

**STATE OF NEW YORK**  
**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL**

**AGENDA**

*June 6, 2019*

*Immediately following the Special Establishment and Project Review Committee meeting  
which is to begin immediately following the Committee on Codes, Regulations and  
Legislation meeting  
(Codes scheduled to begin at 9:15 a.m.)*

*90 Church Street 4<sup>th</sup> Floor, Room 4A & 4B, New York City*

**I. INTRODUCTION OF OBSERVERS**

Jo Ivey Boufford, M.D., Vice Chair

**II. ADOPTION OF 2020 PHHPC MEETING DATES**

2020 Public Health and Health Planning Council Meeting Dates

**III. APPROVAL OF MINUTES**

April 11, 2019 Meeting Minutes

**IV. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES**

**A. Report of the Department of Health**

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

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

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

**C. Report of the Office of Public Health Activities**

Brad Hutton, Deputy Commissioner, Office of Public Health

**V. REGULATION**

**Report of the Committee on Codes, Regulations and Legislation**

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

**For Adoption**

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

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

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

**For Information**

18-24 Amendment of Sections 415.2 and 415.3 of Title 10 NYCRR  
(Residents' Rights)

**VI. HEALTH POLICY**

**Report on the Activities of the Health Planning Committee**

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

**VII. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS**

**Report of the Committee on Establishment and Project Review**

Gary Kalkut, M.D., Vice Chair of Establishment and Project Review Committee

**A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES**

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

**CON Applications**

**Ambulatory Surgery Centers - Construction**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	191120 C	The Northway Surgery and Pain Center (Saratoga County)	Contingent Approval

**CATEGORY 2:** Applications Recommended for Approval with the Following:

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

**CON Applications**

**Acute Care Services - Construction**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	191083 C	Staten Island University Hospital (Richmond County) Mr. Kraut – Recusal Dr. Strange – Recusal Dr. Brown – Abstained at EPRC	Contingent Approval

**Residential Health Care Facilities - Construction**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	172351 C	Bronx Center for Rehabilitation & Health Care (Bronx County) Dr. Kalkut - Interest	Contingent Approval

**CATEGORY 3:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

**CATEGORY 4:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

**CATEGORY 6:** Applications for Individual Consideration/Discussion

**NO APPLICATIONS**

**B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES**

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

**CON Applications**

**Ambulatory Surgery Centers – Establish/Construct**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	182326 B	Triborough ASC, LLC d/b/a Triborough Ambulatory Surgery Center (Bronx County)	Contingent Approval

2.	191060 E	Long Island Ambulatory Surgery Center (Suffolk County)	Approval
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**Diagnostic and Treatment Centers – Establish/Construct**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	191107 E	City Wide Health Facility Inc. (Kings County)	Contingent Approval

**Dialysis Services – Establish/Construct**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	182068 B	Freedom Dialysis of Riverdale, LLC (Bronx County)	Contingent Approval
2.	182140 E	DSI Newburgh, LLC (Orange County)	Contingent Approval

**Certified Home Health Care Agencies – Establish/Construct**

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

**Certificates**

**Certificate of Dissolution**

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
F.E.G.S. ProCare Health Services, Inc.	Approval
F.E.G.S. Home Care Services, Inc.	Approval
M.J.G.N.H.C., Inc.	Approval
Mount Sinai Diagnostic & Treatment Center	Approval

**Certificate of Amendment of the Certificate of Incorporation**

**Applicant**

HQ-WCHN Health System, Inc.

**E.P.R.C. Recommendation**

Approval

**CATEGORY 2:** Applications Recommended for Approval with the Following:

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

**CON Applications**

**Ambulatory Surgery Centers – Establish/Construct**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	191019 E	Bronx SC, LLC d/b/a Empire State Ambulatory Surgery Center (Bronx County) Dr. Martin – Recusal	Contingent Approval
2.	191027 E	North Queens Surgical Center (Queens County) Dr. Martin - Recusal	Contingent Approval

**CATEGORY 3:** Applications Recommended for Approval with the Following:

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

**Ambulatory Surgery Centers – Establish/Construct**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	181259 E	Mohawk Valley Eye Surgery Center (Montgomery County) Dr. Berliner – Abstained at EPRC	Approval

**CATEGORY 4:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

**CATEGORY 6:** Applications for Individual Consideration/Discussion

**HOME HEALTH AGENCY LICENSURES**

**Changes in Ownership with Consolidation**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	191080 E	Always Compassionate Home Care, Inc. (Suffolk County)	Contingent Approval

**Serious Concern/Access**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	182247 E	Aides at Home, Inc. (Nassau County)	Contingent Approval

**Ambulatory Surgery Centers – Establish/Construct**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	191117 B	Saratoga Partners North (Saratoga County)	Presented at the 6/6/19 Special Establishment/Project Review Committee No Recommendation

**VIII. PROFESSIONAL**

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

**IX. NEXT MEETING**

July 18, 2019 – Albany  
August 8, 2019 – NYC

**X. ADJOURNMENT**

## Public Health and Health Planning Council 2020 Timeline

PHHPC Mailing #1 (Committee Day Mailing)	PHHPC Committee Meeting	PHHPC Mailing #2 (Full Council Mailing)	PHHPC Full Council Meeting	PHHPC Meeting Location
01/14/20	01/23/20	01/30/20	02/06/20	NYC
03/10/20	03/19/20	03/26/20	04/02/20	Albany
05/05/20	05/14/20	05/28/20	06/04/20	NYC
07/07/20	07/16/20	07/23/20	07/30/20	Albany
09/15/20	09/24/20	10/01/20	10/08/20	NYC
11/10/20	11/19/20 Albany	12/03/20	12/09/20 WEDNESDAY NYC	Albany/NYC

*PHHPC meetings begin @ 10:00 a.m.*

*Albany Location – Empire State Plaza, Concourse Level, Meeting Room 6*

*NYC Location - 90 Church Street, Meeting Rooms A/B, 4<sup>th</sup> Floor, New York, NY*

**State of New York**  
**Public Health and Health Planning Council**

**Minutes**  
**April 11, 2019**

The meeting of the Public Health and Health Planning Council was held on Thursday, April 11, 2019 at the Empire State Plaza, Concourse Meeting Room 6, Albany. Chairman, Jeffrey Kraut presided.

**COUNCIL MEMBERS PRESENT**

Ms. Judy Baumgartner	Dr. Glenn Martin
Dr. Howard Berliner	Ms. Ellen Rautenberg
Dr. Lawrence Brown	Mr. Peter Robinson
Ms. Carver-Cheney	Ms. Nilda Soto
Dr. Angel Gutierrez	Mr. Hugh Thomas
Mr. Thomas Holt	Dr. Anderson Torres
Dr. Gary Kalkut	Dr. Kevin Watkins
Mr. Jeffrey Kraut	Dr. Patsy Yang
Mr. Scott La Rue	Ms. Sally Dreslin – Ex-officio
Mr. Harvey Lawrence	

**DEPARTMENT OF HEALTH STAFF PRESENT**

- |                         |                        |
|-------------------------|------------------------|
| Ms. Deirdre Austin      | Ms. Marthe Ngwashi     |
| Ms. Barbara DelCogliano | Mr. Mark Noe           |
| Mr. Alex Damiani        | Ms. Tracy Raleigh      |
| Mr. Brian Gallagher     | Ms. Beverly Rauch      |
| Ms. Shelly Glock        | Ms. Gilda Riccardi     |
| Mr. Mark Furnish        | Ms. Laura Santilli     |
| Ms. Donna Frescatore    | Mr. Daniel Sheppard    |
| Dr. Eugene Heslin       | Ms. Lisa Thomson       |
| Mr. Brad Hutton         | Mr. John Walters       |
| Mr. Richard Kortright   | Mr. Richard Zahnleuter |
| Ms. Yvonne Lavoie       |                        |
| Ms. Colleen Leonard     |                        |
| Mr. George Macko        |                        |
| Ms. Karen Madden        |                        |
| Ms. Sheila McGarvey     |                        |

**INTRODUCTION**

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



## **2018 ANNUAL MEETING**

Mr. Kraut called the annual meeting portion of the meeting.

### **ELECTION OF OFFICERS**

#### **Election of Vice Chairperson**

Mr. Kraut nominated Dr. Jo Ivey Boufford to serve as the Council's Vice Chair. The motion was seconded by Mr. Robinson. The motion passed. Please see page 3 of the attached transcript.

### **2018 ANNUAL REPORT**

Mr. Kraut asked for a motion to adopt the 2018 Annual Report. Dr. Berliner motioned for approval, Dr. Torres seconded the motion. The motion carried. Please see pages 3 through 6 of the attached transcripts

### **APPROVAL OF THE MINUTES OF DECEMBER 13, 2018 AND FEBRUARY 14, 2019**

Mr. Kraut asked for a motion to approve the December 13, 2018 Minutes of the Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval which was seconded by Dr. Torres. The minutes were unanimously adopted. Please refer to page 7 of the attached transcript.

Mr. Kraut asked for a motion to approve the February 14, 2019 Minutes of the Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval which was seconded by Dr. Torres. The minutes were unanimously adopted. Please refer to page 7 of the attached transcript.

### **REPORT OF DEPARTMENT OF HEALTH ACTIVITIES**

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

#### **Executive Budget**

Ms. Dreslin stated the Department has been working intensely on the finalization of the 2019-2020 budget. There was an agreement on a \$175.5 billion state spending plan and would discuss later in her report.

#### **Candida Auris**

Ms. Dreslin spoke on the topic of the fungal infection candida auris. Although C-auris as it's referred to preys on vulnerable patients with serious underlying medical conditions, there is no threat to the general public in New York State. In 2016 the Department has been working on this very aggressively with the impacted hospitals and nursing homes in the New York City

region to implement infection control strategies. Additionally, the Wadsworth Center Laboratory has developed a first in the nation PCR test for C-auris. The CDC and several other state health departments are using or getting ready to use the Wadsworth PCR test.

### **Flu**

Ms. Dreslin stated that it is still flu season in New York and it will likely continue to be flu season for several more weeks. The CDC recently advised that influenza remains high throughout the United States, even though it's been a relatively mild season. As of April 6, 2019, New York State has had 99,557 lab confirmed cases on influenza and 17,308 people have been hospitalized.

### **Measles**

Ms. Dreslin advised that over the past seven months of addressing the measles outbreak, the Department has focused on increasing vaccination rates in the impacted communities, and limiting the spread of measles and working closely with the Rockland County Department of Health which has been a tremendous partnership.

### **Executive Budget**

Ms. Dreslin stated that the 2019-20 budget includes a number of provisions that the Governor and Department of Health have promoted for a healthier New York. One of the most important items is the codification of key provisions of the affordable care act and the New York State Health Insurance Market Place. Governor Cuomo's executive order which now provides coverage for over 4.7 million New Yorkers in New York State and the codification provides access to essential healthcare benefits for New Yorkers including those with preexisting conditions. The budget authorizes the Department to make up to an additional \$300 million of capital awards for previously submitted applications under the statewide healthcare transformation program. The Department received nearly \$2.5 billion in requests for \$240 million in available funds for this program. These additional funds will help each of the states 10 regions develop high quality medical facilities and programs that serve both inpatient, primary care, mental health, substance use disorder, and long term care needs for their local communities.

Ms. Dreslin further explained to safeguard the health of our youth and vulnerable populations, the budget creates a new 20% tax on electronic cigarette liquids and other vapor products. It also requires e-cigarette retailers to register with the State Department of Tax and Finance. This move coincides with the recent passage in both the assembly and in the senate of the T21 bill which will raise the legal age to buy tobacco and e-cigarettes in New York from 18 to 21.

Ms. Dreslin noted that with this budget they are also protecting children's health when it comes to eliminating environmental lead hazards and preventing future lead exposure. The budget lowers the actionable blood lead levels in children from 10 micrograms per deciliter to five micrograms per deciliter. Moving forward, detected lead levels at five will prompt immediate intervention, primary health providers will provide counseling to families, education on risk reduction and nutrition, they will complete a diagnostic evaluation and they will have follow up blood testing and medical treatment. The threshold detection limit at five will also trigger state and local health departments to conduct environmental management activities including education, exposure assessments, inspections, and enforcement to ensure that lead hazards are remediated.

The budget also supports Governor Cuomo's women's agenda with an \$8 million investment over two years to fund initiatives to combat maternal mortality. These include a comprehensive education and training program to reduce implicit bias in healthcare institutions, and expansion of community health worker programs in key communities, and an innovative data warehouse to provide near realtime information on maternal mortality and morbidity. The Department has also enacted some efficiencies and savings in Medicaid and we have made targeted investments to improve outcomes. Also restored is the \$550 million in Medicaid funding that had been previously proposed for elimination as part of the 30 day amendments in the face of the state's \$2.3 billion shortfall. This restoration though became critical after the Trump administration introduced the federal healthcare budget, which would have made devastating cuts to federal funding for New York including a repeal of the affordable care act. Among the investments in the Medicaid portion of the budget, we have funding to support the implementation of the national diabetes prevention program, an evidence-based program designed to prevent individuals from actually developing diabetes, as well as there's coverage for applied behavioral analysis for children with autism.

### **Donate Life**

Lastly, Ms. Dreslin announced that April is a month celebrating 'donate life' making a big push for organ donation through the Donate Life registry. Donor enrollment is an area where the state does lag behind other states, and getting the numbers up has been a priority of the Governor's and the Department's for the last several years. The Department has changed the driver's license application and renewal process to make the applicants organ donation decision required for processing. The Department has lowered the age of organ donor consent to 16 and 17 year olds who apply for learners permits and driver's licenses, and the Department has explored other avenues for enrolling new organ donors in the registry including requiring in the New York State of Health Marketplace add an organ donation option to its health insurance application. Since this route to donation began in April 2017, 200,000 New Yorkers have elected to enroll in organ donation through the Marketplace.

Ms. Dreslin concluded her report. To read the complete report and questions from the Members, please see pages 7 through 28 of the attached transcript.

## **Office of Primary Care and Health Systems Management Activities**

Mr. Kraut introduced Mr. Sheppard to give the Office of Primary Care and Health Systems Management Activities report.

Mr. Sheppard began his report and spoke on the budget items relevant to the Office of Primary Care and Health Systems Management. The health facility staffing enhancement study included language in the final enacted budget that directed the department to conduct a study to examine how patient safety and quality in hospitals and nursing homes could be improved through enhanced staffing and other initiatives. The Department is in the process of developing a work plan for this study and that will include stakeholder input, data analysis related to both the fiscal and the workforce impacts of staffing enhancement proposals. As well as other research activity focused on patient safety actions that can be taken outside of staffing. This budget language is substantially similar to the policy direction given to the Department by the Governor in documents that accompany the executive budget back in January. The Department already begun the study, the data collection, analysis portion of the study. The Department has gotten a head start and looking forward to a number of months of deep analytical work

Mr. Sheppard advised that the team in OPCHSM is more passionate than figuring out how to use the regulatory process and also working with providers to help to shape the health system to better implement the goals that are being pushed by CMS through Medicare or our own DSRIP program, and other initiatives that attempt to achieve triple aim of reducing costs, providing better care and having better quality outcomes. The Department will be coming to the Health Planning Committee with further work on the efforts to integrate physical and behavioral health.

Mr. Sheppard stated that there is an opportunity that the federal Center for Medicaid and Medicare Innovation (CMMI) has put forward called the emergency triage treat and transport model or ET3. The ET3 demonstration program is focused on ensuring that the healthcare needs, Medicare beneficiaries, following a 911 call are met in the most appropriate setting other than an ED and this would be largely for lower acuity patients. The roots of this study, this proposal are in 2013 study that found that about 15 percent of ED visits that came by ambulance that could have been actually treated in another setting. CMI has announced a five-year payment model that will give emergency responders greater flexibility to transport the patient to an ED, to transport the patient to an appropriate alternative location such as a doctor's office or urgent care center, and/or provide treatment on site with a qualified practitioner who is on the scene, or communicating with first responders through telehealth. The implementation for this requires that participating ambulance services partner with local governments or local government designee who is the 911 dispatcher, and that is to develop a triage system to enable when a call comes in they can screen the call and either direct it into this model or treat it as a traditional emergency call. The Department also understands from the documentation that accompanies this announcement from CMMI that there will be funding. In addition to the payment model, funding for the dispatch entities to start to develop the infrastructure to support these cooperative arrangements with ambulance companies under the program. The model also encourages other payers to participate such as Medicaid. CMMI has indicated they intend to issue the request for applications for this program this summer, and they are anticipating a start date of January 2020.

