERY CENTER**

The Board of Directors (the "Board") of Foxhall Ambulatory Surgery Center ("FASC") does hereby resolve and recommend to its members for approval that FASC be dissolved. The Board having considered the advisability of voluntarily dissolving FASC, and it being the unanimous opinion of the Board that dissolution is advisable and in the best interests of FASC. The Board having adopted, by unanimous written consent, the voluntary dissolution of FASC, does hereby recommend to its members, FASC Foundation and HealthAlliance Foundation, formerly The Kingston Hospital Foundation, (the "Members"), for approval, that FASC be dissolved in accordance with the following Plan:

1. Upon resolution of the Board adopting a Plan of Dissolution, the Board shall submit the plan to a vote of the Members for approval.
2. Approval of the dissolution must be obtained from the New York State Department of Health's Public Health and Health Planning Council.
3. FASC has no assets or liabilities.
4. A Certificate of Dissolution shall be executed by an officer, and all required approvals shall be attached hereto.

CERTIFICATION

I, Joanne Fredenberg, Chair of the Board of HealthAlliance Foundation, formerly The Kingston Hospital Foundation, hereby certifies under penalty of perjury that, at a meeting of the Board of Directors of HealthAlliance Foundation, held at 8:30 AM o'clock on May 10, 2018, 2018 at 396 Broadway, Kingston NY (place), the within Plan of Dissolution was duly submitted and approved by at least a two-thirds vote with a quorum present.



Name: Joanne Fredenberg

Title: Chair

Dated the 10th day of May, 2018

EXHIBIT E
UNANIMOUS WRITTEN CONSENT OF BOARD OF FASC FOUNDATION

**UNANIMOUS WRITTEN CONSENT OF
THE BOARD OF DIRECTORS
OF
FASC FOUNDATION**

The undersigned, being all of the members of the Board of Directors (the "Board") of FASC Foundation do hereby consent, pursuant to Section 614 of the Not-for-Profit Corporation Law of the State of New York, to the adoption of the following resolutions and the taking of the following actions in lieu of a meeting, with the same force and effect as if they had been approved and adopted at a duly commissioned meeting of the Board of FASC Foundation:

WHEREAS, FASC Foundation is a member of Foxhall Ambulatory Surgery Center ("FASC");

WHEREAS, FASC ceased operations as a diagnostic and treatment center, and executed a Plan of Closure which was approved by the New York State Department of Health, effective July 18, 2012;

WHEREAS, FASC has no assets, liabilities or operations;

WHEREAS, the Board of Directors of FASC determined that dissolution of FASC is advisable and in the best interests of FASC, and in furtherance of the same, adopted and authorized a Plan of Dissolution (the "Plan") for the voluntary dissolution of FASC. A copy of the Plan is attached hereto as Attachment A;

WHEREAS, the Board has reviewed the Plan and has determined that it is in the best interest to dissolve FASC.

NOW, THEREFORE, BE IT RESOLVED, by the Board of FASC Foundation:

RESOLVED, that the attached Plan of Dissolution is hereby approved and an Authorized Representative(s) (as defined herein) of FASC be and they hereby are, authorized and directed to take such action as necessary to cause FASC to be dissolved in accordance with the Plan; and be it further;


RESOLVED, that all actions heretofore taken, and all documents, agreements, obligations and undertakings heretofore executed and delivered, by FASC in connection with the dissolution are hereby ratified and confirmed in all respects; and be it further

RESOLVED, that each member of the Board of Directors of FASC and each officer of FASC and any designee of any of the foregoing (each an "Authorized Representative") is hereby authorized to take such action, and to execute and deliver any and all documents, agreements, obligations and undertakings, as may be useful or appropriate to carry out the purposes and intent of these Resolutions including, without limitation, the execution and delivery of all documents necessary to effect the dissolution of FASC; and be it further

RESOLVED, that all of the documents, agreements, obligations and other undertakings executed and delivered by FASC in furtherance of dissolution shall be and are valid, binding and enforceable in accordance with their terms; and be it further

RESOLVED, that these Resolutions shall take effect immediately.

IN WITNESS WHEREOF, the undersigned have executed or consented to this Consent as of the 19 day of April, 2018



Glenn Decker

Michael Kaminski

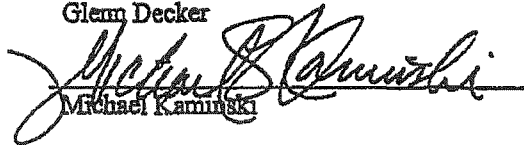
Kathleen Keyser

RESOLVED, that all of the documents, agreements, obligations and other undertakings executed and delivered by FASC in furtherance of dissolution shall be and are valid, binding and enforceable in accordance with their terms; and be it further

RESOLVED, that these Resolutions shall take effect immediately.

IN WITNESS WHEREOF, the undersigned have executed or consented to this Consent as of the 13th day of May, 2018

Glen Decker



Michael Kaminski

Kathleen Keyser

RESOLVED, that all of the documents, agreements, obligations and other undertakings executed and delivered by FASC in furtherance of dissolution shall be and are valid, binding and enforceable in accordance with their terms; and be it further

RESOLVED, that these Resolutions shall take effect immediately.

IN WITNESS WHEREOF, the undersigned have executed or consented to this Consent as of the 5 day of Nov, 2018

Glenn Decker

Michael Kaminski

Kathleen Keyser

Kathleen Keyser

EXHIBIT F
RESOLUTION OF
BOARD OF
HEALTHALLIANCE FOUNDATION

**RESOLUTION OF
THE BOARD OF DIRECTORS
OF
HEALTHALLIANCE FOUNDATION**

WHEREAS, HealthAlliance Foundation, formerly The Kingston Hospital Foundation, is a member of Foxhall Ambulatory Surgery Center ("FASC"); and

WHEREAS, FASC ceased operations as a diagnostic and treatment center, and executed a Plan of Closure which was approved by the New York State Department of Health, effective July 18, 2012; and

WHEREAS, FASC has no assets, liabilities or operations;

WHEREAS, the Board of Directors of FASC determined that dissolution of FASC is advisable and in the best interests of FASC, and in furtherance of the same, adopted and authorized a Plan of Dissolution (the "Plan"), a copy of which is attached hereto as Attachment A;

WHEREAS, the Board of Directors (the "Board") of HealthAlliance Foundation has reviewed the Plan and has determined that it is in the best interest to dissolve FASC.

NOW, THEREFORE, BE IT RESOLVED, by the Board of HealthAlliance Foundation:

RESOLVED, that the attached Plan of Dissolution is hereby approved and an Authorized Representative(s) (as defined herein) of FASC be and they hereby are, authorized and directed to take such action as necessary to cause FASC to be dissolved in accordance with the Plan; and be it further;

RESOLVED, that all actions heretofore taken, and all documents, agreements, obligations and undertakings heretofore executed and delivered, by FASC in connection with the dissolution are hereby ratified and confirmed in all respects; and be it further

RESOLVED, that each member of the Board of Directors of FASC and each officer of FASC and any designee of any of the foregoing (each an "Authorized Representative") is hereby authorized to take such action, and to execute and deliver any and all documents, agreements, obligations and undertakings, as may be useful or appropriate to carry out the purposes and intent of these Resolutions including, without limitation, the execution and delivery of all documents necessary to effect the dissolution of FASC; and be it further


RESOLVED, that all of the documents, agreements, obligations and other undertakings executed and delivered by FASC in furtherance of dissolution shall be and are valid, binding and enforceable in accordance with their terms; and be it further

RESOLVED, that this Resolution shall take effect immediately.

**ATTACHMENT A
PLAN OF DISSOLUTION**

CERTIFICATION

I, Joanne Fredenberg, Chair of the Board of HealthAlliance Foundation, formerly The Kingston Hospital Foundation, hereby certifies under penalty of perjury that, at a meeting of the Board of Directors of HealthAlliance Foundation, held at 8:30 AM o'clock on May 10, 2018, at 396 Broadway, Kingston, NY (place), the within Plan of Dissolution was duly submitted and approved by at least a two-thirds vote with a quorum present.


Name: Joanne Fredenberg
Title: Chair

Dated the 10th day of May, 2018

EXHIBIT G

NYS DEPARTMENT OF HEALTH APPROVAL

EXHIBIT H
CERTIFICATE OF DISSOLUTION

CERTIFICATE OF DISSOLUTION OF

FOXHALL AMBULATORY SURGERY CENTER

(Insert Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is:

FOXHALL AMBULATORY SURGERY CENTER

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:

November 25, 2008

THIRD: The name and address of each officer and director of the corporation is:

Name	Office	Address
Glenn L. Decker	President	320 Hook St. Hurley, NY 12443
Michael Kaminski	Vice President	26 Ridgecrest Dr. Wingdale, NY 12954
Kathleen Keyser	Treasurer	770 Neighborhood Road Lake Katrine, NY 12449
Barbara Sorkin		506 Mountain View Ave. Hurley, NY 12443
Jason Fredenberg		218 Windsor Dr. Hurley, NY 12443
Ruth Ellen Blodgett		178 Church St. Poughkeepsie, NY 12601
Thomas A. Collins		411 Washington Ave., Ste. 201 Kingston, NY 12401
Cynthia Lowe		340 Maplemere Lane Bluffton, SC 22909

FOURTH: At the time of dissolution, the corporation is a Type B corporation.
(A,B,C or D)

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: The dissolution was authorized by:

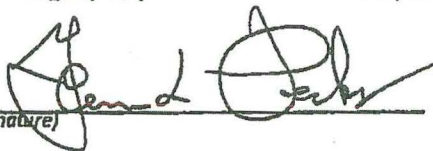
(Check the appropriate statement)

- 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.
- Dissolution of the Corporation was authorized by unanimous written consent of the Corporation's Board of Directors. Dissolution was then approved by the Corporation's two corporate members, FASC Foundation ("FASC Foundation") and HealthAlliance Foundation, formerly The Kingston Hospital Foundation. The Board of Directors of FASC Foundation authorized dissolution of the Corporation by unanimous written consent. The Board of Directors of HealthAlliance Foundation authorized dissolution at a duly called meeting by at least a two-thirds vote.

EIGHTH:

(Check the appropriate statement)

- The Plan of Dissolution and Distribution of Assets has been approved by a Justice of the Supreme Court. A copy of the Court's order is attached hereto.
- 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 Type A corporation and has no assets at the time of dissolution legally required to be used for a particular purpose.

X 
(Signature)

Glenn L. Decker
(Print or Type Name of Signer)

President

(Print or Type Title of Signer)

CERTIFICATE OF DISSOLUTION OF

FOXHALL AMBULATORY SURGERY CENTER

(Insert Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

Filer's Name: Christina Van Vort, Esq

Company Name: Garfunkel W/d, PC

Address: 111 Great Neck Road

City, State and Zip Code: Great Neck, New York 11021

NOTES:

1. The name of the corporation and its date of incorporation must be exactly as they appear on 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 must be signed by an officer, director or duly authorized person.
3. Attach the consent of the NYS Department of Taxation and Finance.
4. Attach the consent of the New York City Department of Finance, if required.
5. Consent of the Attorney General is required for all Type B, C and D corporations and Type A corporations that holds assets at the time of dissolution legally required to be used for a particular purpose.
6. Attach any other consent or approval required by law.
7. 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 11th day of April 2019, approves the filing of the Certificate of Dissolution of Foxhall Ambulatory Surgery Center, dated as attached.



MEMORANDUM

To: Public Health and Health Planning Council
From: Richard J. Zahnleuter, General Counsel
Date: March 19, 2019
Subject: Proposed Dissolution of Cabrini Care at Home, Inc.

Cabrini Care at Home, Inc. (the Corporation) requests Public Health and Health Planning Council approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law § 1002(c) and § 1003, as well as 10 NYCRR Part 650.

Cabrini Care at Home, Inc. is a Not-For-Profit corporation incorporated on March 19, 2002 and is licensed to operate a home health care Article 36 facility. The corporation has ceased operations because it is no longer conducting activities and has no assets or liabilities.

The Board of Directors of the Corporation adopted a Plan of Dissolution by unanimous written consent in January and February of 2019. The Corporation adopted a Plan of Dissolution on February 7, 2019.

The required documents: A Verified Petition to the Attorney General, a Plan of Dissolution, and a proposed Certificate of Dissolution, with supporting organizational documents of the Corporation and resolution of the board of directors authorizing the dissolution, are included for PHHPC's review. A letter from the Corporation's Counsel Nixon Peabody, advocating for dissolution, is also enclosed. Lastly, please note that the Corporation's Verified Petition and Plan for Dissolution indicate that, on the date of the application, the Corporation has no assets or outstanding liabilities.

There is no legal objection to the proposed Verified Petition, Plan of Dissolution, and the Certificate of Dissolution.

Attachments.



NIXON PEABODY LLP
ATTORNEYS AT LAW

NIXONPEABODY.COM
@NIXONPEABODYLLP

Laura R. Roethel
Paralegal
T 585-263-1055
F 866-351-8783
lroethel@nixonpeabody.com

Nixon Peabody LLP
1300 Clinton Square
Rochester, NY 14604-1792
585-263-1000

March 12, 2019

VIA FEDERAL EXPRESS

New York Department of Health
Division of Legal Affairs
Corning Tower, Room 2464
Empire State Plaza
Albany, New York 12237

RE: **Cabrini Care at Home
Dissolution**

Dear Sir or Madam:

We are writing to respectfully request the approval of the enclosed Certificate of Dissolution for **Cabrini Care at Home** (the "Corporation") by the Public Health and Health Planning Council ("PHHPC").

The Corporation is no longer conducting activities and has no remaining assets or liabilities.

At this time, the Corporation requests consent from PHHPC to dissolve. Copies the following proposed materials in support of the Corporation's application for approval of its dissolution are enclosed:

1. Verified Petition, with all exhibits;
2. Plan of Dissolution and Distribution of Assets (Exhibit C of Petition); and
3. Certificate of Dissolution of the Corporation.

Thank you for your time and attention to this matter. Please contact me should you require any additional information.

Very truly yours,

Laura R. Roethel
Paralegal

Enclosures

CERTIFICATE OF DISSOLUTION

OF

CABRINI CARE AT HOME

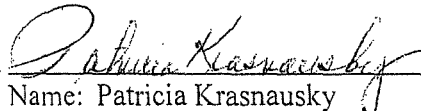
Under Section 1003 of the Not-for-Profit Corporation Law

THE UNDERSIGNED, being the President and Chief Executive Officer of Cabrini Care at Home (the "Corporation"), does hereby certify:

1. The name of this Corporation is Cabrini Care at Home.
2. The Certificate of Incorporation of the Corporation was filed in the office of the Secretary of State of the State of New York on March 19, 2002.
3. The names and addresses of the trustees and officers of the Corporation are as follows:

<u>Name/Address</u>	<u>Title</u>	<u>Name/Address</u>	<u>Title</u>
Ralph Lucariello, MD One Village Ln. Bronxville, NY 10708	Chairman/ Trustee	Peter DiCapua 116 Willow Dr. Briarcliff Manor, NY 10510	Trustee
James Migliore 3 Roundtop Rd. Winchester Village Yonkers, NY 10710	Vice Chairman/ Trustee	Richard T. Celiberti 3 Pine Tree Dr. Rye Brook, NY 10573	Treasurer/ Trustee
James Butler 100 Old Jackson Ave. Scarsdale, NY 10583	Trustee	Carmine Giuliano 16 Dorchester Dr. Scarsdale, NY 10583	Trustee
Donald Amoruso 463 Old Sleepy Hollow Rd. Pleasantville, NY 10570	Trustee	Mary Beth Morrissey, Ph.D 7 Ellis Dr. White Plains, NY 10605	Trustee
Symra Brandon 205 North Broadway Yonkers, NY 10701	Trustee	Sr. Arlene Van Dusen, MSC Holy Family Community 222 East 19 th St., 11G New York, NY 10003	Trustee
Joan Mooney 37 Alex Dr. White Plains, NY 10605	Trustee	Sr. Catherine Garry, MSC Provincial Office 222 East 19 th St. New York, NY 10003	Secretary
Donato Settanni 6 Sutton Pl. Katonah, NY 10536	Trustee	Patricia Krasnauskay 115 Broadway Dobbs Ferry, NY 10522	President/CEO

4. The Corporation is a charitable corporation.
5. At the time of authorization of the Corporation's Plan of Dissolution as provided in Not-for-Profit Corporation Law Section 1002, the Corporation holds no assets which are legally required to be used for a particular purpose.
6. The Corporation elects to dissolve.
7. The dissolution of the Corporation was authorized by a vote of the Board of Trustees.
8. 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.


Name: Patricia Krasnausky
Title: President/CEO

CERTIFICATE OF DISSOLUTION

OF

CABRINI CARE AT HOME

Under Section 1003 of the Not-for-Profit Corporation Law

FILED BY:

**Nixon Peabody LLP
1300 Clinton Square
Rochester, New York 14604**

ATTORNEY GENERAL OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

In the Matter of the Application of

CABRINI CARE AT HOME

VERIFIED
PETITION

For Approval of Certificate of Dissolution pursuant to
Section 1002 of the Not-for-Profit Corporation Law

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
44 SOUTH BROADWAY, WHITE PLAINS, NEW YORK 10601

Petitioner, Cabrini Care at Home, by its attorneys, Nixon Peabody LLP, Anita L. Pelletier, Esq., for its Petition herein respectfully alleges:

1. The name of Petitioner is Cabrini Care at Home. Petitioner's principal place of business is located in Westchester County, New York. Petitioner was formed on March 19, 2002, under the New York Not-for-Profit Corporation Law (the "N-PCL"). A copy of Petitioner's Certificate of Incorporation is attached as **Exhibit A**. A copy of Petitioner's By-Laws is attached hereto as **Exhibit B**.

2. Petitioner is a charitable corporation under Section 201 of the N-PCL.

3. The names and addresses of the trustees and officers are as follows:

<u>Name/Address</u>	<u>Title</u>	<u>Name/Address</u>	<u>Title</u>
Ralph Lucariello, MD One Village Ln. Bronxville, NY 10708	Chairman/ Trustee	Peter DiCapua 116 Willow Dr. Briarcliff Manor, NY 10510	Trustee
James Migliore 3 Roundtop Rd. Winchester Village Yonkers, NY 10710	Vice Chairman/ Trustee	Richard T. Celiberti 3 Pine Tree Dr. Rye Brook, NY 10573	Treasurer/ Trustee
James Butler 100 Old Jackson Ave. Scarsdale, NY 10583	Trustee	Carmine Giuliano 16 Dorchester Dr. Scarsdale, NY 10583	Trustee
Donald Amoruso 463 Old Sleepy Hollow Rd. Pleasantville, NY 10570	Trustee	Mary Beth Morrissey, Ph.D 7 Ellis Dr. White Plains, NY 10605	Trustee

Symra Brandon 205 North Broadway Yonkers, NY 10701	Trustee	Sr. Arlene Van Dusen, MSC Holy Family Community 222 East 19 th St., 11G New York, NY 10003	Trustee
Joan Mooney 37 Alex Dr. White Plains, NY 10605	Trustee	Sr. Catherine Garry, MSC Provincial Office 222 East 19 th St. New York, NY 10003	Secretary/ Trustee
Donato Settanni 6 Sutton Pl. Katonah, NY 10536	Trustee	Patricia Krasnausky 115 Broadway Dobbs Ferry, NY 10522	President/CEO

4. As stated in Petitioner's Certificate of Incorporation, its purposes are "To serve the aged, disabled and chronically impaired persons by establishing and operating a licensed home care services agency in order to provide nursing services, home health aide services and/or personal care services pursuant to Article 36 of the Public Health Law of the State of New York."

5. Petitioner plans to dissolve in accordance with the Plan of Dissolution attached hereto as Exhibit C.

6. Petitioner is dissolving because it is no longer conducting activities and has no remaining assets or liabilities.

7. Petitioner's entire Board of Trustees, by unanimous written consent, approved the Plan, and authorized the filing of a Certificate of Dissolution. A copy of the Written Consent is attached hereto as Exhibit D.

8. Petitioner has no members.

9. Petitioner has no assets or liabilities as of the date hereof.

10. Petitioner is a tax-exempt organization under Internal Revenue Code Section 501(c)(3) and included under the group ruling of the United States Conference of Catholic Bishops ("USCCB"). Evidence of Petitioner's inclusion, including a copy of the USCCB Group Ruling letter, is attached hereto as Exhibit E.

11. Petitioner is not required to file a final financial report with the Charities Bureau because the organization is exempt from registration with the Charities Bureau.

12. A copy of the Public Health and Health Planning Council ("PHHPC") approval for the dissolution of Petitioner as set forth in the Plan is attached hereto as Exhibit F and shall be attached to the Certificate of Dissolution.

13. 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 prays that the Attorney General approve the filing of the Certificate of Dissolution of Cabrini Care at Home, a not-for-profit corporation, pursuant to the Not-for-Profit Corporation Law Section 1003.

Dated: February 28, 2019

A handwritten signature in black ink, appearing to read "Anita L. Pelletier", written in a cursive style.

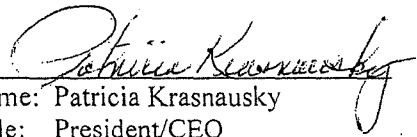
ANITA L. PELLETIER

Anita L. Pelletier, Esq.
Nixon Peabody LLP
Counsel for Petitioner
1300 Clinton Square
Rochester, NY 14604
(585) 263-1164

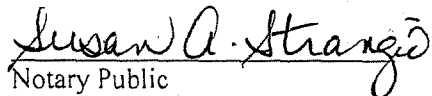
VERIFICATION AND CERTIFICATION

STATE OF NEW YORK)
) SS.:
COUNTY OF WESTCHESTER)

I am the President and Chief Executive Officer of Cabrini Care at Home, the Corporation named in the above Petition, and make this verification at the direction of the Board of Trustees. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief, and to those matters I believe them to be true.


Name: Patricia Krasnausky
Title: President/CEO

Sworn to before me this
7 day of February, 2019


Notary Public

SUSAN A. STRANGIO
Notary Public, State of New York
No. 01ST5084105
Qualified in Westchester County
Commission Expires Aug. 25, 2021

CERTIFICATE OF INCORPORATION

OF

CABRINI CARE AT HOME

Under Section 402 of the
Not-for-Profit Corporation Law

The undersigned, for the purpose of forming a corporation under Section 402 of the Not-for-Profit Corporation Law, hereby certifies:

FIRST: The name of the proposed corporation is CABRINI CARE AT HOME (hereinafter referred to as the "Corporation").

SECOND: The Corporation is not formed for pecuniary profit or financial gain. All income and earnings of the Corporation shall be used exclusively for its corporate purposes. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-for-Profit Corporation Law. The Corporation is a Type B Corporation under section 201 of the Not-for-Profit Corporation Law.

THIRD: The purposes for which the Corporation is formed are as follows:

- (a) To serve the aged, disabled and chronically impaired persons by establishing and operating a licensed home care services agency in order to provide nursing services, home health aide services and/or personal care services pursuant to Article 36 of the Public Health Law of the State of New York.
- (b) To buy, own, sell, convey, assign, mortgage or lease any interest in real estate and personal property and to construct, maintain and operate improvements thereon necessary or incident to the foregoing purposes.
- (c) To borrow money and issue evidence of indebtedness in furtherance of any or all of the objects of its business, and to secure the same by mortgage, pledge or other lien on the Corporation's property.

In furtherance of the foregoing, the Corporation shall have all of the general and special powers set forth in Section 202 of the Not-for-Profit Corporation Law.

FOURTH: (a) No part of the net earnings of the Corporation shall inure to the benefit of any member (other than an organization qualified under Section 501(c)(3) of the Internal Revenue Code of 1986), trustee, director or officer of the Corporation or any private individual, except that reasonable compensation may be paid for services rendered to or for the Corporation. No member (other than an organization qualified under Section 501(c)(3) of the Internal Revenue Code of 1986), trustee or officer of the Corporation or any private individual shall be entitled to

share in the distribution of any of the corporate assets upon dissolution of the Corporation.

- (b) No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, except as otherwise provided by Internal Revenue Code Section 501(h). The Corporation shall not participate or intervene, by any means including the publication or distribution of statements, in any political campaign on behalf of or in opposition to any candidate for public office.
- (c) Notwithstanding any other provision of this Certificate, the Corporation is organized exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals, as specified in Section 501(c)(3) of the Internal Revenue Code of 1986, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal Income tax under Section 501(c)(3) of the Internal Revenue Code of 1986.
- (d) In the event of the liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary or by operation of law, all of the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed to such organizations as shall qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York.

FIFTH: The office of the Corporation is to be located in the County of Westchester, State of New York.

SIXTH: The number of directors shall be not less than three (3).

SEVENTH: The names and residences of the initial directors of the Corporation are:

James Smith
5 Harmony Lane
Hartsdale, New York 10530

Patricia Krasnausky
1 Midland Gardens, Apt. 3D
Bronxville, New York 10708

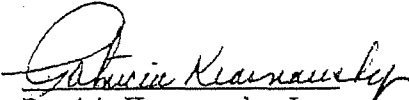
Sr. Tommasina Lanski, M.S.C.
840 NE 125th Street, Apt. 204
Seattle, Washington 98125

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SEVENTH: The Corporation designates the Secretary of State of the State of New York as its agent 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 served upon him/her is as follows:

Patricia Krasnausky
Cabrini Care at Home
115 Broadway
Dobbs Ferry, New York 10522

IN WITNESS WHEREOF, the undersigned incorporator, being at least eighteen years of age, has signed this certificate this 14th day of March, 2002 and hereby affirms the truth of the statements contained herein under penalty of perjury.


Patricia Krasnausky, Incorporator ;
c/o St. Cabrini Nursing Home, Inc.
115 Broadway
Dobbs Ferry, New York 10522

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss.:

On this 14 th day of March, 2002, before me personally came Patricia Krasnausky to me known and known to me to be the person described in and who executed the foregoing Certificate of Incorporation and she duly acknowledged to me that she executed the same.

MARGARET D. KRANZ
NOTARY PUBLIC, State of New York
DZKR No. 4792565, Qual. in Nassau County
Term Expires Nov 30, 192005

Margaret D. Kranz
Notary Public

4

RESOLUTION

RESOLVED, that the Public Health Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 25th day of January, 2002, having considered any advice offered by the staff of the New York State Department of Health and the Establishment 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 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.

<u>NUMBER:</u>	<u>FACILITY:</u>
1084	Priority Home Care d/b/a Accent Care, Inc. (Putnam, Rockland, Westchester, Bronx, Kings, New York, Queens, Richmond, Nassau and Suffolk counties)
1072	American Homecare Agency (Bronx, Kings, New York, Queens, Richmond and Nassau counties)
1048	Cabrini Care at Home (Westchester, Bronx, Kings, New York, Queens and Richmond counties)
1091	Circular Home Care Services (Kings County)
1104	Hudson Valley Care Centers d/b/a Green Manor Adult Home Assisted Living Program (Columbia County)

5

1056

New Gloria's Manor Home Care Services
(Bronx, Kings, New York, Queens, and Richmond
counties)

1085

Premier Home Health Care Services, Inc.
(Dutchess, Westchester, Bronx, Kings, New York,
Queens, Nassau and Suffolk counties)

1051

PSA Health Care
(Allegany, Cattaraugus, Chautauqua, Erie,
Genesee, Monroe, Niagara, Orleans and Wyoming
counties)

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BY-LAWS
OF
CABRINI CARE AT HOME

Adopted: As of April 1, 2002

A Not-for-Profit Corporation
in the State of New York

ARTICLE I

Name

The name of this corporation shall be Cabrini Care at Home, hereinafter referred to as the Corporation.

ARTICLE II

Purpose

Section 1. General Purposes

The Corporation shall be organized and operated exclusively for charitable, religious, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent federal tax laws (the "Code"). The Corporation shall have no power to act in a manner which is not exclusively within the contemplation of Section 501(c)(3) of the Code, and the Corporation shall not engage directly or indirectly in any activity which would prevent it from qualifying, and continuing to qualify, as a Corporation as described in Section 501(c)(3) of the Code. Without limiting the generality of the foregoing, the purposes for which the Corporation is to be formed are:

- (a) To serve the aged, disabled and chronically impaired persons by establishing and operating a licensed home care services agency in order to provide nursing services, home health aide services and/or personal care services pursuant to Article 36 of the Public Health Law of the State of New York.
- (b) To buy, own, sell, convey, assign, mortgage or lease any interest in real estate and personal property and to construct, maintain and operate improvements thereon necessary or incident to the foregoing purposes.
- (c) To borrow money and issue evidence of indebtedness in furtherance of any or all of the objects of its business, and to secure the same by mortgage, pledge or other lien on the Corporation's property.
- (d) To benefit, promote, support, by gift or otherwise, the qualifying religious, charitable and educational works operated by or in connection with the Missionary Sisters of the Sacred Heart of Jesus, Stella Maris province, a religious institute of women of the Roman Catholic Church which is exempt from federal income taxation under Section 501 (c) (3) of the Code.

The Trustees and officers of the Corporation shall carry out these purposes in accord with the teachings and law of the Roman Catholic Church including the Ethical and Religious Directives for Catholic Healthcare Facilities as promulgated by the United States

Conference of Catholic Bishops as amended from time to time and as interpreted by the Bishop of the Diocese in which this Corporation pursues its purposes. Further, the Trustees and officers shall fulfill these purposes in accord with the philosophy of the Missionary Sisters of the Sacred Heart as set forth in the Mission Standards adopted and presented from time to time by the Members to the Trustees without regard to race, creed, color, gender, age or national origin.

Section 2. Powers

The Corporation also has such powers as are now, or hereafter may be, granted by the Not-For-Profit Corporation Law of the State of New York.

Section 3. Activities and Operations

As a not-for-profit corporation:

- (a) The Corporation will not be operated for pecuniary gain or profit, incidental or otherwise, of any private individual. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its Trustees, officers or other private individuals, except to the extent permitted by New York statutes and except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered to or for the Corporation.
- (b) No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office in violation of any provisions applicable to corporations exempt from taxation under Section 501(a) as organizations described in Section 501(c)(3) of the Code and the regulations promulgated thereunder as they now exist or as they may be hereafter amended.
- (c) Notwithstanding any other provisions of these Bylaws, the Corporation shall not carry on any activity not permitted to be carried on by (i) a corporation exempt from federal income tax under Section 501(c)(3) of the Code, or (ii) a corporation, contributions to which are deductible under Section 170(c)(2) of the Code.

ARTICLE III

Offices

The Corporation shall have and continuously maintain in the State of New York, a registered office and a registered agent, whose office is identical with such registered office, and may have other offices within or outside of the State of New York as may from time-to-time be determined by the board of trustees of the Corporation (the "Board" or "Board of Trustees").

ARTICLE IV

Board of Trustees

Section 1. Power of the Board of Trustees

Subject to the Certificate of Incorporation of the Corporation and the New York Not-For-Profit Corporation Law, the Board of Trustees shall exercise the powers of the Corporation, shall have the authority to manage the business and affairs of the Corporation and shall control its property and shall have the power and authority to do and perform all acts or functions permitted by law. Any reference in these By-laws to the Board of Trustees shall include the Executive Committee unless the context or express provision otherwise indicates.

Section 2. Responsibilities of the Board

The primary responsibilities of the Board of Trustees shall be the establishment of policies for the operation and preservation of the Corporation as an entity operated consistently with a Catholic, Cabrinian mission and values, the solicitation and supervision of the funds needed for the development of the Corporation, oversight of the management of the resources, facilities, and endowments of the Corporation, and selection and evaluation of the Corporation's President/Chief Executive Officer. More specifically, these responsibilities shall include, but shall not be limited to, the following:

- (a) To review periodically the Corporation's mission and purpose;
- (b) To approve recommended changes in the philosophy, mission and values of the Corporation;
- (c) To amend, change, restate, alter, modify or repeal the Corporation's Certificate of Incorporation;
- (d) To evaluate annually the performance of, and relationship between, the Board and the administration of the Corporation;

- (e) To formulate and determine such general policies as shall be deemed necessary for the development and administration of the Corporation and in accord with the stated purposes of the Corporation as a Catholic, Cabrinian entity;
- (f) To appoint the President/Chief Executive Officer;
- (g) To oversee and support the President/Chief Executive Officer, who shall be responsible to the Board of Trustees for the administration of the Corporation;
- (h) To terminate the President/Chief Executive Officer, with or without cause;
- (i) Prior to any contract renewal, and otherwise on a regular basis, to conduct evaluations of the performance of the President/Chief Executive Officer through the Executive Committee in accordance with a process with pre-established criteria;
- (j) To establish and support, through individual contributions and solicitation of the support of others, fund-raising goals appropriate to the Corporation's present and future needs, and to participate actively in setting and carrying out strategies to secure sources of support for the Corporation's programs and facilities;
- (k) To authorize the Corporation's officers to accept gifts or bequests made to the Corporation subject to policies and guidelines set by the Board of Trustees;
- (l) To oversee the general financial administration of the Corporation, including the approval of annual budgets consistent with any strategic plan adopted by the Trustees;
- (m) To approve an annual report of the activities of the Corporation and of the Board of Trustees;
- (n) To authorize the Corporation to incur debts and secure the same by mortgaging and/or pledging its assets;
- (o) To retain professional advisors such as attorneys and accountants to assist the Board of Trustees and administration;
- (p) To adopt, amend, alter, modify or repeal these Bylaws, in accord with Article XIII;
- (q) To approve: (i) the granting of a security interest in or the encumbrance of any assets or property owned by the Corporation and the (ii) sale, transfer or other disposition of real or personal property of the Corporation;

- (r) To approve any merger, consolidation, dissolution, fundamental reorganization or liquidation of the Corporation; and
- (s) To determine the distribution of the Corporation's assets upon dissolution.

The Board of Trustees shall have all other powers necessary to carry out any other functions which are permitted by the Corporation's Certificate of Incorporation or these By-laws, except as limited by law.

Section 3. Direction of the Board of Trustees

The function and business of the Corporation, except as otherwise provided herein, shall be directed by a Board of Trustees whose manner of selection and term of office are set forth herein.

Section 4. Nature, Number and Qualifications

The trustees (the "Trustees") shall be composed of between three (3) and twenty-one (21) persons, the number to be determined by resolution of the Board. None of the Trustees need be residents of the State of New York. The Trustees shall be elected on an annual basis by the Board of Trustees of St. Cabrini Nursing Home, Inc.

Section 5. Vacancy

In the event that any Trustee shall be absent without excuse for three (3) consecutive regular meetings of the Board of Trustees after due notice of such meetings has been given, such absences may be deemed by the Board to constitute a resignation from the Board of Trustees by such Trustee, and the Board of Trustees at the meeting (regular or special), if it so deems there to be a resignation, next following the last of such absences may accept or reject such resignation. If such resignation is accepted, or a non-ex-officio Trustee vacancy exists for any other reason such as in case of death or resignation, the Trustees of the Corporation may elect a successor Trustee to fill the balance of the term of the Trustee whose resignation has been accepted or for which the vacancy exists.

Section 6. Removal

Any or all of the Trustees may be removed for cause by vote of the Trustees provided there is a quorum of not less than a majority of the entire Board of Trustees present at the meeting of Trustees at which such action is taken.

Section 7. Meetings of the Board of Trustees

The Board of Trustees shall hold at least two (2) regular meetings each year, at the Corporation, located at 115 South Broadway, Dobbs Ferry, New York. The annual meeting (the "Annual Meeting") of the Board of Trustees shall be in the last quarter of the fiscal year.

Section 8. Special Meetings of the Board of Trustees

Special meetings of the Board of Trustees may be called by the Chairperson of the Board of Trustees. Written notice of such meetings shall be mailed to each Trustee at least seven (7) days prior to the date set for the special meeting or telefax with telephone confirmation of receipt at least three (3) days prior to the date set for the Special Meeting. Such notice shall state the purpose for which the special meeting has been called, and no other business other than stated in the notice shall be transacted at such special meeting. A quorum of Trustees must be present at any special meeting.

Section 9. Notice of Meetings of the Board of Trustees

The Chairperson shall give at least seven (7) days written notice of each regular meeting to each Trustee and shall include in such notice, an agenda and other information of the business to be considered at such meeting. This provision of the By-laws shall be construed only as directory to the Chairperson, it being expressly provided hereby that failure to give notice of the time or place of any regular meeting, or of the business to be conducted at such meeting, shall in no way affect the validity of any action otherwise properly taken by the Board of Trustees at such regular meeting, except when such notice is expressly required by law, the Corporation's Certificate of Incorporation, or these By-laws.

Section 10. Quorum

For regular or special meetings of the Board of Trustees, a quorum shall be a majority of the Trustees in office. For meetings of a committee of the Board, a majority of Committee Members then in office shall constitute a quorum.

Section 11. Consent of Trustees in Lieu of Meeting

Any action required or permitted to be taken by the Board of Trustees or any committee thereof may be taken without a meeting if all Trustees of the Board or members of the committee consent in writing to the adoption of a resolution authorizing the action. The resolutions and the written consents thereto shall be filed with the minutes of the proceedings of the Board or of committee, as the case may be.

Section 12. Conference Telephone Meetings

Any one or more Trustees or any committee thereof may participate in a meeting of the Board or committee, as the case may be, by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at such meeting.

Section 13. Committees of the Board of Trustees

Standing committees of the Board of Trustees shall be:

(a) Executive Committee. The Board of Trustees shall designate from among its members an Executive Committee of three or more Trustees. The Executive Committee shall have all authority of the Board, and act in between regular meetings of the Board. The Executive Committee shall be responsible, among other things, for initiating both the regular evaluation of the President/Chief Executive Officer and the annual evaluation of the performance and relationship between the Board and the President/Chief Executive Officer of the Corporation.

The Executive Committee shall have all the authority of the Board, and shall act between regular meetings of the Board, except that no such committee shall have authority as to the following matters:

- (i) The filling of vacancies in the Board or in any committee.
- (ii) The amendment of the Certificate of Incorporation of the Corporation.
- (iii) The amendment or repeal of the By-laws, or the adoption of new By-laws.
- (iv) The amendment or repeal of any resolution of the Board, which by its terms shall not be so amendable, or repealable.
- (v) The appointment of the President/Chief Executive Officer of the Corporation.

Any reference in these By-laws to the Board of Trustees shall include the Executive Committee unless the context or express provision otherwise provides.

(b) Nominating and Bylaws Committee. The Nominating and Bylaws Committee shall consist of no less than three (3) Trustees. The committee's chairperson and the other committee members shall be appointed for renewable one-year terms by the Chairperson of the Board of Trustees. The Committee shall review the organization and composition of the Board of Trustees, and may recommend to the Board of Trustees of the Corporation nominees eligible for election as a Trustee. The Board of Trustees shall review such nominees, and, if acceptable, recommend such nominees to the Board of Trustees of St. Cabrini Nursing Home, Inc. for final approval. Authority to elect a nominee as a Trustee of the Corporation is vested solely in the Board of Trustees of St. Cabrini Nursing Home, Inc. The Nominating and Bylaws Committee shall also be responsible for periodic review and revision of the corporate By-laws.

(c) Finance, Audit and Corporate Compliance Committee. The Finance Committee shall consist of three (3) members of the Board of Trustees. The Chairperson of the Finance, Audit and Corporate Compliance Committee shall be appointed by the Chairperson of the Board of Trustees. The Finance, Audit and Corporate Compliance Committee shall be concerned with all financial matters of the Corporation and shall

(i) review and submit annually a budget to the Board of Trustees, (ii) examine the monthly financial statements, (iii) provide direction to administration regarding financial matters of the Corporation, (iv) supervise such conflicts-of-interest policy as may be adopted by resolution of the Board of Trustees, to recommend to the Board of Trustees changes therein as deemed necessary from time to time, and report its findings to the Board of Trustees; (v) monitor the activities of the Corporation's internal and independent auditors and to report thereon to the Board of Trustees as necessary; (vi) recommend to the Board of Trustees annually appointment of independent auditors for the Corporation; (vii) receive a report from the appropriate staff at each meeting with respect to the efficacy of the Corporate Compliance Program, including any significant developments, and (viii) perform such other duties as may be assigned to it by the Board of Trustees.

