

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

May 16, 2019
10:00 a.m.

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

I. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Gary Kalkut, M.D., Vice Chair

A. Applications for Construction of Health Care Facilities/Agencies

Ambulatory Surgery Centers – Construction

Exhibit # 1

	<u>Number</u>	<u>Applicant/Facility</u>
1.	191083 C	Staten Island University Hospital (Richmond County)
2.	191120 C	The Northway Surgery and Pain Center (Saratoga County)

Residential Health Care Facility – Construction

Exhibit # 2

	<u>Number</u>	<u>Applicant/Facility</u>
1.	172351 C	Bronx Center for Rehabilitation & Health Care (Bronx County)

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

Ambulatory Surgery Centers - Establish/Construct

Exhibit # 3

	<u>Number</u>	<u>Applicant/Facility</u>
1.	181259 E	Mohawk Valley Eye Surgery Center (Montgomery County)
2.	182326 B	Triborough ASC, LLC d/b/a Triborough Ambulatory Surgery Center (Bronx County)
3.	191019 E	Bronx SC, LLC d/b/a Empire State Ambulatory Surgery Center (Bronx County)

- 4. 191027 E North Queens Surgical Center
(Queens County)
- 5. 191060 E Long Island Ambulatory Surgery Center
(Suffolk County)

Diagnostic and Treatment Center - Establish/Construct

Exhibit # 4

<u>Number</u>	<u>Applicant/Facility</u>
1. 191107 E	City Wide Health Facility Inc. (Kings County)

Dialysis Center - Establish/Construct

Exhibit # 5

<u>Number</u>	<u>Applicant/Facility</u>
1. 182068 B	Freedom Dialysis of Riverdale, LLC (Bronx County)
2. 182140 E	DSI Newburgh, LLC (Orange County)
3. 191136 E	Cowley Dialysis, LLC d/b/a Hutchinson River Dialysis (Bronx County)

Residential Health Care Facilities - Establish/Construct

Exhibit # 6

<u>Number</u>	<u>Applicant/Facility</u>
1. 181151 E	Saratoga Care and Rehabilitation Center LLC (Saratoga County)

Certified Home Health Agency - Establish/Construct

Exhibit # 7

<u>Number</u>	<u>Applicant/Facility</u>
1. 181319 E	Tri-Borough Certified Health Systems of the Hudson Valley LLC (Westchester County)

C. Home Health Agency Licensures

Exhibit # 8

Changes of Ownership with Consolidation

<u>Number</u>	<u>Applicant/Facility</u>
1. 191080 E	Always Compassionate Home Care, Inc. (Suffolk County)

Serious Concern/Access

1. 182247 E Aides at Home, Inc.
(Nassau County)

D. Certificates

Exhibit # 9

Certificate of Dissolution

Applicant

F.E.G.S. ProCare Health Services, Inc.

F.E.G.S. Home Care Services, Inc.

M.J.G.N.H.C., Inc.

Mount Sinai Diagnostic & Treatment Center

Certificate of Amendment of the Certificate of Incorporation

Applicant

HQ-WCHN Health System, Inc.



**Project # 191083-C
Staten Island University Hospital**

**Program: Hospital
Purpose: Construction**

**County: Richmond
Acknowledged: February 25, 2019**

Executive Summary

Description

Staten Island University Hospital (SIUH), a 472-bed, voluntary not-for-profit, Article 28 teaching hospital located at 475 Seaview Avenue, Staten Island (Richmond County), is requesting approval to construct a Cancer Center with co-located adult and pediatric ambulatory cancer and infusion services. The project includes building a new third floor to an existing two-story Radiation and Oncology Wing of the Tower Building, as well as renovating the building's first and second floors. The Cancer Center will encompass 40,122 departmental gross square feet. The renovated ground floor will include a main entrance and provide intake functions for the proposed Cancer Center. All Radiation Oncology and medical support services, along with LINAC and the HDR suite, will be located on the ground floor. The renovated second floor, which currently houses administrative space, will contain the Medical Oncology exam/consultation rooms, as well as administration, research and education functions. The project will add ten adult and three pediatric infusion chairs to current capacity, increasing the total number of adult chairs to 27 and pediatric chairs to six. The new third floor will contain the new 27-bay adult and six-bay pediatric chemotherapy and infusion suites, along with a pharmacy and a compounding suite. The proposed comprehensive Cancer Center will combine existing radiation, adult and pediatric medical oncology functions into a centralized facility designed to improve patient experience and accommodate additional patient volume.

The goal of this project is to create a comprehensive cancer center allowing for the expansion of services to the residents of Staten Island.

**OPCHSM Recommendation
Contingent Approval**

Need Summary

SIUH currently offers a full continuum of cancer care; however, the chemotherapy unit operates at capacity, is small and overcrowded, and has minimal patient privacy. Adult and pediatric patients share the same infusion suite and have a common waiting area. The proposed project addresses all of these issues by creating a patient-centric, all-inclusive Cancer Center in a modern facility that meets industry standards.

Program Summary

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

Financial Summary

Total project cost of \$35,387,054 will be met via accumulated funds of \$3,538,705 and DASNY tax-exempt bonds of \$31,848,349 over 30 years at 6.5%. Citigroup Global Markets has provided a letter of interest to underwrite the bond financing. The projected Budget is as follows:

Incremental	<u>Year One</u>	<u>Year Three</u>
Revenues	\$48,310,068	\$63,607,908
Expenses	<u>\$39,061,647</u>	<u>\$46,156,890</u>
Net Income	\$9,248,421	\$17,451,018

Enterprise	<u>Year One</u>	<u>Year Three</u>
Revenues	\$970,546,068	\$985,843,908
Expenses	<u>\$920,846,647</u>	<u>\$927,941,890</u>
Net Income	\$49,699,421	\$57,902,018

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, 2.18 LSC Chapter 18 Healthcare Facilities Public Use, for review and approval. [DAS]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before September 1, 2019 and construction must be completed by September 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. Financing is conditioned upon the Department having the opportunity to review the final financing proposal in advance to ensure that it meets approval standards. [BFA]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

June 6, 2019

Need and Program Analysis

Analysis

The most recent available data from the New York State Department of Health Cancer Registry data shows Staten Island has the highest cancer incidence rate in New York City. The cancer incidence rate per 100,000 population within Staten Island from 2011 to 2015 was 524.9, exceeding the NYC rate of 453.4.

Staffing is expected to increase as a result of this construction/expansion project by 22.3 FTEs in Year One after completion of the project and by 41.9 FTEs by Year Three.

Compliance with Applicable Codes, Rules and Regulations

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

Conclusion

The new, right-sized Cancer Care Center will allow for the needed expansion of capacity in a patient-centered modern facility.

Financial Analysis

Financial Analysis

Total project cost is estimated at \$35,387,054, further broken down as follows:

New Construction	\$5,832,239
Renovation and Demolition	13,538,711
Design Contingency	1,592,337
Construction Contingency	1,645,483
Architect/Engineering Fees	1,549,676
Construction Manager Fees	968,538
Other Fees (Consultant)	297,713
Moveable Equipment	5,470,780
Telecommunications	2,606,040
Financing Costs	1,689,984
CON Fee	2,000
Additional Processing Fee	<u>193,553</u>
Total Project Cost	\$35,387,054

Project costs are based on a construction start date of September 1, 2019, and a 24-month construction period.

The applicant's financing plan appears as follows:

Equity	\$3,538,705
Bond Issuance (6.5% interest, 30-yr. term)	<u>\$31,848,349</u>
Total	\$35,387,054

This project is approved to be initially funded with Northwell Health, Inc. Obligated Group equity, with the prospect that the project will be 90.00% percent financed as part of a future Northwell Health, Inc. Obligated Group tax-exempt bond financing through the Dormitory Authority of the State of New York (DASNY). The bond issue is expected to include a 6.5% percent interest rate and a 30-year term. Citigroup Global Markets has provided a letter of interest to underwrite the bond financing.

Operating Budget

The applicant's operating budget, in 2019 dollars, during the first and third years, is summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>						
Commercial MC	\$1,991.10	\$18,644,640	\$1,903.10	\$22,119,648	\$1,801.54	\$29,069,640
Medicare FFS	\$562.00	7,135,199	\$561.46	8,307,394	\$560.74	10,651,775
Medicare MC	\$843.51	8,727,787	\$842.80	10,159,145	\$841.91	13,021,848
Medicaid FFS	\$680.53	730,206	\$646.68	863,962	\$607.99	1,131,471
Medicaid MC	\$944.18	5,354,432	\$850.54	6,777,089	\$765.93	9,622,396
Private Pay	<u>\$88.28</u>	<u>68,857</u>	<u>\$88.59</u>	<u>82,830</u>	<u>\$89.05</u>	<u>110,778</u>
Total Revenues		\$40,661,121		\$48,310,068		\$63,607,908
<u>Expenses</u>						
Operating	\$704.81	\$28,143,727	\$669.61	\$32,616,943	\$600.14	\$39,769,266
Capital	<u>\$49.92</u>	<u>1,993,165</u>	<u>\$132.31</u>	<u>6,444,704</u>	<u>\$96.39</u>	<u>6,387,624</u>
Total Expenses	\$754.73	\$30,136,892	\$801.92	\$39,061,647	\$696.53	\$46,156,890
Net Income		<u>\$10,524,229</u>		<u>\$9,248,421</u>		<u>\$17,451,018</u>
Total Visits		39,931		48,710		66,267

The following is noted with respect to the submitted budget:

- The current year revenues include radiation Oncology, Adult and Pediatric Oncology and reflect the 2017 Institutional Cost Report as certified with an escalation factor for 2018 cash collected.
- Year One and Year Three reflect projected incremental net revenue and expense, both direct and indirect for all outpatient oncology visits.
- Commercial revenues and visits represent the aggregate for all commercial payors including United, Cigna, Aetna, Empire Blue Cross as well as Northwell's self-insurance program for employees. The commercial rate per visit is a negotiated rate for cancer services which include the high cost of drugs and exceeds the government payor rates since they have remained constant due to budget cuts and trend below inflation.
- Private Pay is based on actual collections and includes patients covered under the financial assistance program that provides reduced fees for uninsured or underinsured patients.
- The addition of ten adult and three pediatric infusion chairs (currently 17 and three chairs, respectively) will increase the visits and revenues in third year by approximately 36 percent.
- Utilization by payor for the first and third years of operation.

<u>Outpatient</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	23.9%	24.3%
Medicare FFS	30.4%	28.7%
Medicare MC	24.7%	23.3%
Medicaid FFS	2.7%	2.8%
Medicaid MC	16.4%	19.0%
Private Pay	<u>1.9%</u>	<u>1.9%</u>
Total	100.0%	100.0%

Capability and Feasibility

Total project cost of \$35,387,054 will be met via equity of \$3,538,705 and a bond issuance of \$31,848,349 at the above stated terms. Citigroup Global Markets has provided a letter of interest.

BFA Attachment A, Northwell Health, Inc.'s financial statements for the 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).

BFA 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 Northwell Health Obligated Group's certified financial statements for the period ending December 31, 2017, which indicate the group of facilities maintained positive working capital, positive net assets position, and net operating revenue of \$191,238,000.

BFA Attachment D is Northwell Health Obligated Group's internal financial statements as of September 30, 2018, which show the entity maintained positive working capital, a positive net asset position and generated operating revenue of \$182,985,000.

BFA Attachment E is Staten Island University Hospital's certified financial statements for the period ending December 31, 2017, which demonstrate the facility maintained positive working capital, positive net asset position and generated operating income of \$40,451,000

BFA Attachment F is Staten Island University Hospital's internal financial statements as of September 30, 2018, which indicate the facility maintained positive working capital, positive net asset position and generated operating revenue of \$10,677,000.

BFA Attachment G provides Northwell Health, Inc's organization chart.

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

Attachments

BFA Attachment A	Northwell Health, Inc. – December 31, 2017 certified financial statements
BFA Attachment B	Northwell Health, Inc. – September 30, 2018 internal financial statements
BFA Attachment C	Northwell Health Obligated Group – December 31, 2017 certified financial statements
BFA Attachment D	Northwell Health Obligated Group – September 30, 2018 internal financial statements
BFA Attachment E	Staten Island University Hospital – December 31, 2017 certified financial statements
BFA Attachment F	Staten Island University Hospital – September 30, 2018 internal financial statements
BFA Attachment G	Northwell Health, Inc. – Organization chart



Project # 191120-C
The Northway Surgery and Pain Center

Program: Diagnostic and Treatment Center **County:** Saratoga
Purpose: Construction **Acknowledged:** March 11, 2019

Executive Summary

Description

The Northway Surgery and Pain Center (the Center), a single specialty Article 28 freestanding ambulatory surgery center (FASC) located at 1596 Route 9, Clifton Park (Saratoga County), requests approval to be certified as a multi-specialty FASC. The Center was approved by the Public Health and Health Planning Council (PHHPC) under CON 132346 as a single specialty FASC specializing in pain management services. Approval was for a five-year limited life and the Center began operations effective October 19, 2015. The FASC remains within its five-year limited life certification. The applicant is now seeking a multi-specialty certification and will initially add ENT surgical services. There will be no change in membership interest. The Center will continue to operate under its original 15-year lease, which provides for two additional five-year renewal options.

Edward A. Apicella, M.D., a member of the applicant, will continue to serve as Medical Director.

Effective November 1, 2017, Northway SPC, LLC entered into a Consulting Agreement with Specialists' Operations Consulting Services, LLC to provide administrative services to the Center. The services include billing/claims processing, tracking of accounts receivable and accounts payable, payroll and purchasing.

OPCHSM Recommendation

Contingent Approval with no change to the operating certificate expiration date.

Need Summary

The center has one operating room and four procedure rooms. Based upon current experience, the number of total projected procedures is 12,451 in the Year One with 7.8% Medicaid and 4.2% Charity Care. The review for permanent life in 2020 will evaluate the Center against the projections of CON 132346.

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 \$133,294 will be funded via cash from operations. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$6,583,504	\$6,980,770
Expenses	<u>2,965,305</u>	<u>3,033,845</u>
Gain/(Loss)	\$3,618,199	\$3,946,925

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval with no change to the operating certificate expiration date, 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]

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 continued submission of annual reports to the Department as required by approval of CON 132346. [RNR]

Council Action Date

June 6, 2019

Need and Program Analysis

Background

The service area is Saratoga County. The table below shows the number of patient visits at ambulatory surgery centers in Saratoga County for 2016 and 2017. Currently, Saratoga County has a total of one (1) freestanding multi-specialty ASCs and three freestanding single-specialty ASCs. An additional multi-specialty ASC is currently under construction.

ASC Type	Facility Name	Total Patient Visits	
		2016	2017
Ophthalmology	New York Eye Surgical Center	3,401	3,363
Pain Management	Northway Surgery & Pain Center	6,360	10,877
Gastroenterology	Saratoga-Schenectady Endoscopy Center	10,581	12,232
Multi	OrthoNY Surgical Suites (opened 2/1/19)	N/A	N/A
Total Visits		20,342	26,472

Source: SPARCS

The center began operation in October 2015 and is still operating under its original life approval. The center is making strides to provide service to the under-insured in their service area. The center originally projected 3.3% for Medicaid utilization and 3.0% for Charity Care. Per the center's AHCF cost reports, the center achieved Medicaid utilizations of 5.3% in 2016, and 6.7% in 2017. The center is reporting 7.5% for Medicaid utilization in 2018. The center has a robust financial assistance program which provided services at a reduced rate for patients which has resulted in charity care utilizations of 1.5% for 2016, 4.0% for 2017 and 4.3% for 2018.

The center has contracts with the following Medicaid managed care plans: CDPHP, Fidelis, MVP and United Healthcare. The center has started referral agreements with Saratoga Community Health Center and Hometown Health Centers (an FQHC) in late 2018 to expand their services to the under-insured in their service area. The center has a Financial Assistance policy with a sliding fee scale for those patients needing assistance. When the center requests permanent life in 2020, the center's performance will be evaluated against the original projections provided in CON 132346.

The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

Dr. Edward Apicella will be the Medical Director and the existing transfer and affiliation agreement with Saratoga Hospital will remain in effect. There will be no construction to accommodate the additional otolaryngologic procedures projected. The staffing will increase by 0.8 FTEs in the first year and 0.8 FTEs in the third to accommodate the additional procedures.

Compliance with Applicable Codes, Rules and Regulations

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

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

Conclusion

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

<h2>Financial Analysis</h2>

Total Project Cost and Financing

Total project costs are estimated at \$133,294 and broken down as follows:

Moveable Equipment	\$130,576
Application Fee	2,000
Processing Fee	<u>718</u>
Total Project Cost	\$133,294

The project costs are for to the purchase of necessary equipment for otolaryngology surgical procedures and will be funded via equity.

Operating Budget

The applicant has submitted their current year (2018), and their first-year and third-year operating budget after the change in specialty, in 2019 dollars, summarized below:

Revenues	Current Year		Year One		Year Three	
	Per Proc.	Total	Per Proc.	Total	Per Proc.	Total
Medicaid MC	\$458.58	\$416,852	\$477.60	\$461,838	\$502.67	\$529,316
Medicare FFS	\$407.99	\$1,478,142	\$411.76	\$1,507,046	\$417.11	\$1,550,401
Medicare MC	\$397.12	\$526,182	\$402.79	\$541,746	\$410.98	\$565,091
Commercial FFS	\$572.79	\$1,404,478	\$583.14	\$1,461,934	\$597.96	\$1,548,118
Commercial MC	\$425.55	\$448,528	\$485.82	\$566,464	\$556.83	\$743,368
Charity Care	\$167.62	\$86,996	\$165.71	\$86,996	\$163.22	\$86,996
Workers' Comp.	\$890.95	\$1,525,304	\$890.95	\$1,525,304	\$890.95	\$1,525,304
Other	\$759.54	<u>\$432,176</u>	\$759.54	<u>\$432,176</u>	\$759.54	<u>\$432,176</u>
Total Revenues		\$6,318,658		\$6,583,504		\$6,980,770
 <u>Expenses</u>						
Operating	\$205.17	\$2,495,519	\$208.95	\$2,601,621	\$207.26	\$2,670,161
Capital	<u>\$28.37</u>	<u>\$345,030</u>	<u>\$29.21</u>	<u>\$363,684</u>	<u>\$28.23</u>	<u>\$363,684</u>
Total Expenses	\$233.54	\$2,840,549	\$238.16	\$2,965,305	\$235.49	\$3,033,845
 Net Income		 <u>\$3,478,109</u>		 <u>\$3,618,199</u>		 <u>\$3,946,925</u>
 Procedures		 12,163		 12,451		 12,883

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

Payor	Current Year		Year One		Year Three	
	Proc.	%	Proc.	%	Proc.	%
Medicaid MC	909	7.47%	967	7.77%	1,053	8.17%
Medicare FFS	3,623	29.79%	3,660	29.40%	3,717	28.85%
Medicare MC	1,325	10.89%	1,345	10.80%	1,375	10.67%
Commercial FFS	2,452	20.16%	2,507	20.13%	2,589	20.10%
Commercial MC	1,054	8.67%	1,166	9.36%	1,335	10.36%
Charity Care	519	4.27%	525	4.22%	533	4.14%
Workers' Comp.	1,712	14.08%	1,712	13.75%	1,712	13.29%
Other	569	4.67%	569	4.57%	569	4.42%
Totals	12,163	100.00%	12,451	100.00%	12,883	100.00%

Revenue, expense and utilization assumptions are based on the historical experience of the facility, with the same contractual terms applied to the new ENT service line.

Capability and Feasibility

The total project costs for the moveable equipment and CON fees are \$133,294 to be funded via cash from operations.

The submitted budget projects a net income of \$3,618,199 and \$3,946,925 during the first and third year of operation, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services.

BFA Attachment A is the 2017 Audited Financial Statements of Northway SPC, LLC, which indicates the Center had positive working capital and net asset positions and an operating income of \$2,892,419. BFA Attachment B is their Internal Financial Summary as of December 31, 2018, which indicates the Center has maintained positive working and equity and generated a net income of \$3,494,454.

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

Attachments

BFA Attachment A	2017 Audited Financial Statements of Northway SPC, LLC
BFA Attachment B	2018 Internal Financial Summary as of December 31, 2018 of Northway SPC, LLC



**Project # 172351-C
Bronx Center for Rehabilitation & Health Care**

Program: Residential Health Care Facility
Purpose: Construction

County: Bronx
Acknowledged: December 22, 2017

Executive Summary

Description

Bronx Center for Rehabilitation & Health Care (Bronx Center), a 200-bed, proprietary, Article 28 residential health care facility (RHCF) located at 1010 Underhill Avenue, Bronx (Bronx County), requests approval to renovate and expand the facility to accommodate the relocation of beds from two other RHCFs, University Center for Rehabilitation and Nursing (University Center) and Williamsbridge Center for Rehabilitation and Nursing (Williamsbridge Center), which will then be closed. University Center is a 46-bed, proprietary, RHCF located at 2505 Grand Avenue in the Bronx. Williamsbridge Center is a 77-bed, proprietary, RHCF located at 1540 Tomlinson Avenue in the Bronx. The members of Bronx Center for Rehabilitation & Health Care, LLC, Kenneth Rozenberg (95%) and Beth Rozenberg (5%), are also the current operators of University Center and Williamsbridge Center.

The bed relocation will result in an increase in the certified bed capacity of Bronx Center by 123 beds for a final certified capacity of 323 beds. To accommodate the increase in capacity, a four-story extension will be built adjacent to the existing six-story building. This extension is intended to create new resident rooms and amenity space and the quadruple resident rooms in the existing building (from the 2nd to 6th floors) will be converted to double resident rooms. The project includes moving 20 beds in the existing building to the newly constructed space, reflecting a total capacity of 143 beds within the new addition.

The Bronx Center's real estate is owned by Underbruckner Realty Co., LLC, which is 100% owned by Daryl Hagler. The realty owner will finance the construction and renovation project. The applicant indicated that the lease agreement will change due to this project. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity in that the members have previous business relationships involving real estate transactions of nursing homes.

**OPCHSM Recommendation
Contingent Approval**

Need Summary
The relocation will not result in any change to total beds certified in the County.

Program Summary
The addition to the Bronx Center for Rehabilitation will enable the applicant to continue providing care through the replacement of two outdated nursing facilities. Residents that will transfer to the Bronx Center for Rehabilitation will remain within five miles of their original facilities. The project will provide the opportunity for relocated residents to live in modern code compliant rooms and current residents will gain more recreation, dining space, and increased privacy with the elimination of four bedded rooms and the addition of private rooms.

Financial Summary

Total project cost of \$57,241,789 will be financed by Daryl Hagler, the property owner, via \$25,497,836 equity and a bank loan for \$31,743,953 with interest at 5% for a ten-year term and 25-year amortization period. Greystone has provided a letter of interest to finance the construction at the stated terms.

The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$46,525,844	\$46,525,844
Expenses	<u>\$40,705,408</u>	<u>40,521,372</u>
Net Income	\$5,820,436	\$6,004,472

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 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]
3. 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]
4. Submission of an executed bank loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
6. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-04. [AER]
7. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-04. [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 January 2, 2020 and construction must be completed by June 22, 2022, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. [PMU]
3. The operator shall submit a plan to maintain resident services and safety during construction to the Metropolitan Area Regional Office and must receive approval for such plan prior to the commencement of construction. [LTC]
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

June 6, 2019

Need Analysis

Analysis

University Center for Nursing and Rehabilitation, a 46-bed RHC is located 5 miles away and Williamsbridge Manor Nursing Home, a 77-bed RHC is located 2.3 miles away, from Bronx Center. The relocation of beds will result in an increase in the certified capacity of Bronx Center for Rehabilitation, but no change in total certified beds in the County.

Facility	Bed Capacity	Change in Beds	Final Bed Count
Bronx Center	200	123	323
University	46	(46)	0
Williamsbridge	77	(77)	0
Totals	323	0	323

The three RHCs have had consistently high utilization since 2014

Facility	# of Beds	2014	2015	2016	2017	Current	As of
NYC Region		93.8%	95.2%	94.3%	94.5%	95.2%	3/13/19
Bronx County		95.5%	95.9%	93.0%	95.2%	95.5%	3/13/19
Bronx Center for Rehab	200	95.5%	97.0%	98.0%	98.1%	98.5%	3/13/19
University Center for Rehab	46	96.8%	95.6%	97.1%	95.9%	100.0%	3/13/19
Williamsbridge Manor	77	97.1%	96.0%	95.3%	94.2%	98.7%	3/13/19

Bronx Center offers both long-term care and short-term rehabilitation services as well as the following specialty services: bariatric service, HIV care unit, and hip repair/replacement recovery program. Additionally, the facility will offer a cardiac recovery program and Alzheimer's and dementia programs which are currently offered at University and Williamsbridge, respectively. The programs will be transitioned to the Bronx Center upon the relocation of residents to the new addition. It is anticipated that the majority of residents at University and Williamsbridge will decide to relocate to Bronx Center.

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.

Bronx Center's Medicaid admissions rate show a slight decline over the past few years, not exceeding 75% of the Bronx County rate in 2017, as demonstrated in the table below.

Percent of New RHC Admissions that are Medicaid	2015	2016	2017
Bronx County 75% Threshold	28.6%	28.0%	31.6%
Bronx Center for Rehabilitation and Health Care	39.3%	27.9%	23.6%

Conclusion

There will be no change in the number of beds in Bronx County through the completion of this project. The relocation of beds from the two facilities into Bronx Center for Rehabilitation is necessary due to the ages of the buildings and the deteriorating physical plants at these two facilities.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Bronx Center for Rehabilitation & Health Care	Same
Address	1010 Underhill Avenue Bronx, NY 10472	Same
RHCF Capacity	200	323
ADHC Program Capacity	N/A	N/A
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Same
Operator	Bronx Center for Rehabilitation & Health Care, LLC	Same

Program Review

Bronx Center for Rehabilitation and Health Care (Bronx Center) is a 200-bed nursing home located in the Bronx owned by Kenneth and Beth Rosenberg. The Rosenbergs also own University Center for Rehabilitation and Nursing (46 beds) and Williamsbridge Manor Nursing Home (77 beds). Instead of constructing a single replacement facility, the applicant is expanding an existing nursing home to accommodate all 123 beds. The resulting project seeks to construct a four-story addition to the Bronx Center site and make renovations to the existing building chiefly, the reduction of all four bedded rooms into double bedrooms, increasing the number of private bedrooms, and relocating dining space from the existing building to a first floor centrally located dining room.

Physical Environment

The proposed layout of the Bronx Center for Rehabilitation & Health Care new addition is a conventional linear layout with double-loaded corridors. Common resident dining and recreation space is used to connect and create a transition between the new four-story addition and the original six-story facility.

The cellar level contains mechanical, staff support, and service areas such as maintenance, kitchen, mechanical & utility service rooms, central laundry, housekeeping, and a dialysis treatment center that serves both the resident and the public.

On the first floor, the existing building is attached to the addition by lobby space. The new lobby space will have two distinct entry points. One lobby entrance will allow access for dialysis treatment and the other access to the residential health care facility. Directly adjacent to the residential lobby entrance is a café with outdoor terrace. In the existing building, the kitchen was relocated to the cellar and therapy space was relocated to the addition. The open space created was converted into central recreation / dining space for residents that seats 149 residents. The relocated therapy space has been expanded to feature a full activities of daily living suite. The rest of the space in the addition is utilized for residential rooms, dining space, and lounges. The unit has 13 total rooms composed of 10 double and 3 single bedded rooms. The common dining area is located near the entrance of the unit with seating for 34 residents and features a nourishment room.

The second through the fourth floors have a similar layout, each floor will have 76 total beds composed of 31 double and 14 single bedded rooms. The existing building and addition are connected by a common corridor with dining space and access to an outdoor patio area. Resident dining space on each floor offers a small group dining room with seating for 8 in the new addition and a common dining room with seating for 38. Modification to the existing building will convert four bedded rooms into double bedded rooms and the existing dining room space into double bedded rooms. The existing building will contain 13 double bedded rooms and 10 private bedded rooms. The existing resident unit on the floors will have a new resident recreation space and the central shower room will be converted from a bath tub into a shower. The existing resident space will have central elevators for direct access to the first-floor central dining room. The new addition will contain 18 double and 4 single bedded rooms with bathrooms that

feature private showers. A central shower room is also located on the unit that offers the option of shower or tub bathing. Sitting areas are broken up along the corridor allowing for small group socialization or a rest stop when moving along the floor.

The new addition construction stops at the fourth floor. Modification to the existing building's fifth and sixth floors will be converting four bedded rooms to double bedded rooms and the existing dining room space into double bedded rooms. The fifth and sixth floors will each have 36 total beds composed of 13 double bedded rooms and 10 single bedded rooms. The resident unit will have a new resident recreation space and the central shower room will convert a bath tub into a shower. The fifth and sixth floors will not have dining room space on the floors, centrally located elevators on the floor will provide direct access to the first-floor central dining room.

Compliance

Bronx Center for Rehabilitation & Health Care currently has no outstanding civil monetary penalties or pending enforcements.

Quality Review

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Bronx Center for Rehabilitation & Health Care	Current	***	**	*****	**
	Data 02/2009	**	**	****	*

Current ratings as of 4/20/19

Project Analysis and Conclusion

The addition to the Bronx Center for Rehabilitation will enable the applicant to continue providing care through the replacement of two outdated nursing facilities. The use of lobby and lounge space to connect the addition to the existing building will result in limited disruptions for the existing residents during construction. Residents that will transfer to the Bronx Center for Rehabilitation will remain within five miles of their original facilities. The project will provide the opportunity for relocated residents to live in modern code compliant rooms and current residents will gain more recreation, dining space, and increased privacy with the elimination of four bedded rooms and the addition of private rooms.

Financial Analysis

Lease Rental Agreement

The applicant has submitted a revised lease rental agreement, summarized below:

Premises:	The nursing home located at 1010 Underhill Avenue, Bronx, New York
Lessor:	Underbruckner Realty Co., LLC
Lessee	Bronx Center for Rehabilitation and Healthcare, LLC
Term	10 years
Rental	\$3,300,000 annually
Provisions	The lessee shall be responsible for real estate taxes, maintenance and utilities.

The proposed lease agreement is a non-arm's length agreement. The applicant has provided an affidavit attesting to the relationship between landlord and tenant and indicating that the agreement reflects a reasonable lease amount to account for the long-term viability of the operation of the nursing home as well as the debt service for the construction project.

Total Project Cost and Financing

Total project cost for new construction, renovations and the acquisition of moveable equipment is estimated at \$57,241,789, further broken down as follows:

New Construction	\$30,605,000
Renovation and Demolition	11,925,225
Site Development	750,000
Temporary Utilities	100,000
Design Contingency	4,338,023
Construction Contingency	2,807,773
Architect/Engineering Fees	1,200,000
Construction Manager Fees	45,279
Other Fees (Consultant)	60,000
Moveable Equipment	766,900
Telecommunications	75,000
Financing Costs	1,587,198
Interim Interest Expense	2,666,294
CON Fees	2,000
Additional Processing Fee	<u>313,097</u>
Total Project Cost	\$57,241,789

Project costs are based on a construction start date of January 2, 2020, and a 28-month construction period.

Based on the mid-point of construction in 2021, the Bureau of Architectural and Engineering Review has determined that the cost per bed is within the applicable RHCF bed cap limitation (\$352,000 per bed). The allowable cost is based on 143 beds at (98% of the \$352,000 cap), since 20 beds from the existing building will be moved to the new building via decanting and 60 beds that will be renovated (40% of the \$352,000 cap).

The calculation of the applicant being within the applicable RHCF bed cap is as follows:

Construction Cap per bed (Bronx County)	\$352,000
Allowed Percentages	98%
Allowed Per Bed	\$344,960
Number of beds	143
Total Allowed New Construction	\$49,329,280

Construction Cap per bed (Bronx County)	\$352,000
Allowed Percentages	40%
Allowed Per Bed	\$140,800
Number of beds	60
Total Allowed for Renovation Piece	\$8,448,000

Total Allowed for Project	\$57,777,280
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The realty owner will finance the project cost as follows:

Equity (Daryl Hagler)	\$25,497,836
Bank Loan (5% interest, 10-year term, 25-year amortization)	31,743,953

A letter of interest from Greystone to Daryl Hagler has been submitted related to the construction loan financing. A balloon payment of \$23,466,551 would be due after the tenth year if refinancing is not available. The applicant indicated that if refinancing is not available, the balloon payment will be provided by Daryl Hagler. BFA Attachment A is the net worth statement of Daryl Hagler, which indicates sufficient funds to cover the balloon payment and the equity contribution.

Operating Budget

The applicant has submitted their current year (2017) operating results and an operating budget, in 2019 dollars, for the first and third years after project completion, summarized below:

Revenues	Current 2017 (200 beds)		Year One (323 beds)		Year Three (323 beds)	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Medicaid FFS	\$288.90	\$13,308,240	\$321.00	\$23,882,079	\$321.00	\$23,882,079
Medicaid MC	\$288.75	2,871,907	\$321.00	5,157,186	\$321.00	5,157,186
Medicare FFS	\$737.31	9,043,150	\$707.00	14,003,549	\$707.00	14,003,549
Medicare MC	\$387.62	962,460	\$400.00	1,603,200	\$400.00	1,603,200
Comm. FFS	\$235.49	42,860	\$284.00	82,360	\$284.00	82,360
Private Pay	\$658.95	293,232	\$580.00	416,440	\$580.00	416,440
Other	\$415.93	140,585	\$580.00	315,520	\$580.00	315,520
*Other Revenues		<u>1,065,510</u>		<u>1,065,510</u>		<u>1,065,510</u>
Total Revenues		\$27,727,944		\$46,525,844		\$46,525,844
Expenses						
Operating	\$311.34	\$22,301,624	\$285.13	\$32,983,822	\$284.90	\$32,983,822
Capital	<u>47.11</u>	<u>3,374,804</u>	<u>66.75</u>	<u>7,721,586</u>	<u>65.11</u>	<u>7,537,550</u>
Total Expenses	\$358.45	\$25,676,428	\$351.88	\$40,705,408	\$350.01	\$40,521,372
Net Income		<u>\$2,051,516</u>		<u>\$5,820,436</u>		<u>\$6,004,472</u>
Patient Days		71,725		115,773		115,773
Occupancy		98.25%		98.20%		98.20%
Breakeven		90.98%		85.91%		85.53%

The following is noted with respect to the submitted budget:

- The increased reimbursement rates are based upon current market rates for the respective payors.
 - The projected Medicaid rate takes into consideration the revised Statewide Direct and Indirect Price components of Bronx Center's Medicaid rate to reflect the facility's new peer group designation upon completion of the project. The facility's rate will be determined based on the "HBF +300 bed" peer group, which is applicable to hospital-based facilities and all free-standing facilities that have a certified bed capacity of 300 beds or more. As a result of the peer group change, the Statewide Direct Price will increase from \$115.37 to \$125.42 (Medicare Ineligible rate per diem), and the Statewide Indirect Price will increase from \$57.18 to \$64.52 (Medicare Ineligible rate per diem). For purposes of this budget, the applicant conservatively represented the Medicaid rate increase at approximately \$32 over their 2017 per diem FFS and MC rates.
 - The Department assessed the Medicaid revenue increase related to Bronx Center's revised Statewide Direct and Indirect peer group price components utilizing the latest pending January 2019 rate for each facility, which includes updated Case Mix and capital cost information. The incremental Medicaid revenue related to the revised peer grouping is estimated at \$5,332,927 based on the following:
 - University Center's Medicaid patient days related to the bed transfer accounts for \$602,744 of the increase based on a rate differential of \$47.11 per day over the facility's current pending January 2019 rate. The facility is at 93.5% occupancy through 3/6/2019 and was 81.5% Medicaid in 2017.
 - Williamsbridge Center's Medicaid patient days related to the bed transfer accounts for \$1,863,392 of the increase based on a rate differential of \$80.41 per day over the facility's current pending January 2019 rate. The facility is at 96.1% occupancy through 2/27/2019 and was 85.8% Medicaid in 2017.
 - Bronx Center's Medicaid patient days (exclusive of University Center's and Williamsbridge Center's patient day impact) accounts for \$2,866,790 of the increase based on a rate differential is \$52.65 per day over the facility's current pending January 2019 rate. This facility is at 98.25% and was 78.1% Medicaid in 2017.
- BFA Attachment E provides the details of the calculation.
- Other payor relates to other (non-FFS) commercial insurers and is based on current market rates.
 - Other Revenues consists of physician office rentals and unrestricted investment income and advanced training initiative grant funding.

- Expense assumptions are based on the combined expenses for University, Williamsbridge and Bronx Center, less duplicative expenses, such as rent and depreciation.
- Utilization by payor during the current, first and third years after project completion is as follows:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid FFS	64.23%	64.23%	64.23%
Medicaid MC	13.87%	13.87%	13.87%
Medicare FFS	17.10%	17.10%	17.10%
Medicare MC	3.46%	3.46%	3.46%
Private	0.62%	0.62%	0.62%
Other	0.47%	0.47%	0.47%

Capability and Feasibility

Total project cost of \$57,069,553 will be financed by the realty owner, Daryl Hagler, to be funded via equity of \$25,497,836 and a \$31,743,953 bank loan at 5% interest for a ten-year term and 25-year amortization period. The landlord has submitted a letter of interest from Greystone relative to the financing. If refinancing is not available, a balloon payment of \$23,466,551 would be due after the tenth year. The applicant has indicated that if refinancing is not available, the balloon payment will be provided by Daryl Hagler. BFA Attachment A is the net worth statement of Daryl Hagler, which indicates sufficient funds to pay the balloon payment.

Working capital requirements are estimated at \$6,753,562, which is equivalent to two months of third year one expenses. The applicant will finance \$3,376,781 at an interest rate of 5% for a five-year term. Greystone has provided a letter of interest for the financing. The remaining \$3,376,781 will be provided via equity from the members of Bronx Center for Rehabilitation and Health Care, LLC. BFA Attachment A presents the personal net worth statements of the operating entity members and for Daryl Hagler, the landlord, which indicates the availability of sufficient funds for the equity contribution for the total project cost and the working capital portion.

The submitted budget projects \$5,820,436 and \$6,004,472 of net income in Year One and Year Three, respectively, after project completion. Revenues are based on current reimbursement methodologies. As previously noted, the projected Medicaid rate takes into consideration the revised Statewide Direct and Indirect Price components of Bronx Center's rate to reflect the facility's new peer group designation ("HBF +300 bed" peer group). The submitted budget appears reasonable.

BFA Attachment B is the 2015-2017 financial summary of the Bronx Center, which shows the entity had an average negative working capital position and an average positive net asset position for the period. The reason for the average negative working capital position is that in 2015 the facility included \$1.5 million in accounts payable related to amounts due vendors for which the facility has agreements to pay out over an extended period of time. Also, \$377,000 of accrued benefit time is included in accrued payroll. The entity achieved an average net income of \$1,370,440 from 2015 through 2017.

BFA Attachment C is the Bronx Center's internal financial statements as of December 31, 2018. As shown, the entity had a positive working capital position and a positive net asset position through December 31, 2018. Also, the entity achieved a net income of \$1,314,945 through December 31, 2018.

BFA Attachment D is the percentage ownership and financial summaries of the proposed members' NYS affiliated nursing homes. As shown, all facilities had average positive net income and average positive net asset positions from 2014 through December 31, 2017. Also, all facilities achieved an average positive working capital position except for the following: Brooklyn Center, University Nursing Home, Bushwick Center for Rehabilitation, Williamsbridge Manor and Richmond Center for Rehabilitation. The applicant indicated that the average negative working capital positions are attributable to accrued payroll and the continued positive net from operations of each facility enables the operator to satisfy all current obligations as they become due. During 2017 Brooklyn Center, University Nursing Home and Bushwick Center for Rehabilitation show improvement in working capital position compared to the previous two years.

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

Attachments

BFA Attachment A	Personal Net Worth Statement of members of Bronx Center for Rehabilitation and net worth statement of Daryl Hagler (Realty)
BFA Attachment B	Financial Summary- Bronx Center for Rehabilitation from 2015 through 2017.
BFA Attachment C	Financial Summary- December 31, 2018 internal financial statements of Bronx Center for Rehabilitation
BFA Attachment D	Financial Summary of Affiliated Facilities of the Applicant Members
BFA Attachment E	Calculation of Medicaid Revenue Impact due to Revised Peer Group



**Project # 181259-C
Mohawk Valley Eye Surgery Center**

Program: Diagnostic and Treatment Center **County:** Montgomery
Purpose: Construction **Acknowledged:** April 19, 2018

Executive Summary

Description

Amsterdam REC, LLC d/b/a Mohawk Valley Eye Surgery Center, a proprietary Article 28 Diagnostic and Treatment Center located at 108 Holland Circle Drive, Amsterdam (Montgomery County), requests indefinite life status. The D&TC was approved by the Public Health and Health Planning Council (PHHPC) under CON 112179 as a single-specialty Freestanding Ambulatory Surgery Center (FASC) specializing in ophthalmology services. PHHPC approval was for a conditional five-year limited life and the FASC began operation effective June 11, 2013. The applicant notified the Department before their limited life expiration date to request indefinite life.

David Kwiat, M.D., a Board-certified ophthalmologist who is the sole member of the FASC, will continue to serve as Medical Director. The FASC has a Transfer and Affiliation Agreement with St. Mary's Healthcare in Amsterdam for back-up emergency care. There will be no change in services provided. The Center is not proposing to expand or renovate the facility, and there are no changes to the existing lease which provides for an initial 10-year term with two five-year renewal options.

OPCHSM Recommendation
Approval

Need Summary

Data submission by the applicant, a contingency of CON 112179, has been completed. Based on CON 112179, Mohawk Valley Surgery Center

projected 826 procedures in Year One and 877 procedures in Year Three. Medicaid procedures were projected at 22.0% and Charity Care was projected at 2.0% for Year Three. The total number of procedures was 1,275 in Year One (2015-1st full year) and 1,357 in Year Three (2017). Actual Charity Care in Year Three (2017) was 0.0% and Medicaid was 21.2%. The center has a referral relationship with Hometown Health Center, an FQHC.

Upon approval of this project, Mohawk Valley Eye Surgery Center projects 1,168 procedures in Year One with Medicaid at 16.1% and charity care at 0.0%. There will be no changes in services.

Program Summary

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

Financial Summary

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

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,009,557	\$1,267,985
Expenses	<u>775,730</u>	<u>927,022</u>
Net Income	\$233,827	\$340,963

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval

Council Action Date

June 6, 2019

Need and Program Analysis

Analysis

The primary service area is Montgomery County. The table below provides Year Three utilization, projections and actual, by payor, for CON 112179, and projections for Year One following approval. No AHCF cost report was submitted by the center for 2014, so the AHCF cost report information for 2015 and 2017 was used for the first- and third-years actual utilization for the department's analysis.

Payor	CON 112179 Projected Year 3 (2017)	CON 112179 Actual Year 3 (2017)	CON 181259 Projections Year 1
Medicaid	22.0%	21.2%	16.1%
Medicare	39.0%	46.4%	50.3%
Comm/Private/Other	37.0%	32.4%	33.6%
Charity Care	2.0%	0.0%	0.0%
Total	100.00%	100.00%	100.00%

The table below provides information on projections and utilization by procedures for Year One (2015-1st full year) and Year Three (2017) based on CON 112179.

CON 112179- Procedures	Year 1 (2015)		Year 3 (2017)	
Mohawk Valley Eye	Projected	Actual	Projected	Actual
Total	826	1,275	877	1,357

The Center currently has Medicaid Managed Care contracts with the following health plans: Capital District Physicians' Health Plan (CDPHP), MVP, Excellus and several smaller ones. The center has established a referral relationship with Hometown Health Centers, a local FQHC, and has received 58 referrals for years 2016 through 2018. Based upon the five-year (2013-2017) estimate from the US Census, the number of uninsured has decreased to approximately 3,975 (8%) of Montgomery county residents. The number of Montgomery residents enrolled in Medicaid was 23.2% in December 2018. This center's Medicaid utilization has been strong during their limited-life approval process; 19.4% in 2015, 18.0% in 2016, 21.2% in 2017, and 16.1% in 2018.

Compliance with Applicable Codes, Rules and Regulations

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

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

Conclusion

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law. Per the PHHPC Ad Hoc Committee recommendation, the department should exercise flexibility to evaluate each ASC according to the totality of its proposed and actual volume of service to the underserved whether Medicaid, Charity Care or a combination of the two. In analyzing the information provided by the Center, the center's Medicaid utilization has been strong, nearly 20% each year, and the center is projecting this to be at 16% going forward. The center has a referral agreement with a local FQHC to show their commitment to the under-insured, thereby showing reasonable efforts to provide service to the underserved patients in Montgomery County.

Financial Analysis

Operating Budget

The applicant has submitted their current year (2017) and year one and three operating budget, in 2019 dollars, subsequent to receiving indefinite life certification, as summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>						
Medicaid FFS	\$972.20	\$9,722	\$972.00	\$972	\$972.00	\$7,776
Medicaid MC	\$772.69	\$214,036	\$772.69	\$144,493	\$772.69	\$191,627
Medicare FFS	\$662.53	\$288,865	\$662.53	\$245,800	\$662.53	\$315,366
Medicare MC	\$701.40	\$136,071	\$701.40	\$152,203	\$701.40	\$178,856
Commercial FFS	\$931.08	\$392,914	\$931.41	\$348,349	\$916.92	\$440,120
Private Pay	\$12,907.75	\$103,262	\$12,907.75	\$103,262	\$10,326.15	\$134,240
Other (Gov.)	\$1,447.80	\$14,478	\$1,447.80	\$14,478	\$0.00	\$0
Total Revenues		\$1,159,348		\$1,009,557		\$1,267,985
<u>Expenses</u>						
Operating	\$459.24	\$623,191	\$457.38	\$534,217	\$458.53	\$685,509
Capital	<u>\$177.98</u>	<u>\$241,513</u>	<u>\$206.77</u>	<u>\$241,513</u>	<u>\$161.55</u>	<u>\$241,513</u>
Total Expenses	\$637.22	\$864,704	\$664.15	\$775,730	\$620.08	\$927,022
Net Income		<u>\$294,644</u>		<u>\$233,827</u>		<u>\$340,963</u>
Procedures		1,357		1,168		1,495
Cost per Proc.		\$217.13		\$200.19		\$228.07

Revenue, expense and utilization assumptions are based upon the Center's historical operating experience.

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

<u>Payor</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Proc.</u>	<u>%</u>	<u>Proc.</u>	<u>%</u>	<u>Proc.</u>	<u>%</u>
Medicaid FFS	10	0.73%	1	0.09%	8	0.53%
Medicaid MC	277	20.41%	187	16.01%	248	16.59%
Medicare FFS	436	32.13%	371	31.76%	476	31.84%
Medicare MC	194	14.30%	217	18.58%	255	17.06%
Commercial FFS	428	31.10%	374	32.53%	480	32.11%
Private Pay	8	0.59%	8	0.86%	13	0.87%
Charity Care	0	0.00%	0	0.00%	15	1.00%
Other (Gov.)	<u>10</u>	<u>0.74%</u>	<u>10</u>	<u>0.17%</u>	<u>0</u>	<u>0.00%</u>
Totals	1,357	100.00%	1,168	100.00%	1,495	100.00%

Capability and Feasibility

There are no project costs associated with this application. Mohawk Valley EC, LLC projects operating income of \$233,827 and \$340,963 in Year One and Three, respectively. Revenues are based on current reimbursement rates. The budget appears reasonable.

BFA Attachment A is Mohawk Valley Eye Surgery Center's 2016 and 2017 certified financial statements, which shows the facility had a small negative working capital position in 2016 and 2017 but has maintained positive equity and net income for the periods shown.

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

<h2>Attachments</h2>

BFA Attachment A	2016 and 2017 Certified Financial Statements, Mohawk Valley Eye Surgery Center
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**Project # 182326-B
Triborough ASC, LLC d/b/a
Triborough Ambulatory Surgery Center**

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

Executive Summary

Description

Triborough ASC, LLC d/b/a Triborough Ambulatory Surgery Center, an existing New York limited liability company, is requesting approval to establish and construct an Article 28 Freestanding Ambulatory Surgery Center (FASC) to be located at 550 East 180th Street, Bronx (Bronx County). The facility will be certified as a multi-specialty FASC initially offering pain management, and general orthopedic and oculoplastic surgery procedures. The Center will be housed in approximately 4,650 square feet of leased space on the cellar and ground floor levels of an existing single-story building. Upon completion of renovations, the FASC will have two operating rooms, two pre-op bays, three recovery bays, a nurse's station, and the requisite support spaces. Fran-Ju, Inc. (landlord) and Triborough ASC, LLC (tenant) have entered into a proposed lease agreement for site control of the facility. The agreement is an arms-length transaction as there is no relationship between the entities.

Mark Gladstein, M.D., who is Board-certified in Anesthesiology, will serve as Medical Director. The Center expects to have a Transfer and Affiliation Agreement with St. Barnabas Hospital, located 0.3 miles (one minute) from the proposed FACS, for back-up emergency services.

OPCHSM Recommendation
Contingent Approval with an expiration of the operating certificate five years from the date of its issuance.

Need Summary
The number of projected procedures is 3,000 in Year One and 3,632 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.

The membership of Triborough ASC, LLC is:

<u>Members</u>	<u>%</u>
Triboro Surgical Management, LLC	75.10%
Mark Gladstein, M.D. (50%)	
Irene Gladstein, M.D. (50%)	
Mark Gladstein, M.D.	12.45%
Irene Gladstein, M.D.	12.45%

Financial Summary

The total project cost of \$3,985,100 will be funded with \$797,020 members' equity and a \$3,188,080 bank loan at 5.5% interest with a ten-year term. JP Morgan Chase Bank has provided a letter of interest. financings. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,281,579	\$3,845,528
Expenses	<u>3,158,740</u>	<u>3,585,444</u>
Net Income	\$122,839	\$260,084

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

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

Approval conditional upon:

1. The project must be completed within 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 01, 2019 and construction must be completed by March 03, 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 entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The 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/hospitals/docs/hcs_access_forms_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]
6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date
June 6, 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	10,901
Multi	Downtown Bronx ASC (opened 12/5/16)	N/A	312
Multi	Ambulatory Surgery Center of Greater New York	9,450	8,881
Multi	Avicenna ASC, Inc	2,777	2,984
Multi	East Tremont Medical Center	1,378	2,544
Multi	Empire State Ambulatory Surgery Center	3,748	3,997
Ophthalmology	Eye Surgery Center of New York	2,323	2,407
Gastroenterology	Mid-Bronx Endoscopy Center (opened 8/11/17)	N/A	939
Gastroenterology	New York GI Center, LLC	9,251	11,327
Total Visits		41,084	44,292

The number of projected procedures is 3,000 in Year One and 3,632 in Year Three. These projections are based on the current practices of participating surgeons. The applicant estimates that of the current procedures 45% are being done in other ASC's, 34% are being done in an office-based setting and the remaining 21% are being done in hospitals. 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%	182	5.0%
Medicaid MC	150	5.0%	182	5.0%
Medicare MC	780	26.0%	944	26.0%
Commercial FFS	690	23.0%	835	23.0%
Commercial MC	1,050	35.0%	1,271	35.0%
Private Pay	120	4.0%	145	4.0%
Charity Care	60	2.0%	73	2.0%
Total	3,000	100.0%	3,632	100.0%

The Center initially plans to obtain contracts with the following Medicaid Managed care plans: Fidelis, Health First, MetroPlus and United Healthcare Community Plan. The Center plans to contact staff at St Barnabas Hospital and Bronx Lebanon Hospital to discuss a collaborative relationship to meet the needs of the under-served population. The center also intends to contact the following centers: 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 ambulatory surgery services for the residents of Bronx County.

Program Analysis

Project Proposal

Proposed Operator	Triborough ASC, LLC
Doing Business As	Triborough Surgery Center
Site Address	550 East 180th Street Bronx, New York 10457 (Bronx County)
Surgical Specialties	Multi-Specialty
Operating Rooms	2
Procedure Rooms	0
Hours of Operation	Monday through Friday from 8:00 am - 6:00 pm Hours expanded as needed
Staffing (1st / 3rd Year)	10.2 FTEs / 13.2 FTEs
Medical Director	Mark Gladstein, M.D.
Emergency, In-Patient & Backup Support Services Agreement and Distance	Expected to be provided by: St. Barnabas Hospital 0.3 miles/1 minute
After-hours access	Patients will call the surgeon's service and either be directed to the surgeon or an on-call surgeon.

Character and Competence

The membership of Triborough ASC, LLC is as follows:

Name	%
Triborough Surgical Management, LLC Mark Gladstein, M.D. (50%) Irene Gladstein, M.D. (50%)	75.10%
Mark Gladstein, M.D.	12.45%
Irene Gladstein, M.D.	12.45%
Total	100.00%

The participating physicians are board-certified and have medical practices in the proposed service area. Dr. Mark Gladstein will serve as the center's medical director. He has experience as manager of an office based surgery practice that was certified by the American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF) and professes familiarity with the requirements for an Ambulatory Surgery Center.

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. Mark Gladstein disclosed the following legal matters:

- 21st Century Insurance Company commenced a declaratory judgement action against Dr. Gladstein, Avanguard Medical Group, PLLC, and Metropolitan Medical and Surgical, P.C. in the Supreme Court of the State of New York, New York County. 21st Century sought restitution in excess of \$475,000.00. The case was settled on March 13, 2018 and 21st Century reimbursed the defendants \$155,000.00.
- On or about April 20, 2015 United States Automobile Association filed a declaratory judgment in the Supreme Court of the State of New York, Nassau County seeking a declaratory judgment and restitution in excess of \$610,000.00. On or about September 9, 2015, the lawsuit was discontinued.

- On September 10, 2014, Country-Wide Insurance Company filed a declaratory judgement action in the Supreme Court of the State of New York, New York County, seeking to declare the claims against it from Avanguard and Metropolitan uncollectable and void. Country-Wide later amended the action to include restitution in the amount of \$536,419.18. The case was dismissed against Dr. Gladstein personally. The case against Avanguard and Metropolitan currently remains pending.
- In November 2011, Government Employees Insurance Company (GEICO) commenced an action for a declaratory action against Avanguard, seeking a declaration that Avanguard was not entitled to bill for and be reimbursed for a facility fee under auto policies issued by GEICO and other No Fault insurers in New York State. The Nassau District Court determined that Avanguard was permitted to collect a facility fee. Multiple appeals were filed and the case was seen before the New York State Appellate Division. On February 18, 2015, the Appellate Division reversed the ruling of the District Court that an Office Based Surgery practice could not collect a separate facility fee. Avanguard appealed this decision in the New York State Court of Appeals which affirmed the decision of the Appellate Division. Avanguard immediately ceased billing of a facility fee with the determination of the Appellate Division. GEICO did not seek monetary damages or reimbursement in its claim.

Dr. Mark Gladstein disclosed two medical malpractice cases. In the first case, a patient had a cervical disc decompression and was diagnosed with a perforation of the posterior pharynx. The suit remains open. The second case involves a patient who was seen in the office for lower back pain. He was told, with his wife in the room, that he would require surgery to prevent nerve loss in his right foot. He was diagnosed with sural nerve paralysis of the right leg. The suit against Dr. Gladstein is pending.

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

Integration with Community Resources

The Applicant plans to work with St. Barnabas Hospital to make primary and other specialty service referrals, as needed to patients who present in need of primary care services. 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

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

The applicant has submitted an executed lease for the proposed site, the terms are summarized below:

Date:	June 9, 2018
Premises:	4,650 gross square feet located at 550 East 180 th Street, Bronx, New York
Landlord:	Fran-Ju, Inc.
Tenant:	Triborough ASC, LLC
Term:	10 Years with renewal option for additional ten-year term.
Terms:	\$114,000 (\$24.52 per sq. ft.) Base rent will increase 2% annually starting in year two.
Provisions:	Tenant will pay for utilities, taxes, and insurance.

The lease is an arm's length lease arrangement. The applicant has submitted an affidavit confirming that there is no relationship between the landlord and the tenant, other than that of lessor and lessee. Letters have been provided from two New York licensed realtors attesting that the rental rate is of fair market value.

Total Project Costs and Financing

Total project costs are estimated at \$3,985,100 broken down as follows:

Renovation & Demolition	\$1,994,904
Design Contingency	199,490
Construction Contingency	199,490
Architect/Engineering Fees	199,490
Other Fees	206,003
Movable Equipment	1,031,300
Financing Costs	55,985
Interim Interest Expense	74,650
CON Application Fee	2,000
CON Processing Fee	<u>21,787</u>
Total Project Cost	\$3,985,100

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

The applicant's financing plan is as follows:

Members' Equity	\$797,020
Bank Loan (10-year term, 5.5% interest)	<u>3,188,080</u>
Total	\$3,985,100

BFA Attachment A is the net worth statement of the applicant members, which indicates sufficient liquid resources exist to fund the equity requirement for project costs. JP Morgan Chase Bank has provided a letter of interest to finance the bank loan at the stated terms.

Operating Budget

The applicant submitted the first- and third-years' operating budgets, in 2019 dollars, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid FFS	\$1,002.45	\$150,367	\$999.69	\$181,944
Medicaid MC	\$1,002.45	\$150,367	\$999.69	\$181,944
Medicare FFS	\$1,002.44	\$781,906	\$1,002.23	\$946,107
Commercial FFS	\$1,497.13	\$1,033,019	\$1,403.25	\$1,171,717
Commercial MC	\$1,253.06	\$1,315,708	\$1,202.46	\$1,528,324
Private Pay	\$801.96	\$144,352	\$801.22	\$174,666
Bad Debt/NYS Surcharge		<u>(\$294,140)</u>		<u>(\$339,174)</u>
Total Revenues		\$3,281,579		\$3,845,528
<u>Expenses</u>				
Operating	\$702.77	\$2,108,314	\$699.05	\$2,538,963
Capital	<u>\$350.14</u>	<u>\$1,050,426</u>	<u>\$288.13</u>	<u>\$1,046,481</u>
Total Expenses	\$1,052.91	\$3,158,740	\$987.18	\$3,585,444
Net Income/(Loss)		<u>\$122,839</u>		<u>\$260,084</u>
Procedures		3,000		3,632

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

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Proc.</u>	<u>%</u>	<u>Proc.</u>	<u>%</u>
Medicaid FFS	150	5.0%	182	5.0%
Medicaid MC	150	5.0%	182	5.0%
Medicare MC	780	26.0%	944	26.0%
Commercial FFS	690	23.0%	835	23.0%
Commercial MC	1,050	35.0%	1,271	35.0%
Private Pay	120	4.0%	145	4.0%
Charity Care	<u>60</u>	<u>2.0%</u>	<u>73</u>	<u>2.0%</u>
Total	3,000	100.0%	3,632	100.0%

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

Expense and utilization assumptions are based on the experience of the physicians in their private medical practice. The applicant has submitted physician letters in support of the utilization projections they expect to perform at the FASC. Also, data by CPT code detailing case volume, applicable Medicare payment rates, and cost per case have been provided in support of the budgeted revenue and expense projections. The budget appears reasonable given the relate costs and Medicare payment rates associated with the types of procedures to be performed at the FASC.

Capability and Feasibility

The total project cost is \$3,985,100 for construction and moveable equipment. The applicant will fund the cost via members' equity of \$797,020 and a bank loan in the amount of \$3,188,080 at 5.5% interest with a ten-year term. JP Morgan Chase Bank has provided a letter of interest for the bank loan at the stated terms.

Working capital requirements are estimated at \$597,574 based on two months of third year expenses. Working capital will be funded via of \$298,787 equity from the proposed members' personal assets with the balance of \$298,787 to be financed over a five-year term at 6% interest. JP Morgan Chase Bank has provided a letter of interest at the stated terms. BFA Attachment A is the net worth statements of the applicant members, which supports the ability to meet equity and working capital requirements. BFA Attachment B is Triborough ASC, LLC's pro forma balance sheet, which shows operations will start with \$298,787 in members' equity.