Within OPCHSM the Bureau of Emergency Medical Services is leading our efforts and to date, found no statutory or regulatory barriers to us participating in this demonstration, and several hospitals, as well as ambulance companies have already contacted the Department to express interest.

Mr. Sheppard concluded his report. Please see pages 28 through 33 of the attached transcript.

### **Office of Health Insurance Programs Activities**

Mr. Kraut introduced Ms. Frescatore to give the Office of Health Insurance Programs report.

Ms. Frescatore presented a power point containing a high level description of what was included in the budget that was passed on March 30, 2019 including some of the Medicaid highlights. The enacted budget includes \$404 million in state share Medicaid savings. In many instances that number doubles when considering federal matching share overall about 50 percent. In making these savings, there are no reductions to consumer benefits. There is no limits on the benefits that people are going to receive or any increase in the cost of receiving those benefits for the consumers. Much of the savings are obtained in a couple of different areas. Areas where costs of the Medicaid program have escalated substantially in recent years. The first area is in pharmacy reforms, to increase the transparency of prescription drug pricing, and some modifications to the very successful drug cap that was passed in statute a few years ago. There is a series of reforms to long term care related to the consumer directed program, as well as to nursing home reimbursement and some regulatory reforms related to homecare services.

Ms. Frescatore noted that she was pleased that even in this fiscal climate that the budget makes some investments including investments in the national diabetes prevention program, coverage in Medicaid for applied behavioral analysis for children in the program, and a continuation of the fourth year of an investment in increasing ambulance rates as well as promotion of some very promising practices that have been implemented on a very local level through DSRIP or through our waiver.

Ms. Frescatore explained the pharmacy proposals included in the budget. The first is to establish fair drug pricing models in our Medicaid managed care program. The Medicaid managed care prescription drug spending is about \$5.7 billion a year before drug rebates. Managed care plans most often contract with pharmacy benefit managers or PBMs to deliver those pharmacy benefits to their members. The change in statute requires managed care plans, including all types of managed care plans that enroll Medicaid members in the state to change their method of contracting with pharmacy benefit managers to be passed through arrangements as opposed to arrangements which are often referred to as spread pricing. The change is starting later this year, contracts between our Medicaid managed care plans and the pharmacy benefit managers with which they contract will need to ensure that the Medicaid program is charged the same amount that the pharmacy benefit manager pays to the pharmacy that dispensed the medication plus a reasonable professional dispensing fee to the pharmacy for providing their professional services, and a fair and reasonable administrative fee to the pharmacy benefit

management for their services as well, which often include the network management processing of claims, and in some cases, some clinical programs as well. What the data shows here in New York as it has elsewhere in the nation, in Medicaid programs as well as in the commercial insurance markets is that these pricing arrangements have historically not been very transparent and the variation in how much is paid for the same medication is, can be very significant from arrangement to arrangement. The Department wants to be able to see what is being charged to Medicaid for these very important prescription drugs that consumers receive.

Ms. Frescatore stated the second set of pharmacy proposals are around the very successful pharmacy cap that was put in place. It limits how much Medicaid will pay in aggregate for pharmacy, for prescription drugs, but rather gives the Department a trigger, at which point it can seek additional rebates from manufacturers. In state fiscal year 2017-18, implementation of this cap program saved \$60 million from increased rebates and another \$150 million in accelerating rebates from drug manufacturers. The Department saw as we looked at this program that there was some places after couple of years here of implementation that we could further strengthen it.

Ms. Frescatore highlighted other items included in the budget such as rebate negotiations with manufacturers can be initiated based on established cost effectiveness studies that are available and published, that the drug cap rebates can be sought by the Department even when there is already a manufacturer contract enforced that had been a limitation that prevented some negotiations in the past. Changes in long term care included no limitations on the eligibility for consumer to receive long term care services and no limitations in terms of number of hours or number of services are included in this budget.

Ms. Frescatore spoke on the topic of managed care. There is some new language in the budget related to the Office of the Medicaid Inspector General and their ability to recover from managed care organizations, and language that even further increases the compliance requirements on the health plans that participate in the program. There is also reductions to the quality incentive pools that health plans can earn through their participation in Medicaid that is based on a series of very well vetted nationally recognized hedis measures and satisfaction cap survey measures. The mainstream pool would be reduced, is reduced by \$10 million in state share and the managed long term care incentive pool is reduced by \$5 million state share. Those double with federal matching funds. The pools remain, however, available and in fact are fairly substantial still after this reduction with the mainstream plan pool at \$220 million in available funding to be distributed to the plans, and the managed long term care pool at \$137 million to be distributed to qualifying plans.

Ms. Frescatore stated one change in transportation, the executive budget included a number of modifications to transportation. One of those is in the enacted budget and it's the funding of the additional year of ambulance rate adequacy. You may all recall that some years ago the Department conducted a study of ambulance reimbursement and this is a fourth installment of the \$31.4 million rate increase that was recommended by that report.

Ms. Frescatore spoke on the topic of implementation and progression of the health home initiative under the Medicaid program. The budget implements what we consider the next step of a multiyear effort to improve the efficiency at the health home program and to ensure that it is focusing on the highest need members. The two components, one is the reimbursement rates are restructured to add a step-down in care management for members of health homes who have become stable, and the second is it refined some of the discharge criteria for persons who are not in need of healthcare, I should say not healthcare, but health home services on a continued basis. The first is an investment that will help us promote throughout the state some very promising ideas that have been put in place through the DSRIP waiver including those that are a couple that came up in our budget discussions specific to promoting the availability of medically tailored meals to consumers that meet certain criteria including chronic conditions, and also as the management programs, particular modifications and assessments of living environments for children who are frequently either in the emergency room or in the hospital related to their asthma. The budget also extends the Commissioner's regulatory waiver flexibility under certain circumstances for five years as a requirement that before a regulation is waived that there is a period of time that intention would be posted on the Department's website including with a description of the project for which it would be waived and the justification for waiving it.

Ms. Frescatore also noted that two federal waivers anticipated in the budget. The first is an initiative to secure a waiver for Medicaid supportive housing program. In order to access federal funding for certain housing related activities and services that are currently funded with state only dollars, we certainly are following the HHS secretary's comment about the importance of housing in looking at a patient's health, and we are preparing to submit that waiver. There will be a process by which we'll get comments. And then secondly, this is in effect a refreshing of an initiative that was started a couple of years ago, to seek federal approval to provide limited high impact Medicaid coverage to incarcerated individuals 30 days prior to their release to the community and development of that waiver and vetting of that is underway as well.

Ms. Frescatore explained a couple of other proposals. The budget eliminates \$24.5 million in state only funds that went I think date back to 2007 or so that were paid to five major academic hospitals in New York. There is a provision to increase funding for enhanced safety net hospitals over and above the amounts that have been allotted in the budget in the past couple of years. That funding follows distribution of that funding will follow the same criteria which considers the number or percentage of Medicaid patients served by the hospital, the number of uninsured patients as well that are served. Then there's a couple of mechanical shifts in funding, if you will, of the nursing home transition and diversion waiver and the traumatic brain injury waiver to be recognized and funded under the Medicaid global cap. There are no program changes there. That is just a change in funding. The Department remains committed to those waivers as well. Then finally the medical indemnity fund. The budget transfers the administration of that fund from the Department of Financial Services to the Department of Health on October 1, 2019 which also extends enhanced rates of reimbursement for providers for one additional year who serve individuals who are in the indemnity fund through December 31 of 2020.

Ms. Frescatore concluded her report. To see the complete report and questions from members, please see pages 33 through 54 of the attached transcript.

## **Office of Public Health Activities**

Mr. Kraut introduced Mr. Hutton to give the Office of Public Health report.

Mr. Hutton began his report by congratulating Albany County and Rockland County who have recently received accreditation from the Public Health Accreditation Board. The Robert Wood Johnson Foundation recently issued their annual county health rankings. The five healthiest counties in New York are Rockland, Nassau, Westchester, Saratoga, and New York.

Mr. Hutton commented on the enacted budget. First there was an investment that was agreed to in the enacted budget to provide a reimbursement rate increase of five percent in early intervention. That is specifically for therapists who are either speech language pathologists, occupational therapists or physical therapists. Those happen to be some of the service professionals that are in greatest demand and it is also an effort to better align our pricing system with the educational background of the professionals.

Mr. Hutton stated that there was an agreement in the budget to lower the level that is the definition for elevated blood lead levels. Children are required to be tested at age one and age two in New York State by their physician. The level has been lowered from 10 to 5. The Department is hard at work on some regulations that this group will see eventually that further defines the actions that are expected to occur for children who have a confirmed blood lead level of 5 or above. The Department is already been doing across the state nurse case management in environmental assessments for children beginning at 10 micrograms per deciliter. That is when nurse case management activities occur which is essentially working with a family to identify all the potential sources of lead exposure and work to address them and then at 15 is when the environmental assessment is required to occur, be a regulation, and if that could include anywhere the child spends time, not just a residence, but perhaps a grandparents residences or others, and if a lead hazard is found, can authorize under public health law required remediation. So, both of those levels will be defined in regulation to be lowered to five and we expect to see a pretty sizable increase in the number of children with elevated blood levels. It's important to point out that that actually represents a great public health success because the level that is set is really based upon the national reference level as per NHANES which is the effort to sort of measure and monitor blood lead levels across the country. It was not long ago in my childhood when blood lead levels that we aimed to lower were 40 and then 25 and 20 and now fortunately we're in a position we're able to focus on implementing initiatives to reduce exposures for even children who are as low as five since there's really no safe level of blood lead level. The budget also provides an investment to support the costs to implement that huge initiative here, both support the cost for local health departments and state investment where we'll be hiring investigators who will be trained in environmental assessment and also to interview those families.

Mr. Hutton advised that there was an \$8 million investment over two years to support initiatives that were part of the New York State taskforce on maternal mortality. Dr. Boufford would have a keen interest in this and has been following it closely. Those include investments to support the implementation of a maternal mortality review board at the state level, to provide expanded grant funding to some of our current grant initiatives to allow further access to



community health workers, working with hospitals to distribute training and education on implicit bias and implicit racial bias which was an important recommendation from the taskforce. Also an effort to establish a comprehensive data warehouse to better understand perinatal outcomes that improve quality. This is modeled after an initiative in California that really resulted in some meaningful improvements in maternal mortality. Finally, to convene an expert workgroup to optimize post-partum care in New York State, and that is something the Department plans on doing in partnership with ACOG, AAP, and other associations who have really been great partners.

Lastly, Mr. Hutton mention the topic of tobacco and e-cigarettes. Enacted budget first time in New York, a 20 percent retail tax on e-liquids and other products. The Department implemented 180 days from enactment. It also comes along with it a requirement that retailers register with the Department of tax and finance. This is important for a few reasons; it allows us to administer that tax through tax and finance. It also allows the Department to incorporate those retailers into our minor enforcement (TUPA) programs so that the Department is able to assure that existing law that required that only individuals who are under the age of 18, now under the age of 21 could purchase e-cig products. Continue to see concerning increases in the use of e-cigarettes by high schoolers. It is increased 160 percent in the last four years. 27 percent of high schoolers represent e-cig use in the last month. That number is higher among seniors. The Department is hopeful and the primary motivation for the e-cigarette tax is that youth are very price sensitive and that 20 percent tax we hope dissuades them from using or initiating the use of e-cig products. Similarly, for tobacco 21, where there are bills that passed both houses and there's a commitment to sign that by the Governor, will raise the legal age at which youth can purchase which is currently 18 and will now be raised to 21 for both tobacco and e-cigarette products. Important data here to demonstrate why this is so critical. 90 percent of adult smokers started smoking before the age of 18 and many unfortunately become life-long smokers. It is really important to delay initiation and that window of 19-21 was important but also that there was an Institute of Medicine panel that actually recommends T21 legislation. The director of our bureau of tobacco control actually served on that IOM panel. Had some interesting data that showed it's not only about deterring initiation among the 18-21 year old's, those 18-21 year old's purchase and provide tobacco to their social networks who are 15-17 year old's and still in high school and so we actually expect to see delayed initiation of use among teenagers as well. 70 percent of New York State's current population already has local laws that require T21. This statute will make it consistent across the state. Incidentally some of the counties with the highest smoking rates happen to be some of the counties that currently have tobacco 18 as opposed to tobacco 21. So those are really important changes in the budget that will have a real meaningful impact on improving the public's health.

Mr. Hutton concluded his report. To review the complete report, see pages 54 through 63 of the attached transcript.

## **REGULATION**

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

### **Report of the Committee on Codes, Regulation and Legislation**

#### **For Emergency Adoption**

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

Dr. Gutiérrez described For Emergency Adoption the proposed Addition of Section 16.70 and Amendment of Part 89 of Title 10 NYCRR (Body Scanners in Local Correctional Facilities) and motioned for adoption. Dr. Martin seconded the motion. Dr. Yang declared an interest. The motion carried. Please see **page 40** of the transcript.

#### **For Adoption**

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

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

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

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

Dr. Gutiérrez described for adoption the proposed Addition of Section 415.32 to Title 10 NYCRR (Nursing Home Weekly Bed Census Survey) and motioned for adoption. Dr. Martin seconded the motion. The motion carried. Please see pages 63 and 64 of the transcript.

Dr. Gutiérrez described for adoption the proposed Amendment of Sections 766.9 & 766.12(c)(4) of Title 10 NYCRR (New Requirements for Annual Registration of Licensed Home Care Services Agencies) and motioned for adoption. Dr. Martin seconded the motion. The motion carried. Please see pages 64 and 65 of the transcript.

Dr. Gutiérrez described for adoption the proposed Amendment of Part 405 and Section 751.5 of Title 10 NYCRR (Hospital Policies for Human Trafficking Victims) and motioned for adoption. Dr. Torres seconded the motion. The motion carried. Please see page 65 of the transcript.

Dr. Gutiérrez described for adoption the proposed Amendment of Part 19 of Title 10 NYCRR (Clinical Laboratory Directors) and motioned for adoption. Dr. Berliner seconded the motion. The motion carried. Please see page 66 of the transcript.

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

**PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS**

**Report of the Committee on Establishment and Project Review**

Mr. Robinson, Chair, Establishment and Project Review Committee

**A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES**

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

**CON Applications**

**Acute Care Services - Construction**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
182246 C	Cortland Regional Medical Center Inc (Cortland County)	Contingent Approval

Mr. Robinson calls application 182246 and motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carries. Please see pages 67 of the transcript.

**CATEGORY 2:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

**CATEGORY 3:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

**CATEGORY 4:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

**CATEGORY 6:** Applications for Individual Consideration/Discussion

**CON Applications**

**Acute Care Service – Construction**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
182147 C	University Hospital SUNY Health Science Center (Onondaga County)	Contingent Approval

Mr. Robinson calls application 182147 and motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carried. Please see pages 67 and 68 of the attached transcript.

**B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES**

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

**CON Applications**

**Ambulatory Surgery Centers – Establish/Construct**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
182302 B	Regency SC, LLC d/b/a Regency Surgery Center (Bronx County)	Contingent Approval

### **Diagnostic and Treatment Centers – Establish/Construct**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
191009 B	KAHR Health, LLC (Rockland County)	Contingent Approval

Mr. Robinson calls applications 182302 and 191009 and motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carried. Please see pages 68 through 70 of the attached transcript.