(d) Professional Advisory/Quality Improvement Committee. In order to reflect the mission and philosophy of the Corporation and to fulfill the Corporation's responsibilities to its patients, its medical and paraprofessional staff and the community it serves, the Corporation will maintain an integrated program of quality improvement designed to continuously monitor and evaluate the quality of patient care, agency services and processes, identified problems, and pursue opportunities to improve systems, customer service and patient/client outcomes. The Committee shall consist of at least one Trustee, the Administrator, staff responsible for the delivery of services by the Corporation and such other persons as may be required to fulfill the Corporation's obligations under State law and regulation. The Committee shall maintain a Quality Improvement Plan setting forth its purposes, objectives and procedures. The Quality Improvement Plan shall be presented to the Board of Trustees for approval.

(e) Procedures, Other Committees: Other committees may be authorized by the Board of Trustees. Meetings of the above-mentioned committees may be attended by non-committee members upon invitation by a member of the committee in question. Members of each of the above committees may be appointed by the Chairperson of the Board of Trustees for such term as may be deemed appropriate. The frequency of committee meetings and the format of committee reports shall be determined by the Chairperson of the Board of Trustees except as otherwise provided by law. When appropriate, non-Trustees including Honorary Trustees may be asked by the Chairperson of the Board of Trustees to serve in an advisory non-voting capacity on any of the above committees. Procedures for committee meetings shall follow those procedures set forth in this Article IV for meetings of the Board of Trustees.

Section 14. Honorary Trustees

The Board of Trustees may appoint Honorary Trustees for three (3) year terms of office. Honorary Trustees may be invited to attend meetings of the Board of Trustees, but shall have no vote. Honorary Trustees shall be subject to call by the Chairperson of the Board or the Administrator for consultation or special assignment in support of the activities and objectives of the Corporation.

ARTICLE V

Officers of the Board of Trustees

Section 1. Officers

The Officers of the Board of Trustees shall be a Chairperson, a Vice Chairperson, a Secretary, a Treasurer and such other officers elected in accordance with the provisions of this Article. The Board of Trustees may elect such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Trustees. Any two or more offices, except that of the Chairperson and Secretary, may be held by the same person.

Section 2. Election and Term of Office

The officers of the Board of Trustees shall be elected annually by the Board of Trustees at the regular annual meeting of the Board of Trustees. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently possible. New offices may be created and filled at any meeting of the Board of Trustees. Each officer shall hold office until his/her successor shall have been duly elected and shall have been qualified. Election of an officer shall not of itself create any contract rights. Election of the Chairperson of the Board shall be subject to the approval of the Board of Trustees of St. Cabrini Nursing Home, Inc.

Section 3. Removal

Any officer elected by the Board of Trustees may be removed, with or without cause, by the Board of Trustees whenever in its judgment the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed. Removal of the Chairperson of the Board, with or without cause, shall be subject to the approval of the Board of Trustees of St. Cabrini Nursing Home, Inc.

Section 4. Vacancies

A vacancy in any office because of death, resignation, disqualification or otherwise, may be filled by a majority vote of the Board of Trustees for the unexpired portion of the term.

Section 5. Chairperson

The Chairperson of the Board shall preside at all meetings of the Board of Trustees at which the Chairperson is present. The Chairperson of the Board shall also perform such other duties as may be assigned from time to time by the Board. S/he may sign, with the Secretary of the Board or any other proper officer of the Corporation authorized by the Board of Trustees, any deeds, mortgages, bonds, contracts, diplomas or other instruments which the Board of Trustees have authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Trustees or by these By-laws or by law to some other officer

or agent of the Corporation; and, in general, shall perform all duties as may be prescribed by the Board of Trustees from time to time.

Section 6. Vice Chairperson

In the absence of the Chairperson of the Board or in the event of his/her inability or refusal to act, the Vice Chairperson (or in the event there is more than one Vice Chairperson, the Vice Chairperson in order of their election) shall perform the duties of the Chairperson of the Board, and when so acting shall have all the powers of and be subject to all the restrictions upon the Chairperson of the Board. Any Vice Chairperson shall perform such other duties as from time to time may be assigned to him/her by the Chairperson of the Board or the Board of Trustees.

Section 7. Secretary

The Secretary of the Board shall keep the minutes of the meetings of the Board of Trustees in one or more books provided for that purpose; keep an accurate list of the names of the Members and the Trustees and their mailing addresses; give all notices in accordance with the provisions of these By-laws or as required by law; be custodian of the corporate records and of the seal of the Corporation, and affix the seal of the Corporation on all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these By-laws; keep a register of the post-office addresses of the Members which shall be furnished to the Secretary of the Board by each; and, in general, shall perform all duties incident to the office of Secretary of the Board and such other duties as from time to time may be assigned to him/her by the Chairperson of the Board or by the Board of Trustees.

Section 8. Treasurer

The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Corporation; receive and give receipts for monies due and payable to the Corporation from any source whatsoever, and deposit all such moneys in the name of the Corporation in such banks, trust companies, or other depositories; and, in general, shall perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him/her by the Chairperson of the Board or by the Board of Trustees

ARTICLE VI

Administration

Section 1. President/Chief Executive Officer

The President/Chief Executive Officer shall be appointed by the Board of Trustees of the Corporation and may also be elected to the Board of Trustees by the Board of Trustees of St. Cabrini Nursing Home, Inc. The President/Chief Executive Officer shall be the principal executive officer of the Corporation and shall, in general, supervise the business and implement the policies of the Corporation. The President/Chief Executive Officer shall serve *ex officio*

without vote as a member of all Committees of the Board, except as they are engaged in the evaluation, compensation or selection of the President/Chief Executive Officer. The Chief Executive Officer shall be the spokesperson for both the charitable activities of the Corporation and its Catholic, Cabrini mission. As the principal executive officer of the Corporation, the President/Chief Executive Officer shall have such credentials and exercise such leadership and supervision as will promote the efficiency and effectiveness of the mission of the Corporation.

Section 2. Responsibilities of the President/Chief Executive Officer

The President/Chief Executive Officer is the chief administrative officer of the Corporation. The President/Chief Executive Officer shall be responsible for:

- (a) Carrying out all policies established by the Board of Trustees;
- (b) Development and submission to the Board of Trustees for approval of a plan of organization of the personnel and others concerned with the operation of the Corporation;
- (c) Preparation of an annual budget showing the expected receipts and expenditures, as required by the Board of Trustees;
- (d) Selection, employment, control and discharge of employees and development and maintenance of personnel policies and practices for the Corporation;
- (e) Maintenance of physical properties in a good state of repair and operating condition;
- (f) Supervision of business affairs to ensure that funds are collected and expended to the best possible advantage;
- (g) Cooperation with the clinical staff, and with all concerned with rendering professional services, to the end that high quality care may be rendered to the patients.
- (h) Presentation to the Board of Trustees or its authorized committee, of periodic reports reflecting the professional service and financial activities of the Corporation, and preparation and submission of such special reports as may be required by the Board of Trustees;
- (i) Attendance at all meetings of the Board of Trustees and committees thereof as s/he may deem appropriate;
- (j) Development, submission and implementation of all plans to correct operational deficiencies identified by regulatory agencies on a timely basis

and reporting to the Board of Trustees progress in the development and carrying out of corrections; and

- (k) Performance of other duties that may be necessary in the best interest of the Corporation.

Section 3. Appointment, Evaluation and Termination of the President/Chief Executive Officer

The President/Chief Executive Officer shall be appointed by the Board of Trustees. The President/Chief Executive Officer shall be employed under the terms established by the Board. Prior to any contract renewal, or on an annual basis, the President/Chief Executive Officer shall be evaluated by the Board of Trustees through the Executive Committee in a mutually agreeable process with pre-established criteria approved by the Trustees. The President/Chief Executive Officer may be removed, with or without cause, by action of the Board of Trustees in accord with the established evaluation process.

Section 4. Administrator

The Corporation shall employ an administrator (the "Administrator") who will be responsible for the direction and supervision of the operations of the Corporation. If the Administrator is not the Chief Executive Officer, s/he shall report to the President/Chief Executive Officer or to his/her designee in the organization. The Administrator shall, in general, supervise and implement the health care policies of the Corporation under the direction of the President/Chief Executive Officer. The Administrator shall, like the President/Chief Executive Officer, be the spokesperson for both the health care activities of the Corporation and its Catholic, Cabrini mission. The Administrator shall have such credentials and exercise such leadership and supervision as will promote the efficiency and effectiveness of the mission of the Corporation. The Administrator may be a New York State licensed and currently registered nurse, and if so, may function as the director of patient services who will be responsible for the direction and supervision of all patient care services and other health care activities of the Corporation in accordance with New York State Health Department regulations.

Section 5. Appointment, Evaluation and Termination of the Administrator.

The Administrator shall be appointed by the Board of Trustees from the slate of candidates presented by the President/CEO. The Administrator shall serve at the pleasure of the President/Chief Executive Officer. On a regular basis, the Administrator shall be evaluated by the President/Chief Executive Officer in a mutually agreeable process with pre-established criteria. The Administrator may be terminated by the President/Chief Executive Officer or by the Board of Trustees with or without cause.

ARTICLE VII

Indemnification and Insurance

Section 1. Authorized Indemnification

Unless prohibited by law or Section 2 of this Article VII, the Corporation shall indemnify any person ("Indemnified Person") made, or threatened to be made, a party in any action or proceeding, whether civil, criminal, administrative, investigative or otherwise, including any action by or in the right of the Corporation, by reason of the fact that he (or his testator or intestate), whether before or after adoption of this By-law, (a) is or was a Trustee or officer of the Corporation, or (b) in addition is serving or served, in any capacity, at the request of the Corporation, any other corporation, or any partnership, joint venture, trust, employee benefit plan or other enterprise. The indemnification shall be against all judgments, fines, penalties, amounts paid in settlement (provided the Corporation shall have consented to such settlement) and reasonable expenses, including attorneys, fees and costs of investigation, incurred by an Indemnified Person with respect to any such threatened or actual action or proceeding, and any appeal thereof.

Section 2. Prohibited Indemnification

The Corporation shall not indemnify any person if a judgment or other final adjudication adverse to the Indemnified Person (or the person whose actions are the basis for the action or proceeding) established, or the Board of Trustees in good faith determines, that such person's acts were committed in bad faith or were the result of active and deliberate dishonesty and 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.

Section 3. Advance of Expenses

The Corporation shall, on request of any Indemnified Person who is or may be entitled to be indemnified by the Corporation, pay or promptly reimburse the Indemnified Person's reasonably incurred expenses in connection with a threatened or actual action or proceeding prior to its final disposition. However, no such advancement of expenses shall be made unless the Indemnified Person makes a binding, written commitment to repay the Corporation, with interest, for any amount advanced for which it is ultimately determined that he is not entitled to be indemnified under the law or Section 2 of this Article VII. An Indemnified Person shall cooperate in good faith with any request by the Corporation that common legal counsel be used by the parties to such action or proceeding who are similarly situated unless it would be inappropriate to do so because of actual or potential conflicts between the interests of the parties.

Section 4. Indemnification of Others

Unless prohibited by law or Section 2 of this Article VII, the Board of Trustees may approve Corporation indemnification as set forth in Section 1 of this Article VII, and

advancement of expenses as set forth in Section 3 of this Article VII, to a person (or the testator or intestate of a person) who is or was employed by the Corporation or who is or was a volunteer for the Corporation, and who is made or threatened to be made, a party in any action or proceeding, by reason of the fact of such employment or volunteer activity, including actions undertaken in connection with service at the request of the Corporation in any capacity for any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

Section 5. Determination of Indemnification

Indemnification mandated by a final order of a court of competent jurisdiction will be paid. After termination or disposition of any actual or threatened action or proceeding against an Indemnified Person, if indemnification has not been ordered by a court the Board of Trustees shall, upon written request by the Indemnified Person, determine whether and to what extent indemnification is permitted pursuant to these By-laws. Before indemnification can be paid the Board of Trustees must explicitly find that such indemnification will not violate the provisions of Section 2 of this Article VII. No Trustee with a personal interest in the outcome, or who is a party to such actual or threatened action or proceeding concerning which indemnification is sought, shall participate in this determination. If a quorum of disinterested trustees is not obtainable, the Board of Trustees shall act only after receiving the opinion in writing of independent legal counsel that indemnification is proper in the circumstances under then applicable law and these By-laws.

Section 6. Binding Effect

Any person entitled to indemnification under these By-laws has a legally enforceable right to indemnification, which cannot be abridged by amendment of these By-laws with respect to any event, action or omission occurring prior to the date of such amendment.

Section 7. Insurance

The Corporation is not required to purchase trustees' and officers' liability insurance, but the Corporation may purchase such insurance if authorized and approved by the Board of Trustees. To the extent permitted by law, such insurance may insure the Corporation for any obligation it incurs as a result of this Article VII or operation of law and it may insure directly the Trustees, officers, employees or volunteers of the Corporation for liabilities against which they are not entitled to indemnification under this Article VII as well as for liabilities against which they are entitled or permitted to be indemnified by the Corporation.

Section 8. Nonexclusive Rights

The provisions of this Article shall not limit or exclude any other rights to which any person may be entitled under law or contract. The Board of Trustees is authorized to enter into agreements on behalf of the Corporation with any Trustee, officer, employee or volunteer providing them rights to indemnification or advancement of expenses in connection with

potential indemnification in addition to the provisions therefore in this Article subject in all cases to the limitations of Section 2 of this Article VII.

ARTICLE VIII

Conflicts of Interest

- (a) The relationship between the Corporation and its Trustees and officers, is one which carries with it a strict duty of loyalty and fidelity. They shall exercise the utmost good faith in all transactions touching upon their duties at the Corporation and its property. They shall not use their positions of knowledge gained there from so that a conflict might arise between the interest of the Corporation and that of the individual Trustee or officer.
- (b) Any contract or other transaction between the Corporation and one of its Trustees or officers or between the Corporation and any other corporation, firm, association or other entity in which one or more of the Corporation's Trustees or officers have a substantial financial interest therein, not otherwise prohibited by federal, state or municipal statutory or administrative law, must be in compliance with the following conditions:
 - (1) The relevant and material facts of such Trustee's or officer's interest in such contract or transaction are fully disclosed in good faith and in advance by the interest individual and such facts are reflected in the minutes of the Board, and
 - (2) In the judgment of the Board, the contract or other transactions is as fair and reasonable to the Corporation as would otherwise then be obtained by it and such determination is indicated in the minutes of the Board, and
 - (3) The Board authorizes such contract or transaction by a resolution adopted by a vote of at least two-thirds (2/3) of the voting Trustees present at a meeting at which a quorum is present, and
 - (4) If the interested individual shall be a Trustee, his presence shall not be counted in determining the presence of a quorum at the meeting at which the Board authorizes such contract or transaction, he shall not be present in the room at the time the vote is taken, and he shall not participate in the deliberations nor use personal influence in the matter.
- (c) For the purpose of this Article, a Trustee or officer shall be deemed to have a direct or indirect substantial financial interest in any corporation, firm, association or other entity (1) in which s/he, together with her/his parents and spouse, and all descendents of either of her/his parents and spouse, have an aggregate beneficial equity of 10 percent or more, or (2) of which s/he is an officer or employee.

ARTICLE IX

Miscellaneous

Section 1. Signature on Checks and Drafts

All checks, drafts and other orders for the payment of money out of the funds of the Corporation, and all notes or other evidences of indebtedness of the Corporation, shall be signed on behalf of the Corporation in such manner as shall from time to time be determined by resolution of the Board of Trustees.

Section 2. Official Seal

The Official Seal of the Corporation shall consist of a circle within a circle. The outer circle shall contain the words "Cabrini Care at Home," and the inner circle, "Incorporated, New York, 2002".

ARTICLE X

Books and Records

The Corporation shall keep correct and complete books and records of account; and also shall keep minutes of the proceedings of its Board of Trustees, and committees having any of the authority of the Board of Trustees; and shall keep at the registered or principal office a record giving the names and addresses of all Trustees. All books and records of the Corporation may be inspected by any Trustee for any proper purpose at any reasonable time.

ARTICLE XI

Fiscal Year

The fiscal year of the Corporation shall begin on the first day of January and end on the last day of December in each year.

ARTICLE XII

Waiver of Notice

Whenever any notice is required to be given under the provisions of the General Not-for-Profit Corporation Act of New York or under the provisions of these By-laws, a waiver thereof in writing signed by the persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XIII

Amendment of By-Laws

The By-laws of the Corporation may be adopted, amended, altered, modified or repealed only by the Trustees. The action of the Trustees on adoption, amendment, alteration, modification or repeal of the Bylaws shall be final and binding upon the Corporation.

ARTICLE XIV

Certificate of Incorporation

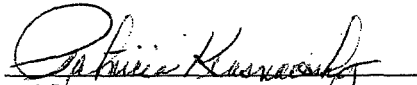
The Certificate of Incorporation may be amended, changed, restated, altered, modified or repealed only by the Board of Trustees in accord with the provisions of Article IV, Section 2.

**PLAN OF DISSOLUTION
OF
CABRINI CARE AT HOME**

The Board of Trustees of Cabrini Care at Home (the "Corporation") has considered the advisability of voluntarily dissolving the Corporation and has determined that dissolution is in the best interests of the Corporation.

1. The Corporation has no assets or liabilities.
2. In addition to Attorney General approval, the approval of this Plan by the Public Health and Health Planning Council is required and copies of the approval will be attached to the Verified Petition submitted to the Attorney General.
3. A Certificate of Dissolution shall be signed by an authorized trustee or officer of the Corporation and all required approvals shall be attached thereto.

Dated: February 7, 2019



Name: Patricia Krasnausky

Title: President/CEO

**WRITTEN CONSENT
OF THE
BOARD OF TRUSTEES
OF
CABRINI CARE AT HOME**

The undersigned, being all of the Trustees of Cabrini Care at Home (the "Corporation"), does hereby adopt the following resolutions by unanimous written consent of the Board of Trustees of the Corporation:

WHEREAS, the Corporation is a New York not-for-profit corporation formed to provide licensed home care services to the aged, disabled and chronically impaired; and

WHEREAS, the Corporation is no longer conducting activities and has no remaining assets or liabilities; and

WHEREAS the Board of Trustees has considered the advisability of voluntarily dissolving the Corporation; and

WHEREAS, the Board of Trustees, after due consideration, has deemed it advisable and in the best interests of the Corporation to adopt and approve a plan of dissolution and to dissolve.

NOW, THEREFORE BE IT

RESOLVED: that the Corporation shall dissolve voluntarily; and it is further

RESOLVED: that the Board of Trustees does hereby adopt and approve the Plan of Dissolution, in the form attached hereto; and it is further

RESOLVED: that the Board of Trustees hereby authorizes the filing of a Certificate of Dissolution with the New York State Department of State, subject to the consent of the Attorney General's Office; and it is further

RESOLVED: that the officers of the Corporation are hereby authorized and empowered to execute such documents, to make any necessary, non-material amendments to such documents and to do any and all acts necessary to effectuate the foregoing resolutions.

IN WITNESS WHEREOF, we have signed this instrument and direct that it be filed with the minutes of the proceedings of the Board of Directors.

Dated: 1/31/19

Ralph Lucariello
Ralph Lucariello, MD

Dated: _____

James Migliore

Dated: _____

James Butler

Dated: _____

Donald Amoruso

Dated: _____

Symra Brandon

Dated: _____

Joan Mooney

Dated: _____

Donato Settanni

Dated: _____

Sr. Arlene Van Dusen, MSC

Dated: _____

Sr. Catherine Garry, MSC

Dated: 1/31/19

Peter DiCapua
Peter DiCapua

Dated: _____

Richard T. Celiberti

Dated: _____

Carmine Giuliano

Dated: _____

Mary Beth Morrissey, Ph.D.

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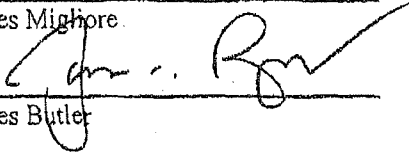
Dated: _____

Ralph Lucariello, MD

Dated: _____

James Migliore

Dated: 1-31-19



James Butler

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Donald Amoruso

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Symra Brandon

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James Butler

Dated: 2/7/2019

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Symra Brandon

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Joan Mooney

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Donald Amoruso

Dated: 2/5/19

Symra Brandon
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Dated: _____

Joan Mooney

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Donato Settanni

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Sr. Arlene Van Dusen, MSC

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Sr. Catherine Garry, MSC

Dated: 1/31/19

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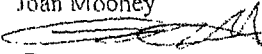
Dated: _____

Symra Brandon

Dated: _____

Joan Mooney

Dated: January 30, 2019



Donato Settanni
Donato Settanni

Dated: _____

Sr. Arlene Van Dusen, MSC

Dated: _____

Sr. Catherine Garry, MSC

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Donato Settanni

Dated: 1/30/2019

A. Arlene Van Dusen, MSC
Sr. Arlene Van Dusen, MSC

Dated: 1/30/2019

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Peter DiCapua

Dated: 2/1/19

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Sr. Arlene Van Dusen, MSC

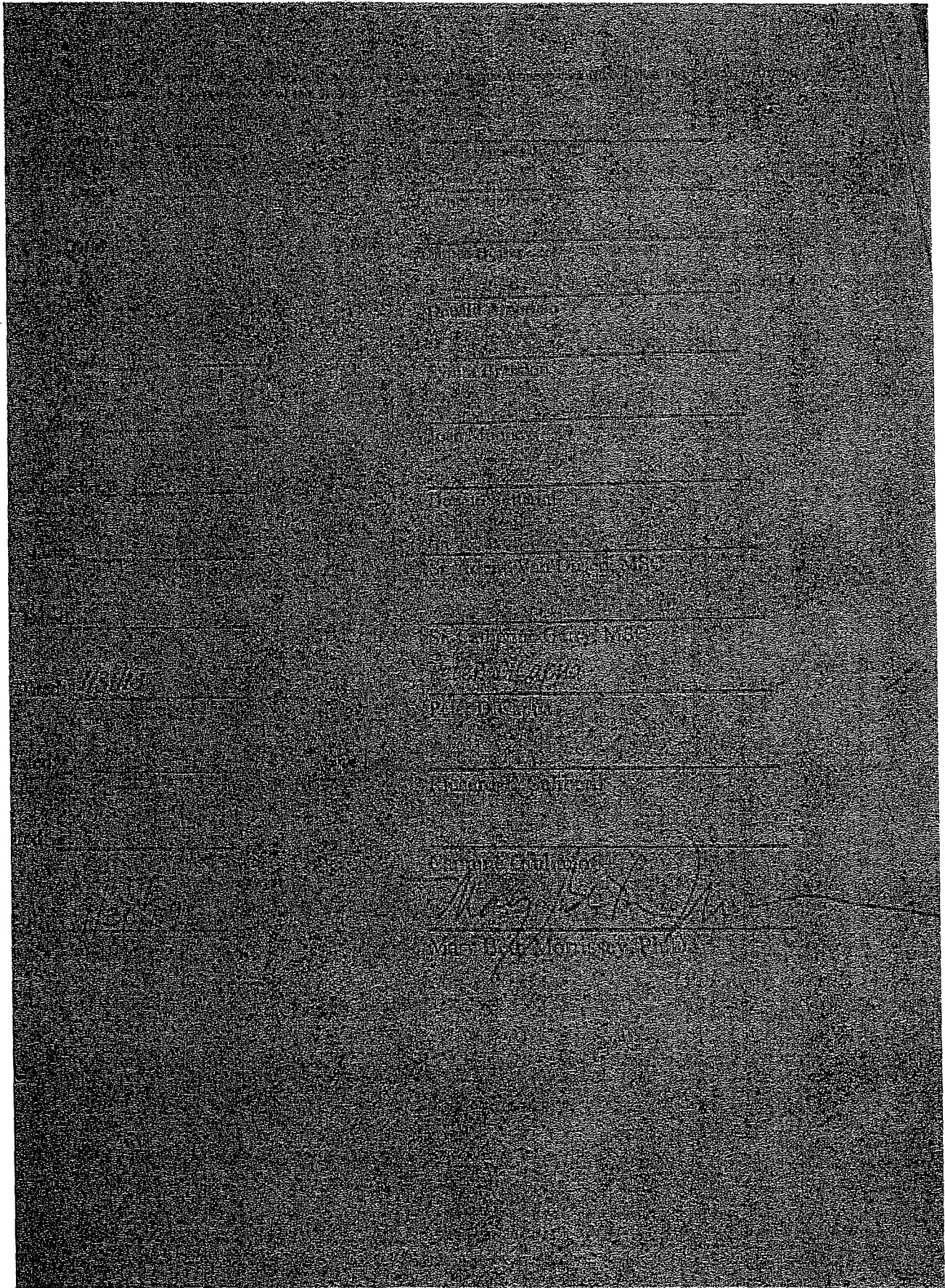
Dated: _____
Sr. Catherine Garry, MSC

Dated: _____
Peter DiCapua

Dated: _____
Richard T. Celiberti

Dated: 1-31-19
Carmine Giuliano
Carmine Giuliano

Dated: _____
Mary Beth Morrissey, Ph.D.



Roethel, Laura

From: Roethel, Laura
Sent: Monday, February 11, 2019 8:06 AM
To: Roethel, Laura
Subject: FW: Document

-----Original Message-----

From: Joan Mooney [mailto:mooney.joan@yahoo.com]
Sent: Wednesday, February 06, 2019 7:34 PM
To: Strangio, Susan <sstrangio@Cabrini-eldercare.org>
Subject: Re: Document

Susan,

Unfortunately I am traveling and unable to complete the required form regarding the closure of Cabrini Care at Home but I do approve.

As a member of the Board of Trustees of Cabrini Care at Home I do hereby adopt and approve the Plan of Dissolution of the Corporation and authorize the filing of a Certificate of Dissolution with the New York State Department of State.

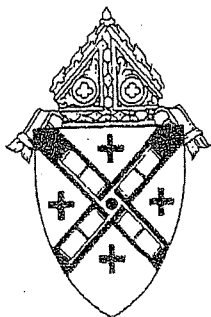
I apologize for any inconvenience.

Joan Mooney

Sent from my iPhone

>
>
>

This email and its attachments may contain privileged and confidential information and/or protected health information (PHI) intended solely for the use of Cabrini of Westchester and the recipient(s) named above. If you are not the recipient, or the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any review, dissemination, distribution, printing or copying of this email message and/or any attachments is strictly prohibited. If you have received this transmission in error, please notify the sender immediately at 914-693-6800 and permanently delete this email and any attachments.



CHANCERY OFFICE
ARCHDIOCESE OF NEW YORK

June 6, 2003

Re: *Cabrini Care at Home*

Dear Ms. Krasnausky:

We have reviewed the above organization's application for inclusion in the United States Catholic Conference Group Exemption Ruling ("Group Ruling") and listing in the Official Catholic Directory ("OCD"). Based upon the application and the supporting documentation, we have approved its inclusion in the Group Ruling and its listing in the next edition of the OCD. Please inform this office of any changes in the organization's name, address or corporate structure.

This letter establishes the organization's exemption from Federal income tax under Section 501(c) (3) of the Internal Revenue Code of 1986 in the interim until publication of the next edition of the OCD. Please retain it in your permanent records.

Sincerely,

Mr. George Borrero
Director of Finance Operations

Ms. Patricia Krasnausky
Cabrini Care at Home
115 Broadway
Dobbs Ferry, New York 10522

cc: Rod Cassidy

**Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201**

Department of the Treasury

Date: June 2, 2017

Person to Contact:

R. Meyer ID# 0110429

Toll Free Telephone Number:

877-829-5500

United States Conference of Catholic
Bishops
3211 4th Street, NE
Washington, DC 20017-1194

Group Exemption Number:

0928

Dear Sir/Madam:

This responds to your June 2, 2017, request for information regarding the status of your group tax exemption.

Our records indicate that you were issued a determination letter in March 1946, that you are currently exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, and are not a private foundation within the meaning of section 509(a) of the Code because you are described in sections 509(a)(1) and 170(b)(1)(A)(i).

With your request, you provided a copy of the *Official Catholic Directory for 2017*, which includes the names and addresses of the agencies and instrumentalities and the educational, charitable, and religious institutions operated by the Roman Catholic Church in the United States, its territories, and possessions that are subordinate organizations under your group tax exemption. Your request indicated that each subordinate organization is a non-profit organization, that no part of the net earnings thereof inures to the benefit of any individual, and that no substantial part of their activities is for promotion of legislation. You have further represented that none of your subordinate organizations is a private foundation under section 509(a), although all subordinates do not all share the same sub-classification under section 509(a). Based on your representations, the subordinate organizations in the *Official Catholic Directory for 2017* are recognized as exempt under section 501(c)(3) of the Code under GEN 0928.

Donors may deduct contributions to you and your subordinate organizations as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to them or for their use are deductible for federal estate and gifts tax purposes if they meet the applicable provisions of section 2055, 2106, and 2522 of the Code.

Subordinate organizations under a group exemption do not receive individual exemption letters. Most subordinate organizations are not separately listed in Publication 78 or the EO Business Master File. Donors may verify that a subordinate organization is included

in your group exemption by consulting the *Official Catholic Directory*, the official subordinate listing approved by you, or by contacting you directly. IRS does not verify the inclusion of subordinate organizations under your group exemption. See IRS Publication 4573, *Group Exemption*, for additional information about group exemptions.

Each subordinate organization covered in a group exemption should have its own EIN. Each subordinate organization must use its own EIN, not the EIN of the central organization, in all filings with IRS.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Stephen A. Martin".

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 11th day of April 2019, approves the filing of the Certificate of Dissolution of Cabrini Care at Home Inc., dated February 28, 2019.



Project # 182124-E
John T. Mather Memorial Hospital of Port Jefferson New York, Inc.

Program: Hospital
Purpose: Establishment

County: Suffolk
Acknowledged: September 20, 2018

Executive Summary

Description

John T. Mather Memorial Hospital of Port Jefferson New York, Inc. (Mather Hospital), a 248-bed, voluntary not-for-profit, Article 28 acute-care, community teaching hospital located at 75 North Country Road, Port Jefferson (Suffolk County) seeks approval to for Northwell Healthcare, Inc., a not-for-profit corporation located in Nassau County, to become the hospitals active parent and co-operator of. There are no projected changes in the utilization, revenue or expenses as a result of this project, although Mather Hospital is expected to ultimately experience cost benefits related to operational efficiencies resulting from the active parent co-operator designation. The hospital will remain a separate not-for-profit corporation licensed under Article 28 of the Public Health Law, maintaining its separate operating certificate following completion of the project. There will be no change in authorized services, the number or type of beds, or staffing as a result of Public Health and Health Planning Council approval of this project.

As active parent and co-operator, Northwell Healthcare, Inc. will have the power and authority to make decisions for its affiliate as stated in its certificate of incorporation and bylaws, and the active parent powers with regard to Mather Hospital as described in 10 NYCRR 405.1(c), including the following:

- Appointment or dismissal of management level employees and medical staff, except the election or removal of corporate officers;

- Approval of operating and capital budgets;
Adoption or approval of operating policies and procedures;
Approval of certificate of need applications filed by or on behalf of JT Mather;
Approval of debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
Approval of contracts for management or for clinical services; and
Approval of settlements of administrative proceedings or litigation to which JT Mather is party, except approval by the members of a not-for-profit corporation of settlements of litigation that exceed insurance coverage or any applicable self-insurance fund.

Mather believes that Northwell Healthcare, Inc.'s exercise of powers will enable Mather Hospital and its affiliates to:

- Improve wellness for the residents of the communities served;
Improve value to patients, payors, and employers;
Increase operational efficiencies;
Support a long-term financial mission and quality-enhancing commitment to Mather Hospital, by making a sustained commitment to the existing and future Mather Hospital assets and operations, though the hospital will not be part of Northwell's obligated group; and
Advance clinical best practices, efficient and effective governance, and stewardship of community assets.

Northwell Healthcare, Inc. and Mather Hospital, along with their respective affiliates, have agreed to work together to build an integrated delivery system to provide high quality, lower cost health care to improve the health status for the populations Mather Hospital serves. The transaction presents opportunities to improve health care delivery and access to services in an efficient manner, with resulting cost savings and other efficacies.

Northwell Healthcare, Inc., whose sole corporate member is Northwell Health, Inc., a New York not-for-profit corporation, is a comprehensive, integrated health care delivery system comprised of 22 hospitals across the New York metropolitan area, as well as physician practices and providers of subacute care including home care, long term care, and hospice services.

There are no project costs associated with this application.

OPCHSM Recommendation

Contingent Approval

Need Summary

The purpose of the transaction is to establish a coordinated, highly integrated system with the objectives of improving quality, increasing access and lowering the costs of health care in the communities served by Mather Hospital. There will be no change in beds or services. There is no cost associated with this project.

Program Summary

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, working capital requirements or budgets associated with this application. There is no purchase price consummating the transfer of ownership interests to Northwell HealthCare, Inc.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of a photocopy of an executed amendment to the Certificate of Incorporation of John T. Mather Memorial Hospital of Port Jefferson, New York, Inc., acceptable to the Department. [CSL]
3. Submission of a photocopy of the amended bylaws of John T. Mather Memorial Hospital of Port Jefferson, New York, Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed Affiliation Agreement between John T. Mather Memorial Hospital of Port Jefferson, New York, Inc. and Northwell Healthcare, Inc., acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

April 11, 2019

Need and Program Analysis

Background

Mather Hospital seeks to join Northwell Healthcare, Inc. to increase operational efficiencies, advance clinical best practices, and improve healthcare delivery and access. There will be no change in either authorized services or the number or type of beds as a result of this proposed change in governance structure.

Character and Competence

The Board of Northwell Healthcare, Inc. is:

Frank J. Besignano
Roger A. Blumencranz
Robert W. Chasanoff
Mark L. Claster
Michael J. Dowling
Michael A. Epstein
Michael E. Feldman
Catherine C. Foster
Keith L. Friedlander
Lloyd M. Goldman
Richard D. Goldstein
Alan I. Greene
Paul B. Guenther
William O. Hiltz
Kenneth A. Jacoppi
Saul B. Katz

Cary Kravet
Jeffrey B. Lane
Seth Lipsay
William L. Mack
F.J. McCarthy
Patrick F. McDermott
Ralph A. Nappi
Richard B. Nye
Sharon Patterson
Lewis S. Ranieri
Robert D. Rosenthal
Barry Rubenstein
Michael I. Schwartz
Kenneth Taber
Donald Zucker
Roy J. Zuckerberg

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.

Character and Competence review for the Board of Directors of Northwell Healthcare was conducted on Project 181333 which received Contingent Approval by the Public Health and Planning Council during its meeting on October 11, 2018 and received final approval on February 22, 2019.

Upon review of the Board of Trustees of Northwell Healthcare, Inc., the following disclosures were made:

Dr. Craig disclosed a pending malpractice suit filed in 2013 alleging a bowel injury during a repair of an incisional hernia.

Mr. Epstein disclosed that the Jewish Board of Family and Children's Services with which he is affiliated entered into a settlement with the NY Office of Medicaid Inspector General to reconcile excess payments received relative to Office of Mental Health's reimbursement methodology.

Compliance with Applicable Codes, Rules and Regulations

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

The following enforcement actions have been taken against Northwell affiliates:

In an S&O dated July 8, 2010, Syosset Hospital was fined \$42,000 based on an investigation of the care a child received related to an adenotonsillectomy. The patient was improperly cleared for surgery and, despite multiple comorbidities, was not kept for observation post-operatively. The patient expired after discharge.

In September 2010, North Shore-Long Island Jewish Health System settled claims without a finding or admission of fraud, liability or other wrongdoing relative to a qui tam lawsuit filed under the civil False Claims Act by a private whistleblower and investigated by the U.S. Attorney's Office. The \$2.95M settlement covered a 10-year period and primarily related to isolated errors in various cost reports rather than the allegations.

In November 2010, Civil Investigative Demands (CIDs) for documents, interviews and other information relating to North Shore University Hospital's clinical documentation improvement program were issued by the US Attorney's Office for the Southern District. The Health System complied, however, to date, there have been no specific demands for repayment or findings of liability in this matter.

In December 2010, the Civil Division of the United States Department of Justice (DOJ) requested the Health System execute a one-year tolling agreement to provide the government time to review claims for payment of implantable cardioverter defibrillators (ICDs) and related services for which Medicare does not cover. The Health System has executed eight extensions to the initial tolling agreement. In 2016, the investigation was resolved by agreement with the DOJ. and the matter is now closed. When the government's review is complete, it may seek repayment of any claims that were not proper as determined by its resolution model.

In October 2011, the US Attorney's Office for the Western District of New York initiated a review of Southside Hospital's inpatient admissions for atherectomy procedures. And, in June 2012, the US Attorney's Office for the Eastern District of New York subpoenaed documentation relating to services rendered at Staten Island University Hospital's inpatient specialized burn unit. To date, the government has not indicated whether there is any potential liability in either matter.

In a S&O dated November 5, 2014, the former Broadlawn Manor Nursing & Rehab Center, now operating as Massapequa Center Rehabilitation and Nursing, was fined \$6,000 based on an inspection completed on December 19, 2011 for issues involving Accidents and Supervision; Administration; and Quality Assurance. In a subsequent S&O filed on January 5, 2016, Broadlawn received a fine of \$8,000 based on an inspection finding of April 18, 2014 involving the lack of supervision and reassessment of a resident who exhibited wandering and elopement behavior. After several episodes of wandering the resident was found face down in the parking lot. The facility failed to investigate this incident and the circumstances leading up to it. Again, on July 12, 2016, a S&O was issued along with a \$10,000 fine for inspection findings of October 12, 2015 involving the care provided to a resident identified as at moderate risk for skin breakdown. This resident developed a stage IV decubitus ulcer which required surgical debridement. It was determined that the physician's orders for this patient were not properly followed.

In June 2012, the OIG and U.S. Attorney's Office for the Eastern District of New York subpoenaed Staten Island University Hospital (SIUH) for documentation relating to services rendered at SIUH's inpatient specialized burn unit dating back to 2005. Requested documentation was provided in 2012 and, in 2013, SIUH responded to follow-up questions. To date, the government has not indicated whether SIUH has any potential liability in this matter.

In October 2012, a Program Integrity Contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS) reviewed 33 inpatient cardiac stent claims for 25 Medicare patients that had been submitted by Lenox Hill Hospital (LHH) between October 2007 and December 2010. The Contractor determined that the documentation did not support inpatient admission and/or the medical necessity of the of the cardiac stent procedure for the majority of the claims. The contractor requested that LHH undertake a self-audit and voluntary disclosure of its billing and claims history for elective cardiac stent admissions during this time. In 2016, LHH completed the self-audit and made a repayment to Medicare.

In a S&O dated November 21, 2016, Long Island Jewish Medical Center was fined \$4,000 based on complaint investigation findings related to Infection Control Practices. During the investigation, 24 staff were observed not following acceptable of standards of practice for Infection Control practices in Surgical Areas. Specifically, staff demonstrated improper attire and exposure of hair during procedures.

Also, on November 21, 2016, the Department issued a S&O and \$10,000 fine to Northern Westchester Hospital. Immediate Jeopardy was identified on April 22, 2016 during an allegation survey. The issues involved the calling of a code team in a timely manner for a newborn baby (who subsequently expired). It was determined that hospital staff were not trained in the code policy and as such, did not initiate the code via the proper procedure.

In a S&O dated December 8, 2016 Forest Hills Hospital was fined \$12,000 following the investigation of wrong sided hernia surgery.