Triborough ASC, LLC projects an operating excess of \$122,839 and \$260,084 in the first and third years, respectively. The budget appears reasonable.

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.

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

NY Eye & Ear Infirmary of Mount Sinai
310 East 14th Street
New York, New York 10003

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

Montefiore Medical Center - Henry & Lucy Moses Div
111 East 210th Street
Bronx, New York 10467

St. Barnabas Hospital
4422 Third Avenue
Bronx, New York 10457

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	Personal Net Worth Statement of Proposed Members of Triborough ASC, LLC
BFA Attachment B	Pro Forma Balance Sheet of Northern New York for Surgery, LLC
BHFP Attachment	Map



Project # 191019-E
Bronx SC, LLC d/b/a Empire State
Ambulatory Surgery Center

Program: Diagnostic and Treatment Center **County:** Bronx
Purpose: Establishment **Acknowledged:** January 22, 2019

Executive Summary

Description

Bronx SC, LLC d/b/a Empire State Ambulatory Surgery Center (ESASC), an Article 28 freestanding ambulatory surgery center (FASC) located at 3170 Webster Avenue, Bronx (Bronx County), is requesting approval to transfer 70% membership interest from various existing members to one new member LLC, Surgicore 5th Avenue, LLC, which consists of four individual members each with equal ownership interest in the corporation.

The facility was approved by the Public Health and Health Planning Council (PHHPC) under CON 111439 as a multi-specialty FASC with a five-year limited life and began operations February 19, 2015. The FASC remains within its five-year limited life certification. There will be no change in services upon the change in membership interest and the facility will continue to operate under its original 20-year plus five months lease (with extension options). The FASC currently has an administrative service agreement (ASA) with Ambulatory Surgical Centers of America. Upon PHHPC approval of this application, the FASC will enter into a new ASA with Surgicore Management NY LLC, a related entity to Surgicore 5th Avenue, LLC via identical membership.

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

Ownership		
Empire State Ambulatory Surgery Center		
Members	Current	Proposed
John Aljian, M.D.	3.7898%	2.0489%
Sanjiv Bansal, M.D.	0.8373%	0.4527%
Reginald Camillo, M.D.	3.7898%	2.0489%
Gabriel Dassa, D.O.	3.0064%	1.6253%
Barry Finkelstein, D.P.M.	1.9884%	1.0750%
Gary Fishman, M.D.	3.0064%	0.0000%
Albert Graziosa, M.D.	1.9884%	1.0750%
Emmanuel Hostin, M.D.	1.9884%	1.0750%
Dennis Nachmann, D.P.M.	3.0064%	1.6253%
Jalu Patel, D.P.M.	3.0064%	1.6253%
Neil Patel, M.D.	3.7898%	2.0489%
Anthony Terraciano, M.D.	3.0064%	1.6253%
Arnold Wilson, M.D.	3.7898%	2.0489%
Jian Zhang, D.P.M.	3.0064%	1.6253%
NYEE Holding Corp.	30.0000%	0.0000%
Thomas Bombardier, M.D.	9.0000%	2.5000%
Brent Lambert, M.D.	9.0000%	2.5000%
Luke Lambert	3.0000%	2.5000%
George Violin, M.D.	9.0000%	2.5000%
Surgicore 5th Avenue, LLC	0.0000%	70.0000%
Total	100.0000%	100.0000%

The members of Surgicore 5th Avenue, LLC are Anthony DeGradi (25%), Wayne Hatami (25%), Feliks Kogan (25%), and Leonid Tylman (25%). Concurrently under review is CON 191027 in which Surgicore 5th Avenue, LLC seeks to acquire 75% ownership interest in North Queens Surgical Center, an Article 28 FASC located in Bayside (Queens County).

John Aljian, M.D., who is Board-certified in Ophthalmology, will continue to serve as Medical Director. ESASC has a Transfer Agreement with Bronx-Lebanon Hospital Center that will remain in place.

OPCHSM Recommendation
Contingent Approval, with no change to the operating certificate expiration date.

Need Summary
The center has four operating rooms. Trending current experience, the number of total projected procedures is 5,207 in the Year One following approval, with 16.9% Medicaid and 2.0% Charity Care

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

Financial Summary

There are no project costs associated with this application. The total purchase price for the 70% ownership interest is \$3,010,000 plus a buyer deliverable at closing (Ambulatory Surgical Centers of America fee of \$300,000) for a total purchase price of \$3,310,000. The purchase price will be funded via the proposed new members' personal equity and the liquid resources of Surgicore 5th Avenue, LLC valued at \$4.07M as of April 22, 2019. Surgicore 5th Avenue, LLC and the proposed new members overall have sufficient equity to fund the purchase price. An affidavit was submitted by three members attesting to their willingness to contribute equity disproportionate to their membership interest in the corporation to fund the total purchase price. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$10,433,025	\$10,433,025
Expenses	<u>8,350,141</u>	<u>8,390,164</u>
Gain	\$ 2,082,884	\$2,042,861

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval with no change to the operating certificate expiration date contingent upon:

1. Submission of an executed Administrative Services Agreement, 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]
2. The continued submission of annual reports to the Department as required by approval of CON 111439. [RNR]

Council Action Date

June 6, 2019

Need and Program Analysis

Analysis

The service area is Bronx County. The population of Bronx County was 1,385,108 in 2010. Per PAD projection data from the Cornell Program on Applied Demographics, the population of Bronx County is estimated to grow to 1,567,988 by 2025, an increase of 13.2%.

The center began operation in February 2015 and is still operating under its original life approval. The center is making strides to provide service to the under-insured in their service area. The center originally projected 10.24% for Medicaid utilization and 2.00% for Charity Care. Per the center's AHCF cost reports, the center achieved Medicaid utilizations of 18.4% in 2016, and 22.3% in 2017. The center is reporting 24.4% for Medicaid utilization in 2018. Charity care has been low, just 0.1% in 2016 and 2018.

Upon approval of this project, the center expects that five (5) new physicians will also practice at the center, adding orthopedic and pain management procedures to the center. All the additional procedures are currently being performed either as office-based procedures or in other Article 28 ambulatory surgery centers. The center operates Monday through Friday from 7:15 am until 5 pm.

The center currently has contracts with the following Medicaid managed care plans: Affinity, Amida Care, Emblem Health, Empire Blue Cross Medicaid, Fidelis, Healthcare Partners, HealthFirst, HIP, Metroplus, MVP, United Healthcare Community plan, VNSNY Choice and Wellcare. For outreach efforts, the ASC states that they have contacted nearly a dozen health centers to provide service to the under-insured. One center indicated that they could send patients yet could not have a formal referral agreement with the ASC. A couple other health centers indicated that they were part of the Montefiore Health System and could not enter into a referral agreement with the ASC. None of the other outreach efforts have results in referral agreements yet. The center has a Financial Assistance policy with a sliding fee scale for those patients needing assistance. When the center requests permanent life in 2020, the center's performance will be evaluated against the original projections provided in CON 111439.

The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

Character and Competence

The following table details the proposed change in ownership:

Member Name	Original	Proposed
John Aljian, MD	3.789%	2.0489%
Sanjiv Bansal, MD	0.8373%	0.4527%
Reginal Camillo, MD	3.7898%	2.0489%
Gabriel Dassa, DO	3.0064%	1.6253%
Barry Finkelstein, DPM	1.9884%	1.0750%
Gary Fishman, MD	3.0064%	-----
Albert Graziosa, MD	1.9984%	1.0750%
Emmanuel Hostin, MD	1.9884%	1.0750%
Dennis Nachmann, MD	3.0064%	1.6253%
Jalu Patel, DPM	3.0064%	1.6253%
Neil Patel, MD	3.7898%	2.0489%
Anthony Terraciano, MD	3.0064%	1.6253%
Arnold Wilson, MD	3.7898%	2.0489%
Jian Zhang, DPM	3.0064%	1.6253%
NYEE Holding Corp	30.0000%	-----
Thomas Bombardier, MD	9.000%	2.5000%
Brett Lambert, MD	9.000%	2.5000%
Luke Lambert, MD	3.000%	2.5000%
George Violin, MD	9.000%	2.5000%
*Surgicore Fifth Avenue LLC	-----	70.0%
*Anthony DeGradi (25%)		
*Feliks Kogan (25%)		
*Wayne Hatami (25%)		
*Leonid Tylman (25%)		
TOTAL	100.00%	100.00%

***Members Subject to Character & Competence Review**

The proposed managers upon approval will be Mr. Lambert, Mr. Blank, Mr. Hendizadeh, Mr. Degradi, Mr. Hatami, Mr. Kogan, and Mr. Tylman.

Surgicore 5th Avenue LLC is a limited liability company formed by four individuals who have experience in the healthcare sector and also own interests in other ambulatory surgical facilities.

Mr. DeGradi has over ten years of experience as the partner/co-owner of a surgical center in Paterson, New Jersey. His duties include the all aspects of managing the facility and working with the executive team to ensure compliance with all applicable regulations. **Mr. Hatami** is a recently retired (2017) licensed physical therapist with over 20 years of experience treating patients in an out-patient capacity. He operated a private physical therapy practice (with 5 sites) and managed the daily operations of his business. **Messrs. Kogan and Tylman** each have several years of experience owning and operating several surgical centers in New Jersey with responsibility for working with medical staff to improve patient care and ensure compliance with applicable regulations.

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.

On February 13, 2019, Fifth Avenue Surgery Center, LLC was named as a defendant in a malpractice case. The plaintiff alleges negligence for injuries to her foot that resulted in additional expenses and treatment.

On or about June 22, 2018 by Allstate Insurance Company et al. The complaint alleges common law fraud, violation of New York General Business Law 349, unjust enrichment, and declaratory judgement, arising primarily from allegations challenging New Horizon's ownership structure, the transportation of it's patients to its facility in New Jersey and coding and billing in excess of fee schedule. The defendants have not formally responded to the complaint as the parties are engaging in settlement discussions.

On or about August 2016 by The Government Employees Insurance Company with the United States District Court for the District of New Jersey against New Horizon Surgical Center, LLC and a number of medical providers. The suit alleges that New Horizon was submitting fraudulent billing to GEICO and other insurers for procedures that were not medically necessary. In October 2017, the parties entered into a settlement agreement.

On or about March 5, 2018, a lawsuit was filed in Superior Court in Hudson County by a former employee of Surgicore of Jersey City, LLC. The case alleged that the former employee was harassed and retaliated against by her former employer. The allegation was denied but the case was settled.

On July 8, 2016, a lawsuit was filed with the State of New Jersey against New Horizon Surgical Center, LLC. The case alleged a negligent performance of left ankle surgery resulting in permanent injury. The case remains pending.

On January 28, 2015, a lawsuit was filed with the State of New Jersey against New Horizon Surgical Center, LLC. The case alleged negligent performance of shoulder surgery. The case remains pending.

On February 26, 2015 a lawsuit was filed against New Horizon Surgical Center, LLC with the State of New Jersey. The suit alleged negligent orthopedic surgery resulting in the patient's death and that the ambulatory surgery center failed to properly equip themselves with monitoring and resuscitation equipment. The case remains pending.

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.

5th Avenue Surgical Center:

- *Fined \$2,000 pursuant to a Stipulation and Order (S&O) dated February 16, 2018 for surveillance findings set forth in the reports of inspection dated April 5, 2017. Deficiencies were found under 10 NYCRR 416.66 Environment and 416.51 Infection Control.*

Surgicore of Jersey City, LLC:

- *The New Jersey Department of Health issued an Immediate Jeopardy based on findings from a survey concluded on May 3, 2018. Deficient practice was cited in the following areas: Pharmaceutical Services and Infection Control.*

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

Financial Analysis

The applicant has submitted an executed Company Interest Purchase Agreement (CIPA), to be effectuated upon PHHPC approval, summarized as follows:

Date:	October 23, 2018
Buyer:	Surgicore 5th Avenue, LLC
Seller/Company:	Bronx SC, LLC d/b/a Empire State Ambulatory Surgery Center
Purchase:	Purchase 70% Membership Interest
Buyer Deliverables at Closing:	1) Purchase Price; 2) Ambulatory Surgical Centers of America (ASCOA) Fee (\$300,000); 3) Buyer's Limited Guaranty Agreement Pledge of Membership Units and Distribution Rights, and other documents Bankwell may reasonably require to provide security; 4) Operating Agreement; 5) Administrative Services Agreement; 6) Buyer Certificate; and 7) other certificates and documents reasonably requested.
Assumed Liabilities:	Bank Direct Insurance Loan, Bankwell Loan, Charter School Sublease Deposit, and Partner Loan. The assumed liabilities total \$5,536,694 as of March 31, 2019.
Purchase Price	\$3,010,000 plus \$300,000 ASCOA fee to be paid at Closing
Payment of Purchase Price	Equity at Closing.

The CIPA provides that the purchase price shall be reduced by the amount by which the "Closing Company Liabilities" (Center liabilities as of the month prior to closing) exceed 105% of the "Target Company Liabilities" (Center liabilities as of May 31, 2018, which totaled \$6,220,412). The "Closing Company Liabilities" estimated at \$5,536,694 as of March 31, 2019, are less than 105% of the Target Company Liabilities; hence, the purchase price would not be reduced based on the current valuation.

BFA Attachment A provides the members' net worth, which indicates sufficient liquid resources overall to fund the transaction. An affidavit was submitted by three members attesting to their willingness to contribute equity disproportionate to their membership interest to fund the total purchase price.

Administrative Service Agreement

The applicant has submitted a draft ASA, which is summarized below:

Contractor:	Surgicore Management NY LLC
Licensed Operator:	Bronx SC, LLC
Term	10 years effective upon execution, renewable for successive 5-year terms
Services Provided:	Assist to secure and monitor permits, licenses, and other necessary operating certificates, purchasing, project financing, developing and updating of policies and procedures, billing and collection, A/R and A/P processing, development of contracts with managed care payors, joint venture agreements, utilization management and quality assurance procedures, human resources administration, developing a proposed capital and operating budget, preparation of monthly financial reports, and performing other consulting, business support and administrative duties as reasonably requested by the Company.
Fee:	\$300,000 annually (\$25,000/month)

Surgicore Management NY LLC is a related entity to Surgicore 5th Avenue, LLC via identical membership. The draft ASA provides that the Facility Operator retains ultimate authority, responsibility, and control in all final decisions associated with the services and acknowledges the reserve powers that must not be delegated. The applicant has submitted an executed attestation acknowledging understanding of the reserve powers that cannot be delegated, and that they will not willingly engage in any such illegal delegations of authority.

Operating Budget

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

<u>Revenues</u>	<u>Current Year (2017)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
Commercial-FFS	\$2,441.04	\$2,006,531	\$2,439.31	\$1,661,168	\$2,439.31	\$1,661,168
Medicare-FFS	\$1,304.97	1,610,332	\$1,305.18	1,378,271	\$1,305.18	1,378,271
Medicaid-FFS	\$3,256.12	133,501	\$3,256.12	133,501	\$3,256.12	133,501
Medicaid-MC	\$1,374.60	1,154,662	\$1,374.60	1,154,662	\$1,374.60	1,154,662
All Other *	\$2,675.58	<u>2,726,420</u>	\$2,423.11	<u>6,018,994</u>	\$2,423.11	<u>6,018,994</u>
Total Revenue		\$7,631,446		\$10,346,596		\$10,346,596
<u>Expenses</u>						
Operating	\$1,416.83	\$5,604,977	\$1,293.96	\$6,615,994	\$1,301.78	\$6,656,017
Capital	<u>\$438.36</u>	<u>1,734,147</u>	<u>\$339.16</u>	<u>1,734,147</u>	<u>\$339.16</u>	<u>1,734,147</u>
Total Expenses	\$1,855.19	\$7,339,124	\$1,633.12	\$8,350,141	\$1,640.95	\$8,390,164
Net Income		<u>\$292,322</u>		<u>\$1,996,455</u>		<u>\$1,956,432</u>
Procedures		3,956		5,207		5,207

* *Workers' Compensation, Uninsured/Self Pay and No-Fault*

Utilization by payor source is as follows:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial-FFS	20.8%	13.1%	13.1%
Medicare-FFS	31.2%	20.3%	20.3%
Medicaid-FFS	1.0%	0.8%	0.8%
Medicaid-MC	21.2%	16.1%	16.1%
Charity	0.0%	2.0%	2.0%
All Other	<u>25.8%</u>	<u>47.7%</u>	<u>47.7%</u>
Total	100.0%	100.0%	100.0%

The following is noted regarding the first and third-year budgets:

- Revenue, expense, and utilization assumptions are based on the historical performance of the FSAC and the proposed addition of five new non-member physicians.
- All Other Revenue includes the estimated additional 1,465 procedures to be performed in the first and third year by the five new non-member physicians for workers' compensation and no-fault cases. Each physician has submitted a letter indicating the estimated number surgical procedures they will perform annually at the FASC. The projected rates for these procedures are based on ESASC's 2017 payor rates for these types of procedures.

Capability and Feasibility

There are no project costs associated with this application. The total purchase price for the 70% ownership interest is \$3,010,000 plus an additional \$300,000 related to the ASCOA fee for a total cash outlay of \$3,310,000 at closing. The total amount due will be funded via the proposed new members' personal equity and from the liquid resources of Surgicore 5th Avenue, LLC valued at \$4.07M as of April 22, 2019. BFA Attachment A, provides the proposed members' net worth summaries. Liquid resources may not be available in proportion to the proposed members ownership interest. Members Anthony DeGradi, Wayne Hatami, and Leonid Tylman have provided an affidavit attesting that should Feliks Kogan not have sufficient cash reserves to contribute equity disproportionate to their ownership interest to meet all equity requirements. BFA Attachment F provides the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$394,569.

The working capital requirement is estimated at \$1,391,690 based on two months of first year expenses. Working capital will be funded via the ongoing operations of the FASC, which turned profitable in 2017. However, if the ongoing operations do not generate sufficient capital to meet the working capital requirements, the members of Surgicore 5th Avenue, LLC have signed an affidavit indicating they are prepared to fund any Year One shortfall.

BFA Attachments D and E are a summary of the 2017 Certified Financial Statements and 2018 Internal Financial Statements for Bronx SC, LLC, which shows negative working capital position, a positive net asset position, and positive net income. The negative working capital is due to ESASC's violation of the Debt Service Coverage Ratio with Bankwell Bank; ESASC is required by Generally Accepted Accounting Principles (GAAP) to show the full amount of this loan as a current liability. As of March 31, 2019, the Center has increased its case volume and revenues to a point where it is no longer in violation of the Debt Service Coverage Ratio.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A Net Worth Statement of Proposed New Members of Surgicore 5th Avenue, LLC
BFA Attachment B 2017 Certified Financial Statements – Bronx SC, LLC
BFA Attachment C 2018 Internal Financial Statements – Bronx SC, LLC
BFA Attachment D Pro Forma Balance

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**Project # 191027-E
North Queens Surgical Center**

Program: Diagnostic and Treatment Center **County:** Queens
Purpose: Establishment **Acknowledged:** January 22, 2019

Executive Summary

Description

NYEEQASC, LLC d/b/a North Queens Surgical Center, an Article 28 freestanding ambulatory surgery center (FASC) located at 45-64 Francis Lewis Boulevard, Bayside (Queens County), requests approval to transfer 75% ownership interest from several existing members to one new member, Surgicore 5th Avenue, LLC, which consists of four individual members each with equal ownership interest in the corporation. The facility was approved by the Public Health and Health Planning Council (PHHPC) under CON 111552 as a multi-specialty FASC with a five-year limited life and began operations March 5, 2015. The FASC remains within its five-year limited life certification. There will be no change in services upon the change in membership interest and the facility will continue to operate under its original 20-year sublease agreement. The FASC currently has an administrative services agreement (ASA) with Ambulatory Surgical Centers of America. Upon PHHPC approval of this application, the FASC will enter into a new ASA with Surgicore Management NY LLC, a related entity to Surgicore 5th Avenue, LLC via identical membership.

Ownership interest in the Center before and after this requested change is as follows:

Member:	Current %	Proposed %
Thomas Bombardier, MD	6.0000%	2.67%
Brent Lambert, MD	6.0000%	2.67%
George Violin, MD	6.0000%	2.67%
Andrew Blank, MD	2.9550%	2.11%
Ed Chan, MD	2.9550%	2.11%
Greg Gordon, MD	2.9550%	2.11%
Pedram Hendizadeh, MD	2.9550%	2.11%
Stephen Perrone, MD	2.9550%	2.11%
Luke Lambert, MD	2.0000%	2.00%
Donald Fox, MD	2.9550%	1.48%
Mark Friedman, MD	2.9550%	1.48%
Manoi Kantu, MD	2.9550%	1.48%
NYEE Holding Corp	30.0000%	0.00%
Eric Lichtenstein	4.1190%	0.00%
Chervl Kaufmann	2.9550%	0.00%
Peter Menger	2.9550%	0.00%
Nilesh Patel	2.9550%	0.00%
Brett Wu	2.9550%	0.00%
Gene Ukrainskv	1.5566%	0.00%
Aspasia Draga	1.4775%	0.00%
Irene Draga	1.4775%	0.00%
Greg Mashkevich	1.4775%	0.00%
Rand Rodgers	1.4775%	0.00%
Evan Vieira	1.4775%	0.00%
Ken Wald	1.4775%	0.00%
Surgicore 5 th Avenue, LLC	0.0000%	75.00%

The members of Surgicore 5th Avenue, LLC are Anthony DeGradi (25%), Wayne Hatami (25%), Feliks Kogan (25%), and Leonid Tylman (25%). Concurrently under review is CON 191019 in which Surgicore 5th Avenue, LLC seeks to acquire 70% ownership interest in Empire State Ambulatory Surgery Center, an Article 28 FASC located in the Bronx.

Dr. Ed Chan, who is Board-Certified in Otolaryngology and has admitting privileges at New York Eye & Ear Infirmary of Mount Sinai Hospital, will continue serve as Medical Director. The applicant submitted a Transfer Agreement (effective February 28, 2019) with The Mount Sinai Hospital d/b/a Mount Sinai Queens located 10.9 miles (25 minutes travel) from the facility.

OPCHSM Recommendation
Contingent Approval with no change to the operating certificate expiration date.

Need Summary
The Center has four operating rooms. Based upon current experience, the number of total projected procedures is 6,257 in the year one with 16.53% Medicaid and 2.01% Charity Care.

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

Financial Summary

There are no project costs associated with this application. The purchase price for the 75% ownership interest is \$2,617,500 plus buyer deliverables at closing (Ambulatory Surgical Centers of America fee of \$300,000 and a NYEE Holding Member loan payoff of \$316,300) for a total purchase price of \$3,233,800. The purchase price will be funded via the proposed new members' personal equity and from the liquid resources of Surgicore 5th Avenue, LLC valued at \$4.07M as of April 22, 2019. The members and Surgicore 5th Avenue, LLC overall have sufficient equity to fund the purchase price. An affidavit was submitted by three members attesting to their willingness to contribute equity disproportionate to their membership interest in the corporation to fund the total purchase price. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$10,476,664	\$10,516,773
Expenses	<u>\$10,077,848</u>	<u>\$10,153,203</u>
Gain/(Loss)	\$398,816	\$363,570

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval with no change to the operating certificate expiration date, contingent upon:

1. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the applicants executed and completed Articles or Organization, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicants amended and executed Operating Agreement, acceptable to the Department. [CSL]
4. Submission of a photocopy of Surgicore 5th Avenue LLC amended and executed Operating Agreement acceptable to the Department. [CSL]
5. Submission of a photocopy of Surgicore 5th Avenue LLC amended and executed Articles of Organization, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The continued submission of annual reports to the Department as required by approval of CON 111552. [RNR]

Council Action Date

June 6, 2019

Need and Program Analysis

Analysis

The service area is Queens County. The population of Queens County was 2,230,722 in 2010. Per PAD projection data from the Cornell Program on Applied Demographics, the population of Queens County is estimated to grow to 2,508,764 by 2025, an increase of 12.5%.

The center began operation in October 2015 and is still operating under its original life approval. The center is making strides to provide service to the under-insured in their service area. The center originally projected 5.0% for Medicaid utilization and 2.0% for Charity Care. Per the center's AHCF cost reports, the center achieved Medicaid utilizations of 22.9% in 2016, and 21.4% in 2017. The center is reporting 18.5% for Medicaid utilization in 2018.

Upon approval of this project, the center expects that six new physicians will also practice at the center, adding orthopedic and pain management procedures to the center. All the additional procedures are currently being performed either as office-based procedures or in other Article 28 ambulatory surgery centers. The center operates Monday through Friday from 7:15 am until 5 pm.

The center currently has contracts with the following Medicaid managed care plans: Affinity, Empire BCBS Medicaid, Fidelis, Healthfirst, HIP, Metroplus, United Healthcare Community Plan, and Wellcare. The center has started referral agreement with the Charles B Wang Community Health Center (an FQHC) in October 2018 to expand their services to the under-insured in their service area. The center has a Financial Assistance policy with a sliding fee scale for those patients needing assistance. The center has not provided any Charity Care in 2016 through 2018. The applicant indicated that this was because low-income and indigent patients seen by the Center were already covered by Medicaid by the time the Center provided services to these patients. When the center requests permanent life in 2020, the center's performance will be evaluated against the original projections provided in CON 111552.

The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

Character and Competence

The following table details the proposed change in ownership:

Member Name	Current	Proposed
Andrew Blank, MD	2.9550%	2.1135%
Edwin K. Chan, MD	2.9550%	2.1135%
Aspasia Draga, MD	1.4775%	-----
Irene Draga, MD	1.4775%	-----
Donald Fox, MD	2.9950%	1.4775%
Mark Friedman, MD	2.9950%	1.4775%
Gregg Gordon, MD	2.9550%	2.1135%
Pedram Hendrzadeh, MD	2.9550%	2.1135%
Manoj Kantu, MD	2.9550%	1.4775%
Cheryl Kaufman, MD	2.9550%	-----
Eric Lichtenstein, MD	4.1190%	-----
Greg Mashkevich, MD	1.4775%	-----
Peter Menger, MD	2.9950%	-----
Nilesh Patel, MD	2.9550%	-----
Stephen Perrone, MD	2.9550%	2.1135%
Rand Rodgers, MD	1.4775%	-----
Gene Ukrainsky, MD	1.5566%	-----
Evan Vieira, MD	1.4775%	-----
Ken Wald, MD	1.4775%	-----
Brett Wu, MD	2.9550%	-----
NYEE Holding Corp	30.0000%	-----
Thomas Bombardier, MD	6.000%	2.667%
Brett Lambert, MD	6.000%	2.667%
Luke Lambert, MD	2.000%	2.000%
George Violin, MD	6.000%	2.6667%
*Surgicore Fifth Avenue LLC	-----	75.0%
*Anthony DeGradi (25%)		
*Feliks Kogan (25%)		
*Wayne Hatami (25%)		
*Leonid Tylman (25%)		
TOTAL	100.00%	100.00%

***Members Subject to Character & Competence Review**

The proposed managers upon approval will be Mr. Lambert, Mr. Blank, Mr. Hendzadeh, Mr. Degradi, Mr. Hatami, Mr. Kogan, and Mr. Tylman.

Mr. DeGradi has over ten years of experience as the partner/co-owner of a surgical center in Paterson, New Jersey. His duties include the all aspects of managing the facility and working with the executive team to ensure compliance with all applicable regulations. **Mr. Hatami** is a recently retired (2017) licensed physical therapist with over 20 years of experience treating patients in an out-patient capacity. He operated a private physical therapy practice (with 5 sites) and managed the daily operations of his business. **Messrs. Kogan and Tylman** each have several years of experience owning and operating several surgical centers in New Jersey with responsibility for working with medical staff to improve patient care and ensure compliance with applicable regulations.

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.

On February 13, 2019, Fifth Avenue Surgery Center, LLC was named as a defendant in a malpractice case. The plaintiff alleges negligence for injuries to her foot that resulted in additional expenses and treatment.

On or about June 22, 2018 by Allstate Insurance Company et al. The complaint alleges common law fraud, violation of New York General Business Law 349, unjust enrichment, and declaratory judgement, arising primarily from allegations challenging New Horizon's ownership structure, the transportation of it's patients to its facility in New Jersey and coding and billing in excess of fee schedule. The defendants have not formally responded to the complaint as the parties are engaging in settlement discussions.

On or about August 2016 by The Government Employees Insurance Company with the United States District Court for the District of New Jersey against New Horizon Surgical Center, LLC and a number of medical providers. The suit alleges that New Horizon was submitting fraudulent billing to GEICO and other insurers for procedures that were not medically necessary. In October 2017, the parties entered into a settlement agreement.

On or about March 5, 2018, a lawsuit was filed in Superior Court in Hudson County by a former employee of Surgicore of Jersey City, LLC. The case alleged that the former employee was harassed and retaliated against by her former employer. The allegation was denied but the case was settled.

On July 8, 2016, a lawsuit was filed with the State of New Jersey against New Horizon Surgical Center, LLC. The case alleged a negligent performance of left ankle surgery resulting permanent injury. The case remains pending.

On January 28, 2015, a lawsuit was filed with the State of New Jersey against New Horizon Surgical Center, LLC. The case alleged negligent performance of shoulder surgery. The case remains pending.

On February 26, 2015 a lawsuit was filed against New Horizon Surgical Center, LLC with the State of New Jersey. The suit alleged negligent orthopedic surgery resulting in the patient's death and that the ambulatory surgery center failed to properly equip themselves with monitoring and resuscitation equipment. The case remains pending.

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.

5th Avenue Surgical Center:

- Fined \$2,000 pursuant to a Stipulation and Order (S&O) dated February 16, 2018 for surveillance findings set forth in the reports of inspection dated April 5, 2017. Deficiencies were found under 10 NYCRR 416.66 Environment and 416.51 Infection Control.

Surgicore of Jersey City, LLC:

- The New Jersey Department of Health issued an Immediate Jeopardy based on findings from a survey concluded on May 3, 2018. Deficient practice was cited in the following areas: Pharmaceutical Services and Infection Control.

Conclusion

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

Financial Analysis

Company Interest Purchase Agreement

The applicant has submitted an executed Company Interest Purchase Agreement (CIPA) for the purchase of the company's interests, summarized below:

Date:	October 23, 2018
Buyer:	Surgicore 5 th Avenue LLC
Seller/Company:	NYEEQASC, LLC d/b/a North Queens Surgical Center & Its Members
Purchase:	75% of the issued and outstanding company interests.
Buyer Deliverables at Closing:	1) Purchase Price; 2) Ambulatory Surgical Centers of America (ASCOA) Fee (\$300,000); 3) Instruments of Novation; 4) Buyer's Sublease Guaranty; 5) NYEE Holding Member Loan Payoff Amount (\$316,300); 6) NYEE Holding Unit Redemption Price; 7) Buyer's Limited Guaranty Agreement Pledge of Membership Units and Distribution Rights, and other documents Bankwell may reasonably require to provide security; 8) Operating Agreement; 9) Administrative Services Agreement; 10) Buyer Certificate; and 11) other certificates and documents reasonably requested.
Assumed Liabilities	The purchaser will assume the following liabilities: Equipment Leases, members loans, loans and due to redeemed members. The assumed liabilities total \$8,168,277.31 as of March 31, 2019.
Purchase Price:	\$2,167,500 plus buyer deliverables at Closing for a total purchase price of \$3,233,800.
Payment of Purchase Price	Equity at Closing.

The CIPA provides that the purchase price shall be reduced by the amount by which the "Closing Company Liabilities" (Center liabilities as of the month prior to closing) exceed 105% of the "Target Company Liabilities" (Center liabilities as of May 31, 2018, which totaled \$9,072,894). The "Closing Company Liabilities" estimated at \$8,168,277 as of March 31, 2019, are less than 105% of the Target Company Liabilities; hence, the purchase price would not be reduced based on the current valuation.

BFA Attachment A is the members' net worth, which indicated sufficient liquid resources overall to fund the transaction. An affidavit was submitted by three members attesting to their willingness to contribute equity disproportionate to their membership interest to fund the total purchase price.

Administrative Services Agreement (ASA)

The applicant has submitted a draft ASA, which is summarized below:

Contractor:	Surgicore Management NY LLC
Licensed Operator:	NYEEQASC, LLC d/b/a North Queens Surgical Center
Term:	10 years effective upon execution, renewable for successive 5-year terms
Services Provided:	Assistance to secure and monitor permits, licenses and necessary certifications to operate the Center; advising on purchase of supplies and capital equipment; project financing; developing/advising on policy and procedure manuals; coordinate creation of documents associated with licensure and continuing operations; billing, collection, accounts receivable and accounts payable; assist with fee schedules and payor contracts including managed care payors; advise on joint venture agreements or other arrangements with third parties; assist in formation, implementation and monitoring of utilization management and quality assurance procedures, protocols, and software management systems
Direct Costs	Company will reimburse Contractor for all direct costs incurred on the Company's behalf (provided costs are reasonably and proportionately shared by the Company), including organizational services, employee and physician

	education, transportation costs and all reasonably related costs not to exceed Forty-Five Thousand Dollars (\$45,000) per calendar year.
Fee:	\$450,000 annual fee with \$37,500 paid monthly

Surgicore Management NY LLC is a related entity to Surgicore 5th Avenue, LLC via identical membership. The draft ASA provides that the licensed operator retains ultimate authority, responsibility and control in all final decisions associated with the services including authority over the appointment/dismissal of management level employees, the right to approve operating/capital budgets, control over books/records and possession of all medical records and facility databases. In accordance with the Department's 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 submitted an executed attestation dated December 11, 2018, acknowledging their understanding of the reserve powers that cannot be delegated and that they will not willfully engage in any such illegal delegations of authority.

Operating Budget

The applicant has submitted an operating budget, in 2019 dollars, during the first and third years, summarized below:

	<u>Current Year 2017</u>		<u>Year One</u>		<u>Year Three</u>	
<u>Revenues</u>	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
Medicaid FFS	\$1,374.00	\$4,122	\$1,374.00	\$4,122	\$1,374.00	\$4,122
Medicaid MC	1,542.38	1,590,197	1,542.38	1,590,197	1,542.38	1,590,197
Medicare FFS	1,134.67	1,732,635	1,134.71	1,368,464	1,135.11	1,375,748
Commercial FFS	2,696.57	2,963,526	2,698.49	1,322,261	2,694.01	1,355,086
Commercial MC	2,246.33	6,739	2,246.33	6,739	2,246.33	6,739
All other *	1,820.15	<u>2,135,040</u>	1,820.15	<u>6,184,881</u>	1,820.15	<u>6,184,881</u>
Total Revenues		\$8,432,259		\$10,476,664		\$10,516,773
 Expenses						
Operating	\$1,666.23	\$8,057,898	\$1,487.25	\$9,305,723	\$1,494.75	\$9,381,078
Capital	<u>\$159.66</u>	<u>772,125</u>	<u>123.40</u>	<u>772,125</u>	<u>123.03</u>	<u>772,125</u>
Total Expenses:	\$1,825.89	\$8,830,023	\$1,610.65	\$10,077,848	\$1,617.78	\$10,153,203
 Net Income (Loss)						
		<u>(\$397,764)</u>		<u>\$398,816</u>		<u>\$363,570</u>
 Utilization (Proc.)						
		4,836		6,257		6,276
Cost Per Proc.		\$1,826		\$1,611		\$1,618

* *Workers' Compensation, Uninsured/Self Pay and No-Fault*

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

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid FFS	0.06%	0.05%	0.05%
Medicaid MC	21.32%	16.48%	16.43%
Medicare FFS	31.57%	19.27%	19.31%
Commercial FFS	22.73%	7.83%	8.01%
Commercial MC	0.06%	0.05%	0.05%
Charity Care	0.00%	2.01%	2.01%
All Other	<u>24.26%</u>	<u>54.31%</u>	<u>54.14%</u>
Total Procedures	100.00%	100.00%	100.00%

The following is noted with respect to the submitted budget:

- Revenues are based on the current payor rates experienced by the Center remaining constant going forward, to be conservative in projecting the Year One and Year Three revenues.
- Expense assumptions are based on the historical experience of the Center adjusted for the increase associated with the increase in procedures and a 2% inflation factor.
- Workers' Compensation, Uninsured/Self-Pay and No-Fault utilization is expected to increase by 2,225 procedures due to the addition of six new non-member practicing physicians at the center. The increase is offset due to several existing physicians not performing procedures in Years One and Three resulting in a net increase of 1,421 procedures in Year One and 1,440 procedures in Year Three.
- Medicare FFS and Commercial revenues and utilization are expected to decrease in Years One and Three due to several existing physicians not performing procedures at the Center.

Capability and Feasibility

The purchase price for the 75% ownership interest is \$2,617,500 plus buyer deliverables at closing (ASCOA fee of \$300,000 and a NYEE Holding Corp. loan payoff of \$316,300). Surgicore 5th Avenue LLC has also agreed to provide security for the Bankwell Loan and sublease payments to the landlord for the remainder of the month after the closing (\$44,695 maximum). After adjustments, the total purchase price will be \$3,233,800 to be funded via the proposed new members' personal equity and from the liquid resources of Surgicore 5th Avenue, LLC valued at \$4.07M as of April 22, 2019. The members and Surgicore 5th Avenue, LLC overall have sufficient equity to fund the purchase price. However, Feliks Kogan has insufficient personal equity to cover his share. An affidavit was submitted by the other three members attesting to their willingness to contribute equity disproportionate to their membership interest in the corporation to fund the total purchase price.

Working capital requirements are estimated at \$1,679,641 based on two months of first year expenses. The working capital requirement will be met via equity of the current and proposed members personal funds and from Surgicore 5th Avenue, LLC's TD bank account. The applicant has submitted documentation of the availability of funds in the bank account. A disproportionate share affidavit has been provided from three members of Surgicore 5th Avenue LLC. BFA Attachment A is the net worth statements of the members of NYEEQASC, LLC after this proposed transaction, which indicates the availability of sufficient funds to meet all the equity requirements for the purchase, the buyer deliverables and working capital needs.

The submitted budget projects a net income of \$389,816 and \$354,570 during the first and third years after the change in membership interest. Revenues are based on current reimbursement rates. The submitted budget appears reasonable.

BFA Attachment B is the 2016 and 2017 certified financial statements of North Queens Surgical Center. As shown, the facility had an average negative working capital position and an average negative net asset position from 2016 through 2017. Working capital and net assets were negative due to the Center being in breach of its required debt service coverage ratio of at least 1.25 on a \$7,500,000 Bankwell Bank loan, causing long-term debt of \$6,451,032 to be reclassified as a current liability on the 2017 balance sheet. Bankwell Bank has not yet issued a waiver of the covenant. The Bankwell Loan was a refinancing of the Wells Fargo loan balance of \$6,334,463 used for equipment and leasehold improvements. The remaining balance of the Bankwell Loan was used to pay outstanding accounts payables. The Center incurred an average net loss of \$937,559 from 2016 through 2017. The applicant indicated that the losses were due to high Medicaid utilization, decreasing revenues from 2016 to 2017 insufficient to cover operating expenses, and a decline in workers' compensation orthopedic cases and increased workers' compensation pain management cases with lower average reimbursement rates.

BFA Attachment C is the internal financial statements of North Queens Surgical Center as of December 31, 2018. As shown, the facility had a negative working capital position, a negative net asset position and achieved a net income of \$43,197 through December 31, 2018, despite declining revenues from December 31, 2017. The decline in net patient revenues from 2017 to 2018 was due to a decrease in the Center's overall case volume related to two non-member physicians leaving the Center. As previously noted, working capital and net assets were negative due to the Center being in breach of its financial covenants on the \$7,500,000 Bankwell Bank loan causing long-term debt of \$6,451,032 to be reclassified as current liability in the 2017 balance sheet.

Subject to the noted contingency, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

- BFA Attachment A Member net worth statements
- BFA Attachment B 2016 - 2017 certified financial statements of North Queens Surgical Center
- BFA Attachment C December 31, 2018 internal financial statements of North Queens Surgical Center



Project # 191060-E
Long Island Ambulatory Surgery Center

Program: Diagnostic and Treatment Center **County:** Suffolk
Purpose: Establishment **Acknowledged:** March 1, 2019

Executive Summary

Description

Long Island Ambulatory Surgery Center, LLC, a multi-specialty Article 28 freestanding ambulatory surgical center (FASC) located at 601 Suffolk Avenue, Brentwood (Suffolk County), requests approval to transfer 100% ownership interest to one new member, Sight Medical Doctors, PLLC, comprised of three individuals. Pursuant to a Membership Interest Purchase Agreement dated September 10, 2018, Sight Medical Doctors, PLLC will purchase 100% interest in the LLC for an aggregate purchase price of \$800,000. Upon Public Health and Health Planning Council (PHHPC) approval, Sight Medical Doctors, PLLC will become the sole member of the FASC. There will be no change in services provided.

The current 15-year lease term expires December 31, 2022 and is renewable for one additional ten-year period.

John G. Passarelli, M.D. will continue to serve as Medical Director of the Center, and the existing transfer and affiliation agreements with Good Samaritan Hospital and Southside Hospital will remain in place.

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

Member	Current	Proposed
David Immanuel, MD	1.00%	-----
Jeffrey L. Martin, MD	16.10%	-----
John Mauro, MD	3.00%	-----
Richard J. Nattis	8.60%	-----
Neil Nichols, MD	4.20%	-----
John G Passarelli, MD	44.80%	-----
Edward Reigel, MD	3.00%	-----
Raju Sarwal, MD	12.60%	-----
Glenn Scibilia, MD	4.80%	-----
Lewis Weinstein, MD	1.90%	-----
Sight Medical Doctors, PLLC	-----	100%
<i>Vance Vanier, MD (75%)</i>		
<i>Jeffrey L. Martin, MD (12.5%)</i>		
<i>John G. Passarelli, MD (12.5%)</i>		
TOTAL	100%	100%

OPCHSM Recommendation
Approval

Need Summary

The center has four operating rooms and one procedure room. The number of projected visits is 20,328 in Year One with payor sources of Medicaid at 11.52% and Charity Care at 0.00%.

Program Summary

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

Financial Summary

There are no project costs associated with this transaction. The applicant will fund the \$800,000 purchase price for the shares with existing personal liquid resources. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$14,135,001	\$14,995,591
Expenses	<u>\$11,284,500</u>	<u>\$12,059,777</u>
Gain/(Loss)	\$2,850,501	\$2,935,814

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. 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]

Council Action Date

June 6, 2019

Need and Program Analysis

Analysis

The primary service area is Suffolk County. The population of Suffolk County in 2010 was 1,493,350. Data from the Cornell Program on Applied Demographics indicates the population of Suffolk County is estimated to grow to 1,494,816 by 2025.

Long Island Ambulatory Surgery Center has been in operation since 1989. The center is seeking approval for a transfer in the ownership interests of the center. There will be no change to the services provided as a result of the change in ownership. The hours of operation for the center are Monday through Friday from 6 am until 5 pm, and Saturday from 8 am until 3 pm.

Long Island Ambulatory Surgery Center provided a total of 15,038 visits in 2015, 18,159 visits in 2016, and 19,736 visits in 2017. The center's Medicaid utilization was 17.9% in 2015, 20.8% in 2016, and 11.5% in 2017 per the AHCF cost reports. As of December 2018, 214,949 individuals are enrolled in Medicaid, representing approximately 14% of the county's population. This center's Medicaid utilization has been strong over the last few years.

Upon approval of the project, the applicant projects 20,328 visits in Year One and 21,566 visits in Year Three.

Character and Competence

The following table details the proposed change in ownership:

Member Name	Current	Proposed
David Immanuel, MD	1.00%	-----
Jeffrey L. Martin, MD	16.10%	-----
John Mauro, MD	3.00%	-----
Richard J. Nattis	8.60%	-----
Neil Nichols, MD	4.20%	-----
John G Passarelli, MD	44.80%	-----
Edward Reigel, MD	3.00%	-----
Raju Sarwal, MD	12.60%	-----
Glenn Scibilia, MD	4.80%	-----
Lewis Weinstein, MD	1.90%	-----
*Sight Medical Doctors, PLLC	-----	100.0%
*Vance Vanier, MD (75%)		
*Jeffrey L. Martin, MD (12.5%)		
*John G. Passarelli, MD (12.5%)		
TOTAL		100.0%

****Members Subject to Character & Competence Review***

The new proposed member, Sight Medical Doctors, LLC is comprised of three physicians who have a variety of experience in the healthcare sector, owning interests in other ambulatory surgical facilities, healthcare management companies and other healthcare operations. Two of the physician members Drs. Martin and Passarelli, are members of the current operator.

Dr. Martin is a practicing physician, board certified in Ophthalmology. He received his medical degree from Stony Brook School of Medicine. He completed his residency at Nassau County Medical Center He is a managing partner of SightMD. He teaches at several hospitals and universities. **Dr. Passarelli** is an Ophthalmologist and Eye Surgeon who has more than 30 years of experience. He is the Medical Director of Long Island Ambulatory Surgery Center, Long Island Surgical Care Center, and Suffolk Surgery Center. He received his medical degree from State University of New York Downstate. He completed his residency at St. Vincent's Catholic Medical Center and St. Clare's Hospital. **Dr. Vanier** is a practicing physician, board certified in Emergency Medicine. He received his medical degree from the Johns

Hopkins School of Medicine. He completed his residency at the University of California, San Francisco and Highland Hospital in Oakland. He is a co-founder and co-manager of an investment fund that builds healthcare businesses.

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. Passarelli disclosed a malpractice suit in September 2014 related to post-operative care after cataract surgery. He did not perform the surgery but was involved in the post-operative care. The case has been discontinued.

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.

Inspirations Senior Living:

- *The Nevada Department of Health issued a Civil Monetary Penalty (CMP) of pending based on findings from a survey concluded on 03/02/2016. Deficient practice was cited in the following areas: Supervision and Treatment of Residents Generally.*

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

Financial Analysis

The applicant submitted an executed Membership Interest Purchase Agreement to be effectuated upon PHHPC approval. The terms are summarized below:

Date:	September 10, 2018
Seller:	Long Island Ambulatory Surgery Center, L.L.C.
Buyer:	Sight Medical Doctors, PLLC
Shares Acquired:	13 shares of stock (100%)
Asset Acquired:	All assets owned by the company which include: cash, accounts receivable, equipment, and other assets.
Assumption of Liabilities:	All liabilities incurred by the company which include: accounts payable, accrued expenses, long term debt, and other liabilities.
Purchase Price:	\$800,000
Payment of the Purchase Price:	Payable at closing

The applicant 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.

Administrative Service Agreement

The applicant submitted an executed Administrative Services Agreement (ASA), the terms are summarized below:

Date:	September 10, 2018
Facility:	Long Island Ambulatory Surgery Center, LLC
Contractor:	Long Island Vision Management, LLC
Services Provided:	General administrative services including: development of an annual budget, financial services, financial systems and procedures, purchasing and inventory management, accounts payable, cash management, managed care services. Operational assistance including operational reviews, charge control, maintaining physical plant, preparing written monthly statistical information, material management control, assist in providing housekeeping/maintenance services, assist in maintaining committees, maintain insurance coverage, assist in procurement of supplies, assist in arranging for utilities and waste management, provide support in maintaining/acquiring licenses and permits, provide support in developing policies and procedures, assist with personnel services, provide billing and collection services.
Term:	10 years – with automatic 5-year renewals
Fee:	Year 1 \$4,499,100; Year 2 \$4,663,800; Years 3-10 \$4,742,100

The service provider is owned by Sight Vision Partners, LLC. There is a relationship between the ASA provider and the applicant in that there is common ownership between the two entities. The ASA provides that the licensed operator retains ultimate control in all the final decisions associated with the services provided.

Operating Budget

The applicant submitted the current year (2017) and the first and third year projected operating budgets, in 2019 dollars, as summarized below:

	Current Year		Year One		Year Three	
	Per Proc.	Total	Per Proc.	Total	Per Proc.	Total
<u>Revenues</u>						
Commercial FFS	\$ 692.88	\$5,854,183	\$692.92	\$6,029,808	\$692.92	\$6,397,024
Medicare FFS	\$732.54	\$5,691,094	\$732.55	\$5,861,827	\$732.57	\$6,218,812
Medicare MC	\$480.73	\$526,882	\$480.68	\$542,688	\$480.58	\$575,738
Medicaid MC	\$672.71	\$1,406,647	\$672.63	\$1,448,846	\$672.68	\$1,537,081
Medicaid FFS	\$732.97	\$132,667	\$734.66	\$136,647	\$732.17	\$144,969
Private Pay	\$685.53	\$54,842	\$680.59	\$56,489	\$688.82	\$59,927
Other #	\$761.54	\$53,308	\$762.60	\$54,907	\$756.51	\$58,251
Other Op. Rev. *		<u>\$3,789</u>		<u>\$3,789</u>		<u>\$3,789</u>
Total Revenue		\$13,723,412		\$14,135,001		\$14,995,591
<u>Expenses</u>						
Operating	\$498.80	\$9,844,239	\$500.96	\$10,183,519	\$505.86	\$10,909,382
Capital	<u>\$54.57</u>	<u>\$1,077,076</u>	<u>\$54.16</u>	<u>\$1,100,981</u>	<u>\$53.34</u>	<u>\$1,150,395</u>
Total Expenses	\$553.37	\$10,921,315	\$555.12	\$11,284,500	\$559.20	\$12,059,777
Net Income		<u>\$2,802,097</u>		<u>\$2,850,501</u>		<u>\$2,935,814</u>
Utilization		19,736		20,328		21,566
Cost/Procedure		\$553.37		\$555.12		\$559.20

Other consist of Workers' Compensation, No Fault and Governmental payors.

* Other operating revenue consists of Investment Income.

Utilization by payor is as follows:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	42.81%	42.81%	42.81%
Medicare FFS	39.36%	39.36%	39.36%
Medicare MC	5.55%	5.55%	5.55%
Medicaid FFS	.92%	.92%	.92%
Medicaid MC	10.59%	10.60%	10.60%
Private Pay	.41%	.41%	.40%
Other	.36%	.35%	.36%
Total	100%	100%	100%

Revenue, expense and utilization are based on historical experience of the facility and other surgery centers in the region.

Capability and Feasibility

There are no project costs associated with this transaction. The purchase price for the FASC is \$800,000 to be funded via equity from the proposed members. BFA Attachment A is the personal net worth statements of the proposed new owners of Long Island Ambulatory Surgery Center, LLC, which shows the availability of enough liquid resources.

The working capital requirement is estimated at \$1,880,750 based on two months of first year expenses. All working capital needs will be provided by the members from their personal equity. Review of BFA Attachments A reveals sufficient resources to meet all equity requirements.

BFA Attachment B is Long Island Ambulatory Surgery Center, LLC's 2015-2017 certified financial statements and their internal financials as of December 31, 2018, which indicates the facility experienced positive working capital and equity positions and had an average net income of \$2,770,433 for the 2015-2017 period. The 2018 internal financial statements indicate the facility experienced both positive working capital and equity positions and generated a net income of \$2,589,951.

BFA Attachment C is the pro forma balance sheet of Long Island Ambulatory Surgery Center, LLC that shows operations will start with \$1,880,750 in equity.

The FASC projects net income of \$2,850,501 and \$2,935,814 in the first and third years of operation after the change in ownership, respectively. The budget appears reasonable.

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

Attachments

- BFA Attachment A Net Worth Statement of Proposed Member of Sight Medical Doctors, PLLC
- BFA Attachment B Financial Summary - 2015-2017 certified and the 1/1/2018-12/31/2018 internal financials of Long Island Ambulatory Surgery Center, LLC
- BFA Attachment C Pro-Forma Statement of Long Island Ambulatory Surgery Center, LLC



Project # 191107-E
City Wide Health Facility Inc.

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Establishment **Acknowledged:** March 8, 2019

Executive Summary

Description

City Wide Health Facility, Inc., a proprietary Article 28 Diagnostic and Treatment Center (D&TC) located at 105 Kings Highway, Brooklyn (Kings County), is requesting approval to transfer 70% ownership interest from the current sole shareholder, Alexander Zharov, to three new shareholders. On September 26, 2018, each proposed new shareholder executed a shareholder purchase agreement with Mr. Zharov for the purchase of their respective shares of common stock in the corporation. The agreements provide that Mr. Zharov will contribute \$144,000 toward the working capital needs of the corporation. The shareholder transactions will to be effectuated upon Public Health and Health Planning Council (PHHPC) approval of this application. The facility is currently certified for Medical Services-Other Medical Specialties, CT Scanner and MRI services. There will be no change in services provided.

Ownership interest after this requested change is as follows:

	<u>Shares</u>	<u>%</u>
Alexander Zharov	60	30%
Edward Atbashyan	60	30%
Simon Korenblit	60	30%
Alex Korenblit	<u>20</u>	<u>10%</u>
Total	200	100%

OPCHSM Recommendation
Contingent Approval

Need Summary

The center provides the following certified services: CT Scanner, MRI and Medical Services – Other Medical Specialties. There will be no change in the services provided. The number of projected visits is 13,782 in Year One.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The total purchase price for the 70% shareholder interest is \$336,000 and will be paid via the new shareholders' personal equity in proportion to their percent ownership interest. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,700,306	\$3,774,312
Expenses	<u>\$3,319,581</u>	<u>\$3,369,375</u>
Gain/(Loss)	\$ 380,725	\$ 404,937

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of the applicant's executed and completed Articles or Organization, acceptable to the Department. [CSL]
2. Submission of a photocopy of an amended and executed Bylaws, acceptable to the Department. [CSL]
3. A copy of the seller's affidavit acceptable to the Department. [CSL]
4. A photocopy of a sample stock certificate acceptable to the Department [CSL]

Approval conditional upon:

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

Council Action Date

June 6, 2019

Need and Program Analysis

Background

The primary service area includes Kings County. The population of Kings County in 2010 was 2,504,700. Per PAD projection data from the Cornell Program on Applied Demographics, the population of Kings County is estimated to grow to 2,810,876 by 2025 and increase of 12.2%.

City Wide Health Facility has been providing services to the communities of Southern Brooklyn for several years. There will be no change in services as a result of the proposed change in ownership. The center is projecting its Medicaid utilization to be approximately 43% for the coming years. The center's hours of operation are Monday through Friday from 9 am until 8 pm, and Saturday from 9 am until 1 pm.

The number of projected visits is 13,782 in Year One and 14,058 in Year Three. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

Character and Competence

The following table details the proposed change in ownership:

Member Name	Current	Proposed
Alexander Zharov	100.0%	30.0%
*Edward Atbashyan	-----	30.0%
*Simon Korenblit	-----	30.0%
*Alex Korenblit	-----	10.0%
TOTAL	100.0%	100.0%

**Members Subject to Character & Competence Review*

The new proposed members of City Wide Health Facilities, Inc. have a variety of experience in the healthcare sector, healthcare management companies and other healthcare operations.

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

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

Conclusion

The 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

The applicant has submitted the executed shareholder agreements for the purchase of 70% of the shares in the corporation, summarized below.

Date:	September 26, 2018
Seller:	Alexander Zharov
Buyers:	Simon Korenblit (60 shares, 30%), Edward Atbashyan (60 shares, 30%), Alex Korenblit, (20 shares, 10%),
Purchase:	70% of common shares (140 shares) to be transferred.
Purchase Price:	\$336,000 total (\$2,400 per share purchased)
Payment of Purchase price:	Cash equity at closing in proportion to the shareholders' percent ownership interest.

The agreements provide that Mr. Zharov, the current 100% shareholder, will contribute \$144,000 toward the working capital of the corporation. This amount has already been paid.

Operating Budget

The applicant has submitted the current year (2107) results, and the first- and third-year operating budget after the change in ownership, in 2019 dollars, summarized as follows:

	Current Year		Year One		Year Three	
	Per Visit	Total	Per Visit	Total	Per Visit	Total
<u>Revenues</u>						
Commercial MC	\$95.24	\$268,386	\$95.35	\$272,412	\$95.26	\$277,860
Medicare FFS	152.42	494,296	152.40	501,710	152.44	511,745
Medicaid FFS	152.12	71,042	152.13	72,108	152.28	73,550
Medicaid MC	170.29	925,015	170.30	938,890	170.28	957,668
Private Pay	192.63	25,235	192.59	25,614	192.10	26,126
All Other	1,251.11	<u>1,861,647</u>	1,251.37	<u>1,889,572</u>	1,250.72	<u>1,927,363</u>
Total Revenue		\$3,645,621		\$3,700,306		\$3,774,312
<u>Expenses</u>						
Operating	\$232.09	\$3,151,587	\$232.10	\$3,198,861	\$230.96	\$3,246,844
Capital	8.76	<u>118,936</u>	8.76	<u>120,720</u>	8.72	<u>122,531</u>
Total Expenses	\$240.85	\$3,270,523	\$240.86	\$3,319,581	\$239.68	\$3,369,375
Net Income/(Loss)		<u>\$375,098</u>		<u>\$380,725</u>		<u>\$404,937</u>
Total Visits		13,579		13,782		14,058

Utilization for the payor for the current year and after the change in shareholder ownership is summarized below:

Payor	Current Year (2017)		Year One		Year Three	
	Visits	%	Visits	%	Visits	%
Commercial MC	2,818	20.75%	2,860	20.75%	2,917	20.75%
Medicare FFS	3,243	23.88%	3,292	23.89%	3,357	23.88%
Medicaid FFS	467	3.44%	474	3.44%	483	3.44%
Medicaid MC	5,432	40.00%	5,513	40.00%	5,624	40.01%
Private Pay	131	.96%	133	.97%	136	.97%
All Other	<u>1,488</u>	<u>10.96%</u>	<u>1,510</u>	<u>10.96%</u>	<u>1,541</u>	<u>10.96%</u>
Total	13,579	100%	13,782	100%	14,058	100%

Revenue, expense and utilization assumption are based on current reimbursement rates and historical experience of the D&TC.

Capability and Feasibility

The total purchase price for the 70% transfer of shares is \$336,000 to be funded via equity upon PHHPC final approval. Edward Atbashyan and Simon Korenblit will each purchase 30% ownership interest for \$144,000 each. Alex Korenblit will purchase 10% ownership interest for \$48,000. BFA Attachment A, the net-worth statement for the proposed new shareholders and the current shareholder, shows sufficient equity to fund the share purchase agreements.

The working capital requirement is estimated at \$1,322,368 based on two months of first year expenses of \$553,264 plus \$769,104 to cover the negative working capital position per the 2018 internal financial statements. Review of the net worth statements reveals sufficient equity overall to meet the working capital needs. However, liquid resources are not available in proportion to the proposed shareholders' ownership interests. Mr. Zharov has submitted an affidavit attesting that he will contribute resources disproportionate to his ownership interest to fund the working capital needs of this project. BFA Attachment A indicates that Mr. Zharov has sufficient resources to meet the working capital needs.

The submitted budget projects a net income of \$380,725 and \$404,937 during the first and third years after the change in shareholder interest. Revenues are based on current reimbursement rates. Medicare and Medicaid reflect prevailing reimbursement methodologies. The submitted budget appears reasonable.

BFA Attachment C is City Wide Health Facility, Inc.'s 2017 certified financial statements. As shown, the facility had positive working capital and positive net asset positions and achieved a net income of \$371,347.

BFA Attachment B is the D&TC's 2018 internal financial statements. As shown, the facility had a negative working capital position, a positive net asset position, and achieved a net income of \$209,211 through 2018. Working capital was negative due to the impact of three short-term loans that were provided to the DTC by the three proposed new shareholders who are currently employees of the facility. The loans total \$464,000 and are identified as current liabilities. The applicant indicated that the loans will be settled upon the final transfer of shares immediately following PHHPC approval.

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

Attachments

BFA Attachment A	Members net worth statement.
BFA Attachment B	2018- Internal Financial Statement, City Wide Health Facility, Inc.
BFA Attachment C	2017- Certified Financial Statement, City Wide Health Facility, Inc.