### **Residential Health Care Facilities – Establish/Construct**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
182209 E	Morris Park Nursing and Rehab Center, LLC (Bronx County)	Contingent Approval
182221 E	Leroy Operating LLC d/b/a Leroy Village Green Nursing and Rehabilitation Center (Genesee County)	Contingent Approval
182271 E	Union Plaza Care Center (Queens County)	Contingent Approval

### **Certified Home Health Agencies – Establish/Construct**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
182175 E	FSNR CHHA, LLC d/b/a Four Seasons Nursing and Rehabilitation Certified Home Health Agency (Kings County)	Contingent Approval

Mr. Robinson calls applications 182209, 182221, 182271, and 182175 and motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carried. Please see pages 70 through 71 of the attached transcript.

### **Certificates**

#### **Certificate of Amendment of the Certificate of Incorporation**

<b><u>Applicant</u></b>	<b><u>Council Action</u></b>
FASC Foundation	Approval

Foxhall Ambulatory Surgery Center Approval

Cabrini Care at Home, Inc. Approval

Mr. Robinson calls FASC Foundation, Foxhall Ambulatory Surgery Center and Cabrini Care at Home, Inc. and motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carried. Please see page 71 of the attached transcript.

**CATEGORY 2:** Applications Recommended for Approval with the Following:

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

**CON Applications**

**Acute Care Services – Establish/Construct**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
182124 E	John T. Mather Memorial Hospital of Port Jefferson New York, Inc. (Suffolk County) Mr. Kraut – Recusal	Contingent Approval

Dr. Gutiérrez calls application 182124 and notes for the record that Mr. Kraut has a conflict and has left the meeting room. Dr. Gutiérrez motions for approval. Dr. Berliner seconds the motion. The motion to approve carried. Mr. Kraut returns to the meeting room. Please see page 72 of the attached transcript.

**Residential Health Care Facilities – Establish/Construct**

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

Mr. Robinson calls application 182060 and notes for the record that Mr. LaRue has a conflict and has exited the meeting room. Mr. Robinson motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carried. Mr. LaRue returns to the meeting room. Please see pages 72 and 73 of the attached transcript.

## **Hospice Services – Establish/Construct**

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

## **Certified Home Health Agencies – Establish/Construct**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
182159 E	Lifetime Care (Monroe County) Mr. Robinson – Interest Mr. Thomas - Recusal	Contingent Approval

Mr. Robinson calls applications 182160 and 182159 and notes for the record that he is declaring an interest and Mr. Thomas has a conflict and not present at the meeting to recuse. Mr. Robinson motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carried. Please see pages 73 and 74 of the attached transcript.

## **HOME HEALTH AGENCY LICENSURES**

### **Changes in Ownership with Consolidation**

182163 E	Genesee Region Home Care of Ontario County, Inc. d/b/a Home Care Plus (Monroe County) Mr. Robinson- Interest Mr. Thomas – Recusal	Approval
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Mr. Robinson calls applications 182163 and notes for the record that he is declaring an interest and Mr. Thomas has a conflict and not present at the meeting to recuse. Mr. Robinson motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carried. Please see pages 74 and 75 of the attached transcript.

**CATEGORY 3:** Applications Recommended for Approval with the Following:

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

**CON Applications**

**Dialysis Services – Establish/Construct**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
181420 E	Rogosin Auburndale, LLC d/b/a Rogosin Kidney Center- Auburndale (Queens County)	Contingent Approval

**Residential Health Care Facilities– Establish/Construct**

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

Mr. Robinson calls applications 181420, 172415, 182272, and 181110. Mr. Robinson motions for approval. Dr. Kalkut seconds the motion. The motion to approve carried with one member opposing. Please see pages 75 and 76 of the attached transcript.

**CATEGORY 4:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**



**CATEGORY 6:** Applications for Individual Consideration/Discussion

**CON Applications**

**HOME HEALTH AGENCY LICENSURES**

**Affiliated with Assisted Living Programs (ALPs)**

181115 E	ISLACF, LLC d/b/a The Pavilion at Ideal Commons (Broome County)	Contingent Approval
182100 E	Pine Haven Assisted Living, LLC d/b/a Pine Haven Home Care (Columbia County)	Contingent Approval
182244 E	The Sentinel of Rockland, LLC (Rockland County)	Contingent Approval
182289 E	Rosewood of Auburn, LLC d/b/a Ridgewood Senior Living (Cayuga County)	Contingent Approval

**Changes in Ownership with Consolidation**

182249 E	South Shore Home Health Service, Inc. (Suffolk County)	Approval
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Mr. Robinson calls applications 181115, 182100, 182244, and 182289 and motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carried. Please see page 71 of the attached transcript.

**ADJOURNMENT:**

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

1                                   **NEW YORK STATE DEPARTMENT OF HEALTH**

2                                   **PUBLIC HEALTH AND HEALTH PLANNING COUNCIL MEETING**

3                                   **APRIL 11, 2019**

4                                   **MEETING ROOM 6, CONCOURSE LEVEL, ALBANY, NY**

5

6           JEFF KRAUT:        Good morning. I'm Jeff Kraut. I'd like to  
7 call to order the meeting of the Public Health and Health  
8 Planning Council. Welcoming our members, the executive deputy  
9 commissioner Dreslin, participants and observations. I'd like to  
10 remind the council members, staff, and the audience, this  
11 meeting is subject to the open meeting law and broadcast over  
12 the internet. These webcasts can be accessed at the Department  
13 of Health's website at NYHEALTH.GOV. These on-demand webcasts  
14 are going to be available no later than seven days after the  
15 meeting for a minimum of 30 days thereafter, and then a copy  
16 will be in the Department for upwards of four months. There are  
17 some suggestions and ground rules. I want to remind everybody  
18 about to make this meeting more successful, we're doing  
19 synchronized captioning. It's important you do not speak over or  
20 talk to each other. It's very difficult to do the captioning  
21 when two people speak at the same time. The first time you speak  
22 please state your name and briefly identify yourself as a  
23 council member or member of DOH staff. This will be very  
24 helpful and know that the microphones are hot, they pick up

1 every sound including the rustling of papers. So be very  
2 sensitive about that as well as any personal side conversations.  
3 The microphones tend to pick that up and preserve it for  
4 posterity. Just as a reminder for our audience, there's a form  
5 that needs to be filled out before you enter the room. It's  
6 required by the Joint Commission on Public Ethics in accordance  
7 with executive law section 166. This form is also posted on the  
8 Department's website at NYHEALTH.GOV under certificate of need  
9 so you can fill this form out prior to entering the council  
10 meetings. And we appreciate your cooperation in fulfilling our  
11 duties.

12 Today we're going to conduct our annual meeting. We'll vote  
13 on the appointment of a vice-chair, then hear reports from the  
14 Department of Health, Ms. Dreslin, Mr. Sheppard, Ms. Frescatore,  
15 and Mr. Hutton. Dr. Gutierrez will provide a report on code  
16 committee. We'll conduct the establishment and project review  
17 recommendations. And prior to holding the establishment  
18 committee report, you should note that if members have  
19 conflicts, we have organized the batching of certificate of need  
20 applications. Please take a look and review the agenda and how  
21 we're batching those applications and tell us if there's any  
22 project you want to move to a different category, and please let  
23 Colleen know that, and she'll inform us.

1           Now, I'd like to turn to the annual meeting portion of our  
2 activities here. I want to move to elect the council's vice-  
3 chair, and I make a motion for Dr. Boufford. I'm assuming she's  
4 going to agree? To serve - well, she's not here. To continue to  
5 serve as the vice-chair of the council. May I have a second? All  
6 those in favor say aye?

7           [Aye]

8           Opposed? The motion carries, and we'll inform Dr. Boufford  
9 it was unanimous.

10           Currently there are no changes to the standing committees.  
11 I'd like to thank all the members of the council for their work  
12 and dedication throughout the year. I'm going to talk about  
13 those activities in a moment. If there is any interest in  
14 changing that, obviously we consider to doing that during the  
15 year and you'd have to just let us know. One of the things that  
16 if you see the - well, before I do this, I yeah... Let's go  
17 through the annual meeting. At your place and you've received by  
18 email and it's been posted on to the website is the annual  
19 meeting of the ... annual report of the council. In that report we  
20 have the major accomplishment of the committees in 2018 and it  
21 provides us some of the actions we took as a council. Just out  
22 of interest, we met 17 times last year. Both the committees and  
23 the full council meetings, and I know how much work and you  
24 certainly know how much paper you get for every meeting. It's

1 significant. The prep work that people don't see or appreciate,  
2 the time you have to spend to serve here, and diligently do our  
3 work is quite extensive, so I just want to thank everybody,  
4 because I know this is not anyone's full time job and we do  
5 appreciate your commitment to serving and advancing the interest  
6 of not only the council, but of the people of the state to  
7 improve healthcare. And in that light, when you have an  
8 opportunity to read this a little more thoroughly you'll note  
9 that last year in the codes committee we approved policies for  
10 individuals with substance use disorders, we reviewed the public  
11 water systems and the coliform rules, we created a category of  
12 advanced home health aide to expand the scope of practice, we  
13 implemented protocols for sepsis- one of the main diseases that  
14 essentially lead to mortality in the hospital, we've  
15 strengthened the patient bill of rights with respect to  
16 treatment without discrimination based on gender identity and  
17 including care givers that are going to be included in discharge  
18 planning and post discharge information, and we provided  
19 additional flexibility to support the creation of the all-payer  
20 database and the statewide planning and research system. We're  
21 also in the midst of approving regulations for stroke center  
22 designation, nursing home bed census, the licensed home care  
23 agencies, victims of human trafficking, food establishments and  
24 clinical laboratory directors that you heard earlier this

1 morning. In the committee on health planning, we worked on  
2 demonstration program for establishing observation beds at the  
3 cancer care facilities and hospital outpatient settings. We  
4 worked on reviewing the different models of establishment and  
5 how operating controls will be evolving in the future in this  
6 state, and we've approved new stroke center designations that  
7 will start coming through the council, and we've revised the  
8 cardiac PCI services rules that will be coming to the council  
9 during this year.

10       The committee on public health has really focused on  
11 advancing the prevention agenda, the state's health improvement  
12 plan, and the health across all policies initiative. It's been  
13 very active in looking at how to understand and incorporate  
14 community benefit spending into discussions with, to make us  
15 more aware of how institutions support that agenda. And lastly  
16 we started to discuss the focus on maternal mortality which in  
17 the most recent, we'll hear that probably with the budget  
18 presentation, is going to kind of manifest itself in a process  
19 and a review committee to take it to the next level of those  
20 recommendations. And in the establishment committee we reviewed  
21 over, almost \$3 billion of investment in the healthcare systems.  
22 These included the development of new facilities, the expansion  
23 of programs and services to start-up of new ones. We also looked  
24 at changing control. We reviewed changing controls and

1 hospitals, 32 nursing homes, 10 home care agencies, 30 LHCSAs  
2 and three hospices and the LHCSAs in both a pre and post  
3 moratorium and we've granted permanent life to 9 ambulatory  
4 surgery centers. So I want to thank all of the chairs that run  
5 this committees, doing the prep work with the Department, but  
6 most importantly I want to thank the Department staff for the  
7 diligent work they do and their willingness to always be  
8 responsive to our concerns and our needs. Most of the time  
9 they're logical. Sometimes you might scratch your head and say,  
10 I don't quite get it. But you respond anyway and Dan and Tracy  
11 and particular on the certificate of need, but it really goes to  
12 all the staff work that comes from public health and the  
13 enormous efforts that are done by throughout the year through  
14 the Department. We really appreciate it. Obviously we could not  
15 function without the support you've given us, and I know we tend  
16 not to decrease your workload. But we do appreciate it and I  
17 wanted to thank you.

18       So what I'd like to do is I'd like to have a motion to  
19 accept the annual report that you have at your place so... I think  
20 then we'll post it. Have a motion, Dr. Berliner, a second, Dr.  
21 Torres. All those in favor, aye.

22

23       [Aye]

24       Opposed? The motion carries. Thank you very much.

1           Our next agenda item is the adoption of minutes. May I have  
2 a motion to adopt the minutes of the December 13, 2018 public  
3 health and health planning council minutes. May I have a motion?  
4 Dr. Berliner. A second? Dr. Torres. All those in favor, aye.

5

6           [aye]

7           Approved. Thank you very much. Now I'd like to turn it  
8 over to Ms. Dreslin who will update the council about the  
9 Department's activities since our last meeting.

10

11           SALLY DRESLIN: Can everybody hear me alright? I just wanted  
12 to thank the Chair for ...

13

14           JEFF KRAUT: One thing. They want me to approve a second  
15 set of minutes. I also have a motion on the February 14, 2019  
16 minutes. Dr. Berliner makes the motion. Dr. Torres second. All  
17 those in favor, aye.

18

19           [aye]

20           Approved. Opposed? Motion carries. Now I'll turn it over to  
21 Ms. Dreslin.

22

23           SALLY DRESLIN: Thank you. I just wanted to say thank you  
24 for the appreciation and I think it's a tremendous partnership



1 and going through the annual report breadth and scope and  
2 importance of the work that's getting done is really remarkable  
3 and much appreciated. So, thank you.

4       So, good morning, and welcome. I'm happy to be here to  
5 update you on the Department's activities since Dr. Zucker last  
6 spoke with you in February. Over the last two months we've been  
7 working hard, very intensely on the finalization of the 2019-  
8 2020 budget. As you all know, we all agreed on a \$175.5 billion  
9 state spending plan, and I'll discuss some of the health related  
10 highlights here, in addition to Dan and Brad and Donna getting  
11 into some of the details on the health related aspects. But  
12 first, I want to quickly address some of the interest that may  
13 have been raised by the recent New York Times article on the  
14 fungal infection candida auris. Although C-auris as it's  
15 referred to preys on vulnerable patients with serious underlying  
16 medical conditions, there is no threat to the general public in  
17 New York State. Dating back to this pathogens emergence in the  
18 region in 2016 the State Health Department has been working on  
19 this very aggressively with the impacted hospitals and nursing  
20 homes in the New York City region to implement infection control  
21 strategies. Additionally, DOH's Wadsworth Center Laboratory has  
22 developed a first in the nation PCR test for C-auris. It  
23 actually provides same-day results which allows for rapid  
24 action, rapid isolation, of new cases to prevent the increased

1 spread. The CDC and several other state health departments are  
2 using or getting ready to use the Wadsworth PCR test, and this  
3 is just, I can't think of a clearer affirmation of New York's  
4 leadership in responding to antimicrobial resistance and  
5 hospital acquired infections. I also want to mention despite the  
6 welcome clusters of daffodils in some areas of the state,  
7 although I haven't seen any up here in the capital district, I  
8 think we had snow a couple days ago, it is still flu season in  
9 New York and it will likely continue to be flu season for  
10 several more weeks. CDC recently advised that influenza remains  
11 high throughout the United States, even though it's been a  
12 relatively mild season. If you look at the comparison graph on  
13 our Department of Health flu tracker you'll see there was not a  
14 major spike this season like there was last season, but we have  
15 seen the numbers have been slower to come down from their peak  
16 in February and as of April 6, New York State has had 99,557 lab  
17 confirmed cases on influenza and 17,308 people have been  
18 hospitalized. The updated surveillance reports are going to be  
19 available later this afternoon, so you have the preview. The  
20 Department has also been responding to one of the largest measles  
21 outbreaks in decades. I know that during the February meeting  
22 Dr. Zucker briefed you on the Department's response to the  
23 outbreak in Rockland County. I will add that during seven months  
24 of addressing this outbreak, the Department has focused on

1 increasing vaccination rates in the impacted communities, and  
2 limiting the spread of measles. Working closely with the  
3 Rockland County Department of Health, and I will say it has been  
4 a tremendous partnership, the staff and the Rockland County  
5 Department of Health have been tireless, they've been remarkably  
6 dedicated just doing a wonderful, wonderful job. We've ensured  
7 that unvaccinated students in the outbreak areas were excluded  
8 from schools that had vaccination rates that were below the  
9 level necessary for herd immunity. With the county and local  
10 healthcare providers we've administered more than 18,000 doses  
11 of MMR across Rockland. That's more than four times the number  
12 given over the same timeframe in each of the past two years. So  
13 since the measles outbreak began last fall, I believe it was  
14 October 1, the Department has reported 176 cases in Rockland  
15 County, 17 cases in Orange, 8 cases in Westchester, and 2 cases  
16 in Sullivan County. A successful response to the current measles  
17 outbreak will require a continued strong collaboration between  
18 the state and local officials and we will be providing full  
19 support until it is 100 percent contained.