On January 19, 2017, the Department issued a S&O to Plainview Hospital regarding a pattern of infection control practices which were not consistent with accepted standards and levied a fine of \$4,000.

On September 11, 2017, the Department issued a S&O to Lenox Hill Hospital regarding surgical practices that were not consistent with acceptable standards and levied a fine of \$10,000.

Prevention Agenda

Northwell stated that the CON itself does not directly address or advance one particular local Prevention Agenda (PA) priority. However, as Mather Hospital becomes part of the Northwell system, it will gain access to and benefit from Northwell's existing infrastructure, resources, expertise and knowledge-base, which indirectly advances all PA priorities. Northwell Health specializes in early detection, treatment and prevention of heart disease, providing a full range of preventive cardiology services.

Northwell and Mather engage with a variety of local community partners including the Long Island Health Collaborative which is a partnership of Long Island's hospitals, county health departments, health providers, community-based social and human service organizations, academic institutions, health plans, local government and the business sector.

Northwell and Mather prioritize several metrics from the PA dashboard, including but not limited to age-adjusted heart attack hospitalization rates, hospitalizations for short-term complications of diabetes and the percent of adults, children and adolescents who are obese.

Northwell indicated that in their most recent Schedule H form they reported Community Benefit spending in the Community Health Improvement Services category that supports local PA goals.

Conclusion

There will be no change in beds or services as a result of 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 Analysis

Financial Analysis

There will be no change in authorized services, the number or type of acute care beds, or utilization as a result of approval of this project.

There is no purchase price consummating the transfer of ownership interests to Northwell HealthCare, Inc. Mather Hospital and Northwell Healthcare, Inc. separately financed the acquisition and each entity agreed to be fully responsible for the respective costs and expenses for effectuating this transaction. No other consideration has been exchanged.

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 February 19, 2019, the Mather Hospital had an outstanding Medicaid liability of \$78,880.

Capability and Feasibility

There will be no change in the daily operations of each health care entity, although each is expected to experience cost benefits from the active parent designation.

BFA Attachment A, Northwell Health, Inc.'s financial statements for year ended December 31, 2017, shows they maintained positive working capital, a positive net asset position and positive operating revenues of \$124,633,000 before their Health Insurance Companies' net operating deficiency of \$143,370,000. This deficiency resulted in a net operating loss of \$18,737,000 for the period (-0.17% operating margin). The operating loss was offset by non-operating gains of \$312,982,000, resulting in excess revenue over expenses of \$294,245,000 (2.65% excess margin).

Attachment B, Northwell Health, Inc's internal financial statements for period ended September 30, 2018, shows they maintained positive working capital, positive net asset position, and net operating revenue of \$89,974,000 before the Health Insurance Companies' net operating gain of \$7,000,000. This gain resulted in total net operating gain of \$96,974,000 for the period (1.14% operating margin). Non-operating gains amounted to \$175,645,000 through September 30, 2018, resulting in excess revenue over expenses of \$272,619,000 (3.15% excess margin).

BFA Attachment C is Mather Hospital's certified financial statements for year ended December 31, 2017, which shows they maintained positive working capital, a positive net asset position and experienced a net loss from operations of \$788,639. The loss is attributed to Mather Hospital's owned and operated physician organization, Harbor View Medical Services, and will be eliminated by the end of 2018 through the anticipated proceeds from the Medical Liability Mutual Insurance Company (MLMIC) sale.

Attachment D is Mather Hospital's internal financial statements for period ended September 30, 2018, which shows the facility maintained positive working capital, a positive net asset position and experienced a net operating loss of \$4,520,000 (-1.66% operating margin). Non-operating gains of \$1,542,000 decreased the loss resulting in a net loss of \$2,978,000 (-1.09% excess margin) through September 30, 2018. The applicant states that the year-end financials will show an operating surplus for Mather Hospital due to the MLMIC proceeds. Ongoing integration of services and administrative functions between Mather Hospital and Northwell Health are expected to improve financial performance in 2019 via economies of scale savings and revenue initiatives.

The designation of Northwell Healthcare, Inc. as the active parent and co-operator of Mather Hospital is expected to enhance Mather's operations and improve their focus on population health management, thereby helping to bridge gaps in access to care to residents in the hospitals service area.

Based on the preceding information, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

- BFA Attachment A Northwell Health, Inc. – 2017 Certified Financial Statements
- BFA Attachment B Northwell Health, Inc. – September 30, 2018 internal financial statements
- BFA Attachment C John T. Mather Memorial Hospital – 2017 Certified Financial Statements
- BFA Attachment D John T. Mather Memorial Hospital – September 30, 2018 internal financial statements
- BFA Attachment E Post-Merger Organizational Chart

Northwell Health, Inc.

Consolidated Statements of Financial Position
(In Thousands)

	<u>December 31</u> <u>2017</u>
Assets	
Current assets:	
Cash and cash equivalents	\$ 399,856
Short-term investments	2,689,489
Accounts receivable for services to patients, net of allowance for doubtful accounts of \$117,600 in 2017	1,094,584
Accounts receivable for physician activities, net	149,504
Pledges receivable, current portion	63,459
Insurance claims receivable, current portion	78,468
Other current assets	288,197
Total current assets	<u>4,763,557</u>
Long-term investments	2,279,855
Pledges receivable, net of current portion	126,263
Property, plant and equipment, net	4,934,215
Insurance claims receivable, net of current portion	181,869
Other assets	283,229
Total assets	<u>\$ 12,568,988</u>
Liabilities and net assets	
Current liabilities:	
Short-term borrowings	\$ 110,608
Accounts payable and accrued expenses	998,686
Accrued salaries and related benefits	732,536
Current portion of capital lease obligations	3,742
Current portion of long-term debt	48,844
Current portion of insurance claims liability	78,468
Current portion of malpractice and other insurance liabilities	134,488
Current portion of estimated payables to third-party payers	358,518
Total current liabilities	<u>2,465,890</u>
Accrued retirement benefits, net of current portion	948,994
Capital lease obligations, net of current portion	171,873
Long-term debt, net of current portion	3,220,283
Insurance claims liability, net of current portion	181,869
Malpractice and other insurance liabilities, net of current portion	1,057,325
Other long-term liabilities	576,696
Total liabilities	<u>8,622,930</u>
Commitments and contingencies	
Net assets:	
Unrestricted	3,315,111
Temporarily restricted	435,172
Permanently restricted	195,775
Total net assets	<u>3,946,058</u>
Total liabilities and net assets	<u>\$ 12,568,988</u>

Northwell Health, Inc.
 Consolidated Statements of Operations
(In Thousands)

	Year Ended December 31
	2017
Operating revenue:	
Net patient service revenue	\$ 7,880,282
Physician practice revenue	1,495,740
Provision for bad debts	(129,033)
Total patient revenue, net of provision for bad debts	9,246,989
Other operating revenue	654,042
Net assets released from restrictions used for operations	61,375
	9,962,406
Operating expenses:	
Salaries	5,212,002
Employee benefits	1,230,621
Supplies and expenses	2,834,144
Depreciation and amortization	431,497
Interest	129,509
	9,837,773
Excess of operating revenue over operating expenses, excluding Health Insurance Companies	124,633
Health Insurance Companies operating revenue	828,077
Health Insurance Companies operating expenses	971,447
Health Insurance Companies excess of operating expenses over operating revenue	(143,370)
Total (deficiency) excess of operating revenue over operating expenses	(18,737)
Non-operating gains and losses:	
Investment income	109,051
Change in net unrealized gains and losses and change in value of equity method investments	281,520
Change in fair value of interest rate swap agreements designated as derivative instruments	-
Non-operating net periodic benefit cost	(27,863)
Loss on refunding of long-term debt	(42,619)
Contribution received in the acquisition of Peconic Bay Medical Center	-
Other non-operating gains and losses	(7,107)
Total non-operating gains and losses	312,982
Excess of revenue and gains and losses over expenses	294,245
Net assets released from restrictions for capital asset acquisitions	32,516
Change in fair value of interest rate swap agreements designated as cash flow hedges	2,218
Recovery of fair value of endowment corpus	-
Pension and other postretirement liability adjustments	(36,130)
Other changes in net assets	(5,681)
Increase in unrestricted net assets	\$ 287,168

Northwell Health, Inc.

**Consolidated Statements of Financial Position
September 30, 2018 (In Thousands)**

	(Unaudited) September 30, 2018
Assets	
Current assets:	
Cash and cash equivalents	\$ 406,953
Short-term investments	2,705,706
Accounts receivable for services to patients, net	1,129,487
Accounts receivable for physician activities, net	198,944
Pledges receivable, current portion	70,627
Insurance claims receivable, current portion	78,468
Other current assets	326,510
Total current assets	<u>4,916,695</u>
Long-term investments	2,329,874
Pledges receivable, net of current portion	78,493
Property, plant and equipment, net	5,288,900
Insurance claims receivable, net of current portion	179,207
Other assets	389,065
Total assets	<u>\$ 13,182,234</u>
Liabilities and net assets	
Current liabilities:	
Short-term borrowings	\$ 113,718
Accounts payable and accrued expenses	991,175
Accrued salaries and related benefits	832,372
Current portion of capital lease obligations	7,175
Current portion of long-term debt	56,947
Current portion of insurance claims liability	78,468
Current portion of malpractice and other insurance liabilities	137,494
Current portion of estimated payables to third-party payers	391,499
Total current liabilities	<u>2,608,848</u>
Accrued retirement benefits, net of current portion	1,003,513
Capital lease obligations, net of current portion	178,789
Long-term debt, net of current portion	3,203,530
Insurance claims liability, net of current portion	179,207
Malpractice and other insurance liabilities, net of current portion	1,199,652
Other long-term liabilities	563,162
Total liabilities	<u>8,936,701</u>
Commitments and contingencies	
Net assets:	
Unrestricted	3,610,736
Temporarily restricted	435,594
Permanently restricted	199,203
Total net assets	<u>4,245,533</u>
Total liabilities and net assets	<u>\$ 13,182,234</u>

Northwell Health, Inc.

**Consolidated Statements of Operations
 For the Nine Months Ended September 30, 2018 (In Thousands)**

	(Unaudited) 2018
Operating revenue:	
Net patient service revenue	\$ 6,429,507
Physician practice revenue	<u>1,376,137</u>
Total patient revenue	7,805,644
Other operating revenue	541,426
Net assets released from restrictions used for operations	<u>50,031</u>
	<u>8,397,101</u>
Operating expenses:	
Salaries	4,308,585
Employee benefits	1,002,740
Supplies and expenses	2,520,146
Depreciation and amortization	368,146
Interest	<u>107,510</u>
	<u>8,307,127</u>
Excess of operating revenue over operating expenses, excluding Health Insurance Companies	<u>89,974</u>
Health Insurance Companies operating revenue	94,825
Health Insurance Companies operating expenses	<u>87,825</u>
Health Insurance Companies excess (deficiency) of operating revenue over operating expenses	7,000
Total excess of operating revenue over operating expenses	<u>96,974</u>
Non-operating gains and losses:	
Investment income	100,609
Change in net unrealized gains and losses and change in value of equity method investments	(38,220)
Change in fair value of interest rate swap agreements designated as derivative instruments	800
Non-operating net periodic benefit cost	(14,022)
Loss on refunding of long-term debt	-
Contribution received in the acquisition of John T. Mather Memorial Hospital	75,819
Gain on sale of property	64,178
Other non-operating gains and losses	<u>(13,519)</u>
Total non-operating gains and losses	<u>175,645</u>
Excess of revenue and gains and losses over expenses	272,619
Net assets released from restrictions for capital asset acquisitions	27,127
Change in fair value of interest rate swap agreements designated as cash flow hedges	1,816
Other changes in net assets	<u>(5,937)</u>
Increase in unrestricted net assets	<u>\$ 295,625</u>

The John T. Mather Memorial Hospital of Port Jefferson, New York, Inc.BFA Attachment C
CON 182124Consolidated Balance Sheet
December 31, 2017

	<u>2017</u>
Assets	
Current Assets	
Cash and cash equivalents	\$ 15,222,018
Investments	25,953,362
Patient accounts receivable net of estimated allowance for doubtful accounts of \$9,859,000 in 2017	46,387,520
Inventory	8,060,446
Estimated retroactive receivables from third parties, net	4,318,777
Prepaid expenses and other current assets	<u>4,033,012</u>
Total current assets	103,975,135
Noncurrent Assets	
Assets whose use is limited	26,247,849
Property and equipment, net	86,342,578
Interest in net assets of JTM Health Facilities Foundation, Inc.	2,304,629
Insurance claims receivable	21,257,955
Other assets, net	<u>967,257</u>
Total assets	<u>\$ 241,095,403</u>
Liabilities and Net Assets	
Current Liabilities	
Current portion of long-term debt	\$ 5,491,060
Line of credit	3,500,000
Accounts payable	26,687,430
Accrued expenses and other liabilities	6,073,232
Accrued salaries, vacation, and other benefits	12,530,792
Accrued pension liabilities	<u>7,794,265</u>
Total current liabilities	62,076,779
Long-Term Debt	
Bonds payable, net of current portion	29,163,127
Capital leases, net of current portion	8,854,791
Notes payable, net of current portion	190,416
Line of credit	-
Other Liabilities	
Estimated malpractice liability	24,615,000
Accrued pension liabilities, net of current portion	49,187,357
Other	<u>12,849,978</u>
Total liabilities	<u>186,937,448</u>
Net Assets	
Unrestricted	50,916,607
Temporarily restricted	3,218,016
Permanently restricted	<u>23,332</u>
Total net assets	<u>54,157,955</u>
Total liabilities and net assets	<u>\$ 241,095,403</u>

The John T. Mather Memorial Hospital of Port Jefferson, New York, Inc.Consolidated Statement of Operations
Years Ended December 31, 2017

	<u>2017</u>
Operating Revenues	
Patient service revenue	\$ 363,698,163
Provision for bad debts	<u>(5,088,260)</u>
Net patient service revenue	358,609,903
Other revenue	<u>7,578,703</u>
Total operating revenues	<u>366,188,606</u>
Operating Expenses	
Salaries	172,212,441
Employee benefits	47,216,562
Supplies and other expenses	130,041,703
Depreciation and amortization	15,688,980
Interest	<u>1,817,559</u>
Total operating expenses	<u>366,977,245</u>
(Loss) income from operations	<u>(788,639)</u>
Nonoperating Activities	
Investment income, net	448,304
Contributions, bequests, and grants	536,574
Change in fair value of interest rate swap agreement	363,136
Other	<u>36,725</u>
Net nonoperating activities	<u>1,384,739</u>
Excess of revenues and gains over expenses	596,100
Change in Net Unrealized Gains on Investments on Other-Than-Trading Securities	460,158
Change in Fair Value of Interest Rate Swap Agreement	49,299
Net Assets Released from Restrictions for Capital Asset Acquisitions	1,742,909
Pension-Related Changes Other than Net Periodic Pension Cost	(2,581,226)
Reserve for Advances to Affiliates	(2,920,575)
Transfer from Affiliates	<u>98,064</u>
Change in unrestricted net assets	<u>\$ (2,555,271)</u>

	Northwell Health, Inc. Total	Northwell Health Obligated Group	Phelps Memorial Hospital Association and Subsidiaries	Northwell Westchester Hospital Association and Subsidiaries	Peconic Bay Medical Center	Jobs T. Moher Memorial Hospital and Subsidiary	The Long Island Home	Hopecare Network	The Einstein Institute for Medical Research	Northwell Health Foundation	Northwell Health Laboratories	Caprise Insurance Companies	Dolan Family Health Center	Health Insurance Companies	Joint Venture Ambulatory Surgery Centers	Other Northwell Health Entities
ASSETS																
Current assets	\$406,953	\$171,633	\$1,362	\$3,235	\$14,396	\$10,151	\$4,366	\$6,155	\$-	\$73,403	\$-	\$-	\$-	\$41,632	\$5,578	\$3,914
Cash and cash equivalents	2,795,706	2,190,062	84,312	82,724	23,104	25,105	89	39,897	25	7,708	-	41,428	806	210,646	-	-
Short-term investments																
Accounts receivable (for services to patients, net of allowance for doubtful accounts)	1,129,487	973,070	28,905	24,398	18,079	48,369	11,136	8,414	-	-	-	-	411	-	6,273	13,973
Accounts receivable for physician advances, net	41,388	132,671	3,084	1,901	4,347	1,183	-	92	-	70,565	-	-	-	-	-	57,580
Pledges receivable, current portion	28,627	-	-	-	135	-	1,581	6	90	302	-	-	-	-	-	-
Insurance claims receivable, current portion	32,468	15,437	106	717	175	-	1,881	485	14,687	30	25,777	-	60	-	-	-
Other current assets	4,916,695	3,758,270	125,564	158,163	69,984	93,954	20,338	55,548	14,802	151,989	25,079	44,536	1,277	260,669	13,226	24,126
Total current assets																
Due from affiliates, net	(404,307)	380,600	-	185	-	-	-	2,289	100,894	97,965	13,937	9,585	-	-	-	-
Long-term investments	2,329,874	2,048,939	31,863	69,170	17,023	25,844	-	2,289	100,894	97,965	186,108	6,935	13,656	-	-	17,669
Pledges receivable, net of current portion	78,893	-	709	470	-	-	-	-	-	70,999	-	-	-	-	-	6,315
Property, plant and equipment, net	5,288,406	4,316,396	174,102	198,201	108,210	102,506	421,24	727	51,773	1,08	107,110	-	505	2,992	28,214	156,339
Insurance claims receivable, net of current portion	179,207	300,789	5,261	2,700	333	21,258	3,884	103	266	17	913	-	-	-	-	-
Other assets	389,865	357,255	7,739	7,831	10,935	12,813	4,782	216	-	77	-	-	429	-	62,659	99,937
Total assets	\$13,182,234	\$11,162,743	\$345,238	\$416,780	\$204,575	\$258,375	\$7,118	\$58,883	\$166,735	\$322,134	\$148,039	\$250,229	\$9,206	\$277,117	\$104,099	\$43,891
LIABILITIES AND NET ASSETS (DEFICIT)																
Current liabilities	\$13,178	\$110,238	\$-	\$-	\$-	\$5,520	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-
Short-term borrowings	941,275	701,445	14,666	29,615	22,929	26,356	3,029	1,885	18,408	16,967	34,789	2,916	174	72,690	2,323	56,828
Accounts payable and related payables	832,732	696,655	14,665	12,008	15,004	21,823	5,910	1,653	5,547	1,317	7,566	-	417	14,526	15*	47,974
Accrued salaries and related benefits	7,175	2,200	-	-	1,802	3,036	-	-	-	-	-	-	-	-	-	-
Current portion of capital lease obligations	56,907	46,670	1,687	3,584	2,183	2,565	-	-	-	-	-	-	-	-	238	-
Current portion of long-term debt	78,668	75,457	1,05	717	175	1,581	15	15	90	6	302	-	-	-	18	-
Current portion of insurance claims liabilities	137,494	93,154	1,715	3,441	1,111	3,006	642	642	3,441	-	34,407	-	-	98,394	-	-
Current portion of malpractice and other insurance liabilities	391,499	235,120	2,494	3,201	7,399	3,201	2,995	3,273	24,127	183,10	41,996	36,423	591	172,670	3,723	104,902
Current portion of estimated payable to third-party payers	2,608,648	1,900,916	34,732	52,566	50,603	60,286	14,207	3,273	24,127	183,10	84,653	36,423	591	172,670	3,723	104,902
Total current liabilities																
Due to affiliates, net	(381,394)	701	701	45,995	18,750	3,390	54,796	71	4,183	13,383	-	-	12,046	1,431	9,152	203,401
Accrued retirement benefits, net of current portion	1,003,513	902,682	6,107	45,995	1,091	42,905	4,280	219	-	-	-	-	-	114	-	-
Capital lease obligations, net of current portion	178,789	169,040	-	-	2,924	6,590	-	-	-	-	-	-	-	-	235	-
Long-term debt, net of current portion	3,204,530	3,060,538	30,288	49,655	36,811	28,136	-	-	-	-	-	-	-	-	4,108	-
Insurance claims liability, net of current portion	179,207	300,789	5,261	2,700	333	21,258	3,664	103	266	17	913	10,000	-	-	-	-
Malpractice and other insurance liabilities, net of current portion	1,199,652	1,018,455	16,157	23,891	11,898	18,371	4,256	103	266	17	913	12,400	-	-	-	-
Other long-term liabilities	563,162	519,565	4,765	14,713	3,820	1,114	-	876	28	6,044	1,304	-	-	422	9,447	764
Total liabilities	8,936,301	7,931,785	98,071	189,520	120,230	182,104	81,433	4,442	28,604	37,754	86,870	173,823	12,637	194,637	27,165	369,067
Commitments and contingencies																
Net assets (deficit)																
Unrestricted	3,610,736	2,798,312	24,183	212,635	72,119	73,972	(10,295)	52,360	22,669	36	61,169	76,406	(10,145)	102,480	76,914	24,157
Temporarily restricted	(135,594)	(247,999)	8,917	27,328	11,175	2,276	-	1,481	61,144	188,183	-	-	2,411	-	-	20,667
Permanently restricted	199,203	73,135	4,057	7,297	851	23	-	500	54,118	96,161	-	-	4,403	-	-	-
Total net assets (deficit)	4,245,333	(465,807)	37,157	247,260	84,345	76,271	(10,295)	54,341	138,131	284,380	61,169	76,406	(3,311)	102,480	76,914	44,824
Total liabilities and net assets (deficit)	\$13,182,234	\$11,162,743	\$345,238	\$416,780	\$204,575	\$258,375	\$7,118	\$58,883	\$166,735	\$322,134	\$148,039	\$250,229	\$9,206	\$277,117	\$104,099	\$43,891

Northwell Health, Inc.

Consolidating Statement of Operations
For the Nine Months Ended September 30, 2018 (Unaudited and In Thousands)

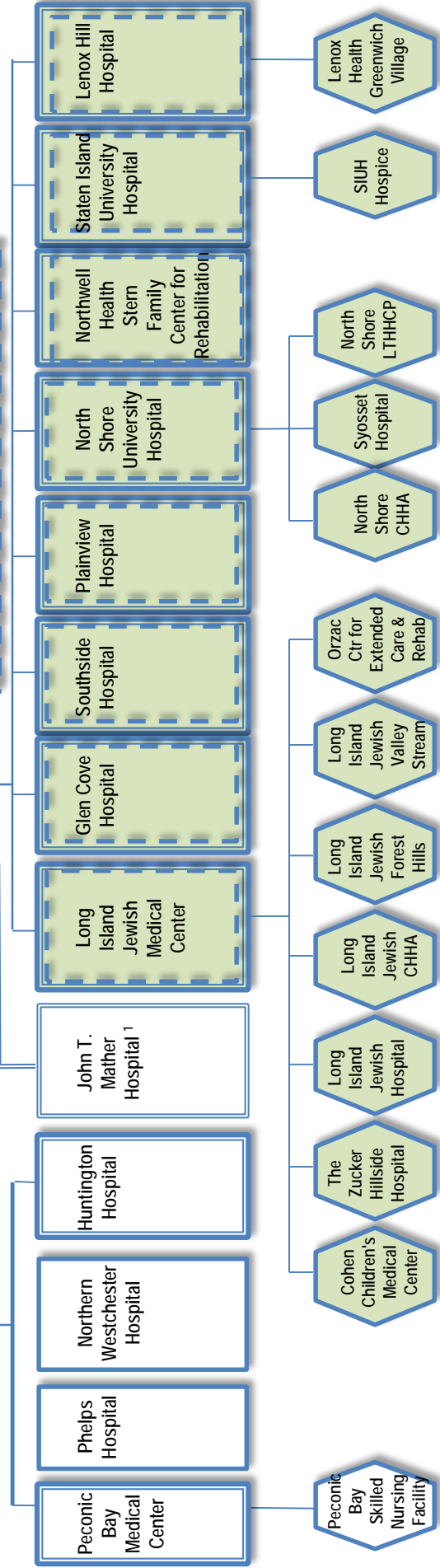
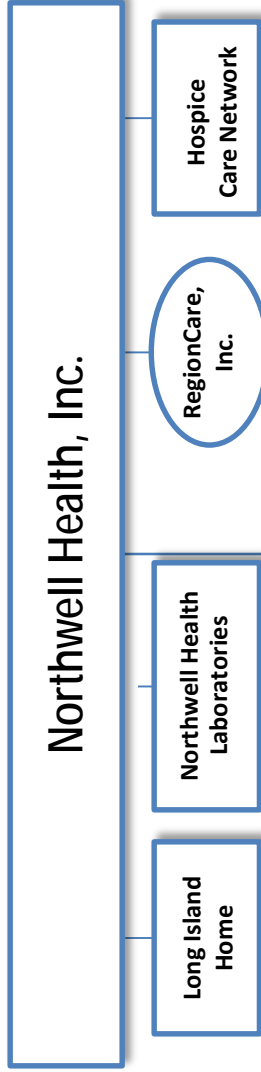
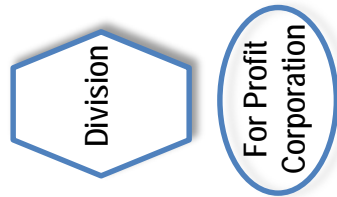
	Northwell Health, Inc.	Elimination	Northwell Health Obligated Group	Phelps Memorial Hospital Association and Subsidiaries	Northern Westchester Hospital Association and Subsidiaries	Prostate Cancer Medical Center	John T. Mather Memorial Hospital and Subsidiaries	The Long Island Home	Hospice Care Network	The Feinstein Institute for Medical Research	Northwell Health Foundation	Northwell Health Laboratories	Capitol Insurance Companies	Dulan Family Health Center	Health Insurance Companies	Joint Venture Ambulatory Surgery Centers	Other Northwell Health Entities
Operating revenue	\$6,129,507	(521,195)	\$5,418,310	\$191,699	\$204,772	\$142,753	\$246,176	\$57,489	\$17,638	\$-	\$-	\$-	\$-	\$1,993	\$-	\$-	\$57,074
Net patient service revenue	1,376,137	(81,178)	91,513	18,393	5,379	18,056	28,197	1,354	3,854	-	-	-	-	3,493	-	-	418,564
Physician practice revenue	5,753,370	(439,997)	5,313,373	211,092	210,151	160,399	268,977	58,843	3,884	-	-	-	-	-	-	-	475,638
Total patient revenue	7,129,507	(521,175)	6,608,332	402,184	420,302	348,455	537,174	160,197	7,738	-	-	-	-	3,493	-	-	894,202
Other operating revenue	511,256	(603,388)	577,543	6,027	4,143	1,606	4,379	2,976	81	44,019	7,246	350,075	7,246	1,707	-	21	231,105
Net assets released from restrictions used in operations	8,197,171	(7,462,711)	694,460	217,159	214,747	165,868	272,746	61,813	38,616	53,584	7,246	350,075	7,246	5,773	-	45,707	706,761
● Repricing expenses	4,108,585	(120,724)	3,447,730	113,438	95,668	78,911	132,253	43,656	15,681	47,043	-	80,130	-	3,415	-	9,622	161,742
Salaries	1,003,740	(7,383)	1,011,123	18,783	25,521	22,254	32,435	16,430	5,053	14,956	-	26,841	-	1,427	-	1,750	69,408
Employee benefits	2,520,146	(150,298)	2,112,112	59,209	66,963	58,376	100,254	11,315	15,375	23,811	-	232,025	7,131	1,730	-	21,254	360,799
Supplies and expenses	3,681,466	-	3,681,466	16,006	11,567	5,027	16,984	1,641	197	4,695	-	1,786	-	65	-	2,784	6,278
Depreciation and amortization	107,510	-	107,510	793	1,196	1,340	1,340	-	-	-	-	-	-	-	-	-	61
Interest	8,197,171	(7,462,711)	694,460	217,159	214,747	165,868	272,746	61,813	38,616	53,584	7,246	350,075	7,246	5,773	-	45,707	706,761
Excess (deficiency) of operating revenue over operating expenses, excluding Health Insurance Companies	89,974	-	182,985	14,121	13,832	(1,581)	(4,520)	(11,229)	2,310	(36,941)	115	9,293	115	(884)	-	10,316	(89,466)
Health Insurance Companies operating revenue	94,825	-	-	-	-	-	-	-	-	-	-	-	-	-	94,825	-	-
Health Insurance Companies operating expenses	878,25	-	-	-	-	-	-	-	-	-	-	-	-	-	87,825	-	-
Health Insurance Companies excess of operating revenue over operating expenses	7,600	-	-	-	-	-	-	-	-	-	-	-	-	-	7,000	-	-
Total excess (deficiency) of operating revenue over operating expenses	96,574	-	182,985	14,121	13,832	(1,581)	(4,520)	(11,229)	2,310	(36,941)	115	9,293	115	(884)	-	10,316	(89,466)
Non-operating gains and losses	100,609	-	91,585	1,357	2,391	396	230	55	1,218	12	511	(34)	2,146	-	(3,184)	(160)	46
Change in net unrealized gains and losses and change in value of equity method investments	(18,226)	-	(17,864)	1,372	(775)	-	(509)	-	(955)	-	(65)	-	783	-	(645)	-	(62)
Change in fair value of interest rate swap agreements designated as derivatives instruments	800	-	(16,868)	-	1,125	-	1,081	1,439	-	(113)	(52)	(470)	-	(52)	-	-	(112)
Nonoperating net periodic benefit (cost) credit	(14,022)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Contribution received in the acquisition of John T. Mather Memorial Hospital	75,819	-	75,819	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Gain on sale of property	64,178	-	64,178	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Gain on sale of investments	(13,519)	-	64,178	336	(456)	-	-	-	115	-	-	-	-	-	-	-	91
Total nonoperating gains and losses	173,845	(9,950)	163,895	3,005	2,285	396	1,542	1,494	958	(81)	(13,211)	(984)	2,929	(52)	(3,382)	(160)	(32)
Excess (deficiency) of revenue and gains and losses over expenses	272,619	(9,900)	371,735	17,386	16,117	248	(2,978)	(9,735)	3,268	(17,022)	(13,211)	8,789	3,044	(936)	3,171	10,156	(85,981)
Net assets released from restrictions for capital asset acquisitions	27,127	-	25,541	283	-	-	1,669	-	-	214	-	-	-	-	-	-	-
Change in fair value of interest rate swap agreements designated as cash flow hedges	1,816	-	140	-	174	1,440	62	-	-	36,683	13,400	-	-	-	-	-	80,946
Transfers (to) from affiliates	(5,957)	9,664	(158,247)	(2,800)	15,000	(13,218)	-	-	-	-	265	-	-	-	-	(15,222)	(191)
Other changes in net assets	(2,975)	-	240,169	(31,469)	(31,291)	(4,886)	(51,847)	(57,335)	(3,268)	\$100	\$189	\$6,789	\$1,844	(936)	\$2,918	(55,060)	(18,788)
Increase (decrease) in unrestricted net assets	\$29,625	(623)	\$29,002	\$17,469	\$11,291	\$14,886	\$51,847	\$57,335	\$3,268	\$100	\$189	\$6,789	\$1,844	(936)	\$2,918	(55,060)	(18,788)

Not-for-Profit Corporation

Entities Delegating Authority to NQMA*

Northwell Health, Inc. Existing Co-operator Table of Organization

Submitted April 3, 2019



¹ Northwell Healthcare, Inc. is currently the Passive Parent

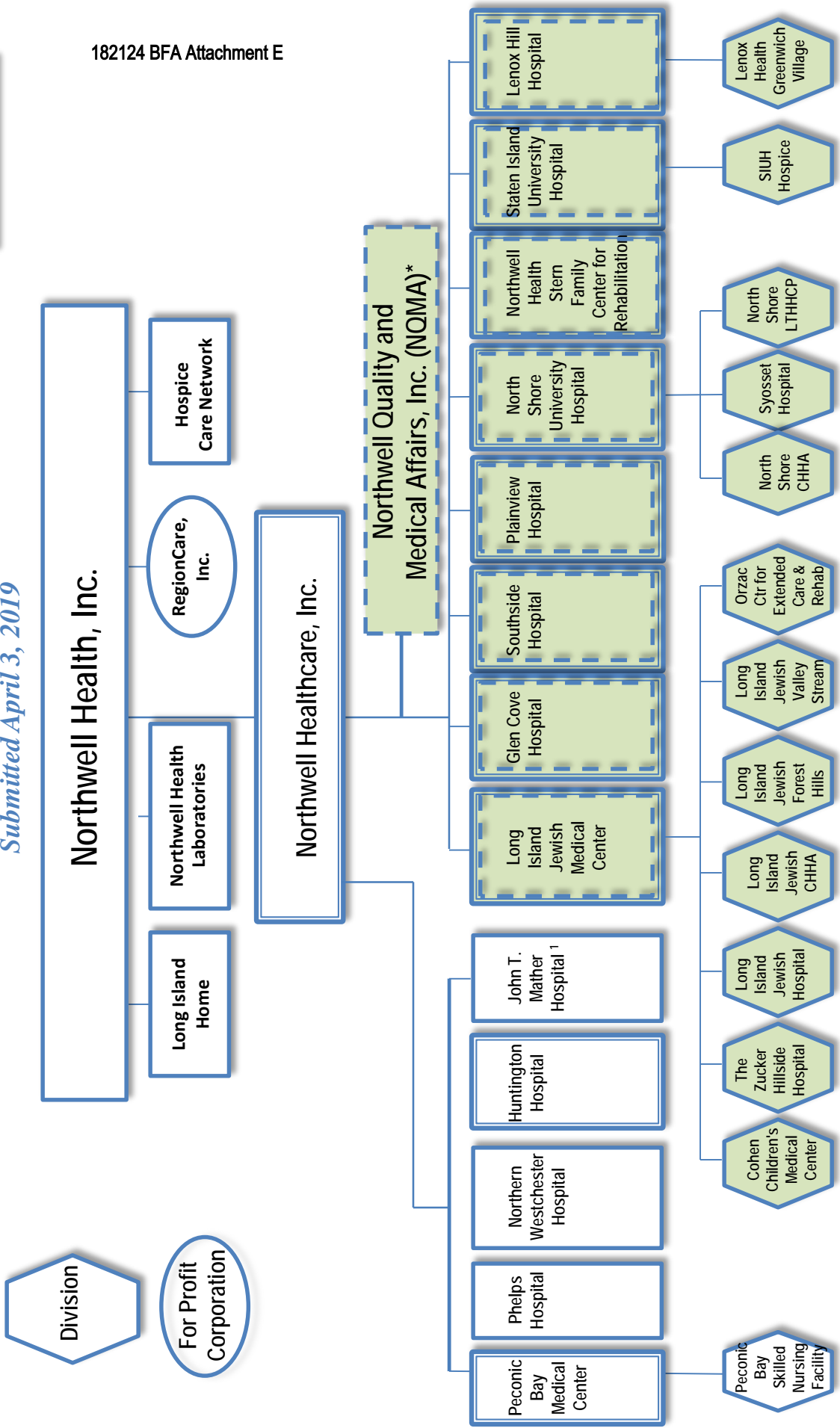
Not-for-Profit Corporation

Northwell Health, Inc. Proposed Co-operator Table of Organization

Submitted April 3, 2019

Entities Delegating Authority to NQMA*

182124 BFA Attachment E



¹ Northwell Healthcare, Inc. is the proposed Active Parent and Co-operator pending DOH approval of CON# 182124-E

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 11th day of April 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 Northwell Healthcare, Inc. as the active parent and co-operator of John T. Mather Memorial Hospital of Port Jefferson, New York, Inc. , and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

182124 E

John T. Mather Memorial Hospital of
Port Jefferson New York, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of a photocopy of an executed amendment to the Certificate of Incorporation of John T. Mather Memorial Hospital of Port Jefferson, New York, Inc., acceptable to the Department. [CSL]
3. Submission of a photocopy of the amended bylaws of John T. Mather Memorial Hospital of Port Jefferson, New York, Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed Affiliation Agreement between John T. Mather Memorial Hospital of Port Jefferson, New York, Inc. and Northwell Healthcare, Inc., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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

Program: Residential Health Care Facility
Purpose: Establishment

County: Kings
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:

Table with 2 columns: Members, %
Buena Vida SNF LLC
Eliezer Jay Zelman 10%
Zevi Kohn 40%
FBH Healthcare Group, LLC: Sarah Rosenfeld (100%) 50%

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:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$29,037,010	\$31,531,618
Expenses	<u>28,647,415</u>	<u>28,647,415</u>
Gain:	\$389,595	\$2,884,203

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]

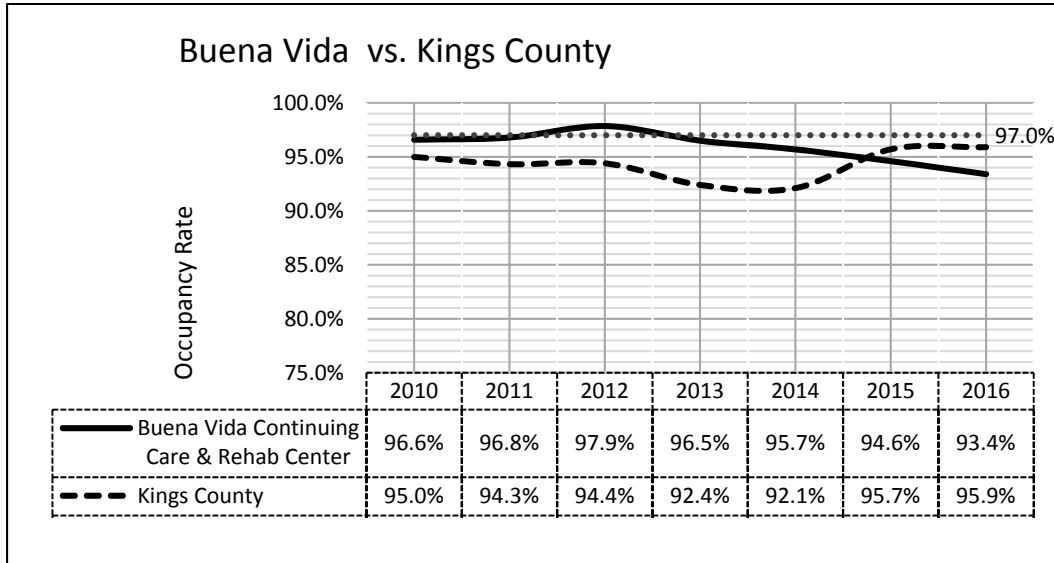
Council Action Date

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.



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

Assisted Living Facilities

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

Dialysis Facilities

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:

	<u>Current Year (2017)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues</u>						
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.		<u>416,620</u>		<u>0</u>		<u>0</u>
Total Op. Rev.		\$24,604,091		\$29,037,010		\$31,531,618
Non-Op. Rev.		<u>521,319</u>		<u>0</u>		<u>0</u>
Total Revenues		\$25,125,410		\$29,037,010		\$31,531,618
<u>Expenses</u>						
Operating	\$334.75	\$27,069,714	\$300.98	\$25,047,415	\$300.98	\$25,047,415
Capital	<u>24.16</u>	<u>1,953,543</u>	<u>43.26</u>	<u>3,600,000</u>	<u>43.26</u>	<u>3,600,000</u>
Total Expenses	\$358.91	\$29,023,257	\$344.24	\$28,647,415	\$344.24	\$28,647,415
Net Income (Loss)		<u>(\$3,897,847)</u>		<u>\$389,595</u>		<u>\$2,884,203</u>
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:

<u>Payor</u>	<u>Current Year</u>	<u>First Year</u>	<u>Third Year</u>
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

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 11th day of April 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 Buena Vida SNF LLC as the new operator of Buena Vida Continuing Care & Rehab Center, a 240-bed residential health care facility located at 48 Cedar Street, Brooklyn, 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:

182060 E

Buena Vida SNF LLC d/b/a Buena Vida
Rehabilitation and Nursing Center

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of 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]

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 # 182160-E
Lifetime Care/Hospice of Rochester/Hospice of Wayne & Seneca Counties

Program: Hospice
Purpose: Establishment

County: Monroe
Acknowledged: October 11, 2018

Executive Summary

Description

Rochester Regional Health (RRH), a not-for-profit corporation located in Monroe County, requests approval to be established as the new sole member of the Genesee Regional Home Care Association, Inc. (GRHCA) d/b/a Lifetime Care/Hospice of Rochester/Hospice of Wayne and Seneca Counties (Lifetime Care Hospice), a not-for profit Article 40 Hospice with main offices located at 3111 South Winton Road, Rochester (Monroe County). GRHCA currently has two classes of members—a sole Class A member, Excellus Health Plan, Inc. (Excellus), and Class B members who are individuals that are the Class B Directors of the Corporation. With approval of this application, RRH will become the sole member of GRHCA and there will no longer be any Class A or Class B members of GRHCA. This application is being submitted because Excellus wishes to divest its provider business to focus on its core insurance business.