**Project # 182068-B
Freedom Dialysis of Riverdale, LLC**

Program: Diagnostic and Treatment Center **County:** Bronx
Purpose: Establishment and Construction **Acknowledged:** September 18, 2018

Executive Summary

Description

Freedom Dialysis of Riverdale, LLC, a Delaware limited liability company authorized to do business in New York State, requests approval to establish and construct a 12-station, Article 28 chronic renal dialysis center within the Schervier Nursing Care Center, a 364-bed, proprietary, Article 28 residential health care facility (RHCF) located at 2975 Independence Avenue, (Bronx County). 2975 Independence Avenue, LLC, the RHCF's real property owner, will construct and equip the dialysis center in approximately 4,520 square feet of designated space on the Ground (1st) floor of the RHCF. The applicant will enter into a license agreement with 2975 Independence Avenue, LLC to lease the clinic premises (fixed annual base rent) and reimburse the landlord for project costs (tenant improvements). There is a relationship between Freedom Dialysis of Riverdale, LLC and 2975 Independence Avenue, LLC in that there are family relationships and members in common. The Center will treat the general public and the residents of Schervier Nursing Care Center.

The members of the proposed operator are:

Teddy Lichtschein	40%
Heather Scheiner	40%
Zevi Kohn	10%
Efraim Elchonen	10%

Suman Reddy, M.D., who is Board-Certified in Internal Medicine and Nephrology, will serve as Medical Director. An Affiliation agreement is being negotiated with Montefiore Medical Center to serve as the Center's backup hospital.

OPCHSM Recommendation

Contingent Approval

Need Summary

The proposed stations will be located within a nursing home, thus transportation and access for the frail and elderly is significantly improved. The applicant is also located in a high-density population area with many minority and poverty-stricken residents. Bronx County is one of the poorest ranked in NYS for high rates of diabetes which can lead to end stage renal disease. These factors support the approval 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

Project cost of \$2,280,408 will be met via equity from the members of the landlord, 2975 Independence Avenue, LLC. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,703,664	\$3,407,329
Expenses	<u>1,883,884</u>	<u>3,052,569</u>
Gain/(Loss)	(\$180,220)	\$354,760

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 License Agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. Submission of a photocopy of the applicants amended and executed Operating Agreement, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's executed Amendment to the Articles of Organization, acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's amended and executed License Agreement, acceptable to the Department. [CSL]
7. Submission of the Administrative Services Agreement, acceptable to the Department. [CSL]
8. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
9. 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 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 project by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before August 31, 2019 and must be completed by April 30, 2020, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The 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]

Council Action Date

June 6, 2019

Need Analysis

Analysis

The primary service area for the new facility will be Bronx County, which had a population estimate of 1,471,160 for 2017. The percentage of the population aged 65 and over was 12.3%. The nonwhite population percentage was 55.1%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Bronx County and New York State are shown below.

	Bronx County	New York State
Ages 65 and Over	12.3%	15.9%
Nonwhite	55.1%	30.4%

Source: U.S. Census 2017

Need Projection

Bronx County							
County	Existing Stations	Pending Stations	Total Current Stations	Total Need 2021	Unmet Need 2021	Stations Under Review	Unmet Need After Approval
	a	b	c	d	e	f	g
			(a + b)		(d - c)		(e - f)
Bronx	586	287	873	863	-10	12	-22
Effective December 26, 2018							
Column (a): Stations in Operation							
Column (b): Includes approved but not yet operational projects and projects, excluding this application, with a recommendations of approval by the Bureau of Public Need Review, but not yet approved by the Department/PHHPC.							
Column (f): Includes subject application and all other CONs currently under review within the County pending a Department approval or recommendation.							

There are 287 stations in the pipeline which can treat approximately 1,292 patients. Within the applicant zip code there is currently one facility with a total of 31 stations.

Local Factors

- The proposed Freedom Dialysis Center would operate within a skilled nursing facility, The Schervier Nursing Care Center, a 364-bed residential health care facility and would be one of two nursing home-based dialysis centers in the area. Locating a dialysis center within Schervier Nursing home would allow for the treatment of residents with minimal disruption. Given the fragile condition of many of the residents and comorbidity, this would be the best treatment option; on site treatment would be available mitigating adverse weather conditions and transportation issues.
- There are 58 dialysis facilities within 10 miles of the proposed site (medicare.gov/dialysis compare). However, of these facilities, nine are in Westchester County, two are in Queens and 11 are in New Jersey; travel to any of these 22 centers requires tolls and trips over bridges.
- The proposed center would be in a densely populated, urban center with many apartment buildings; the population density is 19,997 people per square mile.
- The Bronx overall ranks 62nd out of 62 in health profiles. Clinical care and health care monitoring received low marks as well. There are high rates of obesity and diabetes in the service area. Recent studies by the New York City Department of Health indicate that the Bronx has five of the city's worst 10 neighborhoods with respect to rates of diabetes – overall in the Bronx 14% of residents over the age of 18 have been diagnosed with diabetes.

Conclusion

The addition of this Center will provide additional dialysis resources for a high-need population.

Program Analysis

Program Description

Proposed Operator	Freedom Dialysis of Riverdale, LLC
To Be Known As	Freedom Dialysis of Riverdale
Site Address	2975 Independence Avenue Riverdale, New York 10463 (Bronx County)
Approved Services	Chronic Renal Dialysis (12 Stations)
Shifts/Hours/Schedule	Monday through Saturday from 6:30 am to 6:30pm when center has reached a consistent level of operations. Possible Sunday shifts as well to meet the needs of the community.
Staffing (1 st Year / 3 rd Year)	9.0 FTEs / 18.9 FTEs
Medical Director(s)	Suman Reddy, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by provided by Montefiore Medical Center 3.6 miles / 18 minutes

Character and Competence

The members of Freedom Dialysis of Riverdale, LLC are:

<u>Name</u>	<u>Percentage</u>
Efraim Elchonen, manager	10%
Heather Scheiner	40%
Teddy Lichstein	40%
Zevi Kohn	10%
Total	100%

Efraim Elchonen reports involvement in a variety of diverse business interests in the past few years. Currently, he is involved in a project in the State of Pennsylvania which entails the establishment and launching of a new dialysis provider of home dialysis services. In addition, since 2012, Mr. Elchonen has been the Chief Financial Officer for a large full-service hotel in Westchester County. In his CFO role, he coordinates with various departments of the hotel, develops budgets, and works with numerous employees in a 24-hour-a-day operation.

Heather Scheiner is a guidance Counselor at Bnos Leah Prospect Park school in Brooklyn. She has 15 years of experience overseeing the changing needs of students in an academic setting and ensuring their emotional and social needs are met.

Teddy Lichtstein is the Principal/Chief Executive Officer of TL Management, LLC. TL Management owns and/or operates nursing homes in nine states. In seven states, Mr. Lichtstein is involved in the real estate component of the facilities. In two states, New York and Texas, he reports an ownership/operator affiliation.

Zevi Kohn has been involved in day-to-day operations of numerous health related facilities for the last 10 years through his employment with TL Management, LLC in his role as Chief Financial Officer (CFO). TL Management provides services to numerous skilled nursing facilities throughout the United States. In his role of CFO, Mr. Kohn has experience in the preparation of financial statements, bulk purchasing, negotiating with insurance companies, establishment of policies and procedures governing quality assurance, risk management and development and implementation of marketing and public relations materials.

Disclosure information was submitted and reviewed for the proposed Medical Director, **Suman M. Reddy, MD**. Dr. Reddy is a New York State licensed practicing clinical physician who is board-certified in Internal Medicine with sub-certification in Nephrology. Dr. Reddy completed a three-year fellowship in Nephrology

at Boston University Medical Center and has over 20 years of experience assessing and treating kidney conditions.

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

In June 2018, TL Management LLC and Teddy Lichtstein were named as defendants in a lawsuit by a bankruptcy trustee in Connecticut. According to the Applicant, neither party was part of the alleged transactions and complaint does not allege that they were. Background provided revealed a related entity purchased a note from TD Bank and sought to enforce its valid secured claim against the real estate and the operator. After remedies were enforced, the operator filed a Chapter 7 petition and the Chapter 7 Trustee sued numerous defendants alleging fraudulent transfers. A motion to dismiss was filed and argued in October 2018 and is currently under advisement.

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

The Texas Health and Human Services Commission was only able to provide surveillance history for entities located in Texas for the period January 1, 2013 through August 24, 2018.

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

Total Project Cost and Financing

The total project cost for construction and fees is estimated at \$2,280,408, broken down as follows:

Renovation & Demolition	\$1,530,000
Fixed Equipment	173,400
Architect/Engineering Fees	144,111
Other Fees	75,000
Movable Equipment	343,434
Application Fees	2,000
Additional Processing Fees	<u>12,463</u>
Total Project Cost	\$2,280,408

Project costs are based on a construction start date of May 1, 2019, with an 8-month construction period.

The landlord will finance 100% of the total project cost via equity. BFA Attachments A and B are the net worth summaries for the proposed members of Freedom Dialysis of Riverdale, LLC (operator) and 2975 Independence Avenue, LLC (landlord), respectively, which show sufficient resources to meet the equity requirement. Teddy Lichtschein and Heather Scheiner have provided affidavits stating the willingness to contribute resources disproportionate to their ownership interest in Freedom Dialysis of Riverdale, LLC and 2975 Independence Avenue, LLC.

License Agreement

The applicant has submitted draft license agreement for the proposed site, summarized below:

Premises:	4,520 sq. ft. located on the first-floor at 2975 Independence Avenue, Bronx, NY
Landlord:	2975 Independence Avenue, LLC
Tenant:	Freedom Dialysis of Riverdale, LLC
Term:	25 years
License Fees: *	Annual Base Rent: \$99,440 (\$8,287 per month) for the full 25-year term; Annual Leasehold Improvements Fee: \$205,000 (\$17,084 per month) for years 1-10 of the License Agreement
Provisions:	Triple Net

**Per the applicant the yearly \$205,000 payment to reimburse the landlord's funding of the project cost will end after ten years.*

The License Agreement is non-arm's length. The applicant has submitted an affidavit attesting to the relationship between the landlord and tenant in that there are family relationships and common members. The applicant has submitted a letter from a NYS licensed realtor attesting to the reasonableness of the per square foot rental rate, inclusive of the leasehold improvements.

Consulting Service Agreement

The applicant has provided an executed Consulting Service Agreement, with terms summarized below:

Date:	March 14, 2018
Contractor:	Geripro Dialysis Consultants, LLC
Facility:	Freedom Dialysis of Riverdale, LLC
Development and Startup Services:	Develop assumptions for budgets/capital financing; assist in establishing corporate entity & CON process; prepare responses to regulatory agencies; attend meetings; make recommendation regarding space and functional needs; coordinate with architects and construction firms; develop site-specific policies and procedures, admission documents and agreements; train staff on dialysis specific accounting systems; assure facility meets CMS, State and local codes, regulations and conditions, assist in recruitment and hiring of staff; draft organizational documents & make recommendations, negotiating service agreements and contracts, software review and recommendations and pre-occupancy mock survey.
Administrative Services:	Coordinate billing & collections systems, assure personnel are up-to-date on reimbursement requirements, assistance with the following: updating policy and procedure manual, regulatory monitoring, compliance/quality assurance, ongoing education, ensuring staff follows procedures and regulatory requirements, training curriculum, accounting, budgeting, reports, audits, and purchasing.
Term:	Three Years with automatic one-year renewals.
Startup Fee:	\$85,000 paid in seven installments
Administrative Fee:	\$72,000 per year (\$6,000 per month)

The applicant has provided an affidavit attesting that there is no relationship between the proposed facility operator and consulting service provider. The Consulting Service Agreement provides that Freedom Dialysis of Riverdale, 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 submitted an operating budget, in 2019 dollars, for years one and three, as summarized below:

<u>Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Medicaid-MC	\$285.80	\$80,309	\$285.80	\$160,618
Medicare-MC	\$295.03	1,076,868	\$294.99	2,153,736
Commercial-MC	\$344.96	581,256	\$344.96	1,162,512
All Other-Bad Debt		<u>-34,769</u>		<u>-69,537</u>
Total Revenue		\$1,703,664		\$3,407,329
<u>Expenses</u>				
Operating	\$253.29	\$1,422,473	\$231.58	\$2,601,326
Capital	<u>82.16</u>	<u>461,411</u>	<u>40.17</u>	<u>451,243</u>
Total	\$335.45	\$1,883,884	\$271.75	\$3,052,569
Net Income		<u>(\$180,220)</u>		<u>\$354,760</u>
Total Treatments/visits		5,616		11,233
Cost per		\$335.45		\$271.75

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

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid-MC	281	5.0%	562	5.0%
Medicare-MC	3,650	65.0%	7,301	65.0%
Commercial MC	<u>1,685</u>	<u>30.0%</u>	<u>3,370</u>	<u>30.0%</u>
Total	5,616	100%	11,233	100%

The following is noted with respect to the submitted budget:

- Revenue assumptions included information from similar area chronic renal dialysis providers, and experience in dealing with Medicaid and Medicare Manage Care.
- Utilization assumptions by payor are based on the cost reports and experience of similar area chronic renal dialysis providers. The applicant stated that there is a shortage of dialysis stations in the community and they expect to serve the residents of the Schervier due to the convenience.
- Expense assumptions are based on the experience of similar area chronic renal dialysis providers.
- The breakeven utilization is approximately 10,064 treatments in Year Three.

Capability and Feasibility

The project cost of \$2,280,408 will be met via equity from the members of the landlord, 2975 Independence Avenue, LLC.

The working capital requirement is estimated at \$688,982 based on two months of third year expenses of \$508,762, plus \$180,220 to cover the first-year loss. Funding will come from operating members' equity. A review of BFA Attachment A, net worth summaries, shows sufficient resources to meet the equity requirement. Teddy Lichtschein and Heather Scheiner have provided affidavits stating their willingness to contribute resources disproportionate to their ownership interest in Freedom Dialysis of Riverdale, LLC and 2975 Independence Avenue, LLC. BFA Attachment D is Freedom Dialysis of Riverdale, LLC Pro Forma Balance Sheet, which shows the operations will start with \$688,982 in equity.

The submitted budget projects a first-year net loss of \$180,220 and a third-year profit of \$354,760. The budget appears reasonable.

BFA Attachment C is the 2017 financial statements of 2975 Independence Avenue, LLC, which shows positive working capital position of \$6,305,191, positive equity position of \$20,008,300 and a net loss of \$315,643.

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

Attachments

- BFA Attachment A Net Worth - Proposed Members of Freedom Dialysis of Riverdale, LLC
- BFA Attachment B Net Worth - Proposed Members of 2975 Independence Avenue, LLC
- BFA Attachment C 2017 Financial Statements - 2975 Independence Avenue, LLC
- BFA Attachment D Pro-Forma balance sheet of Freedom Dialysis of Riverdale, LLC
- BFA Attachment E Members of 2975 Independence Avenue, LLC



Project # 182140-B
DSI Newburgh, LLC

Program: Diagnostic and Treatment Center **County:** Orange
Purpose: Establishment and Construction **Acknowledged:** September 26, 2018

Executive Summary

Description

DSI Newburgh, LLC, an existing New York limited liability company, requests approval to be established as the new operator of DSI Newburgh Dialysis, a 16-station, Article 28 end stage renal dialysis (ESRD) center located at 39-47 North Plank Road, Newburgh (Orange County). The center is currently operated as an extension clinic of DSI Dutchess Dialysis, Inc. whose main clinic is located at 2585 South Road, Poughkeepsie (Dutchess County). DSI Dutchess Dialysis, Inc. is a wholly-owned subsidiary of U.S. Renal Care, Inc. (USRC) which operates several ESRD clinics at various locations in New York State. DSI Dutchess Dialysis, Inc. (seller) and DSI Newburgh Dialysis, LLC (buyer) will enter into an Asset Purchase Agreement (APA) to effectuate the transfer of operations for a purchase price of \$1,140,506. Upon Public Health and Health Planning Council (PHHPC) approval of this application, DSI Dutchess Dialysis, Inc. will continue to operate the 24-station ESRD center at 2585 South Road in Poughkeepsie.

DSI Newburgh Dialysis is certified to provide renal dialysis-chronic O/P and home peritoneal training and support services. There will be no change in services upon PHHPC approval of the change in ownership. The clinic operates in leased space and the existing lease will be assumed by the applicant via a lease assignment and assumption agreement at closing.

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

Current Operator	
DSI Dutchess Dialysis, Inc.	100%

Proposed Operator	
DSI Newburgh, LLC	
Members	
DSI Dutchess Dialysis, Inc.	51.0%
Yong Wen, M.D.	24.5%
Paul Feldman, M.D.	24.5%

The two incoming physician members currently provide services at the Center. Paul Feldman, M.D., who is Board-Certified in Internal Medicine and Nephrology, will serve as Medical Director. St Luke's Cornwall Hospital will continue to serve as back-up hospital to the Center for emergency care.

The applicant will enter into an Administrative Services Agreement (ASA) with Dialysis Newco, Inc, a Delaware corporation, who will provide administrative services to the Center.

Pursuant to a Merger Agreement dated February 10, 2019, DSI Newburgh, LLC will undergo a change in indirect ownership six levels above. Following the merger, BCPE Cycle Buyer, Inc. will be the indirect owner of USRC (as it's great-grandparent) and USRC subsidiaries including DSI Newburgh, LLC. The merger is not expected to have any effect on DSI Newburgh, LLC's business or operations (personnel, equipment, legal entity name, federal tax identification number and NPI number). USRC will retain its existing subsidiary structure and indirect interest in DSI Newburgh,

LLC post-merger. BFA Attachment E presents pre-and post-organizational charts illustrating this transaction.

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no change to the number of stations or services provided as a result of this application.

Program Summary

The 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 transaction is \$1,140,506 and will be paid by the proposed members via equity in proportion to their ownership interest in the operation. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$6,615,209	\$5,634,202
Expenses	<u>\$3,931,151</u>	<u>\$4,170,558</u>
Net Income	\$2,684,058	\$1,463,644

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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of an executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed Asset Purchase Agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed Assignment and Assumption of Lease Agreement, acceptable to the Department of Health. [BFA]
5. Submission of an amended, executed and dated facility lease agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of a final complete, executed and dated purchase and sale agreement between applicant and DSI Dutchess Dialysis, Inc. acceptable to the Department. [CSL]
7. Submission of a photocopy of a final executed and dated administrative services agreement between applicant and Dialysis Newco, Inc., acceptable to the Department. [CSL]
8. Submission of a photocopy of a final executed and dated client services agreement between applicant and U.S. Renal Care, Inc. and/or Dialysis Newco, Inc., acceptable to the Department. [CSL]
9. Submission of a photocopy of a final executed and dated medical director agreement between applicant and Paul Feldman, M.D., acceptable to the Department. [CSL]
10. Submission of a photocopy of a complete, final executed and dated revolving credit agreement between applicant and U.S. Renal Care, Inc., together with photocopies of final, executed and dated counterparts of any related security agreement(s) and member guarantee(s), each of which shall be acceptable to the Department. [CSL]
11. Submission of a photocopy of applicant's amended and restated operating agreement, acceptable to the Department. [CSL]
12. Submission of a photocopy of a final, executed and dated affiliation agreement between applicant and St. Luke's Cornwall Hospital, acceptable to the Department. [CSL]
13. Submission of a photocopy of a complete, executed, dated and notarized Medicaid Affidavit, acceptable to the Department. [CSL]
14. Submission of a photocopy of a final, complete, fully-executed certificate of assumed name for DSI Newburgh, LLC, d/b/a DSI Newburgh Dialysis, 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 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]

Council Action Date

June 6, 2019

Need and Program Analysis

Character and Competence

The proposed membership of DSI Newburgh, LLC is provided in the chart below.

Member Name/Title	Membership Interest
DSI Dutchess Dialysis, Inc	51.0%
Stephen M. Pirri, President	
James D. Shelton, Vice President & Treasurer	
David Eldridge, Sr. Vice President of Finance	
Thomas L. Weinberg, Chairman	
Paul Feldman, MD	24.5%
Yong Wen, MD	24.5%
Total	100.0%

The proposed managers of DSI Newburgh, LLC have been identified as:

Stephen Pirri	Thomas L. Weinberg
James D. Shelton	Paul Feldman, MD
David Eldridge	Yong Wen, MD

U.S. Renal Care, Inc is the parent company of DSI Dutchess, Inc. Each of the members of DSI Dutchess, Inc. is employed by U.S. Renal Care, Inc.

Mr. Eldridge has been employed at U.S. Renal Care for over 12 years. He is the Senior Vice President of Finance and manages the accounting and finance functions of the company. **Mr. Pirri** has been employed at U.S Renal, Inc for over 11 years. He is the current president. He has 19 years of dialysis experience. **Mr. Shelton** has been employed at U.S. Renal Care, Inc for over 11 years. He manages the company's accounting, finance, and information technology functions. **Messrs. Brengard, Eldridge, Pirri, and Shelton** disclosed in February 2010, an investigation from the Office of the Inspector General of the U.S. Department of Health and Human Services (OIG) related to alleged improper Medicare and Medicaid billing at certain Dialysis Corporation of America (DCA) clinics. U.S. Renal Care, Inc acquired DCA in June 2010. The two suits filed by the U.S. government were settled on May 17, 2013 and September 12, 2014.

Dr. Wen is a practicing nephrologist with over ten years of experience. He has worked in multiple dialysis units and hospitals. He has served in leadership roles on multiple committees. He has managed a physician practice.

The proposed Medical Director, **Dr. Feldman**, has been a practicing physician for over 19 years and is board-certified in Internal Medicine and Nephrology. He completed his residency in nephrology at New York and Presbyterian Hospital. He has eight years managing nephrology practices.

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.

The Department has taken the following enforcement action against U.S. Renal Care, Inc affiliated facilities:

- On April 7, 2017, the Department issued a Stipulation and Order (S&O) and \$2,000 fine for surveillance findings of December 9, 2016 related to Construction prior to Department of Health approval.

Star Ratings - Dialysis Facility Compare (DFC)

The Centers for Medicare and Medicaid Services (CMS) and the University of Michigan Kidney Epidemiology and Cost Center have developed a methodology for rating each dialysis facility which may be found on the Dialysis Facility Compare website as a “Star Rating.” The method produces a final score that is based on quality measures currently reported on the DFC website and ranges from 1 to 5 stars. A facility with a 5-star rating has quality of care that is considered 'much above average' compared to other dialysis facilities. A 1- or 2- star rating does not mean that a facility provides poor care. It only indicates that measured outcomes were below average compared to other facilities. Star ratings on DFC are updated annually to align with the annual updates of the standardized measures.

The DFC website currently reports on nine measures of quality of care for facilities. The measures used in the star rating are grouped into three domains by using a statistical method known as Factor Analysis. Each domain contains measures that are most correlated. This allows CMS to weight the domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.

To calculate the star rating for a facility, each domain score between 0 and 100 by averaging the normalized scores for measures within that domain. A final score between 0 and 100 is obtained by averaging the three domain scores (or two domain scores for peritoneal dialysis-only facilities). Finally, to recognize high and low performances, facilities receive stars in the following way:

- Facilities with the top 10% final scores were given a star rating of 5.
- Facilities with the next 20% highest final scores were given 4 stars.
- Facilities within the middle 40% of final scores were given 3 stars.
- Facilities with the next 20% lowest final scores were given 2 stars.
- Facilities with the bottom 10% final scores were given 1 star.

U.S. Renal Care, Inc operates over 300 dialysis centers, nine of which are located in New York State. DSI Newburgh Dialysis, Inc. is a subsidiary of U.S. Renal Care, Inc. A comprehensive list of the Star Ratings for all dialysis centers that USRC operates or is affiliated with in New York State is provided in **HSP Attachment A**.

Conclusion

There will be no change to services or capacity as a result of this application. The 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 has submitted a draft APA to acquire the operating interests of DSI Newburgh Dialysis, to be effectuated upon PHHPC approval. The terms are summarized below:

Seller:	DSI Dutchess Dialysis, Inc.
Buyer:	DSI Newburgh Dialysis, LLC
Clinic Address:	39-47 North Plank Road, Newburgh, NY 12550
Asset Acquired:	All fixed assets and supplies primarily and exclusively to the Seller's business including warranties that are transferable, Inventory used during business to include office supplies, and usable medical supplies such as dialysis supplies, and drugs and inventory items used during dialysis treatment. Contract related to the center, files records, documents, data and medical records. Prepaid expenses, licenses, permits, certificates and provider numbers issued by the federal, state and local governmental entity exclusively used in the operation of the business. The Sellers's Business as a going concern and all the goodwill associated with the Seller's business and all accounts receivable relating to the Center Including Medicare and Medicaid cost report receivable).
Excluded Assets:	All cash, bank accounts and short-term investments as of the closing date. All income tax refunds and tax deposits of seller: and the minute books and tax returns of the Seller.
Assumption of Liabilities:	Liabilities arising because of events after the closing date which include losses, debts, liabilities, or obligations.
Purchase Price:	\$1,140,506 (paid, held escrow)
Payment of Purchase Price:	Cash at closing.

The purchase price has been funded via equity by the proposed applicant members and is being held in an escrow account to fund the transaction at closing.

Lease Agreement

The applicant submitted an executed lease agreement, the terms of which are summarized below:

Date:	March 22, 2016
Premises:	6,798 sq. feet located at 39-47 North Plank Road, New York, 12550
Landlord:	Mid-Valley Improvements Owner, LLC
Lessee:	DSI Dutchess Dialysis, Inc.
Term:	10 Years, plus two renewal terms of (5) years each.
Rental:	Years 1-5: \$7,364.50 per month or \$88,374 per annum Years 6-10: \$7,647.75 per month or \$91,773 per annum
Provisions:	Tenant will pay share of taxes, office improvements, insurance policy and repairs

The lease arrangement is an arm's length agreement. The applicant has submitted letters from two New York Licensed Real Estate Brokers attesting that the lease cost per square foot is at fair market value.

Assignment and Assumption of Lease

The applicant has submitted a draft assignment and assumption of the lease agreement for site control of the center. The terms are summarized below:

Landlord:	Mid-Valley Improvement Owner LLC
Assignor:	DSI Dutchess Dialysis, Inc.
Assignee:	DSI Newburgh, LLC
Assigned Rights:	All of the Assignor's leasehold rights, title and interest in and to the lease of the premises consisting of 6,798 sq. ft. (Space #5) of the shopping center known as Mid Valley Mall located at 39-47 North Plank Road, Newburgh, NY 12550
Rent:	Rental Payments will be the same as DSI Dutchess Dialysis and payments will be transferred to Assignee.

Administrative Services Agreement

The applicant has submitted a draft ASA, summarized below:

Consultant:	Dialysis Newco, Inc.
Licensed Operator:	DSI Newburgh, LLC
Services Provided:	Personnel training, monitoring; arrangements of purchase and supplies to include vendor relations on behalf of the operator; billing and collections for services rendered; bookkeeping and accounting services inclusive of reports; funds management which include operation and maintenance of clinics, disbursements of clinic funds as needed; Insurance premiums, Equipment pricing and authorization with operators approval; deductibles, retention, and co-insurance attributable insurances; policies and procedures development as authorized by the operator; quality control reviews; licenses, permits, accreditations and provider numbers; compliance assistant; engage in back up to legal actions;
Term:	10 Year Term however the Administrator has a right to terminate with (60) days' notice. The Licensed Operator and Administrator may terminate the agreement anytime with mutual written consent.
Fee:	Yr. 1 - \$378,836; Yr. 2 - \$454,060; Yr. 3 - \$517,171; Yr. 4 - \$527,515; Yr. 5 - \$538,065; Yr. 6 - \$543,446; Yr. 7 - \$548,881; Yr. 8 - \$554,369 Yr. 9 - \$559,912; Yr.10 - \$565,512

While Dialysis Newco, Inc. will provide all the above services, the licensed operator retains ultimate authority, responsibility, and control for the operations. There is common ownership between the applicant and the ASA provider as shown on BFA Attachment E post-closing organization chart. The applicant has submitted an executed attestation acknowledging understanding of the statutory and regulatory required reserve powers that cannot be delegated, and that they will not willfully engage in any such illegal delegations of authority.

Operating Budget

The applicant has submitted the current year operating budget and year one and three, in 2019 dollars, shown below:

Revenues	Current		Year One		Year Three	
	Per Treat.	Total	Per Treat.	Total	Per Treat.	Total
Commercial FFS	\$8,880	\$6,455,599	\$8,444	\$3,951,792	\$8,444	\$2,634,528
Commercial MC	\$307	\$89,561	\$307	\$47,892	\$307	\$307
Medicare FFS	\$325	\$1,457,494	\$312	\$2,527,200	\$312	\$2,725,008
Medicare MC	\$272	\$99,169	\$253	\$170,459	\$253	\$305,311
Medicaid FFS	\$0	\$14,010	\$216	\$216	\$216	\$216
Medicaid MC	\$175	\$72,198	\$164	\$114,800	\$164	\$137,104
Self-pay/Charity	\$36	\$1,564	\$0	\$0	\$0	\$0
Less Bad Debt		<u>-\$96,860</u>		<u>-\$197,150</u>		<u>-\$168,272</u>
Total Revenue		\$8,092,735		\$6,615,209		\$5,634,202

<u>Expenses</u>						
Operating	\$407.34	\$2,604,156	\$321.81	\$3,592,406	\$341.41	\$3,811,183
Capital	<u>\$59.03</u>	<u>\$377,399</u>	<u>\$30.35</u>	<u>\$338,745</u>	<u>\$32.19</u>	<u>\$359,375</u>
Total	\$466.38	\$2,981,555	\$352.16	\$3,931,151	\$373.61	\$4,170,558
Net Income		<u>\$5,111,180</u>		<u>\$2,684,058</u>		<u>\$1,463,644</u>
Treatments		6,393		10,153		11,163

The following is noted with respect to the submitted budget:

- Current year is reflective of the extension clinic only from 10/1/2017 to 9/30/2018, which is the first full year of operations.
- Sliding scale revenue is related to self-pay patients in current year, and charity care utilization in years one and three.
- Expense and utilization assumptions are based on the historical experience of the existing dialysis center.
- Revenues are based on the actual rates by payor currently received by the existing facility, with Medicaid based on the 2018 Medicaid APG rate for renal dialysis reflected in the first- and third-year budgets.
- Breakeven utilization in Year Three is estimated at 8,410 treatments.
- Utilization by payor source for the current year and Year One and Three after the ownership change are summarized below:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	727	468	312
Commercial MC	292	156	1
Medicaid FFS	4,488	8,100	8,713
Medicaid MC	365	675	1,209
Medicare FFS	65	1	1
Medicare MC	412	700	836
Self-Pay/Charity	<u>44</u>	<u>53</u>	<u>70</u>
Total	6,393	10,153	11,163

DSI Dutchess Dialysis, Inc. failed to file proper cost reports with the Department that resulted in a Medicaid overpayment for years 2013 through 2018 estimated at approximately \$45,731. A revision to the provider's Medicaid rates is currently being process via a rate appeal to effectuate the corrections for the respective rate years. USRC's Executive Vice President & Legal Counsel has provided a letter indicating that once final determination of the total amount due is determined, USRC will absorb the cost and fund the recoupment.

Capability and Feasibility

There are no project costs associated with this application. The total purchase price of \$1,140,056 will be funded via equity from the proposed members (paid and held in escrow until closing upon PHHPC approval).

The working capital requirement is estimated at \$685,093 based on two months of the third-year expenses. The working capital will be funded via equity from the proposed members proportional to their ownership interest. BFA Attachment A is the net-worth statements for Drs. Feldman and Wen, which indicate Dr. Wen has insufficient resources to fund his share of the working capital requirement. USRC has provide a letter attesting that they will provide any disproportionate share needed to fund working capital for any DSI Newburgh, LLC member. BFA Attachment C indicates that USRC can provide the necessary funds. BFA Attachment E is the financial summary for DSI Dutchess Dialysis, Inc., which indicates sufficient resources to fund their portion of the working capital requirement.

BFA Attachment B, DSI Newburgh, LLC's pro forma balance sheet, shows the entity will start with a \$1,195,699 in members equity as of the first day of operations.

The submitted budget projects net income of \$20,684,058 and \$1,463,644 in Year One and Year Three, respectively. Revenues are based on prevailing reimbursement methodologies and contracted rates for dialysis services. The budget appears reasonable.

BFA Attachment C is USRC's internal financials for the year ended December 31, 2018, which shows the entity has maintained positive working capital and net asset positions and generated net income from operations of \$10,637,160 after taxes. BFA Attachment D is USRC's certified financial statements as of December 31, 2016 and 2017. The entity has maintained average positive working capital and net asset positions and had net operating income of \$81,588,000 and \$73,288,000, respectively, after taxes.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A	Personal Net Worth Statement Dr. Yong Wen and Dr. Paul Feldman
BFA Attachment B	Pro Forma Balance Sheet for DSI Newburgh, LLC
BFA Attachment C	U.S Renal Care, Inc. December 31, 2018 Internal Financials
BFA Attachment D	U.S Renal Care, Inc. December 31, 2016 and 2017 Certified Financials
BFA Attachment E	Financial Summary 2016, 2017 & 2018 for Affiliated NY Dialysis Center
BFA Attachment F	Pre and Post Organizational Chart for USRC
HSP Attachment A	Star Rating Profile for New York Dialysis Services, Inc. Dialysis Centers



Project # 191136-E
Cowley Dialysis, LLC d/b/a Hutchinson River Dialysis

Program: Diagnostic and Treatment Center **County:** Bronx
Purpose: Establishment **Acknowledged:** March 18, 2019

Executive Summary

Description

Cowley Dialysis, LLC (Cowley), an existing New York limited liability company, is requesting approval to be established as the new operator of Hutchinson River Dialysis (Hutchinson), a 19-station, proprietary Article 28 chronic renal dialysis center located at 2331 Eastchester Road, Bronx (Bronx County). The facility was approved as an extension clinic site of Bronx Dialysis Center under CON 151279 and became operational effective September 14, 2018. Bronx Dialysis Center, a 25-station chronic renal dialysis center located at 1615-1612 Eastchester Road in the Bronx, operates numerous extension clinics throughout New York State. Knickerbocker Dialysis, Inc., a wholly-owned subsidiary of DaVita of New York, Inc. and the operator of Bronx Dialysis Center, will remain in the ownership structure of Hutchinson as an 82% member of Cowley.

Hutchinson is currently licensed to provide chronic renal dialysis, home hemodialysis training and support and home peritoneal dialysis training and support services. There will be no change in services provided. Upon approval by the Public Health and Health Planning Council (PHHPC), Cowley will assume the lease for the site and continue to operate the facility under the assumed name of Hutchinson River Dialysis.

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

<u>Current Operator</u>	
Knickerbocker Dialysis, Inc.	100%

<u>Proposed Operator</u> Cowley Dialysis, LLC	
<u>Members</u>	<u>%</u>
Knickerbocker Dialysis, Inc.	82%
Nephrology Ventures LLC:	18%
Robert Lynn, M.D. (9.784%)	
Anjali Acharya, M.D. (13.756%)	
Naheed Ansari, M.D. (13.755%)	
Janice Desir, M.D. (2.353%)	
Gill Frei, M.D. (3.966%)	
Alan Friedman, M.D. (5.288%)	
Janet Gorkin, M.D. (3.532%)	
Zaher Hamadeh, M.D. (9.784%)	
Gabriela Henriquez, M.D. (7.089%)	
Mario Henriquez, M.D. (3.529%)	
Suman Reddy, M.D. (9.457%)	
Bernard Weiner, M.D. (17.707%)	
Total	100%

Nephrology Ventures LLC is an existing New York Limited Liability company whose managing member is Dr. Robert Lynn. BFA Attachment C shows the organizational chart of Hutchinson River Dialysis.

Janet Gorkin, M.D., who is Board-certified in Nephrology and Internal Medicine, will continue as Medical Director of Hutchinson. Cowley executed a Consulting and Administrative Services Agreement (CASA) with DaVita Inc., to

be effective upon PHHPC approval of this application, for the provision of accounting, billing, funds management and other administrative services to the Center.

OPCHSM Recommendation
Contingent Approval

Need Summary

There are no plans to change the current provision of dialysis services. Cowley Dialysis, LLC (Cowley) intends to continue to offer all current existing services with no changes to the staffing, operating times, or backup hospital.

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. Cowley will purchase the operating interest via a Contribution and Purchase Agreement (CAPA) for \$5,681,000 to be funded by the proposed members' contribution of \$2,101,000 (contributed in proportion to the members' percent ownership interest) and a City National Bank loan of \$3,580,000. The loan, executed on April 7, 2017, is classified as a revolving to installment loan structured to cover a period of seven years and two months. The loan term began June 1, 2017 (drawdown start date) and has a maturity date of August 1, 2024. The drawdown period continues until August 1, 2019, after which no additional drawdowns are permitted and the paydown of the principal begins (instalment phase). Interest on the outstanding principal amount is equal to the greater of 2.5% or the CNB prime rate, which is currently 5.5%. The projected budget is:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$935,825	\$4,618,079
Expenses	<u>1,944,276</u>	<u>4,194,528</u>
Gain/(loss)	(\$1,008,451)	\$423,551

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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of a copy of Cowley LLC Operating Agreement indicating that the power to approve Certificates of Need filed by or on behalf of the Art. 28 entity remains with the Cowley LLC acceptable to the Department. [CSL]
3. Submission of a restated Certificate of Incorporation of Knickerbocker, Inc. that indicates that all stockholders must be natural persons and that this provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health. [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 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/hospitals/docs/hcs_access_forms_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]

Council Action Date

June 6, 2019

Need and Program Analysis

Program Description

Proposed Operator	Crowley Dialysis, Inc
Doing Business As	Hutchinson River Dialysis
Site Address	2331 Eastchester Road Bronx, NY 10469 (Bronx County)
Shift/Hours/Schedule	Monday-Wednesday-Friday 6:00 AM to 3:00 PM
Approved Services	Renal Dialysis-Chronic O/P Home Hemodialysis Training and Support Home Peritoneal Dialysis Training and Support
Staffing (1st Year/3rd Year)	5.79 FTES/15.72 FTES
Medical Director(s)	Janet Gorkin, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Montefiore Medical Center 1 mile/7 minutes Jacobi Medical Center 0.4 miles/ 9 minutes

There will be no programmatic changes, changes in stations or services as a result of this proposed change in ownership. The two members of Crowley Dialysis, LLC are Knickerbocker Dialysis, Inc and Nephrology Ventures, LLC. Knickerbocker Dialysis, Inc is the 82% owner of Crowley Dialysis, LLC. Nephrology Ventures, LLC owns the remaining 18% of Crowley Dialysis, LLC. Furthermore, the members of Nephrology Venture, LLC are all physicians who are board-certified in Internal Medicine and Nephrology. DaVita of New York, Inc, which is owned by DaVita Inc. is the owner of the shares of stock of Knickerbocker. DaVita Inc. is the operator

Knickerbocker is the licensed operator of 34 chronic renal dialysis facilities in the state, while DaVita is the operator of more than 2,400 dialysis facilities in the United States.

Character and Competence

The proposed membership of Cowley Dialysis, LLC are:

Member Name/Title	Interest
Knickerbocker Dialysis, Inc	82.0%
<i>Matt H. Henn, President</i>	
<i>Gregory S. Stewart, Vice President</i>	
<i>Marcus Catsouphus, Treasurer</i>	
<i>Nicholas M. Gossman, Secretary</i>	
<i>Luann D. Regensburg, Assistant Secretary</i>	
Nephrology Ventures, LLC	18.0%
Robert Lynn, M.D. (9.784%)	
Suman Reddy, M.D. (9.457%)	
Alan Friedman, M.D. (5.288%)	
Gill Frei, M.D. (3.966%)	
Bernie Weiner, M.D. (17.707%)	
Naheed Ansari, M.D. (13.755%)	
Janet Gorkin, M.D. (3.532%)	
Janice Desire, M.D. (2.353%)	
Gabriela Henriquez, M.D. (7.089%)	
Mario Henriquez, M.D. (3.529%)	
Zaher Hamadeh, M.D. (9.784%)	
Anjali Acharya, M.D. (13.756%)	
Total	100.0%

Member Janet Gorkin, M.D., will continue to serve as the facility's Medical Director. Dr. Gorkin completed a Nephrology Fellowship at Mt. Sini Hospital and is board-certified in Internal Medicine and a sub-specialty in Nephrology.

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

A Character and Competence Review was conducted on the members of Crowley Dialysis, LLC, Knickerbocker Dialysis, Inc, and Nephrology Ventures, LLC. The following disclosures were made:

Dr. Friedman disclosed being named in a malpractice case which alleged not diagnosing a lung nodule on a chest x-ray that was performed preoperatively. The patient developed and expired from lung cancer. The case was settled by the insurance in 2010.

Dr. Weiner disclosed a malpractice case related to a patient with diagnosis of pulmonary tuberculosis who was started on an anti-tubercular treatment. The patient ultimately succumbed in November 2006. The case was dropped in April 2012.

Dr. Lynn disclosed being named in a malpractice case filed on February 21, 2011 which alleged negligence and malpractice in the treatment of the patient. The case was discontinued against Dr. Lynn without cost on April 4, 2016.

Compliance with Applicable Codes, Rules and Regulations

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 October 2011, OIG requested documents from DaVita, Inc. related to payments for infusion drugs covered by Medicaid composite payments for dialysis. In April 2014 DaVita reached an agreement with the government and is in the process of working to finalize specific terms of the settlement.

In July 2014 the State of Indiana Attorney General's Medicaid Fraud Control Unit requested reimbursement of \$712.66 for dialysis services provided by a DaVita RN to a Medicaid recipient while she was temporarily unlicensed.

In October 2014 OIG determined that DaVita was overpaid for claims that in whole or in part should have been billed to the Nursing Home Division Waiver Program rather than Medicaid Fee-For-Service. DaVita refunded \$267,287.93 covering services provided at nineteen DaVita dialysis facilities.

In March 2015, JSA HealthCare Corporation, a subsidiary of HealthCare Partners, received a subpoena from the OIG, from a period of January 1, 2008 through December 31, 2013, related to an ongoing civil investigation concerning Medicare Advantage service providers' risk adjustment practices and patient diagnosis coding. It also requests information regarding JSA's communication about diagnoses related to certain Medicare Advantage plans, specifically relate to two (2) Florida physicians that JSA previously contracted with. In addition, in June 2015 DaVita received a subpoena from the OIG related to DaVita and its subsidiaries provision of services to Medicare Advantage plans and related patient diagnosis coding and risk adjustment submissions and payments. In September 2018, DaVita reached a settlement with the DOJ and agreed to pay \$270 million.

In November 2015 RMS Lifeline, Inc., a wholly owned subsidiary of DaVita that operates under the name Lifeline Vascular Access received a CID from the DOJ relating to two vascular access centers in Florida. The DOJ is investigating the medical necessity of angiograms performed on 10 patients. In January 2017, DaVita executed an agreement with the realtor and the government for an "immaterial amount". In April 2017, the case was dismissed.

In February 2016 DaVita's pharmacy services wholly owned subsidiary, DaVita Rx, received a CID from the U.S. Attorney's Office for the Northern District of Texas. The investigation concerns allegations that DaVita Rx presented or caused false claims for payment to the government for prescription medications. DaVita initiated a compliance review which indicated potential billing and operational issues and filed a self-disclosure with the OIG. The investigation is ongoing.

In January 2017, a class action lawsuit was filed in the Kentucky Commonwealth court against DaVita alleging the defendants conspired to provide medically unnecessary dialysis services. On May 10, 2018 the court denied a motion to dismiss the case.

In January 2017, the U.S. Attorney's Office, District of Massachusetts, served DaVita with an administrative subpoena for records relevant to charitable patient assistance organizations, including documents related to the efforts to provide patients with information concerning the availability of charitable assistance. This is in connection into possible federal healthcare offenses. The investigation is ongoing.

In February 2017, the Peace Officers' Annuity and Benefit Fund of Georgia filed a putative federal securities class action complaint against DaVita and certain executives in the U.S. District Court for the District of Colorado. The complaint alleges that they violated federal securities laws concerning DaVita's financial results and revenue derived from patients who received charitable premium assistance from an industry funded non-profit organization. The investigation is on-going.

In August 2017, the U.S. District Court for the District of Delaware consolidated three (3) previously disclosed shareholder derivative lawsuits. The complaint alleges a breach of fiduciary duty, unjust enrichments, abuse of control, gross mismanagement, corporate waste, and misrepresentation/failure to disclose certain information in violation of the federal securities law in connection with an alleged practice to direct patients with government subsidized health insurance into private health insurance plans to maximize DaVita's profits. The investigation is ongoing.

In November 2017, DaVita was informed by the U.S. Attorney District of Columbia's Office of an investigation into possible healthcare offenses involving DaVita Kidney Care and, wholly owned subsidiaries, including DMG, DaVita Rx, DaVita Laboratory Services, Inc (DaVita Labs), and RMS Lifeline, Inc (Lifeline). In August 2018, DaVita received a CID from the U.S. Attorney's Office which was issued pursuant to the FCA. The investigation is ongoing.

In November 2017, DaVita was informed by the U.S Attorney's Office, Southern District of Florida, of an investigation into possible federal healthcare offenses involving Lifeline. The investigation is ongoing.

In March 2018, DaVita Labs received two (2) CIDs from the U.S. Attorney's office, Middle District of Florida, investigating submission of false claims for laboratory testing due to insufficient test validation or stability studies. In October 2018, DaVita Labs received a subpoena requesting certain patient records linked to this matter. The investigation is ongoing.

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

Financial Analysis

The applicant has submitted an executed CAPA for the operating interests of Hutchinson, to be effectuated upon PHHPC approval of this application. The CAPA includes executed Forms of Assignment and Assumption and Bill of Sale. The terms of the agreement are summarized below:

Date:	July 25, 2017
Purchaser:	Cowley Dialysis, LLC
Seller:	Knickerbocker Dialysis, Inc.
Acquired Assets:	All assets used in connection with the ownership and operation of Hutchinson including inventory, supplies, prepaid expenses and fixed assets.
Assumed Liabilities:	All debts, obligations and liabilities incurred by Knickerbocker in connection with the Dialysis business, regardless of when incurred.
Purchase Price:	\$3,396,323 (Start-up capital expenditures), \$2,106,352 (Start-up working capital), and \$178,325 (development fee) totaling \$5,681,000. These figures are estimates and are subject to change. Nephrology Ventures, LLC and Knickerbocker Dialysis, Inc. each acknowledges and agrees that it may be required to contribute additional capital to the Company if the actual amounts differ from the estimated amounts.
Payment of Purchase Price:	Credit Facility from City National Bank of \$3,580,000 and proposed members' contribution of \$2,101,000 of which \$372,780 has been deposited in escrow.

Members	Loan*	Equity	Total
Knickerbocker Dialysis, LLC	\$2,935,600	\$1,722,820	\$4,658,420
Nephrology Ventures LLC	644,400	378,180	1,022,580
Totals	\$3,580,000	\$2,101,000	\$5,681,000

* The City National Bank loan is classified as a revolving to installment loan in the amount of \$3,580,000. The loan was executed on April 7, 2017 and is structured to cover a period of seven years and two months. The loan term began June 1, 2017 (drawdown start date) with a maturity date of August 1, 2024. The drawdown period of the loan continues until the Term Out Date of August 1, 2019, after which time no additional drawdowns are permitted and the paydown of the loan principal begins. Interest on the outstanding principal amount is equal to the greater of 2.5% or the CNB prime rate, which is currently 5.5%.

The purchase price is based upon Knickerbocker Dialysis, Inc.'s cost of construction of the facility, costs of moveable equipment required for the operation of the facility, operating losses during the period when Knickerbocker Dialysis, Inc. is operating the facility prior to the change of ownership, and working capital needed to operate the facility until cash flows become positive.

The applicant has provided an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

Lease Agreement

The applicant will lease space on the first floor under the terms of the executed lease agreement, summarized below:

Date:	October 16, 2015
Premises:	Approximately 11,412 rentable square feet of floor area in a building located at 2331 Eastchester Road, Bronx, New York
Landlord:	2331 Eastchester Road LLC
Tenant:	Knickerbocker Dialysis, Inc.
Rent:	\$410,909.46, annually (Year 3) and increases approx. 2% per year.
Terms:	120 months
Provisions:	Tenant's share of real estate taxes, other taxes, assessments and public charges, insurance, gas, water and electricity.

Assignment and Assumption of Lease Agreement

The applicant has submitted an executed Assignment and Assumption of Lease agreement for the site, summarized below:

Date:	July 25, 2017
Assignor:	Knickerbocker Dialysis, Inc.
Assignee:	Cowley Dialysis, LLC
Premises:	11,412 sq. ft. located at 2331 Eastchester, Bronx, New York

Luann D. Regensburg, Assistant Secretary of Knickerbocker Dialysis, Inc. and Acting Division Vice President of DaVita Inc., submitted an affidavit stating the proposed lease is an arm's length agreement as there is no relationship between landlord and tenant.

Consulting and Administrative Services Agreement

The applicant has submitted an executed CASA, to be effective upon PHHPC approval of the change in ownership. The terms of the agreement are summarized below:

Date:	July 25, 2017
Facility Operator:	Cowley Dialysis, LLC
Consultant:	DaVita, Inc.
Services Rendered:	Establish and develop the center; acquire all assets, equipment and maintenance required for operation of the center; provide computer hardware and software; provide supplies and prescription drugs; perform all patient billing and collecting functions; employ bookkeeping and accounting procedures; manage and account for center's funds; prepare and deliver to established operator operating and capital budgets for the following fiscal year; assist in securing insurance; recommend policies and procedures; advise in quality assurance; assist in applying for licenses, permits and provider numbers; develop a compliance program; advocate for established operator in legal actions or proceedings; and comply with all provisions of federal, state and local Laws, rules, regulations and ordinances that are applicable to the Consulting Services provided.
Term:	10-year initial term with option to renew at 5 year intervals
Fee:	\$97,736 annually

While DaVita, Inc. will be providing all of the above services, the Facility Operator retains ultimate control in all of the final decisions associated with the services. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

Operating Budget

The applicant has submitted first and third year operating budgets, in 2019 dollars, summarized below. Hutchinson began operations September 14, 2018; therefore, current year data is not available.

<u>Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial - FFS	\$939.73	\$280,040	\$920.19	\$1,479,666
Medicare - MC	\$304.01	658,187	\$303.35	3,155,752
Medicaid - MC	\$262.66	<u>39,136</u>	\$261.70	<u>187,641</u>
Total		\$977,363		\$4,823,059
Less: Bad Debt		<u>(41,538)</u>		<u>(204,980)</u>
Total Revenue		\$935,825		\$4,618,079
<u>Expenses</u>				
Operating	\$400.70	\$1,046,639	\$258.16	\$3,285,858
Capital	<u>\$343.66</u>	<u>897,637</u>	<u>\$71.39</u>	<u>908,670</u>
Total	\$744.36	\$1,944,276	\$329.55	\$4,194,528
Net Income (Loss)		<u>(\$1,008,451)</u>		<u>\$423,551</u>
Visits (Treatments)		2,612		12,728

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

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial - FFS	11.4%	12.6%
Medicare - MC	82.9%	81.7%
Medicaid - MC	<u>5.7%</u>	<u>5.6%</u>
Total	100%	100%

The following is noted regarding the submitted budgets:

- The estimated revenues and expenses for the first year of operation are based on recent experience at the existing facility, as well as Knickerbocker Dialysis, Inc.'s experience with similar facilities in New York State.
- The estimated revenues and expenses for the third year of operation are based on a growing need for dialysis services in Bronx County, expected growth in utilization for the start-up facility, and DaVita Inc.'s experience with the large number of facilities it currently operates in New York State.

Capability and Feasibility

There are no project costs associated with this application. Cowley will purchase the operating interest through a CAPA for \$5,681,000 to be funded via a \$3,580,000 loan and the proposed members' contribution of \$2,101,000. The City National Bank loan is a revolving to installment loan that was executed on April 7, 2017. The loan is structured to cover a period of seven years and two) months with a commencement date of June 1, 2017 (drawdown start date) and a maturity date of August 1, 2024. The drawdown period continues until August 1, 2019, after which no additional drawdowns are permitted and paydown of the loan principal begins. Interest on the outstanding principal amount is equal to the greater of 2.5% or the CNB prime rate, which is currently 5.5%.

The working capital requirement is estimated at \$699,088 based on two months of third year expenses. Working capital will be funded through the initial capital contributions provided by the proposed members. BFA Attachments A and D, Net worth statements for the members of Nephrology Ventures, LLC and the financial summary of DaVita, Inc., grandparent of Knickerbocker Dialysis, Inc., indicate sufficient funds available for estimated working capital.

BFA Attachment E is the pro forma balance sheet of Cowley Dialysis, LLC.

The submitted budget projects a net loss of \$1,008,451 for Year One and a net income of \$423,551 during Year Three. The Acting Division Vice President of DaVita, Inc. and the Manager for Nephrology Ventures, LLC have submitted a deficit funding letter, attesting that the projected first year loss will be absorbed by the ongoing operations of DaVita, Inc. and the individual members of Nephrology Ventures, LLC.

BFA Attachment D is a summary of the 2017 and 2018 Certified Financial Statements for DaVita, Inc., which shows a positive working capital position, a positive net asset position, and positive net income. DaVita, Inc., a publicly traded company, is the ultimate parent of Knickerbocker Dialysis, Inc.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A	Net Worth Statement for Nephrology Ventures, LLC
BFA Attachment B	Pre- and Post-closing Organizational chart
BFA Attachment C	Summary of 2017 and 2018 Certified Financial Statements – DaVita, Inc.
BFA Attachment D	Pro Forma Balance Sheet – Cowley Dialysis, LLC



Project # 181151-E
Saratoga Care and Rehabilitation Center LLC

Program: Residential Health Care Facility
Purpose: Establishment

County: Saratoga
Acknowledged: March 7, 2018

Executive Summary

Description

Saratoga Care and Rehabilitation Center, LLC, a New Jersey limited liability company, requests approval to be established as the new operator of Saratoga Center for Rehab and Skilled Nursing Care, a 257-bed, proprietary, Article 28 residential health care facility (RHCF) located at 149 Ballston Avenue, Ballston Spa (Saratoga County). Saratoga Center for Care, LLC is the current operator of the facility. There will be no change in beds or services provided. The applicant intends to file an application with the New York State Department of State seeking authority to conduct business in New York upon contingent approval of this application from the Public Health and Health Planning Council (PHHPC).

On December 1, 2016, Saratoga Center for Care, LLC entered into an Asset Purchase Agreement (APA) with Saratoga Care and Rehabilitation Center, LLC for the sale and acquisition of the of the RHCF’s operating interests for a purchase price of \$1. On February 16, 2017, Ballston Two, LLC, the current real property owner, entered into a Real Estate Purchase Agreement (REPA) with Saratoga Realty Holdings, LLC for the sale and acquisition of the RHCF’s real property for \$26,000,000. The APA and REPA will close simultaneously upon final PHHPC approval. There is a relationship between Saratoga Care and Rehabilitation Center, LLC and Saratoga Realty Holdings, LLC in that there are common members. The applicant will lease the premises from Saratoga Realty Holdings, LLC.

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

<u>Current Operator</u>	
Saratoga Center for Care, LLC	
<u>Members</u>	
Jeffrey Veigh	50%
Alan Schwartz	50%

<u>Proposed Operator</u>	
Saratoga Care and Rehabilitation Center, LLC	
<u>Members</u>	
Jack Jaffa	90%
Chaim Scheinbaum	10%

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

<u>Current Realty Owner</u>	
Ballston Two, LLC	
<u>Member</u>	
Leon Melohn	100%

<u>Proposed Realty Owner</u>	
Saratoga Realty Holdings, LLC	
<u>Member</u>	
Jace Management Group, LLC	100%
Jack Jaffa 2016 Insurance Trust (100%) <i>(Managing Member – Jack Jaffa)</i>	

OPCHSM Recommendation
Contingent Approval

Need Summary

This project is a change in ownership. There will not be any changes to beds or services provided.

Program Summary

The 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 \$1 funded via owners' equity. Saratoga Realty Holdings, LLC will acquire the RHCF's real property for \$26,000,000 funded via \$5,200,000 in equity

with the remaining \$20,800,000 to be financed with a loan for a 25-year term at the 5-year Treasury Note rate plus 3.25% interest (5.74% as of March 2019). HHC Capital Advisory Group has provided a letter of interest for the loan at the stated terms. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$19,824,254	\$21,200,169
Expenses	<u>19,762,877</u>	<u>20,617,819</u>
Net Income	\$61,377	\$582,350

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 loan commitment for the purchase of the RHCF realty, acceptable to the Department of Health. [BFA]
4. Submission of an executed Service and Consulting Agreement, acceptable to the Department of Health. [BFA]
5. Submission of documentation of Saratoga Care and Rehabilitation Center, LLCs authority to do business in New York State, acceptable to the Department. (CSL)
6. Submission of a photocopy of the applicant's amended and fully executed Lease Agreement, acceptable to the Department. (CSL)
7. Submission of a photocopy of the applicant's Amended Articles of Organization, acceptable to the Department. (CSL)
8. Submission of a photocopy of the applicant's amended Amended and Restated Operating Agreement, acceptable to the Department. (CSL)
9. Submission of a photocopy of the applicant's fully executed Purchase Agreement, acceptable to the Department. (CSL)
10. Submission of an executed Services and Consulting Agreement, acceptable to the Department. (CSL)

Approval conditional upon:

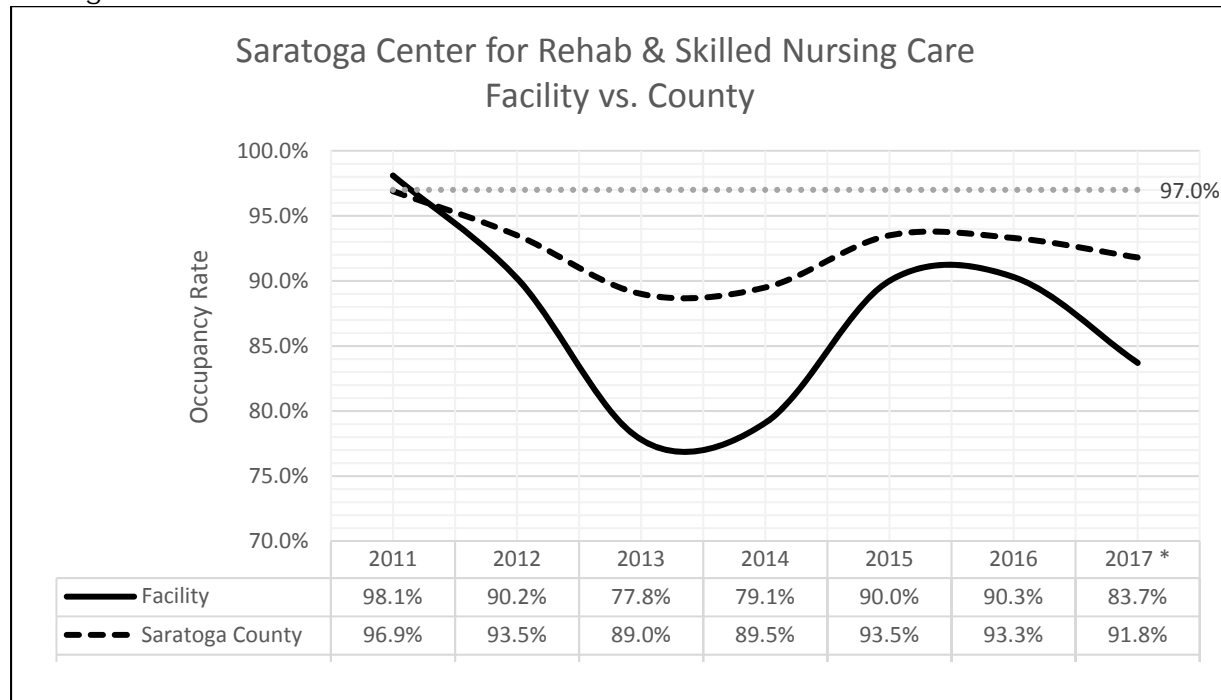
1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The applicant must receive Department of Health approval prior to entering into or making substantive changes to any agreement, including any subcontract or assignment, involving management, administrative and/or consulting activities and/or services, including but not limited to, operational policies and procedures. [CSL]

Council Action Date

April 11, 2019

Need Analysis

Background



**2017 data is based upon weekly census data because the 2017 Cost Report has not been submitted*

Based upon weekly census data, current occupancy, as of April 24, 2019 is 78.6% for the facility and 90.4% for Saratoga County. The lower rate of occupancy is due to operational issues under the current ownership. A strategic decision has been made to limit the number of residents and new admissions so that the facility's operations could stabilize. The facility has voluntarily taken 60 beds offline for a short period of time so that upgrades, operational improvements, and cosmetic physical plant renovations could be made.