20 So on to the budget. The '19-'20 budget includes a number  
21 of provisions that the Governor and Department of Health have  
22 promoted for a healthier New York. And as I mentioned, I'll hit  
23 some of the highlights, and then Dan and Brad and Donna will get  
24 into some additional detail. So one of the most important items

1 is the codification of key provisions of the affordable care act  
2 and the New York State Health Insurance Market Place. These  
3 were, as you now, originally established by Governor Cuomo's  
4 executive order which now provides coverage for over 4.7 million  
5 New Yorkers in New York State. The codification provides access  
6 to essential healthcare benefits for New Yorkers including those  
7 with preexisting conditions. The budget authorizes the  
8 Department to make up to an additional \$300 million of capital  
9 awards for previously submitted applications under the statewide  
10 healthcare transformation program. You'll recall that we  
11 received nearly \$2.5 billion in requests for \$240 million in  
12 available funds for this program. So, these additional funds  
13 will help each of the states 10 regions develop high quality  
14 medical facilities and programs that serve both inpatient,  
15 primary care, mental health, substance use disorder, and long  
16 term care needs for their local communities. To safeguard the  
17 health of our youth and vulnerable populations, budget creates a  
18 new 20% tax on electronic cigarette liquids and other vapor  
19 products. And it also requires e-cigarette retailers to register  
20 with the State Department of Tax and Finance. So this move  
21 coincides with the recent passage in both the assembly and in  
22 the senate of the T21 bill which will raise the legal age to buy  
23 tobacco and e-cigarettes in New York from 18 to 21. So, this is  
24 exciting. So with this budget we're also protecting children's

1 health when it comes to eliminating environmental lead hazards  
2 and preventing future lead exposure. The budget lowers the  
3 actionable blood lead levels in children from 10 micrograms per  
4 deciliter to five micrograms per deciliter. So going forward,  
5 detected lead levels at five will prompt immediate intervention,  
6 primary health providers will provide counseling to families,  
7 education on risk reduction and nutrition, they'll complete a  
8 diagnostic evaluation and they'll have follow up blood testing  
9 and medical treatment. The threshold detection limit at five  
10 will also trigger state and local health departments to conduct  
11 environmental management activities including education,  
12 exposure assessments, inspections, and enforcement to ensure  
13 that lead hazards are remediated.

14 The budget also supports Governor Cuomo's women's agenda  
15 with an \$8 million investment over two years to fund initiatives  
16 to combat maternal mortality. So these include a comprehensive  
17 education and training program to reduce implicit bias in  
18 healthcare institutions, and expansion of community health  
19 worker programs in key communities, and an innovative data  
20 warehouse to provide near realtime information on maternal  
21 mortality and morbidity.

22 We've also enacted some efficiencies and savings in  
23 Medicaid and we've made targeted investments to improve out  
24 outcomes. We restored the \$550 million in Medicaid funding that

1 had been previously proposed for elimination as part of the 30  
2 day amendments in the face of the state's \$2.3 billion  
3 shortfall. So this restoration though became critical after the  
4 Trump administration introduced the federal healthcare budget,  
5 which would've made devastating cuts to federal funding for New  
6 York including a repeal of the affordable care act.

7       Among the investments in the Medicaid portion of the  
8 budget, we have funding to support the implementation of the  
9 national diabetes prevention program, an evidence-based program  
10 designed to prevent individuals from actually developing  
11 diabetes, as well as there's coverage for applied behavioral  
12 analysis for children with autism.

13       So the budget has consumed an awful lot of attention over  
14 the past few months, but not enough to distract us from  
15 celebrating April as 'donate life' month and making a big push  
16 for organ donation through the Donate Life registry. I see a  
17 fair amount of blue and green around the table, so thank you  
18 very much. Tomorrow is Blue/Green day across the state. You all  
19 have pins at your places so you can wear it tomorrow. Donor  
20 enrollment is an area where the state does lag behind other  
21 states, and getting the numbers up has been a priority of the  
22 Governor's and the Department's for the last several years. We  
23 have changed the driver's license application and renewal  
24 process to make the applicants organ donation decision required

1 for processing. We have lowered the age of organ donor consent  
2 to 16 and 17 year olds who apply for learners permits and  
3 driver's licenses, and we've explored other avenues for  
4 enrolling new organ donors in the registry including requiring  
5 in the New York State of Health Marketplace add an organ  
6 donation option to it's health insurance application. Since  
7 this route to donation began in April 2017, 200,000 New Yorkers  
8 have elected to enroll in organ donation through the  
9 Marketplace. It's impressive. We look forward to updating you on  
10 these initiatives and other Department of Health activities  
11 throughout the year. Those are just some of the highlights of  
12 what we've been up to. And I'll close there. Thank you.

13

14 JEFF KRAUT: Questions for Ms. Dreslin? And before I do  
15 that I just want to reinforce the organ donation issue. If those  
16 of you who have apple phones, if you go to the heart app and you  
17 go under medical ID, you can donate, you can sign up right  
18 directly from your phone. It goes right to the same website for  
19 the registration. They've made it very, very easy.

20 Dr. Berliner.

21

22 HOWARD BERLINER: Commissioner, Dresler [sic], I wonder  
23 if you could answer some questions I have, mostly through

1 confusion reading the media about the measles epidemic and the  
2 administrative process around it.

3

4 SALLY DRESLIN: I can do my best and Brad can help me out.

5

6 HOWARD BERLINER: So the first question is, only a health  
7 commissioner of a county or municipality or the state can  
8 declare a health emergency. Is that correct?

9

10 SALLY DRESLIN: I'm turning to counsel.

11

12 RICK ZAHNLEUTER: This is Rick Zahnleuter, General  
13 Counsel. So, Dr. Berliner, I think the answer is that county  
14 health commissioners have certain powers, and in this case the  
15 Rockland County Commissioner of Health exercised those powers.  
16 Does that help?

17

18 JEFF KRAUT: So they can exercise it in consultation with  
19 a lawyer. I mean, really.

20

21 HOWARD BERLINER: And the New York City Health  
22 Commissioner...

23

24 JEFF KRAUT: Did the same thing this morning.



1

2           HOWARD BERLINER:       Also did the same thing. Is the power  
3 to declare a health emergency something that's vested with the  
4 health commissioner, or is it a recommendation the health  
5 commissioner makes to an elected official?

6

7           RICK ZAHNLEUTER:       It is with the local health  
8 commissioner, although I want to be careful about the  
9 terminology, it may vary. We'll just, ... for talking here we'll  
10 just use health emergency or something. But it is something that  
11 the local health commissioner has the authority to do. Although  
12 there are other sources of authority that may enable a local  
13 executive to act as well.

14

15           HOWARD BERLINER:       Can a local executive act to declare a  
16 health emergency without the concurrence of the health  
17 commissioner?

18

19           RICK ZAHNLEUTER:       Well, I have to get picky with the  
20 terminology because there are authorities that the local  
21 executive might have in an emergency or a disaster, and those  
22 are different than what authority, a local health commissioner  
23 might have. So they can be doubled up, they can be done tandem,  
24 they can be done separately. And keep in mind, this is all

1 local. So, we haven't yet discussed the New York State  
2 Department of Health or the State Health Commission.

3

4 HOWARD BERLINER: Next question. So can the state health  
5 commissioner override a local health commissioner's declaration  
6 of a health emergency?

7

8 RICK ZAHNLEUTER: The law is not set up that way for the  
9 word "override," but the law is set up such that the state  
10 health commissioner does have authority at times to declare  
11 whatever kind of action is necessary to be taken.

12

13 HOWARD BERLINER: But I guess what I'm asking is if a  
14 local health commissioner, Dr. Watkins - if you don't mind -  
15 declares a health emergency in Buffalo.

16 Sorry, sorry. He's acting above his authority. If Dr.  
17 Watkins declares a health emergency, can Commissioner Zucker  
18 say, No? You can't do that?

19

20 RICK ZAHNLEUTER: First of all I think that there's be a  
21 good degree of consultation before that occurs so that  
22 everything is in the same channel, and I think that if the  
23 Commissioner of the State of New York wanted to do something in

1 addition to what a local commissioner wanted to do, that would  
2 be feasible.

3

4 HOWARD BERLINER: OK, so then the obverse of that, if the  
5 State Health Commissioner wanted to declare an emergency in a  
6 county but the local, the county health commissioner disagreed?  
7 Who would have, who would prevail?

8

9 RICK ZAHNLEUTER: In that hypothetical limited to those  
10 circumstances, the State Health Commissioner has the authority  
11 to do whatever's necessary to protect the public health given  
12 certain conditions that must be met, of course, as a  
13 prerequisite.

14

15 HOWARD BERLINER: OK. And the final question, I think,  
16 this is an easier one, as I understand it, the judge who put a  
17 stay on the Rockland County order, did it on the basis of saying  
18 that the county had not shown that an epidemic was in process or  
19 there were enough cases to call it an epidemic. So how many  
20 cases or what percent of the population would be required for  
21 that to have occurred? And maybe that's a question for Dr.  
22 Hutton.

23

1 BRAD HUTTON: I think I can't answer that from a legal  
2 perspective, I think from an epidemiologic perspective, you  
3 know, for measles for it to be very low threshold.

4

5 HOWARD BERLINER: But the judge disagreed. I mean...

6

7 JEFF KRAUT: Well, if something's eradicated, and it  
8 reappears, and it reappears in a significant numbers, there's,  
9 you know, it's pornography - I know it when I see it. To some  
10 degree.

11

12 [Do you?]

13 Well, I mean, that's a judicial test. You know, there's got  
14 to be some test to reasonableness here. But I guess judicially  
15 you gotta give them the data.

16

17 HOWARD BERLINER: Thank you all.

18

19 JEFF KRAUT: Dr. Martin then Dr. Kalkut. And then Dr.  
20 Brown. Sorry.

21

22 GLENN MARTIN: Thank you. Just a quick question. Pretty  
23 sure I asked it last year. Didn't get an answer then, so I

1 figured... I will speak slowly and directly into the microphone.

2 For about three seconds then I'll get back to old habits.

3 Last year I think I asked it, but I'm just curious, now  
4 that flu season is winding up, we've spent a great deal of  
5 effort over the last many years vaccinating or masking hospital  
6 employees and the like. Have we looked at it's effectiveness?

7 Can we demonstrate that this rather significant intrusive policy  
8 actually is effective?

9

10 SALLY DRESLIN: Effective in preventing flu transmissions  
11 within hospitals?

12

13 GLENN MARTIN: Do we have any evidence that this is an  
14 effective form now that we've been doing this for years in New  
15 York? I've never seen it and I was just... and you have all the  
16 data. But have we ever looked at it and can demonstrate it?

17

18 BRAD HUTTON: I think we'll take a look to see if it's  
19 reduced the number of cases or outbreaks in facilities.

20

21 JEFF KRAUT: Dr. Kalkut. Oh, the mic doesn't work. Does  
22 it work that one? That should work.

23

1           GARY KALKUT:    I think this question is for Dr. Hutton. Are  
2   there recommendations for people in the communities where an  
3   emergency has been declared or particularly susceptible to  
4   measles and side effects?  Immunocompromised patients, pregnant  
5   women, or how to and what to do in those communities?

6

7           BRAD HUTTON:    I think standard response to measles  
8   outbreaks includes a couple things.  One is to promote  
9   vaccination which we've done in partnership with Rockland County  
10  to begin the initial age at which we offer vaccination to six-  
11  month olds so that's one thing is to boost herd immunity.  Also  
12  to isolation which is to make sure that individuals who are sick  
13  isolate themselves and be especially careful not to expose  
14  people who are pregnant, unimmunized, and have medical  
15  conditions such as that, so certainly isolation and finally  
16  quarantine for people who have maybe been exposed and are not  
17  immune, and decide that they're not going to get post exposure  
18  prophylaxis, we would want them to voluntarily isolate  
19  themselves so that they don't present with symptoms and infect a  
20  new round of non-immune people.  So those are just things that  
21  local health departments in New York City, Rockland, Orange, all  
22  the effected counties are really working hard to implement when  
23  they investigate cases.

24

1           LAWRENCE BROWN:           Lawrence Brown, member of the council.  
2 I'd like to turn to another pandemic. I think that needs to  
3 definition, epidemiologic terms as well. The issue about the  
4 opiate pandemic; I was wondering if we might be able to see some  
5 data with respect to the impact of the state deciding that  
6 opiate use disorder would be a basis for medical marijuana. We'd  
7 like to know things like what's the target? Is it really trying  
8 to reduce overdoses? Is it really trying to have an impact on  
9 opiate use disorder, how it's defined? And look to see both the  
10 benefits as well as any limitations. I raise this because still,  
11 at the same time, the FDA has only approved three medications  
12 for opiate use disorder, and it would be useful if we're going  
13 to... and I still have a lot of conversations with my colleagues  
14 and my patients with respect to what does this mean, Dr. Brown?  
15 And it would be useful as providers to be able to share that  
16 with the patients about the benefits versus some drawbacks. And  
17 as you know, there's no medication with zero risks. So I think  
18 it's useful for us to be able to inform out healthcare providers  
19 about the merits of that approach.

20

21           SALLY DRESLIN: I mean, absolutely. And I know that this  
22 policy has been a concern of yours for some time, and I  
23 appreciate that concern that you have. And I think as we start  
24 to see the conditions, we collect data on the different serious

1 conditions for which people are certified to use medical  
2 marijuana as we start to see those numbers, we can certainly  
3 start looking and do some outreach on the effectiveness. But I  
4 would say, we're trying, again, to take that multifaceted  
5 approach because it is an epidemic and to try to provide as many  
6 opportunities for treatment an access to treatment as we can.  
7 I'm sure that you saw the press release earlier in the week on  
8 Dr. Zucker led a 22 state coalition letter campaign to HHS  
9 secretary to ask for changes in the buprenorphine policies to  
10 enable increased access for patients, so ultimately we would  
11 like to see, and it'd be wonderful to have your input and your  
12 perspective on this. Would like to see just anyone who can  
13 prescribe controlled substances be able to prescribe  
14 buprenorphine in the meantime before that significant policy  
15 changes, we would love to see an increase on the number of  
16 patients that newly waived providers can treat as well as making  
17 changes to what emergency department, for example, non-waived  
18 practitioners can actually prescribe, because, as you know, they  
19 can only administer now so that folks have to come back, so that  
20 people can be stabilized while they get into community-based  
21 care.  
22



1           LAWRENCE BROWN:        I think that's wonderful and Im sure  
2 that I don't stretch things too far by saying that my colleague  
3 Lynn Martin and I would be happy to provide our input.

4

5           SALLY DRESLIN: I have no doubt.

6

7           LAWRENCE BROWN:        The other thing I want to ask you a  
8 question about is that, if a patient is in fact enrolled in the  
9 medical marijuana program, will they appear on the prescription  
10 monitoring program to say that they are receiving this pharmaco  
11 therapy?

12

13          SALLY DRESLIN: I think that it depends on the context in  
14 which they're being treated as you know, there's issues with the  
15 data that's... substance abuse disorder in treatment programs. So  
16 I know that that's an ongoing conversation and request as to how  
17 does a provider get that full view of all of the medications and  
18 treatments that all of their patients may be receiving.

19

20          LAWRENCE BROWN:        Absence for the use for an opiate use  
21 disorder, will the patrons name appear on the prescription drug  
22 monitoring panel?

23

24          JEFF KRAUT:        I don't know. I don't think it does.

1

2 SALLY DRESLIN: For medical marijuana...

3

4 LAWRENCE BROWN: For medical marijuana.

5

6 SALLY DRESLIN: For medical marijuana they don't go into the  
7 prescription... the certifiers I thin are required to check the  
8 PMP, but I do not believe, and I will double check this and I  
9 should know this, so I apologize.