In addition to the Hospice, GRHCA operates an Article 36 Certified Home Health Agency (CHHA) (GRHCA d/b/a Lifetime Care) and is the sole member of Genesee Region Home Care of Ontario County, Inc. (GRHCOC) d/b/a Home Care Plus, an Article 36 LHCSA. Applications are concurrently under review, whereby RRH seeks approval to be established as the new sole member of the CHHA (CON 182159) and the grandparent of GRHCOC, which operates the LHCSA (CON 182163). The proposed changes in control will be accomplished through a member substitution transaction involving a Corporate Realignment Agreement (the

“Realignment”). The applicant indicated that the three applications (Hospice, CHHA and LHCSA) are mutually inclusive and that each component of the Realignment must be included for the transaction to close. GRHCA is also the sole member of Lifetime Pharmacy, LLC and RRH is making appropriate regulatory submissions to replace Excellus as the sole member of the pharmacy.

Lifetime Care Hospice is authorized to serve Monroe, Seneca and Wayne counties in central New York. In addition to offering hospice services in the patient’s home or nursing home setting, they also offer inpatient hospice care and hospice residence care at their free-standing hospice facility, the Hildebrandt Hospice Care Center, located at 2652 Ridgeway Avenue in Greece. The facility is located on the Unity Hospital campus and is certified for 13 beds (ten Inpatient, three Residence). There will be no change in licensed services or beds, and no change in the authorized geographic area/counties served as a result of this change in ownership. Lifetime Care Hospice will remain a separate voluntary not-for-profit corporation licensed under Article 40 of the Public Health Law, maintaining its separate operating certificate following completion of the project.

Rochester Regional Health was formed in 2014 and is the active parent, co-operator and sole member of five hospitals, six nursing homes, and a network of outpatient clinics and support services. The Realignment will transition control of Lifetime Care and its affiliates to RRH,

thereby extending and strengthening the continuum of services provided by the system. The transition aims to improve the wellness of the communities served, deliver value to patients and payors, increase operational efficiencies, support a long-term financial commitment to GHRCA, advance clinical best practices, and promote efficient governance and stewardship of community assets.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no Need recommendation 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 acquisition prices associated with this application. Projected revenues and expenses for Lifetime Care Hospice following the Realignment are as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$28,197,243	\$30,194,686
Expenses	<u>\$25,002,169</u>	<u>\$53,498,393</u>
Net Income	\$3,195,074	\$3,824,848

Projected revenues and expenses for GRHCA d/b/a Lifetime Care (inclusive of the CHHA, Hospice and LHCSA operations) following the Realignment are as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$98,764,000	\$100,365,000
Expenses	<u>\$99,330,000</u>	<u>\$98,398,000</u>
Net Income	(\$566,000)	\$1,967,000

Recommendations

Health Systems Agency

The Finger Lakes HSA recommends approval of this application.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed lease assignment and assumption agreement for 3111 South Winton Road, Rochester, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of Rochester Regional Health's executed Restated Certificate of Incorporation, acceptable to the Department. [CSL]
3. Submission of a photocopy of GHRAs board resolution allowing Rochester Regional Health to become its sole member 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

Program Analysis

Program Description

Currently, Genesee Region Home Care Association, Inc. (GRHCA) d/b/a Lifetime Care/Hospice of Rochester/Hospice of Wayne & Seneca Counties is parented by Excellus Health Plan, Inc., which is parented by Lifetime Healthcare, Inc. This application proposes to establish Rochester Regional Health as the sole parent of GRHCA.

Rochester Regional Health operates the following facilities within New York State, which were reviewed as part of this project:

- Rochester General Hospital
- The Unity Hospital of Rochester
- The Unity Hospital of Rochester – St. Mary's Campus
- United Memorial Medical Center North Street Campus
- United Memorial Medical Center South Street Campus
- Clifton Springs Hospital and Clinic
- Newark-Wayne Community Hospital
- Rochester Regional Health System Home Care (CHHA)
- Rochester Surgery Center (D&TC)
- Linden Surgery Center (D&TC)
- Clifton Springs Hospital and Clinic Extended Care (RHCF)
- Unity Living Center (RHCF)
- Park Ridge Nursing Home
- Edna Tina Wilson Living Center (RHCF)
- Hill Haven Nursing Home (RHCF)
- Wayne Health Care (RHCF)
- MS Achievement Center at the Park (Adult Day Care)
- Friends for the Day (Adult Day Care)
- Unity at Home (LHCSA)
- Independent Living for Seniors (LHCSA)
- The Hamlet at Park Ridge (ALP)

Rochester Regional Health also operates a number of facilities which are regulated by the Office of Mental Health and the Office of Alcoholism and Substance Abuse Services. For a complete list of these facilities, please see Programmatic Attachment A – Office of Mental Health and Office of Alcoholism and Substance Abuse Services Providers.

This project will have no impact on the services being provided by Genesee Region Home Care Association, Inc. d/b/a Lifetime Care or the counties being served.

Character and Competence

The Board of Directors of Rochester Regional Health is as follows:

<p>Efrain Rivera – Board Member Senior VP, CFO, Treasurer, Paychex <u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Edna Tina Wilson Living Center (NH) • Independent Living for Seniors (LHCSA) 	<p>Thomas E. Houseknecht – Board Member President, MTE Turf Equipment Solutions, Inc. President, Crickler Vending Company, Inc. <u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • The Unity Hospital of Rochester • Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Edna Tina Wilson Living Center (NH) • Independent Living for Seniors (LHCSA)
<p>Robert S. Sands, Esq. – Board Member, Secretary CEO, Constellation Brands, Inc. <u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Edna Tina Wilson Living Center (NH) • Independent Living for Seniors (LHCSA) 	<p>Michael R. Nuccitelli – Board Member, Chair CEO, Omega Tool Measuring Machines <u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • The Unity Hospital of Rochester • Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Edna Tina Wilson Living Center (NH) • Independent Living for Seniors (LHCSA)
<p>Justin T. Smith – Board Member President, COO – Brite Computers <u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Edna Tina Wilson Living Center (NH) • Independent Living for Seniors (LHCSA) 	<p>Anna E. Lynch, Esq. – Board Member Managing Partner, Attorney, Underberg & Kessler LLP <u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Edna Tina Wilson Living Center (NH) • Independent Living for Seniors (LHCSA)
<p>David Munson, Jr. – Board Member President, Rochester Institute of Technology <u>Affiliation</u> Rochester General Hospital</p>	<p>David J. Riedman – Board Member, Treasurer President, Riedman Development Corporation <u>Affiliation</u> Rochester Regional Health</p>

<p>Rachel A. Adonis – Board Member VP, Client Relationship Manager – Champlin & Associates <u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Rochester General Long Term Care, Inc. (Nursing Home) • Independent Living for Seniors (LHCSA) 	<p>Eric J. Bieber – CEO CEO, Rochester Regional Health <u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Rochester General Long Term Care, Inc. (Nursing Home) • Independent Living for Seniors (LHCSA) • Clifton Springs Hospital & Clinic • Newark Wayne Community Hospital
<p>Nancy S. Ferris – Board Member Retired <u>Affiliations</u></p> <ul style="list-style-type: none"> • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Rochester General Long Term Care, Inc. (Nursing Home) • Independent Living for Seniors (LHCSA) • Unity Health System (Hospital) 	<p>Hugh R. Thomas, Esq. (NY, MD) – Assistant Secretary General Counsel, CAO, EVP, Rochester Regional Health <u>Affiliations</u></p> <ul style="list-style-type: none"> • Drugscan, Inc. (Toxicology Laboratory, NY, PA) • Unity Ambulatory Surgery Center, Inc. • Rochester General Health System Dialysis, Inc. • Rochester Surgery Center • Unity Linden Oaks Surgery Center, LLC
<p>Leonard P. Olivieri, Esq. – Board Member, Vice-Chair CFO, EVP, Peko Precision Products, Inc. <u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Edna Tina Wilson Living Center • Independent Living for Seniors (LHCSA) 	

David J. Riedman disclosed that he is routinely subject to civil actions during the ordinary course of business in his position as President of Riedman Development Corporation.

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

Facility Compliance/Enforcement

The Bureau of Quality and Surveillance reviewed the compliance history of the affiliated Nursing Homes and Skilled Nursing Facilities and reports as follows:

- Edna Tina Wilson Living Center was fined \$10,000.00 pursuant to a stipulation and order dated July 13, 2015 for inspection findings on October 15, 2013 for violations of Article 28 of the Public

Health Law and 10 NYCRR Part 415. Edna Tina Wilson Living center was also fined a Civil Monetary Penalty in the amount of \$4,455.00 related to findings during this complaint survey.

- Hill Haven Nursing Home was fined \$10,000.00 pursuant to a stipulation and order dated January 10, 2016 for inspection findings on February 11, 2014 for violations of Article 28 of the Public Health Law and 10 NYCRR Part 415. Hill Haven Nursing Home was also fined a Civil Monetary Penalty in the amount of \$77,935.00 related to findings during this complaint survey.

The information provided by the Division of Home and Community Based Services, the Division of Hospitals and Diagnostic & Treatment Centers, the Division of Adult Care Facilities and Assisted Living Surveillance, the Clinical Laboratory Evaluation Program, the Office of Mental Health, and the Office of Alcohol and Substance Abuse 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 Pennsylvania Department of Health indicated no issue with the license of the clinical laboratory associated with this application.

CHHA Quality of Patient Care Star Ratings as of February 15, 2019	
New York Average: 3.5 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
Genesee Region Home Care Association, Inc. d/b/a Lifetime Care	3.5 out of 5 stars
Rochester Regional Health System Home Care	2.5 out of 5 stars

Conclusion

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a hospice.

Financial Analysis

Corporate Realignment Agreement

RRH has submitted a Corporate Realignment Agreement to be executed upon PHHPC approval. Upon execution of this agreement, RRH will become the sole member of GRHCA. The Realignment will also result in changes to certain CHHA reimbursement rates and to the assets and liabilities controlled by GRHCA. The terms are summarized below:

Execution Date:	September 5, 2018
Parties to the Agreement:	Genesee Region Home Care Association, Inc. d/b/a Lifetime Care (“Lifetime”) Excellus Health Plan, Inc. (“Excellus”) Rochester Regional Health (“RRH”)
Closing Date:	As soon as practicable after all required approvals have been obtained, including PHHPC approval.
Realignment Date:	Date that amended Certificate of Incorporation for Lifetime is filed with the NYS Department of State and that restated bylaws of Lifetime become effective.
Transaction:	Rochester Regional Health will become the sole member of Lifetime, replacing Excellus, the current Class A member of Lifetime.
Assets of Lifetime at Closing	Property, plant and equipment (\$3.7M); indefinite life intangibles (\$1.5M); goodwill (\$5.8M); net working capital (\$9.0M). (All approximate values)
Liabilities of GHRCA:	Accounts payable, accrued expenses, unearned revenue, and other current liabilities (included in net working capital above). Reserves to be established for material compliance matters which individually or in the aggregate exceed \$25,000.

Transfer of Restricted Funds Held by Lifetime	\$3.2M in funds restricted in use to support hospice care will be transferred to the RRH Foundation and subject to a donor restriction for the support of Lifetime hospice services.
Cash Payment at Closing:	\$-0-
Other Provisions:	Prior to the Closing, Lifetime may pay any liabilities of Lifetime to Excellus and/or make any charitable contributions authorized by law, provided that at the time of Closing the Closing Balance Sheet reflects working capital in the amount of \$9M.
Reimbursement Post-Closing	Pursuant to the Excellus/LC Participating Provider Agreement, Lifetime is reimbursed by Excellus for services rendered to Excellus' Medicare Advantage members based on an episodic reimbursement methodology. At Closing, Excellus and Lifetime shall enter into an amendment to the Excellus/LC Participating Provider Agreement effective for four (4) years replacing the episodic reimbursement methodology with a fee-for-service methodology at the then-current Excellus community fee schedule including the community market trend rate as determined by Excellus from time to time during such four (4) year period.
Termination of Exclusive Provider Agreement	Pursuant to the Excellus/LC Participating Provider Agreement, Lifetime is the exclusive provider of certain services to Excellus' Medicare Advantage and Commercial HMO members. At Closing, Excellus and Lifetime shall enter into an amendment to the Excellus/LC Participating Provider Agreement terminating such exclusivity effective six (6) months after the Realignment Date.

Lease Agreements

The applicant has submitted the current lease for the hospice office space, summarized as follows:

Dates:	December 9, 2004 (sublease dated July 1, 2015)
Premises:	CHHA and Hospice offices at 3111 South Winton Road, Rochester, NY
Lessor:	Morgan Winton Road, LLC and JJAR Properties, LLC
Lessee:	Excellus Health Plan, Inc.
Sublessee:	Lifetime Care
Term:	Current term ends 6/30/2020, with one additional five-year option.
Rental:	\$761,758.73 base rent
Provision	Tenant pays for real property taxes, utilities, insurance, and maintenance.

Lease Assignment and Assumption Agreement

Effective as of the Realignment Date, and subject to the receipt of any required landlord consent, the lease between Excellus and the landlord for the property located at 3111 Winton Road South, Rochester New York shall be assigned to Lifetime Care or RRH, and the current sublease between Excellus and Lifetime Care shall be terminated. It is the Department's understanding that 95 Linden LLC is the current owner of 3111 South Winton Road and will be the lessor in the updated lease agreements. The lessor and lessee are independent third parties.

Premises:	Hospice offices at 3111 South Winton Road, Rochester, NY
Assignor:	Excellus Health Plan, Inc.
Assignee:	Lifetime Care
Assignment:	Draft in process but no material changes to terms in the current sublease between Excellus and Lifetime Care.
Fee:	Any fees imposed by landlord as a condition of the lease assignment shall be borne solely by RRH.

The Hildebrandt Hospice Care Center facility located on the Unity Hospital campus is owned by Lifetime Care. The ground lease between GRHCA and the Unity Health System (an entity controlled by RRH) will remain active post-Realignment.

Operating Budget

The applicant has submitted the current operating results (2017) for the Lifetime Care Hospice and the operating budget, in 2019 dollars, for the first and third years, as summarized below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>			
Medicare	\$18,176,344	\$19,327,634	\$20,681,140
Medicaid	7,542,154	7,809,525	8,373,022
Other	<u>1,027,154</u>	<u>1,060,084</u>	<u>1,140,524</u>
Total Revenue	\$26,745,652	\$28,197,243	\$30,194,686
<u>Expenses</u>			
Operating	\$23,650,620	\$25,002,169	\$26,369,838
Capital	<u>267,656</u>	<u>0</u>	<u>0</u>
Total Expenses	\$23,918,276	\$25,002,169	\$26,369,838
Net Income	<u>\$2,827,376</u>	<u>\$3,195,074</u>	<u>\$3,824,848</u>
Utilization - Visits	162,461	6,523	18,656

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

<u>Payor</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicare	113,972	70.15%	118,800	70.30%	127,288	70.28%
Medicaid	44,054	27.12%	45,615	26.99%	48,906	27.00%
Other	<u>4,435</u>	<u>2.73%</u>	<u>4,569</u>	<u>2.70%</u>	<u>4,923</u>	<u>2.72%</u>
Total	162,461	100.00%	168,984	100.00%	181,117	100.00%

The above projections assume that hospice revenue will increase by 4.1% annually over the forecast period, driven primarily by organic volume growth and increased referrals from the RRH network. Hospice operating expenses are projected to increase 3.3% annually due to increased salary costs, with no projected growth in overhead or other operating costs over the forecast period.

As part of the Realignment, RRH will implement initiatives to strengthen the overall performance of GRHCA, including:

- Investments of \$5.7MM for information technology purchases, including hardware and software;
- Reductions in overhead through leveraging economies of scale for purchasing and administration costs;
- Non-capital system integration expenditures of \$1.5M in Year One and \$0.3M in Year Three, expected to result in sustained productivity improvements;
- Pharmacy revenue growth of 11% annually through Year Three, reflecting ability to extend reach throughout the RRH system; and
- Increased CHHA referrals from RRH, which will partially offset volume decreases due to loss of exclusivity.

In sum, these activities are expected to enable GRHCA to generate positive net income by Year Three:

	<u>Year One</u>			<u>Year Three</u>		
	<u>Hospice</u>	<u>All Other</u>	<u>Total</u>	<u>Hospice</u>	<u>All Other</u>	<u>Total</u>
Revenues	\$28,197,243	\$70,566,757	\$98,764,000	\$30,194,686	\$70,170,314	\$100,365,000
Expenses	<u>\$25,002,169</u>	<u>\$74,321,831</u>	<u>\$99,330,000</u>	<u>\$53,498,393</u>	<u>\$72,028,162</u>	<u>\$98,398,000</u>
Net	\$3,195,074	(\$3,761,074)	(\$566,000)	\$3,824,848	(\$1,857,848)	\$1,967,000

All Other includes CHHA, LHCSA, Pharmacy, and investment income.

RRH has provided a letter of support indicating that they will cover GRHCA's operating losses and will provide working capital support above the \$9M provided at closing, as needed.

Capability and Feasibility

There are no project costs associated with this application.

BFA Attachment B is the 2017 certified financial statements of Rochester Regional Health, Inc. and their internal financial statements as of September 30, 2018. As shown, the entity maintained a positive working capital position and a net asset position in 2017 and as of September 30, 2018. RRH also achieved an average net operating income of \$54.4M in 2017 and \$27.4M as of September 30, 2018.

BFA Attachment C is the 2017 certified financial statements of GHRCA, Inc. and Subsidiaries and their internal financial statements as of October 31, 2018. During this period, GHRCA maintained positive working capital and net asset positions and generated net income of \$1.4M in 2017 and \$886K as of October 31, 2018.

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

Attachments

Program Attachment A	Office of Mental Health and Office of Alcoholism and Substance Abuse Services Providers.
BFA Attachment A	Rochester Regional Health – Current and proposed organizational charts
BFA Attachment B	Rochester Regional Health – 2017 certified financial statements and internal financial statements as of 9/30/18
BFA Attachment C	Genesee Regional Home Care Association and Subsidiaries – 2017 certified financial statements and internal financial statements as of 10/31/2018
BFA Attachment D	Pro Forma Balance Sheet – Genesee Regional Home Care Association d/b/a Lifetime Care
FLHSA Attachment	Finger Lakes HSA Review and Recommendation

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 11th day of April 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 Rochester Regional Health as the new sole member of Genesee Region Home Care Association, Inc., the operator of Lifetime Care Hospice, 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:

182160 E

Lifetime Care/Hospice of Rochester/Hospice of
Wayne and Seneca Counties

APPROVAL CONTINGENT UPON:

1. Submission of an executed lease assignment and assumption agreement for 3111 South Winton Road, Rochester, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of Rochester Regional Health's executed Restated Certificate of Incorporation, acceptable to the Department. [CSL]
3. Submission of a photocopy of GHRAs board resolution allowing Rochester Regional Health to become its sole member 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 # 182159-E
Lifetime Care

Program: Certified Home Health Agency
Purpose: Establishment

County: Monroe
Acknowledged: October 12, 2018

Executive Summary

Description

Rochester Regional Health (RRH), a not-for-profit corporation located in Monroe County, requests approval to be established as the new sole member of Genesee Regional Home Care Association, Inc. (GRHCA) d/b/a Lifetime Care, a not-for profit Article 36 Certified Home Health Agency (CHHA) located at 3111 South Winton Road, Rochester (Monroe County). GRHCA currently has two classes of members—a sole Class A member, Excellus Health Plan, Inc. (Excellus), and Class B members who are individuals that are the Class B Directors of the Corporation. With approval of this application, RRH will become the sole member of GRHCA and there will no longer be any Class A or Class B members of GRHCA. This application is being submitted because Excellus wishes to divest its provider business to focus on its core insurance business.

In addition to the CHHA, GRHCA operates an Article 40 Hospice program (GRHCA d/b/a Lifetime Care) and is the sole member of Genesee Region Home Care of Ontario County, Inc. (GRHCOC) d/b/a Home Care Plus, an Article 36 LHCSA. Applications are concurrently under review, whereby RRH seeks approval to be established as the new sole member of the Hospice (CON 182160) and the grandparent of GRHCOC, which operates the LHCSA (CON 182163). The proposed changes in control will be accomplished through a member substitution transaction involving a Corporate Realignment Agreement (the "Realignment"). The applicant indicated that the three applications (CHHA, Hospice and LHCSA) are mutually inclusive and that each component of the Realignment must be included for the transaction to close. GRHCA

is also the sole member of Lifetime Pharmacy, LLC, and RRH is making appropriate regulatory submissions to replace Excellus as the sole member of the pharmacy.

Lifetime Care provides CHHA services in Cayuga, Livingston, Monroe, Ontario, Seneca, Wayne, Schuyler and Yates counties in central New York. There will be no change in authorized CHHA services or population served as a result of this application. GRHCA will remain a separate voluntary not-for-profit corporation licensed under Article 36 of the Public Health Law, maintaining its separate operating certificate following completion of the project.

Rochester Regional Health was formed in 2014 and is the active parent, co-operator and sole member of five hospitals, six nursing homes, and a network of outpatient clinics and support services. The Realignment will transition control of Lifetime Care and its affiliates to RRH, thereby extending and strengthening the continuum of services provided by the system. The transition aims to improve the wellness of the communities served, deliver value to patients and payors, increase operational efficiencies, support a long-term financial commitment to GHRCA, advance clinical best practices, and promote efficient governance and stewardship of community assets.

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 or acquisition price associated with this application. Projected revenues and expenses for Lifetime Care CHHA following the Realignment are as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$50,487,994	\$49,202,322
Expenses	<u>\$54,707,922</u>	<u>\$53,498,393</u>
Net Income	(\$4,219,928)	(\$4,296,071)

Projected revenues and expenses for GRHCA d/b/a Lifetime Care (inclusive of the CHHA, Hospice and LHCSA operations) following the Realignment are as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$98,764,000	\$100,365,000
Expenses	<u>\$99,330,000</u>	<u>\$98,398,000</u>
Net Income	(\$566,000)	\$1,967,000

Recommendations

Health Systems Agency

The Finger Lakes HSA recommends approval of this application.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed lease assignment and assumption agreement for 3111 South Winton Road, Rochester, acceptable to the Department of Health. [BFA]
2. Submission of a copy of the restated articles of incorporation of the applicant, acceptable to the Department. [CSL]
3. Submission of a copy of the restated certificate of incorporation of Genesee Region Home Care Association, Inc., acceptable to the Department. [CSL]
4. Submission of a copy of the amended and restated bylaws of Genesee Region Home Care Association, Inc., acceptable to the Department. [CSL]
5. Submission of a copy of the resolution of the board of directors of the applicant, acceptable to the Department. (CSL)

Approval conditional upon:

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

Council Action Date

April 11, 2019

Program Analysis

Program Description

Currently, Genesee Region Home Care Association, Inc. (GRHCA) d/b/a Lifetime Care, an existing Certified Home Health Agency (CHHA), is parented by Excellus Health Plan, Inc., which is parented by Lifetime Healthcare, Inc. This project proposes to establish Rochester Regional Health as the sole parent of GRHCA.

Rochester Regional Health operates the following facilities within New York State, which were reviewed as part of this project:

- Rochester General Hospital
- The Unity Hospital of Rochester
- The Unity Hospital of Rochester – St. Mary's Campus
- United Memorial Medical Center North Street Campus
- United Memorial Medical Center South Street Campus
- Clifton Springs Hospital and Clinic
- Newark-Wayne Community Hospital
- Rochester Regional Health System Home Care (CHHA)
- Rochester Surgery Center (D&TC)
- Linden Surgery Center (D&TC)
- Clifton Springs Hospital and Clinic Extended Care (RHCF)
- Unity Living Center (RHCF)
- Park Ridge Nursing Home
- Edna Tina Wilson Living Center (RHCF)
- Hill Haven Nursing Home (RHCF)
- Wayne Health Care (RHCF)
- MS Achievement Center at the Park (Adult Day Care)
- Friends for the Day (Adult Day Care)
- Unity at Home (LHCSA)
- Independent Living for Seniors (LHCSA)
- The Hamlet at Park Ridge (ALP)

Rochester Regional Health also operates a number of facilities which are regulated by the Office of Mental Health and the Office of Alcoholism and Substance Abuse Services. For a complete list of these facilities, please see Programmatic Attachment A – Office of Mental Health and Office of Alcoholism and Substance Abuse Services Providers.

This project will have no impact on the services being provided or the counties served by Genesee Region Home Care Association, Inc. d/b/a Lifetime Care.

Character and Competence

The Board of Directors of Rochester Regional Health is as follows:

<p>Efrain Rivera – Board Member Senior VP, CFO, Treasurer, Paychex <u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Edna Tina Wilson Living Center (NH) • Independent Living for Seniors (LHCSA) 	<p>Thomas E. Houseknecht – Board Member President, MTE Turf Equipment Solutions, Inc. President, Crickler Vending Company, Inc. <u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • The Unity Hospital of Rochester • Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Edna Tina Wilson Living Center (NH) • Independent Living for Seniors (LHCSA)
<p>Robert S. Sands, Esq. – Board Member, Secretary CEO, Constellation Brands, Inc. <u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Edna Tina Wilson Living Center (NH) • Independent Living for Seniors (LHCSA) 	<p>Michael R. Nuccitelli – Board Member, Chair CEO, Omega Tool Measuring Machines <u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • The Unity Hospital of Rochester • Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Edna Tina Wilson Living Center (NH) • Independent Living for Seniors (LHCSA)
<p>Justin T. Smith – Board Member President, COO – Brite Computers <u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Edna Tina Wilson Living Center (NH) • Independent Living for Seniors (LHCSA) 	<p>Anna E. Lynch, Esq. – Board Member Managing Partner, Attorney, Underberg & Kessler LLP <u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Edna Tina Wilson Living Center (NH) • Independent Living for Seniors (LHCSA)
<p>David Munson, Jr. – Board Member President, Rochester Institute of Technology <u>Affiliation</u> Rochester General Hospital</p>	<p>David J. Riedman – Board Member, Treasurer President, Riedman Development Corporation <u>Affiliation</u> Rochester Regional Health</p>

<p>Rachel A. Adonis – Board Member VP, Client Relationship Manager – Champlin & Associates <u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Rochester General Long Term Care, Inc. (Nursing Home) • Independent Living for Seniors (LHCSA) 	<p>Eric J. Bieber – CEO CEO, Rochester Regional Health <u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Rochester General Long Term Care, Inc. (Nursing Home) • Independent Living for Seniors (LHCSA) • Clifton Springs Hospital & Clinic • Newark Wayne Community Hospital
<p>Nancy S. Ferris – Board Member Retired <u>Affiliations</u></p> <ul style="list-style-type: none"> • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Rochester General Long Term Care, Inc. (Nursing Home) • Independent Living for Seniors (LHCSA) • Unity Health System (Hospital) 	<p>Hugh R. Thomas, Esq. (NY, MD) – Assistant Secretary General Counsel, CAO, EVP, Rochester Regional Health <u>Affiliations</u></p> <ul style="list-style-type: none"> • Drugscan, Inc. (Toxicology Laboratory, NY, PA) • Unity Ambulatory Surgery Center, Inc. • Rochester General Health System Dialysis, Inc. • Rochester Surgery Center • Unity Linden Oaks Surgery Center, LLC
<p>Leonard P. Olivieri, Esq. – Board Member, Vice-Chair CFO, EVP, Peko Precision Products, Inc. <u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Edna Tina Wilson Living Center • Independent Living for Seniors (LHCSA) 	

David J. Riedman disclosed that he is routinely subject to civil actions during the ordinary course of business in his position as President of Riedman Development Corporation.

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

Facility Compliance/Enforcement

The Bureau of Quality and Surveillance reviewed the compliance history of the affiliated Nursing Homes and Skilled Nursing Facilities and reports as follows:

- Edna Tina Wilson Living Center was fined \$10,000.00 pursuant to a stipulation and order dated July 13, 2015 for inspection findings on October 15, 2013 for violations of Article 28 of the Public

Health Law and 10 NYCRR Part 415. Edna Tina Wilson Living center was also fined a Civil Monetary Penalty in the amount of \$4,455.00 related to findings during this complaint survey.

- Hill Haven Nursing Home was fined \$10,000.00 pursuant to a stipulation and order dated January 10, 2016 for inspection findings on February 11, 2014 for violations of Article 28 of the Public Health Law and 10 NYCRR Part 415. Hill Haven Nursing Home was also fined a Civil Monetary Penalty in the amount of \$77,935.00 related to findings during this complaint survey.

The information provided by the Division of Home and Community Based Services, the Division of Hospitals and Diagnostic & Treatment Centers, the Division of Adult Care Facilities and Assisted Living Surveillance, the Clinical Laboratory Evaluation Program, the Office of Mental Health, and the Office of Alcohol and Substance Abuse 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 Pennsylvania Department of Health indicated no issue with the license of the clinical laboratory associated with this application.

CHHA Quality of Patient Care Star Ratings as of February 15, 2019	
New York Average: 3.5 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
Genesee Region Home Care Association, Inc. d/b/a Lifetime Care	3.5 out of 5 stars
Rochester Regional Health System Home Care	2.5 out of 5 stars

Conclusion

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a certified home health agency.

Financial Analysis

Corporate Realignment Agreement

RRH has submitted a Corporate Realignment Agreement to be effectuated upon Public Health and Health Planning Council (PHHPC) approval. Upon execution of this agreement, RRH will become the sole member of GRHCA. The Realignment will also result in changes to certain CHHA reimbursement rates and to the assets and liabilities controlled by GRHCA. The terms are summarized below:

Execution Date:	September 5, 2018
Parties to the Agreement:	Genesee Region Home Care Association, Inc. d/b/a Lifetime Care ("Lifetime") Excellus Health Plan, Inc. ("Excellus") Rochester Regional Health ("RRH")
Closing Date:	As soon as practicable after all required approvals have been obtained, including PHHPC approval.
Realignment Date:	Date that amended Certificate of Incorporation for Lifetime is filed with the NYS Department of State and that restated bylaws of Lifetime become effective.
Transaction:	Rochester Regional Health will become the sole member of Lifetime, replacing Excellus, the current Class A member of Lifetime.
Assets of Lifetime at Closing	Property, plant and equipment (\$3.7M); indefinite life intangibles (\$1.5M); goodwill (\$5.8M); net working capital (\$9.0M). (All approximate values)
Liabilities of GHRCA:	Accounts payable, accrued expenses, unearned revenue, and other current liabilities (included in net working capital above). Reserves to be established for material compliance matters that individually or in the aggregate exceed \$25,000.

Transfer of Restricted Funds Held by Lifetime	\$3.2M in funds restricted in use to support hospice care will be transferred to the RRH Foundation and subject to a donor restriction for the support of Lifetime hospice services.
Cash Payment at Closing:	\$-0-
Other Provisions:	Prior to Closing, Lifetime may pay any liabilities of Lifetime to Excellus and/or make any charitable contributions authorized by law, provided that at the time of Closing the Closing Balance Sheet reflects working capital in the amount of \$9M.
Reimbursement Post-Closing	Pursuant to the Excellus/LC Participating Provider Agreement, Lifetime is reimbursed by Excellus for services rendered to Excellus' Medicare Advantage members based on an episodic reimbursement methodology. At Closing, Excellus and Lifetime shall enter into an amendment to the Excellus/LC Participating Provider Agreement effective for four (4) years replacing the episodic reimbursement methodology with a fee-for-service methodology at the then-current Excellus community fee schedule including the community market trend rate as determined by Excellus from time to time during such four (4) year period.
Termination of Exclusive Provider Agreement	Pursuant to the Excellus/LC Participating Provider Agreement, Lifetime is the exclusive provider of certain services to Excellus' Medicare Advantage and Commercial HMO members. At Closing, Excellus and Lifetime shall enter into an amendment to the Excellus/LC Participating Provider Agreement terminating such exclusivity effective six (6) months after the Realignment Date.

Lease Agreement

The applicant has submitted the current lease for the CHHA office space, summarized as follows:

Dates:	July 1, 2015
Premises:	CHHA and Hospice offices at 3111 South Winton Road, Rochester, NY
Lessor:	Morgan Winton Road, LLC and JJAR Properties, LLC (prime landlords)
Lessee:	Excellus Health Plan, Inc.
Sublessee:	Lifetime Care
Term:	Current term ends 6/30/2020, with one additional five-year option.
Rental:	\$761,758.73 base rent
Provision	Tenant pays for real property taxes, utilities, insurance, and maintenance.

Lease Assignment and Assumption Agreement

Effective as of the Realignment Date, and subject to the receipt of any required landlord consent, the lease between Excellus and the landlord for the property located at 3111 Winton Road South, Rochester New York shall be assigned to Lifetime Care or RRH, and the current sublease between Excellus and Lifetime Care shall be terminated. It is the Department's understanding that 95 Linden LLC is the current owner of 3111 South Winton Road and will be the lessor in the updated lease agreements. The lessor and lessee are independent third parties.

Premises:	CHHA offices at 3111 South Winton Road, Rochester, NY
Assignor:	Excellus Health Plan, Inc.
Assignee:	Lifetime Care
Assignment:	Draft in process but no material changes to terms in the current sublease between Excellus and Lifetime Care.
Fee:	Any fees imposed by landlord as a condition of the lease assignment shall be borne solely by RRH.

Operating Budget

The applicant has submitted the current operating results (2017) for the Lifetime Care CHHA and the operating budget, in 2019 dollars, for the first- and third-years post-realignment, as summarized below:

Revenues	Current Year (2017)		Year One		Year Three	
	Per Visit	Total	Per Visit	Total	Per Visit	Total
Commercial	\$160.78	\$2,734,851	\$167.61	\$2,549,854	\$178.71	\$2,318,431
Medicare Advantage	\$157.75	\$31,319,994	\$136.03	\$27,202,220	\$136.65	\$26,816,519
Medicaid FFS	\$157.10	\$13,059,550	\$157.73	\$13,001,543	\$159.68	\$12,705,839
Medicaid	\$117.51	\$5,427,983	\$118.24	\$5,294,873	\$119.16	\$5,024,883
Other	\$111.85	<u>\$2,483,920</u>	\$112.37	<u>\$2,439,504</u>	\$112.37	<u>\$2,336,650</u>
Total Revenue		\$55,026,298		\$50,487,994		\$49,202,322
Expenses						
Operating:	\$147.48	\$54,138,369	\$147.70	\$53,790,804	\$149.49	\$52,581,275
Capital:	<u>2.49</u>	<u>\$915,280</u>	<u>2.52</u>	<u>\$917,118</u>	<u>2.61</u>	<u>\$917,118</u>
Total Expenses	\$149.97	\$55,053,649	\$150.22	\$54,707,922	\$152.10	\$53,498,393
Net Income		<u>(\$27,351)</u>		<u>(\$4,219,928)</u>		<u>(\$4,296,071)</u>
Total Visits		367,089		364,189		351,748

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

Payor	Current Year (2017)		Year One		Year Three	
	Visits	%	Visits	%	Visits	%
Commercial	17,010	4.6%	15,213	4.2%	12,973	3.7%
Medicare Advantage	198,547	54.1%	199,975	54.9%	196,243	55.8%
Medicare FFS	83,131	22.6%	82,430	22.6%	79,569	22.6%
Medicaid	46,193	12.6%	44,781	12.3%	42,168	12.0%
Other	<u>22,208</u>	<u>6.0%</u>	<u>21,790</u>	<u>6.0%</u>	<u>20,795</u>	<u>5.9%</u>
Total	367,089	100%	364,189	100%	351,748	100%

The above projections incorporate the following business assumptions and management actions to be taken by RRH pursuant to the Realignment Agreement:

- CHHA operating revenues are projected to be 8.2% (Year One) and 10.6% (Year Three) below 2017 actuals. CHHA reimbursement rates between Excellus and Lifetime Care will convert from episodic payments to market fee-for-service rates consistent with community trends. The existing Participating Provider Agreement (PPA) will be renegotiated for a four-year term, which is forecasted to reduce revenue by approximately \$4.4M in Year One and \$4.5M in Year Three.
- CHHA operating expenses are projected to fall 0.6% and 2.8% below 2017 levels in Year One and Year Three, respectively, driven by savings in purchased health services and salary and benefits costs.
- CHHA utilization is projected to decrease by 0.8% in Year One and 4.1% in Year Three from 2017 levels. Exclusivity arrangements between Lifetime Care and Excellus will end post-realignment, and it is expected that some patients will switch to other providers. Increased referral activity from RRH will partially offset these volume losses.

RRH also plans to implement initiatives that will strengthen the overall performance of GRHCA, including:

- Investments of \$5.7M for information technology purchases, including hardware and software;
- Reductions in overhead through leveraging economies of scale for purchasing and administration costs;
- Non-capital system integration expenditures of \$1.5M in Year One and \$0.3M in Year Three, expected to result in sustained productivity improvements; and
- Hospice revenue growth of 4% and Pharmacy revenue growth of 11% annually through Year Three, reflecting ability to extend reach throughout the RRH system.

In sum, these activities are expected to enable GRHCA to generate positive net income by Year Three:

	Year One			Year Three		
	CHHA	All Other	Total	CHHA	All Other	Total
Revenues	\$50,487,994	\$48,276,006	\$98,764,000	\$49,202,322	\$51,162,678	\$100,365,000
Expenses	\$54,707,922	\$44,622,078	\$99,330,000	\$53,498,393	\$44,899,607	\$98,398,000
Net Income	(\$4,219,928)	\$3,653,928	(\$566,000)	(\$4,296,071)	\$6,263,071	\$1,967,000

All Other includes Hospice, LHCSA, Pharmacy, and investment income.

RRH has provided a letter of support indicating that they will cover GRHCA's operating losses and will provide working capital support above the \$9M provided at closing, as needed.

Capability and Feasibility

There are no project costs associated with this application. BFA Attachment B is the 2017 certified financial statements of Rochester Regional Health, Inc. and their internal financial statements as of September 30, 2018. As shown, the entity maintained a positive working capital position and a net asset position in 2017 and as of September 30, 2018. RRH also achieved an average net operating income of \$54.4M in 2017 and \$27.4M as of September 30, 2018.

BFA Attachment C is the 2017 certified financial statements of GHRCA, Inc. and Subsidiaries and their internal financial statements as of October 31, 2018. During this period, GHRCA maintained positive working capital and net asset positions and generated net income of \$1.4M in 2017 and \$886K as of October 31, 2018.