The applicant is developing new marketing and outreach plans to improve the occupancy. New clinical programs are also being developed and reviewed for implementation upon approval of this project. The applicant is working with the current operator to achieve strong daily hospital outreach to obtain new admissions. The facility is preparing to reopen the 60 beds over the coming months.

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.

Saratoga Center’s Medicaid admissions rate has exceeded the threshold of 75% of the Saratoga County rate, as demonstrated in the table below. Applicant has not yet submitted their 2017 RHCFC cost report.

Percent of New RHCFC Admissions that are Medicaid	2014	2015	2016
Saratoga County 75% Threshold	12.7%	13.1%	12.6%
Saratoga Center for Rehab and Skilled Nursing Care	50.0%	37.6%	28.9%

Conclusion

This is a change in ownership with no impact on need or bed capacity in Saratoga County.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Saratoga Center for Rehab and Skilled Nursing Care	Same
Address	149 Ballston Avenue Ballston Spa	Same
RHCFC Capacity	257	Same
ADHC Program Capacity	0	Same
Type of Operator	Proprietary	Same
Class of Operator	LLC	Same
Operator	Saratoga Center for Care LLC Alan Schwartz Jeffrey Vegh	Saratoga Care and Rehabilitation Center, LLC Jack Jaffa 90% Chaim Scheinbaum 10%

Character and Competence

Individual Background Review

Chaim (Mutt) Scheinbaum discloses employment as the Chief Executive Officer for Alliance Healthcare, a consulting and service company for skilled nursing and rehabilitation facilities, as well as Assisted living facilities, since 2016. Additionally, Mr. Scheinbaum lists employment as an Administrator at various Nursing Homes over a two-and-a-half-year timeframe. He has a BA degree from Telshe College. Mr. Scheinbaum has a current Nursing Home Administrator License in New Jersey.

Mr. Scheinbaum indicated that through Alliance Healthcare he has been involved with the subject facility since May 2018 as a consultant. Mr. Scheinbaum states “The Applicant has supported the facility to cash flow positive by making personal loans of over \$1 million to the facility.”

Mr. Scheinbaum discloses the following ownership interests:

New Jersey

Preferred Care at Wall	01/2016 to 11/2016
Preferred Care at Mercer	06/2015 to 11/2016
Andover Subacute and Rehabilitation 1	06/2017 to present
Andover Subacute and Rehabilitation 2	06/2017 to present
Cooper River West	02/2019 to present
Cinnaminson Center	02/2019 to present

Pennsylvania

Mountain View Care and Rehabilitation Center	02/2018 to present
Bloomsburg Care and Rehabilitation Center	02/2018 to present

Jack Jaffa discloses employment as the President and CEO of Jack Jaffa & Associates, a firm which specializes in advisory services for property owners since 1997. Mr. Jaffa attended the New York University from 1994 to 1996. He indicates he has a NY license as an EPA Toxic Substances Control-Lead Inspector since 1995. Mr. Jaffa discloses no health facility ownership interests.

Quality Review

The 5 star information is based on the new “unfrozen” CMS data, which was released 4/24/2019.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New Jersey					
Cooper River West	02/2019	**	*	****	****
Cinnaminson Center	02/2019	**	*	*****	***
Andover Subacute and Rehabilitation I	Current	**	**	***	***
	06/2017	****	***	*****	***
Andover Subacute and Rehabilitation II	Current	***	***	*****	**
	06/2017	**	**	***	**

Pennsylvania

Mountain View Care and Rehabilitation Center	Current	*	*	***	**
	02/2018	**	*	*****	****
Bloomsburg Care Center and Rehabilitation Center	Current	**	**	*****	**
	02/2018	**	**	*****	***

Data date: 04/2019

Notes: Greyed out facilities reflects recent acquisition.

The following facilities were previously owned by the applicant:

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Preferred Care at Wall (NJ)	End of Ownership 11/2016	**	*	*****	****
	01/2016	**	*	****	*****
Preferred Care at Mercer (NJ)	End of Ownership 11/2016	***	**	*****	**
	06/2015	****	**	*****	****

Enforcement History

Andover Subacute and Rehab II, NJ:

- A federal Civil Money Penalty of \$7,673 was assessed and paid for a survey on November 14, 2017.
- A federal Civil Money Penalty of \$21,393 was assessed for an Immediate Jeopardy from a complaint survey on January 30, 2019.

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. The applicant will utilize a consulting agreement with Alliance Healthcare. As previously mentioned above, Mr. Scheinbaum is the Chief Executive Officer for Alliance Healthcare, and Alliance is already working with the facility.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Saratoga Center for Rehab and Skilled Nursing Care (SFF*)	Subject Facility Current	**	*	***	***
<i>The date Alliance Healthcare became affiliated with the facility</i>	May 2018	*	*	****	**

Data date: 04/2019

Notes: *Saratoga Center for Rehab and Skilled Nursing Care was designated a Special Focus Facility by CMS on March, 27, 2019.

As a result of the SFF designation, CMS requires the Department to provide increased surveillance oversight, including two recertification surveys per year.

The applicant has provided a plan for improvements at the subject facility which addresses labor/management, capital expenditures, quality measures, business development, procurement savings, contract negotiations and insurance management. See Program Attachment A,

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. The agreement will become effectuated upon PHHPC approval of this CON. The terms are summarized below:

Date:	December 1, 2016
Seller:	Saratoga Center for Care, LLC
Buyer:	Saratoga Care and Rehabilitation Center, LLC
Asset Acquired:	Business and operations, inventory, supplies, real property lease and all other contracts, security deposits and prepayments, policies and procedures, financial records, resident records, licenses and permits, Medicare and Medicaid provider numbers, cash and cash equivalents, leasehold improvements, furniture, fixtures, and equipment, and all other assets other than excluded assets.
Excluded Assets:	Insurance policies and claims, personal property, and real property
Seller Retained Liabilities:	Seller shall retain any liabilities relating to the excluded assets, and liabilities relating to employees who are not transferred employees.
Purchase Price:	\$1
Payment of the Purchase Price:	Equity

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of March 28, 2019, the facility had an

outstanding Medicaid overpayment liability of \$243,397. The liability is being recouped at 30% of the facility's weekly claim submissions.

Real Estate Purchase Agreement (REPA)

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

Date:	February 16, 2017
Premises:	257-bed RHCf located at 149 Ballston Ave, Ballston Spa, NY
Seller:	Ballston Two, LLC
Buyer:	Saratoga Realty Holdings, LLC
Purchase Price:	\$26,000,000
Payment of Purchase Price:	\$750,000 down payment held in escrow \$25,250,000 due at closing

The purchase price of the real property will be satisfied as follows:

Equity	\$5,200,000
Loan (25-year term, 25-year amortization, 5.74% interest*)	<u>\$20,800,000</u>
Total	\$26,000,000

*5-year Treasury Note rate plus 3.25% interest (5.74% as of March 2019).

HHC Capital Advisory Group has provided a letter of interest for the financing at the stated terms. BFA Attachment A provides the realty members' net worth summaries, which shows sufficient liquid resources to meet the equity requirements.

Lease Agreement

An executed lease has been submitted for site control of the RHCf. The agreement will become effectuated upon PHHPC approval of this CON. The terms are summarized below:

Date:	February 20, 2018
Premises:	257-bed RHCf located at 149 Ballston Avenue, Ballston Spa NY
Landlord:	Saratoga Realty Holdings, LLC
Lessee:	Saratoga Care and Rehabilitation Center, LLC
Term:	10-year Initial Term with 2 5-year renewals
Rental:	\$2,058,180
Provisions:	Triple Net

The lease is a non-arm's length agreement. The applicant has attested that there is a relationship between landlord and tenant through common ownership

Services and Consulting Agreement (SCA)

The applicant has submitted a draft SCA, and the terms of the agreement are summarized below:

Facility Operator:	Saratoga Care and Rehabilitation Center, LLC
Consultant:	Alliance Healthcare
Services Rendered:	Training and education related to the IT and other tools; Review/audit the Facility's compliance with internal policies and procedures; Inspect for capital needs and life safety compliance; Assist in identifying and engaging professional consultants; Audit records for compliance with internal policies and procedures; Provide in-service education to the clinical staff; Assist in working with local regulatory agencies.
Term:	3 years
Fee:	\$43,750 per month - \$525,000 annually.

While Alliance Health will be providing all the above services, the Facility Operator retains ultimate control in all of the final decisions associated with the services. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable. It is also noted that the proposed SCA is not an arm's length agreement as there is a relationship between the Facility Operator and the Consultant.

Operating Budget

The applicant has provided the latest available current year operations, and an operating budget, in 2019 dollars, for the first and third years after the change in ownership. The budget is summarized below:

Revenues	Current Year (2016)		Year One		Year Three	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Commercial-FFS	\$403.59	\$1,838,350	\$234.42	\$3,810,769	\$234.42	\$4,001,307
Medicare-FFS	\$428.34	2,060,303	\$431.65	2,630,053	\$431.63	2,761,555
Medicaid-FFS	\$200.92	11,215,947	\$217.40	6,846,030	\$217.40	7,188,332
Medicaid-MC	\$197.50	2,229,757	\$271.33	5,515,409	\$271.34	5,791,179
Private Pay	\$346.99	2,578,461	\$210.21	884,160	\$210.23	928,368
All Other		<u>850,642</u>		<u>137,833</u>		<u>529,427</u>
Total Revenue		\$20,773,460		\$19,824,254		\$21,200,168
Expenses						
Operating	\$241.73	\$20,541,871	\$223.51	\$17,618,113	\$223.19	\$18,472,969
Capital	<u>\$68.67</u>	<u>5,835,171</u>	<u>\$27.21</u>	<u>2,144,764</u>	<u>\$25.91</u>	<u>2,144,850</u>
Total	\$310.40	\$26,377,042	\$250.72	\$19,762,877	\$249.11	\$20,617,819
Gain/(Loss)		<u>(\$5,603,582)</u>		<u>\$61,377</u>		<u>\$582,349</u>
Patient Days		84,978		78,826		82,767
Occupancy %		90.59%		84.03%		88.23%

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

- The applicant indicated that the current operator failed to maintain records sufficient for the accountants to prepare 2017 certified financial statements; therefore, the current year is based on the 2016 certified financial statements and RHCF filing with the Department. The 2017 RHCF cost report has not been submitted to date.
- Based upon self-reported weekly census data, occupancy for the facility was 83.7% in 2017. The applicant indicated that census was low as the facility has been undergoing a 60-bed cosmetic upgrade project that impacted occupancy levels.
- Medicaid/Medicare rates are based on the facility's current rates.
- Expense projections include significant decreases in operating expenses. The current owners contract out for laundry, dietary, and agency services, all of which will be provided in-house by the new operator. A management fee paid to the current owners and their company has been eliminated. Also, rent to be paid to the landlord under the new lease arrangement was reduced significantly.
- The budgeted staffing pattern for year one indicates reductions for select direct care staff (RNs, LPNs and Aides/Orderlies); however, this is being compared to 2016 FTE levels when occupancy was higher. The applicant indicated that the reductions reflect the facility's actual staffing levels in 2018 related to a lower patient volume. By year three, the applicant intends to add 1 FTE RN, 10 FTE LPN and 10 FTE Aides/Orderlies as occupancy improves.
- All Other Revenue in the current year included ancillary services and prior year insurance.
- Breakeven utilization is projected at 84% or 78,582 patient days for Year One and 86% or 80,493 for Year Three.

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

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial - FFS	5.4%	20.6%	20.6%
Medicare - FFS	5.7%	7.7%	7.7%
Medicaid - FFS	65.7%	39.9%	39.9%
Medicaid - MC	13.3%	25.8%	25.8%
Private Pay	8.7%	5.3%	5.3%
All Other	<u>1.3%</u>	<u>0.6%</u>	<u>0.6%</u>
Total	100.0%	100.0%	100.0%

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the RHCF's operating interest is \$1 and will be funded via owners' equity. Saratoga Realty Holdings, LLC will acquire the RHCF's real property for \$26,000,000 funded via \$5,200,000 in equity with the remaining \$20,800,000 to be financed with a loan for 25-year term at the 5-year Treasury Note rate plus 3.25% interest (5.74% as of March 2019). HHC Capital Advisory Group has provided a letter of interest at the stated terms. BFA Attachment A provides the realty members' net worth summaries, which shows sufficient liquid resources to meet the realty equity requirement.

The working capital requirement is estimated at \$3,293,813 based on two months of year one expenses. The applicant indicated they will provide \$1,693,813 in working capital to be funded via members' equity with the remaining \$1,600,000 to be satisfied through a five-year term loan at Prime + 0.25% interest (5.5% as of March 2019). HHC Capital Advisory Group has provided a letter of interest. BFA Attachment A provides the members' net worth summaries, which shows sufficient liquid resources to meet the working capital equity requirements.

The submitted budget projects net profit of \$61,377 in year one after the change in ownership. Revenues are estimated to remain approximately the same, while overall expenses are expected to decrease by approximately \$6 million due mostly to a decrease in rent/depreciation expense from a new lease agreement, reduction of patient volume, and the remaining decrease from non-revenue support service reductions based on the expertise of the new owners. BFA Attachment C is the pro forma balance sheet of both the operating and realty companies, which shows the operation entity will start with positive members' equity. The budget appears reasonable.

BFA Attachment B is a Financial Summary of Saratoga Center for Rehab and Skilled Nursing Care's 2015-2016 certified financial statements and their 2017-2018 internal financial statements. The applicant indicated that the current operator failed to maintain records sufficient for the accountants to prepare 2017 certified financial statements. Also, the 2017 RHCF cost report has not been submitted.

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

Attachments

BFA Attachment A	Net Worth of Proposed Members
BFA Attachment B	Financial Summary of Saratoga Center for Rehab and Skilled Nursing Care
BFA Attachment C	Pro Forma Balance Sheet
Program Attachment A	Quality Improvement Plan



**Project # 181319-E
Tri-Borough Certified Health Systems
of the Hudson Valley, LLC**

Program: Certified Home Health Agency
Purpose: Establishment

County: Westchester
Acknowledged: May 23, 2018

Executive Summary

Description

Tri-Borough Certified Health Systems of the Hudson Valley, LLC (Tri-Borough HV), a New York limited liability company whose sole member is Kenrick Cort, requests approval to be established as the new operator of Datahr Home Health Care, Inc. (Datahr), a voluntary, not-for-profit Article 36 certified home health agency (CHHA) located at 120 Kisco Avenue, Mt. Kisco (Westchester County). The CHHA was established in May 2004 as a special pilot program CHHA with services limited to individuals with developmental disabilities (OPWDD population). Datahr is certified to provide Home Health Aide, Nursing, Personal Care, Medical Social Services, Medical Supplies/Equipment and Appliances, Nutritional, Occupational Therapy, Physical Therapy and Speech-Language Pathology Therapy services, and is authorized to serve Dutchess, Putnam and Westchester counties. There will be no change in services or counties served. Upon approval the CHHA proposed to use the assumed name Family Care Certified Services, a division Tri-Borough Certified Health Systems of the Hudson Valley

On December 15, 2017, Tri-Borough Certified Health Systems of New York, LLC (Tri-Borough NY), whose sole member is Kenrick Cort, entered into an Asset Purchase Agreement (APA) with Datahr Home Care, Inc. to acquire the CHHA's business assets for a purchase price of \$1 plus the assumption of an Office of the Medicaid Inspector General (OMIG) audit liability valued at \$1,234,019.65 per the Final Audit Report letter date September 14, 2018.

The OMIG audit liability relates to Medicaid overpayments on claims with dates of service October 22, 2011 through November 8, 2014. Tri-Borough NY will enter into an Assignment and Assumption Agreement (AAA) with Tri-Borough HV for assignment of the CHHA's operating interest. The APA and AAA will close simultaneously upon Public Health and Health Planning Council (PHHPC) approval of this application. Kenrick Cort has operated the CHHA under a Management Agreement executed January 31, 2012, which was approved by the Department of Health on August 28, 2012. Tri-Borough NY is assuming the OMIG liability and will assign it to Tri-Borough HV at closing.

Kenrick Cort is the sole stockholder, director and officer of Tri-Borough Home Care, Ltd., a proprietary corporation operating a certified License Home Care Service Agency in Nassau, Bronx, Kings, New York, Queens and Richmond counties. Mr. Cort is also the sole owner/operator of Tri-Borough Home Care, Ltd. d/b/a Metrocare Givers (CHHA), Tri-Borough Health Careers, LLC, d/b/a Metrocare Home Services (CHHA), Tri-Borough Home Care, Ltd. d/b/a Family Pediatric Home Care and Family Care Certified Services, a Division of Tri-Borough NY.

OPCHSM Recommendation
Contingent Approval

Need Summary

The change in ownership of the CHHA will not result in any changes to the special pilot program population or counties being served or to the CHHA's services.

Program Summary

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a Certified Home Health Agency.

Financial Summary

The purchase price for the CHHA business assets is \$1 and the assumption of three outstanding OMIG audit liabilities totaling \$1,106,828 as of March 28, 2019. The liabilities are being recouped at 50% of the Medicaid payments due the CHHA per their weekly bill claim submissions. There are no project costs associated with this proposal. The projected budget is as follows:

	Year One	Year Three
Revenues	\$1,060,061	\$5,487,669
Expenses	<u>\$2,012,853</u>	<u>\$4,834,782</u>
Gain/(Loss)	(\$952,792)	\$652,887

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed building lease agreement, 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]
2. Services are limited to the special pilot program population of individuals in Dutchess, Putnam and Westchester Counties diagnosed as being developmentally disabled. [CHA]

Council Action Date

June 6, 2019

Need and Program Analysis

Background

Datahr Home Health Care currently offers: Home Health Aides, Medical Social Services, Medical Supplies Equipment and Appliances, Nursing, Nutritional, Personal Care, Therapy – Occupational, Therapy – Physical, and Therapy – Speech Language Pathology. The establishment of Tri-borough Certified Health Systems of Hudson Valley as the operator will have no immediate impact on the services nor will there be a change to the population or counties served by the CHHA.

As a special pilot program CHHA, the agency will continue to serve the developmentally disabled. The proposed operators are working with hospital discharge planners and the local Department of Social Services to expand services to their target population who are Medicare eligible. The applicant has attested that in the years 2016 through 2018, 95% of their services were provided to special pilot program population patients. It was confirmed that the agency will continue to serve predominantly this population going forward, with an excess of 90% of their services to these patients.

Character and Competence

The sole member of Tri-Borough Certified Health Systems of the Hudson Valley, LLC d/b/a Family Care Certified Services, a division Tri-Borough Certified Health Systems of the Hudson Valley is:

Kenrick Cort, President/Ceo, Tri-Borough Home Care, LTD.

Affiliations

- Tri-Borough Certified Health Systems of New York, LLC d/b/a Family Care Certified Services, A Division of Tri-Borough Certified Health Systems (CHHA, 7/2013-present)
- Tri-Borough Home Care, Ltd (LHCSA)
- Tri-Borough Home Care, Ltd d/b/a Metrocare Givers, A Division of Tri-Borough Home Care (LHCSA, 5/2013-present)
- Tri-Borough Health Careers, LLC d/b/a Metrocare Home Services (LHCSA, 04/2013-present)
- Tri-Borough Home Care, Ltd d/b/a Pediatric Home Care (LHCSA, 05/2013-present)

CHHA Quality of Patient Care Star Ratings as of April 10, 2019	
New York Average: 3.5 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
Datahr Home Health Care, Inc (Certified)	<i>The number of patient episodes is too small for reporting by Medicare.gov.</i>
Tri-Borough Certified Health Systems of New York, LLC d/b/a Family Care Certified Services, A Division of Tri-Borough Certified Health Systems	<i>The number of patient episodes is too small for reporting by Medicare.gov.</i>

A seven-year review of the operations of the facilities listed above was performed as part of this review (unless otherwise noted). 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.

A search of the individuals (and entities where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant has attested to being named as a defendant in a civil action. The applicant also attested to having pending civil or administrative actions against professional/business entities with which they are affiliated. These actions are documented in **Program Attachment A**.

Program

The applicant proposes to continue to serve the residents of the following counties from an office located at 120 Kisco Avenue, Mt. Kisco, New York 10549:

Westchester Putnam Dutchess

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Physical Therapy
Occupational Therapy	Speech-Language Pathology	Medical Social Services
Medical Supply Equipment	Nutrition	Personal Care

Conclusion

Datahr Home Health Care, Inc. is an existing special pilot program CHHA that has established relationships with hospitals and other health providers in its service area and has an existing patient base. The establishment of Tri-Borough Certified Health Systems of Hudson Valley as the new operator will result in no changes to the population, counties and services provided by the CHHA. 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

Financial Analysis

The applicant submitted an executed APA for the purchase of the CHHA, summarized below:

Date:	December 15, 2017
Seller:	Datahr Home Health Care, Inc
Buyer:	Tri-Borough Certified Health Systems of New York, LLC
Assets Acquired:	All its right, title and interest in assets relating to Datahr's CHHA operations including: all furniture, fixture and other assets used in CHHA operations, all transferable and assignable contracts/agreements, real property leases and leasehold improvements, the patient list for the business, all software rights with respect to the business, seller's telephone numbers.
Excluded Assets:	N/A
Assumed Liabilities:	At the Closing, Buyer shall assume all liabilities pursuant to the assigned contracts, all liabilities or obligations attributable to acts or omissions of the purchaser in its role as manager pursuant to the management agreement, and all liabilities arising from the operation of the business or purchased assets after closing.
Purchase Price:	\$1 plus assumed liabilities estimated at \$1,234,019 as of 10/31/2018
Payment of the Purchase Price:	\$1 at the Closing (met via equity) with the \$1,234,019 being recouped at 50% of Medicaid amounts due to the CHHA per their billed claims per week.

Assignment and Assumption Agreement

The applicant has submitted an executed assignment and assumption agreement for assignment of the CHHA operations, the terms are summarized below:

Date:	December 13, 2018
Assignor:	Tri-Borough Certified Health Systems of New York, LLC
Assignee:	Tri-Borough Certified Health Systems of the Hudson Valley, LLC
Assets Assigned:	Assignor's right, title and interest in, to and under the Purchase Agreement
Obligations:	Accepts the transfer and assignment of the Purchase Agreement; assumes/agrees to keep/perform/fulfill all terms, covenants, conditions and obligations of the Purchase Agreement.

Mr. Cort, the sole member/manager of Tri-Borough NY, has operated the CHHA since 2012 under a Management Services Agreement that was approved by the Department of Health on August 28, 2012. Since that time, the agency has accumulated \$1,234,019 in OMIG audit liabilities, which will be assumed by Tri-Borough NY per the terms of the APA and assigned to Tri-borough HV at closing.

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 of March 28, 2019, the CHHA has three outstanding OMIG audit liabilities due totaling \$1,106,828, with the largest valued at \$1,069,059. The liabilities are being recouped at 50% of the CHHA's weekly claims.

Lease Rental Agreement

The applicant submitted a draft lease for the CHHA administrative office site they will occupy, summarized below:

Premises:	1,000 gross square feet located at 120 Kisco Avenue, Mt. Kisco, NY
Landlord:	Medcomp Technologies, Inc.
Lessee:	Tri-Borough Certified Health Systems of Hudson Valley, LLC
Term:	15-year term at \$43,439 for year 1 with an annual 3% increase (\$43.44 per sq. ft.)
Provisions:	Utilities, taxes and maintenance.

The lease agreement is an arm's length arrangement.

Operating Budget

The applicant submitted the CHHA's current results for 2017, and the projected first- and third-year operating budgets, in 2019 dollars, summarized below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>			
Medicare	\$236,685	\$59,985	\$185,380
Medicaid	\$719,655	\$1,419,657	\$4,387,349
Less: OMIG Recoupment #	\$0	(\$709,831)	\$0
Commercial	\$16,910	\$290,250	\$914,940
Total Revenues	\$973,250	\$1,060,061	\$5,487,669
<u>Expenses</u>			
Operating	\$770,062	\$1,799,214	\$4,622,538
Capital	\$156,249	\$213,639	211,939
Total Expenses	\$926,311	\$2,012,853	\$4,834,782
Net Income (Loss)	<u>\$46,939</u>	<u>(\$952,792)</u>	<u>\$652,887</u>
Utilization - Visits*	4,198	9,496	29,348
Utilization - Hours**	23	6,332	19,566

* Nursing and PT visits

** Home Health Aid hours

OMIG audit recoupment at 50% of Medicaid billings.

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

<u>Visits</u>	<u>Current</u>	<u>Years One/Three</u>
Medicare	8.91%	4.89%
Medicaid	87.76%	78.24%
Commercial	3.33%	14.67%
Charity Care	0%	2.20%

<u>Hours</u>	<u>Current</u>	<u>Years One/Three</u>
Medicare	0%	4.89%
Medicaid	100%	78.24%
Commercial	0%	14.67%
Charity Care	0%	2.20%

Charity care is expected to be 2%. The applicant states their policy is to assess individual based on income to determine eligibility fee reduced fees and/or charity care. Their commitment includes providing uncompensated services to uninsured patients lacking the financial resources to pay.

Capability and Feasibility

There are no project costs associated with this application. Tri-Borough Certified Health Systems of Hudson Valley, LLC will acquire the CHHA's operations for \$1 funded by equity as stated above and the assumption of the OMIG audit of \$1,234,019 to be recouped at 50% of Medicaid amounts due to the CHHA per their billed claims.

The working capital requirement is estimated at \$335,476 based on two months of first year expenses. The total working capital will be funded from members' equity, current operations or cash flow. BFA Attachment A is the net worth statements for the proposed member of, which reveals sufficient resources to meet the equity requirements.

The submitted budget projects a net loss of \$952,792 in the first year and net income of \$652,887 in the third year. Revenues reflect current reimbursement rates for CHHAs. The Year One loss is mainly due to the OMIG audit recoupment estimated at \$709,831, with the remaining \$242,961 loss related to ramp up in patient volume to cover anticipated overhead and patient service costs. The loss will be covered from cash on hand.

BFA Attachment C is the pro-forma balance sheet of the CHHA upon change of ownership, which shows positive net assets of \$1,173,917.

BFA Attachments D is the 2017 certified financial statements for Datahr CHHA, which shows the agency had both positive working capital and net asset positions and generated net income of \$46,939.

BFA Attachment E is the 2015-2017 certified and 2018 internal financial statements of Tri-Borough Home Care, LTD, which show the entity maintained positive working capital and net asset positions for the 2015-2018 period, had average operating income of \$1,173,709 for the 2015-2017 period, and had a net loss of \$476,087 for 2018. The 2018 loss was due to the impact of Managed Long-Term Care providers limiting their licensed agencies, per new regulations, and an abnormal number of patients expiring. To rectify this, a new contract is being secured with the understanding that it will be transitioned to the new operator upon the change in ownership.

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

Attachments

BFA Attachment A	Net Worth, Tri-Borough Certified Health Systems of the Hudson Valley, LLC
BFA Attachment B	Tri-Borough Certified Health Systems of the Hudson Valley, LLC - Organization Chart
BFA Attachment C	Pro-Forma Balance Sheet, Datahr CHHA after change of ownership
BFA Attachment D	Financial Summary for 2017, Datahr CHHA
BFA Attachment E	2015-2017 Certified and 2018 Internal Financial Summary for Tri-Borough Home Care, LTD
Program Attachment A	Attestation of Civil or Administrative Actions

Application Number: 191080
Name of Agency: Always Compassionate Home Care, Inc.
Address: Speonk
County: Suffolk
Structure: For-Profit Corporation

OPCHSM Recommendation

Approval, contingent upon:

1. Submission of a copy of the bylaws of the applicant, acceptable to the Department. [CSL]

Proposal

Always Compassionate Home Care, Inc., a business corporation, requests approval for a change in ownership and consolidation/merger of two licensed home care services agencies (see below) through two separate Asset Purchase Agreements. The two LHCSA being purchased and merged/consolidated into the Always Compassionate Home Care, Inc. are:

- **Island Home Care Agency, Inc.**, approved by the Public Health Council at its September 7, 2007 meeting and subsequently licensed as 1578L effective September 19, 2007. One additional office was subsequently issued for this provider, effective March 1, 2019.
- **Utopia Home Care, Inc.**, approved by the Public Health Council at its July 25, 1986 meeting and subsequently licensed as 0087L, effective June 17, 1987. Nine additional offices were subsequently licensed for this provider. Four offices remain operational:

Character and Competence

Always Compassionate Home Care, Inc. has authorized 200 shares of stock (of which 100 shares remain unissued) which will be owned as follows:

Always Compassionate Holdings, Inc – 90 Shares	Susan Fechtmann , LPN – 10 Shares Vice President, Island Home Care Agency, Inc. <u>Affiliations</u> Island Home Care Agency, Inc. (LHCSA) (2007 – present)
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The Board of Directors of **Always Compassionate Home Care, Inc** comprises the following individuals:

Victor J. Stolt-Nielsen Holten
Vice President, Steamboat Industries
Manager Partner/Co-Founder, Sun2o Partners

Olivia C. Stolt-Nielsen Holten
Director, Olive and Squash

Louise Stolt-Nielsen Holten
Unemployed

Always Compassionate Holdings, Inc. has authorized 5,000 shares of stock (of which 1,300 shares remain unissued) which will be owned as follows:

AHC Holdings, Inc. – 3,700 shares

The Board of Directors of **Always Compassionate Holdings, Inc.** comprises the following individuals:

Victor Stolt-Nielsen Holten
(Previously Disclosed)

Olivia Stolt-Nielsen Holten
(Previously Disclosed)

Louise Stolt-Nielsen Holten
(Previously Disclosed)

AHC Holdings, Inc. has authorized 1,500 shares of stock which will be owned as follows:

Victor Stolt-Nielsen Holten – 500 Shares
(Previously Disclosed)

Olivia Stolt-Nielsen Holten – 500 Shares
(Previously Disclosed)

Louise Stolt-Nielsen Holten – 500 Shares
(Previously Disclosed)

The Board of Directors of **AHC Holdings, Inc.** comprises the following individuals:

Victor Stolt-Nielsen Holten
(Previously Disclosed)

Olivia Stolt-Nielsen Holten
(Previously Disclosed)

Louise Stolt-Nielsen Holten
(Previously Disclosed)

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 issue with the licensure of the health professional associated with this application.

A seven-year review of the operation of Island Home Care Agency, Inc. LHCSA was performed as part of this review. The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Program Review

The applicant proposes to continue to serve the residents of the following counties from offices located at:

193 Montauk Highway, Pb 244, Speonk, New York 11972
Nassau Suffolk Queens

180 Old Country Road, Riverhead, New York 11901
Suffolk

175 Fulton Avenue, Suite 209, Hempstead, New York 11550
Nassau Queens

120 Deer Park Avenue, Babylon, New York 11702
Suffolk

10 East Main Street, Suite 201, Victor, New York 14564
Monroe Ontario

110 East 40th Street, Suite 803, New York, New York 10016
Bronx Kings New York
Queens Richmond Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Medical Social Services	Physical Therapy	Speech-Language Pathology
Occupational Therapy	Respiratory Therapy	Durable Medical Supplies and Equipment

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

Application Number: 182247
Name of Agency: Aides at Home, Inc.
Address: Hicksville
County: Nassau
Structure: For-Profit Corporation

OPCHSM Recommendation

Approval, contingent upon:

1. Submission of a copy of the bylaws of the applicant, acceptable to the Department. [CSL]

Proposal

Aides at Home, Inc., a for-profit corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Based on the specialty nature of the applicant and the applicant services (NHTB and TBI waiver provider), this requested change in ownership meets the Licenses Home Care Services Agency moratorium exception for applications that address a serious concern, such as a lack of access to home care services in a geographic area or lack of appropriate care, language and cultural competence or special needs services.

Aides at Home, Inc. was previously approved by the Public Health Council at its September 20, 2002 meeting and subsequently assigned license numbers 0605L to operate five offices, effective September 20, 2002. A sixth office was approved effective June 5, 2006. Subsequently, one office closed on December 3, 2012. The applicant is requesting approval to establish Aides at Home by Prime, Inc. as the parent corporation of Aides at Home, Inc.

Character and Competence

Aides at Home, Inc. has authorized 1,000 shares of stock; 500 shares are proposed to be solely owned by Aides at Home by Prime, Inc. and 500 shares of stock will be held in treasury.

The Board of Directors of **Aides at Home, Inc. and Aides at Home by Prime, Inc.** are identical. (see below)

Aides at Home by Prime, Inc. has authorized 500 shares of stock (400 shares of stock remain unissued), which are owned as follows:

Boris Mendel – 30 Shares

Administrator, Central Assisted Living

Affiliations

Central Assisted Living, LLC d/b/a Central Assisted Living LLC (ALP, 1981 - present)

Central Assisted Living, LLC d/b/a Central Assisted Living LLC (LHCSA, 1981 -present)

Prime Home Health Services, LLC (CHHA, 2007-present)

Prime Home Health Services LLC (MLTC, 2007 - present)

Assisted Home Care, LLC d/b/a Prime Assisted Home Care (LHCSA, 2016-present)

Metrostar Home Care, LLC (LHCSA, 2015-present)

Optima Care Smithtown, LLC d/b/a Brookside Multicare Center for Nursing (RHCF, 2018 - present)

Optima Care Little Neck, LLC (RHCF, 1/2018-Present)

Optima Care White Plains, LLC (RHCF, 2018-present)

Alexander Rovt, PhD – 20 Shares
President, IBE Trade Corp.

Affiliations

Brookdale University Hospital and Medical Center (Hospital, 2001-present)
The Maimonides Medical Center (Hospital, 2010-present)
Prime Home Health Services, LLC (CHHA, 2007-present)
Prime Health Choice, LLC (MLTC, 2014-present)
Assisted Home Care, LLC d/b/a Prime Assisted Home Care (LHCSA, 2016-present)
Optima Care Little Neck, LLC d/b/a Little Neck Care Center for Nursing (RHCF, 2018-present)
Optima Care White Plains, LLC d/b/a White Plains Center for Nursing (RHCF, 2018-present)
Optima Care Smithtown, LLC d/b/a Brookside Multicare Center for Nursing (RHCF, 2018-present)
Brookdale Hospital (Hospital, 02/22/2017 – present)
Interfaith Medical Center (Hospital 02/22/2017 – present)
Kingsbrook Jewish Medical Center (Hospital, 02/22/2017 -present)
Urban Strategies/Brookdale Family Care Center (D&TC, 05/08/2018 – present)
Brookdale Family Care Center, Inc. (D&TC, 05/08/2018 – present)
Ruthland Nursing Home, Inc. (RHCF, 05/08/18 – present)
Schulman and Schachne Institute for Nursing and Rehab, Inc. (RHCF, 05/14/18 – present)

Azzy Reckess – 12.5 Shares
President, PAZ Management, Inc.

Affiliations

Dutchess Care (ALP, 1985-present)
Crestview Manor ALP (ALP, 1994-present)
Golden Care LHCSA (LHCSA, 1995-present)
Avalon Assisted Living & Wellness Center (ALP, 2001-present)

Leon Hofman – 10.42 Shares

Administrator, Hofgur LLC d/b/a Queens Adult Care Center
Assistant Manager, Oceanview Manor Home for Adults, Inc.

Affiliations

Hedgewood Home for Adults, LLC (AH/ALP, 08/01/1989-present)
New Brookhaven Town House for Adults (AH 12/01/1993-present)
MZL Home Care Agency, LLC (LHCSA, 04/18/1996-present)
Mountainview Home Care Services Agency (LHCSA, 05/27/1998-present)
Hofgur LLC d/b/a Queens Adult Care Center (AH/ALP, 02/28/2002-present)
Gefen ACF, LLC d/b/a Brooklyn Adult Care Center (AH/ALP, 06/30/2006-present)
Prime Home Health Services, LLC (CHHA, 09/18/2007-present)
QACC ALP Home Care, LLC (LHCSA, 10/13/2009-present)
Prime Health Choice, LLC (MLTC, 01/13/2014-present)
Oceanview Manor Home for Adults, Inc. (AH/ALP, 11/24/14-present)

Martin Hofman, R.Ph – 10.42 Shares

Administrator, New Brookhaven Town House for Adults
Assistant Manager, Oceanview Manor Home for Adults, Inc.

Affiliations

New Brookhaven Town House for Adults (AH/ALP, 03/11/1996-present)
MZL Home Care Agency, LLC (LHCSA, 04/18/1996-present)
Hofgur LLC d/b/a Queens Adult Care Center (AH/ALP, 02/28/2002-present)
Gefen ACF, LLC d/b/a Brooklyn Adult Care Center (AH/ALP, 06/30/2006-present)
Prime Home Health Services, LLC (CHHA, 09/18/2007-present)
QACC ALP Home Care, LLC (LHCSA, 10/13/2009-present)
Prime Health Choice, LLC (MLTC, 01/31/2014-present)
Oceanview Manor Home for Adults, Inc. (AH/ALP, 11/24/14-present)

Zvi Gurevich – 10.41 Shares

Administrator, Hedgewood Home for Adults, LLC
Assistant Manager, Oceanview Manor Home for Adults, Inc.

Affiliations

Hedgewood Home for Adults, LLC (AH/ALP, 08/01/1989-present)
New Brookhaven Town House for Adults (AH, 12/01/1993-present)
MZL Home Care Agency, LLC (LHCSA, 04/18/1996-present)
Mountainview Home Care Services Agency (LHCSA, 06/27/1998-present)
Hofgur LLC d/b/a Queens Adult Care Center (AH/ALP, 02/28/2002-present)
Gefen ACF, LLC d/b/a Brooklyn Adult Care Center (AH/ALP, 06/30/2006-present)
Prime Home Health Services, LLC (CHHA, 09/18/2007-present)
QACC ALP Home Care, LLC (LHCSA, 10/13/2009-present)
Prime Health Choice, LLC (MLTC, 01/31/2014-present)
Oceanview Manor Home for Adults, Inc. (ALP, 11/24/14-present)

Eric Mendel – 6.25 Shares

Administrator, Central Assisted Living and Central Assisted Living LLC

Affiliations

Central Assisted Living d/b/a Central Home Care (LHCSA, 2016-present)
Central Assisted Living LLC (AH/ALP, 2016-present)
Prime Home Health Services LLC (CHHA, 2016-present)
Prime Home Health Services LLC (MLTC, 2016-present)
Assisted Home Care LLC d/b/a Prime Assisted Home Care (LHCSA, 2016-present)
Metrostar Home Care LLC (LHCSA, 2016-present)
Optima Care Smithtown, LLC d/b/a Brookside Multicare Center for Nursing (RHCF, 1/2018-present)
Optima Care Little Neck, LLC (RHCF, 1/2018-present)
Optima Care White Plains, LLC (RHCF, 2018-present)

The Board of Directors of **Aides at Home by Prime, Inc.** comprise of the following individuals:

Boris Mendel – Director
(Previously Disclosed)

Azzy Reckess – Director
(Previously Disclosed)

Martin Hofman, R.Ph – Director
(Previously Disclosed)

Christopher Doulos, President
Chief Executive Officer, Prime Health Choice Services, LLC
Chief Executive Officer, Prime Health Choice, LLC

Affiliations

Prime Home Health Services, LLC (CHHA, since 5/2010)

Adriana M. Cuesta (Radovic), Secretary
Director of Finance, Prime Home Health Services, LLC
Chief Financial Officer, Prime Health Choice, LLC

Alexander Rovt, PhD – Director
(Previously Disclosed)

Leon Hofman – Director
(Previously Disclosed)

Zvi Gurevich – Director
(Previously Disclosed)

Eric Mendel – Director
(Previously Disclosed)

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application. A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A seven-year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Managed Long Term Care Programs

Prime Health Choice, LLC (2014-present)

Certified Home Health Agencies

Prime Home Health Services, LLC

CHHA Quality of Patient Care Star Ratings as of 04/23/2019	
New York Average: 3.5 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
Prime Home Health Services, LLC	4.5 out of 5 stars

Licensed Home Care Services Agencies

Central Assisted Living, LLC d/b/a Central Home Care (11/24/14-present)
 Assisted Home Care, LLC d/b/a Prime Assisted Home Care (2016-present)
 Metrostar Home Care, LLC (2015-present)
 Golden Care LHCSA
 MZL Home Care Agency, LLC
 Mountainview Home Care Services Agency
 QACC ALP Home Care Agency, LLC

Assisted Living Programs

Central Assisted Living, LLC
 Dutchess Care
 Crestview Manor ALP
 Avalon Assisted Living & Wellness Center
 Hedgewood Home for Adults, LLC
 New Brookhaven Town House for Adults
 Hofgur LLC d/b/a Queens Adult Care Center
 Gefen ACF, LLC d/b/a Brooklyn Adult Care Center
 Oceanview Manor Home for Adults, Inc.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the following:

- Gefen ACF, LLC d/b/a Brooklyn Adult Care Center was fined one thousand five hundred and ninety-seven dollars and Fifty Cents (\$1,597.50) pursuant to a stipulation and order dated August 20, 2018 for inspection findings on September 29, 2016; and December 19, 2017 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487 Sections 487.7(f)(5); 487.11(f) (19; and 487.11(j) (1-3).

Hospitals

Brookdale University Hospital and Medical Center
 Maimonides Medical Center

D&TC

Urban Strategies/Brookdale Family Care Center (05/08/2018 – present)
 Brookdale Family Care Center, Inc. (05/08/2018 – present)

RHCF

Optima Care Little Neck, LLC d/b/a Little Neck Care Center for Nursing (RHCF, 2016-present)
 Optima Care White Plains, LLC d/b/a White Plains Center for Nursing (RHCF, 2016-present)
 Optima Care Smithtown, LLC d/b/a Brookside MultiCare Center for Nursing (RHCF, 2016-present)

Program Description

The applicant proposes to continue to serve the residents of the following counties, with the services indicated, from offices located at:

29 West Marie Street, Hicksville, New York 11801

Counties: Nassau Queens
Services: Nursing Home Health Aide Personal Care

25 East Main Street, Suite 1, Bay Shore, New York 11706

Counties: Nassau Suffolk
Services: Nursing Home Health Aide Personal Care

91-31 Queens Boulevard, Suite 408, Elmhurst, New York 11273

Counties: Westchester Bronx Kings
New York Queens Richmond
Services: Nursing Home Health Aide Personal Care

37 New Dorp Plaza, Suite 201, Staten Island, New York 10306

Counties: Bronx Kings New York
Queens Richmond
Services: Nursing Home Health Aide Personal Care

175 Fulton Avenue, Suite 502, Hempstead, New York 11550

Counties: Nassau
Services: Nursing Home Health Aid Personal Care
Homemaker

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.



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter
General Counsel

Date: April 19, 2019

Subject: Dissolution: F.E.G.S. Procure Health Services, Inc.

F.E.G.S. Procure Health Services, Inc. (the Corporation) is a licensed entity with the New York State Department of State. The Corporation is currently not registered with The Department of Health.

The Corporation is currently inactive and ceased operations several years ago due to financial difficulties. Thus, it was determined that dissolution is in the best interest of the Corporation.

Pursuant to Article 10 of the New York State Not-for-Profit Corporation Law, PHHPC approval of the dissolution must be received. PHHPC approval is also required pursuant to 10 NYCRR Part 650. Please note that the corporation does not have any remaining assets or liabilities.

The documents submitted by the Corporation have been reviewed. There is no legal objection to the proposed Certificate of Dissolution and Attorney General's Approval of Certificate of Dissolution.

Attachments

GARFUNKEL WILD, P.C.

ATTORNEYS AT LAW

111 GREAT NECK ROAD • GREAT NECK, NEW YORK 11021

TEL (516) 393-2200 • FAX (516) 466-5964

www.garfunkelwild.com

FILE NO.: 12261.0058

April 10, 2019

VIA EMAIL

Christopher Chin, Esq.
Senior Attorney
Division of Legal Affairs
New York State Department of Health
Room 2462, Tower Building
Empire State Plaza
Albany, NY 12237

Re: Proposed Certificate of Dissolution of F.E.G.S. Procure Health Services, Inc.

Dear Mr. Chin:

Per your request of April 8, 2019, please note that F.E.G.S. Procure Health Services, Inc., is an inactive corporation that ceased operations several years ago due to financial difficulties. Such financial difficulties persist and it was determined that dissolution is in the best interests of the corporation.

Please contact me at (516) 393-2207 or via e-mail at Sramnarace@garfunkelwild.com, if there is any additional information that you require, or if you have any further questions.

Regards,



Sita Ramnarace
Paralegal

Enclosure

cc: Barbara Knothe, Esq.

NEW YORK

NEW JERSEY

CONNECTICUT

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.state.ny.us

March 29, 2019

Sita Ramnarace
Garfunkel Wild, P.C.
Attorneys at Law
111 Great Neck Road
Great Neck, NY 11021

Re: Certificate of Dissolution of F.E.G.S. Procare Health Services, Inc.

Dear Ms. Ramnarace:

I have received your letter dated March 27, 2019, regarding the Certificate of Dissolution of F.E.G.S. Procare Health Services, Inc. for approval under Section 1003 of the Not-For-Profit Corporation Law of the State of New York. Your letter has been forwarded to the Division of Legal Affairs, Bureau of Health Facility Planning and Development for review and approval.

You will be notified when this request has been approved, or if additional information is required. Division of Legal Affairs staff may be reached at (518) 473-3303 if you have any questions.

Sincerely,

Colleen M. Leonard
Colleen M. Leonard
Executive Secretary

cc: DLA

/cl

GARFUNKEL WILD, P.C.

ATTORNEYS AT LAW

111 GREAT NECK ROAD • GREAT NECK, NEW YORK 11021

TEL (516) 393-2200 • FAX (516) 466-5964

www.garfunkelwild.com

FILE NO.: 12261.0058

March 27, 2019

By FedEx

Ms. Colleen Frost
Executive Secretary
Department of Health
Empire State Plaza
Corning Towers, Room 1805
Albany, NY 12237

Re: Proposed Certificate of Dissolution of F.E.G.S Procure Health Services, Inc.

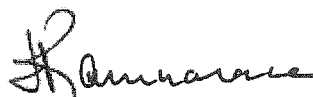
Dear Ms. Frost:

I enclose a copy of the proposed Certificate of Dissolution of F.E.G.S Procure Health Services, Inc. (the "Corporation"). We request Public Health and Health Planning Council approval of this proposed Certificate of Dissolution.

Also enclosed to aid you in your review is a copy of the Certificate of Incorporation of the Corporation and the Attorney General's Approval of the Plan of Dissolution and Distribution of Assets. There have been no subsequent amendments to the Certificate of Incorporation. We appreciate your consideration of this matter.

Please contact me at (516) 393-2207 or via e-mail at Sramnarace@garfunkelwild.com, if there is any additional information that you require, or if you have any further questions

Regards,



Sita Ramnarace
Paralegal

Enclosure

cc: Barbara Knothe, Esq.

NEW YORK

NEW JERSEY

CONNECTICUT

CERTIFICATE OF DISSOLUTION

OF

F•E•G•S PROCARE HEALTH SERVICES, INC.

(Under Section 1003 of the New York Not-for-Profit Corporation Law)

I, H. David Goodman, M.D., President, Chair and Director of F•E•G•S ProCare Health Services, Inc. hereby certify:

1. The name of this corporation is F•E•G•S ProCare Health Services, Inc. (the "Corporation").

2. The Certificate of Incorporation of the Corporation was filed by the Department of State of the State of New York on March 19, 2013.

3. The names, addresses and titles of the Corporation's Officers and Directors are as follows:

<u>Name:</u>	<u>Office</u>	<u>Address</u>
H. David Goodman, M.D.	President, Chair and Director	2 Park Avenue, 20th Floor New York, New York 10016
James Wetzler	Treasurer	2 Park Avenue, 20th Floor New York, New York 10016
Robert O. Lehrman	Secretary	2 Park Avenue, 20th Floor New York, New York 10016

4. Dissolution of the Corporation was authorized by (i) the Unanimous Written Consent of the Board of Directors dated as of September 21, 2016, 2016, and (ii) Written Consent of the sole corporate member dated as of September 21, 2016.

5. The Corporation elects to dissolve.

6. At the time of dissolution, the Corporation is a charitable corporation.

7. The Corporation will file with the Attorney General a petition for Approval of the Certificate of Dissolution with the original certified Plan of Dissolution and Distribution of Assets. A Plan of Dissolution and Distribution of Assets was authorized by resolution of the Board of Directors of the Corporation adopted by Unanimous Written Consent dated as of September 21, 2016, and by the sole corporate member pursuant to resolution adopted by Written Consent dated as of September 21, 2016.

8. The Corporation holds no assets required to be used for a restricted purpose under the Not-for-Profit Corporation Law.

9. On the 15th day of October, 2018 the Attorney General of the State of New York, or the Supreme Court of New York County, approved the Plan of Dissolution and

Distribution of Assets. A copy of the Attorney General's approval (or a copy of the Supreme Court Order) is attached pursuant to N-PCL§1003(a)(8).

10. The approval of the Public Health and Health Plannin Council. Other than the Attorney General or Supreme Court, no approval of the dissolution is required by any government agency or officer.

11. The Corporation has carried out the Plan of Dissolution and Distribution of Assets.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of F•E•G•S ProCare Health Services, Inc. as of the ____ day of _____, 201__.

Name: H. David Goodman, M.D.
Title: President, Chair and Director

CERTIFICATE OF DISSOLUTION
OF
F•E•G•S PROCARE HEALTH SERVICES, INC.

(Under Section 1003 of the New York Not-for-Profit Corporation Law)

Filed by:

Barbara D. Knothe, Esq.
Garfunkel Wild, P.C.
111 Great Neck Road
Great Neck, New York 11021
(516) 393-2219

E-12

130319000421

CERTIFICATE OF INCORPORATION
OF
F.E.G.S. PROCARE HEALTH SERVICES, INC.

Under Section 402 of the Not-for-Profit Corporation Law

The undersigned, a natural person over 18 years of age, desiring to form a corporation pursuant to the provisions of the Not-for-Profit Corporation Law of the State of New York (the "NFPCL"), does hereby certify:

1. The name of the corporation is F.E.G.S. ProCare Health Services, Inc. (the "Corporation").
2. The Corporation is a corporation as defined in subparagraph (a)(5) of section 102 of the Not-for-Profit Corporation Law and shall be a Type B corporation under Section 201 of the NFPCL.
3. Subject to Article 4 below, the Corporation's purposes are as follows:
 - (a) To operate a diagnostic and treatment center as authorized by Article 28 of the Public Health Law and Title 10, Part 405 of the New York Codes, Rules and Regulations, for the purpose of rendering care and treatment services customarily provided to patients at a diagnostic and treatment center;
 - (b) To solicit and receive grants, contracts and funds from federal, state and local government agencies, foundations or any other sources to advance the purposes of the Corporation;
 - (c) To accept subventions from members and non-members on terms not inconsistent with the NFPCL and to issue certificates therefore; and
 - (d) To have and exercise all powers and provide all services necessary and convenient to effect the foregoing purposes for which the Corporation is formed, together with all the powers now or hereafter granted to it by the State of New York including, but not limited to, the general powers enumerated in Section 202 of the NFPCL.
4. Notwithstanding any other provision contained herein, the Corporation is organized and shall be operated exclusively for charitable, scientific and educational purposes, within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") or the corresponding provisions of any further Federal internal revenue law, without regard to race, color or creed, and in connection therewith:
 - (a) 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 or individuals. Reasonable compensation, however, may be paid for services rendered to or for the Corporation in furtherance of one or more of its purposes;

(b) 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 permitted by the Code whether pursuant to an election under Section 501(h) of the Code or otherwise), and the Corporation shall not participate in or intervene (including the publishing or distributing of statements) in any political campaign on behalf of or in opposition to any candidate for public office;

(c) Notwithstanding any other provision contained herein, the Corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt from federal income tax under Section 501(a) of the Code as an organization described in Section 501 (c)(3) of the Code, or by an organization, contributions to which are deductible under Section 170(e)(2) of the Code; and

(d) 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 as determined by the Board of Directors and as approved by a court of competent jurisdiction to F·E·G·S and such other charitable or educational organizations as shall qualify under Section 501(c)(3) of the Code. Any of such assets not so distributed shall be disposed of for such purposes as approved by a Justice of the Supreme Court of the State of New York or such other court having jurisdiction over the Corporation.

5. Nothing herein shall authorize the Corporation, directly or indirectly, to engage in, or include among its purposes, any of the activities mentioned in NFPCL, Section 404 (a-p) and (r-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.


6. The names and addresses of the initial directors of the Corporation are as follows:

<u>Name</u>	<u>Address</u>
Harry M. Lander, Ph.D.	435 East 70th Street - #31 J&K New York, NY 10021
James W. Wetzler	Deloitte & Touche, LLP Two World Financial Center New York, NY 10281
H. David Goodman, MD	110 East End Avenue New York, NY 10028

7. The office of the Corporation is to be located in the County of New York, State of New York.

8. The Secretary of State is designated as agent of the Corporation upon whom service of process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon it is: c/o F·E·G·S, 315 Hudson Street, New York, NY 10013.

IN WITNESS WHEREOF, this Certificate of Incorporation has been signed, and the statements made herein are affirmed as true, under the penalties of perjury, this 13th day of March, 2013.


H. David Goodman, MD Incorporator
110 East End Avenue
New York, NY 10028



PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.state.ny.us

March 4, 2013

Mr. Ira Machowsky
Executive Vice President
F.B.G.S Health and Human Services System
315 Hudson Street
New York, New York 10013

Re: Certificate of Incorporation of F.B.G.S. ProCare Health Services, Inc.

Dear Mr. Machowsky:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 14th day of May, 2010, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Certificate of Incorporation of F.B.G.S. ProCare Health Services, Inc. dated, December 13, 2011. Pursuant to Section 86 of Part A of Chapter 58 of the Laws of 2010, the Public Health and Health Planning Council is authorized to complete action on any application under consideration by the Public Health Council or State Hospital Review and Planning Council effective December 1, 2010.

Sincerely,

Colleen M. Frost
Executive Secretary

/cf

130319000 4/21

CERTIFICATE OF INCORPORATION
OF
F.E.G.S. PROCARE HEALTH SERVICES, INC.

Under Section 402 of the Not-for-Profit Corporation Law

1-CC.
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAR 19 2013

TAXS _____

BY: _____

Out

MY

RECEIVED

2013 MAR 19 AM 11:00

FILED BY:

GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
111 GREAT NECK ROAD
GREAT NECK, NY 11021

B-12

DRAWDOWN

2013 MAR 19 AM 11:52

FILED

130319000 4/21

-----	X	
In the Matter of the Application of	:	
F·E·G·S ProCare Health Services, Inc.	:	ATTORNEY GENERAL'S
	:	APPROVAL OF
	:	PLAN OF DISSOLUTION
Approval of Plan of Dissolution and	:	AND DISTRIBUTION
Distribution of Assets pursuant to	:	OF ASSETS
Section 1002 of the Not-for-Profit	:	AG# <u>DAG-AL-2018-46</u>
Corporation Law.	:	
-----	X	

1. By Petition verified on Sept 21, 2016, F·E·G·S ProCare Health Services, Inc., applied to the Attorney General pursuant to section 1002 of the Not-for-Profit Corporation Law for approval of a Plan of Dissolution and Distribution of Assets.
2. Based on a review of the Petition and its attachments, and the verification of H. David Goodman, M.D., of F·E·G·S ProCare Health Services, Inc., the Attorney General has determined that the corporation has complied with the provisions of Section 1002 of the Not-for-Profit Corporation Law applicable to the dissolution of not-for-profit corporations with assets.
3. The Plan of Dissolution and Distribution of Assets, the Plan is approved.

Barbara D. Underwood
Attorney General of the State of New York


By: [Signature]
Assistant Attorney General

Dated 10/15/18



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter
General Counsel 

Date: April 19, 2019

Subject: Dissolution: F.E.G.S. Home Care Services, Inc.

F.E.G.S. Home Care Services, Inc. (the Corporation) is a licensed home care services agency with the license number 0923L002. The Corporation is currently not registered with The Department of Health.

The Corporation is currently inactive and ceased operations several years ago due to financial difficulties. Thus, it was determined that dissolution is in the best interest of the Corporation.

Pursuant to Article 10 of the New York State Not-for-Profit Corporation Law, PHHPC approval of the dissolution must be received. PHHPC approval is also required pursuant to 10 NYCRR Part 650. Please note that the corporation does not have any remaining assets or liabilities.

The documents submitted by the Corporation have been reviewed. There is no legal objection to the proposed Certificate of Dissolution and Attorney General's Approval of Certificate of Dissolution.

Attachments

GARFUNKEL WILD, P.C.

ATTORNEYS AT LAW

111 GREAT NECK ROAD • GREAT NECK, NEW YORK 11021

TEL (516) 393-2200 • FAX (516) 466-5964

www.garfunkelwild.com

FILE NO.: 12261.0058

April 10, 2019

VIA EMAIL

Christopher Chin, Esq.
Senior Attorney
Division of Legal Affairs
New York State Department of Health
Room 2462, Tower Building
Empire State Plaza
Albany, NY 12237

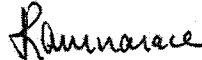
Re: Proposed Certificate of Dissolution of F.E.G.S. Home Care Services, Inc.

Dear Mr. Chin:

Per your request of April 8, 2019, please note that F.E.G.S. Home Care Services, Inc., is an inactive corporation that ceased operations several years ago due to financial difficulties. Such financial difficulties persist and it was determined that dissolution is in the best interests of the corporation.

Please contact me at (516) 393-2207 or via e-mail at Sramnarace@garfunkelwild.com, if there is any additional information that you require, or if you have any further questions.

Regards,


Sita Ramnarace
Paralegal

Enclosure

cc: Barbara Knothe, Esq.

NEW YORK

NEW JERSEY

CONNECTICUT

GARFUNKEL WILD, P.C.

ATTORNEYS AT LAW

111 GREAT NECK ROAD • GREAT NECK, NEW YORK 11021

TEL (516) 393-2200 • FAX (516) 466-5964

www.garfunkelwild.com

FILE NO.: 12261.0058

March 26, 2019

By FedEx

Ms. Colleen Frost
Executive Secretary
Department of Health
Empire State Plaza
Corning Towers, Room 1805
Albany, NY 12237

Re: Proposed Certificate of Dissolution of Fegs Home Care Services, Inc.

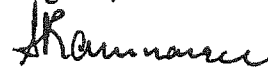
Dear Ms. Frost:

I enclose a copy of the proposed Certificate of Dissolution of F.E.G.S. Home Care Services, Inc. (the "Corporation"). We request Public Health and Health Planning Council approval of this proposed Certificate of Dissolution.

Also enclosed to aid you in your review is a copy of the Certificate of Incorporation of the Corporation and the Attorney General's Approval of the Plan of Dissolution and Distribution of Assets. There have been no subsequent amendments to the Certificate of Incorporation. We appreciate your consideration of this matter.

Please contact me at (516) 393-2207 or via e-mail at Sramnarace@garfunkelwild.com, if there is any additional information that you require, or if you have any further questions

Regards,



Sita Ramnarace
Paralegal

Enclosure

cc: Barbara Knothe, Esq.