10

11 LAWRENCE BROWN: Thank you.

12

13 ELLEN RAUTENBERG: What's the Department thinking about  
14 the federal change in the title 10 regulations?

15

16 SALLY DRESLIN: The title 10 changes? So I know that the  
17 regulations have been proposed not yet adopted at the federal  
18 level, and I think Brad can speak a little bit more to the  
19 specific path that we're taking.

20

21 BRAD HUTTON: I think it's clear that the Department's  
22 concerned and will be looking to make comment and confer with  
23 folks at the attorney general's office and the governor's office  
24 about the potential role that we would play with other states

1 who are concerned about the regulations. We want to make sure  
2 that we continue to have strong reproductive health access  
3 across the state.

4

5 SALLY DRESLIN: Very much so.

6

7 PETER ROBINSON: Going back to the measles discussion  
8 earlier, does the Department contemplate any introduction of  
9 either new statute or regulation that would restrict religious  
10 exemptions for vaccination?

11

12 SALLY DRESLIN: So, I think what we have, the path that we  
13 are taking is that immunizations give children the best  
14 protection. They are effective. They are safe. We I think the  
15 Governor has been speaking to this issue in the last couple of  
16 days. We are looking at this issue from a public health  
17 perspective, from a legal perspective, and from a perspective  
18 where we can maximize vaccination, limit spread, and also  
19 maintain a collaborative relationship with the communities and  
20 the stakeholders that are impacted, because we don't necessarily  
21 want to do anything that will drive cases underground, that will  
22 prevent us from understanding who has been exposed, because  
23 those types of things can lead to increased spread. So I would  
24 say that all ideas are being discussed and contemplated. We are

1 certainly looking at what's going on in other counties in New  
2 York City, and so I think that the actions that we've taken  
3 around school exclusions have been very effective in motivating  
4 families in Rockland County, and I know that New York City took  
5 a similar path to get their children immunized so they could go  
6 back to school. So there are way to work with the community. And  
7 as I said, I think all of the options are on the table at the  
8 moment.

9

10 JEFF KRAUT: I would add that in conversations that we've  
11 had with representatives of the rabbis of some of the orthodox  
12 communities, many of them are tremendously supportive of  
13 vaccination, and I think we need to hear those voices louder  
14 outside of that community. That would be enormously helpful. But  
15 as one group said to me that the rabbi wouldn't even entertain a  
16 discussion about not vaccinating because he said, you're not  
17 going to change my mind. So he's very supportive, and I just  
18 hope we would hear that louder in our community. I think would  
19 be tremendously helpful.

20

21 SALLY DRESLIN: And I will add that Dr Zucker has been to  
22 Rockland County, has met with, had multiple meetings with the  
23 rabbinical leadership there with families and mothers there,  
24 with primary care practitioners there. They are very supportive

1 of our efforts. As with any group, it's not a monolithic  
2 approach, but our experience has been a very positive one and  
3 Dr. Zucker has been intensely engaged.

4

5 JEFF KRAUT: Any other questions? Before I turn to Mr.  
6 Sheppard? Which I will do now for Office of Primary Care and  
7 Health Systems Management.

8

9 DAN SHEPPARD: Thank you Mr. Kraut.

10 So, good morning. I just want to add one budget item that's  
11 relevant to the Office of Primary Care and Health Systems  
12 Management that Sally did not touch on. This is the health  
13 facility staffing enhancement study. There was language in the  
14 final enacted budget that directed the department to conduct a  
15 study to examine how patient safety and quality in hospitals and  
16 nursing homes could be improved through enhanced staffing and  
17 other initiatives. The Department is in the process of  
18 developing a work plan for this study and that will include  
19 stakeholder input, data analysis related to both the fiscal and  
20 the workforce impacts of staffing enhancement proposals. As well  
21 as other research activity focused on patient safety actions  
22 that can be taken outside of staffing. This budget language is  
23 actually substantially similar to the policy direction given to  
24 the Department by the Governor in documents that accompany the

1 executive budget back in January. So we've actually already  
2 begun the study, the data collection, analysis portion of the  
3 study. So we've got a head start and we're looking forward to a  
4 number of months of deep analytical work and I'm sure this body  
5 will be hearing about this work later in the year.

6 I'd like to actually just, particularly given the time I  
7 think constraints here, maybe touch on one topic for the balance  
8 of my report, and I think there are a few things that I think  
9 get the folks, the team in OPCHSM more passionate than figuring  
10 out how to use the regulatory process and also working with  
11 providers to help to shape the health system to better implement  
12 the goals that are being pushed by CMS through Medicare or our  
13 own DSRIP program, and other initiatives that attempt to achieve  
14 triple aim of reducing costs, providing better care and having  
15 better quality outcomes. And so we've I think have talked a lot  
16 to you over the past year about our regulatory modernization. We  
17 had, I don't feel like I'm stealing Dr. Ruge's thunder because  
18 he's not here today, but we had a planning committee meeting  
19 last month, late last month that focused on providing different  
20 standards for basic primary care to enable basic healthcare to  
21 penetrate into licensed settings, potentially lowering the bar  
22 for cost of entry, but certainly not the quality of service  
23 provided. We were upcoming. We're going to be coming to the  
24 planning committee with further work on our efforts to integrate

1 physical and behavioral health. But there's an opportunity that  
2 CMMI, the federal center for Medicaid and Medicare Innovation  
3 has put forward called the emergency triage treat and transport  
4 model or ET3, and it's something I just wanted to highlight for  
5 folk here who aren't aware of it. Some of you might be that  
6 we're pretty excited about hopefully participating in. The ET3  
7 demonstration program is focused on ensuring that the healthcare  
8 needs, in this case, Medicare beneficiaries, following a 911  
9 call are met in the most appropriate setting other than an ED  
10 and this would be largely for lower acuity patients. The roots  
11 of this study, this proposal are in 2013 study that found that  
12 about 15 percent - it was a federal, a multiagency federal study  
13 - found about 15 percent of ED visits that came by ambulance  
14 could've been actually treated in another setting. So what CMI  
15 has announced is a five-year payment model that will give  
16 emergency responders greater flexibility to transport the  
17 patient to an ED, to transport the patient to an appropriate  
18 alternative location such as a doctors office or urgent care  
19 center, and/or provide treatment on site with a qualified  
20 practitioner who is on the scene, or communicating with first  
21 responders through telehealth. So, ties together a lot of the  
22 issues we've been talking about in a pretty neat payment model.  
23 The implementation for this requires that participating  
24 ambulance services partner with local governments or local

1 government designee who is the 911 dispatcher, and that's to  
2 develop a triage system to enable when a call comes in they can  
3 screen the call and either direct it into this model or treat it  
4 as a traditional emergency call. We also understand from the  
5 documentation that accompanies this announcement from CMMI that  
6 there will be funding. So in addition to the payment model,  
7 funding for the dispatch entities to start to develop the  
8 infrastructure to support these cooperative arrangements with  
9 ambulance companies under the program. I think the model also  
10 encourages other payers to participate such as Medicaid and  
11 we'll be looking into that with Donna Frescatur and her  
12 colleagues in OHIP, and as well as non-public payers. CMMI has  
13 indicated they intend to issue the RFA, the request for  
14 applications for this program this summer, and they're  
15 anticipating a start date of January 2020. Within OPCHSM the  
16 bureau of emergency medical services is leading our efforts.  
17 We've to date, found no statutory or regulatory barriers to us  
18 participating in this demonstration, and several hospitals, as  
19 well as ambulance companies have already contacted the  
20 Department to express interest. So it's something that we're  
21 looking forward to working with the provider community on. And  
22 again, nothing, I think, charges us up more than being able to  
23 work with providers to develop new ways of delivering care that



1 cost less and deliver better patient experience. So with that,  
2 that's the end of my report.

3

4 JEFF KRAUT: Thank you very much, Mr. Sheppard. Are there  
5 any questions? So, I would just have one. We've been very active  
6 in the demonstration project on community paramedicine and it's  
7 had tremendous, under a CMMI innovation grant, tremendous... we're  
8 one of those groups that suggested you could do a lot more. The  
9 other thing I think we have to do in the state, and just to  
10 increase the difficulty, is we have to look at the licensure  
11 issue and the scope of practice because with these highly  
12 trained and experienced paramedics and EMTs they're limited into  
13 where they can practice and preemergency, prehospital care, and  
14 I think if you're going to take the full advantage of the venue  
15 shifts, you have to take this tremendously valuable healthcare  
16 resource we have and give it some more flexibility. And I know  
17 that's a DOE issue, right, and that's of course what complicates  
18 things, but if there's some cross department it would be very  
19 helpful.

20

21 DAN SHEPPARD: It's definitely, I mean one of our work  
22 streams with emergency responders is definitely that, and we are  
23 in discussions with the education department. We're looking at  
24 other options on a community paramedicine front. So you know, I

1 think what's much more straight forward about this model is it  
2 doesn't... it's still an emergency response. Initial dispatch is  
3 an emergent context

4 [right, I get it]

5 It just provides the flexibility both, enables it from a  
6 reimbursement standpoint that it allows a non-ED transport.

7

8 JEFF KRAUT: Great. Thanks so much. I'm now going to  
9 welcome and eagerly... Ms. Frescatur who's head of the Office of  
10 Health Insurance Programs. And she's going to give us an update.

11

12 DONNA FRESCATUR: Thanks, Mr. Kraut, and thank you to the  
13 council for including us in today's agenda. Do the hardest part  
14 here and see if the clicker works. There you have it.

15 So I wanted to present this morning high level description  
16 of what was included in the budget that was passed on March 30,  
17 including some of the Medicaid highlights. I'm happy to answer  
18 questions to the extent I can, but willing to hit some of the  
19 high points. So the enacted budget includes \$404 million in  
20 state share Medicaid savings. In many instances that number  
21 doubles when considering federal matching share overall about 50  
22 percent. In making these savings, there are no reductions to  
23 consumer benefits. There's no limits on the benefits that people  
24 are going to receive or any increase in the cost of receiving

1 those benefits for the consumers. And in fact, as Sally  
2 mentioned, the budget provides some investments. So, much of the  
3 savings that you see here are obtained in a couple of different  
4 areas. Areas where costs of the Medicaid program have escalated  
5 substantially in recent years. The first area is in pharmacy  
6 reforms, to increase the transparency of prescription drug  
7 pricing, and some modifications to the very successful drug cap  
8 that was passed in statute a few years ago. There's a series of  
9 reforms to long term care related to the consumer directed  
10 program, as well as to nursing home reimbursement and some  
11 regulatory reforms related to homecare services that we'll touch  
12 on in a minute. And then as Sally already mentioned, we were  
13 pleased that even in this fiscal climate that the budget makes  
14 some investments including investments in the national diabetes  
15 prevention program, coverage in Medicaid for applied behavioral  
16 analysis for children in the program, and a continuation of the  
17 fourth year of an investment in increasing ambulance rates as  
18 well as promotion of some very promising practices that have  
19 been implemented on a very local level through DSRIP or through  
20 our waiver.

21 So first let me touch a little bit on pharmacy proposals  
22 included in the budget. There's a fair amount of detail in  
23 these slides. I promise I won't go through all of that. But two  
24 significant reforms. The first is to establish fair drug pricing

1 models in our Medicaid managed care program. The Medicaid  
2 managed care prescription drug spending is about \$5.7 billion a  
3 year before drug rebates. Managed care plans most often, if not  
4 always, contract with pharmacy benefit managers or PBMs to  
5 deliver those pharmacy benefits to their members. The change in  
6 statute requires managed care plans, including all types of  
7 managed care plans that enroll Medicaid members in the state to  
8 change their method of contracting with pharmacy benefit  
9 managers to be passed through arrangements as opposed to  
10 arrangements which are often referred to as spread pricing. And  
11 you're seeing certainly a lot in the past weeks reported about  
12 congressional hearings on really all PBM issues. But this very  
13 topic specifically. So in short, what the change here is, is  
14 that starting later this year, contracts between our Medicaid  
15 managed care plans and the pharmacy benefit managers with which  
16 they contract will need to ensure that the Medicaid program is  
17 charged the same amount that the pharmacy benefit manager pays  
18 to the pharmacy that dispensed the medication plus a reasonable  
19 professional dispensing fee to the pharmacy for providing their  
20 professional services, and a fair and reasonable administrative  
21 fee to the pharmacy benefit management for their services as  
22 well, which often include the network management processing of  
23 claims, and in some cases, some clinical programs as well. What  
24 the data shows here in New York as it has elsewhere in the

1 nation, in Medicaid programs as well as in the commercial  
2 insurance markets is that these pricing arrangements have  
3 historically not been very transparent and the variation in how  
4 much is paid for the same medication is, can be very significant  
5 from arrangement to arrangement. We want to be able to see what  
6 is being charged to Medicaid for these very important  
7 prescription drugs that consumers receive.

8       The second set of pharmacy proposals are around the very  
9 successful pharmacy cap that was put in place. I'd like to think  
10 of this not as a cap in that it limits how much Medicaid will  
11 pay in aggregate for pharmacy, for prescription drugs, but  
12 rather gives the Department a trigger, if you will, at which  
13 point it can seek additional rebates from manufacturers. In  
14 state fiscal year '17-'18, implementation of this cap program  
15 saved \$60 million from increased rebates and another \$150  
16 million in accelerating rebates from drug manufacturers. So we  
17 think this has become a model for the nation. But nevertheless,  
18 we saw as we looked at this program that there was some places  
19 after couple of years here of implementation that we could  
20 further strengthen it. So there's a series of changes in the  
21 budget. I won't go through all of them. Hit some of the  
22 highlights here including that rebate negotiations with  
23 manufacturers can be initiated based on established cost  
24 effectiveness studies that are available and published, that the

1 drug cap rebates can be sought by the Department even when  
2 there's already a manufacturer contract enforced that had been a  
3 limitation that prevented some negotiations in the past. And,  
4 coupled with that, our new transparency requirements on this  
5 process including that any cost effectiveness analysis that's  
6 provided by a third party that the Department invites must  
7 include that third party's funding sources and all materials  
8 including the analysis and research that was provided to our  
9 drug utilization review board, must be publicly available. I  
10 think you know that those meetings of our DUR board are already  
11 publicly are done in the public and are fully transparent.

12 Couple of changes in long term care that were included in  
13 the budget. Again, no limitations on the eligibility for  
14 consumer to receive long term care services and no limitations  
15 in terms of number of hours or number of services are included  
16 in this budget. The first that I'll mention is a change to the  
17 consumer directed program, and let me first state we've stated  
18 since the release of the executive budget that the executive and  
19 the Department of Health remain fully committed to self-  
20 direction. But what we saw when we looked at the program was  
21 some room for administrative efficiencies in the program. So  
22 there are no changes to who's eligible for the CDPAS program.  
23 There's no limit on the number of hours of CDPAS provided those  
24 hours are necessary for the consumer. About 70,000 Medicaid

1 patients are enrolled in these CDPAS programs throughout the  
2 state. So two components to what is included in the budget. The  
3 first which will be effective on January 1, 2019, changes the  
4 way fiscal intermediaries are reimbursed for the services they  
5 provide, and both state regulation and now state law prescribe  
6 some eight or nine discreet services that a fiscal intermediary  
7 provides, including some things that are administerial in  
8 nature, like processing of payroll for the aide that's employed  
9 by the consumer, computation of payroll taxes, administration of  
10 benefits, and others are support services that are provided to  
11 the consumer who is in fact employing their aide. And those  
12 happen on a much more local basis.