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

Attachments

Program Attachment A	Office of Mental Health and Office of Alcoholism and Substance Abuse Services Providers.
BFA Attachment A	Rochester Regional Health. – Current and proposed organizational charts
BFA Attachment B	Rochester Regional Health. – 2017 certified financial statements and internal financial statements as of 9/30/2018.
BFA Attachment C	Genesee Regional Home Care Association and Subsidiaries – 2017 certified financial statements and internal financial statements as of 10/31/2018
BFA Attachment D	Pro Forma Balance Sheet – Genesee Regional Home Care Association d/b/a Lifetime Care
FLHSA Attachment	Finger Lakes HSA Review and Recommendation

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 11th day of April 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 Rochester Regional Health as the new sole member of Genesee Region Home Care Association, Inc. d/b/a Lifetime Care an existing 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

182159 E

Lifetime Care

APPROVAL CONTINGENT UPON:

1. Submission of an executed lease assignment and assumption agreement for 3111 South Winton Road, Rochester, acceptable to the Department of Health. [BFA]
2. Submission of a copy of the restated articles of incorporation of the applicant, acceptable to the Department. [CSL]
3. Submission of a copy of the restated certificate of incorporation of Genesee Region Home Care Association, Inc., acceptable to the Department. [CSL]
4. Submission of a copy of the amended and restated bylaws of Genesee Region Home Care Association, Inc., acceptable to the Department. [CSL]
5. Submission of a copy of the resolution of the board of directors of the applicant, acceptable to the Department. (CSL)

APPROVAL CONDITIONED UPON:

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

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

Application Number: 182163
Name of Agency: Genesee Region Home Care of Ontario County, Inc. d/b/a Home Care Plus
Address: Rochester
County: Monroe
Structure: Not-for-Profit Corporation

Proposal

Genesee Region Home Care of Ontario County, Inc. d/b/a Home Care Plus, a not-for-profit corporation, requests approval to merge two existing Licensed Home Care Services Agency (LHCSA) licenses under Article 36 of the Public Health Law. In addition to the consolidation, this project also seeks to establish Rochester Regional Health as the sole member of Genesee Region Home Care Association, which is currently the sole member of Genesee Region Home Care of Ontario County, Inc.

Genesee Region Home Care of Ontario County, Inc. currently has two classes of members. The sole Class A member is Genesee Region Home Care Association. The Class B members are individuals who are the Class B Directors of Genesee Region Home Care Association. Upon approval of this project, Rochester Regional Health will be the sole member of Genesee Region Home Care Association; there will no longer be any Class A or Class B members.

Currently, Genesee Region Home Care of Ontario County, Inc. is the operator of two existing LHCSAs with a total of three locations:

License #	Agency Name (d/b/a)	Address	Counties Served
0811L001	Home Care Plus – Newark	800 West Miller Street, Unit 6 Newark, NY 14513	Livingston, Monroe, Ontario, Cayuga, Seneca, Wayne, Chemung, Schuyler, Steuben, Yates
0811L002	Home Care Plus - Rochester	3111 Winton Road South Rochester, NY 14623	Genesee, Livingston, Monroe, Ontario, Seneca, Wayne, Chemung, Ontario, Schuyler, Seneca, Steuben, Wayne, Yates
2213L001	Home Care Plus	115 West 30 th Street, Suite 700 New York, NY 10001	Cayuga, Schuyler, Cortland, Herkimer, Madison, Oneida, Onondaga, Tompkins

There will be no changes to the counties being served by these providers. The applicant is requesting to remove Medical Social Work from each license.

As a result of this consolidation, Genesee Region Home Care of Ontario County, Inc. d/b/a Home Care Plus (2213L001) will surrender their license and become a third branch location under the original license number.

Rochester Regional Health currently operates Unity at Home (LHCSA), which serves Monroe county, upon approval of this project, the operating certificate for Unity at Home will be surrendered, as Monroe county is also served by the Home Care Plus licenses.

Rochester Regional Health operates the following facilities within New York State, which were reviewed as part of this project:

- Rochester General Hospital
- The Unity Hospital of Rochester
- The Unity Hospital of Rochester – St. Mary’s Campus
- United Memorial Medical Center North Street Campus
- United Memorial Medical Center South Street Campus

- Clifton Springs Hospital and Clinic
- Newark-Wayne Community Hospital
- Rochester Regional Health System Home Care (CHHA)
- Rochester Surgery Center (D&TC)
- Linden Surgery Center (D&TC)
- Clifton Springs Hospital and Clinic Extended Care (NH)
- Unity Living Center (NH)
- Park Ridge Nursing Home
- Edna Tina Wilson Living Center (NH)
- Hill Haven Nursing Home (NH)
- Wayne Health Care (NH)
- MS Achievement Center at the Park (Adult Day Care)
- Friends for the Day (Adult Day Care)
- Unity at Home (LHCSA)
- Independent Living for Seniors (LHCSA)
- The Hamlet at Park Ridge (ALP)

Rochester Regional Health also operates a number of facilities which are regulated by the Office of Mental Health and the Office of Alcoholism and Substance Abuse Services. For a complete list of these facilities, please see Programmatic Attachment A – Office of Mental Health and Office of Alcoholism and Substance Abuse Services Providers.

Character and Competence Review

The Board of Directors of Rochester Regional Health is as follows:

<p>Efrain Rivera – Board Member Senior VP, CFO, Treasurer, Paychex <u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Edna Tina Wilson Living Center (NH) • Independent Living for Seniors (LHCSA) 	<p>Thomas E. Houseknecht – Board Member President, MTE Turf Equipment Solutions, Inc. President, Crickler Vending Company, Inc. <u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • The Unity Hospital of Rochester • Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Edna Tina Wilson Living Center (NH) • Independent Living for Seniors (LHCSA)
<p>David Munson, Jr. – Board Member President, Rochester Institute of Technology <u>Affiliation</u> Rochester General Hospital</p>	<p>David J. Riedman – Board Member, Treasurer President, Riedman Development Corporation <u>Affiliation</u> Rochester Regional Health</p>

<p>Robert S. Sands, Esq. – Board Member, Secretary CEO, Constellation Brands, Inc.</p> <p><u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Edna Tina Wilson Living Center (NH) • Independent Living for Seniors (LHCSA) 	<p>Michael R. Nuccitelli – Board Member, Chair CEO, Omega Tool Measuring Machines</p> <p><u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • The Unity Hospital of Rochester • Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Edna Tina Wilson Living Center (NH) • Independent Living for Seniors (LHCSA)
<p>Justin T. Smith – Board Member President, COO – Brite Computers</p> <p><u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Edna Tina Wilson Living Center (NH) • Independent Living for Seniors (LHCSA) 	<p>Anna E. Lynch, Esq. – Board Member Managing Partner, Attorney, Underberg & Kessler LLP</p> <p><u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Edna Tina Wilson Living Center (NH) • Independent Living for Seniors (LHCSA)
<p>Rachel A. Adonis – Board Member VP, Client Relationship Manager – Champlin & Associates</p> <p><u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Rochester General Long Term Care, Inc. (Nursing Home) • Independent Living for Seniors (LHCSA) 	<p>Eric J. Bieber – CEO CEO, Rochester Regional Health</p> <p><u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Rochester General Long Term Care, Inc. (Nursing Home) • Independent Living for Seniors (LHCSA) • Clifton Springs Hospital & Clinic • Newark Wayne Community Hospital

<p>Leonard P. Olivieri, Esq. – Board Member, Vice-Chair CFO, EVP, Peko Precision Products, Inc. <u>Affiliations</u></p> <ul style="list-style-type: none"> • United Memorial Medical Center (Hospital) • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Edna Tina Wilson Living Center <p>Independent Living for Seniors (LHCSA)</p>	<p>Hugh R. Thomas, Esq. (NY, MD) – Assistant Secretary General Counsel, CAO, EVP, Rochester Regional Health <u>Affiliations</u></p> <ul style="list-style-type: none"> • Drugscan, Inc. (Toxicology Laboratory, NY, PA) • Unity Ambulatory Surgery Center, Inc. • Rochester General Health System Dialysis, Inc. • Rochester Surgery Center • Unity Linden Oaks Surgery Center, LLC
<p>Nancy S. Ferris – Board Member Retired <u>Affiliations</u></p> <ul style="list-style-type: none"> • Rochester Regional Health (Hospital) • The Unity Hospital of Rochester • The Rochester General Hospital • Behavioral Health Network, Inc. • North Park Nursing Home, Inc. • Park Ridge Nursing Home, Inc. • Rochester General Long Term Care, Inc. (Nursing Home) • Independent Living for Seniors (LHCSA) • Unity Health System (Hospital) 	

David J. Riedman disclosed that he is routinely subject to civil actions during the ordinary course of business in his position as President of Riedman Development Corporation.

Facility Compliance/Enforcement

The Bureau of Quality and Surveillance reviewed the compliance history of the affiliated Nursing Homes and Skilled Nursing Facilities and reports as follows:

- Edna Tina Wilson Living Center was fined \$10,000.00 pursuant to a stipulation and order dated July 13, 2015 for inspection findings on October 15, 2013 for violations of Article 28 of the Public Health Law and 10 NYCRR Part 415. Edna Tina Wilson Living center was also fined a Civil Monetary Penalty in the amount of \$4,455.00 related to findings during this complaint survey.
- Hill Haven Nursing Home was fined \$10,000.00 pursuant to a stipulation and order dated January 10, 2016 for inspection findings on February 11, 2014 for violations of Article 28 of the Public Health Law and 10 NYCRR Part 415. Hill Haven Nursing Home was also fined a Civil Monetary Penalty in the amount of \$77,935.00 related to findings during this complaint survey.

The information provided by the Division of Home and Community Based Services, the Division of Hospitals and Diagnostic & Treatment Centers, the Division of Adult Care Facilities and Assisted Living Surveillance, the Clinical Laboratory Evaluation Program, the Office of Mental Health, and the Office of Alcohol and Substance Abuse 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 Pennsylvania Department of Health indicated no issue with the license of the clinical laboratory associated with this application.

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

CHHA Quality of Patient Care Star Ratings as of February 20, 2019	
New York Average: 3.5 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
Rochester Regional Health System Home Care	2.5 out of 5 stars

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Attachments

Programmatic Attachment A Office of Mental Health and Office of Alcoholism and Substance Abuse Services Providers.

OPCHSM Recommendation

Approval

Programmatic Attachment A: Office of Mental Health and Office of Alcohol and Substance Abuse Services Providers
 Project #182163: Genesee Region Home Care of Ontario County, Inc. d/b/a Home Care Plus
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LIST OF OMH AND OASAS CERTIFIED PROGRAMS

OMH/OASAS	DEPARTMENT_NAME	Program Name	Type
OASAS	BH CSH CLIFTON ARP	Clifton CD (W1)	Outpatient
OASAS	BH UHS CD @ EBHC	EBHC CD	Outpatient
OASAS	BH UHS CD @ GREECE	Greece CD	Outpatient
OASAS	BH UHS CD BRIGHTON	Brighton CD	Outpatient
OASAS	BH UHS CD DETOX	Detox	Ambulatory Detox
OASAS	BHN RGH ADDICTION SRVS	RMHC CD	Outpatient
OASAS	CSH IP ADDICT REHAB W3	Clifton CD W3	Inpatient
OASAS	UHS PRCD ADOL RES	Men's Residence	Community Residence
OASAS	UHS PRCD INP	Greece IP CD	Inpatient
OASAS	Barbara Wolk Schwartz	Women's Residence	Community Residence
OASAS	Hope Haven Inpatient Addiction Recovery Program	UMMC CD	Inpatient
OMH	BH CSH ADULT MH CDGA	Canandaigua MH	Outpatient
OMH	BH CSH ADULT MH CLFTN	Clifton MH (W1)	Outpatient
OMH	BH CSH CPEP OUTREACH	CPEP Outreach	CPEP
OMH	BH PC CLINTON FHC	Clinton FHC MH	DSRIP
OMH	BH PC GHS IM AND RFM	GHS IM MH	DSRIP
OMH	BH PC GHS REFUGEE	GHS Refugee MH	DSRIP
OMH	BH PC TWIG OPD AT RGMA	OPD TWIG MH	DSRIP
OMH	BH UHS ACIC	BHACC	Crisis
OMH	BH UHS ACT	ACT	ACT
OMH	BH UHS ADULT MH EBHC	EBHC MH	Outpatient
OMH	BH UHS ADULT MH GRCE	Pinewild MH	Outpatient
OMH	BH UHS HBCI	HBCI	HBCI
OMH	BH UHS PC HEALTHREACH	Health Reach MH	DSRIP
OMH	BH UHS PC ORCHARD ST	Orchard St MH	DSRIP
OMH	BH UHS PC ST BERNARDS	St Bernards MH	DSRIP
OMH	BH UHS PC ST MARYS FM	St Marys FM MH	DSRIP
OMH	BH UHS PROS	UHS PROS	PROS
OMH	BHN CHARLOTTE HS	Charlotte HS	SBHC
OMH	BHN DR F THOMAS LC	Freddie Thomas HS	SBHC
OMH	BHN DR MLK JR SCHOOL 9	MLK Jr HS	SBHC
OMH	BHN EDISON CAMPUS	Edison HS	SBHC
OMH	BHN GMHC ADULT CLINIC	GMHC MH	Outpatient
OMH	BHN GMHC CHILD & YOUTH	GMHC C&Y MH	Outpatient
OMH	BHN JOHN JAMES AUDUBON	JJ Audubon HS	SBHC
OMH	BHN RMHC ADULT CLINIC	RMHC MH	Outpatient
OMH	CSH IP MENTAL HLTH W2	Clifton MH W2	Inpatient
OMH	GMH GMHC PROS	RGH PROS	PROS
OMH	NWH 1 SOUTH	Newark MH 1S	Inpatient
OMH	RGH G1 PSYCH	RGH MH G1	Inpatient
OMH	UHS ST MARY IP PSYCH	St Marys MH 4300	Inpatient

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 11th day of April 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:

182163 E

Genesee Regional Home Care of Ontario County, Inc.
d/b/a Home Care Plus

APPROVAL CONTINGENT UPON:

N/A

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*.



Project # 181420-E
Rogosin Auburndale, LLC d/b/a Rogosin Kidney Center-Auburndale

Program: Diagnostic and Treatment Center County: Queens
Purpose: Establishment Acknowledged: June 20, 2018

Executive Summary

Description

Rogosin Auburndale, LLC (RA), a New York limited liability company, requests approval to be established as the new operator of The Rogosin Kidney Center-Auburndale, a 29-station, Article 28 chronic renal dialysis diagnostic and treatment center (D&TC) located in leased space in a stand-alone building at 39-20 Utopia Parkway, Flushing (Queens County). The D&TC is currently operated as an extension clinic of The Rogosin Kidney Center, which is owned by The Rogosin Institute, Inc. (RI), a voluntary not-for profit corporation. The Auburndale site was contingently approved as an extension clinic of RI on February 12, 2009 (CON 082059), and became operational on June 14, 2011. The clinic provides in-center renal dialysis and home-based renal dialysis training and support services. There will be no change in the number of stations or disruption of services.

On March 25, 2009, RI entered into an Asset Purchase Agreement (APA) with RA for the sale and acquisition of the Auburndale extension clinic site for a purchase price equal to the value of the net assets as of the closing date, plus the seller's development costs. As of July 1, 2018, the purchase price is estimated at \$3,540,000 based on the net assets' value of \$2,634,000 and development costs of \$906,000.

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

Table with 1 column: Current Operator. The Rogosin Institute, Inc. Not-For-Profit Corporation (100%)

Table with 1 column: Proposed Operator. Rogosin Auburndale, LLC. Members: The Rogosin Institute, Inc. (80%), DAFA Renal Services, LLC: Surya Viriya, M.D. (100%) (10%), Queens Nephron Medicine Docs, PPLC: Dayanand Huded, M.D. (50%), Lujbisa Micic, M.D. (50%) (6%), Dayanand Huded, M.D. (4%)

Gail Frumkin, M.D. will continue to serve as Medical Director. Flushing Hospital and Medical Center, located 1.8 miles from the Auburndale Dialysis Center, indicated willingness to continue to serve as backup to the Center. There will be no change in staffing or in the operation of the facility.

In 2007-2008, RI learned that the dialysis facility at Flushing Hospital might close. As several near by dialysis facilities were at capacity, RI, local hospitals, and several local physicians began to explore the programmatic and economic feasibility of opening a freestanding dialysis facility to serve the needs of the community. By May 2008, the adjacent neighborhood of Auburndale was identified as a viable location.

RI and the physician investors decided to proceed in stages: (1) RI would obtain approval to operate the new center as an extension clinic of Rogosin Kidney Center (CON 082059); and (2) after the extension clinic was operating, a new joint venture entity formed by RI and other investors would apply for regulatory approval to become the facility's new operator (the current application).

RI provides patient-centered health care services for individuals with chronic diseases, including kidney disease, diabetes, hypertension and cholesterol or triglyceride disorders. They are also engaged in research for these service areas. RI will use the sale proceeds to support the entity's ongoing programmatic needs and related research.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no change in the number of stations 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

The acquisition price is estimated at \$3,540,000 (projected value of net assets plus development costs as of 7/1/18), with funding provided by RA and RI via \$760,142 in equity and a \$2,779,858 loan for a five-year term at 3.25% interest. The Rogosin Institute, Inc. (80% Member) has provided a letter of interest for up to \$3,000,000 at the stated terms. There are no project costs associated with this application. The proposed budget is as follows:

	<u>Year One</u>
Revenues	\$9,458,903
Expenses	<u>8,048,459</u>
Net Income	\$1,410,444

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 loan commitment for the purchase, acceptable to the Department. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
3. Submission of an executed Administrative Service Agreement, acceptable to the Department. [BFA]
4. Submission of an executed Assignment and Assumption of Leases, acceptable to the Department. [BFA]
5. Submission of a photocopy of an Administrative Services Agreement, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of an Attestation for Service Agreements, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of a Certificate of Amendment of the Articles of Organization of Rogosin Auburndale, LLC, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of an amendment to the Amended and Restated Operating Agreement of Rogosin Auburndale, LLC, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of an amendment to the Articles of Organization of DAFA Renal Service, LLC, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of an Operating Agreement of DAFA Renal Service, LLC, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of an amendment to the Articles of Organization of Queens Nephron Medicine DOCS PLLC, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of an Operating Agreement of Queens Nephron Medicine DOCS PLLC, which is acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

April 11, 2019

Need and Program Analysis

Program Description

There are no plans to change the current provision of dialysis services. It is anticipated that the current staff of the facility, including the medical director and the facility administrator, will remain after the transfer of the license and ownership of the center. The continuity of staff and management will also ensure ongoing and uninterrupted high standards of compliance and quality.

Proposed Operator	Rogosin Auburndale, LLC
Doing Business As	Rogosin Kidney Center - Auburndale
Site Address	39-20 Utopia Boulevard Flushing, NY 11438 (Queens County)
Approved Services	Chronic Renal Dialysis (29 stations) Home Peritoneal Dialysis Training & Support
Shifts/Hours/Schedule	Monday through Saturday, 5 am – 11 pm Additional hours as indicated by demand.
Staffing (1st Year / 3rd Year)	Current year staffing is 42.3 FTEs There is no anticipated change for years 1 and 3
Medical Director(s)	Gail Frumkin, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Flushing Hospital and Medical Center 1.8 miles / 7 minutes

Character and Competence

The proposed membership of Rogosin Auburndale, LLC is as follows:

Name	Interest
The Rogosin Institute, Inc.	80%
DAFA Renal Services, LLC Surya Viriya, M.D. (100%)	10%
Queens Nephron Medicine Docs, PLLC Dayanand Huded, M.D. (50%) Lujbisa Micic, M.D. (50%)	6%
Dayanand Huded, M.D.	4%
Total	100%

Rogosin Institute, Inc. will be the managing member of Rogosin Auburndale. The remaining 20% of Rogosin Auburndale is owned by nephrologists who have been working at the facility since its inception and will continue to participate in the governance of the facility.

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

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.

In December of 2011, the Rogosin Institute received a subpoena duces tecum from the U.S. Department of Health and Human Services Office of Inspector General in connection with a False Claims Act Investigation by the U.S. Attorney's Office (USAO) for the Eastern District of New York and the New York Attorney General's Office (NYAG) involving certain Medicaid prescription reimbursement issues.

On March 12, 2018, a settlement between The Rogosin Institute, Inc. (Rogosin), the United States, State of New York, and Whistleblower against Rogosin and Nephrology Foundation of Brooklyn (NFB) was filed. Rogosin is the successor in interest of NFB.

Accusations

- From January 1, 2000 through December 31, 2010, Rogosin and NFB engaged in conduct to reduce their expenses by improperly causing pharmacies to submit false claims for payment of certain drugs (Drugs) covered by Medicaid.
- The Drugs were administered during the course of dialysis treatments and were already paid for by Medicaid as part of composite dialysis payments received by dialysis clinics and management companies for dialysis treatments.

Settlement

- Two Million Five Hundred Thousand Dollars (\$2,500,000.00)
 - U.S. portion: One Million Thirty-Three Thousand Five Hundred Dollars (\$1,033,500.00)
 - NY portion: One Million Four Hundred Sixty-Six Thousand Five Hundred Dollars (\$1,466,500.00)
- Rogosin is also responsible for payment of Seventy-Five Thousand Dollars (\$75,000.00) to Whistleblower for reasonable expenses, attorneys' fees and costs.
- Agreement constitutes neither an admission of liability by Rogosin or NFB nor a concession by the U.S. and New York State that the claims are not well-founded.

Star Ratings - Dialysis Facility Compare (DFC)

The Centers for Medicare and Medicaid Services (CMS) and the University of Michigan Kidney Epidemiology and Cost Center have developed a methodology for rating each dialysis facility which may be found on the Dialysis Facility Compare website as a "Star Rating." The method produces a final score that is based on quality measures currently reported on the DFC website and ranges from 1 to 5 stars. A facility with a 5-star rating has quality of care that is considered 'much above average' compared to other dialysis facilities. A 1- or 2- star rating does not mean that a facility provides poor care. It only indicates that measured outcomes were below average compared to other facilities. Star ratings on DFC are updated annually to align with the annual updates of the standardized measures.

The Rogosin Institute operates the following seven dialysis centers in New York State:

Facility Name	Address	Star Rating
Rogosin Institute	505 East 70th Street, 2nd Fl New York, NY 10021	☆☆☆☆●●
Rogosin Institute - Nephrology Foundation of Brooklyn East	2372 Linden Boulevard Brooklyn, NY 11207	☆☆☆☆●●
Rogosin Institute - Nephrology Foundation of Brooklyn South	1845 McDonald Avenue Brooklyn, NY 11223	☆☆☆☆●
Rogosin Institute – Queens Dialysis	66-20 Queens Boulevard Woodside, NY 11377	☆☆☆☆●
The Rogosin Institute – Auburndale Dialysis	39-20 Utopia Parkway Flushing, NY 11358	☆☆☆☆☆☆
Rogosin West Side	619 West 54th Street New York, NY 10019	☆☆☆☆☆☆
Rogosin Kidney Center- Brooklyn	506 6th Street, 7th Fl Buckley Pavilion Brooklyn, NY 11215	☆☆☆☆●●

Note: Information retrieved on 03/15/2019 from <https://www.medicare.gov/dialysisfacilitycompare/#>

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

Asset Purchase Agreement (APA)

The applicant has submitted an executed APA to acquire the dialysis extension clinic, to be effectuated upon Public Health and Health Planning Council approval. The terms are summarized below:

Date:	March 25, 2009
Seller:	The Rogosin Institute, Inc.
Buyer:	Rogosin Auburndale, LLC
Assets Acquired:	Seller's right, title and interest in the following assets: equipment, furniture, supplies, goodwill, copy of records and other documents to enable buyer to assume and continue providing services. The right to communicate the ownership change. The rights to real property lease, lease equipment and contracts related solely to the Facility. Cash, deposits, accounts receivable, insurance policies, prepaid premiums and expenses, all other intangible assets used in the business, and transferable license and permits.
Excluded Assets:	Facility's books, records, financial and accounting records, any claims or causes of action prior to closing, leases & contracts not assigned, and Federal ID number.
Assumed Liabilities:	All debts, obligations and liabilities associated with the purchased assets attributed to the operation of the business prior to closing.
Purchase Price:	Estimated at \$3,540,000 (\$2,634,000 projected value of net assets plus \$906,000 development costs as of 7/1/18). The "Purchase Price" equal to the "Value of Net Assets" as of the Closing Date and Sellers "Development Costs"
Payment:	\$3,540,000 at closing

The purchase price is proposed to be satisfied as follows:

Equity, Rogosin Auburndale, LLC	\$760,142
Loan from The Rogosin Institute, Inc. (5-year term, 3.25% interest	<u>2,779,858</u>
Purchase Price	\$3,540,000

BFA Attachment E is RA's 2017 financial statements and their internals as of October 31, 2018, which indicate sufficient resources to meet equity requirements. BFA Attachment D is RI's 2016-2017 certified financial statement, which indicates sufficient resources to fund the loan. BFA Attachment A is the proposed physician members' net worth. It is noted that the members previously invested in Rogosin Auburndale, LLC.

In keeping with the business plan described above, RI initially owned and operated the dialysis facility as an extension clinic site. RA was formed in 2009 to engage in and conduct the business of providing administrative services and the use of certain real property and equipment to the clinic. When the Rogosin Kidney Center-Auburndale dialysis facility opened in 2011, RA amended and restated its operating agreement and added an additional corporate purpose: "Upon receiving establishment approval from the New York State Department of Health, to own and operate a diagnostic treatment center caring for and treating patients with end stage renal disease". The current ownership of RA is the same as the proposed ownership of the clinic.

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding, any agreement, arrangement or understanding between the applicant and transferor to the contrary, to be liable and for any Medicaid overpayments, made to the facility and/or surcharges, assessments, or fees due from the Seller pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the Seller of its

ability and responsibility. As of October 24, 2018, the facility had no outstanding Medicaid audit liabilities or assessments.

Administrative Service Agreement:

The applicant has submitted a draft Administrative Service Agreement with M Group Consulting, LLC, which is summarized as follows:

Provider:	M Group Consulting, LLC
Licensed Operator:	Rogosin Auburndale, LLC
Services:	Provide Administration Services through non-clinical M Group Personnel and M Group’s agents in accordance with all applicable regulations and the operators policies, direction and approval to include the following: recommend cost containment policies and procedures regarding staffing, supplies and capital and other expenditures; assist in identifying revenue cycle improvement, assist implementation and operation of financial accounting and management reporting systems including budgeting, accounts receivable and billing, vendor credentialing, property access, security, identification, infection control safety, patient privacy, and certification requirements.
Term:	3 years
Fee:	\$360,000 per year.

M Group Consulting, LLC is owned by Kenneth R. Maier, the former Vice President of Finance for The Rogosin Institute, Inc., and Mary Mescher, Anthony Justic, Peter Markey, Bernadette Schopfer and Navy Djonovic.

The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

Lease Rental Agreements

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

Date:	June 17, 2008
Premises:	Premises located at 39-20 Utopia Parkway, Flushing, NY (dialysis site)
Landlord:	Barco Realty Bayside, LLC
Lessee:	The Rogosin Institute, Inc.
Term:	10 Years, Option to renew for additional three (3) 5-year terms.
Rental:	\$240,000 per year with a 3% increase in each succeeding year.
Provisions:	Triple Net

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

Date:	June 17, 2008
Premises:	Premises located 188-05 and 188-17 Station Road, Flushing, NY (parking lots)
Landlord:	Barco Realty Bayside, LLC
Lessee:	The Rogosin Institute, Inc.
Term:	10 Years, Option to renew for additional three (3) 5-year terms.
Rental:	\$60,000 per year with a 3% increase in each succeeding year.
Provisions:	Triple Net

Landlord Acknowledgement of Anticipated Assignment and Assumption of Leases

The applicant has submitted a signed landlord acknowledgement of anticipated Assignment and Assumption of Leases associated with this project, as shown below:

Date:	December 7, 2018
Assignor:	The Rogosin Institute, Inc.
Assignee:	Rogosin Auburndale, LLC
Lessee Assigned:	Leases associated with dialysis premises at 39-20 Utopia Parkway, Flushing, NY and the parking lots at 188-05 and 188-17 Station Road, Flushing, NY
Terms, Payments and Provisions:	No change. The assignments shall be accomplished pursuant to Section 30 of the Auburndale Facility Lease and Section 30 of the Auburndale Parking Lot Lease. Per the applicant, the consent of the Landlord is not required under the terms of the Lease (because Rogosin Auburndale, LLC is control by The Rogosin Institute, Inc.)

Operating Budget

The applicant has provided the current year (2017) results and the first-year operating budget subsequent to transfer in ownership, in 2018 dollars, summarized below:

Revenue	Current Year		Year One	
	Per Visit	Total	Per Visit	Total
Medicaid-FFS	\$266.53	\$217,752	\$266.53	\$217,752
Medicaid-MC	\$355.91	595,444	\$418.57	820,824
Medicare-FFS	\$267.54	4,347,301	\$267.54	4,462,861
Medicare-MC	\$405.00	1,410,220	\$401.25	1,512,722
Commercial-FFS	\$793.41	2,304,849	\$758.37	2,421,489
All Other		<u>17,655</u>		<u>23,255</u>
Total Revenues		\$8,893,221		\$9,458,903
<u>Expenses</u>				
Operating	\$234.19	\$5,899,817	\$273.39	\$7,245,018
Capital	<u>\$28.08</u>	<u>707,299</u>	<u>\$30.32</u>	<u>803,441</u>
Total Expenses	\$262.27	\$6,607,116	\$303.71	\$8,048,459
Net Income (Loss)		<u>\$2,286,105</u>		<u>\$1,410,444</u>
Visits		25,192		26,501

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

- The current year reflects the facility's 2017 revenue and expenses.
- Revenue from Medicare, Medicaid and commercial insurers is based on current payment rates with a slight change due to either an increase in treated patients or a change in reimbursement rates. Medicare is based on a bundled payment and geographic location, which is not changing. The APG Medicaid payment is also set based on service location. The applicant is expecting to accept the current provider's Medicare and Medicaid numbers. The commercial insurers are expected to leave all contracts in place, as The Rogosin Institute, Inc. was and is the major owner in the seller and the applicant.
- Expense and staffing assumptions are based on the operator's current model. The cost increase between the current year and first-year is primarily associated with the repayment of the principal and interest on the purchase and working capital loans.
- The breakeven utilization is expected at 85.1% or 22,549 visits in Year-One.

- Utilization by payor source for the current year and first-year subsequent the ownership change, are summarized below:

Payor	Current Year		Year One	
	Visits	%	Visits	%
Medicaid-FFS	817	3.25%	817	3.08%
Medicaid-MC	1,673	6.64%	1,961	7.40%
Medicare-FFS	16,249	64.50%	16,681	62.94%
Medicare-MC	3,482	13.82%	3,770	14.23%
Commercial-FFS	2,905	11.53%	3,193	12.05%
All Other	66	.26%	79	.30%
Total	25,192	100%	26,501	100%

The applicant states The Rogosin Institute has never turned away a patient due to lack of insurance and Rogosin Auburndale, LLC will continue this practice.

Capability and Feasibility

The acquisition price is estimated at \$3,540,000 (projected value of net assets plus development costs as of 7/1/18), with funding provided via \$760,142 in equity and a \$2,779,858 loan for a five-year term with interest at 3.25%. The Rogosin Institute, Inc. (80% member) has provide a letter of interest for up to \$3,000,000 at the stated terms. There are no project costs associated with this application.

The working capital requirement is estimated at \$1,341,410 based on two months of Year One expenses. Working capital will be funded via \$670,705 in equity from Rogosin Auburndale, LLC and a \$670,705 loan for a one-year term with a 2.25% interest rate. The Rogosin Institute, Inc. has provided a letter of interest at the stated terms. Review of BFA Attachment E, RA's 2017 financial statements and internals as of October 31, 2018, shows average positive working capital of \$1,431,017, positive net income in both periods, and net assets of \$1,596,127 as of October 31, 2018. BFA Attachment F presents Rogosin Auburndale, LLC Pro Forma Balance Sheet, which shows operations will start with \$1,462,000 in equity.

The applicant projects the organization will generate a net profit of \$1,410,444 and \$2,715,022 in the first and third years, respectively. The budget appears reasonable.

BFA Attachment D, The Rogosin Institute, Inc. and Subsidiaries' 2016 – 2017 certified financial statements, shows positive working capital and positive net asset positions. For 2016 – 2017, the average deficiency of revenue and non-operating gains over expenses was \$3,779,000. In 2018, RI is planning on lower research costs and staff attrition where possible to reduce costs. In 2017, the dialysis division of RI had a patient growth rate of 1%, which has increased to 4% through May 2018. The increased patient volume has contributed to higher revenue and earnings and is expected to improve operations.

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

Attachments

BFA Attachment A	Net worth Statements for Physicians Members of Rogosin Auburndale, LLC
BFA Attachment B	Pre-Closing and Post-Closing Organization for Chart for The Rogosin Institute
BFA Attachment C	Post-Closing Organizational Chart for Rogosin Auburndale LLC
BFA Attachment D	The Rogosin Institute, Inc and Subsidiaries 2016 – 2017 Certified Financial Statements
BFA Attachment E	Rogosin Auburndale, LLC 2017 and October 31, 2018 Financial Statements
BFA Attachment F	Pro-Forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 11th day of April 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 Rogosin Auburndale, LLC as the new operator of the 29-station chronic renal dialysis center located at 39-20 Utopia Boulevard, Flushing, currently operated by The Rogosin Institute, Inc, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

181420 E

FACILITY/APPLICANT:

Rogosin Auburndale, LLC d/b/a Rogosin
Kidney Center – Auburndale

APPROVAL CONTINGENT UPON:

1. Submission of an executed loan commitment for the purchase, acceptable to the Department. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
3. Submission of an executed Administrative Service Agreement, acceptable to the Department. [BFA]
4. Submission of an executed Assignment and Assumption of Leases, acceptable to the Department. [BFA]
5. Submission of a photocopy of an Administrative Services Agreement, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of an Attestation for Service Agreements, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of a Certificate of Amendment of the Articles of Organization of Rogosin Auburndale, LLC, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of an amendment to the Amended and Restated Operating Agreement of Rogosin Auburndale, LLC, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of an amendment to the Articles of Organization of DAFA Renal Service, LLC, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of an Operating Agreement of DAFA Renal Service, LLC, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of an amendment to the Articles of Organization of Queens Nephron Medicine DOCS PLLC, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of an Operating Agreement of Queens Nephron Medicine DOCS PLLC, which is acceptable to the Department. ([CSL]

APPROVAL CONDITIONAL UPON:

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

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



Project # 172415-E
The Pearl Nursing Center of Rochester, LLC

Program: Residential Health Care Facility
Purpose: Establishment

County: Monroe
Acknowledged: January 8, 2018

Executive Summary

Description

The Pearl Nursing Center of Rochester, LLC, a New York limited liability company, requests approval to be established as the new operator of New Roc Nursing and Rehabilitation Center, a 120-bed, proprietary, Article 28 residential health care facility (RHCF) located at 1335 Portland Avenue, Rochester (Monroe County). Blossom North, LLC is the current operator of the RHCF. Upon approval of this CON application, the applicant will operate the facility under the name The Pearl Nursing Center of Rochester. There will be no change in beds or services provided.

On September 13, 2017, Blossom North, LLC entered into an Asset Purchase Agreement (APA) with The Pearl Nursing Center of Rochester, LLC for the sale and acquisition of the operating interest of the RHCF 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 \$100,000 and the assumption of certain liabilities. Concurrent with the APA, New Roc Realty, LLC, the current real property owner, entered into a contract for the Purchase and Sale of Real Property (PSRP) with 1335 Portland Avenue BH Realty, LLC for the sale and acquisition of the of the RHCF's real estate. The purchase price for the real estate is the assumption of the existing HUD note and HUD mortgage associated with the facility, which is currently valued at approximately \$10,061,635. HUD approval is required for the applicant to acquire the basic assets to become the new operator of the facility and for the proposed new realty entity to purchase the premises. The mortgage lender, Housing & Healthcare Finance, LLC (HHC), advised that a Transfer of Physical Assets Application to transfer the mortgage to the proposed realty entity was submitted to HUD on October 20, 2017. The application fee was paid,

and HUD review is underway. HHC indicated that HUD will expedite completion of its review once final determination and approval of the membership is made through the CON process for this project. Upon PHHPC approval, 1335 Portland Avenue BH Realty, LLC will lease the premises to The Pearl Nursing Center of Rochester, LLC for a term of 30 years with a ten-year renewal option. There is a relationship between 1335 Portland Avenue BH Realty, LLC and The Pearl Nursing Center of Rochester, LLC in that the entities have common ownership.

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

Table with 2 columns: Members, %
Current Operator: Blossom North, LLC
Members: Stephen O'Neill (26.73%), Gerald J. Wood (26.73%), William Madden (26.74%), Yisroel Segal (9.90%), Aryeh Platschek (9.90%)

Table with 2 columns: Members, %
Proposed Operator: The Pearl Nursing Center of Rochester, LLC
Members: Scott Wheeler* (15.00%), Gabriel Platschek (21.25%), Sima Shapiro (21.25%), Jacob Abramczyk (21.25%), Naftoli Abramczyk (21.25%)

* Initial managing member

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this application. The current resident population includes a significant number of difficult-to-place residents for whom continuity of care is important.

Program Summary

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

Financial Summary

There are no project costs associated with this proposal. The purchase price for the assets is \$100,000 and the assumption by The Pearl Nursing Center of Rochester, LLC at the time of closing of certain liabilities relating to a pharmaceutical settlement amounting to \$383,657.82 as of February 1, 2019. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$9,599,724	\$9,778,297
Expenses	<u>8,836,132</u>	<u>8,912,461</u>
Gain	\$763,592	\$865,836

Recommendations

Health Systems Agency

The Finger Lakes HSA recommends approval of this application.

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 the executed personal loan agreements to Sima Shapiro, Jacob Abramczyk and Naftoli Abramczyk from Solomon Abramczyk, acceptable to the Department of Health. [BFA]
4. Submission of the executed personal loan agreement to Gabriel Platschek from Aryeh (Richard) Platschek, acceptable to the Department of Health. [BFA]
5. Submission of the final HUD approval of the Transfer of Project Assets Application, acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of a Certificate of Amendment of the Articles of Organization of The Pearl Nursing Center of Rochester, LLC, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of a property lease, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of the Amended and Restated Operating Agreement of The Pearl Nursing Center of Rochester, LLC, which is acceptable to the Department. [CSL]

Approval conditional upon:

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

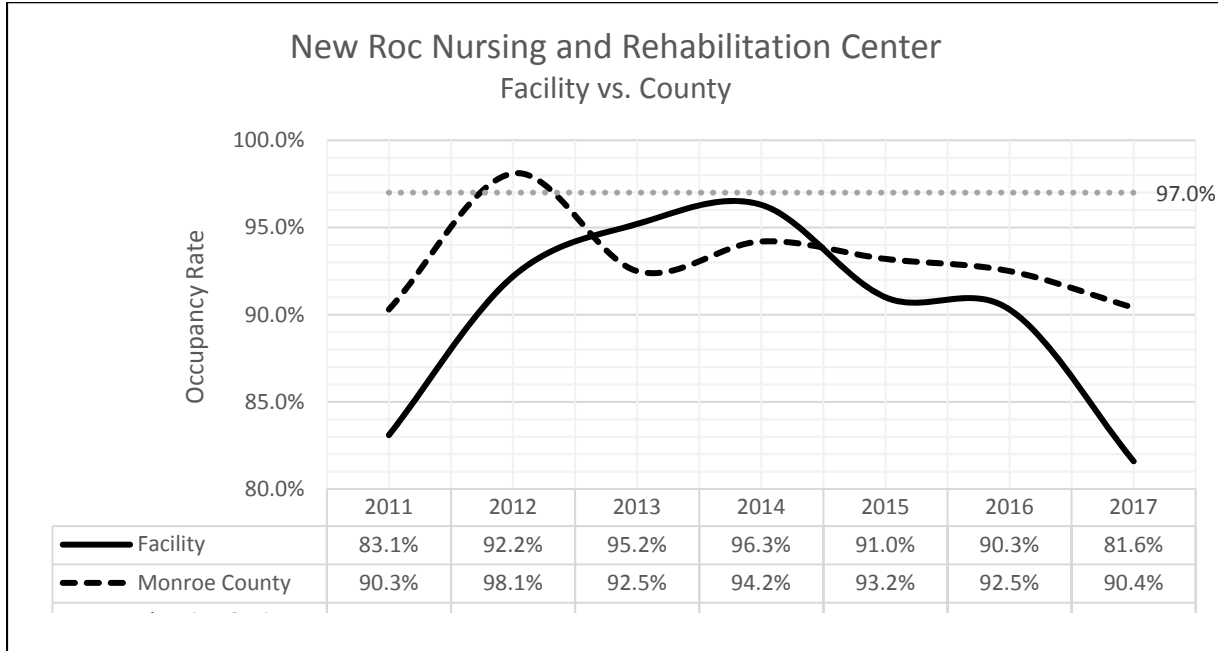
Council Action Date

April 11, 2019

Need Analysis

Analysis

The overall occupancy for Monroe County was 90.4% for 2017 and 81.6% for New Roc Nursing and Rehabilitation Center. The most current year of certified data is 2017.