NEW YORK

NEW JERSEY

CONNECTICUT



PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.state.ny.us

March 29, 2019

Sita Ramnarace
Garfunkel Wild, P.C.
Attorneys at Law
111 Great Neck Road
Great Neck, NY 11021

Re: Certificate of Dissolution of F.E.G.S. Home Care Services, Inc.

Dear Ms. Ramnarace:

I have received your letter dated March 26, 2019, regarding the Certificate of Dissolution of F.E.G.S. Home Care Services, Inc. for approval under Section 1003 of the Not-For-Profit Corporation Law of the State of New York. Your letter has been forwarded to the Division of Legal Affairs, Bureau of Health Facility Planning and Development for review and approval.

You will be notified when this request has been approved, or if additional information is required. Division of Legal Affairs staff may be reached at (518) 473-3303 if you have any questions.

Sincerely,

Colleen M. Leonard
Colleen M. Leonard
Executive Secretary

cc: DLA

/cl

CERTIFICATE OF DISSOLUTION

OF

F·E·G·S HOME CARE SERVICES, INC.

(Under Section 1003 of the New York Not-for-Profit Corporation Law)

I, Lynn Berger, Vice President, Secretary and Director of F·E·G·S Home Care Services, Inc. hereby certify:

1. The name of this Corporation is F·E·G·S Home Care Services, Inc. (the "Corporation").

2. The Certificate of Incorporation of the Corporation was filed by the Department of State of the State of New York on March 18, 1977.

3. The names, addresses and titles of the Corporation's Officers and Directors are as follows:

<u>Name:</u>	<u>Office</u>	<u>Address</u>
M. Joseph Levin	President and Director	2 Park Avenue, 20th Floor New York, New York 10016
Lynn Berger	Vice President, Secretary and Director	2 Park Avenue, 20th Floor New York, New York 10016
Burton Strauss, Jr.	Vice President, Treasurer and Director	2 Park Avenue, 20th Floor New York, New York 10016
Allan Greenberg	Vice President and Director	2 Park Avenue, 20th Floor New York, New York 10016

4. Dissolution of the Corporation was authorized by (i) the Unanimous Written Consent of the Board of Directors dated as of September 21, 2016, and (ii) Written Consent of the sole corporate member, dated as of September 21, 2016.

5. The Corporation elects to dissolve.

6. At the time of dissolution, the Corporation is a charitable corporation.

7. The Corporation will file with the Attorney General a petition for Approval of the Certificate of Dissolution with the original certified Plan of Dissolution. A Plan of Dissolution and Distribution of Assets was authorized by resolution of the Board of Directors of the Corporation adopted by Unanimous Written Consent dated as of September 21, 2016 and by the sole corporate member pursuant to resolution adopted by Written Consent dated as of September 21, 2016.

8. The Corporation holds no assets required to be used for a restricted purpose under the Not-for-Profit Corporation Law.

9. On _____, 201____, the Attorney General of the State of New York State, or the Supreme Court of New York County, approved the Plan of Dissolution and Distribution of Assets. A copy of the Attorney General's Approval (or a copy of the Supreme Court Order) is attached pursuant to N-PCL § 1003(a)(8).

10. No approval of the dissolution of the Corporation is required by any government agency or officer.

11. The Corporation has carried out the Plan of Dissolution and Distribution of Assets.

12. Prior to the filing of this Certificate of Dissolution with the Department of State, the endorsement of the Attorney General will be stamped below.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of F•E•G•S Home Care Services, Inc. as of this ____ day of _____, 2016.

Name: Lynn Berger
Title: Vice President, Secretary and
Director

CERTIFICATE OF DISSOLUTION
OF
F•E•G•S HOME CARE SERVICES, INC.

(Under Section 1003 of the New York Not-for-Profit Corporation Law)

Filed by:
Barbara D. Knothe, Esq.
Garfunkel Wild, P.C.
111 Great Neck Road
Great Neck, New York 11021
(516) 393-2219

CERTIFICATE OF INCORPORATION

OF

FEGS HOME CARE SERVICES, INC.

(Under Section 402 of the Not-for-Profit Corporation Law)

The undersigned, being a natural person of at least eighteen years of age and acting as the incorporator of the corporation hereby being formed under the Not-for-Profit Corporation Law, certifies as follows:

FIRST: The name of the Corporation is FEGS HOME CARE SERVICES, INC.

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.

THIRD: The Corporation shall be a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.

FOURTH: The purpose or purposes:

To provide home health aide/companion services and/or other therapeutic and related services which may be of a preventive, therapeutic, rehabilitative, health guidance, and/or supportive nature to persons at home, and from time to time to expand, reduce, or modify the services provided by the Corporation. Such services will be provided for a fee or charge, which fee or charge may be less than the cost of providing such services, or may be provided without any fee or charge to the extent practicable.

3

To train employees to provide home health aide services.

In the event that the Corporation possesses funds in excess of amounts reasonably required to provide services and training in accordance with the first and second paragraphs of this Article FOURTH, to contribute all or any portion of such excess funds to Federation Employment and Guidance Service, Inc., a New York not-for-profit corporation, provided that such corporation shall at the time of the making of such contribution qualify as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954 (or corresponding provisions of any subsequent Federal tax laws).

To have in furtherance of its not-for-profit corporate purposes all of the powers conferred upon corporations organized under the Not-for-Profit Corporation Law, subject to any limitations thereof contained in Article TENTH and elsewhere in this Certificate of Incorporation or in the laws of the State of New York.

Nothing contained in this Certificate of Incorporation shall authorize the Corporation, directly or indirectly, to:

(a) engage in or include among its purposes any of the activities mentioned in Section 404(b)-(t) of the Not-for-Profit Corporation Law; or

(b) operate a "home care services agency" as defined in Article 36 of the Public Health Law unless it shall possess a valid certificate of approval and all other governmental and agency approvals required for such operation; or

(c) establish, operate, or maintain a hospital, or provide hospital service or health related service, or operate a drug maintenance program, a hospice, or a health maintenance organization, or provide a comprehensive health services plan, as defined in Articles 29, 33, 40, and 44, respectively, of the Public Health

/s/

Law, or solicit contributions for the benefit of any hospital; or

(d) engage in the practice of the profession of nursing or any other profession required to be licensed by Title VIII of the Education Law, or provide training to engage in any such profession.

FIFTH: The office of the Corporation is to be located in the City of New York, County of New York, State of New York.

SIXTH: The territory in which the activities of the Corporation are principally to be conducted is the City of New York.

SEVENTH: The name and the address of each of the initial directors of the Corporation is as follows:

<u>Name</u>	<u>Address</u>
Walter A. Miller	185 Montague Street Brooklyn, New York 11201
James S. Tisch	666 Fifth Avenue New York, New York 10019
Michael Saphier	2 Peter Cooper Road New York, New York 10010

EIGHTH: The duration of the Corporation is to be perpetual.

NINTH: The Secretary of State of the State of New York is designated as agent of the Corporation upon whom process against it may be served. The post office address within the State of New York to which the Secretary of State

shall mail a copy of any process against the Corporation served upon him is: Mrs. Bernice Sherman, FECS Health Care Services, Inc., 114 Fifth Avenue, New York, New York 10011.

TENTH: For the regulation of the Internal affairs of the Corporation, it is hereby provided:

1. No part of the assets, income, profits, or net earnings of the Corporation shall inure to the benefit of or be distributable to its members, directors, trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article FOURTH hereof. No substantial part of the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this Certificate of Incorporation, the Corporation shall not carry on any activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954 (or corresponding provisions of subsequent Federal tax laws) or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1954 (or corresponding provisions of subsequent Federal tax laws).

2. Upon the dissolution, final liquidation, or winding up of the Corporation, the Board of Directors shall, subject to any requisite approval and/or jurisdiction of the Supreme Court of the State of New York, after paying or making provisions for the payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation

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exclusively for the purposes of the Corporation in such manner, or to such organization or organizations organized and operated exclusively for the same or similar not-for-profit purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (or corresponding provisions of any subsequent Federal Tax Laws), as the Board of Directors shall determine.

Subscribed and affirmed by me as true under the penalties of perjury on *September 13*, 1984.

Kathleen A. Kress
Kathleen A. Kress
80 Pine Street
New York, New York 10005

STATE OF NEW YORK)
) ss. :
COUNTY OF NEW YORK)

On this *24th* day of October, 1984, before me came KATHLEEN A. KRESS, to me known to be the individual described in, and who executed, the foregoing instrument, and acknowledged that she executed the same.

Barbara G. Lundholm

Notary Public

BARBARA G. LUNDHOLM
Notary Public, State of New York
No. 37-4683011
Qualified in Nassau County
Certificate Exp. in New York County,
County of New York, March 30, 1986

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

Jerome J. Cohen, being duly sworn,
deposes and says that he is an attorney and counsellor at law
and a member of the firm of Guggenheimer Untermyer, attorneys
for the subscriber of the annexed Certificate of Incorporation,
and that to the best of his knowledge and belief, no previous
application for the approval of the annexed Certificate of
Incorporation by any Justice of the Supreme Court has ever been
made.



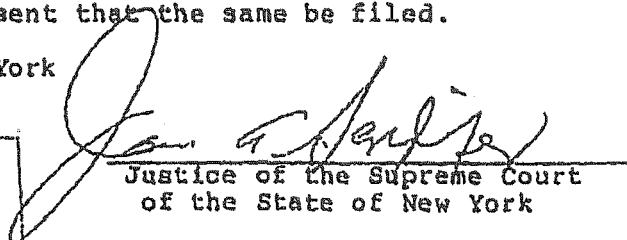
Sworn to before me this
24th day of October, 1984.

Barbara G. Lundholm
Notary Public

BARBARA G. LUNDHOLM
Notary Public, State of New York
No. 30-4683911
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1986

1, JAWN A. SANDITER, a Justice of the Supreme
Court of the State of New York, First Judicial District, in
which the office of the Corporation is to be located, approved
the foregoing Certificate of Incorporation of FECS Home Care
Services, Inc. and consent that the same be filed.

Dated: New York, New York
OCTOBER 25, 1984


Justice of the Supreme Court
of the State of New York

JAWN A. SANDITER

THE UNDERSIGNED HAS NO
OBJECTION TO THE GRANTING OF
THE ABOVE REQUESTED HONOR AND
WARRANTS BY THIS OFFICE.

OFFICE OF THE ATTORNEY GENERAL
STATE OF NEW YORK
William J. ...
ALLAN E. KIRSTEIN
Assistant Attorney General



The undersigned hereby consents to the use of the name "PEGS Home Care Services, Inc." by a corporation to be organized under the New York Not-for-Profit Corporation Law.

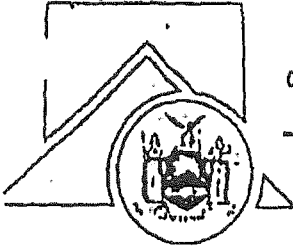
Date:

PEGS HOME ATTENDANT SERVICES INC.

By Caroline K. Simon

Judge Caroline K. Simon
President

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STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

Kathleen A. Kress
Guggenheimer and Untermyer
80 Pine Street
New York, New York 10005

Re: FECS Home Care
Services, Inc.

Dear Ms. Kress:

The proposed certificate of incorporation of FECS Home Care Services, Inc. does not require the approval of the Public Health Council, since the purposes set forth in the said certificate do not authorize the corporation to operate a hospital or to provide hospital services or health related services or to operate a drug maintenance program, a hospice or a health maintenance organization, or to provide a comprehensive health service plan as defined in and covered by Articles 28, 33, 40 and 44, respectively, of the Public Health Law.

The purposes authorize the corporation to provide the services of a home care services agency provided the corporation first obtains the necessary approvals required by the Public Health Law. Chapter 959 of the laws of 1984 amended Article 36 of the Public Health Law to require licensure for an agency that provides services to persons at home. However, licensure is not required until April 1, 1985 for those agencies that have filed applications for licensure by October 1, 1985. I suggest that you contact the appropriate area office of the New York State Department of Health for further information concerning the provision of home care services.

Very truly yours,

Nancy A. Massaroni

Nancy Massaroni
Executive Secretary

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----- X
In the Matter of the Application of
F•E•G•S Home Care Services, Inc.

Approval of Plan of Dissolution and
Distribution of Assets pursuant to
Section 1002 of the Not-for-Profit
Corporation Law.

ATTORNEY GENERAL'S
APPROVAL OF
CERTIFICATE OF
DISSOLUTION

AG#01AG-AL-2018-45

- X
1. By Petition verified on Sept 21, 2016, F•E•G•S Home Care Services, Inc., applied to the Attorney General pursuant to section 1002 of the Not-for-Profit Corporation Law for approval of a Plan of Dissolution and Distribution of Assets.
 2. Based on a review of the Petition and its attachments, and the verification of Lynn Berger, of F•E•G•S Home Care Services, Inc., the Attorney General has determined that the corporation has complied with the provisions of Section 1002 of the Not-for-Profit Corporation Law applicable to the dissolution of not-for-profit corporations with assets.
 3. The Plan of Dissolution and Distribution of Assets, the Plan is approved.

Barbara D Underwood
Attorney General of the State of New York

By: 
Assistant Attorney General

Dated 10/15/18



MEMORANDUM

To: Public Health and Health Planning Council

From: Richard J. Zahnleuter, General Counsel

Date: April 3, 2019

Subject: Proposed Dissolution of M.J.G.N.H.C., Inc. (originally Metropolitan Jewish Geriatric Nursing Home Company, Inc.)

M.J.G.N.H.C., 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 ("NPCL") sections 1002(c) and 1003, as well as 10 NYCRR Part 650.

The Corporation was initially formed on May 19, 1971, as the Metropolitan Jewish Geriatric Nursing Home Company, Inc. under the NPCL "to provide Nursing Home accommodation for sick, invalid, infirm, disabled or convalescent persons of low income" under the sponsorship of the Metropolitan Jewish Geriatric Center. In 1985, the Corporation expanded its purposes to include the establishment and operation of a Hospice under Article 40 of the Public Health Law. In January 2011, the Corporation changed its name to "M.J.G.N.H.C., Inc." and purposes "to provide administrative and financial services that are incidental to, connected with, or in advancement of the operation of a residential health care facility pursuant to the terms and provisions of the Public Health Law." On May 5, 2011, the Corporation sold all its assets and operations to another nursing home operator. The Corporation has no assets or liabilities as of the date hereof. The Corporation is now dissolving because it has wound up its business and affairs and ceased all operations.

As of August 16, 2018, the Board of Directors of the Corporation by unanimous written consent adopted a plan of dissolution pursuant to sections 1001(a) and 1002(a) of the NPCL, submitted the plan to a vote of members, and authorized the filing of a Certificate of Dissolution. The members of the Corporation by unanimous written consent adopted the plan of dissolution as of the same date in accordance with section 1002(a)(2) of the NPCL.

The required documents: a Verified Petition to the Attorney General, Plan of Dissolution, and a proposed Certificate of Dissolution, together with supporting organizational documents of the Corporation and resolutions of the Board of Directors of the Corporation and of the members authorizing the dissolution, are included for PHHPC's review. A letter from Marsena M. Farris, Esq. of Crowell & Moring LLP, counsel to the

Corporation, explaining the need and desire for the dissolution, has been received and is enclosed. Lastly, please note that the Verified Petition and Certificate of Dissolution indicate that, on the date of this application, the Corporation has no assets or outstanding liabilities and holds no assets 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.



Marsena M. Farris
(212) 803-4068
MFarris@crowell.com

December 10, 2018

FEDERAL EXPRESS

Ms. Colleen M. Leonard
Executive Secretary
Public Health and Health Planning Council
New York State Department of Health
Corning Tower, Room 1805
Empire State Plaza
Albany, New York 12237

Re. M.J.G.N.H.C., Inc. Dissolution

Dear Ms. Leonard:

We are the attorneys for M.J.G.N.H.C., Inc., an Article 28-A New York not-for-profit corporation nursing home company (the "Corporation"). The Corporation has completely wound down its operations, has no assets or liabilities and has elected to voluntarily dissolve. Because the Commissioner of Health and the Public Health and Health Planning Council ("PHHPC") originally consented to the filing of the Certificate of Incorporation of the Corporation, the Corporation seeks their consent to its dissolution as required by Section 1002(c) of the New York Not-for-Profit Corporation Law. Enclosed for review by the Bureau of House Counsel is (i) a copy of the proposed form of Verified Petition, which includes as exhibits the Certificate of Incorporation of the Corporation with all amendments thereto, (ii) the required Board of Director and Member resolutions, and (iii) the Plan of Dissolution. We also enclose a copy of the executed Certificate of Dissolution.

By way of background, the Corporation was established in 1971 as a not-for-profit nursing home under the original name of "Metropolitan Jewish Geriatric Nursing Home Company, Inc." The Corporation sold all of its assets in May, 2011 to another operator and on January 4, 2013 filed a certificate of amendment to its Certificate of Incorporation with the Department of State to delete the corporate purposes relating to operation of a nursing home and to change its name to "M.J.G.N.H.C., Inc."

Ms. Colleen M. Leonard
Page 2

Please note my new contact information at Crowell & Moring. Please call me at (212) 803-4068 if you have any questions or require further information for the PHHPC. Thank you in advance for your assistance.

Sincerely yours,



Marsena M. Farris

MMF:er

Enclosures

cc: Paul W. Mourning, Esq.

EXHIBIT E
CHAR500 (2017)

CHAR500

NYS Annual Filing for Charitable Organizations
www.CharitiesNYS.com

Send with fee and attachments to:
NYS Office of the Attorney General
Charities Bureau Registration Section
28 Liberty Street
New York, NY 10005

2017
Open to Public
Inspection

1. General Information

For Fiscal Year Beginning (mm/dd/yyyy) 01 / 01 / 2017 and Ending (mm/dd/yyyy) 05 / 31 / 2018

Check if Applicable <input type="checkbox"/> Address Change <input type="checkbox"/> Name Change <input type="checkbox"/> Initial Filing <input checked="" type="checkbox"/> Final Filing <input type="checkbox"/> Amended Filing <input type="checkbox"/> Reg ID Pending	Name of Organization: <u>M. J. G. N. H. C., INC COMPANY, INC.</u>	Employer Identification Number (EIN) <u>23-7123076</u>
	Mailing Address <u>6323 7TH AVENUE</u>	NY Registration Number <u>15-38-94</u>
	City / State / Zip <u>BROOKLYN, NY, 11220</u>	Telephone: <u>(718) 491-7261</u>
	Website:	Email:

Check your organization's registration category: 7A only EPTL only DUAL (7A & EPTL) EXEMPT Confirm your Registration Category in the Charities Registry at www.CharitiesNYS.com

2. Certification

See instructions for certification requirements. Improper certification is a violation of law that may be subject to penalties.

We certify under penalties of perjury that we reviewed this report, including all attachments, and to the best of our knowledge and belief, they are true, correct and complete in accordance with the laws of the State of New York applicable to this report.

President or Authorized Officer	<u>ALEXANDER BALKO</u>	CEO, PRESIDENT	
	Signature	Print Name and Title	Date
Chief Financial Officer or Treasurer	<u>JEFFREY DAVIS</u>	CFO	
	Signature	Print Name and Title	Date

3. Annual Reporting Exemption

Check the exemption(s) that apply to your filing. If your organization is claiming an exemption under one category (7A or EPTL only filers) or both categories (DUAL filers) that apply to your registration, complete only parts 1, 2, and 3, and submit the certified Char500. No fee, schedules, or additional attachments are required. If you cannot claim an exemption or are a DUAL filer that claims only one exemption, you must file applicable schedules and attachments and pay applicable fees.

3a. 7A filing exemption: Total contributions from NY State including residents, foundations, government agencies, etc. did not exceed \$25,000 and the organization did not engage a professional fund raiser (PFR) or fund raising counsel (FRC) to solicit contributions during the fiscal year. Or the organization qualifies for another 7A exemption (see instructions).

3b. EPTL filing exemption: Gross receipts did not exceed \$25,000 and the market value of assets did not exceed \$25,000 at any time during the fiscal year.

4. Schedules and Attachments

See the following page for a checklist of schedules and attachments to complete your filing.

Yes No 4a. Did your organization use a professional fund raiser, fund raising counsel or commercial co-venturer for fund raising activity in NY State? If yes, complete Schedule 4a.

Yes No 4b. Did the organization receive government grants? If yes, complete Schedule 4b.

5. Fee

See the checklist on the next page to calculate your fee(s). Indicate fee(s) you are submitting here:

7A filing fee:

\$ _____

EPTL filing fee:

\$ _____

Total fee:

\$ _____

Make a single check or money order payable to:
"Department of Law"

CHAR500

Annual Filing Checklist

Simply submit the certified CHAR500 with no fee, schedule, or additional attachments IF

- Your organization is registered as 7A only and you marked the 7A filing exemption in Part 3
- Your organization is registered as EPTL only and you marked the EPTL filing exemption in Part 3
- Your organization is registered as DUAL and you marked both the 7A and EPTL filing exemption in Part 3.

Checklist of Schedules and Attachments

Check the schedules you must submit with your CHAR500 as described in Part 4

- If you answered "yes" in Part 4a, submit Schedule 4a Professional Fund Raisers (PFR), Fund Raising Counsel (FRC), Commercial Co-Venturers (CCV)
- If you answered "yes" in Part 4b, submit Schedule 4b Government Grants

Check the financial attachments you must submit with your CHAR500

- IRS Form 990 990-EZ or 990-PF, and 990-T if applicable
- All additional IRS Form 990 Schedules, including Schedule B (Schedule of Contributors)
- Our organization was eligible for and filed an IRS 990-N e-postcard. We have included an IRS Form 990-EZ for state purposes only

If you are a 7A only or DUAL filer, submit the applicable independent Certified Public Accountant's Review or Audit Report

- Review Report if you received total revenue and support greater than \$250,000 and up to \$750,000
- Audit Report if you received total revenue and support greater than \$750,000
- No Review Report or Audit Report is required because total revenue and support is less than \$250,000
- We are a DUAL filer and checked box 3a, no Review Report or Audit Report is required

Calculate Your Fee

For 7A and DUAL filers, calculate the 7A fee

- \$0, if you checked the 7A exemption in Part 3a
- \$25, if you did not check the 7A exemption in Part 3a

For EPTL and DUAL filers, calculate the EPTL fee

- \$0, if you checked the EPTL exemption in Part 3b
- \$25, if the NET WORTH is less than \$50,000
- \$50, if the NET WORTH is \$50,000 or more but less than \$250,000
- \$100, if the NET WORTH is \$250,000 or more but less than \$1,000,000
- \$250, if the NET WORTH is \$1,000,000 or more but less than \$10,000,000
- \$750, if the NET WORTH is \$10,000,000 or more but less than \$50,000,000
- \$1,500, if the NET WORTH is \$50,000,000 or more

Is my Registration Category 7A, EPTL, DUAL or EXEMPT?

Organizations are assigned a Registration Category upon registration with the NY Charities Bureau

7A filers are registered to solicit contributions in New York under Article 7-A of the Executive Law ("7A")

EPTL filers are registered under the Estates, Powers & Trusts Law ("EPTL") because they hold assets and/or conduct activities for charitable purposes in NY

DUAL filers are registered under both 7A and EPTL

EXEMPT filers have registered with the NY Charities Bureau and meet conditions in Schedule E - Registration Exemption for Charitable Organizations. These organizations are not required to file annual financial reports but may do so voluntarily

Confirm your Registration Category and learn more about NY law at www.CharitiesNYS.com.

Where do I find my organization's NET WORTH?

NET WORTH for fee purposes is calculated on

- IRS Form 990 Part I line 22
- IRS Form 990 EZ Part I line 21
- IRS Form 990 PF, calculate the difference between Total Assets at Fair Market Value (Part II, line 16(c)) and Total Liabilities (Part II, line 23(b))

Send Your Filing

Send your CHAR500, all schedules and attachments, and total fee to:

NYS Office of the Attorney General
Charities Bureau Registration Section
28 Liberty Street
New York, NY 10005

CHAR500

Schedule 4a: Professional Fund Raisers, Fund Raising Counsels, Commercial Co-Venturers
www.CharitiesNYS.com

2017
Open to Public
Inspection

If you checked the box in question 4a in Part 4 on the CHAR500 Annual Filing for Charitable Organizations, complete this schedule for EACH Professional Fund Raiser (PFR), Fund Raising Counsel (FRC) or Commercial Co-Venturer (CCV) that the organization engaged for fund raising activity in NY State. The PFR or FRC should provide its NY Registration Number to you. Include this schedule with your certified CHAR500 NYS Annual Filing for Charitable Organizations and use additional pages if necessary.

1. Organization Information

Name of Organization M. J. G. N. H. C., INC COMPANY, INC.	NY Registration Number 15-38-94
---	------------------------------------

2. Professional Fund Raiser, Fund Raising Counsel, Commercial Co-Venturer Information

Fund Raising Professional type:	Name of FRP	NY Registration Number
<input type="checkbox"/> Professional Fund Raiser		
<input type="checkbox"/> Fund Raising Counsel	Mailing Address	Telephone
<input type="checkbox"/> Commercial Co-Venturer	City / State / Zip	

3. Contract Information

Contract Start Date	Contract End Date
---------------------	-------------------

4. Description of Services

Services provided by FRP

5. Description of Compensation

Compensation arrangement with FRP	Amount Paid to FRP
-----------------------------------	--------------------

6. Commercial Co-Venturer (CCV) Report

<input type="checkbox"/> Yes <input type="checkbox"/> No	If services were provided by a CCV, did the CCV provide the charitable organization with the interim or closing report(s) required by Section 173(a) part 3 of the Executive Law Article 7A?
--	--

Definitions

A Professional Fund Raiser (PFR), in addition to other activities, conducts solicitation of contributions and/or handles the donations (Article 7A, 171-a.4)

A Fund Raising Counsel (FRC) does not solicit or handle contributions but limits activities to advising or assisting a charitable organization to perform such functions for itself (Article 7A, 171-a.9).

A Commercial Co-Venturer (CCV) is an individual or for-profit company that is regularly and primarily engaged in trade or commerce other than raising funds for a charitable organization and who advertises that the purchase or use of goods, services, entertainment or any other thing of value will benefit a charitable organization (Article 7A, 171-a.6)

CHAR500

Schedule 4b: Government Grants
www.CharitiesNYS.com

2017
Open to Public
Inspection

If you checked the box in question 4b in Part 4 on the CHAR500 Annual Filing for Charitable Organizations, complete this schedule and list EACH government grant. Use additional pages if necessary. Include this schedule with your certified CHAR500 NYS Annual Filing for Charitable Organizations.

1. Organization Information

Name of Organization	NY Registration Number
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2. Government Grants

Name of Government Agency	Amount of Grant
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13
14	14
15	15
Total Government Grants	Total

<p style="text-align: center;">In the Matter of the Application of</p> <p style="text-align: center;"><u>M.J.G.N.H.C., INC.</u></p> <p>For Approval of a Certificate of Dissolution pursuant to Section 1002 of the Not-for-Profit Corporation Law</p>	X: : : : : : X	VERIFIED PETITION FOR APPROVAL OF CERTIFICATE OF DISSOLUTION
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TO:

THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
CHARITIES BUREAU
28 LIBERTY STREET
NEW YORK, NEW YORK 10005

Petitioner, M.J.G.N.H.C., Inc. (the "Corporation") by Steven Topal, the Chairman of the Corporation, for its Verified Petition, respectfully alleges:

1. Petitioner is a corporation incorporated under the New York Not-for-Profit Corporation Law on May 19, 1971, with its principal office in the County of Kings, at 6323 Seventh Avenue, Brooklyn, New York 11220. A copy of the Certificate of Incorporation and all amendments thereto and the complete and current By-laws of the Corporation are attached hereto as Exhibit A.

2. The name, addresses and titles of the Corporation's officers and directors are as follows:

<u>NAME</u>	<u>TITLE</u>	<u>ADDRESS</u>
Alexander Balko	Director	105 Mineola Avenue Point Lookout, New York 11569
William Gormley	Director	441 Lockheart Mountain Road, #21 Lake Gorge, New York 12845
Ronald Milch	Director	25 Sutton Place South #4B New York, New York 10022
Steven Topal	Chairman and Director	66-36 Yellowstone Blvd. #15D Forest Hills, New York 11375

3. The purposes for which the Corporation was organized are set forth in its Certificate of Incorporation, as amended, at paragraph 3 thereof, and are as follows:

“To provide administrative and financial services that are incidental to, connected with, or in advancement of the operation of a residential health care facility pursuant to the terms and provisions of the Public Health Law, and the rules and regulations promulgated pursuant thereto, and to engage in any other activity that is incidental to, connected with, or in advancement of the foregoing purposes and that is within the definition of charitable, scientific and educational for purposes of Section 501(c)(3) of the Code.”

4. The Corporation is a charitable corporation as defined under the Not-for-Profit Corporation Law.

5. The Corporation plans to dissolve in accordance with the Plan of Dissolution attached hereto as Exhibit B (the “Plan”).

6. The Corporation was formerly known as M.J.G. Nursing Home, Inc. On May 5, 2011, the Corporation sold its operations and assets and ceased providing healthcare services. The Corporation is dissolving because it has wound up its business and affairs and is no longer operational.

7. Resolutions were adopted by the Board of Directors of the Corporation by unanimous written consent dated as of August 16, 2018, pursuant to which the Board adopted the Plan and authorized the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. The resolutions of the Board of Directors, certified by the Secretary or other duly authorized officer of the Corporation, are attached hereto as Exhibit C.

8. After the Board of Directors adopted the Plan of the Corporation, the Members of the Corporation received and reviewed the Plan and resolutions were adopted by the Members by unanimous written consent dated as of August 16, 2018, pursuant to which the Members approved the Plan. The resolutions of the Members, certified by the Secretary or other duly authorized officer of the Corporation, are attached hereto as Exhibit D.

9. The Corporation has no assets or liabilities as of the date hereof.

10. Any required governmental approvals of the Plan are set forth in the Plan and are attached to the Certificate of Dissolution.

11. The Corporation is submitting herewith as Exhibit E a final financial report on Form CHAR500 with all required attachments, showing no assets or liabilities and attaching the appropriate registration fee, if required.

12. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003.

WHEREFORE, Petitioner requests that the Attorney General approve the Certificate of Dissolution of M.J.G.N.H.C., Inc., a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREOF, the Corporation has caused this Petition to be executed this 21st day of August, 2018 by Steven Topal, its Chairman.



Steven Topal
Chairman


Verification

STATE OF NEW YORK)

COUNTY OF New York) : ss.:

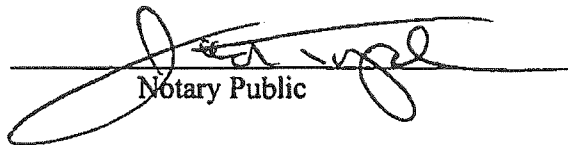
I, the undersigned, Steven Topal, being duly sworn, depose and say:

I am the Chairman of M.J.G.N.H.C., Inc., the corporation named in the above Petition. I make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge.



Steven Topal

Sworn to before me this
21 day of April, 2018



Notary Public

JACK TOPAL
NOTARY PUBLIC-STATE OF NEW YORK
NO. 01T09357950
QUALIFIED IN QUEENS COUNTY
MY COMMISSION EXPIRES MAY 31, 2022

EXHIBIT A
CERTIFICATE OF INCORPORATION
AND
BY-LAWS

Grotzky

CERTIFICATE OF INCORPORATION

- of -

METROPOLITAN JEWISH GERIATRIC
NURSING HOME COMPANY, INC.

908965

Under § 402 of the Not-For-Profit
Corporation Law and Public
Health Law

WE, the undersigned, for the purpose of forming
a Nursing Home Corporation pursuant to the Not-For-Profit
Corporation Law and the Public Health Law of the State
of New York, hereby certify:

I.

The name of the proposed corporation is
HOME
METROPOLITAN JEWISH GERIATRIC NURSING/COMPANY, INC.
(hereinafter referred to as the "Corporation").

II.

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 § 102 (Definitions) of the Not-
For-Profit Corporation Law.

III.

The purpose for which the corporation is formed
is to provide Nursing Home accommodations for sick,

invalid, infirm, disabled or convalescent persons of low income, and to this end to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of the Public Health Law.

This Corporation pursuant to Section 201 of the Not-For-Profit Corporation Law, shall be "Type D".

IV.

The territory in which the operations of the Corporation will be principally conducted is the State of New York.

V.

The principal office of the Corporation is to be located in the Borough of Brooklyn, County of Kings and State of New York.

VI.

The number of directors of the Corporation shall be not less than three (3) nor more than fifteen (15). Directors shall be elected by the members of the Corporation. One additional director may be designated by the Commissioner of Health of the State of New York (hereinafter referred to as the "Commissioner"). In

the absence of fraud or bad faith said additional director appointed by the Commissioner shall not be personally liable for the debts, obligations or liabilities of the Corporation.

VII.

The names and residences of the initial Directors

are:

<u>Name</u>	<u>Address</u>
Irving Roaman	465 Park Avenue, New York, New York 10022
Solomon S. Dobin	1124 Beach 27th Street, Far Rockaway, New York 11691
Philip Geller	166 Beach 148th Street, Neponsit, New York 11694

VIII.

The duration of the Corporation shall be two (2) years from the date of the filing of this Certificate by the Secretary of State.

IX.

The real property of the Corporation shall not be sold, transferred, encumbered or assigned except as permitted by the provisions of the Public Health Law and the Not-For-Profit Corporation Law.

X.

The Corporation has been organized exclusively to serve a public purpose and it shall be and remain subject

to the supervision and control of the Commissioner pursuant to the provisions of the Public Health Law.

XI.

The Corporation is organized and shall be operated as a non-profit organization, and shall not have power to issue certificates of stock or to declare or pay dividends, and shall be operated exclusively for the purposes enumerated in Articles II and III hereof, thereby to lessen the burdens of government and promote social welfare. 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. No officer or employee of the Corporation shall receive or be lawfully entitled to receive any pecuniary benefits from the operation thereof except as reasonable compensation for services. No member or director of the Corporation shall receive any salary, other compensation or pecuniary profit of any kind for services as such member or director other than reimbursement of actual and necessary expenses incurred in the performance of his duties.

Upon the dissolution of the Corporation the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the Corporation, distribute all of the remaining assets of the Corporation exclusively for the purposes of the Corporation or for a

similar public use or purpose, to such organization or organizations organized and operated exclusively for charitable purposes as shall at the time qualify as an exempt organization or organizations under § 501 (c) (3) of the Internal Revenue Code of 1954 as the same shall then be in force, or the corresponding provisions of any future United States Internal Revenue Law, or to the United States of America, the State of New York, or a local government within the State of New York, as the Board of Directors shall determine, or in the absence of such determination by the Board of Directors such assets shall be distributed by the Supreme Court of the State of New York to such other qualified exempt organization or organizations as in the judgment of the Court will best accomplish the general purposes of a similar public use or purpose of the Corporation. In no event shall the assets of this Corporation upon dissolution be distributed to a director, officer, employee or member of the Corporation.

The dissolution of this Corporation and any distribution of the assets of this Corporation incident thereto shall be subject to such laws, if any, then in force as may require the approval thereof or consent thereto by any Court or judge thereof having jurisdiction or by any governmental department or agency or official thereof.

XII.

All of the incorporators of this Corporation are natural persons over the age of nineteen years.

XIII.

The following consents and approvals are annexed hereto:

1. The consent of the Commissioner of Health to the filing of this Certificate of Incorporation with the Secretary of State.
2. The approval of a Justice of the Supreme Court who serves in the district wherein the Corporation is to have an office, to the formation of this Corporation.
3. The approval of the Public Health Council.

XIV.

The post office address to which the Secretary of State shall mail a copy of any notice required by law is:

Howard and Dumont Avenues
Brooklyn, New York

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this Certificate of Incorporation in quadruplicate this 5th day of February, 1971.

465 Park Ave.
New York, N.Y.


Irving Rosman

1124 Beach 27th St.
Far Rockaway, N.Y.


Solomon S. Dobin

160 Beach 148th St.
Neponsit, N.Y.


Philip Gepler

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

On this 5th day of February, 1971 before me personally came IRVING ROAMAN, SOLOMON S. DOBIN and PHILIP GELLER, to me known and known to me to be the persons described in and who executed the foregoing certificate of incorporation of METROPOLITAN JEWISH GERIATRIC NURSING HOME COMPANY, INC., and they duly acknowledged to me that they executed the same.


Norma Stern

NORMA STERN
Notary Public, State of New York
No. 24-0183175
Qualified in Kings County
Commission Expires March 30, 1972

CONSENT TO INCORPORATION BY
COMMISSIONER OF HEALTH

I, HOLLIS S. INGRAHAM, M.D., Commissioner of Health
of the State of New York, do this 2nd day of April
1971, pursuant to Article 28-A of the Public Health Law,
hereby certify that I consent to the filing of the foregoing
Certificate of Incorporation of METROPOLITAN, JEWISH GERIATRIC
NURSING HOME COMPANY, INC., with the Secretary of State.

Hollis S. Ingraham, M.D.
Commissioner of Health

6/

DONALD G. DICKSON, M.D.
DEPUTY COMMISSIONER

The undersigned, a Justice of the Supreme Court of
the State of New York, ^{2nd JUDICIAL DISTRICT} wherein is located the principal
office of METROPOLITAN JEWISH GERIATRIC NURSING HOME
COMPANY, INC., hereby approves the within Certificate of
Incorporation of METROPOLITAN JEWISH GERIATRIC NURSING
HOME COMPANY, INC. and the filing thereof.

Dated:

Brooklyn, N.Y.
April 27, 1971.

HON. MILES F. McDONALD


Justice of the Supreme Court

2nd JUDICIAL DISTRICT

WAIVER OF NOTICE OF APPLICATION
BY ATTORNEY-GENERAL

Notice of application waived. (This is not to be deemed an approval on behalf of any Department or Agency of the State of New York, nor an authorization of activities otherwise limited by law).

Dated: _____

LOUIS J. LEFKOWITZ, Attorney General

By _____
Assistant Attorney-General

Notice of Application Waived
(This is not to be deemed an approval on behalf of any Department or Agency of the State of New York, nor an authorization of activities otherwise limited by law.)

Dated: April 23, 1971

By *James J. [Signature]*
Assistant Attorney-General

7

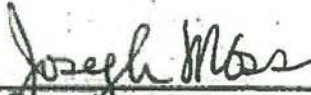
The following is a true copy of a resolution duly adopted by the Board of Directors of METROPOLITAN JEWISH GERIATRIC CENTER, at a meeting of said Board on May 11, 1971.

WHEREAS, METROPOLITAN JEWISH GERIATRIC CENTER has undertaken the sponsoring of a nursing home and extended care facility under Article 28a of the Public Health Law of the State of New York; and

WHEREAS, there has been proposed the formation of a corporation pursuant to the laws of the State of New York under the name of METROPOLITAN JEWISH GERIATRIC NURSING HOME COMPANY, INC., and the Secretary of State has requested the expression of an opinion of this board concerning the similarity of the proposed name to that of this corporation,

NOW, therefore, be it resolved that in the opinion of this board the abovementioned proposed name does not so nearly resemble that of this corporation as to tend to confuse or deceive and it consents to the use of such name.


President


Secretary

(Seal)

10

RECEIVED
APR 30 1971
HARRIS, BEVIER & FLANNERY

Pravine

x

JHX/VT/A

CERTIFICATE OF INCORPORATION

- of -

METROPOLITAN JERISH GERIATRIC
NURSING HOME COMPANY, INC.

Under § 402 of the Not-For-
Profit Corporation Law and
Public Health Law

J. H. R...

O

SIMNEY SCHULTZ
Attorney at Law
55 Fifth Avenue
New York, N.Y. 10003

Tel - 929-0400

11

908982-11

Health

STATE OF NEW YORK
DEPARTMENT OF REVENUE
MAY 19 1971

CAP 1
BILLING PER
50
John P. ...
Secretary of State

24 Kings
Typed
Revisions 2 go

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
July 16, 2018.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan Fitzgerald
Executive Deputy Secretary of State

CERTIFICATE OF AMENDMENT OF
CERTIFICATE OF INCORPORATION

OF

METROPOLITAN JEWISH GERIATRIC
NURSING HOME COMPANY, INC.

(Under Section 803 of the Not-For-
Profit Corporation Law)

928078

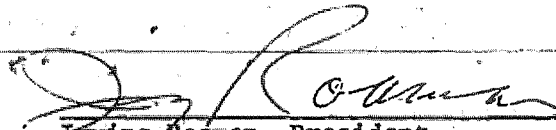
The undersigned, being the president and secretary
of METROPOLITAN JEWISH GERIATRIC NURSING HOME COMPANY, INC.,
certify:

1. The name of the corporation is METROPOLITAN
JEWISH GERIATRIC NURSING HOME COMPANY, INC. It was formed
under that name and the name has not been changed.
2. The Certificate of Incorporation of said
corporation was filed by the Department of State on May 19,
1971. Paragraph VIII of said certificate provided for
duration of two years.
3. The duration of the corporation shall be
perpetual.
4. The manner in which the Amendment of the
Certificate of Incorporation was authorized was by the consent
of all attending members of record of the corporation voting
in person at a meeting duly called for that purpose upon due
notice to all members of record given in the manner required
for a special meeting of the corporation; said meeting was
held at 29th Street and the Boardwalk, Brooklyn, New York,
at the Metropolitan Jewish Geriatric Center, at 4:00 P.M.
on May 25, 1971; a quorum was present; the certificate of

incorporation of this corporation does not require the consent of more than a majority of members to extend the corporate existence.

5. The corporate purposes are not enlarged, limited or in any way changed except as above set forth.

IN WITNESS WHEREOF, we have executed this Certificate this 21st day of June, 1971.

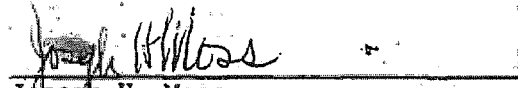

Irving Roaman, President


Joseph H. Moss, Secretary


STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

IRVING ROAMAN and JOSEPH H. MOSS, being severally
duly sworn, depose and say that they are the President
and Secretary, respectively of METROPOLITAN JEWISH GERIATRIC
NURSING HOME COMPANY, INC., and that they have read the
foregoing Certificate of Amendment of Certificate of
Incorporation of METROPOLITAN JEWISH GERIATRIC NURSING
HOME COMPANY, INC. and know the contents thereof; that the
same is true to their own knowledge, except as to those
matters therein stated to be alleged on information and
belief, and that as to those matters deponents believe them
to be true.


Irving Roaman


Joseph H. Moss

Sworn to before me this
21st day of June, 1971.


NORMA STERN
Notary Public, State of New York
No. 24-9183175
Qualified in Kings County
Commission Expires March 30, 1972

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

IRVING ROAMAN and JOSEPH H. MOSS, being severally,
duly sworn, depose and say:

1. That IRVING ROAMAN is the President of
METROPOLITAN JEWISH GERIATRIC NURSING HOME COMPANY, INC.,
mentioned in the foregoing Certificate and was such
President at the time of the consent mentioned therein to
extend the existence of the corporation.

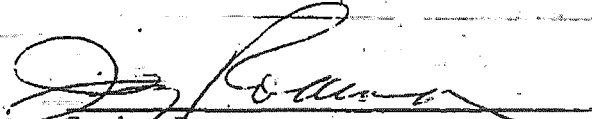
2. That JOSEPH H. MOSS is the Secretary of
METROPOLITAN JEWISH GERIATRIC NURSING HOME COMPANY, INC.,
mentioned in the foregoing Certificate and was such
Secretary at the time of the consent mentioned therein to
extend the existence of the corporation.

3. That they were duly authorized to execute
and file the foregoing certificate of consent by unanimous
action of the members at a regular meeting.

4. Such consent was given by unanimous affirma-
tive votes cast in person at a meeting of the members duly
called for that purpose after due notice to all members of
the corporation given in the manner required for a regular
meeting of the corporation, said meeting was held at the
Metropolitan Jewish Geriatric Center, 29th Street and the
Boardwalk, Brooklyn, New York, on May 25, 1971 at 4:00 P.M.

a quorum was present.

5. That the certificate of incorporation of this corporation does not require a consent of more than a majority of the members to extend the corporate existence.


Irving Roaman


Joseph H. Moss

Sworn to before me this
21st day of June, 1971.


Notary Public

SIDNEY SCHUTZ
Notary Public, State of New York
No. 03-8964475
Qualified in Bronx County
Commission Expires March 30, 1972

CONSENT TO EXTEND THE EXISTENCE
OF CORPORATION BY A RESIDENT
SUPREME COURT JUSTICE.

I, ~~RON~~ & COURTNEY MCGROARTY, Justice of the
Supreme Court of the State of New York for the Second
Judicial District hereby approve the within Certificate
to extend the existence of the METROPOLITAN JEWISH
GERIATRIC NURSING HOME COMPANY, INC.

Dated:

Handwritten:
August 17, 1971

Handwritten Signature: Courtney McGroarty
Justice of the Supreme Court

CONSENT TO EXTEND THE EXISTENCE OF
CORPORATION BY COMMISSIONER OF HEALTH

I, HOLLIS S. INGRAHAM, M.D., Commissioner of Health
of the State of New York, do this 23rd day of July,
1971 pursuant to Article 28-A of the Public Health Law and
Section 804 of the Not-For-Profit Corporation Law hereby
certify that I consent to the filing of the foregoing
Certificate of Extension of the Existence of METROPOLITAN
JEWISH GERIATRIC NURSING HOME COMPANY, INC. with the Secre-
tary of State of the State of New York.

HOLLIS S. INGRAHAM, M.D..
Commissioner of Health

By *Handwritten Signature: Hollis S. Ingraham*

WAIVER OF NOTICE OF APPLICATION
BY ATTORNEY GENERAL

Notice of application waived. (This is not to be deemed an approval on behalf of any Department or Agency of the State of New York, nor an authorization of activities otherwise limited by law).

Dated:

LOUIS J. LEFKOWITZ,
Attorney General

By _____

Notice of Application Waived:
(This is not to be deemed an approval on behalf of any Department or Agency of the State of New York, nor an authorization of activities otherwise limited by law.)


Dated: *Aug 17, 1971*

By *Conrad Gutsky*
AA

July 23, 1971

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken, after due inquiry and investigation, at a meeting of the Public Health Council held on the 22nd day of July, 1971, I hereby certify that the certificate of amendment to the certificate of incorporation of M.J.G. Nursing Home Company, Inc. (formerly, Metropolitan Jewish Geriatric Nursing Home Company, Inc.) extending the corporate life to perpetuity and changing the corporate name is approved.


RICHARD H. MATTOX
Executive Secretary

COUNCIL

NORMAN S. MOORE, M.D.
CHAIRMAN
GEORGE BAHR, M.D.
BLONVELA E. BOND
DETLEV BRONK, Ph. D.
GORDON E. BROWN

MORTON P. HYMAN
CHARLES T. LAMIGAN
GERALD B. MANLEY, M.D.
GEORGE R. METCALF
W. KENNETH RILAND, D.O.
JOHN F. ROACH, M.D.

HOWARD A. RUSHE, M.D.
JOHN M. WALSH
WILLIAM H. WISELY, D. ENT.
HOLLIS S. INGRAHAM, M.D.
EX OFFICIO

928078-9

memo
5/19/71

(1)
Kingco New York

908982-11

CERTIFICATE OF AMENDMENT OF
CERTIFICATE OF INCORPORATION

- of -

^{OF}
METROPOLITAN JEWISH GERIATRIC
NURSING HOME COMPANY, INC.

(Under Section 803 of the
Not-For-Profit Corporation Law)

By - [Signature]

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED **AUG 18 1971**
TAX \$ None
FILING FEE \$ 30

[Signature]
Secretary of State

24 Kings

SIDNEY SCHUTZ
Attorney at law
55 Fifth Avenue
New York, New York 10003

929-0400

9

RECEIVED
AUG 18 1971
HEAD OF HOSPITAL
CENTR. CIL N FINANCING

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
July 16, 2018.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan Fitzgerald
Executive Deputy Secretary of State

CERTIFICATE OF AMENDMENT OF THE
CERTIFICATE OF INCORPORATION OF
METROPOLITAN JEWISH GERIATRIC
NURSING HOME COMPANY, INC. UNDER
SECTION 803 OF THE NOT-FOR-PROFIT
CORPORATION LAW.

930011


WE, the undersigned, IRVING ROAMAN, President, and JOSEPH H. MOSS, Secretary, of METROPOLITAN JEWISH GERIATRIC NURSING HOME COMPANY, INC., a corporation which was duly organized pursuant to the Membership Corporations Law and the Public Health Law of the State of New York, for the purpose of amending the Certificate of Incorporation so as to change the name of the corporation to M. J. G. NURSING HOME COMPANY, INC., pursuant to Section 803 of the Not-For-Profit Corporation Law, do hereby make, sign and acknowledge this Certificate and do hereby certify as follows:

1. The present name of the corporation is METROPOLITAN JEWISH GERIATRIC NURSING HOME COMPANY, INC.
2. The Certificate of Incorporation of said corporation was filed by the Department of State on May 19, 1971.
3. The new name to be assumed by this corporation is M. J. G. NURSING HOME COMPANY, INC.
4. The manner in which the Amendment of the Certificate of Incorporation was authorized was by the consent of all attending members of record of the corporation voting in person at a meeting duly called for that purpose upon due notice to all members of record given in the manner required for a special meeting of the Corporation; said meet-

ing was held at 29th Street and the Boardwalk, Brooklyn, New York, at 6:00 P.M. on the 25th day of May, 1971; a quorum was present; the Certificate of Incorporation of the Corporation does not require the consent of more than a majority of members to change the corporate name.

5. The Corporate purposes are not enlarged, limited or in any way changed except as above set forth.

IN WITNESS WHEREOF, we have executed this Certificate this 21st day of June, 1971.

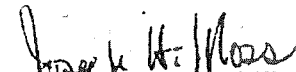

Irving Roaman, President


Joseph H. Moss, Secretary

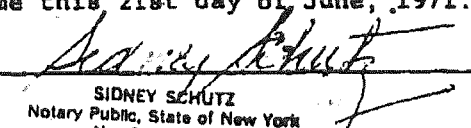
STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

IRVING ROAMAN and JOSEPH H. MOSS, being severally, duly sworn, depose and say that they are the President and Secretary, respectively, of METROPOLITAN JEWISH GERIATRIC NURSING HOME COMPANY, INC., and know the contents thereof; that the same is true to their own knowledge, except as to those matters stated therein to be alleged on information and belief, and that as to those matters deponents believe them to be true.


Irving Roaman


Joseph H. Moss

Subscribed and sworn to before me this 21st day of June, 1971.


SIDNEY SCHUTZ
Notary Public, State of New York
No. 03 8864475
Qualified in Bronx County
Commission Expires March 30, 1972

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

IRVING ROAMAN and JOSEPH H. MOSS, being severally duly sworn, depose and say:

1. That IRVING ROAMAN is the President of METROPOLITAN JEWISH GERIATRIC NURSING HOME COMPANY, INC., mentioned in the foregoing Certificate and was such President at the time of the consent mentioned therein to change the corporate name.

2. That JOSEPH H. MOSS is the Secretary of METROPOLITAN JEWISH GERIATRIC NURSING HOME COMPANY, INC., mentioned in the foregoing Certificate and was such Secretary at the time of the consent mentioned therein to change the corporate name.


3. That they were duly authorized to execute and file the foregoing Certificate of Consent by unanimous action of the members at a special meeting.

4. Such consent was given by unanimous affirmative votes cast in person at a meeting of the members duly called for that purpose after due notice to all members of the Corporation given in the manner required for a special meeting of the Corporation; said meeting was held at 29th Street and Boardwalk, Brooklyn, New York, on May 25, 1971 at 6:00 P.M. a quorum was present.

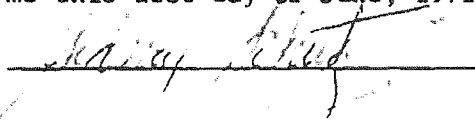
5. That the Certificate of Incorporation of this

Corporation does not require a consent of more than a majority of the members to change the corporate name.


Irving Roaman


Joseph H. Moss

Subscribed and sworn to before
me this 21st day of June, 1971.



SIDNEY SCHUTZ
Notary Public, State of New York
No. 03-88644/5
Qualified in Bronx County
Commission Expires March 30, 1972

CONSENT TO FILING CERTIFICATE OF AMENDMENT
OF THE CERTIFICATE OF INCORPORATION

OF

METROPOLITAN JEWISH GERIATRIC
NURSING HOME COMPANY, INC.

I, HOLLIS S. INGRAHAM, M.D., Commissioner of
Health of the State of New York, do this 6th day of August,
1971, pursuant to Article 28-A of the Public Health Law,
hereby certify that I consent to the filing of the fore-
going Certificate of Amendment of the Certificate of
Incorporation of METROPOLITAN JEWISH GERIATRIC NURSING
HOME COMPANY, INC., with the Secretary of State of the
State of New York.

HOLLIS S. INGRAHAM, M.D.,
Commissioner of Health

By *Donald W. Dickerson*

The undersigned, a Justice of the Supreme Court of the State of New York, Second Judicial District, in which the principal office of the above corporation is located, does approve the within Certificate of Amendment to the Certificate of Incorporation of METROPOLITAN JEWISH GERIATRIC NURSING HOME COMPANY, INC. and the filing thereof.

Dated:

*1 month by
August 15, 1971*

HOWARD ROSENTHAL
*Justice of the Supreme Court
of the State of New York*

WAIVER OF NOTICE OF APPLICATION
BY ATTORNEY GENERAL

Notice of application waived. (This is not to be deemed an approval on behalf of any Department or Agency of the State of New York, nor an authorization of activities otherwise limited by law).

Dated:

LOUIS J. LEFKOWITZ,
Attorney General

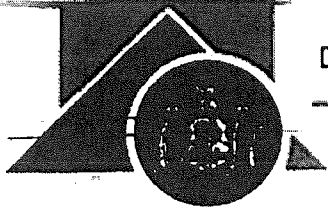
By

Notice of Application Waived
(This is not to be deemed an approval on behalf of any Department or Agency of the State of New York, nor an authorization of activities otherwise limited by law)

Dated: *Aug 17, 1971*

-6-

By *Cornel Gutby*
Assistant Attorney General



STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY

PUBLIC HEALTH COUNCIL

August 6, 1971

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken, after due inquiry and investigation, at a meeting of the Public Health Council held on the 22nd day of July, 1971, I hereby certify that the certificate of amendment to the certificate of incorporation of M.J.G. Nursing Home Company, Inc. (formerly, Metropolitan Jewish Geriatric Nursing Home Company, Inc.) extending the corporate life to perpetuity and changing the corporate name is approved.

RICHARD H. MATTOX
Executive Secretary

COUNCIL

NORMAN S. MOORE, M.D.
CHAIRMAN
GEORGE BAEHR, M.D.
BLONEVA P. BOND
DETLEV BRONK, Ph. D.
GORDON L. BROWN

MORTON P. HYMAN
CHARLES T. LAMIGAN
GERALD B. MANLEY, M.D.
GEORGE R. METCALF
W. KENNETH MILANO, D.O.
JOHN F. ROACH, M.D.

HOWARD A. RUSK, M.D.
JOHN M. WALSH
WILLIAM H. WISELY, D. ENR.
HOLLIS S. INGRAM, M.D.
BY OFFICE

7

①

930011 - 8
5/19/71 *King* 908982 - 11

CONSENT

CERTIFICATE OF AMENDMENT OF
CERTIFICATE OF INCORPORATION

- of -

METROPOLITAN JEWISH GERIATRIC
NURSING HOME COMPANY, INC.

(Under Section 803 of the
Not-For-Profit Corporation Law)

*Do not find
new name
38/8
8/26*

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED AUG 27 1971

TAX \$ none
FILING FEE \$ 30

ms

John P. ...

Secretary of State

[Signature]
24 King

8

SIDNEY SCHUTZ
Attorney at law
55 Fifth Avenue
New York, New York 10003

RECEIVED
AUG 18 1971
BUREAU OF HOSPITAL
AND CLINICAL FINANCING

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
July 16, 2018.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", is written over a horizontal line.

Brendan Fitzgerald
Executive Deputy Secretary of State

CERTIFICATE OF CORRECTION OF
CERTIFICATE OF INCORPORATION

- of -

M.J.G. NURSING HOME COMPANY, INC.
~~M.J.G. NURSING HOME COMPANY, INC.,~~
~~formerly known as Metropolitan~~
Jewish Geriatric Nursing Home Company, Inc.

(Under Section 105 of the Not-for-
Profit Corporation Law)

933510

WE, the undersigned, incorporators of M.J.G. NURSING HOME COMPANY, INC., formerly known as Metropolitan Jewish Geriatric Nursing Home Company, Inc., pursuant to Section 105 of the Not-for-Profit Corporation Law, DO HEREBY CERTIFY:

1. The name of the corporation is M.J.G. NURSING HOME COMPANY, INC. It was originally incorporated under the name of METROPOLITAN JEWISH GERIATRIC NURSING HOME COMPANY, INC., which certificate of incorporation was filed by the Department of State on May 19, 1971.

2. Thereafter, certificate of amendment of the certificate of incorporation of METROPOLITAN JEWISH GERIATRIC NURSING HOME COMPANY, INC., extending the corporate existence from two years to perpetuity, was filed by the Department of State on August 18, 1971.

3. Thereafter, said certificate of incorporation of ~~METROPOLITAN JEWISH GERIATRIC NURSING HOME COMPANY, INC.,~~ was further amended by certificate of amendment thereto changing the name of the corporation from METROPOLITAN JEWISH GERIATRIC NURSING HOME COMPANY, INC. to M.J.G. NURSING HOME COMPANY, INC.,

said certificate of amendment was filed by the Department of State on August 27, 1971.

4. It now appears that the certificate of incorporation inadvertently failed to have the approval of the Public Health Council annexed thereto although it was stated in the said certificate of incorporation in Article XIII thereof that the approval of the Public Health Council was annexed thereto. The Public Health Council had in fact on January 22, 1971 given such approval and it was believed that the same had been attached to the certificate of incorporation when submitted for filing with the Department of State. It is now desired that the approval of the Public Health Council which is annexed hereto and made part hereof be filed under Section 105 of the Not-for-Profit Corporation Law, with the same force and effect as if such approval of the Public Health Council had been originally annexed to the certificate of incorporation.

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this certificate of correction of the certificate of incorporation, in quadruplicate, this 13th day of September, 1971.


Irvine Rosman


Solomon S. Robin


Philip Gelfer

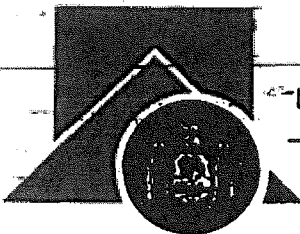
Incorporators.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On this 13th day of September, 1971 before me personally came IRVING ROAMAN, SOLOMON S. DOBIN and PHILIP GELLER, to me known and known to me to be the persons described in and who executed the foregoing certificate of correction of the certificate of incorporation of METROPOLITAN JEWISH GERIATRIC NURSING HOME COMPANY, INC., and they duly acknowledged to me that they executed the same.

Norma Stern

Notary Public
NORMA STERN
Notary Public, State of New York
No. 24-9183175
Qualified in Kings County
Commission Expires March 30, 1972



STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY

PUBLIC HEALTH COUNCIL

September 15, 1971

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken, after due inquiry and investigation, at a meeting of the Public Health Council held on the 22nd day of January, 1971, I hereby certify that the Certificate of Incorporation of Metropolitan Jewish Geriatric Nursing Home Company, Inc. is APPROVED.