13       The second part of the statute actually seeks to address  
14 what has become a very growing number of fiscal intermediaries  
15 for the CDPAS program. Over 700 organizations have registered to  
16 become fiscal intermediaries. Remember that's to serve about  
17 70,000 patients. And so the statute allows the Commissioner of  
18 Health to contract with organizations to be fiscal  
19 intermediaries for the CDPAS program. There are some  
20 organizations that are specifically described in the state law  
21 to be able to perform these services if they're interested. They  
22 include centers for independent living that are established  
23 under education law. They include fiscal intermediaries that  
24 have long term experience working particularly with disabled

1 populations and we're performing FI services on January 1, 2015.  
2 I'm sorry, 2012 or before. And then there's a process for other  
3 entities that are interested in continuing or becoming fiscal  
4 intermediaries to apply to the Department. Coupled with these  
5 changes is the establishment of a stakeholder workgroup, and we  
6 had, as you would imagine considerable interest in workgroup  
7 participation. And the workgroup which is also the functions  
8 delineated in the state law are to identify best practices for  
9 the delivery of fiscal intermediary services to inform the  
10 criteria that will be use to make the selection of FIs.  
11 Criterias such as the needs of the patients, their geographic  
12 location, any special considerations, language and cultural  
13 competencies of the organizations, and other factors that the  
14 workgroup may identify. And of course then some transition too.  
15 So in the event that a fiscal, a consumer's fiscal intermediary  
16 changes some rules around those transitions. The workgroup is to  
17 be established by May 15, just a few weeks really, and in the  
18 statute includes the organizations, must include the  
19 organizations that you see there. The ILCs managed care  
20 organizations, and local departments of social services both of  
21 which have an important role in administering this program, as  
22 well as consumer advocates in statewide associations of fiscal  
23 intermediaries.



1 Couple of other things to mention on long term care, I'll  
2 mention them more quickly. First is the budget includes  
3 initiative related to amending regulations for the  
4 implementation of managed care. In particular, the regulations  
5 around fair hearings for long term care services have not been  
6 updated to include the managed care, the presence of managed  
7 care organizations including the managed long term care plans  
8 and so we would refer to them, the mainstream managed care  
9 plans. So that is on our agenda. We will fully follow this  
10 process in making those recommended changes. And then under the  
11 21<sup>st</sup> century cures act, federal legislation states are required  
12 to implement an electronic visit verification for Medicaid  
13 personal care services by January 2020 and for homecare services  
14 or CHHA services by January 2023. A good faith exception is  
15 required to be filed in November if states aren't going to make  
16 these dates, and I think it's fair to assume at this point that  
17 New York will apply for a good faith exception. Failure to  
18 comply under the federal law subject states to an up to one  
19 percent reduction in the federal matching for those services,  
20 so, substantial fiscal risk to New York should we not be able to  
21 comply. And so the budget provides funding to begin to develop,  
22 design and implement a visit verification system. More to follow  
23 on this. We are conducting a landscape survey. We know that many  
24 providers and organizations have moved forward. Even before the

1 21<sup>st</sup> century cures act to put similar systems in place and we  
2 expect that we will be visiting all regions of the state to  
3 gather input as well to inform that process.

4       And then finally, let's move to managed care. And just, a  
5 couple of issues there -- I'm looking at here, a slide here we  
6 missed - let's just take a look here before we move out of long  
7 term care on the nursing home case mix adjustment. The first  
8 item is the consumer first choice options program that is a  
9 change in the effective date from July of 2019 until January  
10 2020 for a series of covered services including environmental  
11 modifications and vehicle modifications and some other services  
12 that have been put out in time and result in some budget savings  
13 but also allow the Department and the local social services  
14 districts, additional time to implement.

15       So moving to the nursing home case mix adjustment, the  
16 statute continues to require the Department to adjust nursing  
17 home reimbursement rates in January and July of each year to  
18 adjust for patient acuity. But allows the Department to use all  
19 data points that in all assessments that are performed by the  
20 nursing home under federal requirements which include within 14  
21 days of admission and then every 92 days. The adjustment as it's  
22 been currently done has not used all of that information and  
23 instead has used a selected date within each period of time, and  
24 so that's the change here. Also, statute creates a workgroup

1 specific to the nursing home case mix adjustment to review  
2 acuity data and to promote a high degree of accuracy in that  
3 data. No additional reporting is required here from the nursing  
4 homes. We intend to use the data that is currently reported to  
5 CMS. And so here too we've received a considerable amount of  
6 interest.

7 Couple things, and I won't go into a lot of detail here,  
8 but you will see in the budget, an investment in the state  
9 office for the aging program for expanded in home services for  
10 the elderly. We're excited about this. We know that in many  
11 parts of the state there are seniors who are waiting to be able  
12 to receive these services to the SOFA program, so there is a \$15  
13 million investment in the budget in that program. And in return,  
14 the budget anticipates that Medicaid will receive some savings  
15 as a result in Medicaid eligibility either being delayed or  
16 avoided.

17 OK, moving to managed care, I think we can move fairly  
18 quickly through these items. There is some new language in the  
19 budget related to the office of the Medicaid inspector general  
20 and their ability to recover from managed care organizations,  
21 and language that even further increases the compliance  
22 requirements on the health plans that participate in the  
23 program. There's also reductions to the quality incentive pools  
24 that health plans can earn through their participation in

1 Medicaid that's based on a series of very well vetted nationally  
2 recognized hedis measures and satisfaction cap survey measures.  
3 The mainstream pool would be reduced, is reduced by \$10 million  
4 in state share and the managed long term care incentive pool is  
5 reduced by \$5 million state share. Those double with federal  
6 matching funds. The pools remain, however, available and in fact  
7 are fairly substantial still after this reduction with the  
8 mainstream plan pool at \$220 million in available funding to be  
9 distributed to the plans, and the managed long term care pool at  
10 \$137 million to be distributed to qualifying plans.

11 One change in transportation, the executive budget included  
12 a number of modifications to transportation. One of those is in  
13 the enacted budget and it's the funding of the additional year  
14 of ambulance rate adequacy. You may all recall that some years  
15 ago the Department conducted a study of ambulance reimbursement  
16 and this is a fourth installment of the \$31.4 million rate  
17 increase that was recommended by that report.

18 Health homes, they're, I think, continuing the  
19 implementation and progression of the health home initiative  
20 under the Medicaid program. The budget implements what we  
21 consider the next step of a multiyear effort to improve the  
22 efficiency at the health home program and to ensure that it is  
23 focusing on the highest need members. The two components, one is  
24 the reimbursement rates are restructured to add a step-down in

1 care management for members of health homes who have become  
2 stable, and the second is it refined some of the discharge  
3 criteria for persons who are not in need of healthcare, I should  
4 say not healthcare, but health home services on a continued  
5 basis.

6 Sally mentioned, I mentioned some investments in patient  
7 care. The first is an investment that will help us promote  
8 throughout the state some very promising ideas that have been  
9 put in place through the DSRIP waiver including those that are a  
10 couple that came up in our budget discussions specific to  
11 promoting the availability of medically tailored meals to  
12 consumers that meet certain criteria including chronic  
13 conditions, and also as the management programs, particular  
14 modifications and assessments of living environments for  
15 children who are frequently either in the emergency room or in  
16 the hospital related to their asthma. The budget also extends  
17 the Commissioner's regulatory waiver flexibility under certain  
18 circumstances for five years as a requirement that before a  
19 regulation is waived that there is a period of time that  
20 intention would be posted on the Department's website including  
21 with a description of the project for which it would be waived  
22 and the justification for waiving it. Sally mentioned a  
23 reimbursement for the National Diabetes Prevention Program.  
24 We're excited about this. We have some experience here. Shows

1 this is effective evidence-based, and as a result we were able  
2 to actually recognize a modest amount of savings even though  
3 it's an addition of a new service. Sally also mentioned applied  
4 behavioral analysis. This expands Medicaid to cover that service  
5 for children age four or children who are in an early  
6 intervention if they're younger, up to age 20, and again, we  
7 think aligns Medicaid with the commercial insurance requirements  
8 around coverage for ADA. The budget also includes Medicaid  
9 support for maternal mortality which I think Brad may be going  
10 to talk about so I'm going to let Brad cover that. And increases  
11 in reimbursement rates for early intervention services that  
12 Medicaid reimburses if the child is otherwise Medicaid eligible.

13 Two federal waivers anticipated in the budget. I think both  
14 of these will be somewhat familiar to the council. The first is  
15 an initiative to secure a waiver for Medicaid supportive housing  
16 program. In order to access federal funding for certain housing  
17 related activities and services that are currently funded with  
18 state only dollars, we certainly are following the HHS  
19 secretary's comment about the importance of housing in looking  
20 at a patient's health, and we are preparing to submit that  
21 waiver. There will be a process by which we'll get comments. And  
22 then secondly, this is in effect a refreshing of an initiative  
23 that was started a couple of years ago, I think I've got the  
24 right timeline here, to seek federal approval to provide limited

1 high impact Medicaid coverage to incarcerated individuals 30  
2 days prior to their release to the community and development of  
3 that waiver and vetting of that is underway as well.

4 Couple of other proposals and then I will try to wrap up  
5 here. The budget eliminates \$24.5 million in state only funds  
6 that went I think date back to 2007 or so that were paid to five  
7 major academic hospitals in New York. There is a provision to  
8 increase funding for enhanced safety net hospitals over and  
9 above the amounts that have been allotted in the budget in the  
10 past couple of years. That funding follows... distribution of that  
11 funding will follow the same criteria which takes into account  
12 the number or percentage of Medicaid patients served by the  
13 hospital, the number of uninsured patients as well that are  
14 served. And then there's a couple of mechanical shifts in  
15 funding, if you will, of the nursing home transition and  
16 diversion waiver and the traumatic brain injury waiver to be  
17 recognized and funded under the Medicaid global cap. There's no  
18 program changes there. That is just a change in funding. We  
19 remain committed to those waivers as well.

20 And then finally the medical indemnity fund. The budget  
21 transfers the administration of that fund from the Department of  
22 Financial Services to the Department of Health on October 1,  
23 2019. And also extends enhanced rates of reimbursement for

1 providers for one additional year who serve individuals who are  
2 in the indemnity fund through December 31 of 2020.

3 Let me just quickly wrap up and say a couple of things  
4 about our DSRP waiver. Hard to believe, I think, but on April 1  
5 we entered the fifth and final year of that waiver. We are  
6 within the Department and with our partner agencies looking at  
7 options to renew or extend that waiver. We believe that some  
8 fabulous work has been done under that waiver and in the  
9 demonstrations that have taken place all throughout the state  
10 and that we will certainly want to proceed with making a request  
11 of HHC to continue to fund that good work. So more to follow  
12 there. So you know the timeframe generally is that concepts on  
13 waiver extensions would be due to the federal government  
14 sometimes in the summer with a formal request for waiver  
15 extension not happening until late fall.

16 So, happy to take questions. Appreciate your attention.

17

18 JEFF KRAUT: Well, you have a few things you spoke about,  
19 so there may be some questions. Questions? Dr. Kalkut.

20

21 GARY KALKUT: Thank you very much for the presentation to  
22 the council.

23 [Gary, a little closer to the mic]



1 I'm glad you mentioned the waiver extension for DSRIP at  
2 the close. Do you anticipate with an application in the fall how  
3 the timing would work relative to the end of DSRIP in March of  
4 '20 and what that transition might be? Would there be an  
5 interruption in a funding stream for those projects you  
6 mentioned that are going so well?

7

8 DONNA FRESCATORE: The timeline is largely prescribed by  
9 HHS. We would intend not to have disruption in projects as a  
10 result of the extension. We'll come back out obviously, and ask  
11 for everybody's good thoughts on the waiver, the application.  
12 We've begun through the process and we'll soon have information  
13 to identify the most promising of practices, and we would  
14 include those in a concept paper. Most likely in July or so,  
15 August of this year, and then follow the intention of having no  
16 interruption.

17

18 GARY KALKUT: One other question. The goal of avoidable  
19 admissions and readmissions is tremendous work that's been done.  
20 The numbers the last I saw was about 20 percent reduction with a  
21 goal of about 25 over five years. Is there any... what is the  
22 thinking of the program related to incentivizing observation and  
23 increasing observation instead of admission as an alternative to

1 admission within the Medicaid program that would then add to  
2 whats happening?

3

4 DONNA FRESCATORE: I, certainly something I can take back  
5 and talk to my colleagues in OHIP about and Dan and his  
6 colleagues as well. I don't have an answer for you on that  
7 today, but it's certainly something that we can explore as  
8 potential options. But your observation about 20 percent  
9 reduction in fact is what we're seeing, and we'll have statewide  
10 measurement results shortly to update, and we think we will see  
11 good progress there. We're happy to take a look at that.

12

13 GARY KALKUT: Yeah, I think in commercial population,  
14 Medicare, there's been a real boost from a viable observation  
15 rate to reduce admissions.

16

17 JEFF KRAUT: By the way, there's an article this week in  
18 JAMA Cardiology questioning the whole... it's interesting is more  
19 data is coming out on this just as you see flip sides of some of  
20 these questions. Dr. Yang.

21

22 PATSY YANG: So I think we all appreciate that this is -  
23 ----- justice involved waiver for CMS. So appreciate that I  
24 think the intention is to include local detention facilities in

1 the second waive. Would argue that you might want to try a  
2 locality in the first wave also, but if in writing the waiver  
3 amendment you could do something that accommodates the fact that  
4 all the localities are jails and so we have less assurance of a  
5 date of release. So, the 30 days prior to release is really  
6 easier in a DOCCF, in a state facility where it's a sentence  
7 population. Most of the localities are dealing with people who  
8 are not sentences. They're detained.

9

10 DONNA FRESCATORE: Thank you for the comment.

11

12 JEFF KRAUT: Carver-Cheney

13

14 KATHLEEN CARVER-CHENEY: Could you give a little more  
15 information about the fiscal intermediaries so those that have  
16 come into existence within the last couple or three years. They  
17 won't have the opportunity to contract, and does that mean they  
18 will be going out of business? What will happen?

19 DONNA FRESCATORE: So, they will have the opportunity to  
20 contract. So, the statute specifies certain types of  
21 organizations, namely the independent living centers in  
22 organizations that were doing FI services before a date certain,  
23 but the third component is a competitive process, an abbreviated  
24 competitive process whereby through the workgroup the Department

1 will develop criteria for additional fiscal intermediaries, and  
2 that will be posted to the Department's website. There'll be a  
3 period of time during which interested parties can come in and  
4 apply to be fiscal intermediaries. And the criteria we think is  
5 essential here in making certain that we have a group of FIs  
6 that are able to well serve the CDPAS members. So there will be  
7 an additional opportunity. There's not a fixed number in the  
8 statute on how many organizations can be FI. We believe that we  
9 need to do that through criteria that addresses consumer needs  
10 and demand.

11

12 SCOTT LARUE: Thank you. Donna just a couple of questions  
13 on the case mix. So the legislation as it's currently written  
14 already establishes that you'd be moving from what was referred  
15 to as two picture windows a year to some type of system that  
16 uses the entire prior 12 months MDS?

17

18 DONNA FRESCATORE: So, the statute fixes two points during  
19 the year at which time the rate will be adjusted. But is silent  
20 on the period of data that will be used to compute the  
21 adjustment. So the statute requires an adjustment be made  
22 effective July 1 of the calendar year, and January 1 of the  
23 calendar year. So you won't see a statutory change to that  
24 language that remains, but operationally rather than the

1 Department selecting what we currently do now which if I recall  
2 this correctly, and Scott you can fix this if it's not correct,  
3 is that we pick one day in each period. It happens to be a  
4 Wednesday that happens to be closest to another certain day, and  
5 that's the date on which the adjustment is based. When we step  
6 back and looked at all of the information that was submitted to  
7 CMS through the existing required reporting process, what we saw  
8 is that that date, one date, for each adjustment was not  
9 necessarily reflective of what the case mix had been and the  
10 acuity of the patients when you looked at the entire period. In  
11 some cases, the acuity was higher by selecting one date, and  
12 some cases it was lower by selecting just one date. So I think  
13 that the reasonable approach here is to without creating any  
14 additional reporting requirements on the nursing homes, is to  
15 use all the available data to get this - this is a really  
16 important adjustment in our view - to get this as accurate as  
17 possible.

18

19 JEFF KRAUT: Thank you. Any other questions? Before I go  
20 on I just have one; during the course of the year we heard  
21 concern about the availability of inpatient behavioral health  
22 capacity and I note that the budget included a rebasing of the  
23 rates for inpatient both psych and substance use care. Could

1 you, do you have any thinking, I know it's a little preliminary,  
2 but when you'd expect to see that occur and what' the process?