The applicant states that the decline in occupancy for 2017 and 2018 is because the current operator did not negotiate strong contracts with many of the facility’s Managed Long-Term Care (MLTC) plans. As a result, the pool of potential residents for the facility has been shrinking because the facility is considered out-of-network by many of the MLTC plans.

The applicant intends to improve occupancy in the following ways:

- Alter the facility’s admissions practices to ensure that the approval/acceptance process runs efficiently and that the existing MLTC contracts are successfully renegotiated to ensure a larger pool of potential residents;
- Offer the following additional services: post-acute rehabilitation services, medical post-acute services, advanced wound care and related services, IV therapy (short and long term) and telehealth programs and services;
- Hire a marketing consultant to focus on community outreach as follows: visit all local acute care hospitals daily, present to community senior centers, participate in eldercare events and foster community participation in facility activities (i.e., multigenerational programs, multiple sclerosis community meetings, dementia support groups, etc.); and
- Complete building renovations and create a concierge program to improve overall resident experience.

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.

New Roc 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 RHCf Admissions that are Medicaid	2015	2016	2017
Monroe County 75% Threshold	10.7%	12.3%	11.3%
New Roc Nursing and Rehabilitation Center	64.6%	98.8%	59.1%

Resident Characteristics

Although the facility is located in Monroe County, with a 2017 occupancy rate of 90.4 %, the facility has a high population of residents with challenging behavioral health issues, psychiatric diagnoses and who smoke, and the nursing home is considered a safety net provider for difficult to place residents in the city of Rochester. Additionally, the facility is located in an area of the city accessible by public transportation for resident families and admits a high volume of residents on Medicaid.

Conclusion

There will be no changes to beds or services as a result of this project. The current resident population includes a significant number of difficult-to-place residents for whom continuity of care is important.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	New Roc Nursing and Rehabilitation Center	The Pearl Nursing Center of Rochester
Address	1335 Portland Avenue Rochester	Same
RHCf Capacity	120	Same
ADHC	N/A	Same
Type of Operator	LLC	Same
Class of Operator	Proprietary	Same
Operator	Blossom North, LLC Stephen O'Neill 26.73% Gerald J. Wood 26.73% William Madden 26.74% Yisroel Segal 9.90% Aryeh Platschek 9.90%	The Pearl Nursing Center of Rochester, LLC Scott Wheeler 15.00% Gabriel Platschek 21.25% Sima Shapiro 21.25% Jacob Abramczyk 21.25% Naftoli Abramczyk 21.25%

Background

The application for this project was originally received in December 2017. At that time, the proposed ownership included Richard (Aryeh) Platschek, Solomon Abramczyk, Robert Schuck, Goldie Platschek, Sima Shapiro, Jacob Abramczyk, Naftoli Abramczyk, Gabriel Platschek and Alexander Platschek.

Richard Platschek, Solomon Abramczyk and Robert Schuck are contesting a CMS decision regarding an IJ with a pending enforcement at a facility they own, South Shore Rehabilitation and Nursing Center. These circumstances preclude favorable advancement of an establishment application.

The current proposed members were submitted to the Department in January 2018. These members include family members of Richard Platschek and Solomon Abramczyk (Sima Shapiro, Jacob Abramczyk, Naftoli Abramczyk, Gabriel Platschek) and Scott Wheeler. Mr. Wheeler is currently employed by Sapphire Care Group (since 8/2018). The managing member of Sapphire Care Group is Richard Platschek.

Experience

Scott Wheeler is currently the Director of Operations for the Western Tier for the Sapphire Care Group, which manages Skilled Nursing Facilities. He has been in their employ since August 2018. NYS Department of Health records indicate that Mr. Wheeler was the Administrator at the subject facility from December 2018 through February 2019. Previously, from October 2016 to July 2018 Mr. Wheeler was employed as the President/CEO at Penacook Place, which is a not-for-profit skilled nursing facility in Massachusetts. He discloses other previous employment in the nursing home field either as an Administrator or other management positions, dating back to 2005. He discloses no health facility ownership.

Gabriel Platschek is currently employed at A&P Payroll, a nursing home and other facility management company, as a Purchaser. Mr. Platschek has a High School Diploma. He discloses no health facility ownership interest.

Sima Shapiro is currently employed at A&P Payroll, a nursing home and other facility management company, in Accounts Receivable. Sima Shapiro has a bachelor’s degree from Touro College. No health facility ownership interest was disclosed.

Jacob Abramczyk is currently employed as the Director of Floral Home Care, a nursing home and other health facility staffing agency. Mr. Abramczyk has a High School Diploma. He discloses no health facility ownership.

Naftoli Abramczyk is currently employed at Floral Home Care, a nursing home and other health facility staffing agency, as the Assistant Director. Mr. Abrmczyk has a High School Diploma. He discloses no health facility ownership interest.

Quality Review

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New Roc Nursing and Rehabilitation Center (Subject Facility)	Current	**	*	**	****

Data Date 02/2019

Note: The health inspection star rating is based on two years of inspections occurring before November 28, 2017.

Enforcement History

None of the proposed members have health care facility ownership experience, so there is no enforcement history.

Quality Improvement Plan

The applicant has submitted a plan for the subject facility which addresses improvements in systems of care to address quality measures and past survey non-compliance, low occupancy percentages, building refurbishments to improve resident experience, staff recruitment and retention including facility leadership and behavioral health assessment, care planning and monitoring to address the special behavioral health needs of the current population. Refer to BNHLC Attachment – Applicant’s Plan.

On March 11, 2019, New Roc Nursing and Rehabilitation Center was designated as a CMS Special Focus facility (SFF). As a result of the SFF designation, CMS guidance requires DOH to provide increased surveillance oversight including two recertification surveys per year and progressive enforcements for any noncompliance cited.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants identified as new members. It should be noted that because the current proposed members have no ownership history, the review is limited.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement 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:	September 13, 2017
Purchaser:	The Pearl Nursing Center of Rochester, LLC
Seller:	Blossom North, LLC
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 security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to the contract date, and personal property of residents.
Purchase Price:	\$100,000 cash and the assumption of settlement liabilities of the seller at the time of closing, approximately in the amount of \$383,657.82
Payment of Purchase Price:	\$250,000 cash deposit to be held in escrow with \$150,000 refunded to buyer on October 20, 2017, when the Transfer of Project Assets application was submitted to HUD, and the remaining \$100,000 to be applied to purchase price at time of closing.

The APA refers to a Specialty RX Settlement (section 1.31), which is an agreement between Specialty RX, Inc., Specialty RX NY, Inc. and Blossom North, LLC that provides for a legal settlement of a dispute between the parties regarding pharmaceutical services provided by Specialty RX, Inc. and Specialty RX NY, Inc. to Blossom North, LLC. To avoid costly litigation, the parties decided to enter into this settlement agreement under which Blossom North, LLC agreed to pay Specialty RX, Inc. and Specialty RX NY, Inc. a total of \$603,7621.99. This amount is payable in monthly installments of \$17,527.30 per month until the balance is paid in approximately three years. Under the APA (Section 2.3) the applicant has agreed to assume this debt from Blossom North, LLC. The balance as of February 1, 2019 is \$383,657.82.

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 January 29, 2019, the facility had no outstanding Medicaid overpayment liabilities.

Lease Agreement

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

Premises:	A 120-bed RHCf located at 1335 Portland Avenue, Rochester, New York 14621
Landlord:	1335 Portland Avenue BH Realty, LLC (Gabriel Platschek, Goldie Platschek, Alexander Platschek, Benjamin Landa, Solomon Abramczyk, Robert Shuck)
Tenant:	The Pearl Nursing Center of Rochester, LLC
Terms:	30 years commencing on execution of the lease with a ten-year renewal option.
Rental:	An amount equal to 110% of the monthly mortgage payment owed by lessor to HUD of \$54,809, plus the monthly deposit to the HUD Replacement Reserve, mortgage insurance, property insurance and property taxes as required by HUD in the approximate amount of \$81,758 per month (\$981,096 annual).
Provisions:	Triple Net

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. Gabriel Platschek, a member of the applicant, is also a member of the realty 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:

	<u>Current Year (2017)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues</u>						
Medicaid-FFS	\$205.15	\$4,785,503	\$204.04	\$5,544,979	\$203.98	\$5,655,448
Medicaid-MC	\$289.11	2,056,122	\$276.12	2,287,673	\$274.52	2,321,353
Medicare-FFS	\$258.78	997,607	\$258.79	1,162,212	\$258.76	1,186,155
Medicare-MC	\$258.78	332,536	\$258.79	387,404	\$258.76	395,385
Private Pay	\$689.74	104,151	\$689.41	121,336	\$687.98	123,836
Other		<u>96,120</u>		<u>96,120</u>		<u>96,120</u>
Total Revenues		\$8,372,039		\$9,599,724		\$9,778,297
<u>Expenses</u>						
Operating	\$220.47	\$7,877,474	\$188.08	\$7,848,755	\$186.55	\$7,925,084
Capital	<u>33.48</u>	<u>1,196,414</u>	<u>24.27</u>	<u>981,091</u>	<u>23.24</u>	<u>987,377</u>
Total Expenses	\$253.95	\$9,073,888	\$212.35	\$8,836,132	\$209.79	\$8,912,461
Net Income (Loss)		<u>(\$701,849)</u>		<u>\$763,592</u>		<u>\$865,836</u>
Patient Days		35,730		41,625		42,483
Occupancy %		81.58%		95.00%		97.00%

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2017 payor and 2017 RHCf-4 cost report information. Historical utilization for base year 2017 was 81.58%.
- For budget Year One, Medicaid revenues are projected based on the current operating and capital components of the facility's 2019 Medicaid FFS rate plus assessments. Medicare and Private Pay rates are based on average per diems experienced during 2017.
- Other is miscellaneous income per the 2017 RHCf-4 and a retroactive adjustment.
- Breakeven utilization is 87.48% and 88.40% for the first and third years, respectively.
- Utilization by payor source is as follows:

<u>Payor</u>	<u>Current, First & Third Years</u>
Medicaid	85.2%
Medicare	14.4%
Private/Other	0.4%

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the assets is \$100,000 and the assumption by The Pearl Nursing Center of Rochester, LLC of certain liabilities relating to the previously noted pharmaceutical settlement liability, which was initially valued at \$603,761.99. The current operator has been making monthly installment payments of \$17,527.30 and as of February 1, 2019, the outstanding balance due was \$383,657.82. At closing, the proposed new operator will assume the liability and continue to pay down the debt via the agreed upon monthly installment amount of \$17,527.30.

The working capital requirement of \$1,472,689, based on two months of the first year's expenses, will be satisfied from a \$725,000 bank loan at 5.5% over a five-year term, with the remaining \$747,689 to come from the proposed members' equity. The applicant has submitted a bank letter of interest from HHC financial. Solomon Abramczyk has provided letters of interest to give each of the following proposed members a \$200,000 personal loan: Sima Shapiro, Jacob Abramczyk and Naftoli Abramczyk. Also, Aryeh (Richard) Platschek has provided a letter of interest to provide a personal loan of \$200,000 to Gabriel Platschek. BFA Attachment A, proposed members' net worth of The Pearl Nursing Center of Rochester, LLC, reveals sufficient resources exist for stated levels of equity as long as the personal loans are executed. BFA Attachment E is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$847,689.

The submitted budget indicates that net income of \$763,592 will be generated for the first year. BFA Attachment F is the budget sensitivity analysis based on current utilization of the facility as of November 30, 2018, which was 79.28%, which shows the budgeted revenues would decrease by \$327,482 resulting in a net operating profit in Year One of \$436,110. The applicant has provided a business plan to achieve the increase in utilization as follows:

- Restore the facility's admission practices to ensure the acceptance and approval process runs efficiently and that existing Managed Long-Term Care Plans are successfully renegotiated.
- Increase the scope of services offered by the facility such as post-acute rehabilitation, medical post-acute services, wound care, IV Therapy and a telehealth program.
- The facility will hire a marketing consultant to focus on daily visits to local hospitals, presentations to senior centers, participation in eldercare events and community participation in facility activities.
- In addition, the applicant is actively planning renovations to the existing building post approval.
- The Admissions Director will utilize a tracking log to present a statistical review of referral sources and payor sources to review efficiencies of the marketing program to be reviewed by the Administrator, Marketing Consultant and the Admissions Director.

The budget appears reasonable given the business plan to improve occupancy.

After final PHHPC approval, the applicant plans to upgrade the physical plant to improve the overall resident experience. Some of the upgrades include brand new resident furniture (such as beds, dressers, night tables, and bed-side tables), new medical and therapy equipment purchases, as well as new flooring, wallpaper, painting, lighting, ceilings and window treatments throughout the facility. The plan also includes updates to the nurses' stations, further computer infrastructure improvements (including telehealth) and a complete overhaul of the security/video cameras, phone system and call-bell systems. The plans also include improvements to the resident dining and activity areas. The following chart shows the approximate capital costs that will be incurred pursuant to this plan:

<u>Description</u>	<u>Amount</u>
Upgrade approximately 60 resident rooms	\$600,000
Upgrade day rooms and nurses' stations	\$100,000
Upgrade offices and lobby	\$75,000
Computer and other infrastructure	<u>\$150,000</u>
Total	\$925,000

BFA Attachment C, financial summary of New Roc Nursing and Rehabilitation, indicates that the facility has experienced negative working capital, negative equity position and generated an average annual net loss of \$771,584 for the 2015-2017 period shown. The 2015-2017 operating loss and the negative working capital are due to higher than expected accounts payable and a lower than expected occupancy

at the facility. The facility has been working toward paying down these payables moving forward by improving administrative functions and changing the admission processes.

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

Attachments

BFA Attachment A	The Pearl Nursing Center of Rochester, LLC, Proposed Members Net Worth
BFA Attachment B	Organizational Chart
BFA Attachment C	Financial Summary, New Roc Nursing and Rehabilitation
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	Budget Sensitivity Analysis
BNHLC Attachment	Applicant's Plan
FLHSA Attachment	Finger Lakes Health Systems Agency Review and Recommendation

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 11th day of April 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 The Pearl Nursing Center of Rochester, LLC as the new operator of the 120-bed residential health care facility located at 1335 Portland Avenue, Rochester, currently operated as New Roc Nursing and Rehabilitation Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

172415 E

The Pearl Nursing Center of Rochester, LLC

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 the executed personal loan agreements to Sima Shapiro, Jacob Abramczyk and Naftoli Abramczyk from Solomon Abramczyk, acceptable to the Department of Health. [BFA]
4. Submission of the executed personal loan agreement to Gabriel Platschek from Aryeh (Richard) Platschek, acceptable to the Department of Health. [BFA]
5. Submission of the final HUD approval of the Transfer of Project Assets Application, acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of a Certificate of Amendment of the Articles of Organization of The Pearl Nursing Center of Rochester, LLC, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of a property lease, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of the Amended and Restated Operating Agreement of The Pearl Nursing Center of Rochester, LLC, which is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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 # 182272-E
EN Operations Acquisitions, LLC d/b/a
The Grand Rehabilitation and Nursing at Delaware Park

Program: Residential Health Care Facility
Purpose: Establishment

County: Erie
Acknowledged: December 6, 2018

Executive Summary

Description

EN Operations Acquisitions, LLC d/b/a The Grand Rehabilitation and Nursing at Delaware Park, a New York limited liability company, requests approval to be established as the new operator of Buffalo Community Healthcare Center (f/k/a Emerald North Nursing and Rehabilitation Center), a 95-bed, proprietary, Article 28 residential health care facility (RHCF) located at 1205 Delaware Avenue, Buffalo (Erie County). Ruby Care, LLC, whose sole member is Judy Landa, is the current licensed operator of Buffalo Community Healthcare Center. However, the RHCF has been operating under receivership effective October 25, 2018, with EN Receiver, LLC appointed as Receiver. Upon approval of this application by the Public Health and Health Planning Council (PHHPC), the facility will be named The Grand Rehabilitation and Nursing at Delaware Park. There will be no change in beds or services provided.

On October 18, 2018, EN Operations Acquisitions, LLC entered into an Asset Purchase Agreement (APA) with Ruby Care, LLC for the sale and acquisition of the RHCF operating interests for \$525,000, plus \$79,830 in permitted liabilities. Concurrently, EN Realty Acquisitions, LLC entered into a Real Estate Purchase Agreement (REPA) with 1205 Delaware Avenue Realty, LLC for the sale and acquisition of the real property for \$2,975,000. The APA and REPA will close at the same time upon Public Health and Health Planning Council (PHHPC) approval. There is a relationship between EN Operations Acquisitions, LLC and EN Realty Acquisitions, LLC in that the entities

have identical membership. The applicant will lease the premises from EN Realty Acquisitions, LLC.

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

Table with 2 columns: Name, Percentage. Header: Current Operator EN Receiver, LLC. Rows: Jeremy Strauss (97.5%), Elliot Strauss (2.5%).

Table with 2 columns: Name, Percentage. Header: Proposed Operator EN Operations Acquisitions, LLC Members. Rows: Jeremy Strauss (95.0%), Elliott Strauss (5.0%).

The applicant members have ownership interest in various New York State RHCFS. BFA Attachment E is the ownership interests and financial summaries for the affiliated RHCFS.

OPCHSM Recommendation

Contingent Approval

Need Summary

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

Program Summary

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 RHC operation is \$525,000 funded via \$131,250 in members' equity and a 10-year loan for \$393,750 at 6% interest, amortized over 25 years, plus the assumption of \$79,830 for the installation of the facility's generator. EN Realty Acquisitions, LLC will purchase the real property for \$2,975,000 funded by \$743,750 in members' equity and a 10-year loan for \$2,231,250 at 5% interest, amortized over 25 years. Harborview

Capital Partners has provided a letter of interest for the operating and realty loans at the stated terms. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$7,684,972	\$7,846,222
Expenses	<u>7,637,343</u>	<u>7,813,786</u>
Net Income	\$47,629	\$32,436

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 working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed operating loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed real property loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of a photocopy of applicant's final, complete and fully-executed Operating Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of the final, complete, fully-executed Consulting Services Agreement between applicant and Strauss Ventures, LLC, d/b/a The Grand Health Care System, acceptable to the Department. [CSL]
7. Submission of photocopy of the final, complete, fully-executed certificate of amendment of articles of organization of applicant, acceptable to the Department. [CSL]

Approval conditional upon:

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

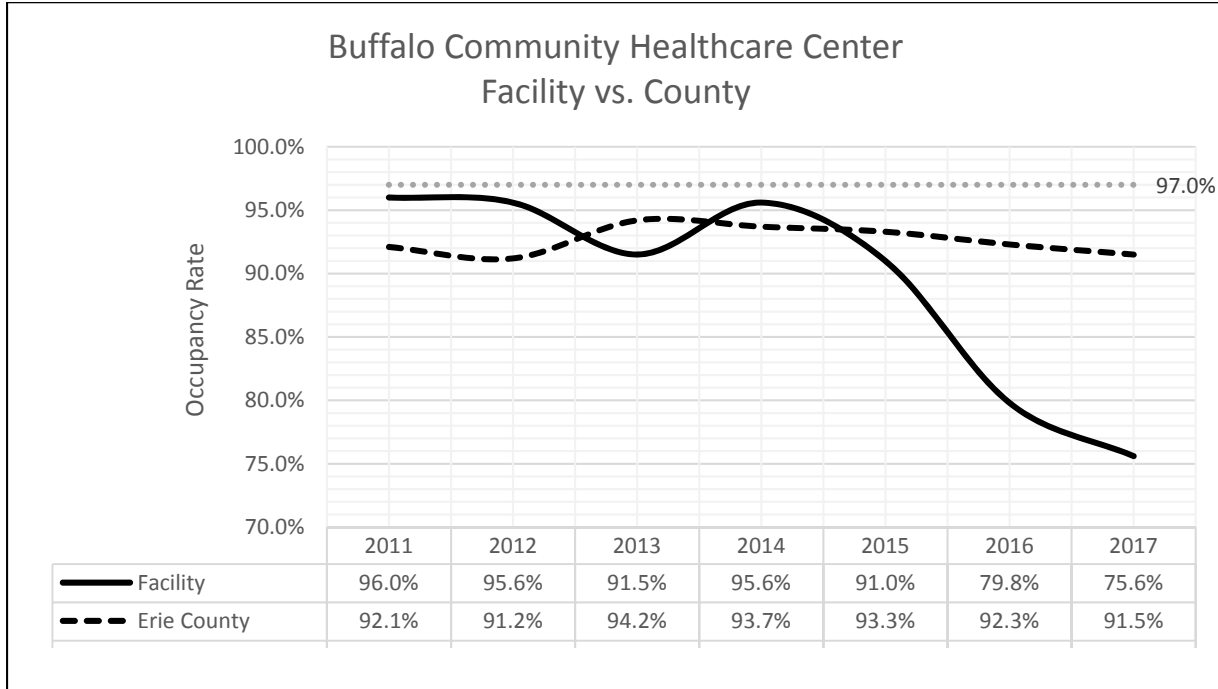
Council Action Date

April 11, 2019

Need Analysis

Analysis

For 2017, the overall occupancy for Erie County was 91.5%, and Buffalo Community Healthcare Center's occupancy was 75.6%. The most current year of certified data is 2017.



It is the applicant's understanding that the decline in occupancy rates since 2015 is the result of a lack of leadership over an extended period which created instability in operations, promoted operational deficiencies, and resulted in the facility being placed in receivership in October 2018. Of note, the managing member (Jeremy Strauss) of EN Operations Acquisitions, LLC, is also the managing member of the receivership entity.

The applicant intends to improve occupancy in the following ways:

- Collaborate with local area hospitals to ensure prompt discharge of hospital patients appropriate for care in a skilled setting and expansion of existing programs as well as implementation of additional new programs to reduce re-hospitalization;
- Rehabilitation of the facility's reputation with the community and among providers and discharge planners;
- Meeting with local community leaders to determine specific needs of the community and the development of programs to address identified needs;
- Acceptance of higher acuity patients;
- Offer the following additional services: 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.

Buffalo Community Healthcare Center's Medicaid admissions rate has exceeded the threshold of 75% of the Erie County rate, as demonstrated in the table below.

Percent of New RHCFC Admissions that are Medicaid	2015	2016	2017
Erie County 75% Threshold	21.6%	20.6%	21.7%
Buffalo Community Healthcare Center	50.0%	64.2%	77.0%

Conclusion

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

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Buffalo Community Healthcare Center (f/k/a Emerald North Nursing and Rehabilitation Center)	The Grand Rehabilitation and Nursing at Delaware Park
Address	1205 Delaware Avenue Buffalo, NY 14209	Same
RHCF Capacity	95	Same
ADHC	N/A	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Same
Operator	<u>EN Receiver, LLC</u> Jeremy Strauss 97.5% Elliott Strauss 2.5%	<u>EN Operations Acquisitions, LLC</u> *Jeremy Strauss 95% Elliott Strauss 5% *Managing Member

Character and Competence

Individual Background Review

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

Mr. Strauss discloses the following health facility interests:

Boro Park Center for Rehabilitation (2%)	05/2011 to 03/2016
Brooklyn Center for Rehabilitation & Residential HealthCare (5%)	03/2007 to 12/2015
Bushwick Center for Rehabilitation (10%)	05/2011 to 12/2015
Corning Center for Rehabilitation (25%)	07/2013 to 02/2016
Essex Center for Rehabilitation (30%)	03/2014 to 12/2015
Fulton Center for Rehabilitation & Health Care (25%)	04/2012 to 12/2015
Holliswood Center for Rehabilitation (7.5%)	05/2013 to 03/2016
Richmond Center for Rehabilitation and Specialty Healthcare (5%)	04/2012 to 12/2015
Steuben Center for Rehabilitation and Healthcare (29%)	07/2014 to 05/2016
Washington Center for Rehabilitation (30%)	02/2014 to 12/2015
Waterfront Center for Rehabilitation (30%)	01/2013 to 12/2015
The Grand Rehabilitation and Nursing at Guilderland (95%)	11/2014 to present
The Grand Rehabilitation and Nursing at River Valley (95%)	09/2016 to present

The Grand Rehabilitation and Nursing at Pawling (98%)	01/2004 to present
The Grand Rehabilitation and Nursing at Queens (95%)	06/2004 to present
The Grand Rehabilitation and Nursing at Chittenango (67%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome (98%)	05/2011 to present
The Grand Rehabilitation and Nursing at Barnwell (95%)	12/2017 to present
The Grand Rehabilitation and Nursing at Batavia (95%)	08/2018 to present
The Grand Rehabilitation and Nursing at Mohawk Valley (95%)	08/2018 to present
The Grand Rehabilitation and Nursing at Great Neck (95%)	01/2019 to present
The Grand Rehabilitation and Nursing at South Point (95%)	01/2019 to present
The Grand Rehabilitation and Nursing at Utica (95%)	02/2019 to present

Adult Homes

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

Senior Care Emergency Ambulance Services, Inc. (EMS)	08/2007 to present
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Elliott Strauss discloses employment as the Director of Purchasing for The Grand Healthcare System since August 2014. Mr. Strauss has a bachelor's degree from Yeshiva University. He currently is a licensed EMT in New York. He discloses no health facility ownership.

Quality Review

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
The Grand Rehabilitation and Nrsng at Guilderland	Current	*	*	****	**
	11/2014	**	*	****	****
The Grand Rehabilitation and Nursing at Barnwell	Current	*	*	****	*
	12/2017	*	*	**	**
The Grand Rehabilitation and Nursing at Mohawk	<i>Current</i>	*	*	***	**
	<i>08/2018</i>	*	*	****	*
The Grand Rehabilitation and Nursing at Rome	Current	**	*	*****	**
	05/2011	*	*	****	*
The Grand Rehabilitation and Nrsng at Chittenango	Current	**	*	*****	*
	05/2011	**	*	**	****
The Grand Rehabilitation and Nrsng at River Valley	Current	**	**	***	**
	09/2016	**	**	****	***
The Grand Rehabilitation and Nrsng at Batavia	<i>Current</i>	**	**	*****	*
	<i>08/2018</i>	*	*	****	*
The Grand Rehabilitation and Nursing at Pawling	Current	****	****	*****	*
	2004 Data 01/2009	**	***	*	*

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
The Grand Rehabilitation and Nursing at Queens	Current	****	****	*****	*
	2004 Data 01/2009	**	***	****	*
The Grand Rehabilitation and Nursing at Great Neck	Current (01/2019)	**	*	*****	**
The Grand Rehabilitation and Nursing at South Point	Current (01/2019)	*****	****	*****	**
The Grand Rehabilitation and Nursing at Utica	Current (02/2019)	*	*	***	*
Buffalo Community Healthcare Center (Subject Facility)	Current	*	*	**	***

Data: 02/2019

Notes: Greyed out facility reflects recent acquisition. The current health inspection star rating is based on two years of inspections occurring before November 28, 2017.

The applicant indicates in general, low star ratings are attributed to inconsistent practices among staff due to varying comprehension of policies/procedures and technical skill proficiencies. They attribute this partly to difficulty in recruiting and training staff, particularly in the upstate areas. The applicant states they must rely on agency staff who aren't invested in either the facility or the residents, and this impacts performance on staffing measures.

In an effort to address staffing deficiencies, The Grand Healthcare System has implemented a global staffing initiative designed to improve quality and performance of staff at each facility owned. The initiative includes weekly case mix reviews and audits, monthly meetings regarding necessary adjustments to staffing, review of CMS data to ensure facilities aren't engaging in similar practices, exit interviews with employees who are leaving their employment, installation of educational software, clinical rotation on site with partnering CNA and LPN schools to increase recruitment of qualified staff and promote retention, as well as additional staff hired in recruitment departments.

Enforcement History

Fulton Center for Rehabilitation:

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

Grand Rehabilitation and Nursing at Guilderland:

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-16-026 issued on January 5, 2016 for surveillance findings on March 16, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.26 Administration.
- A Federal CMP of \$4,517.50 was assessed for the March 16, 2015 survey findings.
- The facility was fined \$4,000 pursuant to Stipulation and Order NH-16-110 was issued for surveillance findings on August 27, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.26 Administration.
- A Federal CMP of \$16,477.50 was assessed for the August 27, 2015 survey findings.

- The facility was fined \$10,000 pursuant to Stipulation and Order # 17-042 issued on July 25, 2017 for surveillance findings on April 14, 2017. Deficiencies were found under 10 NYCRR 415.3(e)(2)(ii)(b) Notification of Changes - Significant Changes in Condition-Complications and /or Life Threatening.

Richmond Center for Rehabilitation and Specialty Healthcare

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

Essex Center for Rehabilitation and Health Care

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

The Grand Rehabilitation and Nursing at Chittenango

- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.
- A federal CMP of \$7,283.25 was assessed for December 16, 2016 survey findings.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-18-009 issued for surveillance findings on October 20, 2017. Deficiencies were found under 10 NYCRR 483.24 and 483.25(k)(l) Provide Care/Services for Highest Well Being
- The facility has agreed to a Stipulation and Order, which is pending processing by the Department, for a \$2,000 fine for surveillance findings on October 18, 2018. Deficiencies were found under 10 NYCRR 415.12(C)(1) Treatment/services to Prevent/Heal Pressure Ulcers.

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.
- A federal CMP of \$8,541 was assessed for the September 11, 2015 survey findings.

Waterfront Center for Rehabilitation and Healthcare

- 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.

Washington Center Adult Home, (Argyle Center for Independent Living)

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

Programmatic Review

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

Conclusion

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 Analysis

Asset Purchase Agreement (APA)

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

Date:	October 18, 2018
Seller:	Ruby Care, LLC
Buyer:	EN Operations Acquisitions, LLC
Asset Acquired:	Rights, title and interest in tangible and intangible business assets.
Excluded Assets:	Seller's rights, title and interest on the day before closing date in; cash and cash equivalents as of the Receivership Date, accounts receivables before the Receivership Date; leases and contracts not expressly assumed, tax refunds for the periods prior to the Receivership Date, corporate records and personal items
Assumption of Liabilities:	Liabilities and obligations arising with respect to the operation of the Facility on and after the Closing Date; plus, assumption of a \$79,830 liability for the installation of the facility’s generator
Purchase Price	\$525,000
	\$52,500 deposit paid upon execution \$472,500 due at closing Plus, the assumption of a \$79,830 liability (generator installation)

The purchase price for the operations will be satisfied as follows:

Equity – EN Operations Acquisitions, LLC members	\$131,250
Loan (10-year, 6% interest, 25-year amortization)	<u>393,750</u>
Total	\$525,000

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

BFA Attachment A is the net worth summary for EN Operations Acquisitions, LLC members, which reveals sufficient resources to meet the overall equity requirements. As the result of potential equity shortfall, Jeremy Strauss has provided affidavits stating his willingness to contribute resources disproportionate to his ownership interest in the operating entity to make up any member’s equity shortfall and to cover the balloon payment should the need arise.

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 5, 2019, the facility had no outstanding Medicaid liabilities.

Real Estate Purchase Agreement (REPA)

The applicant has submitted an executed REPA to purchase the RHCF’s real property. The REPA will close concurrent with the APA upon PHHPC approval of this CON. The terms are summarized below

Date:	October 18, 2018
Seller:	1205 Delaware Avenue Realty, LLC
Purchaser:	EN Realty Acquisitions, LLC
Asset Transferred Realty:	Real Property located at 1205 Delaware Avenue, Buffalo, NY Tax map of Erie County Section 100.31, Block 1, Lot 32.1
Purchase Price:	\$2,975,000
Payment of Purchase Price:	\$297,500 deposit paid upon execution \$2,677,500 due at closing

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

Equity - EN Realty Acquisitions, LLC Members	\$743,750
Loan (10-year, 5% interest, 25-year amortization)	<u>2,231,250</u>
Total	\$2,975,000

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

BFA Attachment B is the net worth summary for EN Realty Acquisitions, LLC members, which reveals sufficient resources to meet the overall equity requirements. As the result of potential equity shortfall, Jeremy Strauss has provided affidavits stating his willingness to contribute resources disproportionate to his ownership interest in the realty entity to make up any member’s equity shortfall and to fund the real property loan balloon payments, should terms acceptable to the Department be unavailable at the time of refinancing.

Lease Agreement

The applicant submitted an executed lease agreement, the terms of which are summarized below:

Date:	October 30, 2018
Premises:	Lots/parcels of land, including buildings, structures and improvements thereon consisting of a 95-bed RHCF located at 1205 Delaware Avenue, Buffalo, NY 14209
Landlord/Lessor:	EN Realty Acquisitions, LLC
Lessee:	EN Operations Acquisitions, LLC
Term:	10 years
Rent:	\$525,598 per year, includes lessor’s interest & principal on the mortgage
Provisions:	Triple Net

The lease arrangement is a non-arm’s length agreement. There is a relationship between EN Operations Acquisitions, LLC and EN Realty Acquisitions, LLC in that the members of both entities are identical.

Consulting Services Agreement

The applicant has provided an executed Consulting Services Agreement, with terms summarized below:

Date:	November 1, 2018
Contractor:	Strauss Ventures, LLC d/b/a The Grand Health Care System
Facility:	EN Operations Acquisitions, LLC
Consulting and Advisory Services:	Consulting & advisory services related to administration and operational functions, including assistance with the following: regulatory monitoring, compliance/quality assurance, development/implementation of marketing plan, assistance/supervision of all functions related to accounts receivable, billing and analytics, preparing reports, bookkeeping, reimbursement, back office financial activities and group purchasing.
Term:	One Year with automatic one-year renewals, unless terminated through mutual consent, default or by one party with 30-day written notice.
Fee:	\$38,000 per month. Periodically fees will be adjusted based on quarterly review of fairness and appropriateness of the fees.

Jeremy Strauss, a member of the applicant, is CFO of Strauss Ventures, LLC. The executed Consulting Service Agreement provides that EN Operations Acquisitions, LLC retains ultimate authority, responsibility and control in all the final decisions associated with the services. In accordance with the Department's Administrative Service Agreement (ASA) and Contract standardization policy effective December 13, 2016, the terms of the executed ASA must acknowledge the reserve powers that must not be delegated, the conflicts clause provisions to ensure that the Licensed Operator retains ultimate control for the operations, and the notwithstanding clause provisions to ensure compliance with governmental agencies, statutes and regulations. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

Operating Budget

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

	Current Year		First Year		Third Year	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Revenues						
Medicaid -FFS	\$195.91	\$3,206,134	\$214.10	\$4,402,967	\$214.10	\$4,495,672
Medicaid-MC	273.52	1,800,851	214.10	1,771,678	\$214.10	1,808,931
Medicare -FFS	\$380.00	350,360	\$380.00	440,800	\$380.00	449,920
Medicare-MC	\$380.00	646,380	\$380.00	812,440	\$380.00	829,540
Private	\$317.00	137,578	\$317.00	173,399	\$317.00	176,886
All Other	\$317.00	66,253	\$317.00	83,688	\$317.00	85,273
Other Operating		<u>1,300</u>		<u>0</u>		<u>0</u>
Total		\$6,208,856		\$7,684,972		\$7,846,222
Expenses						
Operating	\$271.20	\$7,109,570	\$210.67	\$6,941,482	\$212.21	\$7,138,997
Capital	<u>\$14.34</u>	<u>376,013</u>	<u>\$21.12</u>	<u>695,861</u>	<u>\$20.06</u>	<u>674,789</u>
Total Expenses	\$285.54	\$7,485,583	\$231.79	\$7,637,343	\$232.27	\$7,813,786
Net Income (Loss)		<u>(\$1,276,727)</u>		<u>\$47,629</u>		<u>\$32,436</u>
Patient Days		26,215		32,949		33,641
Utilization %		75.60%		95.02%		97.02%

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

- The current year reflects the facility's 2017 revenues and expenses.
- Medicaid revenue is based on the facility's current 2018 Medicaid Regional Pricing rate. The current year and forecasted Medicare rates represent the actual daily rate experienced by the facility during 2017. The Private Pay rate was based on the current operator's average rate for 2017.

- Expenses will be reduced by economies of scale achieved through anticipated renegotiation of vendor contracts and centralization of administrative expenses.
- As of January 23, 2019, the occupancy was 92.6%.
- Utilization by payor for the first and third year after the change in ownership is summarized below:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid-FFS	62.43%	62.42%	62.42%
Medicaid-MC	25.11%	25.11%	25.11%
Medicare-FFS	3.51%	3.52%	3.52%
Medicare-MC	6.49%	6.49%	6.49%
Private Pay	1.66%	1.66%	1.66%
All Others	<u>.80%</u>	<u>.80%</u>	<u>.80%</u>
Total	100%	100%	100%

- The breakeven utilization is projected at 94.43% in the first year.

Capability and Feasibility

EN Operations Acquisitions, LLC agreed to acquire the RHC operation for \$525,000 funded via \$131,250 in members' equity and a 10-year loan for \$393,750 at stated terms plus the assumption of a \$79,830 liability related to a generator installation. EN Realty Acquisitions, LLC will purchase the real property for \$2,975,000 funded by \$743,750 in members' equity and a 10-year loan for \$2,231,250 at stated terms. Harborview Capital Partners has provided a letter of interest for the operating and realty loans at the stated terms. There are no project costs associated with this application.

The working capital requirement is estimated at \$1,352,721 based on two months of first year expenses of \$1,272,891, plus \$79,830 in an assumed liability. Funding will be as follows: \$716,276 from the members' equity, \$636,445 from a working capital loan. Harborview Capital Partners has provided a letter of interest for the working capital loan at 5% interest for a five-year term.

Review of BFA Attachment A, proposed operating members' net worth summaries, reveals sufficient resources to meet equity requirements. As previously stated, liquid resources may not be available in proportion to ownership interest, Jeremy Strauss has provided affidavits stating his willingness to contribute resources disproportionate to his membership interest making up the other member's equity shortfall and to fund the operating entity's loan balloon payment, should terms acceptable to the Department be unavailable at the time of refinancing.

Review of BFA Attachment B, proposed realty members' net worth summaries, reveals sufficient resources to meet equity requirements. As previously stated, liquid resources may not be available in proportion to ownership interest, Jeremy Strauss has provided affidavits stating his willingness to contribute resources disproportionate to his membership interest making up the other member's equity shortfall and fund the realty entity's loan balloon payment, should terms acceptable to the Department be unavailable at the time of refinancing.

The submitted budget projects a first- and third-year profit of \$47,629 and \$32,436, respectively. Revenues are expected to increase by \$1,476,116, primarily due to an increase in Medicaid occupancy. Overall expenses are expected to increase by \$151,760 coming from a \$168,088 reduction in operating expenses and a \$319,848 increase in capital expense (primary from rent). The decline in operating expense comes mainly from other direct expenses. Employee benefits remain at the current level of 23.28%. BFA Attachment C is EN Operations Acquisitions, LLC's pro forma balance sheet, which shows the entity will start with \$2,087,846 in members' equity (which includes \$79,830 in assumed liability). Equity includes \$852,807 in goodwill which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill is eliminated, the total net assets would be \$1,235,039. The budget appears reasonable.