RICHARD H. MATTOX
Executive Secretary

COUNCIL

NORMAN S. MOORE, M.D.
CHAIRMAN
GEORGE BAEHR, M.D.
BLONEVA P. BOND
DEYLEV BRONK, Ph. D.
GORDON E. BROWN

MORTON P. HYMAN
CHARLES T. LANIGAN
GERALD B. MANLEY, M.D.
GEORGE R. METCALF
W. KENNETH RILAND, D.D.
JOHN F. ROACH, M.D.

HOWARD A. RUSK, M.D.
JOHN M. WALSH
WILLIAM H. WISELY, D. ENG.
HOLLIS S. INGRAHAM, M.D.
EX OFFICIO

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933500

CERTIFICATE OF CORRECTION OF
CERTIFICATE OF INCORPORATION

-of-

M.J.G. NURSING HOME COMPANY, INC.
~~M.J.C. NURSING HOME COMPANY, INC.~~
formerly known as Metropolitan
Jewish Geriatric Nursing
Home Company, Inc. (by incorporation)

(Under Section 105 of the Not-for-
Profit Corporation Law)

SIDNEY SCHUTZ
Attorney at law
55 Fifth Avenue
New York, New York 10003

5

*file 5/19/71
Kings*

*paid
8/27/71*

STATE OF NEW YORK
DEPARTMENT OF REVENUE

FILED SEP 15 1971

TAXES None
FILING FEE \$ 2.00

John P. Long

SECRETARY OF STATE

mt
24 Kings

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
July 16, 2018.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan Fitzgerald
Executive Deputy Secretary of State

**CERTIFICATE OF AMENDMENT OF THE
CERTIFICATE OF INCORPORATION OF
M.J.G. NURSING HOME COMPANY, INC.**

Under Section 803 of the Not-For-Profit Corporation Law

The undersigned Isaac Assael and Beatrice Teitelbaum, the president and Secretary respectively of M.J.G. Nursing Home Company, Inc. hereby certify:

1. The name of the corporation is M.J.G. Nursing Home Company, Inc. (It was formed under the name of Metropolitan Jewish Geriatric Nursing Home Company, Inc.)

2. Its certificate of incorporation was filed by the Department of State on May 19, 1971, under the Not-for-Profit Corporation Law and the Public Health Law of the State of New York.

3. MJG Nursing Home Company, Inc. is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and is a Type D corporation as defined in Section 201 of that law.

4. The certificate of incorporation is amended as follows:
to add the following paragraph to Paragraph III of its purposes:

a) To establish, operate and maintain a hospice as defined in Article 40 of the Public Health Law of the State of New York, and the rules and regulations promulgated pursuant thereto.

b) To amend paragraph IX as follows:

The Secretary of State is hereby designated as agent of the corporation upon whom process

6278458

against it may be served. The Post Office address to which the Secretary shall mail a copy of any process against the corporation served upon him is:


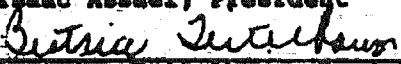
M.J.G. Nursing Home Company, Inc.
4915 Tenth Avenue
Brooklyn, New York 11219

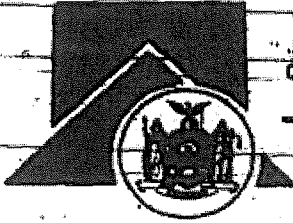
5. The corporation shall hereafter be a Type D corporation under Section 201 of the Not-For-Profit Corporation Law.

6. The Secretary of State of the State of New York is hereby designated the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation is 4915 Tenth Avenue, Brooklyn, New York 11219

7. The above amendments to the Certificate of Incorporation were authorized and approved by vote of a majority all members entitled to vote thereon at a meeting of the members.

IN WITNESS WHEREOF, the undersigned have made, subscribed and acknowledged this certificate this 13th day of May, 1985..


Isaac Assael, President

Beatrice Teitelbaum, Secretary



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

CERTIFIED MAIL - RETURN RECEIPT REQUIRED

RECEIVED

JUN 20 1985

July 8, 1985

TOBIN & DEMPSEY

KNOW ALL MEN BY THESE PRESENTS:

After inquiry and investigation and in accordance with action taken at a meeting of the Public Health Council held on the 28th day of June, 1985, I hereby certify that the Certificate of Amendment of the Certificate of Incorporation of M.J.G. Nursing Home Company, Inc., dated May 13, 1985 is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

Nancy A. Massarow
NANCY A. MASSAROW
Executive Secretary

Sent to: Tobin and Dempsey
100 State Street
Albany, New York 12207

ATTENTION: JAMES W. SANDERSON, ESQ.



STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY

DAVID AXELROD, M.D.
COMMISSIONER

CONSENT
TO THE FILING OF THE
CERTIFICATE OF AMENDMENT OF THE
CERTIFICATE OF INCORPORATION OF
M.J.G. NURSING HOME COMPANY, INC.
BY THE
COMMISSIONER OF HEALTH

I, DAVID AXELROD, M.D., Commissioner of Health of the State of New York, do this 18th day of July, 1985, pursuant to Section 2854 of the Public Health Law and Section 804 of the Not-for-Profit Corporation Law, certify that I consent to the filing of the Certificate of Amendment of the Certificate of Incorporation of M.J.G. Nursing Home Company, Inc., as executed on May 13, 1985, with the Secretary of State of the State of New York.

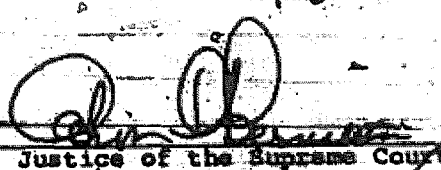


DAVID AXELROD, M.D.
Commissioner of Health

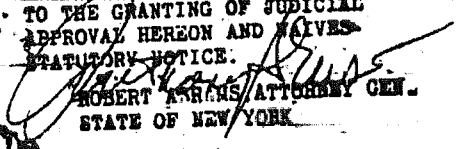
The undersigned, a Justice of the Supreme Court of the State of New York, Second Judicial District, wherein is located the principal office of MJC NURSING HOME COMPANY, INC., hereby approves the within Certificate of Amendment to the Certificate of Incorporation of MJC NURSING HOME COMPANY, INC. and the filing thereof.

DATED:

OCT - 2 1985


Justice of the Supreme Court

AARON D. BERNSTEIN

8/30/85
THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON AND WAIVES STATUTORY NOTICE.

ROBERT ABRAMS ATTORNEY GEN.
STATE OF NEW YORK

E270450

-7

CERTIFICATE OF AMENDMENT OF THE
CERTIFICATE OF INCORPORATION OF
M.J.G. NURSING HOME COMPANY, INC.

Under Section 803 of the
Not-For-Profit Corporation Law

6081211

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED OCT 17 1985

AMT. OF CHECK \$ 30
FILING FEE \$ 30
TAX \$ _____
COUNTY FEE \$ _____
COPY \$ _____
CERT \$ _____
REPROD \$ _____
SPEC HANDLE \$ _____

BY: S. Kings
Typed

assd 8/27/71
Kings Co

933502-5
NFP-Type D

orig Metropolitan Jewish Geriatric Nursing Home, Inc.
5/19/71

908982-11
not add = Howard and Dumont Ave
Brooklyn, NY

3

N

LAW OFFICES
TOBIN AND DEMPFF
100 STATE STREET
ALBANY, N. Y. 12207

6081211

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
July 16, 2018.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan Fitzgerald
Executive Deputy Secretary of State

DRAWDOWN ACCOUNT #52
Vanguard Corporate Services, Ltd.

130104000551

**CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF INCORPORATION
OF
M.J.G. NURSING HOME COMPANY, INC.**

UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned, being respectively the Chairperson and Assistant Secretary of M.J.G. Nursing Home Company, Inc., hereby certify:

1. The name of the corporation is M.J.G. NURSING HOME COMPANY, INC. (the "Corporation"). The Corporation was formed under the name "Metropolitan Jewish Geriatric Nursing Home Company, Inc."
2. The Certificate of Incorporation of the Corporation was filed by the Department of State on May 19, 1971, under the Not-for-Profit Corporation Law of the State of New York.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and is a Type D corporation as defined in Section 201 of that law. The Corporation shall hereafter continue to be a Type D corporation under Section 201 of the Not-for-Profit Corporation Law.
4. Paragraph 1 of the Certificate of Incorporation relating to the name of the Corporation is hereby amended to read in its entirety as follows:

"1.

The name of the Corporation is M.J.G.N.H.C., Inc. (hereinafter referred to as the "Corporation");"

130104000551

5. Paragraph III of the Certificate of Incorporation relating to the purposes of the Corporation is hereby amended to read in its entirety as follows:

- (a) The purposes for which the Corporation is formed are to provide administrative and financial services that are incidental to, connected with, or in advancement of the operation of a residential health care facility pursuant to the terms and provisions of the Public Health Law, and the rules and regulations promulgated pursuant thereto, and to engage in any other activity that is incidental to, connected with, or in advancement of the foregoing purposes and that is within the definition of charitable, scientific and educational for purposes of Section 501(c)(3) of the Code.
- (b) In furtherance of the foregoing corporate purposes, the Corporation shall have all of the general powers set forth in Section 202 of the Not-For-Profit Corporation Law, including, but without limitation thereon, the power to solicit and receive gifts, grants, devises, bequests, donations, contributions in any form, and to use, apply, invest, and reinvest the principal therefrom or distribute the same for the above purposes.
- (c) Nothing herein contained shall authorize the Corporation to establish, operate or maintain a hospital, a residential health care facility, a home care services agency, a hospice, or a health maintenance organization or to provide a comprehensive health services plan as provided for by Article 28, 36, 40 and 44, respectively, of the Public Health Law or the solicitation of contributions therefor.

6. The above amendment to the Certificate of Incorporation was duly authorized by the unanimous written consent of the Members of the Corporation as of January 12, 2011.

7. 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 or her is as follows: c/o the Corporation 6323 Seventh Avenue, Brooklyn, New York 11220.

IN WITNESS WHEREOF, the undersigned have subscribed this Certificate of Amendment to the Certificate of Incorporation of M.J.G. Nursing Home Company, Inc., and hereby affirm the statements made herein as true under the penalties of perjury.

Dated this 12 day of January, 2011


Samuel Lefkowitz
Chairman


Robert E. Leamer
Assistant Secretary

STATE OF NEW YORK)
) ss:
COUNTY OF KINGS)

On this 12th day of January, 2011, before me personally came Robert E. Leamer, to me known and known to me to be the person described in and who executed the foregoing Certificate of Amendment to the Certificate of Incorporation of M.J.G. Nursing Home Company, Inc. and he duly acknowledged to me that he executed the same.

Diane DiBenedetto
Notary Public

DIANE DIBENEDETTO
Notary Public - State of New York
Reg. No. 0106009363
Qualified in Kings County
My Commission Expires June 22, 2014

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

433 River Street, Suite 303
Troy, New York 12180

(518) 402-0964
PHHPC@health.state.ny.us

February 18, 2011

Mr. Kenneth Rozenberg
Bronx Center for Rehabilitation and Health Care
1010 Underhill Avenue
Bronx, New York 10472

Re: Certificate of Amendment to the Certificate of Incorporation of M.J.G. Nursing Home Company, Inc.

Dear Mr. Rozenberg:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 23rd day of July, 2010, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Certificate of Amendment to the Certificate of Incorporation of M.J.G. Nursing Home Company, Inc., dated January 12, 2011. Pursuant to Section 86 of Part A of Chapter 58 of the Laws of 2010, the Public Health and Health Planning Council is authorized to complete action on any application, under consideration by the Public Health Council or State Hospital Review and Planning Council effective December 1, 2010.

Sincerely,


Colleen M. Frost
Executive Secretary

/cf

I, HON. E-M. SPADAK a Justice of the Supreme Court of the State of
New York for the Second Judicial District do hereby approve of the foregoing
Certificate of Amendment of the Certificate of Incorporation of M.J.G. NURSING HOME
COMPANY, INC. and consent that the same be filed.


Date:

12/12/12



J.S.C.

THE ATTORNEY GENERAL HAS NO OBJECTION
TO THE GRANTING OF JUDICIAL APPROVAL
HEREON, ACKNOWLEDGES RECEIPT OF
STATUTORY NOTICE AND DEMANDS SERVICE
OF THE FILED CERTIFICATE. SAID NO OBJECTION
IS CONDITIONED ON SUBMISSION OF THE
MATTER TO THE COURT WITHIN 60 DAYS HEREAFTER.

 December 4, 2012
ASSISTANT ATTORNEY GENERAL DATE
ANDREW P DAVIS

130104000 551

FILED

2013 JAN -4 PM 12:21

RECEIVED

2013 JAN -4 AM 9:14

CERTIFICATE OF AMENDMENT
 TO THE
 CERTIFICATE OF INCORPORATION
 OF
 M.I.G. NURSING HOME COMPANY, INC.
 UNDER SECTION 803 OF
 THE NOT-FOR-PROFIT CORPORATION LAW

CADWALADER, WICKERSHAM & TAFT LLP

One World Financial Center
New York, New York 10281

(212) 504-6000

By Stephanie Marcantonio
Stephanie Marcantonio

Attorneys for Petitioner

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JAN 04 2013

TAXS 0

BY: pk

King

DRAWDOWN ACCOUNT #52

Vanguard Corporate Services, Ltd.

Customer Reference: 122438

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606

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
July 16, 2018.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan Fitzgerald
Executive Deputy Secretary of State

**BY-LAWS OF M.J.G.N.H.C., INC.
(A NEW YORK NOT-FOR-PROFIT CORPORATION)**

BY-LAWS
OF
M.J.G. NURSING HOME COMPANY, INC.
(A NEW YORK NOT-FOR-PROFIT CORPORATION)

AMENDED NOVEMBER 25, 1997

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BY-LAWS
OF
M.J.G. NURSING HOME COMPANY, INC.
(A NEW YORK NOT-FOR-PROFIT CORPORATION)

ARTICLE I
TITLE AND LOCATION

This corporation shall be known as M.J.G. Nursing Home Company, Inc. (hereinafter referred to as the "Corporation"). The principal location of the Corporation shall be in Brooklyn, New York, but it may be located at such other places within the State of New York as the Board of Directors from time to time determine.

ARTICLE II
PURPOSES

SECTION 1. PURPOSES. The Corporation is a corporation organized under the Not-for-Profit Corporation Law of the State of New York for the following purposes:

- (A) To establish, organize, manage and maintain a voluntary health care facility primarily for the Jewish aged, and operated in accordance with the Jewish dietary laws and religious customs.
- (B) To furnish health services to its residents.
- (C) To conduct research in the field of geriatrics and gerontology.
- (D) To maintain and operate day community programs for primarily Jewish aged persons and to participate in any activity designed to promote the general health and well being of aged and aging persons.
- (E) To establish, operate and maintain a hospice as defined in Article 40 of the Public Health Law of the State of New York, and the rules and regulations promulgated pursuant thereto, and is qualified to participate as a hospice under Title XVIII of the Federal Social Security Act.
- (F) To acquire by purchase, gift, contribution or donation, or in any other manner as may be approved by the Board of Directors, and to sell, transfer, convey or otherwise dispose of, real or personal property or any interest therein, and to build, construct, improve, alter, hire, lease and operate all kinds of buildings, lands and equipment for and in furtherance of the Corporation's purposes.

- (G) To administer funds, to invest and reinvest the same in such manner and through such organizations and instrumentalities as the Board of Directors may from time to time determine.
- (H) To do all things permitted by law which may be necessary or proper for the fulfillment of the Corporation's purposes.
- (I) To develop and promote a continuum of health, social and other related care and services which reflect the person's choice of service, and provide services in the least restrictive setting.
- (J) To meet the short and long term care needs of chronically impaired, ill and disabled older persons through all levels of formal and informal support services.

SECTION 2. FUNDS. The Corporation shall derive its funds from gifts, contributions and donations, social functions, grants, subsidies, and reimbursement from governmental and non-governmental agencies and individuals.

ARTICLE III MEMBERS AND MEMBERSHIP

SECTION 1. MEMBERS. The Corporation shall have no less than three (3) nor more than seven (7) members (hereinafter referred to as the "Members").

SECTION 2. ANNUAL MEETING. The Annual Meeting of the Members for the election of directors for the ensuing year, and for the transaction of such other business as may properly come before the meeting, shall, unless otherwise determined by the Members, be held on the third Tuesday in November in each year, unless such day be a legal holiday, and, if a legal holiday, then on the first day following which is not a legal holiday, at the principal location of the Corporation in Brooklyn, New York, or at such other place within or without the State of New York, as the Members may from time to time determine, and as shall be designated in the notice of such meeting.

SECTION 3. SPECIAL MEETINGS. Special meetings of the Members shall be called by two (2) or more Members, by the Secretary upon the direction of the President, or upon the direction of the Board of Directors or the Executive Committee. Such meetings shall be held at the principal location of the Corporation in Brooklyn, New York, or at such other place within or without the State of New York as may be fixed in such direction and designated in the notice of such meeting.

SECTION 4. NOTICE OF MEETINGS. Notice of the place, date and hour of each meeting of the Members, whether annual or special, shall be given by mailing a notice, postage prepaid, to the Members of the Corporation, or by delivering the same to the Members in person, at least ten (10) days before the meeting. When served upon the Members by mail,

such notice shall be addressed to each Member at the Member's address appearing upon the books or records of the Corporation, unless the Member has filed with the Secretary of the Corporation a written request that notice intended for the Member be mailed to some other address, in which case it shall be mailed to the address designated in such request. Notice of special meetings, besides stating the time and place of the meeting, shall state briefly the purpose or purposes for which the meeting is called, and no business other than that specified in such notice shall be transacted. Notice of a meeting need not be given to any Member who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting the lack of notice prior thereto or at its commencement.

SECTION 5. RESIGNATION AND REMOVAL OF MEMBERS. A Member may resign at any time. The Members may remove any Member from membership at the Annual Meeting or at any special meeting of the Members; provided, however, that reasonable notice and opportunity to be heard shall be given to such Member prior to final action by the Members.

SECTION 6. TERMINATION OF MEMBERSHIP. The right of a Member to vote and all of his or her right, title and interest in and to the Corporation, or its property, shall cease on the termination of membership.

SECTION 7. QUORUM AND MANNER OF ACTING. A majority of all the Members shall constitute a quorum for the transaction of business at any meeting. Except where otherwise required by law, the vote of a majority of Members present at the time of the vote, if a quorum is present at such, shall be the act of the Members. Any meeting of the Members may be adjourned at any time, whether or not a quorum be present, without notice other than by announcement at the meeting, by a vote of the Members present. At any adjourned meeting, at which a quorum is present, any business may be transacted which might have been transacted at the original meeting.

SECTION 8. VACANCIES. In case of a vacancy in the Members for any reason, two thirds (2/3) of the remaining Members may at the Annual Meeting of the Members, or at any special meeting called for that purpose, elect a successor.

SECTION 9. NO PROXY. A Member shall not be permitted to authorize another to act for him or her by proxy.

SECTION 10. ACTION BY UNANIMOUS CONSENT. Any action required or permitted to be taken by the Members may be taken without a meeting, if all Members consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the Members shall be filed with the minutes of the proceedings of the Members.

SECTION 11. TELEPHONIC PARTICIPATION. Any one or more Members may participate in a meeting of the Members 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 at the meeting specifically for the matters being discussed.

ARTICLE IV BOARD OF DIRECTORS

SECTION 1. NUMBER AND QUALIFICATION OF DIRECTORS. The Board of Directors shall consist of no less than five (5) nor more than twenty-one (21) directors, who shall be elected at each Annual Meeting of the Members. Directors need not be the Members of the Corporation.

SECTION 2. TERM OF OFFICE. The term of office of each director shall be for one year until the next Annual Meeting of the Members after his/her election, except that he/she shall continue to serve thereafter until his/her successor shall have been duly elected and shall have qualified.

SECTION 3. VACANCIES. In case of a vacancy in the Board of Directors for any reason, the Members may at any regular meeting of the Members, or at any special meeting called for that purpose, elect a successor to hold office for the unexpired term of the director whose place shall be vacant and until the election and qualification of his or her successor.

SECTION 4. POWERS AND DUTIES. The management of the affairs of the Corporation shall be vested in the Board of Directors.

SECTION 5. PLACE OF MEETING. The Board of Directors shall meet at such place within or without the State of New York as it may from time to time determine.

SECTION 6. ANNUAL AND REGULAR MEETINGS. An annual meeting of the Board of Directors shall be held for the election of officers and the transaction of other business. Such meeting shall be held either (a) without notice immediately after the Annual Meeting of the Members and at the same place, or (b) as soon as practicable after the Annual Meeting of the Members, on notice as required in these By-Laws. Regular meetings of the Board of Directors may be held on notice as required by these By-Laws at such times and places as may be fixed from time to time by the President. If any day fixed for a regular meeting shall be a legal holiday, such meeting shall be held on the next business day.

SECTION 7. SPECIAL MEETINGS. Special meetings of the Board of Directors may be called by the President or by such number of directors as shall constitute a quorum for the conduct of business.

SECTION 8. NOTICE OF MEETINGS. Notice of the time and place of each regular and special meeting of the Board of Directors, and of each annual meeting not held immediately after the Annual Meeting of the Members at the same place, shall be given to each director by mailing such notice at least ten (10) days before the meeting addressed to

him/her at his/her residence or usual place of business, or by personally delivering or telephoning the same at least two days before the meeting. Notice need not be given to any director who submits a signed waiver of notice before or after the meeting, or who attends the meeting. Notice of any adjourned meeting need not be given, other than by announcement at the meeting at which such adjournment shall be taken.

SECTION 9. TELEPHONIC PARTICIPATION. Any one or more members of the Board of Directors or any committee thereof may participate in a meeting of the Board of Directors or committee 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 at the meeting.

SECTION 10. ACTION BY UNANIMOUS CONSENT. Any action required or permitted to be taken by the Board of Directors or any committee may be taken without a meeting, if all members of the Board or committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the Board or committee shall be filed with the minutes of the proceedings of the Board or committee.

SECTION 11. RESIGNATION AND REMOVAL OF DIRECTORS. Any director may resign at any time. Any or all of the directors may be removed at any time by vote of the Members upon ten (10) days' prior written notice, and any of the directors may be removed for cause by the Board of Directors.

SECTION 12. QUORUM AND MANNER OF ACTING. One-third (1/3) of the directors of the entire Board, shall constitute a quorum for the transaction of business at any meeting. Except where otherwise required by law or these By-Laws, the vote of a majority of directors present at the time of the vote, if a quorum is present at such, shall be the act of the Board of Directors. "Entire Board" means the total number of directors entitled to vote which the Corporation would have if there were no vacancies. The following actions by the Board of Directors shall require a two-thirds (2/3) vote of the entire Board: a merger, liquidation, the initiation of proceedings under any United States bankruptcy laws, or transfer of all or substantially all of the assets of the Corporation.

SECTION 13. HONORARY DIRECTORS. The directors may from time to time elect such individuals as they shall deem appropriate Honorary Directors of the Corporation. Honorary Directors shall have no voting rights of any kind, and no right, title and interest in or to the Corporation or its property. They may attend meetings of the directors but they shall not be counted for the purposes of determining a quorum thereat.

SECTION 14. VOTE OF INTERESTED DIRECTORS.

(a) A director who is a member, stockholder, director, officer, employee or agent of any firm or corporation with which the Corporation contemplates contracting or transacting business shall disclose his/her relationship or interest to the other directors acting upon or in reference to such contract or transaction. No director so interested shall vote on

such contract or transaction. The affirmative votes of a majority of the disinterested directors shall be required before the Corporation may enter into such contract or transaction.

(b) In case the Corporation enters into a contract or transacts business with any firm, corporation or association of which one or more of its directors is a member, stockholder, director, officer, employee or agent such a contract or transaction shall not be invalidated or in any way affected by the fact that such director or directors have or may have interests therein which are or might be adverse to the interests of the Corporation as long as the provisions of the preceding paragraph (a) are complied with.

SECTION 15. ANNUAL REPORT. At the annual meeting of the Members of the Corporation, the Board of Directors shall present a report or reports as deemed appropriate by the Board of Directors, or as requested by the Members. Such report or reports shall be filed with the records of the Corporation by attaching the same to the minutes of the proceedings of the annual meeting.

SECTION 16. ATTENDANCE. At the discretion of the Board of Directors, three (3) consecutive, unexcused absences by a director from committees, subcommittees, task forces and/or Board meetings, within a reasonable period of time, shall constitute cause for removal of the director by the Board of Directors.

ARTICLE V COMMITTEES

The Chair shall appoint the following standing committees and the chairperson and their chairpersons, as may be required from time to time.

1. Executive Committee
2. Finance Committee

SECTION 1. EXECUTIVE COMMITTEE. The Executive Committee shall consist of the Chair, President, Vice Chair, Treasurer, Secretary, the immediate past Chair of the Corporation, and up to two (2) members of the Board of Directors as the Chair may, in his or her discretion, from time to time, appoint. The Executive Committee shall have all the authority of the Board of Directors to direct and determine the policies of the Corporation between meetings of the Board of Directors; provided, however, that any action taken by the Executive Committee shall not conflict with the policies expressed by the Board of Directors.

The Executive Committee shall fix its own rules or procedure as approved by the Board of Directors and shall meet as provided by such rules or by resolutions of the Board of Directors.

The Executive Committee may appoint subcommittees of the Executive Committee and task forces, with such powers as the Executive Committee may determine.

Any action of the Executive Committee shall be reported to the Board of Directors at its meeting next succeeding such action. A majority of the Executive Committee shall constitute a quorum for the transaction of business at any meeting.

SECTION 2. FINANCE COMMITTEE. The Finance Committee evaluates and recommends overall fiscal and investment policies for the Board of Directors; reviews the capital and operational expenditures of the Corporation and reports on these activities to the Board at least annually; oversees the overall finances of the Corporation, and authorizes investments and reinvestment activities with Board approval; reviews pension matters and makes policy recommendations to the Board of Directors; receives, reviews, and reports on the annual report of the independent auditors; evaluates and recommends appointment to the Board of Directors of an independent auditor for the Corporation and reviews the recommendations of the independent auditor; reviews and supervises budgetary policies.

SECTION 3. SUBCOMMITTEES OF STANDING COMMITTEES. Standing Committees may establish subcommittees and/or task forces to consider policy matters and issues in further depth. All subcommittee and task force chairpersons shall be recommended by the Chairperson of the Standing Committees and appointed by the Chair.

ARTICLE VI OFFICERS AND APPOINTEES

SECTION 1. NUMBER AND QUALIFICATION OF OFFICERS. The officers of the Corporation shall consist of a Chair, President, Vice Chair, Treasurer, Secretary and Assistant Secretary, all of whom, except for the President and Assistant Secretary, shall be chosen from among the members of the Board of Directors. No person may hold more than one office of the Corporation.

SECTION 2. ELIGIBILITY. Except for the President and the Assistant Secretary, only members of the Board of Directors in good standing shall be eligible for nomination and election as an officer of the Corporation.

SECTION 3. ELECTION OF OFFICERS; FILLING OF VACANCIES. The officers of the Corporation, except the President and the Assistant Secretary, shall be elected by a majority vote of the directors present at an annual meeting of the Board of Directors at which a quorum is present, or, if not elected at such meeting, at any subsequent meeting of the Board of Directors, as the Board of Directors may determine. Any vacancy in any office caused by any reason whatsoever, including the creation of a new office, may be filled by the Board of Directors at any meeting by like vote.

SECTION 4. TERM OF OFFICE; RESIGNATION AND REMOVAL OF OFFICERS. The term of office of each of the aforesaid elected officers shall be for one (1) year, until a successor shall have been duly elected and shall have qualified; provided, however, that the Board of Directors by a majority vote of the entire Board may at any time remove any officer of the Corporation. An officer may resign at any time.

SECTION 5. OTHER OFFICERS AND AGENTS. The Board of Directors may appoint such other officers and agents as it may deem advisable who shall hold their respective offices for such terms and shall exercise such powers and perform duties as shall be determined from time to time by the Board of Directors.

SECTION 6. CHAIR. The Chair shall have overall charge of the affairs of the Corporation and shall perform such other duties as are incidental to the office of Chair. The Chair shall appoint the chairperson of each standing committee and the membership of each such committees as may be required from time to time. The Chair shall perform such other duties as directed to perform by resolution of the Board of Directors not inconsistent with the provisions of law or these By-Laws. The Chair shall be a member ex-officio with vote of all committees, subcommittees and task forces. The Chair shall not be eligible to serve in the same office for more than five (5) consecutive years.

SECTION 7. PRESIDENT. The President shall be the chief executive officer of the Corporation subject to the supervision of the Board of Directors. The President shall have general charge of affairs of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. The President shall, when required by the Board of Directors, make a full written report with respect to any designated matter in connection with the Corporation or its affairs, and shall execute and acknowledge on behalf of the Corporation all contracts, documents, checks, bonds or other instruments authorized by the Board of Directors, except in cases where the signing and execution thereof shall be delegated by the Board of Directors or by these By-Laws to some other officer or agent of the Corporation, and, in general shall perform all duties incident to the office of President and such other duties as may from time to time be delegated by the Board of Directors. The President shall be a member ex-officio with vote of the Board of Directors, all committees, subcommittees and task forces.

SECTION 8. VICE CHAIR. The Vice Chair shall have such powers and duties as may be from time to time be delegated by the Board of Directors. In the absence or disability of the Chair, the Vice Chair shall be vested with all the powers and perform all the duties of the Chair.

SECTION 9. TREASURER. The Treasurer shall perform all duties incidental to the office of Treasurer and such duties as are assigned from time to time by the Board of Directors or the Chair. In the absence or disability of the Chair and the Vice Chair, the Treasurer shall be vested with all the powers and perform all the duties of the Chair.

SECTION 10. SECRETARY. The Secretary shall act as Secretary at all meetings of the Members of the Corporation and Board of Directors; shall give or cause to be given all required notices of meetings of directors and the Members; shall record all meetings of the directors and the Members in a book to be kept for that purpose; and, in general, shall perform all duties incident to the office of Secretary, and have such other powers and duties as may from time to time be delegated by the Board of Directors. He/She shall have custody of the seal of the Corporation and shall affix the same to any instrument when duly authorized to

do so and shall attest the same. In the absence or disability of the Chair, the Vice Chair and the Treasurer, the Secretary shall be vested with all the powers and perform all the duties of the Chair.

SECTION 11. ASSISTANT SECRETARY. The Assistant Secretary shall have such powers and duties as may from time to time be delegated by the Board of Directors. In the absence or disability of the Secretary, the Assistant Secretary shall be vested with all the powers and perform all the duties of the Secretary. The offices of President and Assistant Secretary may not be held by the same person.

SECTION 12. COMPENSATION. No officer shall receive compensation from the Corporation for his or her services to the Corporation except for the President and the Assistant Secretary.

ARTICLE VII
INDEMNIFICATION OF THE MEMBERS, DIRECTORS AND OFFICERS

The Members and each of the directors and officers of the Corporation, in the event he/she is made or threatened to be made a party to an action, by reason of the fact that he/she is or was a Member, director, or officer of the Corporation (or is or was serving in any capacity at the request of the Corporation in some other corporation, organization or other enterprise), shall be entitled to indemnification from the Corporation to the full extent permitted by law.

ARTICLE VIII
FISCAL YEAR

The fiscal year of the Corporation shall be the calendar year.

ARTICLE IX
CORPORATE SEAL

The corporate seal shall be in such form as the Board of Directors shall prescribe.

ARTICLE X
AMENDMENTS

SECTION 1. BY THE MEMBERS. By-laws may be amended, repealed or adopted by the vote of two-thirds (2/3) of the Members present at any meeting of the Members, if a quorum is present at such meeting.


SECTION 2. BY THE BOARD OF DIRECTORS. The Board of Directors, by the vote of two-thirds (2/3) of the directors then in office at any meeting of the Board of Directors, if a quorum is present at such meeting (a quorum for the purpose of amending the By-laws being a majority of the directors) and provided the directors shall have received at least ten (10) days' notice of the proposed action, may amend, repeal or adopt By-laws of the Corporation, but any By-laws adopted by the Board of Directors may be amended or repealed by the Members.

CERTIFICATE OF ASSISTANT SECRETARY
OF
M.J.G.N.H.C., INC.

The undersigned hereby certifies that I am the duly appointed and acting Assistant Secretary of M.J.G.N.H.C., Inc., a New York not-for-profit corporation (the "Corporation"), and I further certify as follows:

1. Attached hereto as Exhibit A is a true, correct and complete copy of resolutions adopted by unanimous written consent of the Board of Directors of the Corporation and dated as of August 16, 2018, which resolutions have not been modified, amended, annulled or revoked from the time of their adoption to the date hereof, and which resolutions are in full force and effect on the date hereof.
2. Attached hereto as Exhibit B is a true, correct and complete copy of resolutions adopted by unanimous written consent of the Members of the Corporation and dated as of August 16, 2018, which resolutions have not been modified, amended, annulled or revoked from the time of their adoption to the date hereof, and which resolutions are in full force and effect on the date hereof.
3. Attached hereto as Exhibit C is a true, and complete correct copy of the Plan of Dissolution that was attached to the unanimous written consent of to the Board of Directors of the Corporation dated as of August 16, 2018 and was attached to the unanimous written consent of the Members of the Corporation dated as of August 16, 2018.

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate on the 5th
day of September, 2018.



Robert E. Leamer
Assistant Secretary

**UNANIMOUS WRITTEN CONSENT OF THE BOARD OF DIRECTORS OF
M.J.G.N.H.C., INC.
TO ADOPT
PLAN OF DISSOLUTION**

The undersigned, being all of the directors of M.J.G.N.H.C., Inc., a New York not-for-profit corporation (the "Corporation"), do hereby adopt the following preambles and resolutions by unanimous written consent in lieu of a meeting of the directors pursuant to Section 708(b) of the New York Not-for-Profit Corporation Law:

WHEREAS, on May 5, 2011, the Corporation (formerly known as M.J.G. Nursing Home Co., Inc.) sold its operations and assets and ceased providing healthcare services; and

WHEREAS, the Corporation has wound up its business and affairs and is no longer operational; and

WHEREAS, the Corporation has no assets to distribute, and no liabilities at the time of adoption of the plan attached hereto as Exhibit A (the "Plan of Dissolution"); and

WHEREAS, the Board of Directors has determined that the dissolution of the Corporation and the approval of the Plan of Dissolution is in the best interests of the Corporation; and

WHEREAS, pursuant to Section 1002(a)(2) of the New York Not-for-Profit Corporation Law, the Plan of Dissolution is subject to the approval of the Members of the Corporation.

NOW, THEREFORE, BE IT

RESOLVED, that the dissolution of the Corporation pursuant to the Plan of Dissolution, be, and it hereby is, approved; and be it further

RESOLVED, that the Plan of Dissolution be recommended for approval by the Members of the Corporation; and be it further

RESOLVED, that counsel to the Corporation be authorized and directed to prepare a Certificate of Dissolution and such other documents for execution by the officers of the Corporation as may be necessary to effect the dissolution; and be it further

RESOLVED, that the appropriate officers of the Corporation be and they hereby are authorized to execute any and all documents and to take any and all action necessary or desirable to effectuate the purpose and intent of these resolutions.

IN WITNESS WHEREOF, the undersigned directors of the Corporation have executed this consent as of August 16, 2018.



Alexander Balko

William Gormley

Ronald Milch

Steven Topal

IN WITNESS WHEREOF, the undersigned directors of the Corporation have executed this consent as of August 16, 2018.

Alexander Balko

William J. Gormley

William Gormley

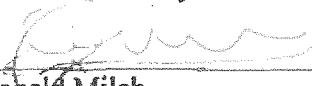
Ronald Milch

Steven Topal

IN WITNESS WHEREOF, the undersigned directors of the Corporation have executed this consent as of August 16, 2018.

Alexander Balko

William Gormley



Ronald Milch

Steven Topal

IN WITNESS WHEREOF, the undersigned directors of the Corporation have executed this consent as of August 16, 2018.

Alexander Balko

William Gormley

Ronald Milch



Steven Topal

EXHIBIT A
PLAN OF DISSOLUTION

PLAN OF DISSOLUTION

OF

M.J.G.N.H.C., INC.

The Board of Directors of M.J.G.N.H.C., Inc. (the "Corporation") has considered the advisability of voluntarily dissolving the Corporation and has determined that the dissolution is in the best interest of the Corporation.

1. The Corporation has no assets or liabilities.
2. In addition to Attorney General approval, the following governmental approvals of the Plan of Dissolution are required and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General:
 - Commissioner of Health
 - Public Health and Health Planning Council
3. A Certificate of Dissolution shall be executed by an authorized Director or Officer of the Corporation and all required governmental approvals shall be attached thereto before filing it with the Department of State.

**UNANIMOUS WRITTEN CONSENT OF THE MEMBERS OF
M.J.G.N.H.C., INC.,
TO APPROVE PLAN OF DISSOLUTION**

The undersigned, being all of the Members of M.J.G.N.H.C., Inc., a New York not-for-profit corporation (the "Corporation"), do hereby adopt the following preambles and resolutions by unanimous written consent in lieu of a meeting of the Members pursuant to Section 614 of the New York Not-for-Profit Corporation Law:

WHEREAS, the Corporation has no assets to distribute, and no liabilities at the time of the adoption of the plan attached hereto as Exhibit A (the "Plan of Dissolution"); and

WHEREAS, the Board of Directors of the Corporation has determined that it is in the best interests of the Corporation to dissolve, and in furtherance of the foregoing, has adopted the Plan of Dissolution and recommended its approval to the Members; and

WHEREAS, pursuant to Section 1002(a)(2) of the New York Not-for-Profit Corporation Law, the Plan of Dissolution is subject to the approval of the Members of the Corporation; and

WHEREAS, the Members of the Corporation have determined that the dissolution of the Corporation and the approval of the Plan of Dissolution are in the best interests of the Corporation.

NOW, THEREFORE, be it

RESOLVED, that the dissolution of the Corporation pursuant to the Plan of Dissolution be, and it hereby is, approved by the Members of the Corporation; and be it further

RESOLVED, that the Members be, and they hereby are, authorized and directed to execute any and all documents and to take any and all action necessary or desirable to effectuate the purpose and intent of these resolutions.

IN WITNESS WHEREOF, the undersigned Members of the Corporation have executed this consent as of August 16, 2018.



Eli Feldman

Shmuel Lefkowitz

Ronald Milch

**UNANIMOUS WRITTEN CONSENT OF THE MEMBERS OF
M.J.G.N.H.C., INC.,
TO APPROVE PLAN OF DISSOLUTION**

The undersigned, being all of the Members of M.J.G.N.H.C., Inc., a New York not-for-profit corporation (the "Corporation"), do hereby adopt the following preambles and resolutions by unanimous written consent in lieu of a meeting of the Members pursuant to Section 614 of the New York Not-for-Profit Corporation Law:

WHEREAS, the Corporation has no assets to distribute, and no liabilities at the time of the adoption of the plan attached hereto as Exhibit A (the "Plan of Dissolution"); and

WHEREAS, the Board of Directors of the Corporation has determined that it is in the best interests of the Corporation to dissolve, and in furtherance of the foregoing, has adopted the Plan of Dissolution and recommended its approval to the Members; and

WHEREAS, pursuant to Section 1002(a)(2) of the New York Not-for-Profit Corporation Law, the Plan of Dissolution is subject to the approval of the Members of the Corporation; and

WHEREAS, the Members of the Corporation have determined that the dissolution of the Corporation and the approval of the Plan of Dissolution are in the best interests of the Corporation.

NOW, THEREFORE, be it

RESOLVED, that the dissolution of the Corporation pursuant to the Plan of Dissolution be, and it hereby is, approved by the Members of the Corporation; and be it further

RESOLVED, that the Members be, and they hereby are, authorized and directed to execute any and all documents and to take any and all action necessary or desirable to effectuate the purpose and intent of these resolutions.

IN WITNESS WHEREOF, the undersigned Members of the Corporation have executed this consent as of August 16, 2018.

Eli Feldman



Shmuel Lefkowitz

Ronald Milch

**UNANIMOUS WRITTEN CONSENT OF THE MEMBERS OF
M.J.G.N.H.C., INC.,
TO APPROVE PLAN OF DISSOLUTION**

The undersigned, being all of the Members of M.J.G.N.H.C., Inc., a New York not-for-profit corporation (the "Corporation"), do hereby adopt the following preambles and resolutions by unanimous written consent in lieu of a meeting of the Members pursuant to Section 614 of the New York Not-for-Profit Corporation Law:

WHEREAS, the Corporation has no assets to distribute, and no liabilities at the time of the adoption of the plan attached hereto as Exhibit A (the "Plan of Dissolution"); and

WHEREAS, the Board of Directors of the Corporation has determined that it is in the best interests of the Corporation to dissolve, and in furtherance of the foregoing, has adopted the Plan of Dissolution and recommended its approval to the Members; and

WHEREAS, pursuant to Section 1002(a)(2) of the New York Not-for-Profit Corporation Law, the Plan of Dissolution is subject to the approval of the Members of the Corporation; and

WHEREAS, the Members of the Corporation have determined that the dissolution of the Corporation and the approval of the Plan of Dissolution are in the best interests of the Corporation.

NOW, THEREFORE, be it

RESOLVED, that the dissolution of the Corporation pursuant to the Plan of Dissolution be, and it hereby is, approved by the Members of the Corporation; and be it further

RESOLVED, that the Members be, and they hereby are, authorized and directed to execute any and all documents and to take any and all action necessary or desirable to effectuate the purpose and intent of these resolutions.

IN WITNESS WHEREOF, the undersigned Members of the Corporation have executed this consent as of August 16, 2018.

Eli Feldman

Shmuel Lefkowitz



Ronald Milch

EXHIBIT A

Plan of Dissolution

PLAN OF DISSOLUTION

OF

M.J.G.N.H.C., INC.

The Board of Directors of M.J.G.N.H.C., Inc. (the "Corporation") has considered the advisability of voluntarily dissolving the Corporation and has determined that the dissolution is in the best interest of the Corporation.

1. The Corporation has no assets or liabilities.
2. In addition to Attorney General approval, the following governmental approvals of the Plan of Dissolution are required and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General:
 - Commissioner of Health
 - Public Health and Health Planning Council
3. A Certificate of Dissolution shall be executed by an authorized Director or Officer of the Corporation and all required governmental approvals shall be attached thereto before filing it with the Department of State.

PROPOSED FORM OF CERTIFICATE OF DISSOLUTION



**Division of Corporations,
State Records and
Uniform Commercial Code**

New York State
Department of State
**DIVISION OF CORPORATIONS,
STATE RECORDS AND
UNIFORM COMMERCIAL CODE**
One Commerce Plaza
99 Washington Ave.
Albany, NY 12231-0001
www.dos.ny.gov

CERTIFICATE OF DISSOLUTION OF

M.J.G.N.H.C., Inc.

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is:

M.J.G.N.H.C., Inc.

If the name of the corporation has been changed, the name under which it was formed is:

Metropolitan Jewish Geriatric Nursing Home Company, Inc.

SECOND: The certificate of incorporation was filed with the Department of State on:

May 19, 1971

THIRD: The name and address of each officer and director of the corporation is:

Alexander Balko, Director, 1050 Mineola Avenue, Point Lookout, New York 11569

William Gormley, Director, 441 Lockheart Mountain Road, #21, Lake George, New York 12845

Ronald Milch, Director, 25 Sutton Place South, #4B, New York, New York 10022

Steven Topal, Chairman and Director, 66-36 Yellowstone Blvd., #15D, Forest Hills, New York 11375

FOURTH: The corporation is a: *(check the appropriate box)*

charitable corporation non-charitable corporation.

FIFTH: At the time of authorization of the corporation's Plan of Dissolution and Distribution of Assets as provided in Not-for-Profit Corporation Law §1002, the corporation holds:

(Check the appropriate statement)

assets which are legally required to be used for a particular purpose.

no assets which are legally required to be used for a particular purpose.

SIXTH: The corporation elects to dissolve.

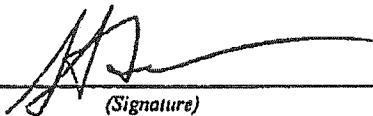
SEVENTH: *(Check the appropriate statement)* The dissolution was authorized by:

- a vote of a majority of the board of directors. The corporation has no members.
- the majority vote of the board of directors, followed by two-thirds vote of the members.

EIGHTH: *(Check the appropriate statement)*

- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by the Attorney General. A copy of the approval of the Attorney General is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by a Justice of the Supreme Court. A copy of the Court's Order is attached.
- The corporation is a charitable corporation with no assets. Prior to the delivery of the Certificate of Dissolution to the Department of State for filing a copy of the Plan of Dissolution which contains the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law, has been duly filed with the Attorney General.
- The corporation is a non-charitable corporation with no assets. The corporation's Plan of Dissolution is not required to contain the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law and is not required to be filed with Attorney General.

X


(Signature)

Steven Topal

(Print or Type Name of Signer)

Chairman

(Capacity of Signer)

**CERTIFICATE OF DISSOLUTION
OF**

M.J.G.N.H.C., Inc.

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

Filer's Name: **Marsena Farris, Esq.**

Company, if applicable: **Crowell & Moring LLP**

Address: **590 Madison Avenue**

City, State and Zip Code: **New York, New York 10022**

NOTES:

1. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at www.dos.ny.gov.
 2. This Certificate of Dissolution must be signed by an officer, director or duly authorized person.
 3. Attach the consent of the New York State Department of Taxation and Finance.
 4. Attach the consent of the New York City Department of Finance, if required.
 5. Attach a copy of the approval of the Attorney General or Order of the Supreme Court, if required.
 6. The Certificate of Dissolution must include the approval of the Attorney General if the corporation is a charitable corporation or if the corporation is a non-charitable corporation and holds assets at the time of dissolution legally required to be used for a particular purpose.
 7. Attach any other consent or approval required by law.
 8. The fee for filing this certificate is \$30, made payable to the Department of State.
-

For DOS Use Only

EXHIBIT B
PLAN OF DISSOLUTION

PLAN OF DISSOLUTION

OF

M.J.G.N.H.C., INC.

The Board of Directors of M.J.G.N.H.C., Inc. (the "Corporation") has considered the advisability of voluntarily dissolving the Corporation and has determined that the dissolution is in the best interest of the Corporation.

1. The Corporation has no assets or liabilities.
2. In addition to Attorney General approval, the following governmental approvals of the Plan of Dissolution are required and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General:
 - Commissioner of Health
 - Public Health and Health Planning Council
3. A Certificate of Dissolution shall be executed by an authorized Director or Officer of the Corporation and all required governmental approvals shall be attached thereto before filing it with the Department of State.

EXHIBIT E
CHAR500 (2017)

CHAR500

NYS Annual Filing for Charitable Organizations
www.CharitiesNYS.com

Send with fee and attachments to:
NYS Office of the Attorney General
Charities Bureau Registration Section
28 Liberty Street
New York, NY 10005

2017
Open to Public
Inspection

1. General Information

For Fiscal Year Beginning (mm/dd/yyyy) <u>01 / 01 / 2017</u> and Ending (mm/dd/yyyy) <u>05 / 31 / 2018</u>		
<input type="checkbox"/> Address Change	Name of Organization: <u>M. J. G. N. H. C., INC</u> <u>COMPANY, INC.</u>	Employer Identification Number (EIN) <u>23-7123076</u>
<input type="checkbox"/> Name Change	Mailing Address <u>6323 7TH AVENUE</u>	NY Registration Number <u>15-38-94</u>
<input checked="" type="checkbox"/> Initial Filing	City / State / Zip <u>BROOKLYN, NY, 11220</u>	Telephone: <u>(718) 491-7261</u>
<input type="checkbox"/> Final Filing	Website:	Email:
<input type="checkbox"/> Amended Filing		
<input type="checkbox"/> Reg ID Pending		

Check your organization's registration category: 7A only EPTL only DUAL (7A & EPTL) EXEMPT Confirm your Registration Category in the Charities Registry at www.CharitiesNYS.com

2. Certification

See instructions for certification requirements Improper certification is a violation of law that may be subject to penalties.

We certify under penalties of perjury that we reviewed this report, including all attachments, and to the best of our knowledge and belief, they are true, correct and complete in accordance with the laws of the State of New York applicable to this report

President or Authorized Officer	<u>ALEXANDER BALKO</u>	CEO / PRESIDENT	
	Signature	Print Name and Title	Date
Chief Financial Officer or Treasurer	<u>JEFFREY DAVIS</u>	CFO	
	Signature	Print Name and Title	Date

3. Annual Reporting Exemption

Check the exemption(s) that apply to your filing. If your organization is claiming an exemption under one category (7A or EPTL only filers) or both categories (DUAL filers) that apply to your registration, complete only parts 1, 2, and 3, and submit the certified Char500. No fee, schedules, or additional attachments are required. If you cannot claim an exemption or are a DUAL filer that claims only one exemption, you must file applicable schedules and attachments and pay applicable fees.

3a. 7A filing exemption: Total contributions from NY State including residents, foundations, government agencies, etc. did not exceed \$25,000 and the organization did not engage a professional fund raiser (PFR) or fund raising counsel (FRC) to solicit contributions during the fiscal year Or the organization qualifies for another 7A exemption (see instructions)

3b. EPTL filing exemption: Gross receipts did not exceed \$25,000 and the market value of assets did not exceed \$25,000 at any time during the fiscal year

4. Schedules and Attachments

See the following page for a checklist of schedules and attachments to complete your filing.

<input type="checkbox"/> Yes <input type="checkbox"/> No	4a. Did your organization use a professional fund raiser, fund raising counsel or commercial co-venturer for fund raising activity in NY State? If yes, complete Schedule 4a.
<input type="checkbox"/> Yes <input type="checkbox"/> No	4b. Did the organization receive government grants? If yes, complete Schedule 4b.

5. Fee

See the checklist on the next page to calculate your fee(s) Indicate fee(s) you are submitting here:	7A filing fee: \$ _____	EPTL filing fee: \$ _____	Total fee: \$ _____	Make a single check or money order payable to: "Department of Law"
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CHAR500

Annual Filing Checklist

Simply submit the certified CHAR500 with no fee, schedule, or additional attachments IF

- Your organization is registered as 7A only and you marked the 7A filing exemption in Part 3
- Your organization is registered as EPTL only and you marked the EPTL filing exemption in Part 3
- Your organization is registered as DUAL and you marked both the 7A and EPTL filing exemption in Part 3.

Checklist of Schedules and Attachments

Check the schedules you must submit with your CHAR500 as described in Part 4

- If you answered "yes" in Part 4a, submit Schedule 4a: Professional Fund Raisers (PFR), Fund Raising Counsel (FRC), Commercial Co-Venturers (CCV)
- If you answered "yes" in Part 4b, submit Schedule 4b: Government Grants

Check the financial attachments you must submit with your CHAR500

- IRS Form 990, 990-EZ, or 990-PF, and 990-T if applicable
- All additional IRS Form 990 Schedules, including Schedule B (Schedule of Contributors)
- Our organization was eligible for and filed an IRS 990-N e-postcard. We have included an IRS Form 990-EZ for state purposes only

If you are a 7A only or DUAL filer, submit the applicable independent Certified Public Accountant's Review or Audit Report

- Review Report if you received total revenue and support greater than \$250,000 and up to \$750,000
- Audit Report if you received total revenue and support greater than \$750,000
- No Review Report or Audit Report is required because total revenue and support is less than \$250,000
- We are a DUAL filer and checked box 3a, no Review Report or Audit Report is required

Calculate Your Fee

For 7A and DUAL filers, calculate the 7A fee

- \$0, if you checked the 7A exemption in Part 3a
- \$25, if you did not check the 7A exemption in Part 3a

For EPTL and DUAL filers, calculate the EPTL fee

- \$0, if you checked the EPTL exemption in Part 3b
- \$25, if the NET WORTH is less than \$50,000
- \$50, if the NET WORTH is \$50,000 or more but less than \$250,000
- \$100, if the NET WORTH is \$250,000 or more but less than \$1,000,000
- \$250, if the NET WORTH is \$1,000,000 or more but less than \$10,000,000
- \$750, if the NET WORTH is \$10,000,000 or more but less than \$50,000,000
- \$1,500, if the NET WORTH is \$50,000,000 or more

Is my Registration Category 7A, EPTL, DUAL or EXEMPT?

Organizations are assigned a Registration Category upon registration with the NY Charities Bureau

7A filers are registered to solicit contributions in New York under Article 7-A of the Executive Law ("7A")

EPTL filers are registered under the Estates, Powers & Trusts Law ("EPTL") because they hold assets and/or conduct activities for charitable purposes in NY

DUAL filers are registered under both 7A and EPTL

EXEMPT filers have registered with the NY Charities Bureau and meet conditions in Schedule E - Registration Exemption for Charitable Organizations. These organizations are not required to file annual financial reports but may do so voluntarily

Confirm your Registration Category and learn more about NY law at www.CharitiesNYS.com.

Where do I find my organization's NET WORTH?

NET WORTH for fee purposes is calculated on

- IRS Form 990 Part I, line 22
- IRS Form 990-EZ Part I, line 21
- IRS Form 990-PF, calculate the difference between Total Assets at Fair Market Value (Part II, line 16(c)) and Total Liabilities (Part II, line 23(b))

Send Your Filing

Send your CHAR500, all schedules and attachments, and total fee to:

NYS Office of the Attorney General
Charities Bureau Registration Section
28 Liberty Street
New York, NY 10005

CHAR500

Schedule 4a: Professional Fund Raisers, Fund Raising Counsels, Commercial Co-Venturers
www.CharitiesNYS.com

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If you checked the box in question 4a in Part 4 on the CHAR500 Annual Filing for Charitable Organizations, complete this schedule for EACH Professional Fund Raiser (PFR), Fund Raising Counsel (FRC) or Commercial Co-Venturer (CCV) that the organization engaged for fund raising activity in NY State. The PFR or FRC should provide its NY Registration Number to you. Include this schedule with your certified CHAR500 NYS Annual Filing for Charitable Organizations and use additional pages if necessary.

1. Organization Information

Name of Organization M. J. G. N. H. C., INC COMPANY, INC.	NY Registration Number 15-38-94
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2. Professional Fund Raiser, Fund Raising Counsel, Commercial Co-Venturer Information

Fund Raising Professional type: <input type="checkbox"/> Professional Fund Raiser <input type="checkbox"/> Fund Raising Counsel <input type="checkbox"/> Commercial Co-Venturer	Name of FRP	NY Registration Number
	Mailing Address	Telephone
	City / State / Zip	

3. Contract Information

Contract Start Date	Contract End Date
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4. Description of Services

Services provided by FRP

5. Description of Compensation

Compensation arrangement with FRP	Amount Paid to FRP
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6. Commercial Co-Venturer (CCV) Report

<input type="checkbox"/> Yes <input type="checkbox"/> No	If services were provided by a CCV, did the CCV provide the charitable organization with the interim or closing report(s) required by Section 173(a) part 3 of the Executive Law Article 7A?
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Definitions

<p>A Professional Fund Raiser (PFR), in addition to other activities, conducts solicitation of contributions and/or handles the donations (Article 7A, 171-a 4)</p> <p>A Fund Raising Counsel (FRC) does not solicit or handle contributions but limits activities to advising or assisting a charitable organization to perform such functions for itself (Article 7A, 171-a.9)</p> <p>A Commercial Co-Venturer (CCV) is an individual or for-profit company that is regularly and primarily engaged in trade or commerce other than raising funds for a charitable organization and who advertises that the purchase or use of goods, services, entertainment or any other thing of value will benefit a charitable organization (Article 7A, 171-a 6)</p>

CHAR500

Schedule 4b: Government Grants
www.CharitiesNYS.com

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Inspection

If you checked the box in question 4b in Part 4 on the CHAR500 Annual Filing for Charitable Organizations, complete this schedule and list EACH government grant. Use additional pages if necessary. Include this schedule with your certified CHAR500 NYS Annual Filing for Charitable Organizations.

1. Organization Information

Name of Organization	NY Registration Number
----------------------	------------------------


2. Government Grants


Name of Government Agency	Amount of Grant
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.
6.	6.
7.	7.
8.	8.
9.	9.
10.	10.
11.	11.
12.	12.
13.	13.
14.	14.
15.	15.
Total Government Grants	Total



MEMORANDUM

To: Public Health and Health Planning Council

From: Richard J. Zahnleuter  General Counsel

Date: March 21, 2019 

Subject: Proposed Dissolution of Mount Sinai Diagnostic & Treatment Center

The Mount Sinai Diagnostic & Treatment 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 April 30, 2004, under the NPCL, “to establish, operate and maintain a diagnostic and treatment center as defined in the Public Health Law of the State of New York and to furnish outpatient medical services in any form to persons in need thereof.” The Corporation was particularly formed with the encouragement of the Department as a means to enhance cooperation and collaboration between The Mount Sinai Hospital and North General Hospital (NGH) and NGH’s newly-created diagnostic and treatment center to “develop improved quality assurance standards and innovative management techniques in order to better control and prevent chronic diseases plaguing the East Harlem community, such as diabetes, heart disease and cancer.” [quoting Unanimous Written Consent of the Board of Trustees of the Corporation authorizing the proposed dissolution] NGH and its diagnostic and treatment center declared bankruptcy and ceased operations. The Corporation has also ceased providing medical services and all operations and its sole Member, The Mount Sinai Hospital, has resumed the provision of all medical services formerly provided by the Corporation in the context of hospital outpatient services. The Corporation and its sole Member have determined that it is advisable and in the best interests of the Corporation, its sole Member and the community they serve to dissolve the Corporation as expeditiously as possible.

The Board of Trustees of the Corporation adopted a Plan of Dissolution by unanimous written consent on January 28, 2019, in accordance with section 1002(a)(1)(ii) of the NPCL. The Mount Sinai Hospital as the sole Member of the Corporation approved the Plan of Dissolution and the dissolution of the Corporation on January 30, 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 resolutions of the Board of Trustees of the Corporation and written consent of the sole Member of the Corporation authorizing the dissolution, are included for PHHPC's review. Letters from Kimberly Rai and Tamar R. Rosenberg of Sheppard, Mullin, Richter & Hampton LLP, counsel to the applicant, explaining the need and desire for the dissolution, have been received and are enclosed. Lastly, please note that the Verified Petition and Certificate of Dissolution indicate that, on the date of this application, the Corporation has no assets and no outstanding liabilities, and the Corporation holds no assets 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.

SheppardMullin

Sheppard, Mullin, Richter & Hampton LLP
30 Rockefeller Plaza
New York, New York 10112-0015
212.653.8700 main
212.653.8701 fax
www.sheppardmullin.com

Kimberly Rai
212.653.8195 direct
krai@sheppardmullin.com

March 5, 2019

File Number: 41JB-201580

VIA FEDEX AND ELECTRONIC MAIL

Lawrence Douglas
Charities Bureau
Office of the New York State Attorney General
28 Liberty Street, 15th Floor
New York, New York 10005

Re: Verified Petition for Consent to Dissolution of Mount Sinai Diagnostic & Treatment Center

Dear Mr. Douglas:

We are writing on behalf of Mount Sinai Diagnostic & Treatment Center, a New York not-for-profit corporation ("MSDTC"), to request the consent of the Charities Bureau of the Office of the New York State Attorney General (the "Charities Bureau") to the dissolution of MSDTC pursuant to Section 1002 of the New York Not-for-Profit Corporation Law (the "NPCL"), pursuant to your e-mail correspondence with my colleague Tamar Rosenberg.

Enclosed herewith is the executed Verified Petition requesting the Charities Bureau's approval of the proposed Certificate of Dissolution pursuant to Section 1002 of the NPCL for filing with the New York Department of State, together with various exhibits thereto, including the executed Certificate of Dissolution. We will separately send the consent of the New York State Department of Health and/or the Public Health and Health Planning Council upon receipt.

Upon issuing the requisite consent, please return the Certificates of Dissolution to me in the enclosed pre-addressed pre-paid FedEx envelope, which I have provided for your convenience. Please do not hesitate to contact me should you require anything additional.

SheppardMullin

Charities Bureau
Office of the New York State Attorney General
Page 2

Thank you for your help, as always.