3

4 DONNA FRESCATORE: I don't have ----- for you, I can tell  
5 you that the financial people in the office of management...  
6 Office of Health Insurance Programs are working with the Office  
7 of Mental Health on that rebasing, and we're really looking at  
8 data in anticipation of that rebasing even before we begin the  
9 budget discussion, so I hope that it'd be relatively soon, and  
10 we'll certainly work with Dan and his colleagues as well on  
11 getting that work completed.

12

13 JEFF KRAUT: I would just encourage it because some of  
14 the recent gyrations with the budget is probably going to have  
15 another spate of institutions relooking at what they're doing.

16

17 DONNA FRESCATORE: Thank you for raising that.

18

19 JEFF KRAUT: Any other questions? Thank you so much and  
20 appreciate a lot of information. We do appreciate you sharing.  
21 Would be nice instead of coming once a year. Maybe coming twice  
22 a year and we'll schedule that out with the Department.

23

1           DONNA FRESCATORE:    We would be happy to do that, and happy  
2 to bring my colleagues who are more expert in some subject  
3 matters, certainly, than I am.

4  
5           JEFF KRAUT:           Thank you so much. We do appreciate it.

6           I'd now like to turn it over to Mr. Hutton who is going to  
7 give us an update on the activities of the Office of Public  
8 Health.

9  
10          BRAD HUTTON:        Thanks for the opportunity. I want to start  
11 by congratulating a few counties who have recently received  
12 accreditation from the Public Health Accreditation Board. Both  
13 Albany County and Rockland County, as if Rockland County wasn't  
14 busy enough. They completed the accreditation process which we  
15 really value as important.

16          Also the Robert Wood Johnson Foundation recently issued  
17 their annual county health rankings. I know that this often gets  
18 a lot of attention. The five healthiest counties in New York I  
19 think were the same although they flipped order. It's Rockland,  
20 Nassau, Westchester, Saratoga, and New York. So again, kudos to  
21 them for a lot of their work that they have contributed to that.  
22 I did want to focus my comments on some of those items that were  
23 included in the enacted budget. Sally Dreslin did mention some  
24 of these, but just to go into a little bit more. First there was

1 an investment that was agreed to in the enacted budget to  
2 provide a reimbursement rate increase of five percent in early  
3 intervention. That is specifically for therapists who are either  
4 speech language pathologists, occupational therapists or  
5 physical therapists. Those happen to be some of the service  
6 professionals that are in greatest demand and it's also an  
7 effort to better align our pricing system with the educational  
8 background of the professionals.

9 Childhood lead poisoning, as Sally mentioned, there was an  
10 agreement in the budget to lower the level that is the  
11 definition for elevated blood lead levels. Children age... are  
12 required to be tested at age one and age two in New York State  
13 by their physician. So the level has been lowered from 10 to 5.  
14 We're hard at work on some regulations that this group will see  
15 eventually that further defines the actions that are expected to  
16 occur for children who have a confirmed blood lead level of 5 or  
17 above. So we've already been doing across the state nurse case  
18 management in environmental assessments for children beginning  
19 at 10 micrograms per deciliter. That's when nurse case  
20 management activities occur which is essentially working with a  
21 family to identify all the potential sources of lead exposure  
22 and work to address them. And then at 15 is when the  
23 environmental assessment is required to occur, be a regulation,  
24 and if that could include anywhere the child spends time, not



1 just a residence, but maybe a grandparents residences or others,  
2 and if a lead hazard is found, can authorize under public health  
3 law required remediation. So, both of those levels will be  
4 defined in regulation to be lowered to five and we expect to see  
5 a pretty sizable increase in the number of children with  
6 elevated blood levels. It's important to point out that that  
7 actually represents a great public health success because the  
8 level that is set is really based upon the national reference  
9 level as per NHANES which is the effort to sort of measure and  
10 monitor blood lead levels across the country. It wasn't long ago  
11 in my childhood when blood lead levels that we aimed to lower  
12 were 40 and then 25 and 20 and now fortunately we're in a  
13 position we're able to focus on implementing initiatives to  
14 reduce exposures for even children who are as low as five since  
15 there's rally no safe level of blood lead level.

16 The budget also provides an investment to support the costs  
17 to implement that huge initiative here, both support the cost  
18 for local health departments and state investment where we'll be  
19 hiring investigators who will be trained in environmental  
20 assessment and also to interview those families.

21 Mention maternal mortality. There was an \$8 million  
22 investment over two years to support initiatives that were part  
23 of the New York State taskforce on maternal mortality. I know  
24 that Dr. Boufford would have a keen interest in this and has

1 been following it closely. Those include investments to support  
2 the implementation of a maternal mortality review board at the  
3 state level, to provide expanded grant funding to some of our  
4 current grant initiatives to allow further access to community  
5 health workers, working with hospitals to distribute training  
6 and education on implicit bias and implicit racial bias which  
7 was an important recommendation from the taskforce. Also an  
8 effort to establish a comprehensive data warehouse to better  
9 understand perinatal outcomes that improve quality. This is  
10 modeled after an initiatives in California that really resulted  
11 in some meaningful improvements in maternal mortality. And then  
12 finally convene an expert workgroup to optimize post-partum care  
13 in New York State, and that's something we're going to be doing  
14 in partnership with ACOG, AAP, and other associations who have  
15 really been great partners.

16 Do want to mention a little bit about tobacco and ecigs. As  
17 Sally mentioned, we did have in the enacted budget first time in  
18 New York 20 percent retail tax on e-liquids and other products.  
19 We implemented 180 days from enactment. It also comes along with  
20 it a requirement that retailers register with the Department of  
21 tax and finance. This is important for a few reasons; it allows  
22 us to administer that tax through tax and finance. It also  
23 allows us to incorporate those retailers into our minor  
24 enforcement (TUPA) programs so that we're able to assure that

1 existing law that required that only individuals who are under  
2 the age of 18, now under the age of 21 could purchase e-cig  
3 products. Continue to see concerning increases in the use of e-  
4 cigarettes by high schoolers. It's increased 160 percent in the  
5 last four years. 27 percent of high schoolers represent e-cig  
6 use in the last month. That number is higher among seniors. So  
7 we're hopeful and the primary motivation for the e-cigarette tax  
8 is that youth are very price sensitive and that 20 percent tax  
9 we hope dissuades them from using or initiating the use of e-cig  
10 products. Similarly for tobacco 21, where there are bills that  
11 passed both houses and there's a commitment to sign that by the  
12 Governor, will raise the legal age at which youth can purchase  
13 which is currently 18 and will now be raised to 21 for both  
14 tobacco and e-cigarette products. Important data here to  
15 demonstrate why this is so critical. 90 percent of adult smokers  
16 started smoking before the age of 18 and many unfortunately  
17 become life-long smokers. So it's really important to delay  
18 initiation and that window of 19-21 was important but also that  
19 there was an Institute of Medicine panel that actually  
20 recommends T21 legislation. The director of our bureau of  
21 tobacco control actually served on that IOM panel. Had some  
22 interesting data that showed it's not only about deterring  
23 initiation among the 18-21 year olds, those 18-21 year olds  
24 purchase and provide tobacco to their social networks who are

1 15-17 year olds and still in high school and so we actually  
2 expect to see delayed initiation of use among teenagers as well.  
3 So, 70 percent of New York State's current population already  
4 has local laws that require T21. And so this statute will make  
5 it consistent across the state. Incidentally some of the  
6 counties with the highest smoking rates happen to be some of the  
7 counties that currently have tobacco 18 as opposed to tobacco  
8 21. So those are really important changes in the budget that  
9 will have a real meaningful impact on improving the public's  
10 health. I'll stop there.

11

12 JEFF KRAUT: Thank you very much Mr. Hutton. Any  
13 questions? I ... yes.

14

15 KEVIN WATKINS: ... want to applaud the State for their  
16 current process in reducing the childhood lead poisoning down  
17 from 10 to 5. I think this is something that should've been done  
18 many years ago and so we're happy to see this finally occurring.  
19 But I do want to... I would be amiss if I did not comment on the  
20 fact when we are looking at environmental health assessments for  
21 this, we know that there are a number of housing stock within  
22 New York specifically in the rural counties that have housing  
23 stock greater than 1978, built before 1978 which is going to  
24 increase at least by 30 percent. The number of environmental

1 health investigations that will have to occur if we were to  
2 require local health departments to have their environmental  
3 health staff to go out to do those investigations at an  
4 actionable level of 5 micrograms per deciliter. So I just want  
5 to say we appreciate that we have moved the level down to 5  
6 because we think at no level, no lead level a child should have  
7 to deal with this type of exposure, but we do know that this  
8 investigation is going to be a tremendous burden on local health  
9 departments, and so we are working with the State, fatefully, so  
10 that we can work something out so that this type of resources  
11 will be given to local health departments if they had to move to  
12 those actionable levels of five for environmental health staff.

13       And I also want to ask Brad, what do we do, I know that the  
14 excess tax for tobacco products have worked for New York State  
15 and the whole, but what about local jurisdiction that have the  
16 native population that actually produce tobacco products, for  
17 instance, Inca Nation of Indian, so we have in Cattaraugus  
18 County who produces tobacco products and they can sell tobacco  
19 products for \$2 a pack and they do not have to abide by state  
20 regulations to sell products at 21 years or under.

21

22       BRAD HUTTON:   Thanks Dr. Watkins. First, certainly  
23 appreciate your comments and also the challenge ahead with  
24 respect to lowering the blood lead level. As Dr. Watkins knows,

1 the State Health Department is responsible for administering  
2 environmental health for 21 counties, so we truly are partners  
3 in this initiative, not just over seeing implementation of a new  
4 program by local health departments. And we're going to do a lot  
5 to try and provide assistance by offering training programs,  
6 helping certify inspectors which is a process in and of itself,  
7 really working to understand the unique challenges that this  
8 group of children will bring because they have lower levels of  
9 exposure than ones that have typically been investigated and so  
10 they might have a diverse and more complicated set of  
11 environmental or nonenvironmental sources of exposure. And so I  
12 mean, why not just commit that we'll be true partners and that  
13 it is a real huge undertaking for health departments and the  
14 state to prepare for the October 1 implementation of this  
15 lowered level.

16 With respect to tax, it's certainly both sales on the  
17 internet and sales and nations that get around the tax.  
18 Unfortunately serve as a way for youth and potentially others to  
19 continue to use and to detract from the potential benefit that  
20 tobacco tax has on delaying start and reducing use, and I think  
21 that's been a recognized problem. I think that there's a lot of  
22 effort underway on the part of the attorney general's office,  
23 where I know our department collaborates with them on some of

1 those issues especially internet sales, and I think that we  
2 continue to try to do our best to address those issues.

3

4           JEFF KRAUT:       It's kind of interesting, you know, In  
5 those counties where we've seen a growth in use and kids and use  
6 of e-cigs, you know, when does it become an epidemic? And the  
7 health commissioner has certain powers, as we understand, to  
8 use, to maybe bypass some of the other processes. But anyway.  
9 The other thing is in commending the counties, and it's a point  
10 of pride about the rankings, just... I had a conversation with  
11 some local electeds in two of the counties that rank very high,  
12 reminding them that it doesn't mean they should reduce their  
13 commitment in public health and community health because they're  
14 doing so well, because when you take a look at some of the  
15 counties, the distance - it's an average, and it's a high  
16 average, but the real story is the distance between the highs  
17 and the low within that county with different communities that  
18 are significantly below that average and the work they need to  
19 do to bring up the bottom part of the county to tighten the  
20 variability. Because it doesn't mean they should stop and fund.  
21 So we have to keep reminding them of that.

22

23           BRAD HUTTON:     That's a great point. I think there are  
24 limitations to any ranking effort. Certainly want to keep that

1 in mind. Rockland being the healthiest county is demonstrating  
2 currently how important it is to invest in a strong public  
3 health system because even the healthiest county in New York can  
4 be faced with a really troubling outbreak of measles. And so I  
5 think we recognize that and really appreciate you for making  
6 that comment.

7

8 JEFF KRAUT: any other questions? I'll now turn it over  
9 to Dr. Gutierrez who will give us a report on Codes,  
10 Regulations, and Legislation.

11

12 ANGEL GUTIERREZ: Thank you very much.

13 Good afternoon. At today's meeting of the committee on  
14 Codes, Regulation, and Legislation the committee reviewed five  
15 proposals; one for emergency adoption and four for adoption. For  
16 emergency adoption we have body scanners in local correctional  
17 facilities. Dr. Yang had declared an interest. This proposal  
18 will amend part 16 of Title 10 pertaining to ionization  
19 radiation and update requirements regarding the use of body  
20 imaging scanning equipment. The committee voted to recommend  
21 emergency adoption to the full council, and I so move.

22



1           JEFF KRAUT:       I have a motion. May I have a second?  
2   Second, Dr. Martin. Any discussion? Questions? Hearing none I'll  
3   call. All those in favor?

4  
5   [Aye]

6           Opposed? Abstention? The motion carries.

7  
8           ANGEL GUTIERREZ:       For adoption now is nursing home weekly  
9   bed census. This proposed regulation would add a new section  
10  415.32 to Title 10 that would require nursing homes to  
11  electrically submit a weekly bed census data survey to the  
12  Department to ensure that the Department has accurate bed  
13  availability information. The committee voted to recommend  
14  adoption to the full council, and I so move.

15  
16          JEFF KRAUT:       I have a motion. I have a second, Dr.  
17  Martin. Any questions? All those in favor, aye.

18  
19   [Aye]

20          Opposed? Abstentions? The motion carries.

21          ANGEL GUTIERREZ:       For adoption also, new requirements for  
22  annual registration of licensed home care services agencies.  
23  This proposal would amend part 766 of Title 10 and update  
24  requirements for licensed homecare services agencies, referred

1 to as LHCSAs with respect to annual registration and reporting.  
2 The committee voted to recommend adoption to the full council,  
3 and I so move.

4

5 JEFF KRAUT: I have a motion, may I have a second, Dr.  
6 Torres. Any questions? All those in favor, aye.

7

8 [Aye]

9 Opposed? The motion carries.

10

11 ANGEL GUTIERREZ: For adoption, hospital policies for  
12 human trafficking victims. This proposal will amend part 405 of  
13 section 751.5 of Title 10 to require hospitals and diagnostic  
14 and treatment centers to establish policies and procedures  
15 pertaining to identification and referral of victims of human  
16 trafficking. The committee voted to recommend adoption to the  
17 full council, and I so move.

18

19 JEFF KRAUT: I have a motion. May I have a second, Dr.  
20 Torres. Any questions? All those in favor, aye.

21

22 [Aye]

23 Opposed? The motion carries.

24

1           ANGEL GUTIERREZ:       And last for adoption also, clinical  
2 laboratory directors. This proposal will amend part 19 of Title  
3 10 pertaining to clinical laboratory directors to update the  
4 list of recognized board certifications that qualify clinical  
5 laboratory directors among other changes. The committee voted to  
6 recommend adoption to the full council and I so move.

7

8           JEFF KRAUT:        I have a motion, may I have a second, Dr.  
9 Berliner. Any questions? All those in favor, aye.

10

11 [Aye]

12           Opposed?   The motion carries.

13

14           ANGEL GUTIERREZ:       This concludes my report Mr. Chairman.

15

16           JEFF KRAUT:        Thank you very much Dr. Gutierrez. I'm now  
17 going to turn it over to Mr. Robinson who will give us the  
18 report of the project review recommendations and establishment  
19 actions.

20

21           PETER ROBINSON:       Thank you Mr. Kraut. As you mentioned  
22 in your introductory remarks we'll be handling these  
23 applications by batch, and so please signal if any member of the  
24 council wishes to take any of these projects out of the batch to

1 discuss individually. Beginning with applications for acute  
2 services. Application 182246C, Cortland Regional Medical Center,  
3 Inc., in Cortland County. Certify an extension clinic to be  
4 located at 126 Homer Avenue. Cortland, which provides radiation  
5 therapy, medical oncology services including chemotherapy. I  
6 will note here that during the discussion of this application  
7 there was a recommendation that the planning committee take up a  
8 review of the need methodology associated with radiation  
9 oncology projects on a going forward basis. But with that said I  
10 would note that the Department recommends approval of this  
11 application with conditions and contingencies, as does the  
12 committee and I so moved.