BFA Attachment D is the Financial Summary of Ruby Care, LLC d/b/a Emerald North Nursing and Rehabilitation Center for 2015 through 2017. The RHC had an average net loss of \$613,701, average negative net assets of \$1,453,750, and working capital average negative \$1,216,535.

BFA Attachment E is the proposed members' ownership interest in the affiliated RHCs and their financial summaries. All the RHCs have maintained positive net income, working capital and net assets for 2017, except for the following:

- Clearview Operating Co, LLC d/b/a The Grand Nursing & Rehab at Queens shows positive net assets and positive operating income during the period. The facility had a small negative working capital position in 2017 but turned the positive in 2018.
- Guilderland Operator Co, LLC d/b/a The Grand Rehab and Nursing at Guilderland shows negative working capital, negative net assets and an operating loss during the period. The facility was acquired in November 2016. The negative result is due to an accounts receivable write-off of \$680,000 and \$340,000 recorded depreciation during 2016-2017. In 2018 net assets turned positive and the negative working capital has gotten smaller.
- River Valley Operating Associates, LLC d/b/a The Grand Rehab and Nursing at River Valley shows positive working capital, net assets turned positive in 2018 and an operating loss during reported period. The facility was acquired in July 2016. The operator plans to mitigate losses through several measures such as modification of the lease for rent reduction, focusing on CMI to increase admissions of short-term residents, appealing real estate taxes, providing consistently better service to maintain high occupancy, investment in the facility's infrastructure, and seeking an abatement in the FHA/Mortgage insurance premium.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A	Net Worth of Proposed Members of EN Operations Acquisitions, LLC
BFA Attachment B	Net Worth of Proposed Members of EN Realty Acquisitions, LLC
BFA Attachment C	Pro Forma Balance Sheet, EN Operations Acquisitions, LLC
BFA Attachment D	Financial Summary 2017 Certified Financial Statement of Ruby Care, LLC d/b/a Emerald North Nursing and Rehabilitation Center
BFA Attachment E	Proposed Members' Ownership Interest in the Affiliated RHCs and Financial Summary
BFA Attachment F	Members of Landlord, EN Realty Acquisitions, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 11th day of April 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 EN Operations Acquisitions, LLC as the operator of Buffalo Community Healthcare Center, formerly known as Emerald North Nursing and Rehabilitation Center, a 95-bed residential health care facility located at 1205 Delaware Avenue, Buffalo, 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:

182272 E

EN Operations Acquisitions, LLC
d/b/a The Grand Rehabilitation and Nursing at
Delaware Park

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 working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed operating loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed real property loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of a photocopy of applicant's final, complete and fully-executed Operating Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of the final, complete, fully-executed Consulting Services Agreement between applicant and Strauss Ventures, LLC, d/b/a The Grand Health Care System, acceptable to the Department. [CSL]
7. Submission of photocopy of the final, complete, fully-executed certificate of amendment of articles of organization of applicant, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



Project # 181110-E
ISLRNC, LLC d/b/a Ideal Commons Rehabilitation and Nursing Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Broome
Acknowledged: February 13, 2018

Executive Summary

Description

ISLRNC, LLC, a New York limited liability company, requests approval to be established as the new operator of Ideal Senior Living Center (ISLC), a 150-bed, voluntary not-for-profit, Article 28 Residential Health Care Facility (RHCF) located at 601 High Avenue, Endicott (Broome County). ISLC is the current RHCF operator and real property owner. United Health Services, Inc. (UHS) is the sole member of ISLC. Upon Public Health and Health Planning Council (PHHPC) approval, the facility will be named Ideal Commons Rehabilitation and Nursing Center. There will be no change in beds or services provided.

On September 5, 2017, ISLC entered into an Asset Purchase Agreement (APA) with ISLRNC, LLC for the sale and acquisition of the operating interests of the RHCF for a purchase price of \$100,000. The APA transaction also provided for the sale of the RHCF's real property to 600 High Avenue, LLC for a purchase price of \$8,350,000. The applicant will lease the premises from 600 High Avenue, LLC. There is a relationship between ISLRNC, LLC and 600 High Avenue, LLC in that the entities have identical membership.

The APA also includes the sale of an Assisted Living Center (ALC), a 103-unit facility located at 600 High Avenue, Endicott, which is currently owned and operated by Ideal Senior Living Center Housing Corporation (ISLCHC), an affiliate of ISLC. The ALC provides housing and services for the elderly and consists of 70 Adult Home beds (35 Adult Care Facility beds and 35

Assisted Living Program (ALP) beds) and 33 Independent Living Apartments. In conjunction with the ALP, ISLCHC owns and operates a Licensed Home Care Services Agency (LHCSA), which is included in the sale transaction. The buyers of the ALC campus are ISLACF, LLC (operations) and High Avenue Realty, LLC (real property). The overall purchase price is \$13,000,000. An Adult Care Facility (ACF) application and an application for the change in ownership of the LHCSA has been submitted and is concurrently under review.

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

Table with 2 columns: Operator Name, Percentage. Row: Current Operator, Ideal Senior Living Center, Inc., 100%

Table with 2 columns: Member Name, Percentage. Row: Proposed Operator ISLRNC, LLC. Members: Uri Koenig (60.0%), Efraim Steif (39.9%), David Camerota (0.1%)

ISLC stated that due to continuing operating losses, UHS and its affiliated companies no longer have the financial resources to continue subsidizing their operations. ISLC used the following criteria when searching for a buyer:

- A proven track record within the region in enabling access and delivering quality long-term care to patients in the community;

- A party with a positive reputation amongst providers and regulators;
- A party willing to embrace quality assurance performance improvement (QAPI); and
- A party willing to commit to UHS's and Ideal's goals.

ISLC will use the net proceeds of the sale, along with any remaining cash generated by the liquidation of assets not assumed by ISLRNC, LLC (e.g., accounts receivable), to pay off liabilities of ISLC that exist as of the closing date of the transaction. There are no known restrictions on the property regarding its use or ownership upon closing of the transaction. ISLC is in the process of planning for the repayment of the mortgage note with HUD, as well as returning grant funds from the New York Housing Trust that must be repaid upon a change of control of ISLC.

OPCHSM Recommendation
Contingent Approval

Need Summary

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

Program Summary

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 and realty is \$8,450,000 to be funded with members' equity of \$2,450,000, a 10-year bank loan for \$2,450,000 with interest at 5.75%, and a 25-year bank loan for \$3,550,000 at 5.75%. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$12,910,024	\$13,365,272
Expenses	\$11,734,463	\$11,335,972
Net Income	\$1,175,561	\$2,029,300

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of 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 commitment, acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of a Certificate of Amendment of the Certificate of Incorporation of Ideal Senior Living Center, Inc., which is acceptable to the Department. [CSL]

Approval conditional upon:

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

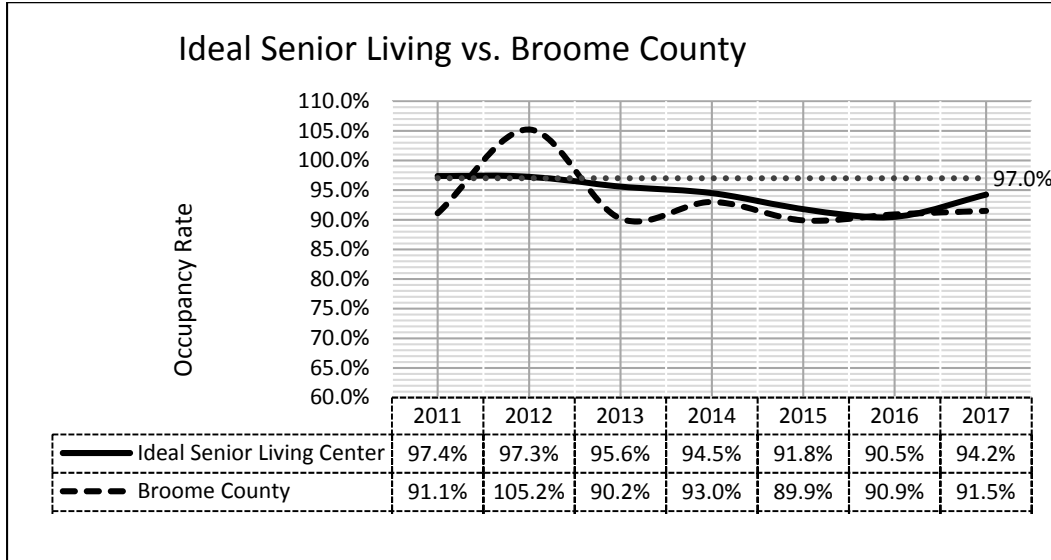
Council Action Date

April 11, 2019

Need Analysis

Analysis

For 2017, the overall occupancy for Broome County was 91.5%, and Ideal Senior Living Center's occupancy was 94.2%. The most current year of certified data is 2017.



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.

The facility's Medicaid admissions of 7.0% in 2016 and 5.6% in 2017 did not exceed Broome County's 75% threshold rates of 15.0% in 2016 and 16.7% for 2017. The proposed applicant indicated that they will be committed to complying with 10 NYCCRR Part 670.3(c)(2) by developing a community outreach program that will inform surrounding hospitals, home health agencies, assisted living facilities and adult care facilities.

Conclusion

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

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Ideal Senior Living Center	Ideal Commons Rehabilitation and Nursing Center
Address	601 High Ave Endicott, NY 13760	Same
RHCF Capacity	150	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Not for Profit Corporation	Limited Liability Company
Class of Operator	Voluntary Not for Profit Corporation	Proprietary
Operator	Ideal Senior Living Center Inc.	ISLRNC, LLC <u>Members</u> *Uri Koenig 60.0% *Efraim Steif 39.9% David Camerota 0.1% *Managing Members

Character and Competence – Experience

Uri Koenig is currently employed as a Certified Public Accountant (C.P.A.) for JH Koenig & Co., which is an accounting firm. He has a Bachelors' degree in Accounting from Touro College. He holds a Certified Public Accountant License in NY and is in good standing. Uri Koenig discloses the following ownership interest:

Bridgewater Center for Rehabilitation & Nursing, LLC	(60%)	08/2006 to present
Beechtree Center for Rehabilitation and Nursing	(60%)	09/2013 to present
Crown Park Rehabilitation and Nursing Center	(60%)	08/2016 to present
Central Park Rehabilitation and Nursing Center	(60%)	11/2008 to present
Cortland Park Rehabilitation and Nursing Center	(60%)	06/2011 to present
Capstone Center for Rehabilitation and Nursing	(60%)	03/2012 to present
Evergreen Commons Rehabilitation & Nursing Center	(60%)	04/2016 to present
Highland Park Rehabilitation and Nursing Center	(60%)	06/2011 to present
Hudson Park Rehabilitation and Nursing Center	(60%)	06/2011 to present
Northeast Center for Rehabilitation and Brain Injury	(60%)	11/2013 to present
Chestnut Park Rehabilitation and Nursing Center	(60%)	06/2011 to present
Pine Valley Center for Rehabilitation and Nursing	(17.714%)	12/2004 to present
Colonial Park Rehabilitation and Nursing Center	(60%)	06/2011 to present
Riverside Center for Rehabilitation and Nursing	(60%)	03/2012 to present
Van Duyn Center for Rehabilitation and Nursing	(60%)	12/2013 to present
Vestal Park Rehabilitation and Nursing Center	(60%)	06/2011 to present
Robinson Terrace Rehabilitation and Nursing Center	(60%)	05/2018 to present
Bridgewater Center for Dialysis	(60%)	03/2012 to present
The Pavilion at Vestal, LLC (Asst. Living)	(60%)	12/2015 to present
The Pavilion at Pine Valley (Asst. Living)	(60%)	09/2016 to present

Efraim Steif is currently the president of and is employed at FRS Healthcare Consultants, Inc. Mr. Steif formerly served as Administrator of Record at Forest View Center for Rehab and Nursing in Forest Hills from 2000 to 2005. He has a Bachelors and Master's degree. He is currently licensed as a Nursing Home Administrator, which he obtained in March of 1997 from Empire State College. He is in good standing per the Board of Nursing Home Administrators in NY. Mr. Steif discloses the following ownership interest:

Bridgewater Center for Rehabilitation & Nursing, LLC	(39.9%)	08/2006 to present
Beechtree Center for Rehabilitation and Nursing	(39.9%)	09/2013 to present
Crown Park Rehabilitation and Nursing Center	(39.9%)	08/2016 to present
Central Park Rehabilitation and Nursing Center	(39.9%)	11/2008 to present
Cortland Park Rehabilitation and Nursing Center	(39.9%)	06/2011 to present
Capstone Center for Rehabilitation and Nursing	(39.9%)	03/2012 to present
Evergreen Commons Rehabilitation & Nursing Center	(39.9%)	04/2016 to present
Highland Park Rehabilitation and Nursing Center	(39.9%)	06/2011 to present
Hudson Park Rehabilitation and Nursing Center	(39.9%)	06/2011 to present
Northeast Center for Rehabilitation and Brain Injury	(39.9%)	11/2013 to present
Chestnut Park Rehabilitation and Nursing Center	(39.9%)	06/2011 to present
Pine Valley Center for Rehabilitation and Nursing	(49.8%)	12/2004 to present
Colonial Park Rehabilitation and Nursing Center	(39.9%)	06/2011 to present
Riverside Center for Rehabilitation and Nursing	(39.9%)	03/2012 to present
Van Duyn Center for Rehabilitation and Nursing	(39.9%)	12/2013 to present
Vestal Park Rehabilitation and Nursing Center	(39.9%)	06/2011 to present
Robinson Terrace Rehabilitation and Nursing Center	(39.9%)	05/2018 to present
Bridgewater Center for Dialysis	(39.9%)	03/2012 to present
The Pavilion at Vestal, LLC (Asst. Living)	(39.9%)	12/2015 to present
The Pavilion at Pine Valley (Asst. Living)	(39.9%)	09/2016 to present

David Camerota is the Chief Operating Officer and currently employed at Upstate Services Group, LLC. Upstate Services Group, LLC provides administrative and operational support to its affiliated skilled nursing facilities throughout New York. He has a Bachelor's degree in Health Services Management. Mr. Camerota holds a Nursing Home Administrator's license in NY and is in good standing per the Board of Nursing Home Administrator's in NY. He had Nursing Home Administrator licenses in Massachusetts and Wisconsin, but both are inactive. Mr. Camerota discloses the following ownership interest:

Bridgewater Center for Rehabilitation & Nursing, LLC	(0.1%)	08/2006 to present
Beechtree Center for Rehabilitation and Nursing	(0.1%)	09/2013 to present
Crown Park Rehabilitation and Nursing Center	(0.1%)	08/2016 to present
Central Park Rehabilitation and Nursing Center	(0.1%)	11/2008 to present
Cortland Park Rehabilitation and Nursing Center	(0.1%)	06/2011 to present
Capstone Center for Rehabilitation and Nursing	(0.1%)	03/2012 to present
Evergreen Commons Rehabilitation & Nursing Center	(0.1%)	04/2016 to present
Highland Park Rehabilitation and Nursing Center	(0.1%)	06/2011 to present
Hudson Park Rehabilitation and Nursing Center	(0.1%)	06/2011 to present
Northeast Center for Rehabilitation and Brain Injury	(0.1%)	11/2013 to present
Chestnut Park Rehabilitation and Nursing Center	(0.1%)	06/2011 to present
Pine Valley Center for Rehabilitation and Nursing	(0.1%)	12/2004 to present
Colonial Park Rehabilitation and Nursing Center	(0.1%)	06/2011 to present
Riverside Center for Rehabilitation and Nursing	(0.1%)	03/2012 to present
Van Duyn Center for Rehabilitation and Nursing	(0.1%)	12/2013 to present
Vestal Park Rehabilitation and Nursing Center	(0.1%)	06/2011 to present
Robinson Terrace Rehabilitation and Nursing Center	(0.1%)	05/2018 to present
Bridgewater Center for Dialysis	(0.1%)	03/2012 to present
The Pavilion at Vestal, LLC (Asst. Living)	(0.1%)	12/2015 to present
The Pavilion at Pine Valley (Asst. Living)	(0.1%)	09/2016 to present

Quality Review

Facility	Ownership Since	Overall	Health Inspection	Quality Measures	Staffing
Bridgewater Center for Rehab & Nursing LLC	Current	*	*	****	***
	08/2006 Data 01/2009	****	***	**	****
Evergreen Commons Rehab & Nursing Center	Current	*	*	***	***
	04/2016	*	*	****	**
Hudson Park Rehabilitation and Nursing Center	Current	*	*	***	**
	06/2011	*	*	****	*
Vestal Park Rehabilitation and Nursing Center	Current	*	*	****	***
	06/2011	**	**	**	**
Chestnut Park and Rehabilitation Nursing Center	Current	*	*	***	*
	06/2011	*****	*****	***	***
Capstone Center for Rehabilitation and Nursing	Current	**	*	*****	***
	03/2012	***	***	***	***
Colonial Park Rehabilitation and Nursing Center	Current	*	*	**	***
	06/2011	*	*	**	*
Van Duyn Center for Rehabilitation and Nursing	Current	*	*	**	***
	12/2013	**	*	**	****
Beechtree Center for Rehabilitation and Nursing	Current	**	*	**	****
	09/2013	*	*	**	***
Crown Park Rehabilitation and Nursing Center	Current	**	*	*****	***
	08/2016	*	*	*	*
Riverside Center for Rehabilitation and Nursing	Current	**	*	****	****
	03/2012	*	*	****	***
Robinson Terrace	05/2018	**	*	***	****
Highland Park Rehabilitation and Nursing Center	Current	**	**	****	***
	06/2011	**	**	****	**
Central Park Rehabilitation and Nursing Center	Current	***	**	*****	**
	11/2008 Data 01/2009	*	*	***	**

Facility	Ownership Since	Overall	Health Inspection	Quality Measures	Staffing
Cortland Park Rehabilitation and Nursing Center	Current	****	***	*****	**
	06/2011	*	**	*	*
Northeast Center for Rehabilitation & Brain Injury	Current	****	****	****	**
	11/2013	**	***	****	*
Pine Valley Center for Rehab and Nursing	Current	*****	****	*****	***
	12/2004 Data 01/2009	****	***	***	*****

Data Date: 02/2019

Note: The star ratings for Robinson Terrace Rehabilitation and Nursing Center are not applicable due to applicants very recent acquisition. The current health inspection star rating is based on two years of inspections occurring before November 28, 2017.

The applicant states that nursing homes with quality ratings of 1 or 2 stars are mainly attributed to poor survey results or troubled history prior to Mr. Koenig, Mr. Steif, and Mr. Camerota taking over. The applicant is making improvements to these facilities by identifying specific quality measures which present challenges in each nursing home and implementing facility wide education related to those quality measures. Also, education programs related to MDS coding for accuracy and clinical training are being implemented, and new regional administrator positions have been created to improve oversight of facility operations at low rated facilities.

The full response from the applicant regarding low quality ratings at Van Duyn, Beechtree, Highland Park and Hudson Park are included as Attachment B.

The applicant states that low staff ratings at certain of its facilities are due, in part, to the shortage of nursing staff. Planned improvements include review of each unit's acuity to determine optimal RN staffing, increasing salary and benefit packages, and revising recruitment and retention plans. The full response from the applicant regarding low staff ratings for Bridgewater Center and Northeast Center are included as Attachment C.

Crown Park Rehabilitation & Nursing Center and Evergreen Commons Rehabilitation & Nursing Center were acquired in 2016, Van Duyn Center for Rehabilitation and Nursing and Beechtree Center for Rehabilitation and Nursing were acquired in December 2013, the applicant states improvements to star ratings will take 3-5 years.

Chestnut Park and Rehabilitation Nursing Center and Bridgewater Center for Rehabilitation & Nursing, LLC, were acquired in 2006 and 2011, respectively. Both facilities had above average overall ratings when acquired, they are both now one star overall. The applicant stated that the reason for the decline was inconsistent annual DOH surveys, multiple deficiencies and quantity of tags that held the facilities back in the progress of the 5 star ratings. The owners anticipate improvements in the star ratings once the freeze on health inspections are lifted.

Subject Facility Plan

The applicant has indicated that they are engaged in transition planning with the current operators of the subject facility. The CMS star ratings for Ideal Senior Living Center and details of the applicants plan for the subject facility are below.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Ideal Senior Living Center	Subject Facility	**	*	*****	****

Data: 02/2019

Note: The health inspection star rating is based on two years of inspections occurring before November 28, 2017.

The applicant has identified recruitment and retention of employees, staff training programs and resident support services to be some of the issues resulting in the subject facility's low star ratings. The applicant has implemented a Transition Team with the current owners that will prioritize addressing these issues. The team meets monthly to identify and prioritize issues and implement or make plans to implement solutions. The team also identifies and works to resolve challenges involved in transitioning operations to the proposed owners. To address challenges in recruitment and retention of employees, the applicant will implement a paid resident assistant program and a paid Certified Nursing Assistant (CNA) training program to increasing staffing levels of the facility.

The expected time frame to implement solutions for the subject facility will depend on the culture of the facility. The proposed owners believe staffing initiatives could result in positive outcomes within a few months; health inspections could be improved as soon as the next survey cycle; and implementation of quality improvements and maintenance of current quality ratings could be realized in as little as three months. The prospective owners state that progress toward improving the care of residents, CMS star ratings and other outcomes will be monitored monthly.

The full response from the applicant regarding plans for the subject facility are included as Attachment A.

Enforcement History

Bridgewater Center for Rehabilitation & Nursing, LLC:

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-13-016 issued May 29, 2013 for surveillance findings on July 6, 2011. Deficiencies were found under 10 NYCRR 415.26(f)(1) Written Plans for Emergency/Disasters and 415.26(f)(3) Emergency Procedure/Drills.
- A federal Civil Money Penalty of \$3,575.00 was assessed for the July 6, 2011 survey findings.

Beechtree Center for Rehabilitation & Nursing:

- A Civil Monetary Penalty of \$2,706 from a complaint survey dated May 27, 2016 Tag-314 – G (Harm) Pressure Ulcers; no enforcements, has been paid and closed.
- A Civil Monetary Penalty imposed in the amount of \$18,500.00 for Life Safety Code Surveys from 03/04/18-03/06/18 for F tags 0025,0345 and 0901.

Crown Park Rehabilitation and Nursing Center:

- A Civil Monetary Penalty in the amount of \$11,053.25 was paid and closed for F tag -600- G (harm) – Free from Abuse and Neglect on November 29, 2017.
- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-18-037 issued September 17, 2018 for surveillance findings on January 18, 2018. Deficiencies were found under 10 NYCRR 415.4 (b)(1) (i) Abuse, Verbal, Sexual, and Mental, Corporal Punishment and Involuntary Seclusion.

Central Park Rehabilitation and Nursing Center:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-10-064 issued December 6, 2010 for surveillance findings on May 26, 2009. Deficiencies were found under 10 NYCRR 415.19(a) Quality of Care: Infection Control.
- The facility was fined \$12,000 pursuant to Stipulation and Order NH-16-142 issued March 9, 2016 for surveillance findings on March 2, 2015. Deficiencies were found under 10 NYCRR

415.12 Quality of Care Highest Practicable Potential and 10 NYCRR 415.12(c)(2) Quality of Care Pressures Sores, Prevention, Pressure Sores with Admission.

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-18-023 issued May 14, 2018 for surveillance findings on July 20, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care Accidents, free from accident hazards and 10 NYCRR 415.26 Organization and Administration.
- The Facility incurred a Civil Money Penalty (CMP) of \$18,000 for an Immediate Jeopardy on July 20, 2015.
- A federal Civil Money Penalty of \$3,750 was assessed for the May 26, 2009 survey findings.

Highland Park Rehabilitation and Nursing Center:

- The facility was fined \$10,000 pursuant to a Stipulation and Order for surveillance findings on October 25, 2013. Deficiencies were found under 10 NYCRR 415.3(e)(2)(ii)(b) Notification of Significant Changes in Condition.

Hudson Park Rehabilitation and Nursing Center:

- The facility was fined \$28,000 pursuant to Stipulation and Order NH-15-020 for surveillance findings on March 30, 2012, February 1, 2013 and May 7, 2013. Deficiencies were cited on: March 30, 2012 for 10 NYCRR 415.15(b)(2)(iii) Physician Services: Physician Visits; February 1, 2013 for 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential, 10 NYCRR 415.12(m)(2) Quality of Care: Medication Errors, 10 NYCRR 415.26 Administration and 10 NYCRR 415.27(a-c) Administration: Quality Assessment and Assurance; May 7, 2013 for 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents.
- The facility was fined \$18,000 pursuant to Stipulation and Order NH-16-137 for surveillance findings on January 28, 2011, March 28, 2011 and December 17, 2012. It should be noted that the applicant was the owner of the nursing home only at the time of the December 17, 2012 survey.
- The facility incurred a Civil Monetary Penalty of \$4,387.50 for the period of December 17, 2012 to February 1, 2013; and a Civil Monetary Penalty of \$48,600 for the period of September 19, 2013 to October 28, 2013.

Van Duyn Center for Rehabilitation and Nursing:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-19-009 issued on January 9, 2019 for repeat lower level citations.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-18-033 issued on August 8, 2018 for surveillance findings on December 19, 2017. Deficiencies were found under 10 NYCRR 415.4(b)(1)(i) Resident behavior and facility practices, staff treatment of residents.
- The facility incurred a Civil Monetary Penalty in the amount of \$7,543.00 for the above survey findings on December 19, 2017.
- The facility was fined \$14,000 pursuant to Stipulation and Order NH-16-172 dated June 6, 2016 for surveillance findings on October 14, 2015. Deficiencies were found under 10 NYCRR 415.14(h) Dietary Services Food Storage, 415.12(c)(2) Quality of Care Pressure Sores with Admission and 415.12 Quality of Care Highest Practicable Potential.

Riverside Center for Rehabilitation and Nursing:

- The facility was fined \$10,000 pursuant to Stipulation and Order NH-18-030 issued July 25, 2018 for surveillance findings on March 15, 2018. Deficiencies were found under 10 NYCRR 415.12(J) Quality of Care: Hydration.
- A Civil Monetary Penalty of \$10,605.00 has been assessed for the above survey findings on March 15, 2018.

Project Review

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

Conclusion

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 Analysis

Asset Purchase Agreement

The applicant submitted an executed APA, to be effectuated upon PHHPC approval, for the purchase of the operating and realty interests associated with the RHCF and ACF. The terms are summarized below:

Date:	September 5, 2017
Seller:	Ideal Senior Living Center, Inc. and Ideal Senior Living Center Housing Corporation
Buyer:	ISLRNC, LLC and 600 High Avenue, LLC (RHCF buyers) ISLACF, LLC and High Avenue Realty LLC (ACF Buyers)
Assets Acquired:	All SNF Operational Assets (ISLRNC, LLC), ACF Operational Assets (ISLACF, LLC), SNF Real Estate Assets (600 High Avenue, LLC) and ACF Real Estate assets (High Avenue Realty, LLC)
Excluded Assets:	Cash, Accounts Receivable, Certain Rate Increases, Other Assets, Claims, Books and Records, Intellectual Property.
Assumption of Liabilities:	Mortgage, Capital lease obligations, PTO amounts
Purchase Price:	\$13,000,000 less assumption of the mortgage valued at \$8,689,114; apportioned as follows: <ul style="list-style-type: none"> • RHCF: \$8,450,000 (\$100,000 Operations, \$8,350,000 Realty) • ACF: \$4,550,000 (\$100,000 Operations, \$4,450,000 Realty)
Payment of Purchase Price:	\$100,000 paid/held in escrow with the Balance due at closing.

The applicant's financing plan is as follows:

Equity-RHCF	\$2,450,000
Equity-ACF	\$150,000
Bank Loan-RHCF (split-amortization, 10-year term, 5.75%) *	\$2,450,000
Bank Loan-RHCF (split-amortization, 25-year term, 5.75%) *	\$3,550,000
Bank Loan-ACF (Interest only for 2-years, followed by 23-year amortization, 5.75%)	\$4,400,000
Total	\$13,000,000

* Single mortgage, conventional bank loan as the properties are all located on a single mortgage parcel.

The total purchase price is apportioned between the RHCF, adult home and senior housing facilities as follows:

Purchase	Proposed Owner	Equity	Bank Loan	Total
RHCF-Operating	ISLRNC, LLC	\$100,000	\$0	\$100,000
RHCF-Realty	600 High Avenue, LLC	*\$2,350,000	\$6,000,000	\$8,350,000
ACF-Operating	ISLACF, LLC	\$100,000	\$0	\$100,000
ACF-Realty	600 High Avenue	*\$50,000	\$4,400,000	\$4,450,000
LHCSA	ISLACF, LLC	Incl. in ACF	Incl. in ACF	Incl. in ACF
Total		\$2,600,000	\$10,400,000	\$13,000,000

*Includes Down Payment of \$100,000 (\$50,000 - RHCF, \$50,000 - ACF)

Century Health Capital, Inc. has provided a letter of interest for the RHCF and ACF/Senior Housing financings at the stated terms.

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. Currently, there are no outstanding Medicaid liabilities or assessments.

Lease Agreement

The applicant has submitted an executed lease agreement for the RHCf, as summarized below:

Date:	December 13, 2017
Premises:	150-bed RHCf at 601 High Avenue, Endicott, New York
Landlord:	600 High Avenue, LLC
Lessee:	ISLRNC, LLC
Term:	40 years
Rental:	\$579,886 per annum (fixed and payable in monthly installments).
Provisions:	Tenant responsible for utilities, property taxes, water/sewer, insurance (Triple Net)

The lease is a non-arm's length agreement. The applicant has submitted an affidavit attesting that there is a relationship between landlord and tenant in that the entities have identical ownership.

Operating Budget

The applicant has provided the current year (2017) and the operating budget, in 2019 dollars, for the first and third year after the change in ownership summarized as follows:

	Current Year		Year One		Year Three	
Revenues	Per Diem	Total	Per Diem	Total	Per Diem	Total
Medicare - FFS	\$435.52	\$1,477,706	\$435.52	\$1,698,948	\$435.55	\$1,742,635
Medicare - MC	\$304.74	582,961	\$304.74	396,158	\$304.82	495,937
Medicaid - FFS	\$199.34	4,236,330	\$199.34	4,240,915	\$199.34	4,241,911
Medicaid - MC	\$488.04	2,296,237	\$488.04	2,928,251	\$488.04	3,221,076
Private Pay	\$142.39	2,894,851	\$142.39	2,781,654	\$142.39	2,790,767
All Other		<u>478,239</u>		<u>864,098</u>		<u>872,946</u>
Total Revenue		\$11,966,324		\$12,910,024		\$13,365,272
Expenses						
Operating	\$259.27	\$13,376,918	\$214.46	\$11,154,575	\$199.12	\$10,574,728
Capital	\$15.10	779,176	\$11.15	579,888	\$14.33	761,244
Total	\$274.37	\$14,156,094	\$225.61	\$11,734,463	\$213.45	\$11,335,972
Net Income/(Loss)		<u>(\$2,189,770)</u>		<u>\$1,175,561</u>		<u>\$2,029,300</u>
Total Patient Days		51,594		52,012		53,108
Occupancy %		94.24%		95.00%		97.00%

The following is noted with respect to the submitted budget:

- Medicare per diems are based on the facility's 2017 average billed Medicare rate held constant going forward.
- Medicaid per diems are based on the 2017 Medicaid Rate Sheet, also held constant.
- Private per diems are based on forecasted per diems for this payor source.
- Utilization is expected to increase due to the applicant's ability to receive residents from its affiliated facilities and a strategic partnership with United Health Services.
- Other Revenue is comprised of Assessment Revenue, Sold Services, Cash Discounts, Barber and Beauty Shop fees, Contributions, and Investment Income.
- Expense assumptions are based on the previous experience of the applicant operating other skilled nursing facilities. Administrative efficiencies will be implemented to reduce costs. Staffing levels will be reduced by 39.9 FTEs, which will reduce costs by \$3,278,514 (\$2,936,903 Salaries and 341,611 in Employee Benefits). The applicant intends to reduce 23 FTEs in Food Service as the applicant will utilize contract labor for this purpose. For Physical Therapy, Occupational Therapy and Speech

Therapy, the applicant plans to eliminate 4.7 FTEs and will utilize contract labor. The applicant also plans to eliminate 6.9 FTEs in the Nursing Administration (Management & Supervision) category and another 4.2 FTEs in the Management & Supervision category, which is based on the applicant's experience in operating other similarly-sized RHCFS.

- Utilization by payor source for the current year and first year is as follows:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicare - FFS	6.58%	7.50%	7.53%
Medicare - MC	3.71%	2.50%	3.06%
Medicaid - FFS	41.19%	40.90%	40.07%
Medicaid - MC	9.12%	11.54%	12.43%
Private Pay	<u>39.41%</u>	<u>37.56%</u>	<u>36.91%</u>
Total	100.0%	100.0%	100.0%

- Breakeven occupancy for Year One is 86.35% or 47,276 patient days. Breakeven occupancy for Year Three is 82.27% or 45,044 patient days.

Capability and Feasibility

There are no project costs associate with this application. The purchase price for the RHCFS and ACF/Senior Housing is \$13,000,000 and will be met via the following:

Equity-RHCFS	\$2,450,000
Equity-ACF	\$150,000
Bank Loan-RHCFS (split-amortization, 10-year term, 5.75%) *	\$2,450,000
Bank Loan-RHCFS (split-amortization, 25-year term, 5.75%) *	\$3,550,000
Bank Loan-ACF (Interest only for 2-years, followed by 23-year amortization, 5.75%)	\$4,400,000
Total	\$13,000,000

* Single mortgage, conventional bank loan as the properties are all located on a single mortgage parcel.

Century Health Capital, Inc. has provided a letter of interest for the RHCFS and ACF/Senior Housing financings at the stated terms.

Working capital requirements are approximately at \$1,955,744 based on two months of the first-year expenses and will be provided by members' equity. BFA Attachment A is the personal net worth statement of the proposed operators, which indicates the availability of resources overall to fund the equity contribution for the purchase price and working capital requirement.

BFA Attachment C shows the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$2,055,744.

The submitted budget indicates a net income of \$1,175,561 and \$2,029,300 for the first and third year, respectively, subsequent to the change in operator. The increase in projected income comes from a decrease in total expenses based on administrative efficiencies under new management, and an increase in revenue based on an increase in patient days along with an increase in the Case Mix Index. The most significant decrease will be from Salaries and Employee Benefits tied to the change in staffing pattern, for a total reduction of \$3,278,514.

BFA Attachment B is a financial summary of Ideal Senior Living Center, Inc. for the 2016-2017 audited period and their internal financials as of October 31, 2018. As shown, the entity had an average negative working capital position, average negative net asset position and net losses for all periods shown. Per the applicant, the losses are attributable to the following:

- Payments from payers have not kept pace with the rising costs of labor and supplies.
- The majority of patients served are Medicaid recipients (in 2016, approximately 67% of total patient days were Medicaid days). Ideal's competition receives higher payer rates due to a payer mix that is more weighted toward Medicare and Commercial payers, as these facilities can be more selective and restrictive on the types of residents the facilities admit.
- There has been an increase in the number of instances where the facility received little or no payment for services rendered. In addition, the length of time it currently takes the facility to obtain

Medicaid eligibility for a prospective resident has led to slow or no incoming cash flow, thus generating a cycle of bad debts and a general erosion of working capital and net assets over time.

- Ideal is the only long-term care facility within the UHS system; therefore, UHS and Ideal have been unable to harness any potential cost synergies that may arise under the ownership of a multi-facility owner like the applicant

BFA Attachment D is a financial summary of the proposed owners' affiliated nursing homes from 2016 through September 30, 2018. The affiliated RHCs show an average positive net asset and an average positive net income position for the periods shown with the exception of the following homes listed below, several of which the applicant states it has taken a longer time to turnaround operationally and financially:

- Beechtree Center for Rehabilitation and Nursing shows a net loss and negative equity for all periods shown. The applicant indicated that an operating loss experienced in 2016 was the result of lower-than-expected Medicaid rate received by the facility during this period. Through September 30, 2018, the facility shows negative equity of \$822,929 and an operating loss of \$563,846. This was related to an operating loss experienced in 2017 and the first half of 2018 as a result of a voluntary hold on new admissions in order to address certain staffing issues. Negative net assets include amounts owed to related parties with no due dates and do not put any financial stress on the facility.
- Bridgewater Rehabilitation and Nursing Center shows an operating loss of \$1,402,006 in 2017 and \$871,619 through September 30, 2018, due to a lower-than-expected occupancy level at the facility during these periods. If census remains stagnant, Bridgewater would not expect to have a profitable year in 2019. Management's plan to increase occupancy includes: having increased face-to-face marketing with the hospital case managers; admission staff is making daily rounds at hospitals; and meeting with local physician groups to create an awareness of the various programs that Bridgewater has on site (Vent and Dialysis). Negative net assets include amounts owed to related parties with no due dates and do not put any financial stress on the facility. The facility expects that its operating income will be positive by the end of 2018 due to improved occupancy levels during Q2 of 2018, as well as a reduction in excess labor costs. The facility shows negative net assets of \$693,436 as of September 30, 2018.
- Capstone Center for Rehabilitation and Nursing shows an operating loss of \$592,248 in 2017 due to a higher-than-expected revenue assessment expense and higher-than-expected administrative costs. Through September 30, 2018, the facility shows an operating profit of \$221,369 due to an overall reduction in excess costs at the facility initiated during 2018.
- Central Park Rehabilitation and Nursing Center shows an operating loss of \$1,171,108 in 2017 due to higher-than-expected administrative costs and a higher-than-expected revenue assessment expense. Through September 30, 2018, the facility shows an operating loss of \$566,954 due to higher-than-expected administrative costs and a lower-than-expected Medicare census. The facility expects that its operating income will be positive by the end of 2018 due to an overall reduction in excess costs at the facility initiated during 2018.
- Colonial Park Rehabilitation and Nursing Center shows an operating loss of \$314,536 in 2017 and \$116,757 through September 30, 2018, due to a lower-than-expected level of occupancy at the facility during these periods. The facility expects that its operating income will be positive by the end of 2018, as its occupancy levels have improved during Q2 of 2018. Occupancy increased during the latter part of 2018 with Q4 averaging 93%. Management's plans to increase occupancy includes: Business Development Consultant meetings with local hospitals; a Hospital Liaison has been hired to focus on local feeder hospitals; an Administrator plays a hands-on approach to each referral to ensure follow-up.
- Crown Park Rehabilitation and Nursing Center showed negative equity of \$706,375 in 2017 but has obtained a positive net equity of \$133,609 through September 30, 2018. This facility was purchased in 2016 by members of the applicant. Since this time, census has increased, and the new operator expects that the facility will show positive operating income for year 2018, due to the fact that the new operator has been able to reduce excessive administrative expenses and increase occupancy at the facility during 2018.
- Highland Park Rehabilitation and Nursing Center shows negative equity for 2016, 2017 and through September 30, 2018. This facility was purchased in 2014 (the facility was in receivership in 2011) by members of the applicant. Since this time, census has increased, and the operator expects that the facility will show positive operating income for year 2018, due to the fact that the operator has been able to reduce excessive administrative expenses and increase occupancy at the facility during

2018. Based on the facility's forecasted operating income for 2018 (the facility shows positive operating income through September 30, 2018), the facility expects that its equity position will be positive by the end of 2018.