Very truly yours,



Kimberly Rai
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:228657081.2

Encl.

-----X

In the Matter of the Application

of

VERIFIED PETITION

Mount Sinai Diagnostic & Treatment Center

AG # _____

For Approval of Certificate of Dissolution
pursuant to
Section 1002 of the New York Not-For-Profit
Corporation Law.

-----X

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
COUNTY OF NEW YORK
28 Liberty Street
New York, New York 10005

Petitioner, Mount Sinai Diagnostic & Treatment Center (the “**Corporation**”) by Sally
Strauss, Esq., attorney for the Corporation, for its Verified Petition herein respectfully alleges:

1. The Corporation, whose principal office is located in the County of New
York, was incorporated pursuant to the New York Not-for-Profit Corporation Law on April 30,
2004. A copy of the Certified of Incorporation of the Corporation, and all amendments thereto,
is annexed to this Verified Petition as Exhibit A.

2. The names, address and titles of each of the Corporation’s sole trustee and
officers are:

Name and Address

Title

Michael Pastier
Senior Vice President/CFO
The Mount Sinai Hospital
One Gustave L. Levy Place
New York, New York 10029

Trustee and Secretary

David Thomas, MD, MS, MHPE
Professor of Medicine, Medical Education

Medical Director

& Rehabilitation Medicine
Vice Chair of Medicine, Associate Dean for CME
Director of Ambulatory Care & Training
Samuel M. Bronfman Department of Medicine
Center for Advanced Medicine
Mount Sinai School of Medicine
One Gustave L. Levy Place
New York, NY 10029

3. The purposes of the Corporation, as set forth in its Certificate of Incorporation, are to:

(a) To establish, operate and maintain a diagnostic and treatment center as defined in the Public Health Law of the State of New York and to furnish outpatient medical services in any form to persons in need thereof.

(b) To enter into agreements, joint ventures and arrangements, and otherwise cooperate, with hospitals, governmental agencies and other organizations in the provision of medical care through the Corporation's diagnostic and treatment center.

(c) To do any and all things deemed necessary, suitable, convenient or appropriate in connection with or incidental to the accomplishment of the purposes of the Corporation to the extent not forbidden by statute or by this certificate or the bylaws of the Corporation.

4. The Corporation is a charitable corporation within the meaning of Section 201(c) of the NPCL.

5. The Corporation does not have any assets or liabilities as of the date hereof.

6. The Corporation plans to dissolve because the Board of Trustees and the sole member of the Corporation, The Mount Sinai Hospital (the "Sole Member"), have heretofore determined that it is in the best interests of the Corporation and the Sole Member that the medical services provided by the Corporation be conducted by the Sole Member and the Corporation has ceased providing medical services and conducting operations, in accordance with requirements of the New York State Department of Health. The Sole Member is a charitable New York not-for-profit corporation that is engaged in activities substantially similar to the Corporation's activities. The Sole Member is exempt from federal income taxes pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

7. The sole remaining Trustee of the Corporation, acting by written consent dated January 28, 2019, in accordance with Section 1001(a) and Section 708 of the NPCL, adopted resolutions authorizing: (a) the dissolution of the Corporation pursuant to a Plan of Dissolution, a certified copy of which is annexed to this Verified Petition as **Exhibit B** (the "Plan

of Dissolution”), and (b) the filing of a Certificate of Dissolution with the New York State Secretary of State pursuant to Section 1003 of the NPCL. A copy of such written consent is annexed to this Verified Petition as Exhibit C.

8. After the Board of Trustees of the Corporation approved the Plan of Dissolution, the Plan of Dissolution was approved by the Sole Member, by written consent adopted by a duly authorized officer of the Sole Member dated January 30, 2019 pursuant to Section 1002 and Section 614 of the New York Not-for-Profit Corporation Law. A copy of such written consent is annexed to this Verified Petition as Exhibit D.

9. Approval of the dissolution of the Corporation is required by the New York State Department of Health and/or the New York State Public Health and Health Planning Council.

10. The Corporation is recognized by the Charities Bureau of the New York State Attorney General’s Office as exempt from the annual Form CHAR500 filing requirement. The Corporation has attached as Exhibit E hereto its Internal Revenue Service Form 990 for the 2017 calendar year, showing that the Corporation did not have any income, expenses, assets or liabilities during 2017. The Corporation has not received any income or assets, and has not incurred any expenses or liabilities, since the end of 2017, and it does not expect its financial position to change prior to the filing of its Certificate of Dissolution with the New York State Secretary of State.

11. With this Petition, the original executed Certificate of Dissolution is being submitted to the Attorney General, attached as Exhibit F, for approval pursuant to Section 1003 of the Not-for-Profit Corporation Law.

WHEREFORE, Petitioner respectfully requests that the New York State Attorney General approve the Certificate of Dissolution of Mount Sinai Diagnostic & Treatment Center, a New York not-for-profit corporation, pursuant to Section 1003 of the NPCL.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Corporation has caused this Petition to be executed this 5 day of February, 2019.

By: 

Sally Strauss, Esq.
Attorney for Petitioner

VERIFICATION AND CERTIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Michael Pastier, being duly sworn, deposes and says:

I am the Secretary and Trustee of Mount Sinai Diagnostic & Treatment Center, the not-for-profit corporation named as the Petitioner in the above Petition (the "Corporation"), and make this verification at the direction of the Corporation's Board of Trustees. I have read the foregoing Petition and (i) know the contents thereof to be true of my own knowledge, except as to those matters that are stated on information and belief and as to those matters I believe them to be true, and (ii) I hereby certify under penalties of perjury that the Plan of Dissolution attached thereto was duly authorized and adopted by the Board of Trustees of the Corporation and by the Corporation's sole member.


Name: MICHAEL PASTIER

Sworn to before me this *5th*
Day of *February*, 2019


Notary Public

Iris Barreto
Notary Public, State of New York
Qualified in New York County
LIC# 01BA6101223
Commission Expires December 13, 2019

EXHIBIT A

Certificate of Incorporation

State of New York)
Department of State } SS:

I hereby certify that the annexed copy has been compared with the original document filed by the Department of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on

April 30, 2004



A handwritten signature in black ink, appearing to read "R. A. S.", is written over the printed title "Secretary of State".

Secretary of State

F04040 000010 P.03/10

**CERTIFICATE OF INCORPORATION
OF**

Mount Sinai Diagnostic & Treatment Center

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 of the State of New York, does hereby certify:

FIRST: The name of the corporation is MOUNT SINAI DIAGNOSTIC & TREATMENT CENTER (the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-for-Profit Corporation Law ("N-PCL").

THIRD: The purposes for which the Corporation is formed are as follows:

- (a) To establish, operate and maintain a diagnostic and treatment center as defined in the Public Health Law of the State of New York and to furnish outpatient medical services in any form to persons in need thereof.
- (b) To enter into agreements, joint ventures and arrangements, and otherwise cooperate, with hospitals, governmental agencies and other organizations in the provision of medical care through the Corporation's diagnostic and treatment center.
- (c) To do any and all things deemed necessary, suitable, convenient or appropriate in connection with or incidental to the accomplishment of the purposes of the Corporation to the extent not forbidden by statute or by this certificate or the bylaws of the Corporation.

The above described purposes and powers, except wherein they contain specific prohibitions, shall not be deemed to limit the powers of the Corporation and it is intended that the Corporation shall have the power, subject to such limitations and conditions as are or may be prescribed by law, to exercise such other powers as are now, or may hereafter be, conferred by law upon a corporation organized for the purposes set forth herein or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitation and condition that, notwithstanding any other provision of this certificate, the Corporation is organized exclusively for one or more of the following purposes: charitable, scientific, religious and/or educational purposes, as specified in Section 501(c)(3) of the Internal Revenue Code, and shall not carry on, directly or indirectly, any activity not permitted to be carried on by a corporation that is exempt from Federal income taxation under Section 501 (c)(3) of the Internal Revenue Code.

FOURTH: The Corporation is a Type B corporation under N-PCL Section 201.

FIFTH: Alliance for Health Improvement, LLC, a New York limited liability company, has been vested with the following limited management duties and decision-making authority with respect to the Corporation: (i) to develop and approve the Corporation's written quality assurance standards that will be incorporated into the Corporation's quality assurance program, and (ii) to oversee the implementation and enforcement of the Corporation's quality assurance program.

SIXTH: No substantial part of the activities of the Corporation shall involve the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene in (including the publishing or distributing of statements) any

political campaign on behalf of (or in opposition to) any candidate for public office.

SEVENTH: The Corporation shall not organize, operate, or conduct an institution of the kind referred to in N-PCL Section 404 (a)-(n), (p)-(s) and (u)-(v). With respect to N-PCL Section 404(o) and (r), there is annexed hereto the approval of the Public Health Council.

EIGHTH: For those periods (if any) during which the Corporation is a private foundation within the meaning of Section 509 of the Internal Revenue Code, then the Corporation shall make distributions at such time and in such manner as not to subject the Corporation to taxation under Section 4942 of the Code, and the Corporation shall not engage in any act of self-dealing (as defined in Section 4941(d) of the Code), nor retain any excess business holdings (as defined in Section 4941(c) of the Code), nor make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code, nor make any taxable expenditures (as defined Section 4945(d) of the Code).

NINTH: The Corporation is not formed for pecuniary profit or financial gain and no part of its assets or net earnings shall inure to the benefit of any member, trustee, officer or director of the Corporation or any private individual, firm, corporation or association (except that reasonable compensation may be paid for services and payments and distributions may be made in furtherance of the purposes set forth herein) and no member, trustee, director or officer of the Corporation, nor any private individual, firm, corporation or association, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation, except as provided in Article EIGHTH.

TENTH: Upon the liquidation or dissolution of the Corporation, after payment of

all of the liabilities of the Corporation or due provision therefor, all of the assets of the Corporation shall be distributed subject to the approval of a Justice of the Supreme Court of the State of New York, but only to an organization or organizations whose purposes are exclusively charitable, scientific, religious and/or educational, and which organization or organizations qualify as exempt at such time under Section 501(c)(3) of the Code.

ELEVENTH: The names and addresses of the initial trustees of the Corporation are:

<u>Name</u>	<u>Address</u>
Marrienne Coughlin, M.D.	One Gustave Levy Place, NY, NY 10029
Connie Klepper	One Gustave Levy Place, NY, NY 10029
Burton Drayer, M.D.	One Gustave Levy Place, NY, NY 10029
Dianne Fogg	One Gustave Levy Place, NY, NY 10029

TWELFTH: The office of the Corporation is to be located in the City of New York, County of New York.

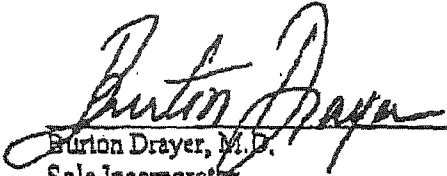
THIRTEENTH: The duration of the Corporation shall expire on January 23, 2007, unless extended thereafter by the Public Health Council.

FOURTEENTH: The Secretary of State (the "Secretary") is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary shall mail a copy of any process accepted on behalf of the Corporation is: 1470 Madison Avenue, New York, New York 10029, Attn: Executive Director.

FIFTEENTH: All references herein: (i) to the Internal Revenue Code shall be deemed to refer to the Internal Revenue Code of 1986, as now in force or hereafter amended; (ii) to the Not-For-Profit Corporation Law shall be deemed to refer to said Not-For-Profit Corporation Law of the State of New York as now in force or hereafter amended; and (iii) to

particular sections of the Internal Revenue Code or said Not-For-Profit Corporation Law shall be deemed to refer to similar or successor provisions hereafter adopted.

IN WITNESS WHEREOF, I have subscribed this certificate and do hereby affirm the foregoing as true under the penalties of perjury, this 4 day of March, 2004.

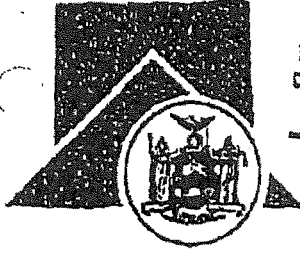


Burton Drayer, M.D.
Sole Incorporator
c/o The Mount Sinai Hospital
One Gustave Levy Place
New York, New York 10029

MAY-05-2004 10:55

RUPES & GRAY LLP

04-26-04 09:48 FROM-



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

April 2, 2004

Mr. David Alge
Executive Director
Mount Sinai Diagnostic and Treatment Center
1470 Madison Avenue, Box 1051
New York, New York 10029

Re: Certificate of Incorporation of Mount Sinai Diagnostic & Treatment Center

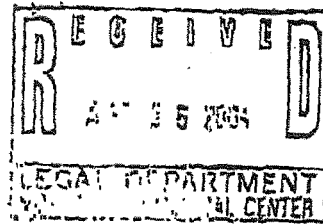
Dear Mr. Alge:

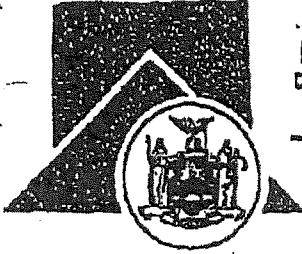
AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 23rd day of January, 2004, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Mount Sinai Diagnostic & Treatment Center, dated March 4, 2004.

Sincerely,

Karen S. Westervelt
Executive Secretary

Jmd





STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

April 2, 2004

Mr. David Alge
Executive Director
Mount Sinai Diagnostic and Treatment Center
1470 Madison Avenue, Box 1051
New York, New York 10029

Re: Application No. 032545 - Mount Sinai Diagnostic and Treatment Center
(New York County)

Dear Mr. Alge:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Mount Sinai Diagnostic and Treatment Center is APPROVED, the contingencies having now been fulfilled satisfactorily. The Public Health Council had considered this application and imposed the contingencies at its meeting of January 23, 2004.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

To complete the requirements for certification approval, please contact the Metropolitan Area/Regional Office of the New York State Office of Health Systems Management, 4 Penn Plaza, 4th Floor, 8th Avenue between W. 33rd and @. 34th Streets, New York, New York 10001 or (212) 268-7215, within 30 days of receipt of this letter.

Sincerely,

Donna Peterson
for
Karen S. Westervelt
Executive Secretary

/md

*CSO
DRAWN*

CERTIFICATE OF INCORPORATION

OF

MOUNT SINAI DIAGNOSTIC & TREATMENT CENTER

Section 402 of the Not-for-Profit Corporation Law

*FA
Typed*

Filer: Ropes & Gray
45 Rockefeller Plaza
11th Floor
New York, NY 10111
Cust. Ref#603299Dav

DRAWDOWN

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STATE OF NEW YORK
DEPARTMENT OF STATE
FILED APR 30 2004
TAX \$ _____
BY: owl
NY

FILED

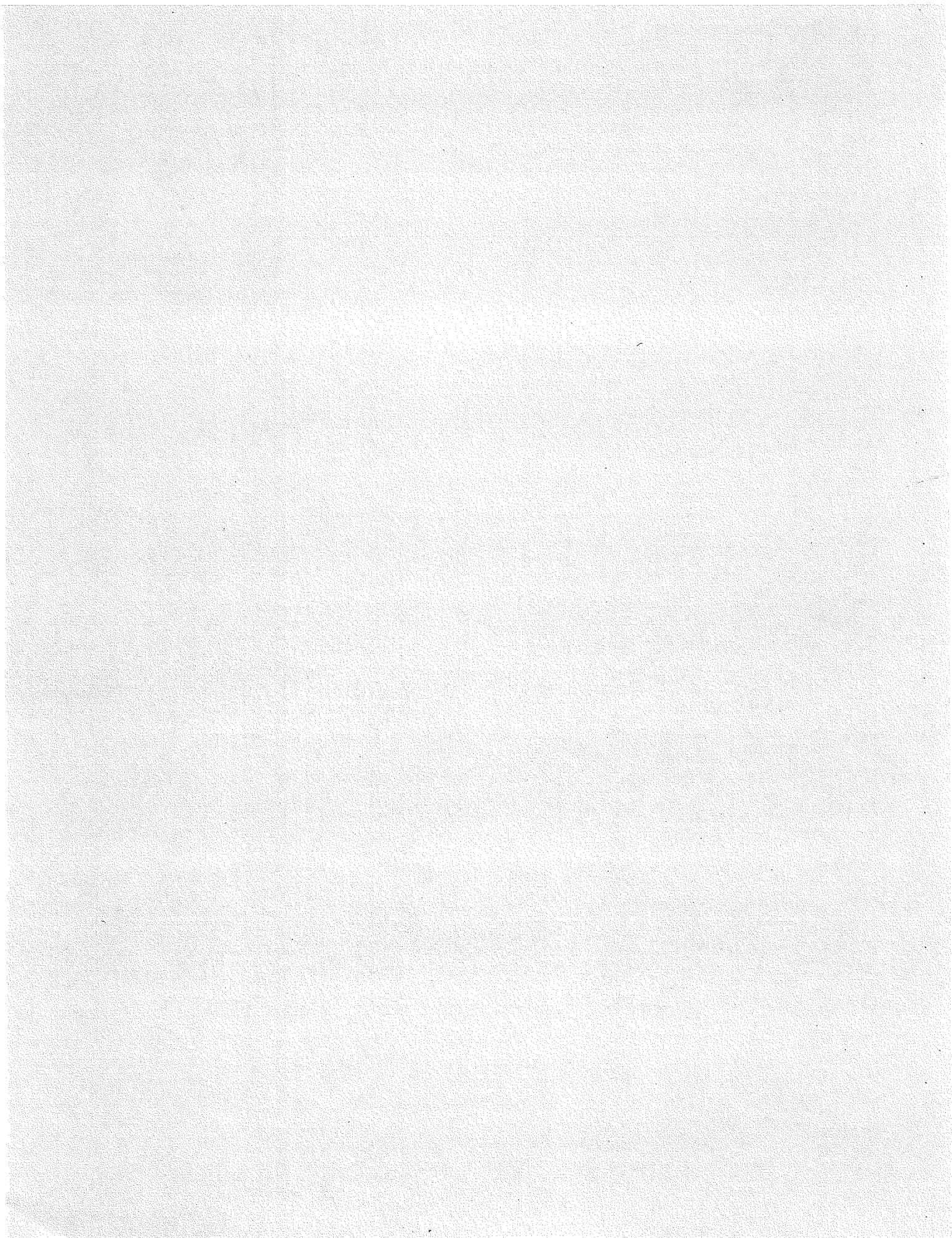
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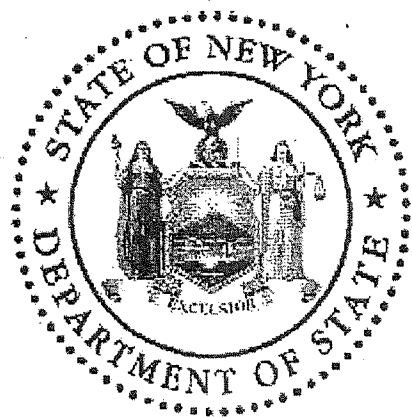
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STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy for MOUNT SINAI DIAGNOSTIC & TREATMENT CENTER, File Number 080108000230 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on December 09, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

Rev. 06/07

Authentication Number: 1512091012 To verify the authenticity of this document you may access the Division of Corporations' Document Authentication Website at <http://ecorp.dos.ny.gov>

080108000230

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION OF
MOUNT SINAI DIAGNOSTIC & TREATMENT CENTER**

Under Section 803 of the Not-For-Profit Corporation Law

THE UNDERSIGNED, being the Chairman of the Board of Trustees of Mount Sinai Diagnostic & Medical Treatment Center, hereby certifies:

FIRST: The name of the Corporation is, Mount Sinai Diagnostic & Treatment Center (the "Corporation").

SECOND: The Certificate of Incorporation of the Corporation was filed by the Department of State on April 30, 2004. The Corporation was formed under the Not-For-Profit Corporation Law of the State of New York (the "N-PCL").

THIRD: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the N-PCL. The Corporation is, and shall hereafter continue to be, a Type B corporation as defined in Section 201 of the N-PCL.

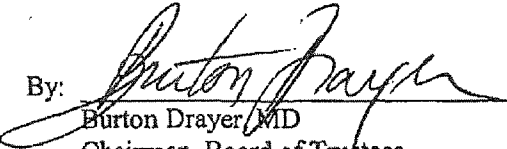
FOURTH: Article Thirteenth of the Certificate of Incorporation of the Corporation, which set forth the duration of the Corporation, is hereby amended to revive the existence of the Corporation and then establish its duration as follows:

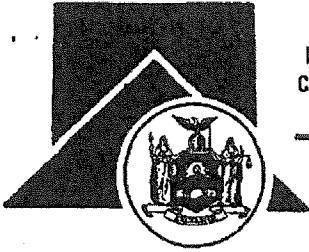
The duration of the Corporation shall have a perpetual life.

FIFTH: This amendment to the Certificate of Incorporation of the Corporation was authorized by the Executive Committee of the sole voting member at a meeting of the Executive Committee duly called and held on August 20, 2007.

SIXTH: The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is: 1470 Madison Avenue, New York, New York 10029, Attn: Executive Director.

IN WITNESS WHEREOF, the undersigned has subscribed this Certificate this 3rd day of January, 2008.

By: 
Burton Drayer MD
Chairman, Board of Trustees



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

RECEIVED

DEC 11 2007

LEGAL DEPARTMENT
MOUNT SINAI MEDICAL CENTER

December 4, 2007

Ms. Sally Strauss
Office of the General Counsel
Mt. Sinai Hospital
1 Gustave Place
New York, New York 10029

Re: Certificate of Amendment of the Certificate of Incorporation of Mount Sinai
Diagnostic & Treatment Center

Dear Ms. Strauss:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 7th day of September, 2007, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Mount Sinai Diagnostic & Treatment Center, dated November 16, 2007.

Sincerely,

Colleen M. Frost
Executive Secretary

/cf

RECEIVED
BUREAU OF

DEC 19 2007

CORPORATIONS
DEPARTMENT OF STATE

080108000230

Certificate of Amendment
Of
Certificate of Incorporation
Of

MOUNT SINAI DIAGNOSTIC & TREATMENT CENTER

(List Entity Name)

Under Section 803 of the Not-For-Profit Corporation Law

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JAN 08 2008

TAXS _____

BY: _____

NEWY

Filed by:

Sally Strauss, Esq. Senior Associate General Counsel

(Name) Office of the General Counsel

The Mount Sinai Hospital

(Mailing address) One Gustave L. Levy Place

New York, NY 10029

(City, State and Zip Code)

AAO

080108000257

EXHIBIT B

Plan of Dissolution

PLAN OF DISSOLUTION
OF
MOUNT SINAI DIAGNOSTIC & TREATMENT CENTER
UNDER SECTION 1001 OF THE NEW YORK NOT-FOR-PROFIT CORPORATION
LAW

The Board of Trustees of the Mount Sinai Diagnostic & Treatment Center (“MSDTC”), acting by unanimous vote, having considered the advisability of voluntarily dissolving MSDTC, and it being the unanimous opinion of the Board of Trustees that the dissolution of MSDTC is advisable and in the best interests of MSDTC, does hereby adopt and recommend to the sole member of MSDTC, The Mount Sinai Hospital, for approval the following Plan of Dissolution (the “Plan of Dissolution”):

1. MSDTC does not have any assets or liabilities.
2. Approval of the dissolution of MSDTC is required from the New York State Department of Health and/or the New York State Public Health and Health Planning Council.
3. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.

Certification

The undersigned, Michael Pastier, Secretary and Trustee of MSDTC, hereby certifies that the sole member of the Board of Trustees of MSDTC has heretofore executed a Unanimous Written Consent of the Board of Trustees of MSDTC dated Jan. 28, 2019 expressly approving and authorizing the foregoing Plan of Dissolution, and that the sole member of the Corporation, The Mount Sinai Hospital, approved the foregoing Plan of Dissolution by written action adopted by a duly authorized officer of The Mount Sinai Hospital on Jan. 30, 2019



Name: Michael Pastier
Title: Secretary and Trustee
Date:

EXHIBIT C

Written Consent of the Board of Trustees

**UNANIMOUS WRITTEN CONSENT
OF THE
BOARD OF TRUSTEES
OF
MOUNT SINAI DIAGNOSTIC & TREATMENT CENTER**

THE UNDERSIGNED, being the sole member of the Board of Trustees of Mount Sinai Diagnostic & Treatment Center (the "MSDTC"), acting pursuant to the authority of Sections 708(b), 1001(a) and 1002(a)(1)(ii) of the New York Not-for-Profit Corporation Law ("NPCL"), hereby consents to the adoption of the following specified resolutions and adopt such resolutions with the same force and effect as if they had been approved and adopted at a duly noticed and constituted meeting of the Board of Trustees of the MSDTC:

WHEREAS, in 2004, The Mount Sinai Hospital ("MSH") formed, and continues to serve as the sole member of, the MSDTC for the purpose of enhancing the provision of certain primary and specialty health care services to the East Harlem Community as well as to the larger New York community;

WHEREAS, the MSDTC is a New York State charitable not-for-profit corporation that was licensed as a Diagnostic and Treatment Center under Article 28 of the Public Health Law of the State of New York;

WHEREAS, the New York State Department of Health ("DOH") encouraged MSH to form the MSDTC as a means to enhance collaboration with North General Hospital and its newly created Diagnostic and Treatment Center ("NGDT") and develop improved quality assurance standards and innovative management techniques in order to better control and prevent the chronic diseases plaguing the East Harlem community, such as diabetes, heart disease and cancer;

WHEREAS, to promote this collaboration and to encourage the ongoing provision of their services, DOH agreed to increase certain Medicaid outpatient reimbursement to both the MSDTC and NGDT to reduce the significant financial losses each of the hospitals was incurring in connection with providing such services within the hospital outpatient settings;

WHEREAS, the MSDTC provided services in previously existing hospital space utilizing the same or a similar composition of professionals, staff and supplies previously utilized by MSH to furnish these services;

WHEREAS, throughout the duration of the operation of the MSDTC, MSH has continued to own the property and equipment used to provide the MSDTC's clinical services and remained the employer of the professionals and support staff who provide services for the patients treated by the MSDTC, but entered into appropriate service agreements and leases with the MSDTC and provided the necessary financial support to ensure that the MSDTC had all the appropriate equipment, supplies and staff to provide top quality health care to treat its patients;

WHEREAS, the Medicaid reimbursement methodology has evolved since the inception of the MSDTC, reducing the impact of the enhanced reimbursement, and Medicaid patients have shifted into Medicaid managed care plans, with the result of eliminating the financial benefits of maintaining a clinic structure separate from MSH;

WHEREAS, North General Hospital and NGDT declared bankruptcy and ended all operations, including termination of the collaborative projects and agreements with the MSDTC;

WHEREAS, since the reasons for the creation of the MSDTC no longer apply, the DOH has indicated that it will approve the dissolution of the MSDTC and has authorized MSH to assume the provision of the MSDTC's services as hospital outpatient services, as previously provided prior to the creation of MSDTC;

WHEREAS, the MSDTC's services have in fact been transferred to, and are now being conducted by, MSH;

WHEREAS, the MSDTC and MSH have maintained common insurance coverage and MSH has indicated its willingness to continue such coverage following the dissolution of the MSDTC in the event any potential future claims relating to the MSDTC arise in the future;

WHEREAS, the dissolution of the MSDTC requires the approval of MSH, as the sole member of the MSDTC, under the NPCL;

WHEREAS, the Board of Trustees of the MSDTC desire to approve the Plan of Dissolution of the MSDTC, which is attached hereto as Exhibit A (the "**Plan of Dissolution**"), and recommend such Plan of Dissolution for the approval of MSH as the sole member of the MSDTC under Section 1002 of the NPCL; and

WHEREAS, a Certificate of Dissolution, attached as Exhibit B ("**Certificate of Dissolution**") hereto, has been prepared on behalf of the MSDTC in contemplation of its dissolution.

NOW THEREFORE, BE IT:

RESOLVED, that the Board of Trustees of the MSDTC hereby deems it advisable and in the best interests of the MSDTC and MSH that the MSDTC be dissolved in accordance with the Plan of Dissolution attached as Exhibit A hereto as soon as practicable after the adoption of these resolutions, which Plan of Dissolution is hereby approved and adopted substantially in the form attached hereto by the Board of Trustees of the MSDTC pursuant to Section 1001(a) and 1002(a)(1)(ii) of the NPCL; and be it further

RESOLVED, that the Board of Trustees of the MSDTC hereby recommends to MSH that MSH approve the dissolution of the MSDTC in accordance with the Plan of Dissolution; and be it further

RESOLVED, that the Board of Trustees of the MSDTC hereby approves the Certificate of Dissolution substantially in the form attached hereto as Exhibit B and recommends such Certificate of Dissolution to MSH for approval in its capacity as the sole member of the MSDTC; and be it further

RESOLVED, that the transfer of the healthcare operations of the MSDTC back to MSH for operation within its outpatient hospital clinics is hereby ratified and approved in all respects; and be it further


RESOLVED, that any agreements between MSH and MSDTC as to employees, space, equipment, etc., with respect to the operations of the MSDTC that were transferred back to MSH for continuing operation within MSH's outpatient hospital clinics be terminated; and be it further

RESOLVED, that each of the Officers and Trustees of the MSDTC shall be, and each of them hereby is, authorized and directed, in the name and on behalf of the MSDTC, to take all such actions as they shall deem necessary or advisable in furtherance of effecting the dissolution of the MSDTC in accordance with the Plan of Dissolution and the intent of these resolutions, including, but not limited to: (i) making such revisions to the Plan of Dissolution as may be required by any governmental or judicial authority, or as may be recommended by the MSDTC's legal counsel; (ii) filing Verified Petitions with the Attorney General of the State of New York for Approval of the Plan of Dissolution and the Certificate of Dissolution, and making any such revisions thereto as necessary to ensure the accuracy and completeness thereof, or as may be required by any governmental or judicial authority, or on the advice of legal counsel; (iii) obtaining any required governmental or judicial approvals, including, but not limited to, the New York State Department of Health, the New York State Public Health and Health Planning Council and the Attorney General of the State of New York; (iv) filing the Certificate of Dissolution with the New York Secretary of State, including making such revisions thereto as, on the advice of legal counsel, shall be necessary or otherwise advisable to effectuate the intent of these resolutions, and (v) executing and delivering all such agreements, documents, certificates and instruments necessary to complete the Plan of Dissolution and consummate the dissolution of the MSDTC, including all such tax filings and other documents as may be required by any regulatory agency, court or other governmental body, the authority and necessity for the taking of such actions and the execution and delivery of such agreements, documents, certificates, and instruments to be conclusively evidenced thereby; and be it further

RESOLVED, that this Consent may be executed and delivered by exchange of electronic or facsimile copies showing the signature of the signatory hereto, which shall constitute an originally signed copy of the same Consent requiring no further execution.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the undersigned, constituting the sole Trustee of the MSDTC, does hereby execute this Consent on the date indicated below next to his name, and this Consent shall take effect as of such date.


By: Michael J. Pastier
Date: 11/28/09

*[Signature Page to Unanimous Written Consent of the Board of Trustees of
Mount Sinai Diagnostic & Treatment Center]*

EXHIBIT D

Written Consent of the Sole Member

**WRITTEN CONSENT
OF
THE MOUNT SINAI HOSPITAL
AS THE
SOLE MEMBER
OF
MOUNT SINAI DIAGNOSTIC & TREATMENT CENTER**

Dissolution of Mount Sinai Diagnostic & Treatment Center

WHEREAS, in 2004, the Mount Sinai Hospital ("MSH") formed Mount Sinai Diagnostic & Treatment Center (the "MSDTC") for the purpose of enhancing the provision of certain primary and specialty health care services to the East Harlem Community as well as to the larger New York community; and

WHEREAS, the New York State Department of Health ("DOH") encouraged MSH to form the MSDTC as a means to enhance collaboration with North General Hospital and its newly created Diagnostic and Treatment Center and develop improved quality assurance standards and innovative management techniques to better control and prevent the chronic diseases such as diabetes, heart disease and cancer, plaguing the East Harlem community; and

WHEREAS, to promote this collaboration and to encourage the ongoing provision of such services, DOH agreed to increase certain Medicaid outpatient reimbursement to both MSHDTC and North General Hospital's DTC to reduce the significant financial losses each of the hospitals were incurring in connection with providing these services within the hospital outpatient settings; and

WHEREAS, the MSDTC provided services in previously existing hospital space utilizing the same or a similar composition of professionals, staff and supplies that MSH used to furnish these services; and

WHEREAS, throughout the duration of the operation of the MSDTC, MSH continued to own the property and equipment used to provide the clinic services and remained the employer of the professionals and support staff who provide services for the patients treated at the clinics, but entered into appropriate service agreements and leases with the MSDTC and provided the necessary financial support to ensure that the MSDTC had all the appropriate equipment, supplies and staff to provide top quality health care to the patients treated at the center; and

WHEREAS, the Medicaid reimbursement methodology has evolved since the inception of the MSDTC reducing the impact of the enhanced reimbursement and Medicaid patients have shifted into Medicaid managed care plans, with the result of eliminating the financial benefits of maintaining a clinic structure separate from the MSH; and

WHEREAS, North General Hospital and its Diagnostic and Treatment Center declared bankruptcy and ended all operations including termination of its collaborative projects and agreements with the MSDTC; and

WHEREAS, since the reasons for the creation of the MSDTC no longer apply, the DOH has indicated that it will approve the dissolution of the MSDTC and has authorized MSH to provide these same services as hospital outpatient services as previously provided prior to the creation of the MSDTC; and

WHEREAS, the MSDTC's services have in fact been transferred to, and are now being conducted by, MSH; and

WHEREAS, the Plan of Dissolution and Distribution of Assets of the MSDTC attached hereto as Exhibit A (the "Plan of Dissolution") and the Certificate of Dissolution attached hereto as Exhibit B (the "Certificate of Dissolution") have been approved by the Board of Trustees of the MSDTC, which has recommended such documents for approval by MSH; and

WHEREAS, MSH is the sole member of the MSDTC and in such capacity its approval is required for the dissolution of the MSDTC and the adoption of the Plan of Dissolution; and

WHEREAS, in connection with the dissolution of the MSDTC, MSH desires to approve and ratify the forgiveness and release of the MSDTC from any and all outstanding debt owed by the MSDTC to MSH, if any,

NOW, THEREFORE, BE IT:

RESOLVED, that MSH hereby deems it advisable and in the best interests of the MSDTC and MSH that the MSDTC be dissolved in accordance with the Plan of Dissolution attached as Exhibit A hereto as soon as practicable after the adoption of these resolutions, which Plan of Dissolution is hereby approved and adopted substantially in the form attached hereto by MSH pursuant to Section 1002(a) of the NPCL;

RESOLVED, that MSH hereby approves the Certificate of Dissolution substantially in the form attached hereto as Exhibit B;

RESOLVED, that the transfer of the healthcare operations of the MSDTC back to MSH for operation within its outpatient hospital clinics is hereby ratified and approved in all respects, and that any agreements between MSH and the MSDTC as to employees, space, equipment, etc., with respect to the operations of the MSDTC that were transferred back to MSH for continuing operation within MSH's outpatient hospital clinics be terminated;

RESOLVED, that the Chairman of the Board of Trustees of MSH, any Vice-Chairman of the Board of Trustees of the MSH, the Chief Executive Officer of MSH, the


President of MSH and any Executive Vice-President of MSH acting on behalf of the MSH, and each of the Officers and Trustees of the MSDTC acting on behalf of the MSDTC (each an "Authorized Officer") are, and each of them hereby is, authorized and directed to negotiate, execute and deliver such consents, agreements, instruments, certificates, and documents as may be necessary or appropriate in connection with the effectuation of the foregoing resolutions and the transactions contemplated thereby, all in such form and with such terms as the Authorized Officer executing the same may approve, the execution and delivery thereof by such Authorized Officer to be conclusive evidence of such approval, and to take all such further action in the name and on behalf of MSH or MSDTC, as applicable, as may be necessary or advisable to carry out the intent of these resolutions and the transactions contemplated hereby or thereby, including, but not limited to approving such revisions to the Plan of Dissolution or Certificate of Dissolution as may be required by any governmental authority or as may be recommended by legal counsel and executing and filing the same with the applicable governmental authorities;

RESOLVED, that MSH hereby forgives, and releases the MSDTC from, any and all indebtedness owed by the MSDTC to MSH, if any; and be it further

RESOLVED, that this Consent may be executed and delivered by exchange of electronic or facsimile copies showing the signature of the signatory hereto, which shall constitute an originally signed copy of the same Consent requiring no further execution.

[Remainder of page intentionally left blank. Signature page follows.]

THE MOUNT SINAI HOSPITAL

By: 
Name: Kenneth L. Davis, M.D.
Title: President & CEO
Date: January 30, 2019

[Signature Page to Written Consent of The Mount Sinai Hospital as the Sole Member of Mount Sinai Diagnostic & Treatment Center]

EXHIBIT E

Form 990

Part V Other Information (Note the Schedule A and personal benefit contract statement requirements in the instructions for Part V.) Check if the organization used Schedule O to respond to any question in this Part V.

33 Did the organization engage in any significant activity not previously reported to the IRS? If "Yes," provide a detailed description of each activity in Schedule O. 34 Were any significant changes made to the organizing or governing documents? 35a Did the organization have unrelated business gross income of \$1,000 or more during the year from business activities... 35b If "Yes," to line 35a, has the organization filed a Form 990-T for the year? 35c Was the organization a section 501(c)(4), 501(c)(5), or 501(c)(6) organization... 36 Did the organization undergo a liquidation, dissolution, termination, or significant disposition of net assets during the year? 37a Enter amount of political expenditures, direct or indirect, as described in the instructions. 37b Did the organization file Form 1120-POL for this year? 38a Did the organization borrow from, or make any loans to, any officer, director, trustee, or key employee... 38b If "Yes," complete Schedule L, Part II and enter the total amount involved. 39 Section 501(c)(7) organizations. Enter: 39a Initiation fees and capital contributions included on line 9. 39b Gross receipts, included on line 9, for public use of club facilities. 40a Section 501(c)(3) organizations. Enter amount of tax imposed on the organization during the year under: section 4911, section 4912, section 4955. 40b Section 501(c)(3), 501(c)(4), and 501(c)(29) organizations. Did the organization engage in any section 4958 excess benefit transaction during the year... 40c Section 501(c)(3), 501(c)(4), and 501(c)(29) organizations. Enter amount of tax imposed on organization managers or disqualified persons during the year under sections 4912, 4955, and 4958. 40d Section 501(c)(3), 501(c)(4), and 501(c)(29) organizations. Enter amount of tax on line 40c reimbursed by the organization. 40e All organizations. At any time during the tax year, was the organization a party to a prohibited tax shelter transaction? 41 List the states with which a copy of this return is filed. 42a The organization's books are in care of RACHEL CROWL Telephone no. 646 605 4102 Located at 150 E 42ND STREET NEW YORK, NY ZIP + 4 10017 42b At any time during the calendar year, did the organization have an interest in or a signature or other authority over a financial account in a foreign country... 42c At any time during the calendar year, did the organization maintain an office outside the United States? 43 Section 4947(a)(1) nonexempt charitable trusts filing Form 990-EZ in lieu of Form 1041 - Check here and enter the amount of tax-exempt interest received or accrued during the tax year. 44a Did the organization maintain any donor advised funds during the year? 44b Did the organization operate one or more hospital facilities during the year? 44c Did the organization receive any payments for indoor tanning services during the year? 44d If "Yes" to line 44c, has the organization filed a Form 720 to report these payments? 45a Did the organization have a controlled entity within the meaning of section 512(b)(13)? 45b Did the organization receive any payment from or engage in any transaction with a controlled entity within the meaning of section 512(b)(13)?

46 Did the organization engage, directly or indirectly, in political campaign activities on behalf of or in opposition to candidates for public office? If "Yes," complete Schedule C, Part I **46** Yes No

Part VI Section 501(c)(3) organizations only

All section 501(c)(3) organizations must answer questions 47-49b and 52, and complete the tables for lines 50 and 51.

Check if the organization used Schedule O to respond to any question in this Part VI

47 Did the organization engage in lobbying activities or have a section 501(h) election in effect during the tax year? If "Yes," complete Schedule C, Part II **47** Yes No

48 Is the organization a school as described in section 170(b)(1)(A)(ii)? If "Yes," complete Schedule E **48** Yes No

49a Did the organization make any transfers to an exempt non-charitable related organization? **49a** Yes No

b If "Yes," was the related organization a section 527 organization? **49b** Yes No

50 Complete this table for the organization's five highest compensated employees (other than officers, directors, trustees, and key employees) who each received more than \$100,000 of compensation from the organization. If there is none, enter "None."

(a) Name and title of each employee	(b) Average hours per week devoted to position	(c) Reportable compensation (Forms W-2/1099-MISC)	(d) Health benefits, contributions to employee benefit plans, and deferred compensation	(e) Estimated amount of other compensation
NONE				

f Total number of other employees paid over \$100,000 **0**

51 Complete this table for the organization's five highest compensated independent contractors who each received more than \$100,000 of compensation from the organization. If there is none, enter "None."

(a) Name and business address of each independent contractor	(b) Type of service	(c) Compensation
0		0

d Total number of other independent contractors each receiving over \$100,000 **0**

52 Did the organization complete Schedule A? Note: All section 501(c)(3) organizations must attach a completed Schedule A Yes No

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here

Signature of officer _____ Date _____

Type or print name and title _____

Paid Preparer Use Only

Print/Type preparer's name: LAURA KIELCZEWSKI Preparer's signature: _____ Date: _____

Firm's name: ERNST & YOUNG U.S. LLP Firm's EIN: 34-6565596

Firm's address: 5 TIMES SQUARE Phone no.: 212-773-3000

Check if self-employed PTIN: P00740769

May the IRS discuss this return with the preparer shown above? See instructions Yes No

SCHEDULE A
(Form 990 or 990-EZ)

Public Charity Status and Public Support

OMB No. 1545-0047

2017

Open to Public Inspection

Complete if the organization is a section 501(c)(3) organization or a section 4947(a)(1) nonexempt charitable trust.

▶ Attach to Form 990 or Form 990-EZ.

▶ Go to www.irs.gov/Form990 for instructions and the latest information.

Department of the Treasury
Internal Revenue Service

Name of the organization

MOUNT SINAI DIAGNOSTIC & TREATMENT CENTER

Employer identification number

45-0537391

Part I Reason for Public Charity Status (All organizations must complete this part.) See instructions.

The organization is not a private foundation because it is: (For lines 1 through 12, check only one box.)

- 1 A church, convention of churches, or association of churches described in section 170(b)(1)(A)(i).
- 2 A school described in section 170(b)(1)(A)(ii). (Attach Schedule E (Form 990 or 990-EZ).)
- 3 A hospital or a cooperative hospital service organization described in section 170(b)(1)(A)(iii).
- 4 A medical research organization operated in conjunction with a hospital described in section 170(b)(1)(A)(iii). Enter the hospital's name, city, and state: _____
- 5 An organization operated for the benefit of a college or university owned or operated by a governmental unit described in section 170(b)(1)(A)(iv). (Complete Part II.)
- 6 A federal, state, or local government or governmental unit described in section 170(b)(1)(A)(v).
- 7 An organization that normally receives a substantial part of its support from a governmental unit or from the general public described in section 170(b)(1)(A)(vi). (Complete Part II.)
- 8 A community trust described in section 170(b)(1)(A)(vi). (Complete Part II.)
- 9 An agricultural research organization described in section 170(b)(1)(A)(ix) operated in conjunction with a land-grant college or university or a non-land-grant college of agriculture (see instructions). Enter the name, city, and state of the college or university: _____
- 10 An organization that normally receives: (1) more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions - subject to certain exceptions, and (2) no more than 33 1/3% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975. See section 509(a)(2). (Complete Part III.)
- 11 An organization organized and operated exclusively to test for public safety. See section 509(a)(4).
- 12 An organization organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more publicly supported organizations described in section 509(a)(1) or section 509(a)(2). See section 509(a)(3). Check the box in lines 12a through 12d that describes the type of supporting organization and complete lines 12e, 12f, and 12g.
 - a **Type I.** A supporting organization operated, supervised, or controlled by its supported organization(s), typically by giving the supported organization(s) the power to regularly appoint or elect a majority of the directors or trustees of the supporting organization. You must complete Part IV, Sections A and B.
 - b **Type II.** A supporting organization supervised or controlled in connection with its supported organization(s), by having control or management of the supporting organization vested in the same persons that control or manage the supported organization(s). You must complete Part IV, Sections A and C.
 - c **Type III functionally integrated.** A supporting organization operated in connection with, and functionally integrated with, its supported organization(s) (see instructions). You must complete Part IV, Sections A, D, and E.
 - d **Type III non-functionally integrated.** A supporting organization operated in connection with its supported organization(s) that is not functionally integrated. The organization generally must satisfy a distribution requirement and an attentiveness requirement (see instructions). You must complete Part IV, Sections A and D, and Part V.
 - e Check this box if the organization received a written determination from the IRS that it is a Type I, Type II, Type III functionally integrated, or Type III non-functionally integrated supporting organization.

f Enter the number of supported organizations.

g Provide the following information about the supported organization(s).

(i) Name of supported organization	(ii) EIN	(iii) Type of organization (described on lines 1-10 above (see instructions))	(iv) Is the organization listed in your governing document?		(v) Amount of monetary support (see instructions)	(vi) Amount of other support (see instructions)
			Yes	No		
(A)						
(B)						
(C)						
(D)						
(E)						
Total						

For Paperwork Reduction Act Notice, see the Instructions for Form 990 or 990-EZ.

Schedule A (Form 990 or 990-EZ) 2017

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Part II Support Schedule for Organizations Described in Sections 170(b)(1)(A)(iv) and 170(b)(1)(A)(vi)
(Complete only if you checked the box on line 5, 7, or 8 of Part I or if the organization failed to qualify under Part III. If the organization fails to qualify under the tests listed below, please complete Part III.)

Section A. Public Support

Table with 7 columns: (a) 2013, (b) 2014, (c) 2015, (d) 2016, (e) 2017, (f) Total. Rows include: 1 Gifts, grants, contributions, and membership fees received; 2 Tax revenues levied for the organization's benefit; 3 The value of services or facilities furnished by a governmental unit; 4 Total. Add lines 1 through 3; 5 The portion of total contributions by each person; 6 Public support. Subtract line 5 from line 4.

Section B. Total Support

Table with 7 columns: (a) 2013, (b) 2014, (c) 2015, (d) 2016, (e) 2017, (f) Total. Rows include: 7 Amounts from line 4; 8 Gross income from interest, dividends, payments received on securities loans, rents, royalties, and income from similar sources; 9 Net income from unrelated business activities; 10 Other income. Do not include gain or loss from the sale of capital assets; 11 Total support. Add lines 7 through 10; 12 Gross receipts from related activities, etc. (see instructions); 13 First five years. If the Form 990 is for the organization's first, second, third, fourth, or fifth tax year as a section 501(c)(3) organization, check this box and stop here.

Section C. Computation of Public Support Percentage

Table with 2 columns: Line number, Percentage. Rows include: 14 Public support percentage for 2017; 15 Public support percentage from 2016 Schedule A, Part II, line 14; 16a 33 1/3% support test - 2017; 16b 33 1/3% support test - 2016; 17a 10%-facts-and-circumstances test - 2017; 17b 10%-facts-and-circumstances test - 2016; 18 Private foundation. If the organization did not check a box on line 13, 16a, 16b, 17a, or 17b, check this box and see instructions.

Part III Support Schedule for Organizations Described in Section 509(a)(2)

(Complete only if you checked the box on line 10 of Part I or if the organization failed to qualify under Part II. If the organization fails to qualify under the tests listed below, please complete Part II.)

Section A. Public Support

Calendar year (or fiscal year beginning in) ▶	(a) 2013	(b) 2014	(c) 2015	(d) 2016	(e) 2017	(f) Total
1 Gifts, grants, contributions, and membership fees received. (Do not include any "unusual grants.")						
2 Gross receipts from admissions, merchandise sold or services performed, or facilities furnished in any activity that is related to the organization's tax-exempt purpose						
3 Gross receipts from activities that are not an unrelated trade or business under section 513						
4 Tax revenues levied for the organization's benefit and either paid to or expended on its behalf						
5 The value of services or facilities furnished by a governmental unit to the organization without charge						
6 Total. Add lines 1 through 5						
7a Amounts included on lines 1, 2, and 3 received from disqualified persons						
b Amounts included on lines 2 and 3 received from other than disqualified persons that exceed the greater of \$5,000 or 1% of the amount on line 13 for the year						
c Add lines 7a and 7b.						
8 Public support. (Subtract line 7c from line 6.)						

Section B. Total Support

Calendar year (or fiscal year beginning in) ▶	(a) 2013	(b) 2014	(c) 2015	(d) 2016	(e) 2017	(f) Total
9 Amounts from line 6.						
10a Gross income from interest, dividends, payments received on securities loans, rents, royalties, and income from similar sources						
b Unrelated business taxable income (less section 511 taxes) from businesses acquired after June 30, 1975						
c Add lines 10a and 10b						
11 Net income from unrelated business activities not included in line 10b, whether or not the business is regularly carried on.						
12 Other income. Do not include gain or loss from the sale of capital assets (Explain in Part VI.)						
13 Total support. (Add lines 9, 10c, 11, and 12.)						
14 First five years. If the Form 990 is for the organization's first, second, third, fourth, or fifth tax year as a section 501(c)(3) organization, check this box and stop here. ▶ <input type="checkbox"/>						

Section C. Computation of Public Support Percentage

15 Public support percentage for 2017 (line 8, column (f) divided by line 13, column (f)).	15	%
16 Public support percentage from 2016 Schedule A, Part III, line 15.	16	%

Section D. Computation of Investment Income Percentage

17 Investment income percentage for 2017 (line 10c, column (f) divided by line 13, column (f))	17	%
18 Investment income percentage from 2016 Schedule A, Part III, line 17	18	%

- 19a 33 1/3% support tests - 2017. If the organization did not check the box on line 14, and line 15 is more than 33 1/3%, and line 17 is not more than 33 1/3%, check this box and stop here. The organization qualifies as a publicly supported organization. ▶
- b 33 1/3% support tests - 2016. If the organization did not check a box on line 14 or line 19a, and line 16 is more than 33 1/3%, and line 18 is not more than 33 1/3%, check this box and stop here. The organization qualifies as a publicly supported organization. ▶
- 20 Private foundation. If the organization did not check a box on line 14, 19a, or 19b, check this box and see instructions. ▶

Part IV Supporting Organizations

(Complete only if you checked a box in line 12 on Part I. If you checked 12a of Part I, complete Sections A and B. If you checked 12b of Part I, complete Sections A and C. If you checked 12c of Part I, complete Sections A, D, and E. If you checked 12d of Part I, complete Sections A and D, and complete Part V.)

Section A. All Supporting Organizations

	Yes	No
1 Are all of the organization's supported organizations listed by name in the organization's governing documents? If "No," describe in Part VI how the supported organizations are designated. If designated by class or purpose, describe the designation. If historic and continuing relationship, explain.		
2 Did the organization have any supported organization that does not have an IRS determination of status under section 509(a)(1) or (2)? If "Yes," explain in Part VI how the organization determined that the supported organization was described in section 509(a)(1) or (2).		
3a Did the organization have a supported organization described in section 501(c)(4), (5), or (6)? If "Yes," answer (b) and (c) below.		
b Did the organization confirm that each supported organization qualified under section 501(c)(4), (5), or (6) and satisfied the public support tests under section 509(a)(2)? If "Yes," describe in Part VI when and how the organization made the determination.		
c Did the organization ensure that all support to such organizations was used exclusively for section 170(c)(2)(B) purposes? If "Yes," explain in Part VI what controls the organization put in place to ensure such use.		
4a Was any supported organization not organized in the United States ("foreign supported organization")? If "Yes," and if you checked 12a or 12b in Part I, answer (b) and (c) below.		
b Did the organization have ultimate control and discretion in deciding whether to make grants to the foreign supported organization? If "Yes," describe in Part VI how the organization had such control and discretion despite being controlled or supervised by or in connection with its supported organizations.		
c Did the organization support any foreign supported organization that does not have an IRS determination under sections 501(c)(3) and 509(a)(1) or (2)? If "Yes," explain in Part VI what controls the organization used to ensure that all support to the foreign supported organization was used exclusively for section 170(c)(2)(B) purposes.		
5a Did the organization add, substitute, or remove any supported organizations during the tax year? If "Yes," answer (b) and (c) below (if applicable). Also, provide detail in Part VI, including (i) the names and EIN numbers of the supported organizations added, substituted, or removed; (ii) the reasons for each such action; (iii) the authority under the organization's organizing document authorizing such action; and (iv) how the action was accomplished (such as by amendment to the organizing document).		
b Type I or Type II only. Was any added or substituted supported organization part of a class already designated in the organization's organizing document?		
c Substitutions only. Was the substitution the result of an event beyond the organization's control?		
6 Did the organization provide support (whether in the form of grants or the provision of services or facilities) to anyone other than (i) its supported organizations, (ii) individuals that are part of the charitable class benefited by one or more of its supported organizations, or (iii) other supporting organizations that also support or benefit one or more of the filing organization's supported organizations? If "Yes," provide detail in Part VI.		
7 Did the organization provide a grant, loan, compensation, or other similar payment to a substantial contributor (defined in section 4958(c)(3)(C)), a family member of a substantial contributor, or a 35% controlled entity with regard to a substantial contributor? If "Yes," complete Part I of Schedule L (Form 990 or 990-EZ).		
8 Did the organization make a loan to a disqualified person (as defined in section 4958) not described in line 7? If "Yes," complete Part I of Schedule L (Form 990 or 990-EZ).		
9a Was the organization controlled directly or indirectly at any time during the tax year by one or more disqualified persons as defined in section 4946 (other than foundation managers and organizations described in section 509(a)(1) or (2))? If "Yes," provide detail in Part VI.		
b Did one or more disqualified persons (as defined in line 9a) hold a controlling interest in any entity in which the supporting organization had an interest? If "Yes," provide detail in Part VI.		
c Did a disqualified person (as defined in line 9a) have an ownership interest in, or derive any personal benefit from, assets in which the supporting organization also had an interest? If "Yes," provide detail in Part VI.		
10a Was the organization subject to the excess business holdings rules of section 4943 because of section 4943(f) (regarding certain Type II supporting organizations, and all Type III non-functionally integrated supporting organizations)? If "Yes," answer 10b below.		
b Did the organization have any excess business holdings in the tax year? (Use Schedule C, Form 4720, to determine whether the organization had excess business holdings.)		

Part IV Supporting Organizations (continued)

	Yes	No
11 Has the organization accepted a gift or contribution from any of the following persons?		
a A person who directly or indirectly controls, either alone or together with persons described in (b) and (c) below, the governing body of a supported organization?	11a	
b A family member of a person described in (a) above?	11b	
c A 35% controlled entity of a person described in (a) or (b) above? If "Yes" to a, b, or c, provide detail in Part VI.	11c	

Section B. Type I Supporting Organizations

	Yes	No
1 Did the directors, trustees, or membership of one or more supported organizations have the power to regularly appoint or elect at least a majority of the organization's directors or trustees at all times during the tax year? If "No," describe in Part VI how the supported organization(s) effectively operated, supervised, or controlled the organization's activities. If the organization had more than one supported organization, describe how the powers to appoint and/or remove directors or trustees were allocated among the supported organizations and what conditions or restrictions, if any, applied to such powers during the tax year.	1	
2 Did the organization operate for the benefit of any supported organization other than the supported organization(s) that operated, supervised, or controlled the supporting organization? If "Yes," explain in Part VI how providing such benefit carried out the purposes of the supported organization(s) that operated, supervised, or controlled the supporting organization.	2	

Section C. Type II Supporting Organizations

	Yes	No
1 Were a majority of the organization's directors or trustees during the tax year also a majority of the directors or trustees of each of the organization's supported organization(s)? If "No," describe in Part VI how control or management of the supporting organization was vested in the same persons that controlled or managed the supported organization(s).	1	

Section D. All Type III Supporting Organizations

	Yes	No
1 Did the organization provide to each of its supported organizations, by the last day of the fifth month of the organization's tax year, (i) a written notice describing the type and amount of support provided during the prior tax year, (ii) a copy of the Form 990 that was most recently filed as of the date of notification, and (iii) copies of the organization's governing documents in effect on the date of notification, to the extent not previously provided?	1	
2 Were any of the organization's officers, directors, or trustees either (i) appointed or elected by the supported organization(s) or (ii) serving on the governing body of a supported organization? If "No," explain in Part VI how the organization maintained a close and continuous working relationship with the supported organization(s).	2	
3 By reason of the relationship described in (2), did the organization's supported organizations have a significant voice in the organization's investment policies and in directing the use of the organization's income or assets at all times during the tax year? If "Yes," describe in Part VI the role the organization's supported organizations played in this regard.	3	

Section E. Type III Functionally Integrated Supporting Organizations

1 Check the box next to the method that the organization used to satisfy the Integral Part Test during the year (see instructions).			
a <input type="checkbox"/> The organization satisfied the Activities Test. Complete line 2 below.			
b <input type="checkbox"/> The organization is the parent of each of its supported organizations. Complete line 3 below.			
c <input type="checkbox"/> The organization supported a governmental entity. Describe in Part VI how you supported a government entity (see instructions).			
2 Activities Test. Answer (a) and (b) below.		Yes	No
a Did substantially all of the organization's activities during the tax year directly further the exempt purposes of the supported organization(s) to which the organization was responsive? If "Yes," then in Part VI identify those supported organizations and explain how these activities directly furthered their exempt purposes, how the organization was responsive to those supported organizations, and how the organization determined that these activities constituted substantially all of its activities.	2a		
b Did the activities described in (a) constitute activities that, but for the organization's involvement, one or more of the organization's supported organization(s) would have been engaged in? If "Yes," explain in Part VI the reasons for the organization's position that its supported organization(s) would have engaged in these activities but for the organization's involvement.	2b		
3 Parent of Supported Organizations. Answer (a) and (b) below.			
a Did the organization have the power to regularly appoint or elect a majority of the officers, directors, or trustees of each of the supported organizations? Provide details in Part VI.	3a		
b Did the organization exercise a substantial degree of direction over the policies, programs, and activities of each of its supported organizations? If "Yes," describe in Part VI the role played by the organization in this regard.	3b		

Part V Type III Non-Functionally Integrated 509(a)(3) Supporting Organizations

1 Check here if the organization satisfied the Integral Part Test as a qualifying trust on Nov. 20, 1970 (explain in Part VI). See instructions. All other Type III non-functionally integrated supporting organizations must complete Sections A through E.

Section A - Adjusted Net Income		(A) Prior Year	(B) Current Year (optional)
1	Net short-term capital gain	1	
2	Recoveries of prior-year distributions	2	
3	Other gross income (see instructions)	3	
4	Add lines 1 through 3.	4	
5	Depreciation and depletion	5	
6	Portion of operating expenses paid or incurred for production or collection of gross income or for management, conservation, or maintenance of property held for production of income (see instructions)	6	
7	Other expenses (see instructions)	7	
8	Adjusted Net Income (subtract lines 5, 6, and 7 from line 4).	8	
Section B - Minimum Asset Amount		(A) Prior Year	(B) Current Year (optional)
1 Aggregate fair market value of all non-exempt-use assets (see instructions for short tax year or assets held for part of year):			
a	Average monthly value of securities	1a	
b	Average monthly cash balances	1b	
c	Fair market value of other non-exempt-use assets	1c	
d	Total (add lines 1a, 1b, and 1c)	1d	
e Discount claimed for blockage or other factors (explain in detail in Part VI):			
2	Acquisition indebtedness applicable to non-exempt-use assets	2	
3	Subtract line 2 from line 1d.	3	
4	Cash deemed held for exempt use. Enter 1-1/2% of line 3 (for greater amount, see instructions).	4	
5	Net value of non-exempt-use assets (subtract line 4 from line 3)	5	
6	Multiply line 5 by .035.	6	
7	Recoveries of prior-year distributions	7	
8	Minimum Asset Amount (add line 7 to line 6)	8	
Section C - Distributable Amount			Current Year
1	Adjusted net income for prior year (from Section A, line 8, Column A)	1	
2	Enter 85% of line 1.	2	
3	Minimum asset amount for prior year (from Section B, line 8, Column A)	3	
4	Enter greater of line 2 or line 3.	4	
5	Income tax imposed in prior year	5	
6	Distributable Amount. Subtract line 5 from line 4, unless subject to emergency temporary reduction (see instructions).	6	
7 <input type="checkbox"/> Check here if the current year is the organization's first as a non-functionally integrated Type III supporting organization (see instructions).			