- Hudson Park Rehabilitation and Nursing Center shows negative equity for all periods shown and an operating loss in 2017. Through September 30, 2018, the facility shows a gain from operations of \$455,266. This facility was purchased in 2014 (the facility was in receivership in 2011) by members of the applicant. Since this time, census has increased, and the operator expects that the facility will show positive operating income and improved equity for year 2018, due to the fact that that the operator has been able to reduce excessive administrative expenses and increase occupancy at the facility during 2018.
- Robinson Terrace Rehabilitation and Nursing Center shows negative operating income from May 1, 2018 through September 30, 2018. This facility was acquired in May of 2018 by members of the applicant.
- Van Duyn Center for Rehabilitation and Nursing shows an operating loss of \$2,873,054 through September 30, 2018 due to a lower-than-expected census. Management's plans to increase occupancy includes:
 - Facility has hired a Chief Experience Officer to respond to all customer concerns, which will provide for an overall higher quality of care experience for all residents and families.
 - Advanced C.N.A. and LPN classes allow for staff to grow within this facility. This allows for continuity of care.
 - VDRNC, LLC has a member of Administration or Social Work who is always available to attend to any needs or concerns.
 - Screeners are placed in local hospitals where VDRNC, LLC has been named a preferred provider.
- Vestal Park Rehabilitation and Nursing Center shows negative equity for all periods shown. This is due to ongoing issues experienced by the new operator (due to a flood). The facility expects that its equity position will be positive by the end of 2018, due to its positive operating results in 2017 and through September 30, 2018.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A	Personal Net Worth Summary of Proposed Members
BFA Attachment B	2016-October 31, 2018 Financial Summary – Ideal Senior Living Center, Inc.
BFA Attachment C	Pro-Forma Balance Sheet
BFA Attachment D	2016- September 30, 2018 Affiliated RHCF Ownership Interest and Financial Summary
PA Attachment A	Applicants Plans for Subject Facility
PA Attachment B	Summary of Five-Star Quality Ratings
PA Attachment C	Summary of Five-Star Staff Ratings - Bridgewater Center for Rehabilitation & Nursing, LLC and Northeast Center for Rehabilitation & Brain Injury

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 11th day of April 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 ISLRNC, LLC as the new operator of the 150-bed residential health care facility located at 601 High Avenue, Endicott, currently operated as Ideal Senior Living Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

181110 E

ISLRNC, LLC d/b/a Ideal Commons
Rehabilitation and Nursing Center

APPROVAL CONTINGENT UPON:

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

APPROVAL CONDITIONAL UPON:

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

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: 181115
Name of Agency: ISLACF, LLC d/b/a The Pavilion at Ideal Commons
Address: Endicott
County: Broome
Structure: Limited Liability Company

Proposal

ISLACF, LLC d/b/a The Pavilion at Ideal Commons, 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. This LHCSA will be associated with the assisted living program to be operated by Ideal Senior Living Center. The LHCSA and the ALP will have identical membership.

Character and Competence

The proposed membership of ISLACF, LLC d/b/a The Pavilion at Ideal Commons is as follows:

Uri Koenig, CPA – 60% Accountant, JH Koenig &Co.	Efraim Steif, NHA – 39.9% President, FRS Healthcare Consultants, Inc.
David Camerota, NHA – 0.1% Chief Operating Officer, Upstate Services Group, LLC	

Affiliations

Facility Name	Agency Type	Affiliation Dates
Bridgewater Center for Rehabilitation & Nursing, LLC	SNF	2006-present
Bridgewater CFD, LLC d/b/a Bridgewater Center for Dialysis	Dialysis Center	2012-present
BTRNC, LLC d/b/a Beechtree Center for Rehabilitation and Nursing	SNF	2013-present
CCRNC, LLC d/b/a Crown Park Rehabilitation and Nursing Center	SNF	2016-present
CPRNC, LLC d/b/a Central Park Rehabilitation and Nursing Center	SNF	2008-present
CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center	SNF	2011-present
CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing	SNF	2012-present
ECRNC, LLC d/b/a Evergreen Commons Rehabilitation and Nursing Center	SNF	2016-present
HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center	SNF	2011-present
JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center	SNF	2011-present
NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury	SNF	2013-present
ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center	SNF	2011-present
Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing	SNF	2004-present
RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center	SNF	2011-present
RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing	SNF	2012-present
The Pavilion at Vestal, LLC	Assisted Living	2015-present
TPPV, LLC d/b/a The Pavilion at Pine Valley	Assisted Living	2016-present
VDRNC, LLC d/b/a Van Duyn Center for Rehabilitation and Nursing	SNF	2013-present
VRNC, LLC d/b/a Vestal Park Rehabilitation and Nursing Center	SNF	2011-present

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bureau of Professional Credentialing has indicated that David Camerota, NHA license #04675 and Efraim Steif, NHA license #04491 hold NHA licenses in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against these individuals or their licenses.

Facility Compliance/Enforcement

A seven-year review of the operations of the affiliated facilities/agencies was performed as part of this review (unless otherwise noted).

Bridgewater Center for Rehabilitation & Nursing, LLC:

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-13-016 issued May 29, 2013 for surveillance findings on July 6, 2011. Deficiencies were found under 10 NYCRR 415.26(f)(1) Written Plans for Emergency/Disasters and 415.26(f)(3) Emergency Procedure/Drills.
- A federal Civil Money Penalty of \$3,575.00 was assessed for the July 6, 2011 survey findings.

Beechtree Center for Rehabilitation & Nursing:

- A Civil Monetary Penalty of \$2,706 from a complaint survey dated May 27, 2016 Tag-314 – G (Harm) Pressure Ulcers; no enforcements, has been paid and closed.
- A Civil Monetary Penalty imposed in the amount of \$18,500.00 for Life Safety Code Surveys from 03/04/18-03/06/18 for F tags 0025,0345 and 0901.

Crown Park Rehabilitation and Nursing Center:

- A Civil Monetary Penalty in the amount of \$11,053.25 was paid and closed for F tag -600- G (harm) – Free from Abuse and Neglect on November 29, 2017.
- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-18-037 issued September 17, 2018 for surveillance findings on January 18, 2018. Deficiencies were found under 10 NYCRR 415.4 (b)(1) (i) Abuse, Verbal, Sexual, and Mental, Corporal Punishment and Involuntary Seclusion.

Central Park Rehabilitation and Nursing Center:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-10-064 issued December 6, 2010 for surveillance findings on May 26, 2009. Deficiencies were found under 10 NYCRR 415.19(a) Quality of Care: Infection Control.
- The facility was fined \$12,000 pursuant to Stipulation and Order NH-16-142 issued March 9, 2016 for surveillance findings on March 2, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential and 10 NYCRR 415.12(c)(2) Quality of Care Pressures Sores, Prevention, Pressure Sores with Admission.
- The facility was fined \$4,000 pursuant to Stipulation and Order NH-18-023 issued May 14, 2018 for surveillance findings on July 20, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care Accidents, free from accident hazards and 10 NYCRR 415.26 Organization and Administration.
- The Facility incurred a Civil Money Penalty (CMP) of \$18,000 for an Immediate Jeopardy on July 20, 2015.
- A federal Civil Money Penalty of \$3,750 was assessed for the May 26, 2009 survey findings.

Highland Park Rehabilitation and Nursing Center:

- The facility was fined \$10,000 pursuant to a Stipulation and Order for surveillance findings on October 25, 2013. Deficiencies were found under 10 NYCRR 415.3(e)(2)(ii)(b) Notification of Significant Changes in Condition.

Hudson Park Rehabilitation and Nursing Center:

- The facility was fined \$28,000 pursuant to Stipulation and Order NH-15-020 for surveillance findings on March 30, 2012, February 1, 2013 and May 7, 2013. Deficiencies were cited on: March 30, 2012 for 10 NYCRR 415.15(b)(2)(iii) Physician Services: Physician Visits; February 1, 2013 for 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential, 10 NYCRR 415.12(m)(2) Quality of Care: Medication Errors, 10 NYCRR 415.26 Administration and 10 NYCRR 415.27(a-c) Administration: Quality Assessment and Assurance; May 7, 2013 for 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents.
- The facility was fined \$18,000 pursuant to Stipulation and Order NH-16-137 for surveillance findings on January 28, 2011, March 28, 2011 and December 17, 2012. It should be noted that the applicant was the owner of the nursing home only at the time of the December 17, 2012 survey.
- The facility incurred a Civil Monetary Penalty of \$4,387.50 for the period of December 17, 2012 to February 1, 2013; and a Civil Monetary Penalty of \$48,600 for the period of September 19, 2013 to October 28, 2013.

Van Duyn Center for Rehabilitation and Nursing:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-19-009 issued on January 9, 2019 for repeat lower level citations.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-18-033 issued on August 8, 2018 for surveillance findings on December 19, 2017. Deficiencies were found under 10 NYCRR 415.4(b)(1)(i) Resident behavior and facility practices, staff treatment of residents.
- The facility incurred a Civil Monetary Penalty in the amount of \$7,543.00 for the above survey findings on December 19, 2017.
- The facility was fined \$14,000 pursuant to Stipulation and Order NH-16-172 dated June 6, 2016 for surveillance findings on October 14, 2015. Deficiencies were found under 10 NYCRR 415.14(h) Dietary Services Food Storage, 415.12(c)(2) Quality of Care Pressure Sores with Admission and 415.12 Quality of Care Highest Practicable Potential.

Riverside Center for Rehabilitation and Nursing:

- The facility was fined \$10,000 pursuant to Stipulation and Order NH-18-030 issued July 25, 2018 for surveillance findings on March 15, 2018. Deficiencies were found under 10 NYCRR 415.12(J) Quality of Care: Hydration.
- A Civil Monetary Penalty of \$10,605.00 has been assessed for the above survey findings on March 15, 2018.

The Information provided by the Bureau of Quality and Surveillance has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of 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.

Program Description

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

The applicant will be restricted to serving the residents of the associated Assisted Living Program in Broome County from an office located at 508 High Avenue, Endicott, New York 13760.

Conclusion

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, contingent upon:

1. A copy of the amended operating agreement of the applicant, acceptable to the Department. (CSL)

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 11th day of April 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:

181115 E

ISLACF, LLC d/b/a The Pavilion at Ideal Commons

APPROVAL CONTINGENT UPON:

1. A copy of the amended operating agreement of the applicant, acceptable to the Department. (CSL)

APPROVAL CONDITIONAL UPON

1. The Agency is restricted to serving the residents of the associated Assisted Living Program.

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

Application Number: 182100
Name of Agency: Pine Haven Assisted Living, LLC d/b/a Pine Haven Home Care
Address: Philmont
County: Columbia
Structure: Limited Liability Company

Proposal

Pine Have Assisted Living, LLC d/b/a Pine Haven Home Care, a proposed limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. This LHCSA is associated with Pine Haven Assisted Living. The proposed ownership of the LHCSA and the ALP are identical.

Character and Competence

The members of Pine Have Assisted Living, LLC d/b/a Pine Haven Home Care comprises the following individuals:

Jonathan Bleier, Managing Member – 50% **Jacob Sod**, Managing Member – 50%

Jonathan Bleier lists employment as the Chief Financial Officer at Highfield Gardens Care Center, a skilled nursing facility located in Great Neck, NY. He has been employed at this facility in positions of increasing responsibility since June of 2005. Mr. Bleier has a First Rabbinic Degree (BA equivalent) from Tiferes Yisrel Rabbinical College. Mr. Bleier discloses the following health facility ownership interests:

Highfield Gardens Care Center of Great Neck	[16.00%]	09/2010 to present
Westchester Center for Rehabilitation and Nursing	[54.96%]	05/2013 to present
Greene Meadows Nursing and Rehabilitation Center	[23.50%]	12/2015 to present
Pine Haven Home	[47.50%]	07/2016 to present
Premier Genesee Center for Nursing and Rehab	[50.00%]	01/2017 to present
Sunnyview Nursing and Rehabilitation Center (PA)	[33.25%]	05/2014 to present
Deer Meadows Rehabilitation Center (PA)	[40.50%]	12/2014 to present
Rosewood Rehabilitation and Nursing Center (PA)	[37.50%]	09/2015 to present
Meadowview Rehabilitation and Nursing Center (PA)	[37.25%]	03/2016 to present
Wyomissing Health and Rehabilitation Center (PA)	[33.33%]	05/2016 to present
Premier Armstrong Rehabilitation & Nursing Facility (PA)	[50.00%]	07/2017 to present
Premier Washington Rehabilitation and Nursing Center (PA)	[50.00%]	10/2017 to present
Brigham Health & Rehab Center (MA)	[33.33%]	06/2016 to present
Country Gardens Skilled Nursing & Rehab Ctr (MA)	[33.33%]	06/2016 to present
Crawford Skilled Nursing & Rehab Ctr (MA)	[33.33%]	06/2016 to present
Blue Hills Health & Rehab Ctr (MA)	[33.33%]	06/2016 to present
Franklin Health & Rehab Ctr (MA)	[33.33%]	06/2016 to present
Kathleen Daniel Nursing & Rehab Ctr (MA)	[33.33%]	06/2016 to present
Charlwell House (MA)	[33.33%]	06/2016 to present
Kimwell Nursing & Rehab (MA)	[33.33%]	06/2016 to present
Timberlyn Nursing and Rehabilitation Center (MA)		12/2014 to 09/2017
Great Barrington Rehabilitation and Nursing Center (MA)		08/2015 to 09/2017
Hanover Terrace Health & Rehab Ctr (NH)	[33.33%]	06/2016 to present
Premier Cadbury at Cherry Hill (NJ)	[30.00%]	07/2016 to present
Fort Myers Rehab (FL)	[45.00%]	01/2016 to present
Manatee Springs Rehabilitation and Nursing Center (FL)	[46.50%]	04/2017 to present
Citywide Mobile Response (EMS)	[9.00%]	06/2004 to present
Genesee Adult Home	[50%]	01/2017 to present

Yaakov (Jacob) Sod lists employment as Manager at Premier Healthcare Management, LLC since 2014. He lists additional employment at Milrose Capital, an investment group located in Lakewood, New Jersey since 2008. Mr. Sod left his position as VP of Acquisitions at Fairview Healthcare Management in December 2017. Mr. Sod has a BA in Talmudic Law from Midrash Shmuel Talmudic College. Mr. Sod discloses the following health facility ownership interests:

Greene Meadows Nursing and Rehabilitation Center	[23.50%]	12/2015 to present
Pine Haven Nursing Home	[47.50%]	7/2016 to present
Premier Genesee Center for Nursing and Rehab	[50%]	1/2017 to present
Fairview Health of Greenwich (CT)		10/2012 to 02/2018
Fairview Health of Southport (CT)		10/2012 to 02/2018
Sunnyview Nursing and Rehabilitation Center (PA)	[39.00%]	05/2014 to present
Deer Meadows Retirement Community (PA)	[40.50%]	12/2014 to present
Rosewood Rehabilitation and Nursing Center (PA)	[37.50%]	09/2015 to present
Meadowview Nursing and Rehabilitation Center (PA)	[37.25%]	01/2016 to present
Wyomissing Health and Rehabilitation Center (PA)	[33.34%]	05/2016 to present
Premier Armstrong Rehabilitation & Nursing Facility (PA)	[50.00%]	05/2016 to present
Brigham Health & Rehab Center (MA)	[33.34%]	06/2016 to present
Country Gardens Skilled Nursing & Rehab Ctr (MA)	[33.34%]	06/2016 to present
Crawford Skilled Nursing & Rehab Ctr (MA)	[33.34%]	06/2016 to present
Blue Hills Health & Rehab Ctr (MA)	[33.34%]	06/2016 to present
Franklin Health & Rehab Ctr (MA)	[33.34%]	06/2016 to present
Kathleen Daniel Nursing & Rehab Ctr (MA)	[33.34%]	06/2016 to present
Charlwell House (MA)	[33.34%]	06/2016 to present
Kimwell Nursing & Rehab (MA)	[33.34%]	06/2016 to present
Timberlyn Nursing and Rehabilitation Center (MA)		12/2014 to 09/2017
Great Barrington Rehabilitation and Nursing Center (MA)		08/2015 to 09/2017
Hanover Terrace Health & Rehab Ctr (NH)	[33.34%]	06/2016 to present
Premier Cadbury at Cherry Hill (NJ)	[30.00%]	07/2016 to present
Fort Meyers Rehabilitation and Nursing Center (FL)	[45.00%]	12/2015 to present
Manatee Springs Rehab & Nursing Ctr(FL)	[46.50%]	04/2017 to present
Page Rehabilitation and Healthcare Center (FL)	[45%]	01/2019 to present
Crystal Care Center (MN)	[18.00%]	12/2013 to 01/2015
Angels Care Center (MN)	[18.00%]	12/2013 to 01/2015

Yaakov (Jacob) Sod Ownership held by a trust:

Sterling Care At Frostburg Village (MD)	[100.00%]	01/2018 to present
Sterling Care At South Mountain (MD)	[100.00%]	01/2018 to present

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

Mr. Bleier and Mr. Sod have also submitted an application (#182221) to establish Leroy Operating LLC as the new operator of Leroy Village Green Residential Health Care Facility, and an application (#3153OFD2) to establish Pine Haven Assisted Living, LLC.

Enforcement History

A review of the operations of the affiliated facilities was performed as part of this review.

A review of Green Meadows for the period identified above reveals the following:

- The facility was fined \$10,000.00 pursuant to Stipulation & Order # 17-036 for surveillance findings on July 21, 2016. Deficiencies were found under 10NYCRR 415.12 - Quality of Care Highest Practicable Potential.

A review of Premier Genesee Center for the period identified above reveals the following:

- The facility was fined \$10,000.00 pursuant to Stipulation & Order # 17-058 for surveillance findings on August 17, 2017. Deficiencies were found under 10NYCRR 415.12 - Quality of Care cityest Practicable Potential
- A Civil Money Penalty of \$9,428.25 was fined and paid regarding the above issue.

A review of operations for Citywide Mobile Response for the time above reveals:

- The ambulance service was fined \$7,000.00 pursuant to Stipulation & Order EMS # 18-004 for an incident on May 2, 2018. Deficiencies were found under 10 NYCRR §800.22(h) - Requirements for certified ambulance vehicle construction and 800.23(a) - General requirements related to equipment.
- Information provided by the Bureau of Emergency Services indicates that they have had 10 Statements of Deficiency (SODs) with accompanying Plans of Correction (POCs) over the past ten years for vehicle and equipment related issues.

A review of Genesee Adult Home for the period identified above reveals the following:

- The facility was fined \$3,286.00 pursuant to Stipulation & Order # ACF 19-03 for surveillance findings on May 22, 2018 and November 20, 2018. Deficiencies were found under 10NYCRR §1001.7(k)(4) - Admission/Retention Standards, §1001.10(l)(3) and 18 NYCRR §487.7(f)(5) - Resident Services, and 18 NYCRR §487.8(e)(8) - Food Service regulations.
- The facility was fined \$1,332.00 pursuant to Stipulation & Order # ACF 18-048 for surveillance findings on June 30, 2017 and November 10, 2017. Deficiencies were found under 10NYCRR §1001.12(b)(1-7) - Records and reports.

A review of operations and the affidavit submitted by the applicant for Fairview Health in Greenwich, Connecticut indicates the following:

- The facility was fined \$360.00 for surveillance findings on May 12, 2014 class B violation of section 19a-527-1(b)(3).
- An enforcement was issued for a finding with a scope and severity level of G, at \$450.00 per day from 3/31/15 – 5/15/15 resulting in a total fine of \$12,285.00.
- The facility was fined \$760.00 for surveillance findings on April 12, 2017. Deficiencies were for Tags F 309 (Quality of Care) and F 323 (Accident Prevention and Resident Supervision)

A review of operations and the affidavit submitted by the applicant for Fairview Health of Southport, Connecticut indicates:

- Fairview Health of Southport was fined \$710.00 pursuant to a Consent Order dated May 4, 2015 for an inspection of the facility concluded on January 20, 2015.
- The facility was fined \$260.00 for surveillance findings on January 20, 2015 related to smoking program violations.
- The facility was fined \$2,958.00 for surveillance findings on September 22, 2015 for findings related to Tag F 323 (Accident Prevention and Resident Supervision).
- The facility was fined \$3,363.00 for survey findings on August 29, 2016 for findings related to Tag F 323 (Accident Prevention and Resident Supervision).
- The facility was fined \$6,821.00 for survey findings on August 8, 2017 related to Tag F441 (Laundry & Infection Control),
- The facility had a payment denial, penalty date August 22, 2017, payment denial start date November 22, 2017, payment denial duration was seven days

A review of operations and the affidavit submitted by the applicant for Sunnyview Nursing and Rehabilitation Center in Pennsylvania indicates:

- Sunnyview Nursing and Rehabilitation Center in Pennsylvania paid a state penalty of \$14,250.00 for Tag F 323 G level for surveillance findings on 1/12/2017.
- Sunnyview Nursing and Rehabilitation Center in Pennsylvania was issued a CMP in the amount of \$9,298.00 assessed on January 2017.

A review of operations and the affidavit submitted by the applicant for Premier Armstrong County Health Center in Pennsylvania indicates:

- Premier Armstrong County Health Center in Pennsylvania was issued a CMP for 1 deficiency at \$250.00 per deficiency per day for 21 days noncompliance + 7 deficiencies at \$500.00 per deficiency per instance + 4 deficiencies at \$250.00 per deficiency per instance. For failure to enforce the rules necessary to ensure the health and safety of the residents. The survey date was 11/14/18.

A review of operations and the affidavit submitted by the applicant for Pleasant Acres Nursing and Rehabilitation Center in Pennsylvania indicates:

- Pleasant Acres Nursing and Rehabilitation Center in Pennsylvania was issued a CMP in the amount \$19,750.00 for \$250.00/ day x 2 deficiencies x 30 days + 500.00/per deficiency x 9 deficiencies x 30 days of noncompliance + 250.00/per deficiency x 1 deficiency for surveillance findings on 7/19/18

A review of operations and the affidavit submitted by the applicant for Willow Terrace Nursing and Rehabilitation Center in Pennsylvania indicates:

- Willow Terrace Nursing and Rehabilitation Center paid a state enforcement of \$21,750.00 for a G level enforcement for Tag F692

A review of operations and the affidavit submitted by the applicant for Premier Cadbury at Cherry Hill Adult Home in New Jersey indicates:

- Premier Cadbury at Cherry Hill Adult Home in New Jersey was fined of \$11,250.00 for surveillance findings on January 31, 2017.

A review of operations and the affidavit submitted by the applicant for Premier Cadbury Cherry Hill in New Jersey indicates:

- Premier Cadbury Cherry Hill in New Jersey nursing home facility was fined \$5,850.00 CMP for surveillance findings on June 23, 2017 related to a repeat deficiency for a dietary Tag. The previous citation was associated with prior owners.

A review of operations an affidavit submitted by the applicant for Angels Care Center in Minnesota for the period indicated above indicates the following:

- The facility was fined \$1,001.60 and there was also a fine of \$27,494.00 for surveillance findings on November 12, 2014.

A review of operations and an affidavit submitted by the applicant for Country Gardens Skilled Nursing and Rehabilitation in Massachusetts for the period identified above indicates the following:

- The facility was fined \$8,076.00 for surveillance findings on February 13, 2017. Deficiencies were for F Tag 225 (Investigate/Reporting) and F Tag 323 (Accident Prevention and Resident Supervision).
- The facility was fined \$56,652.00 for surveillance findings on April 26, 2017. Deficiencies were for F Tag 323 (Accident Prevention and Resident Supervision) and F Tag 152 (Residents right to designate a representative).

It is noted that there was a repeat citation for Tag F323 which were enforced. The applicants gave details which indicated these were not repetitive incidents. Since these enforcements are not recurrent in nature, the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

A review of operations and an affidavit submitted by the applicant for Crawford Skilled Nursing and Rehabilitation Center in Massachusetts for the period identified above indicates the following:

- The facility was fined \$66,812.00 for surveillance findings on August 26, 2016. Deficiencies were for F Tag 411 (Dental Services) and F Tag 309 (Quality of Care).
- The facility was fined \$57,025.00 for surveillance findings on December 8, 2017.

A review of operations and the affidavit signed by the applicant for Blue Hills Health and Rehabilitation Center in Massachusetts for the period identified above indicates the following:

- The facility was fined \$23,679.00 for surveillance findings on March 26, 2017. Deficiencies were for F Tag 248 (Activities) and F Tag 498 (Proficiency of Nurses Aides).
- The facility was fined \$478.00 for surveillance findings on March 7, 2018

A review of operations and the affidavit submitted by the applicant for Franklin Health and Rehabilitation Center in Massachusetts for the period identified above indicates the following:

- The facility was fined \$1,950.00 for surveillance findings on June 22, 2016.
- The facility was fined \$32,697.00 for surveillance findings on August 23, 2017. Deficiencies were for F Tag 319 (Mental/Psychosocial Treatment) and Tag F323 (Accident Prevention and Resident Supervision).
- The facility was fined \$7,803.00 for surveillance findings on May 31, 2018.

A review of operations and the affidavit submitted by the applicant for Kathleen Daniel Nursing and Rehabilitation Center in Massachusetts for the period identified above indicates the following:

- The facility was fined \$27,346.00 for surveillance findings on January 13, 2017. Deficiencies were for F Tag 203 (Documentation transfer/discharge), Tag 204 (Preparation safe/orderly transfer discharge), Tag 225 (Investigate/report allegations), Tag 226 (Develop/Implement Abuse/Neglect Policies) and Tag 353 (Nursing Services).

Programmatic Description

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Speech-Language Pathology
Physical Therapy	Occupational Therapy	Nutrition	Medical Social Services
Homemaker	Housekeeper		

The applicant will be restricted to serving the residents of the associated Assisted Living Program in Columbia County from an office located at 201 Main Street, Philmont, New York 12565.

Conclusion

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, contingent upon:

1. Submission of photocopy of Applicant's executed and completed Operating Agreement, acceptable to the Department. (CSL)
2. Submission of photocopy of final, complete and fully-executed Certificate of Amendment of Articles of Organization of applicant, acceptable to the Department. [CSL]

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 11th day of April 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:

182100 E

Pine Haven Assisted Living, LLC
d/b/a Pine Haven Home Care

APPROVAL CONTINGENT UPON:

1. Submission of photocopy of Applicant's executed and completed Operating Agreement, acceptable to the Department. (CSL)
2. Submission of photocopy of final, complete and fully-executed Certificate of Amendment of Articles of Organization of applicant, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON

1. The Agency is restricted to serving the residents of the associated Assisted Living Program.

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

Application Number: 182244
Name of Agency: The Sentinel of Rockland, LLC d/b/a The Sentinel of Rockland
Address: Montebello
County: Rockland
Structure: Limited Liability Company

Proposal

The Sentinel of Rockland, LLC d/b/a The Sentinel of Rockland, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. The Sentinel of Rockland will be associated with the Assisted Living Program, The Sentinel of Rockland. The ownership of the LHCSA and the ALP are identical.

Character and Competence

The following individual is the sole member of The Sentinel of Rockland, LLC d/b/a The Sentinel of Rockland:

Eric Newhouse, JD – 100%
CEO, The Eliot Management Group, LLC
CEO, Medwiz Solutions, LLC
President, Marquis Home Care, LLC

Affiliations

- The Eliot at Erie Station (AH/ALP, 05/2007 – Present)
- The Eliot at Erie Station (LHCSA, 05/2007 – Present)
- The Eliot at Catskill (AH/ALP, 08/2010 – Present)
- Marquis Home Care (LHCSA, 10/2013 – Present)
- The Sentinel at Amsterdam (AH/ALP, 2016 – Present)
- The Sentinel at Amsterdam (LHCSA, 2016 – Present)

A search of the individual 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.

A seven-year review of the operations of the above facilities was performed as part of this review (unless otherwise noted).

- **The Eliot at Catskill** was fined \$5,700.00 pursuant to a stipulation and order dated August 30, 2016 for inspection findings on July 24, 2015- December 8, 2015- and April 8, 2016. Deficiencies were found under 18 NYCRR for violations of Article 7 of the Social Services Law and 18 NYCRR 487.7(f)(5) – Resident Services; and 487.11(f)(8) –Environmental Standards.
- **The Eliot at Catskill** was fined \$2,500.00 pursuant to a stipulation and order dated December 19, 2016 for surveillance findings set forth in the reports of inspection dated June 8, 2016 and July 29, 2016. Deficiencies were found under 18 NYCRR 487.4(f) Admission Standards, 487.8(c) Food Service, 487.8(e)(1) Food Service, 487.11(f)(8) Environmental Standards, 487.11(g) Environmental Standards, 487.11(h)(5) Environmental Standards, 487.11(k)(1-3) Environmental Standards, 487.11(k)(5) Environmental Standards and 487.11(k)(16) Environmental Standards.
- **The Eliot at Catskill** was fined \$7,770.00 pursuant to a stipulation and order dated October 16, 2017 for surveillance findings set forth in the reports of inspection dated October 25, 2016, May 11, 2017 and August 30, 2017. Deficiencies were found under 18 NYCRR Environmental Standards.
- **The Sentinel at Amsterdam, LLC** was fined \$1,065.00 pursuant to a stipulation and order dated November 28, 2018 for a surveillance finding set forth in the reports of inspection dated May 18, 2018 and August 15, 2018. Deficiencies were found under 18 NYCRR §487.8(d)(1-2), Food Service regulations.

The Information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Programmatic Description

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Medical Social Services	Nutrition	Housekeeper

The LHCSA will be restricted to serving the residents of the associated Assisted Living Program in Rockland County from an office located at 200 Rella Boulevard Montebello, New York 10901.

Conclusion

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, contingent upon:

1. Submission of a photocopy of applicant's amended Operating Agreement, acceptable to the Department. (CSL)

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 11th day of April 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:

182244 E

The Sentinel of Rockland, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of applicant's amended Operating Agreement, acceptable to the Department. (CSL)

APPROVAL CONDITIONAL UPON

1. The Agency is restricted to serving the residents of the associated Assisted Living Program

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

Application Number: 182289
Name of Agency: Rosewood of Auburn, LLC d/b/a Ridgewood Senior Living
Address: Auburn
County: Cayuga
Structure: Limited Liability Company

Proposal

Rosewood of Auburn, LLC d/b/a Ridgewood Senior Living, a limited liability company, requests approval for a change in membership of a licensed home care services agency under Article 36 of the Public Health Law. This LHCSA will be associated with Rosewood of Auburn, LLC d/b/a Ridgewood Senior Living. The applicant has submitted a Certificate of Need application for an identical change in membership of the Adult Home, Northbrook Heights Home for Adults, Inc. Northbrook Heights Home for Adults, Inc was previously approved as a home care services agency by the Public Health Council at its January 26, 2001 meeting and subsequently licensed as 1023L001 effective April 26, 2001.

Character and Competence

The members of the Rosewood of Auburn, LLC d/b/a Ridgewood Senior Living comprise the following:

Terrence Dancykier – 91 % Membership
Chief Financial Officer, Genesee Senior Living

Yosef S. Farkas – 9 % Membership
Manager, Genesee Senior Living

Affiliation

- Receiver, Claxton Manor d/b/a Foltbrook Center for Senior Living (AH) (07/18-present)

A search of the individuals and entity named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A review of the operations of Claxton Manor d/b/a Foltbrook Center for Senior Living (AH) (07/18-present) was performed as part of this review. 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.

Programmatic Description

The applicant proposes to provide Nursing, Home Health Aide and Personal Care services.

The LHCSA will be restricted to serving the residents of the associated Assisted Living Program in Cayuga County from an office located at 170 Murray Street, Auburn, New York 13021.

Conclusion

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, contingent upon:

1. Submission of a copy of the operating agreement of the applicant, acceptable to the Department. (CSL)
2. Submission of an executed copy of the certificate of amendment of the articles of organization of the applicant, acceptable to the Department. (CSL)

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 11th day of April 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:

182289 E

Rosewood of Auburn, LLC
d/b/a Ridgewood Senior Living

APPROVAL CONTINGENT UPON:

1. Submission of a copy of the operating agreement of the applicant, acceptable to the Department. (CSL)
2. Submission of an executed copy of the certificate of amendment of the articles of organization of the applicant, acceptable to the Department. (CSL)

APPROVAL CONDITIONAL UPON

1. The Agency is restricted to serving the residents of the associated Assisted Living Program.

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

Name of Agency: South Shore Home Health Services, Inc.
Address: Oakdale
County: Suffolk
Structure: For-Profit Corporation
Application Number: 182249

Proposal

South Shore Home Health Service, Inc., a business corporation, requests approval for a change in ownership and merger of a licensed home care services agency under Article 36 of the Public Health Law.

South Shore Home Health Services, Inc. was previously approved by the Public Health Council at its June 27, 1986 meeting and subsequently licensed as 0318L001 effective June 30, 1987. Three additional licenses were subsequently issued for this provider, one of which has since closed.

- 0318L002 effective June 4, 1996
- 0318L003 effective July 20, 2000 (closed November 30, 2009)
- 0318L004 effective 11/16/2018

This application seeks Public Health and Health Planning Council approval for a change in ownership and merger of VIP Health Care Services, Inc. LHCSA (see below) into the application’s existing LHCSA through an Asset Purchase Agreement. In addition, all the sites of services will provide the same services for continuity.

VIP Health Care Services, Inc., was previously approved by the Public Health Council at its November 10, 2006 meeting and subsequently licensed as 1493L001, 1493L002, 1493L003, 1493L004 effective December 6, 2006. An additional license was issued, 1493L005 effective December 18, 2017.

South Shore Home Health Services, Inc. will continue to operate their 0318L001, 0318L002 and 0318L004 site as South Shore Home Health Services, Inc. The sites being merged into their existing operations will operate under the assumed name VIP Health Care Services.

Character and Competence

South Shore Home Health Services, Inc. has authorized 400 shares of stock, which are wholly owned by Addus HealthCare, Inc. **Addus HealthCare, Inc.** has authorized 1,000 shares of stock which are wholly owned by Addus HomeCare Corporation. **Addus HomeCare Corporation** is a publicly traded corporation on the NASDAQ which has authorized 40,000,000 shares of stock. **EOS Management, L.P.** **The EOS Funds** owns 20.70% of the issued stock. No other individual or entity owns more than 10% of the issued stock.

The Board of Directors of **South Shore Home Health Service, Inc.** comprises the following:

Rodney ‘Dirk’ Allison , CPA – Chairman President and CEO, Addus HealthCare, Inc.	Brian Poff – Secretary Executive Vice President, Chief Financial Officer/Secretary, Addus HealthCare, Inc.
William ‘Brad’ Bickham , J.D. – Director Executive Vice President/Chief Operating Officer, Addus HealthCare, Inc.	

The Board of Directors of **Addus HealthCare, Inc.** comprise the following:

Rodney ‘Dirk’ Allison , CPA – Chairman President and CEO, Addus HealthCare, Inc.	Brian Poff – Secretary (Previously Disclosed)
William ‘Brad’ Bickham , J.D. – Director (Previously Disclosed)	

The Board of Directors of **Addus HomeCare Corporation** comprise of the following:

Rodney ‘Dirk’ Allison , CPA – Chairman, President, CEO (Previously Approved by PHHPC for this entity) (Previously Disclosed)	Steve I. Geringer – Chairman (Previously Approved by PHHPC for this entity)
Mark L. First – Director (Previously Approved by PHHPC for this entity)	Michael M. Earley – Director (Previously Approved by PHHPC for this entity)
Darin J. Gordon – Director Founding Partner, Speire Healthcare Strategies, LLC President/CEO, Gordon & Associates, LLC <u>Affiliations</u> Caregiver, Inc. (TX) (2015 – present) Caregiver, Inc. – Operates either directly or through wholly owned subsidiaries Basic Developmental Residences, Developmental Training Residences, Intensive Training Residences and Intermediate Care Facilities (IN, TN, TX)	Susan T. Weaver , M.D. - Director President, Kepro LLC
Jean Rush – Director Retired	

The following individual is the controlling person of the **EOS Funds**:

Mark First , Managing Director, EOS Management L.P.

Michael Earley, and Steve Geringer, are exempt from character and competence review due to the fact they were previously approved by the Public Health Council for this operator.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

Susan Weaver, M.D. has confirmed that the proposed financial/referral structure has been assessed in the light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

The North Carolina Medical Board indicates no issues with the licensure of Susan Weaver, M.D., associated with this application.

A search of William ‘Brad’ Bickham on the Texas Bar and Louisiana State Bar Association revealed that the individual is currently registered and has no disciplinary actions taken against them.

The State Board of CPAs of Louisiana indicates Rodney ‘Dirk’ Allison has an expired Certified Public Accountant Certificate.

Addus HealthCare, Inc. d/b/a Addus HomeCare operates either directly or through wholly owned subsidiaries home care businesses in the below states.

Alabama	Georgia	Montana	Pennsylvania	Washington
Arkansas	Illinois	Nevada	South Carolina	
Arizona	Indiana	New Mexico	Tennessee	
California	Michigan	Ohio	Texas	
Delaware	Missouri	Oregon	Virginia	

A review of the operations of facilities was performed as part of this review and responses were received from the states listed above. The responses received indicated that entities in these jurisdictions have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients. The applicant provided sufficient evidence that they made an adequate effort to obtain out of state compliance for each health care facility located outside of New York State.

An affidavit stating that Addus HealthCare, Inc. operates either directly or through wholly owned subsidiaries home care businesses in the State of Arizona, Idaho, Kentucky, Mississippi and New Mexico to the best of their knowledge each of the home care agencies currently operates and has operated during the period their ownership or operation of the respective agencies are in compliance with all applicable codes, rules and regulations was submitted by the applicant.

An affidavit stating that Mr. Darin Gordon is affiliated with Caregiver, Inc. which operates either directly or through wholly owned subsidiaries Basic Developmental Residences, Developmental Training Residences, Intensive Training Residences and Intermediate Care Facilities in the States of Indiana, Tennessee and Texas and to the best of their knowledge each of agencies currently are in compliance with all applicable codes, rules and regulations was submitted by the applicant.

Programmatic Description

South Shore Home Health Inc. (License number: 0318L001) proposes to continue to serve the residents of the following counties from an office located at 1225-2 Montauk Highway, Suite 2 Oakdale, New York 11769:

Nassau	Suffolk
Queens	Westchester

South Shore Home Health Service, Inc. (License number:0318L002) purposes to continue to service the residents of the following counties from an office located at 393 Jericho Turnpike, Suite 206, Mineola, New York 11501:

Nassau	Queens
Westchester	Suffolk

South Shore Home Health Service, Inc. (License number: 0318L004) proposes to continue to serve the residents of the following counties from an office located at 2 William Street, Suite 305, White Plains, New York 10601:

Rockland	Westchester	Bronx
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South Shore Home Health Services, Inc. d/b/a VIP Health Care Services proposes to continue to serve the residents of the following counties from an office located at 116-08 Myrtle Avenue, Richmond Hill, New York 11418:

Bronx	Kings	New York
Queens	Richmond	Nassau

South Shore Home Health Services, Inc. d/b/a VIP Health Care Services proposes to continue to serve the residents of the following counties from an office located at 466 Main Street, Suite 204, New Rochelle, New York 10801:

Putnam	Rockland
Bronx	Westchester

South Shore Home Health Services, Inc. d/b/a VIP Health Care Services proposes to continue to serve the residents of the following counties from an office located at 75 North Main Street, Store #9, Spring Valley, New York 10977:

Orange	Rockland
Westchester	Ulster

South Shore Home Health Services, Inc. d/b/a VIP Health Care Services proposes to continue to serve the residents of the following counties from an office located at 492 Jerusalem Avenue, Uniondale, New York 11553:

Nassau	Suffolk	Queens
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South Shore Home Health Services, Inc. d/b/a VIP Health Care Services proposes to continue to serve the residents of the following counties from an office located at 5801 Second Avenue, Brooklyn, New York 11220:

Bronx	Kings	New York
Queens	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Medical Social Services	Nutrition	Homemaker
Housekeeper		

Conclusion

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 11th day of April 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:

182249 E

South Shore Home Health Service, Inc.

APPROVAL CONTINGENT UPON:

N/A

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*.