Part V Type III Non-Functionally Integrated 509(a)(3) Supporting Organizations (continued)

Section D - Distributions		Current Year		
1	Amounts paid to supported organizations to accomplish exempt purposes			
2	Amounts paid to perform activity that directly furthers exempt purposes of supported organizations, in excess of income from activity			
3	Administrative expenses paid to accomplish exempt purposes of supported organizations			
4	Amounts paid to acquire exempt-use assets			
5	Qualified set-aside amounts (prior IRS approval required)			
6	Other distributions (describe in Part VI). See instructions.			
7	Total annual distributions. Add lines 1 through 6.			
8	Distributions to attentive supported organizations to which the organization is responsive (provide details in Part VI). See instructions.			
9	Distributable amount for 2017 from Section C, line 6			
10	Line 8 amount divided by Line 9 amount			
Section E - Distribution Allocations (see instructions)		(i) Excess Distributions	(ii) Underdistributions Pre-2017	(iii) Distributable Amount for 2017
1	Distributable amount for 2017 from Section C, line 6			
2	Underdistributions, if any, for years prior to 2017 (reasonable cause required-explain in Part VI). See instructions.			
3	Excess distributions carryover, if any, to 2017			
a				
b	From 2013			
c	From 2014			
d	From 2015			
e	From 2016			
f	Total of lines 3a through e			
g	Applied to underdistributions of prior years			
h	Applied to 2017 distributable amount			
i	Carryover from 2012 not applied (see instructions)			
j	Remainder. Subtract lines 3g, 3h, and 3i from 3f.			
4	Distributions for 2017 from Section D, line 7: \$			
a	Applied to underdistributions of prior years			
b	Applied to 2017 distributable amount			
c	Remainder. Subtract lines 4a and 4b from 4.			
5	Remaining underdistributions for years prior to 2017, if any. Subtract lines 3g and 4a from line 2. For result greater than zero, explain in Part VI. See instructions.			
6	Remaining underdistributions for 2017. Subtract lines 3h and 4b from line 1. For result greater than zero, explain in Part VI. See instructions.			
7	Excess distributions carryover to 2018. Add lines 3j and 4c.			
8	Breakdown of line 7:			
a	Excess from 2013			
b	Excess from 2014			
c	Excess from 2015			
d	Excess from 2016			
e	Excess from 2017			

Part VI **Supplemental Information.** Provide the explanations required by Part II, line 10; Part II, line 17a or 17b; Part III, line 12; Part IV, Section A, lines 1, 2, 3b, 3c, 4b, 4c, 5a, 6, 9a, 9b, 9c, 11a, 11b, and 11c; Part IV, Section B, lines 1 and 2; Part IV, Section C, line 1; Part IV, Section D, lines 2 and 3; Part IV, Section E, lines 1c, 2a, 2b, 3a and 3b; Part V, line 1; Part V, Section B, line 1e; Part V, Section D, lines 5, 6, and 8; and Part V, Section E, lines 2, 5, and 6. Also complete this part for any additional information. (See instructions.)

PART 1, LINE 3

MOUNT SINAI DIAGNOSTIC & TREATMENT CENTER (DTC) IS SELECTING SCHEDULE A,
PART I, LINE 3. DTC MEETS THE DEFINITION OF A HOSPITAL FOR SCHEDULE A,
BUT DOES NOT QUALIFY AS A HOSPITAL ORGANIZATION THAT OPERATED AT LEAST
ONE HOSPITAL FACILITY, AT ANY TIME DURING THE TAX YEAR, AND THEREFORE IS
NOT REQUIRED TO FILE SCHEDULE H.

**SCHEDULE O
(Form 990 or 990-EZ)**

Supplemental Information to Form 990 or 990-EZ

OMB No. 1545-0047

Complete to provide information for responses to specific questions on
Form 990 or 990-EZ or to provide any additional information.

▶ Attach to Form 990 or 990-EZ.

▶ Information about Schedule O (Form 990 or 990-EZ) and its instructions is at www.irs.gov/form990.

2017

**Open to Public
Inspection**

Department of the Treasury
Internal Revenue Service

Name of the organization

MOUNT SINAI DIAGNOSTIC & TREATMENT CENTER

Employer identification number

45-0537391

ATTACHMENT 1

FORM 990EZ, PART III - ORGANIZATION'S PRIMARY EXEMPT PURPOSE

OPERATE A VARIETY OF DIAGNOSTIC & TREATMENT CLINICS ON BEHALF OF THE
MOUNT SINAI HOSPITAL.

FORM 990EZ, PART IV - LIST OF OFFICERS, DIRECTORS, TRUSTEES AND KEY EMPLOYEES

<u>NAME AND TITLE</u>	<u>AVERAGE HOURS PER WEEK DEVOTED TO POSITION</u>	<u>REPORTABLE COMPENSATION (FORM W-2/ 1099-MISC)</u>	<u>HEALTH BENEFITS, CONTRIBUTION TO EMPLOYEE BENEFIT PLANS AND DEFERRED COMPENSATION</u>	<u>ESTIMATED AMOUNT OF OTHER COMPENSATION</u>
LAVONIA FRANCIS DIRECTOR/CHAIRPERSON	1.00	0.	0.	0.
MICHAEL PASTIER TRUSTEE/SECRETARY	.50	0.	0.	0.
DAVID C. THOMAS, MD MEDICAL DIRECTOR	20.00	0.	0.	0.
GRAND TOTALS		<u>0.</u>	<u>0.</u>	<u>0.</u>

EXHIBIT F

Certificate of Dissolution

CERTIFICATE OF DISSOLUTION

OF

MOUNT SINAI DIAGNOSTIC & TREATMENT CENTER

UNDER SECTION 1003 OF THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned, Michael Pastier, Secretary and Trustee of Mount Sinai Diagnostic & Treatment Center (the "Corporation"), hereby certifies:

1. The name of the Corporation is: Mount Sinai Diagnostic & Treatment Center.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State of the State of New York on April 30, 2004.
3. The name, address and title of each of the Corporation's trustees and officers are:

Name and Address

Title

Michael Pastier
Senior Vice President/CFO
The Mount Sinai Hospital
One Gustave L. Levy Place
New York, New York 10029

Trustee and Secretary

David Thomas, MD, MS, MHPE
Professor of Medicine, Medical Education
& Rehabilitation Medicine
Vice Chair of Medicine, Associate Dean for CME
Director of Ambulatory Care & Training
Samuel M. Bronfman Department of Medicine
Center for Advanced Medicine
Mount Sinai School of Medicine
One Gustave L. Levy Place
New York, NY 10029

Medical Director

4. The Corporation is a charitable New York not-for-profit corporation.
5. At the time of authorization of its Plan of Dissolution, the Corporation did not hold any assets that 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 the unanimous written consent of the Board of Trustees of the Corporation pursuant to Section 1001, Section 1002 and Section 708(b) of the New York Not-for-Profit Corporation Law, and by the sole member of the Corporation, The Mount Sinai Hospital, by written consent duly adopted by a duly authorized officer of The Mount Sinai Hospital, pursuant to Section 1002 and Section 614 of the New York Not-for-Profit Corporation Law.
8. The Corporation is a charitable corporation with no assets. Prior to the delivery of this 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 New York State Attorney General.
9. The endorsement of the New York State Attorney General is affixed hereto.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of Mount Sinai Diagnostic & Treatment Center as of the 31 day of January, 2019.



By: Michael Pastier
Title: Secretary and Trustee

CERTIFICATE OF DISSOLUTION
OF
MOUNT SINAI DIAGNOSTIC & TREATMENT CENTER

Pursuant to Section 1003 of the Not-for-Profit Corporation Law

Filed by:

Sally Strauss, Esq.
Office of the General Counsel
The Mount Sinai Hospital
One Gustave L. Levy Place
New York, NY 10029

BYLAWS
OF
Mount Sinai Diagnostic & Treatment Center
A Not-For-Profit Corporation Organized Under
The Laws of the State of New York

As of February 25, 2004

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**BYLAWS OF
MOUNT SINAI DIAGNOSTIC & TREATMENT CENTER**

ARTICLE I

PURPOSE

The purposes for which the Mount Sinai Diagnostic & Treatment Center (the "Center") is formed are set forth in its certificate of incorporation.

ARTICLE II

THE MEMBERSHIP

2.01. MEMBERSHIP

The sole Member of the Center shall be The Mount Sinai Hospital, a New York not-for-profit corporation (the "Member").

2.02. POWERS AND RIGHTS

The Member shall have such powers and rights as provided under the New York Not-for-Profit Corporation Law without additional reserved powers.

2.03. VOTE OF MEMBER

The Board of Trustees of the Member, acting in accordance with the certificate of incorporation and bylaws of the Member, shall exercise the Member's rights and obligations. Except as otherwise provided by law or these Bylaws, an act by the vote of the Member shall be in accordance with the quorum, voting and other requirements, as applicable, set forth in the bylaws of the Member.

2.04. ANNUAL AND SPECIAL MEETINGS

There shall be an annual meeting of the Member, which shall be held on such date and at such time and place as are designated by the Member. Special meetings of the Member may be called at any time by the Member and shall be held at such time and place as are designated by the Member.

2.05. REPORT OF ANNUAL MEETING

At each annual meeting of the Member, the Board of Trustees shall present a report in form and substance as required by law, which report shall be filed with the records of the Center and an abstract thereof be entered in the minutes of the proceedings of the annual meeting.

ARTICLE III

BOARD OF TRUSTEES

3.01. GOVERNMENT AND POWERS

The government of the Center is hereby vested in the Board of Trustees, which shall have full legal authority and responsibility for the conduct of the Center. The activities of the Center shall be directed and controlled and its policies shall be adopted by the Board of Trustees, except as otherwise provided by law or by these Bylaws. The Board of Trustees may adopt such rules and regulations for the conduct of its meetings, the exercise of its powers and the management of the affairs and the property of the Center as it may deem proper, not inconsistent with the laws of the State of New York, the Certificate of Incorporation or these Bylaws. The Trustees shall be the directors of the Center for all purposes of the New York Not-for-Profit Corporation Law (the "N-PCL").

[Urban Health, LLC], a New York limited liability company, is vested with the following limited management duties and decision-making authority with respect to the Center: (i) to develop and approve the Center's written quality assurance standards that will be incorporated into the Center's quality assurance program, and (ii) to oversee the implementation and enforcement of the Center's quality assurance program.

3.02. NUMBER OF TRUSTEES

The Board of Trustees shall consist of no less than three (3) Trustees.

3.03. QUALIFICATION OF TRUSTEES

All Trustees shall be selected for their ability to participate effectively in fulfilling the Board of Trustees' responsibilities and the purposes of the Center. Trustees shall have such other qualifications as the Member may deem appropriate to assure that the Board of Trustees represents a broad range of community interests.

*

Alliance for Health
Improvement LLC
(Cert. of Incorporation
Article FIFTH)

3.04. TERM OF OFFICE; ELECTION

Trustees shall hold office for the term of one year or until their successors are elected and qualify. Except as provided in Section 3.06 relating to vacancies, Trustees shall be elected at the annual meeting of the Member.

3.05. RESIGNATION; REMOVAL

Any Trustee may resign at any time by giving written notice of such resignation to the Board of Trustees, the Chairman of the Board of Trustees or the Secretary. Such resignation shall take effect at the time specified therein, or, if not so specified, upon receipt thereof by the Board of Trustees, the Chairman of the Board of Trustees or the Secretary, as the case may be. Any Trustee may be removed with or without cause at any time by a vote of the Board of Trustees or a vote of the Member at any annual or special meeting of the Member.

3.06. VACANCIES

Vacancies in the membership of the Board of Trustees may be filled at any time by the Member.

ARTICLE IV

MEETINGS OF THE BOARD OF TRUSTEES

4.01. ANNUAL MEETING

Immediately following the annual meeting of the Member (or as soon as practicable thereafter), the annual meeting of the Board of Trustees for the election of officers of the Center and for the transaction of such other business as may properly come before the meeting shall be held at the offices of the Center in the month of April, or at such other time, date and place as may be fixed by the Board of Trustees.

4.02. REGULAR MEETINGS

Regular meetings of the Board of Trustees shall be held at the offices of the Center at such time, date and place as the Board of Trustees shall determine.

4.03. SPECIAL MEETINGS

Special meetings of the Board of Trustees shall be held at the offices of the Center or at such other place in the City of New York as the Chairman of the Board of Trustees or the Secretary may designate in the notice of meeting and may be called at any time by the Chairman of the Board of Trustees or the Secretary at the time and date specified in the notice of the

meeting or in the waiver of notice thereof. No business other than that specified in the Notice of a Special Meeting shall be transacted at such meeting.

4.04. NOTICE OF MEETINGS

Regular meetings (including the annual meeting) of the Board of Trustees may be held without notice; all special meetings of the Board of Trustees shall be held upon notice. Notice of meetings of the Board of Trustees shall be mailed by first class mail to each Trustee addressed to such Trustee at his1 address as it appears on the records of the Center not less than four (4) nor more than thirty (30) days before the day on which the meeting is to be held or sent by telegraph to such address or delivered to such Trustee personally not less than two (2) nor more than thirty (30) days before the day of such meeting. No notice need be given of any adjourned meeting, provided the time, date and place to which the meeting is adjourned is announced at the meeting at which the adjournment is taken. The attendance of a Trustee at any meeting of the Board of Trustees shall constitute a waiver of notice thereof.

4.05. MINUTES OF MEETINGS

Minutes shall be maintained of all meetings of the Board of Trustees, and shall reflect pertinent business conducted. Such minutes shall be regularly distributed to the members of the Board of Trustees.

4.06. QUORUM

Except as may be otherwise expressly required by law, at all meetings of the Board of Trustees, the presence of a majority of the Trustees in office shall be necessary and sufficient to constitute a quorum for the transaction of business. In the absence of a quorum, a majority of the Trustees present may adjourn the meeting from time-to-time until a quorum is present. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

4.07. VOTING

Each Trustee shall be entitled to one vote on each matter submitted to a vote of Trustees. At all meetings of the Board of Trustees, all matters shall be decided by the vote of a majority of the Trustees present at the meeting entitled to vote thereon, except as at the time otherwise expressly required by law or by these Bylaws.

4.08. ACTION BY BOARD OF TRUSTEES WITHOUT MEETING

1 All references herein to the masculine gender shall include the feminine gender.

Any action required or permitted to be taken by the Board of Trustees may be taken without a meeting if all the members of the Board of Trustees consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto shall be filed with the minutes of the proceedings of the Board of Trustees.

4.09. TELEPHONE PARTICIPATION IN MEETINGS

Any one or more members of the Board of Trustees may participate in a meeting of the Board of Trustees by means of a conference telephone or similar communications equipment allowing all Trustees participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

4.10. REPRESENTATION OF THE CENTER STAFF

The Center Staff shall have the right to be represented at meetings of the Board of Trustees (through attendance and participation, but not vote) by one member of the Center Staff selected by the Center Staff, except that this provision shall not apply to executive sessions where attendance of all non-Trustees shall be at the discretion of the Board of Trustees

4.11. COMPENSATION AND LIABILITIES OF THE BOARD OF TRUSTEES

(a) No Trustee shall receive any compensation for any services performed in his capacity as a Trustee, but such Trustee may be reimbursed for out-of-pocket expenses necessarily incurred in connection with his duties as a Trustee. Subject to any prohibition or restriction imposed by federal, state or municipal, statutory or administrative law or these By-laws, any Trustee may serve the Center in any other capacity and receive reasonable compensation therefor as authorized by the Board of Trustees.

(b) Trustees shall discharge their duties in good faith and with that degree of diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in like positions. In discharging their duties, Trustees, when acting in good faith, may rely upon the financial statements of the Center represented to them to be correct by the Chairman of the Board or the Treasurer of the Center, or stated in a written report by an independent public or certified public accountant or firm of such accountants, fairly to reflect the financial condition of the Center.

(c) The liability of Trustees, whether joint or several, shall be as set forth in N-PCL Section 719 and shall be subject to indemnification by the Center under the conditions set forth in ARTICLE VIII of these Bylaws.

ARTICLE V

OFFICERS

5.01. NUMBER OF OFFICERS

The officers of the Center shall be the Chairman of the Board of Trustees, a Treasurer and a Secretary. The Board of Trustees may appoint such other officers, agents and employees as it shall deem necessary or appropriate.

5.02. QUALIFICATION OF OFFICERS

The Chairman of the Board of Trustees, the Treasurer and the Secretary shall be Trustees; all other officers may, but need not be, Trustees. All officers shall have such other qualifications as the Board of Trustees may deem appropriate.

5.03. ELECTION; TERMS OF OFFICE FOR CHAIRMAN OF THE BOARD OF TRUSTEES AND OTHER OFFICERS

A Trustee may serve as Chairman of the Board of Trustees for two successive terms. The first term of office shall be three years and, if reelected to a successive term, the second term of office shall be four years. Subject to Section 5.05 relating to vacancies, all other officers shall be elected at the annual meeting of the Board of Trustees and shall hold office until the next annual meeting of the Board of Trustees or until their successors shall have been elected and shall have qualified.

5.04. RESIGNATION; REMOVAL

Any officer may resign at anytime by giving written notice ^JOf such resignation to the Board of Trustees, the Chairman of the Board of Trustees or the Secretary. Such resignation shall take effect at the time specified therein or, if not so specified, upon receipt thereof by the Board of Trustees, the Chairman of the Board of Trustees or the Secretary, as the case may be. Any officer may be removed with or without cause at any time by the Board of Trustees.

5.05. VACANCIES

If any office becomes or is declared vacant for any reason; the vacancy may be filled at any time by the Board of Trustees.

5.06. POWERS AND DUTIES

The powers and duties of the officers shall be those usually appertaining to their respective offices and such other powers and duties as may be prescribed by these Bylaws or

from time-to-time by the Board of Trustees and all powers and duties incidental to carrying out such designated powers and duties.

5.07. CHAIRMAN OF THE BOARD OF TRUSTEES

The Chairman of the Board of Trustees shall preside at all meetings of the Board of Trustees and shall serve as an ex officio member of all committees. He shall have such additional powers and duties as may be assigned to him from time-to-time by the Board of Trustees.

5.08. TREASURER

The Treasurer shall have the care and custody of all the funds and securities of the Center. He shall keep a full and accurate account of all moneys received and paid on account of the Center and shall render a statement of accounts whenever the Board of Trustees shall require. He shall have such other powers and duties as may be assigned to him from time-to-time by, the Board of Trustees or the Chairman of the Board of Trustees.

5.09. SECRETARY

The Secretary shall record all votes and the minutes of all proceedings in a minute book to be kept permanently for that purpose. He shall give or cause to be given all notices required bylaw or by these Bylaws. He shall have custody of the corporate seal and shall have authority to affix the same to any obligation, instrument or contract executed on behalf of the Center and, when so affixed, to attest the same by his signature. He shall keep and account for all books, documents, papers and records of the Center, except those for which some other officer or agent is properly accountable; and shall have such other powers and duties as may be assigned to him from time-to-time by the Board of Trustees or the Chairman of the Board of Trustees.

5.10. DELEGATION OF OFFICER DUTIES

If any officers of the Center are absent or unable to act or for any other reason that the Board of Trustees may deem sufficient, the Chairman of the Board may delegate for the time being some or all of the functions, duties, powers, and responsibilities of any officer to any other officer or to any other agent or employee of the Center or other responsible person provided a majority of the Board concurs therein.

ARTICLE VI

EXECUTIVE DIRECTOR AND MEDICAL DIRECTOR

6.01. EXECUTIVE DIRECTOR

The Executive Director shall be appointed by the Board of Trustees and shall have such powers and duties as may be assigned to him from time-to-time by the Board of Trustees or the

Chairman of the Board of Trustees. The Executive Director shall have the authority and responsibility necessary to operate the Center and all of its activities and departments. The Executive Director shall be responsible for the development, submission and implementation of all plans to maintain the Center's compliance with statutory and regulatory requirements. The Executive Director shall represent the Board of Trustees and the Chairman of the Board of Trustees in the management of the Center. The Executive Director shall be responsible to the Board of Trustees which shall monitor the performance of the Executive Director. The Chairman of the Board of Trustees, together with such other Trustees as he deems appropriate, shall be responsible for conducting evaluations of the performance of the Executive Director, including evaluations of the Executive Director's performance in relation to the Center's goals and objectives on an ongoing and periodic basis.

6.02. MEDICAL DIRECTOR

After consultation with the Center Staff in such manner as the Board of Trustees may deem appropriate, the Board of Trustees shall appoint a physician qualified for membership on the Center Staff as the Medical Director of the Center. The Medical Director shall be responsible for directing the Center Staff in accordance with applicable provisions of law and regulations and shall perform such other duties as may be required bylaw and regulations and such further duties as may be specified by the Board of Trustees. The Medical Director shall be responsible to the Executive Director and to the Board of Trustees.

ARTICLE VII

CENTER STAFF

(a) The Center Staff shall consist of all physicians, dentists and other health care professionals who are appointed by the Board of Trustees as personnel of the Center. The Medical Staff shall consist of all physicians and dentists who, having received a concurrent appointment to the Faculty of the Mount Sinai School of Medicine of New York University, have been granted privileges in accordance with these Bylaws and such policies and procedures governing the Center Staff.

(b) The Board of Trustees shall cause the Center Staff to establish written policies and procedures which set forth (A) its specific purposes and powers, (B) its organization and the organization of the clinical departments of the Center, (C) the rights, duties and obligations of Center Staff members, (D) the specific procedures and qualifications for appointment and reappointment to and suspension and removal from the Center Staff and the delineation of clinical privileges, (E) the specific rights of candidates for appointment and of Center Staff members who have been suspended or removed or who have not been reappointed, including fair hearing procedures, (F) the organization of the quality assurance activities of the Center Staff as well as the mechanism used to conduct, evaluate and revise such activities, and (G) the mechanism for the approval of such policies, rules and regulations as may be necessary for the

governance of the Center Staff and the furtherance of its purposes, provided that such policies and procedures shall not be inconsistent with and shall be subject to the provisions of these Bylaws, and shall not be effective unless and until approved by the Board of Trustees.

ARTICLE VIII

INDEMNIFICATION

(a) Except as otherwise provided by law, no Trustee or officer of the Center shall be liable to any person other than the Center based solely on such Trustee's or officer's conduct in the execution of such office unless such conduct with respect to the person asserting liability constituted gross negligence or was intended to cause the resulting harm to the person asserting liability.

(b) The Center shall, to the fullest extent permitted by applicable law, indemnify any person made, or threatened to be made, a party to any action or proceeding, whether criminal or civil, including an action by or in the right of the Center to procure a judgment in its favor, by reason of the fact that such person, or such person's testator or intestate, is or was a Trustee or officer of the Center, including also an action by or in the right of any corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in which such Trustee or officer served in any capacity at the request of the Center, against judgments, fines, amounts paid in settlement and reasonable expenses, including reasonable attorneys' fees actually and necessarily incurred as a result of such action or proceeding; or any appeal therein.

(c) The Center shall, from time-to-time, reimburse or advance to any person referred to in Section (b) of this ARTICLE VIII the funds necessary for payment of expenses incurred by such person in connection with any action or proceeding, or threatened action or proceeding, or appeal referred to in Section (b) of this ARTICLE VIII upon receipt, if required by the New York Not-For-Profit Corporation Law or deemed appropriate by the Board of Trustees, of a written undertaking by or on behalf of such person to repay such amount(s) if it is ultimately determined that such person is not entitled to indemnification under this ARTICLE VIII or otherwise.

(d) The Center, by resolution adopted by its Board of Trustees or the Executive Committee thereof, may indemnify and reimburse or advance expenses to any person to whom the Center is permitted to provide indemnification or the reimbursement or advancement of expenses to the fullest extent permitted by applicable law, as it may exist from time-to-time, whether pursuant to rights granted pursuant to, or provided by, the New York Not-For-Profit Corporation Law or other rights created by (1) a resolution of Trustees or (2) an agreement approved by the Board or such Committee providing for such indemnification or reimbursement or advancement of expenses, it being expressly intended that this ARTICLE VIII authorizes the creation of other rights in any such manner. Any such indemnification and any such reimbursement or advancement of expenses may, in the Board's discretion and to the extent

permitted by law, be retroactive and be available with respect to events occurring prior to the adoption hereof and prior-to any such resolution or agreement.

(e) Any person entitled to be indemnified or to the reimbursement or advancement of expenses as a matter of right pursuant to this ARTICLE VIII may elect to have the right to indemnification (or reimbursement or advancement of expenses) interpreted on the basis of the applicable law in effect at the time of the occurrence of the event or events giving rise to the. Action or proceeding, to the extent permitted by law, or on the basis of the applicable law in effect at the time indemnification (or reimbursement or advancement of expenses) is sought.

(f) The right to be indemnified or to the reimbursement of advancement of expenses pursuant to Section (b) or (c) of this ARTICLE VIII or a resolution authorized pursuant to Section (d) of this ARTICLE VIII (1) is a contract right pursuant to which the person entitled thereto may bring suit as if the provisions hereof (or of any such resolution) were set forth in a separate written contract between the Center and such person, (2) is intended to be retroactive and shall, to the extent permitted by law, be available with respect to events occurring prior to the adoption hereof or of any such resolution, and (3) shall continue to exist after any rescission or restrictive modification hereof or of any such resolution with respect to events occurring prior thereto. The Center shall not be obligated under this ARTICLE VIII (including any resolution or agreement authorized by Section (d) of this ARTICLE VIII) to make any payment hereunder (or under any such resolution or agreement) to the extent the person seeking indemnification hereunder (or under any such resolution or agreement) has actually received payment (under any insurance policy, resolution, agreement or otherwise) of the amount otherwise indemnifiable hereunder (or under any such resolution or agreement).

(g) If a request to be indemnified or for the reimbursement or advancement of expenses pursuant to this ARTICLE VIII (including any resolution or agreement authorized . by Section (d) of this ARTICLE VIII) is not paid in full by the Center within thirty days after a written claim has been received by the Center, the claimant may at any time thereafter bring suit against the Center to recover – the unpaid amount of the claim, and, if successful in whole or in part, the claimant shall be entitled also to be paid the expenses of prosecuting such claim. Neither the failure of the Center (including its: Board of Trustees or independent legal counsel) to have made a determination prior to the commencement of such action that indemnification of or reimbursement or advancement ‘of expenses to the claimant is proper in the circumstances, nor an actual determination by the Center (including its Board of Trustees or independent legal counsel) that the claimant is not entitled to indemnification or to the reimbursement or advancement of expenses, shall be a defense to the action or create a presumption that the claimant is not so entitled.

(h) For purposes of this Article, the term “Center” shall include any legal successor to the Center, including any corporation which acquires all or substantially all of the assets of the Center in one or more transactions.

(i) The rights granted pursuant to or provided by the foregoing provisions of this ARTICLE VIII shall be in addition to and shall not be exclusive of any other rights to indemnification and expenses to which such person may otherwise be entitled by law, contract or otherwise.

(j) Without limitation of any indemnification provided by Section (b) of this ARTICLE VIII, any Trustee or officer of the Center serving (i) another corporation, partnership, joint venture, trust or other enterprise of which 50% or more of the voting power or economic interest is held, directly or indirectly by the Center, or (ii) any employee benefit plan of the Center or any entity referred to in clause (i), in any capacity shall be deemed to be doing so at the request of the Center.

(k) The Center is not required to purchase directors' and officers' liability insurance, but the Center may purchase such insurance if authorized and approved by the Board of Trustees. To the extent permitted by law, such insurance may insure the Center for any obligation it incurs as a result of this ARTICLE VIII or by operation of law, and it may insure directly the Trustees, officers, employees or volunteers of the Center for liabilities against which they are not entitled to indemnification under this ARTICLE VIII as well as for liabilities against which they are entitled or permitted to-be indemnified by the Center.

ARTICLE IX

CONFLICT OF INTEREST; COMPLIANCE WITH LAWS

All Trustees, employees and members of the Center Staff (voluntary and full-time) should exercise the utmost good faith in all matters relating to their duties and responsibilities to the Center and in discharging their duties and responsibilities to the Center should at all times act in the best interests of the Center. Trustees, employees and members of the Center Staff should not use their positions, or confidential information gained therefrom, to their personal advantage. Furthermore, the judgment and independence of Trustees, employees and members of the Center Staff should not be impaired or appear to be impaired in the discharge of their duties and responsibilities on behalf of the Center because of any activity in which they may engage or any personal or financial interest or relationship they may have. A "Conflict of Interest" is defined to be any activity that violates, for could potentially violate, the foregoing standard.

The Board of Trustees shall adopt such policies and procedures as may be necessary or appropriate with respect to the further definition of Conflict of Interest and the procedures for disclosing, managing and resolving Conflicts of Interest.

The Board of Trustees shall also adopt policies and procedures intended to promote compliance by Trustees, employees and members of the Center Staff with ethical standards of behavior and with applicable laws and regulations.

ARTICLE X

DEPOSITS, CHECKS, LOANS, CONTRACTS, AUDITS, ETC.

10.01. DEPOSIT OF FUNDS

All funds of the Center not otherwise employed shall be deposited in such banks, trust companies or other depositories as the Board of Trustees may from time-to-time determine.

10.02. CHECKS, ETC.

All checks, drafts, endorsements, notes and evidences of indebtedness of the Center shall be signed by such officer or officers or agent or agents of the Center and in such manner as the Board of Trustees may from time-to-time determine. Endorsements for deposits to the credit of the Center shall be made in such manner as the Board of Trustees may from time-to-time determine.

10.03. CONTRACTS, ETC.

Unless otherwise determined by the Board, the officers thereof shall have power, in the name of and on behalf of the Center, to execute and deliver any and all instruments, except to the extent otherwise required by law or these Bylaws.

10.04. AUDITS

An audit of the Center's assets, funds, accounts and records shall be conducted at least once a year.

ARTICLE XI

CORPORATE SEAL

The corporate seal of the Center shall be in such form as may be approved by the Board of Trustees.

ARTICLE XII

OFFICE

The principal office of the Center shall be located at 1470 Madison Avenue, New York, New York 10029.

ARTICLE XIII

FISCAL YEAR

The fiscal year of the Corporation shall be from the 1st day of January to the 31st day of December, inclusive, each year, or such other twelve (12) consecutive months as the Board of Trustees may, from time to time, designate.

ARTICLE XIV

AMENDMENTS AND REVIEW OF BYLAWS

14.01. AMENDMENTS

Except as otherwise provided by law, these Bylaws may be amended or repealed, and new bylaws may be adopted, by the Member or the Board of Trustees at any meeting thereof by vote of the Member or by a majority of the Trustees then in office, provided that the Trustees shall not amend or repeal any provision of these Bylaws or adopt a new bylaw which affects the existence or rights of the Member.

14.02. REVIEW

These Bylaws shall be reviewed at least once every two years and shall be revised as necessary. These Bylaws shall be dated to specify the date of the last such review.

March 6, 2019

VIA FEDEX

Director, Bureau of House Counsel
Division of Legal Affairs
NYS Department of Health
Corning Tower, Rm 2484
Empire State Plaza
Albany, New York 12237



Re: Mount Sinai Diagnostic & Treatment Center – Dissolution

Dear Sir or Madam:

I am writing to respectfully request that the Public Health and Health Planning Council (the “PHHPC”) and/or the New York State Department of Health (the “DOH”) review and consent, or provide a letter stating that review and consent is not required, to the filing of the enclosed proposed Certificate of Dissolution (the “Certificate of Dissolution”) of Mount Sinai Diagnostic & Treatment Center, a New York not-for-profit corporation (the “Corporation”) attached as *Exhibit A*. A copy of the Corporation’s Certificate of Incorporation and all amendments thereto are also attached, as *Exhibit B*.

My understanding is that the Corporation had an operating license from the DOH with a limited life that expired some time ago, and that the Corporation ceased providing healthcare services and has been working to wind down its operations since the expiration of such license. At the time of its dissolution, the Corporation will have no activities, and no assets or liabilities. The dissolution was approved by the Corporation’s Board of Directors and sole member, The Mount Sinai Hospital. The approval of the New York State Attorney General’s Office is also required, and is in the process of being obtained, for the filing of the Certificate of Dissolution.

Please send the consent letter, or letter confirming that consent is not required, to my attention at the address above, and please contact me at (212) 634-3084 or trosenberg@sheppardmullin.com with any questions or concerns. Thank you for your assistance.

Very truly yours,

Tamar R. Rosenberg

CERTIFICATE OF DISSOLUTION

OF

MOUNT SINAI DIAGNOSTIC & TREATMENT CENTER

UNDER SECTION 1003 OF THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned, Michael Pastier, Secretary and Trustee of Mount Sinai Diagnostic & Treatment Center (the "Corporation"), hereby certifies:

1. The name of the Corporation is: Mount Sinai Diagnostic & Treatment Center.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State of the State of New York on April 30, 2004.
3. The name, address and title of each of the Corporation's trustees and officers are:

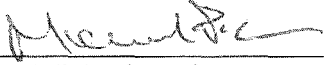
Name and Address	Title
Michael Pastier Senior Vice President/CFO The Mount Sinai Hospital One Gustave L. Levy Place New York, New York 10029	Trustee and Secretary
David Thomas, MD, MS, MHPE Professor of Medicine, Medical Education & Rehabilitation Medicine Vice Chair of Medicine, Associate Dean for CME Director of Ambulatory Care & Training Samuel M. Bronfman Department of Medicine Center for Advanced Medicine Mount Sinai School of Medicine One Gustave L. Levy Place New York, NY 10029	Medical Director

4. The Corporation is a charitable New York not-for-profit corporation.
5. At the time of authorization of its Plan of Dissolution, the Corporation did not hold any assets that 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 the unanimous written consent of the Board of Trustees of the Corporation pursuant to Section 1001, Section 1002 and Section 708(b) of the New York Not-for-Profit Corporation Law, and by the sole member of the Corporation, The Mount Sinai Hospital, by written consent duly adopted by a duly authorized officer of The Mount Sinai Hospital, pursuant to Section 1002 and Section 614 of the New York Not-for-Profit Corporation Law.
8. The Corporation is a charitable corporation with no assets. Prior to the delivery of this 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 New York State Attorney General.
9. The endorsement of the New York State Attorney General is affixed hereto.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of Mount Sinai Diagnostic & Treatment Center as of the 31 day of January, 2019.



By: Michael Pastier
Title: Secretary and Trustee

CERTIFICATE OF DISSOLUTION
OF
MOUNT SINAI DIAGNOSTIC & TREATMENT CENTER

Pursuant to Section 1003 of the Not-for-Profit Corporation Law

Filed by:

Sally Strauss, Esq.
Office of the General Counsel
The Mount Sinai Hospital
One Gustave L. Levy Place
New York, NY 10029

State of New York)
Department of State } ss:

I hereby certify that the annexed copy has been compared with the original document filed by the Department of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on

April 30, 2004



A handwritten signature in black ink, appearing to read "R. A. D.", is written over the printed title.

Secretary of State

F-04042 11/03/10

**CERTIFICATE OF INCORPORATION
OF
Mount Sinai Diagnostic & Treatment Center**

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 of the State of New York, does hereby certify:

FIRST: The name of the corporation is MOUNT SINAI DIAGNOSTIC & TREATMENT CENTER (the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-for-Profit Corporation Law ("N-PCL").

THIRD: The purposes for which the Corporation is formed are as follows:

- (a) To establish, operate and maintain a diagnostic and treatment center as defined in the Public Health Law of the State of New York and to furnish outpatient medical services in any form to persons in need thereof.
- (b) To enter into agreements, joint ventures and arrangements, and otherwise cooperate, with hospitals, governmental agencies and other organizations in the provision of medical care through the Corporation's diagnostic and treatment center.
- (c) To do any and all things deemed necessary, suitable, convenient or appropriate in connection with or incidental to the accomplishment of the purposes of the Corporation to the extent not forbidden by statute or by this certificate or the bylaws of the Corporation.

The above described purposes and powers, except wherein they contain specific prohibitions, shall not be deemed to limit the powers of the Corporation and it is intended that the Corporation shall have the power, subject to such limitations and conditions as are or may be prescribed by law, to exercise such other powers as are now, or may hereafter be, conferred by law upon a corporation organized for the purposes set forth herein or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitation and condition that, notwithstanding any other provision of this certificate, the Corporation is organized exclusively for one or more of the following purposes: charitable, scientific, religious and/or educational purposes, as specified in Section 501(c)(3) of the Internal Revenue Code, and shall not carry on, directly or indirectly, any activity not permitted to be carried on by a corporation that is exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code.

FOURTH: The Corporation is a Type B corporation under N-PCL Section 201.

FIFTH: Alliance for Health Improvement, LLC, a New York limited liability company, has been vested with the following limited management duties and decision-making authority with respect to the Corporation: (i) to develop and approve the Corporation's written quality assurance standards that will be incorporated into the Corporation's quality assurance program, and (ii) to oversee the implementation and enforcement of the Corporation's quality assurance program.

SIXTH: No substantial part of the activities of the Corporation shall involve the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene in (including the publishing or distributing of statements) any

political campaign on behalf of (or in opposition to) any candidate for public office.

SEVENTH: The Corporation shall not organize, operate, or conduct an institution of the kind referred to in N-PCL Section 404 (a)-(n), (p)-(s) and (u)-(v). With respect to N-PCL Section 404(o) and (t), there is annexed hereto the approval of the Public Health Council.

EIGHTH: For those periods (if any) during which the Corporation is a private foundation within the meaning of Section 509 of the Internal Revenue Code, then the Corporation shall make distributions at such time and in such manner as not to subject the Corporation to taxation under Section 4942 of the Code, and the Corporation shall not engage in any act of self-dealing (as defined in Section 4941(d) of the Code), nor retain any excess business holdings (as defined in Section 4941(c) of the Code), nor make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code, nor make any taxable expenditures (as defined Section 4945(d) of the Code).

NINTH: The Corporation is not formed for pecuniary profit or financial gain and no part of its assets or net earnings shall inure to the benefit of any member, trustee, officer or director of the Corporation or any private individual, firm, corporation or association (except that reasonable compensation may be paid for services and payments and distributions may be made in furtherance of the purposes set forth herein) and no member, trustee, director or officer of the Corporation, nor any private individual, firm, corporation or association, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation, except as provided in Article EIGHTH.

TENTH: Upon the liquidation or dissolution of the Corporation, after payment of

all of the liabilities of the Corporation or due provision therefor, all of the assets of the Corporation shall be distributed subject to the approval of a Justice of the Supreme Court of the State of New York, but only to an organization or organizations whose purposes are exclusively charitable, scientific, religious and/or educational, and which organization or organizations qualify as exempt at such time under Section 501(c)(3) of the Code.

ELEVENTH: The names and addresses of the initial trustees of the Corporation are:

<u>Name</u>	<u>Address</u>
Marianne Coughlin, M.D.	One Gustave Levy Place, NY, NY 10029
Connie Klepper	One Gustave Levy Place, NY, NY 10029
Burton Drayer, M.D.	One Gustave Levy Place, NY, NY 10029
Dianne Fogg	One Gustave Levy Place, NY, NY 10029

TWELFTH: The office of the Corporation is to be located in the City of New York, County of New York.

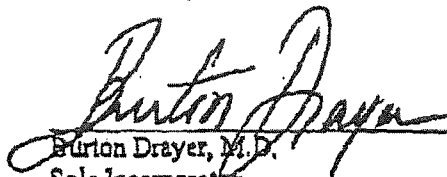
THIRTEENTH: The duration of the Corporation shall expire on January 23, 2007, unless extended thereafter by the Public Health Council.

FOURTEENTH: The Secretary of State (the "Secretary") is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary shall mail a copy of any process accepted on behalf of the Corporation is: 1470 Madison Avenue, New York, New York 10029, Attn: Executive Director.

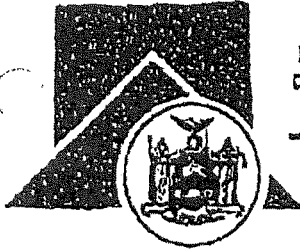
FIFTEENTH: All references herein: (i) to the Internal Revenue Code shall be deemed to refer to the Internal Revenue Code of 1986, as now in force or hereafter amended; (ii) to the Not-For-Profit Corporation Law shall be deemed to refer to said Not-For-Profit Corporation Law of the State of New York as now in force or hereafter amended; and (iii) to

particular sections of the Internal Revenue Code or said Not-For-Profit Corporation Law shall be deemed to refer to similar or successor provisions hereafter adopted.

IN WITNESS WHEREOF, I have subscribed this certificate and do hereby affirm the foregoing as true under the penalties of perjury, this 4 day of March, 2004.



Burton Drayer, M.D.
Sole Incorporator
c/o The Mount Sinai Hospital
One Gustave Levy Place
New York, New York 10029



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

April 2, 2004

Mr. David Alge
Executive Director
Mount Sinai Diagnostic and Treatment Center
1470 Madison Avenue, Box 1051
New York, New York 10029

Re: Certificate of Incorporation of Mount Sinai Diagnostic & Treatment Center

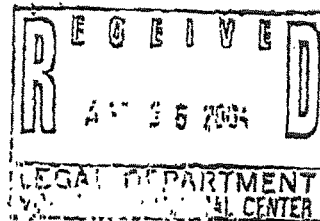
Dear Mr. Alge:

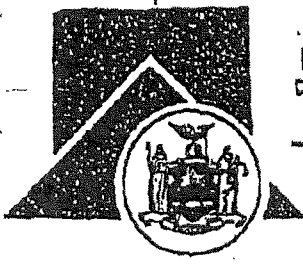
AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 23rd day of January, 2004, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Mount Sinai Diagnostic & Treatment Center, dated March 4, 2004.

Sincerely,

Karen S. Westervelt
Executive Secretary

/md





STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

April 2, 2004

Mr. David Alge
Executive Director
Mount Sinai Diagnostic and Treatment Center
1470 Madison Avenue, Box 1051
New York, New York 10029

Re: Application No. 032345 - Mount Sinai Diagnostic and Treatment Center
(New York County)

Dear Mr. Alge:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Mount Sinai Diagnostic and Treatment Center is APPROVED, the contingencies having now been fulfilled satisfactorily. The Public Health Council had considered this application and imposed the contingencies at its meeting of January 23, 2004.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

To complete the requirements for certification approval, please contact the Metropolitan Area/Regional Office of the New York State Office of Health Systems Management, 4 Penn Plaza, 4th Floor, 8th Avenue between W. 33rd and @. 34th Streets, New York, New York 10001 or (212) 268-7215, within 30 days of receipt of this letter.

Sincerely,

Doona Peterson
for
Karen S. Westervelt
Executive Secretary

/s/

CSO
DRAWN

CERTIFICATE OF INCORPORATION

OF

MOUNT SINAI DIAGNOSTIC & TREATMENT CENTER

Section 402 of the Not-for-Profit Corporation Law

AS
Typed

Filer: Ropes & Gray
45 Rockefeller Plaza
11th Floor
New York, NY 10111
Cust. Ref#603299Dav

DRAWDOWN

I.C.C.
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED APR 30 2004

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BY: *Dwl*

MY

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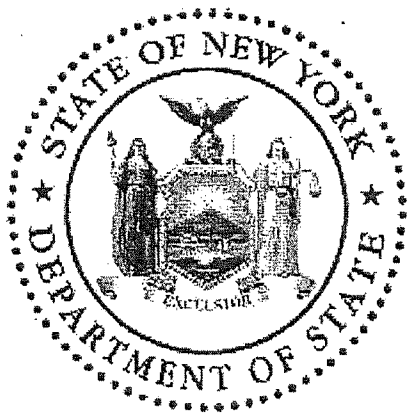
92 (N) - 10111-1001

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040430000555

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy for MOUNT SINAI DIAGNOSTIC & TREATMENT CENTER, File Number 080108000230 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on December 09, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

Rev. 06/07

Authentication Number: 1512091012 To verify the authenticity of this document you may access the Division of Corporations' Document Authentication Website at <http://ecorp.dos.ny.gov>

080108000230

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION OF
MOUNT SINAI DIAGNOSTIC & TREATMENT CENTER**

Under Section 803 of the Not-For-Profit Corporation Law

THE UNDERSIGNED, being the Chairman of the Board of Trustees of Mount Sinai Diagnostic & Medical Treatment Center, hereby certifies:

FIRST: The name of the Corporation is Mount Sinai Diagnostic & Treatment Center (the "Corporation").

SECOND: The Certificate of Incorporation of the Corporation was filed by the Department of State on April 30, 2004. The Corporation was formed under the Not-For-Profit Corporation Law of the State of New York (the "N-PCL").

THIRD: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the N-PCL. The Corporation is, and shall hereafter continue to be, a Type B corporation as defined in Section 201 of the N-PCL.

FOURTH: Article Thirteenth of the Certificate of Incorporation of the Corporation, which set forth the duration of the Corporation, is hereby amended to revive the existence of the Corporation and then establish its duration as follows:

The duration of the Corporation shall have a perpetual life.

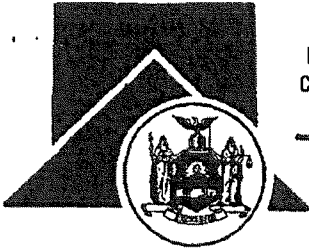
FIFTH: This amendment to the Certificate of Incorporation of the Corporation was authorized by the Executive Committee of the sole voting member at a meeting of the Executive Committee duly called and held on August 20, 2007.

SIXTH: The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is: 1470 Madison Avenue, New York, New York 10029, Attn: Executive Director.

IN WITNESS WHEREOF, the undersigned has subscribed this Certificate this 3rd day of January, 2008.

By: 

Burton Drayer, MD
Chairman, Board of Trustees



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

RECEIVED

DEC 11 2007

LEGAL DEPARTMENT
MOUNT SINAI MEDICAL CENTER

December 4, 2007

Ms. Sally Strauss
Office of the General Counsel
Mt. Sinai Hospital
1 Gustave Place
New York, New York 10029

Re: Certificate of Amendment of the Certificate of Incorporation of Mount Sinai
Diagnostic & Treatment Center

Dear Ms. Strauss:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 7th day of September, 2007, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Mount Sinai Diagnostic & Treatment Center, dated November 16, 2007.

Sincerely,

Colleen M. Frost
Executive Secretary

/cf

RECEIVED
BUREAU OF

DEC 19 2007

CORPORATIONS
DEPARTMENT OF STATE

080108000230

Certificate of Amendment

Of

Certificate of Incorporation

Of

MOUNT SINAI DIAGNOSTIC & TREATMENT CENTER

(List Entity Name)

Under Section 803 of the Not-For-Profit Corporation Law

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JAN 08 2008

TAXS

BY:

NEWY

Filed by:

Sally Strauss, Esq. Senior Associate General Counsel

(Name) Office of the General Counsel

The Mount Sinai Hospital

(Mailing address) One Gustave L. Levy Place

New York, NY 10029

(City, State and Zip Code)

AAO

080108000257



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter
General Counsel

Date: April 30, 2019

Subject: HQ- WCHN Health System, Inc.: Corporate Name Change

HQ-WCHN Health System, Inc. has asked PHHPC to approve a change of its corporate name to "Nuvance Health", for rebranding and marketing purposes. HQ-WCHN Health System, Inc. was approved to become an active parent under CON Project No. 182052. It was established as co-operator of licensed entities owned by Health Quest Systems, Inc., including Northern Dutchess, Putnam, and Vassar Bros. (Hospitals), Northern Dutchess (RHCF), and Health Quest Home Care, Inc. (CHHA & LHCSA).

Pursuant to NY N-PCL §804(a)(i) and 10 NYCRR § 600.11, PHHPC must consent to these changes prior to the filing of any amended certificate.

There is no legal objection to the name change and the Certificate of Amendment of the Certificate of Incorporation of HQ- WCHN Health System, Inc. is in legally acceptable form.

Attachments.

Cicero Consulting Associates

VCC, Inc.

701 Westchester Ave. • Suite 210W • White Plains, NY 10604
Tel: (914) 682-8657 • Fax: (914) 682-8895
cicero@ciceroassociates.com

White Plains Unit
Frank M. Cicero
Charles F. Murphy, Jr.
James Psarianos
Rose Murphy
Michael D. Ungerer
Noelia Chung
Brian Baldwin
Michael F. Cicero
Karen Dietz
Evelyn Branford
Michael C. Maiale
Linda Cammisia, R.N.
Patrick Clemente

Albany Unit
William B. Carmello
Joseph F. Poff
Albert L. D'Amato
Mark Van Guysling
Rosemarie Porco
Daniel Rinaldi, Jr.
Mary Ann Anglin

Emeritus Consultants
Nicholas J. Mongiardo
Joan Greenberg
Martha H. Poff
Frank T. Cicero, M.D.

April 11, 2019

Michael P. Parker, Sr.
(1941-2011)
Anthony J. Maddaloni
(1952-2014)

Ms. Colleen M. Leonard, Executive Secretary
Public Health and Health Planning Council
Center for Health Care Facility Planning, Licensure and Finance
NEW YORK STATE DEPARTMENT OF HEALTH
Corning Tower, Room 1805
Albany, New York 12237

RE: HQ-WCHN HEALTH SYSTEM, INC. (CON PROJECT NO. 182052)
(Dutchess County)
Request for Approval to change corporate name

Dear Ms. Leonard:

On behalf of our client, HQ-WCHN Health System, Inc., and in accordance with 10 NYCRR Section 600.11, we are requesting the Department's approval to change the corporate name of HQ-WCHN Health System, Inc. to use the new corporate name, "Nuvance Health", primarily for rebranding and marketing purposes. Please find enclosed a copy of the executed Certificate of Amendment of the Certificate of Incorporation of HQ-WCHN Health System, Inc. HQ-WCHN Health System, Inc. was approved to become an active parent under CON Project No. 182052.

HQ-WCHN Health System, Inc. proposes the new corporate name ("Nuvance Health") to reflect and reinforce the current changes relative to Health Quest Systems Inc. and Western Connecticut Health Network creating an active parent to form a unified new organization to better serve their community and employees. "Nuvance" is derived from a combination of the words "new" and "advance", which is intended to distinctively define and intuitively communicate the new identity of the collective organization to enable it to provide an integrated and consistent experience for its patients.

Please contact me if there is any additional information required. Thank you for your consideration in this matter.

Sincerely,


Frank M. Cicero

cc: Kate Fagan, Esq., HealthQuest Systems Inc.

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
HQ-WCHN HEALTH SYSTEM, INC.**

Under Section 803 of the New York Not-for-Profit Corporation Law

The undersigned, a natural person of the age of eighteen years or over acting as the incorporator of a corporation pursuant to the New York Not-for-Profit Corporation Law, hereby adopts the following certificate of incorporation:

- FIRST:** The name of the corporation is "HQ-WCHN Health System, Inc." (which is hereinafter referred to as the "Corporation").
- SECOND:** The certificate of incorporation was filed by the Department of State on March 20, 2019.
- THIRD:** The law the corporation was formed under is Section 402 of the New York Not-for-Profit Corporation Law.
- FOURTH:** The Corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the New York Not-for-Profit Corporation Law.
- FIFTH:** The Corporation is formed to engage in an activity or for a purpose requiring consent or approval of a state official, department, board, agency or other body. Such consent or approval is attached.
- SIXTH:** The certificate of incorporation is amended as follows:
- Paragraph **FIRST** of the Certificate of Incorporation relating to the name of the corporation is hereby amended to read in its entirety as follows:
- FIRST:** The name of the corporation is "Nuvance Health".
- SEVENTH:** The Secretary of State is designated as the agent of the Corporation upon whom process against the Corporation may be served. The Post Office address to which the Secretary of the State shall mail a copy of process is:
- Nuvance Health
Attention: Legal Services Department
1351 Route 55, Suite 200
LaGrangeville, NY 12540
- EIGHTH:** The certificate of amendment was authorized by the unanimous written consent of the entire board of directors. The Corporation has no members.



Michael R. Holzhueter
Board Secretary

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
HQ-WCHN HEALTH SYSTEM, INC.**

Under Section 803 of the New York Not-for-Profit Corporation Law

Filed by:

M. Kathleen Fagan
Health Quest Systems, Inc.
1351 Route 55, Suite 200
LaGrangeville, NY 12540

**CERTIFICATE OF INCORPORATION
OF
HQ-WCHN HEALTH SYSTEM, INC.**

Under Section 402 of the New York Not-for-Profit Corporation Law

The undersigned, a natural person of the age of eighteen years or over acting as the incorporator of a corporation pursuant to the New York Not-for-Profit Corporation Law, hereby adopts the following certificate of incorporation:

- FIRST:** The name of the corporation (which is hereinafter referred to as the "Corporation") is "HQ-WCHN Health System, Inc."
- SECOND:** The Corporation is a corporation as defined in Subparagraph (a)(5) of Section 102 (Definitions) of the Not-for-Profit Corporation Law of the State of New York. The Corporation is organized, and shall be operated, exclusively for literary, educational and charitable purposes in the United States and abroad within the meaning of Sections 170(c)(2)(B) and 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The following language relates to the Corporation's tax exempt status and is not a statement of purposes and powers. Consequently, this language does not expand or alter the Corporation's purposes or powers set forth in this paragraph SECOND. The Corporation is organized and shall be operated to benefit, perform the functions of, carry out the purposes of, and uphold, promote and further the welfare, programs, and activities of The Danbury Hospital; The Norwalk Hospital Association; Western Connecticut Medical Group, Inc.; Norwalk Hospital Foundation, Inc.; Western Connecticut Home Care, Inc; Western Connecticut Health Network Affiliates, Inc.; Eastern New York Medical Services, PC; Danbury Hospital and New Milford Hospital Foundation, Inc.; Health Quest Systems, Inc.; Vassar Brothers Hospital; Northern Dutchess Hospital; Putnam Hospital Center; Vassar Health Connecticut, Inc.; Vassar Brothers Hospital Foundation; NDH Foundation; Health Quest Home Health Care, Inc. (certified); Health Quest Home Health Care, Inc. (licensed); Northern Dutchess Residential Health Care Facility, Inc.; Hudson Valley Cardiovascular Practice, P.C.; and Alamo Ambulance Service, Inc.
- THIRD:** The office of the Corporation within the State of New York shall be located in the County of Dutchess.
- FOURTH:** The Secretary of State is designated as the agent of the Corporation upon whom process against the Corporation may be served. The Post Office address to which the Secretary of the State shall mail a copy of process is:

1351 Route 55, Suite 200
LaGrangeville, NY 12540
Attention: Legal Services Department

FIFTH: Notwithstanding any other provision of this certificate of incorporation:

(a) The Corporation shall at all times be organized and operated exclusively for religious, charitable, scientific, literary, educational or other purpose within the meaning of Section 501(c)(3) of the Internal Revenue Code;

(b) No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to the Corporation's trustees, officers or other private persons, provided that the Corporation may pay reasonable compensation for services actually rendered, may reimburse reasonable expenses actually incurred by any such persons, and may make payments and distributions, to the extent reasonable and necessary, in furtherance of the purpose set forth in Article SECOND above;

(c) No substantial part of the activities of the Corporation shall include carrying on propaganda or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene (including by the publication or distribution of statements) in any political campaign on behalf of or in opposition to any candidate for public office;

(d) The Corporation shall not conduct any activities, nor exercise any power, not permitted to be conducted by a corporation exempt from taxation under Section 501(a) of the Internal Revenue Code as an organization described under Section 501(c)(3) of the Internal Revenue Code, or by a corporation the contributions to which are deductible by a contributor under Sections 170(c)(2), 2055(a)(2) or 2522(a)(2) of the Internal Revenue Code.

SIXTH: In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of all necessary expenses and any liabilities of the Corporation, be distributed upon approval of the Justice of the Supreme Court of the State of New York to one or more organizations (i) which then qualify for exemption under the provisions of Code Section 501(a) as organizations described in Code Sections 501(c)(3) and the regulations thereunder; and (ii) contributions to which are deductible under Code Section 170(c)(2) and the regulations thereunder.

SEVENTH: The Corporation shall have no members.

EIGHTH: The activities, business, property, and affairs of the Corporation shall be managed by a board of not less than three trustees (each, a "Trustee") appointed as further provided in the Corporation's bylaws. The names and post office addresses of the initial Trustees of the Corporation are as follows:

<p>Name: Robert Friedberg Address: c/o Health Quest Systems, Inc. 1351 Route 55, Suite 200 LaGrangeville, NY 12540</p>	<p>Name: John Murphy, MD Address: c/o Danbury Hospital 24 Hospital Avenue Danbury, CT 06810</p>
<p>Name: Joseph DiVestea Address: c/o Raymond James 41 South Moger Ave. Mount Kisco, NY 10560</p>	<p>Name: David Cyganowski Address: 1 Dusenberry Road Bronxville, NY 10708</p>

Name: Robert Dyson Address: 2515 South Road, 5th Floor Poughkeepsie, NY 12601	Name: Mark Gudis Address: c/o Backcast Partners Management, LLC 825 Third Avenue, 40th Floor New York, NY 10022
Name: Carla Gude Address: 32 Stringham Road Poughkeepsie, NY 12603	Name: Richard Jabara Address: c/o Meyer Jabara Hotels 7 Kenosia Ave., Suite 2A Danbury, CT 06810
Name: Steven Lant Address: 59 Colburn Drive Poughkeepsie, NY 12603	Name: Daniel McCarthy Address: c/o Frontier Communications 401 Merritt 7 Norwalk, CT 06851
Name: Luke McGuinness Address: 127 D. West Oak Street Chicago, IL 60610	Name: Anne Roby Address: 19 Taporneck Ct. Ridgefield, CT 06877
Name: Mary Madden Address: Hudson Valley Federal Credit Union 137 Boardman Road Poughkeepsie, NY 12601	Name: Syed Shadid, MD Address: Neurosurgical Associates of SWCT, P.C. 148 East Ave., Suite 3D Norwalk, CT 06851
Name: Michael Nesheiwat, MD Address: Brewster Carmel Professional Bldg. 2424 Route 6 Brewster, NY 10509	Name: Ervin Shames Address: 35 Mollbrook Drive Wilton, CT 06897
Name: Gregory Rakow Address: c/o Fraleigh & Rakow, Inc. 6796 Route 9 Rhinebeck, NY 12572	Name: Andrew Whittingham Address: c/o C.A.W.L. Developments, Inc. 1200 High Ridge Rd. Stamford, CT 06902

NINTH: The Corporation shall indemnify and advance expenses to its Trustees to the fullest extent permitted by law. Without limiting the foregoing, the Corporation shall indemnify its Trustees against liability to any person for any action taken, or any failure to take any action, as a Trustee, except liability of a sort for which indemnification is not permitted by the Not-for-Profit Corporation Law of the State of New York. In addition, the Corporation may indemnify and advance expenses to officers, employees, and agents of the Corporation who are not Trustees to the same extent as Trustees, and may further indemnify such officers, employees and agents to the extent provided by the specific action of the Corporation and permitted by law. The Corporation may also procure insurance providing greater indemnification as provided by law.

IN WITNESS WHEREOF, the undersigned has executed this certificate of incorporation this 11th day of March 2019.

A handwritten signature in black ink, appearing to read "Michael R. Holzhueter", written over a horizontal line.

Michael R. Holzhueter, Esq.

1351 Route 55, Suite 200
LaGrangeville, NY 12540