13

14 JEFF KRAUT: I have a motion, and a second by Dr.  
15 Gutierrez. Any questions from the council or comments from the  
16 Department. Hearing none, all those in favor, aye.

17

18 [Aye]

19 Opposed? Abstentions? The motion carries.

20

21 PETER ROBINSON: Thank you. This is an application for  
22 individual consideration. Application 182147C. University  
23 Hospital SUNY Health Sciences Center in Onondaga County. This  
24 proposal would add 10 pediatric beds to this hospital's

1 operating certificate. An approval of this application will  
2 increase the number of pediatric beds to 56 and bring the total  
3 certified beds of the hospital to 430. I'll note here the  
4 Department has recommended approval with conditions and  
5 contingencies, as did the committee, and I so move.

6

7 JEFF KRAUT: I have a motion, second Dr. Gutierrez. Any  
8 comments from the Department or questions? Ms. Raleigh.

9

10 TRACY RALEIGH: Thank you. Tracy Raleigh, from the  
11 Department. I just want to point out in response to committee  
12 members questions raised that the applicant did revise the  
13 budget to more accurately reflect the income contribution from  
14 the pediatric service line.

15

16 JEFF KRAUT: Good catch there. Any other questions from  
17 the council? All those in favor aye.

18

19 [aye]

20 Opposed? Abstentions? The motion carries.

21

22 PETER ROBINSON: Moving now to applications for  
23 ambulatory surgery centers. 182302B. Regency SC LLC d/b/a as  
24 Regency Surgery Center in Bronx County. To establish and

1 construct a multispecialty ambulatory surgery center to provide  
2 orthopedic pain management and podiatry services located at 3250  
3 Westchester Avenue in the Bronx. The Department is recommending  
4 approval with conditions and contingencies and with an  
5 expiration of the operating certificate five years from the date  
6 of issuance. The committee similarly recommended approval with  
7 conditions and contingencies. And also with an expiration of the  
8 operating certificate five years from the date of issuance. I'm  
9 also calling in this batch application 191009B, KAHR Health LLC  
10 in Rockland County. And this is to establish and construct a new  
11 primary medical care diagnostic and treatment center to be  
12 located at 421 Route 59 Monsey through the conversion of a  
13 private practice. I will note here updated contingency number  
14 four has been added, which includes, requires the submission of  
15 photocopy of final, complete, fully executed counter part of  
16 applicants operating agreement acceptable to the Department. The  
17 Department here recommends approval with conditions and  
18 contingencies as does the committee, and I so move.

19

20 JEFF KRAUT: I have a second by Dr. Gutierrez. Any  
21 questions or comments about these applications? All those in  
22 favor Aye.

23

24 [Aye]

1           Opposed? Abstentions? The motion carries.

2

3           PETER ROBINSON:           Thank you. Following our applications  
4 for residential healthcare facilities. These will also be  
5 presented in batch. 182209E, Morris Park Nursing and  
6 Rehabilitation Center LLC in the Bronx. To establish Morris Park  
7 Nursing and Rehab LLC as the new operator of Morris Park Nursing  
8 Home, a 191 bed residential healthcare facility located at 1235  
9 Pelham Parkway North in the Bronx which the Department  
10 recommends with approval and a contingency, as did the  
11 committee. Application 182221E, LeRoy Operating LLC, d/b/a LeRoy  
12 Village Green Nursing and Rehabilitation Center. This is in  
13 Genesee County and it's to establish LeRoy operating LLC as the  
14 new operator of LeRoy Village of Green residential healthcare  
15 facility, existing 140 bed residential healthcare facility  
16 located at 10 Monsey Street in LeRoy. Here the Department  
17 recommends approval with a condition and contingencies as did  
18 the committee. Application 182271E, Union Plaza Care Center in  
19 Queens County. Transferring a total of 50 percent interest from  
20 three withdrawing members to two new members and one existing  
21 member. Department recommends approval with a condition and a  
22 contingency as did the committee. And application 182175E, FSNR  
23 CHHA LLC d/b/a Four Seasons Nursing and Rehabilitation Certified  
24 Home Health Agency. This is to establish FSNR CHHA LLC d/b/a

1 Four Seasons Nursing and Rehabilitation Certified Home Health  
2 Agency as the new operator of the Four Seasons Nursing and  
3 Rehabilitation Certified Home Health Agency. The Department  
4 recommends approval with a condition and contingency as did the  
5 committee. I make a motion on all those applications.

6

7 JEFF KRAUT: I have a second by Dr. Gutierrez. Any  
8 comments or questions? All those in favor, aye.

9

10 [Aye]

11 Opposed? The motion carries.

12

13 PETER ROBINSON: Thank you. The following are  
14 certificates. One is a certificate of dissolution for FASC  
15 Foundation for Foxhall Ambulatory Surgery Center and for  
16 Cabrinni Care at Home Inc. The Department recommends approval as  
17 did the committee, and I so move.

18

19 JEFF KRAUT: I have a motion and a second by Dr.  
20 Gutierrez. Any comments? All those in favor Aye?

21

22 [Aye]

23 Opposed? Motion carries.

24



1           PETER ROBINSON:        Ok, I'm calling application 182124E,  
2 John T. Mather Memorial Hospital of Port Jefferson New York,  
3 Inc. in Suffolk County. Noting a recusal as a result of a  
4 conflict by Mr. Kraut who has left the room. To establish  
5 Northwell Healthcare Inc., as the active parent and co-operator  
6 of John T. Mather Memorial Hospital of Port Jefferson, New York  
7 Inc. and I would note here that there's a new BFE attachment E  
8 that's been posted on this application. The Department is  
9 recommending approval with a condition and contingencies as did  
10 the committee. May I have a motion? Thank you Dr. Gutierrez.  
11 Second, Dr. Berliner. Any questions from the committee? Call  
12 the question. All in favor, aye.

13

14 [Aye]

15           Any opposed? That motion carries. Please ask Mr. Kraut to  
16 return.

17           Application 182060E, noting on this application a conflict  
18 and recusal by Mr. LaRue who is leaving the room. This is for  
19 Buena Vida SNF LLC, d/b/a Buena Vida Rehabilitation and Nursing  
20 Center in Kings County. To establish Buena Vida SNF LLC as the  
21 new operator of Buena Vida Continuing Care and Rehabilitation  
22 Center, 240 bed residential healthcare facility located at 48  
23 Cedar Street in Brooklyn. The Department is recommending

1 approval with condition and contingencies, as did the committee  
2 and I so move.

3

4 JEFF KRAUT: I have a motion, a second by Dr. Gutierrez.  
5 Any comments? Any questions? All those in favor Aye?

6

7 [Aye]

8 Opposed? Motion carries. Please ask Mr. LaRue to return.  
9 And say goodbye to Mr. Thomas.

10

11 PETER ROBINSON: Ok, so Mr. Thomas who I believe is on  
12 the phone but not in the room would please get off the phone for  
13 these applications. I also note that I ...

14

15 JEFF KRAUT: Are you there?

16

17 PETER ROBINSON: I have declared an interest in both of  
18 these applications. 182160E, Lifetime Care Hospice of  
19 Rochester, Hospice of Wayne and Seneca Counties in Monroe County  
20 as well. This is to establish Rochester Regional Health as the  
21 sole member of Genesee Region Homecare Association Inc. The  
22 operator of Lifetime Care Hospice. The Department is  
23 recommending approval with a condition and contingencies as did  
24 the Committee. Similarly, I'm calling application 182159E,

1 Lifetime Care in Monroe County. This is to establish Rochester  
2 Regional Health as the new sole member of Genesee Regional  
3 Homecare Association Inc. d/b/a Lifetime Care, an existing  
4 Certified Home Health Agency. The Department recommends approval  
5 with condition and contingencies as does the committee, and I  
6 make the motion on those two applications.

7

8 JEFF KRAUT: I have a motion. I have a second, Dr.  
9 Gutierrez. Is there anybody else on that phone other than Mr.  
10 Thomas? Just mute... I want the phone muted. Are there any  
11 questions or comments? Hearing none, all those in favor Aye?

12

13 [Aye]

14 Opposed? Motion carries.

15 You can unmute the phone.

16

17 PETER ROBINSON: No you can't. One more.

18 This is application 1821863E, Genesee Region Homecare of  
19 Ontario County Inc., d/b/a Homecare Plus in Monroe County. Again  
20 noting the conflict and recusal by Mr. Thomas and my interest.  
21 The Department is recommending approval and contingent approval  
22 as indicated in the staff reports, as did the committee and I so  
23 move.

24

1           JEFF KRAUT:       I have a motion and a second by Dr.  
2 Gutierrez. Any comments? Questions? All those in favor Aye?

3  
4 [Aye]

5           Opposed? Motion carries.

6           Now unmute the phone.

7

8           PETER ROBINSON:       Going to batch the following  
9 applications that involve both dialysis and residential  
10 healthcare facilities. Application 181420E, Rogosin Auberndale  
11 LLC d/b/a Rogosin Kidney Center in Auberndale in Queens County.  
12 This is to establish Rogosin Auberndale Care LLC as the new  
13 operator of the 29 station chronic renal dialysis center located  
14 at 3920 Utopia Blvd., Flushing currently operated by the Rogosin  
15 Institute Inc. The Department is recommending approval with  
16 condition and contingencies as did the committee. Under the  
17 residential healthcare facilities, application 172415E, The  
18 Pearl Nursing Center of Rochester LLC in Monroe County.  
19 Establishing the Pearl Nursing Center of Rochester LLC as the  
20 new operator of the 120 bed residential healthcare facility,  
21 located at 1335 Portland Avenue, Rochester, currently operated  
22 as the New Rock Nursing and Rehabilitation Center. The  
23 Department is recommending approval with a condition and  
24 contingencies. The committee recommended approval with a

1 condition and contingencies with two members opposing.  
2 Application 182272E, EN Operations Acquisition LLC d/b/a The  
3 Grand Rehabilitation and Nursing at Delaware Park in Erie  
4 County. To establish EN Operations Acquisitions LLC as the  
5 operator of the Buffalo Community Healthcare Center, formerly  
6 known as Emerald North Nursing and Rehabilitation Center, a 95  
7 bed residential healthcare facility located at 1205 Delaware  
8 Avenue in Buffalo. The Department is recommending approval with  
9 a condition and contingencies. The committee did as well, with  
10 one member opposing. Application 181110E, ISLRNC LLC d/b/a Ideal  
11 Commons Rehabilitation and Nursing Center in Broome County. This  
12 is to establish ISLRNC LLC as the new operator of the 150 bed  
13 residential healthcare facility located at 601 High Avenue  
14 Endicott, currently operated as Ideal Senior Living Center. The  
15 Department has recommended approval with a condition and  
16 contingencies, so did the committee again with one member  
17 opposing. And I make the motion on those applications.

18

19 JEFF KRAUT: I have a motion, I have a second Dr. Kalkut.  
20 Any comments? Any questions? All those in favor Aye?

21

22 [Aye]

23 Opposed? Motion carries. Sorry. One opposed? Anybody  
24 else? Motion still carries? Motion carries.

1

2           PETER ROBINSON:        OK, and the final batch, first for home  
3 health licensures, and these are affiliated with assisted living  
4 programs or ALPS. Application 181115E, ISLACF LLC d/b/a the  
5 Pavilion at Ideal Commons in Broome County. 182100E. Pine Haven  
6 Assisted Living LLC, d/b/a Pine Haven Homecare in Columbia  
7 County. 182244E, the Sentinel of Rockland LLC in Rockland  
8 County. 182289E, Rosewood of Auburn LLC d/b/a Ridgewood Senior  
9 Living in Cayuga County, also a change of ownership along with  
10 the consolidation. Application 182249E, South Shore Home Health  
11 Services Inc., in Suffolk County. On all of these the Department  
12 is recommending approval and contingent approval is noted in the  
13 staff reports. The committee made a similar approval and  
14 contingent approval is noted. And I make a motion on those  
15 applications.

16

17           JEFF KRAUT:        I have a motion. I have a second, Dr.  
18 Guttierrez. Any comments? Any questions? All those in favor Aye?

19

20 [Aye]

21           Opposed? Motion carries.

22

23           PETER ROBINSON:        That concludes the report of the  
24 Establishment and Project Review Committee.

1

2           JEFF KRAUT:       Thank you very much Mr. Robinson. I'd like  
3 to make you aware that the next meeting of the Public Health and  
4 Health Planning Council is going to be on, the committee day is  
5 going to be on May 16 in New York City. The full council will  
6 convene on June 6 in New York City. I'll now entertain a motion,  
7 make a motion to adjourn. I have a second. All those in favor,  
8 aye. We are adjourned. Thank you so much for all the work and  
9 the help and the Department. This was a robust discussion today.

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

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

16.70 Use of Body Scanning.

(a) This section shall not apply in cities having a population of two million or more.

(b) Practitioners licensed under Article 35 of the Public Health Law and unlicensed personnel employed at a local correctional facility may utilize body imaging scanning equipment that applies ionizing radiation to humans for purposes of screening inmates committed to such facility, solely in connection with the implementation of such facility's security program and in accordance with the provisions of this Part.

(c) Definitions

(1) "Body imaging scanning equipment" or "equipment" means equipment that is specifically manufactured for security screening purposes and utilizes a low dose of ionizing radiation, with a maximum exposure per scan equal to or less than 10  $\mu$ Sv (1 mrem), to produce an anatomical image capable of detecting objects placed on, attached to or secreted within a person's body. The utilization of body imaging scanning equipment is for purposes of screening inmates committed to such facility, in connection with the implementation of such facility's security program.



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

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

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

(d) Equipment use and installation requirements

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

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

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

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

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

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

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

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

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

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

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

(e) Exposure limits and reporting requirements

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

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

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

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

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

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

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

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

(f) Training Requirements

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

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

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

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

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

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

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

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

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

### **Legislative Objectives:**

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

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

**Needs and Benefits:**

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

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

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

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

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

**Costs to State and Local Governments:**

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

**Costs to the Department of Health:**

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

**Local Government Mandates:**

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

**Paperwork:**

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

**Duplication:**

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

**Alternatives:**

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

**Federal Standards:**

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



**Compliance Schedule:**

There is no compliance schedule imposed by these regulations, which shall be effective upon publication of a Notice of Adoption in the New York State Register.

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

**Effect of Rule:**

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

**Compliance Requirements:**

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

**Professional Services:**

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

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

### **Compliance Costs:**

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

### **Economic and Technology Feasibility**

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

### **Minimizing Adverse Impact:**

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

**Small Business and Local Government Participation:**

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

**Cure Period:**

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

## RURAL AREA FLEXIBILITY ANALYSIS

### Types and Estimated Numbers of Rural Areas:

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

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

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

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

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

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

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

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

**Costs:**

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

**Minimizing Adverse Impact:**

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

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

**Rural Area Participation:**

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

**STATEMENT IN LIEU OF  
JOB IMPACT STATEMENT**

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



## **SUMMARY OF EXPRESS TERMS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Public need for cardiac catheterization laboratory centers:

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

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

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

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

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

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

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



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

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

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

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

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

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

(iv) emergency department discharge data;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

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

### **Legislative Objectives:**

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

### **Needs and Benefits:**

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

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

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

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

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

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

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

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

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

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

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

**Cost to State and Local Government:**

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

**Cost to the Department of Health:**

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

**Local Government Mandates:**

There are no local mandates within this regulatory amendment.



**Paperwork:**

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

**Duplication:**

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

**Alternative Approaches:**

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

**Federal Requirements:**

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

**Compliance Schedule:**

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

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## **REGULATORY FLEXIBILITY ANALYSIS**

### **Effect of Rule:**

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

### **Compliance Requirements:**

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

### **Professional Services:**

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

### **Compliance Costs:**

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

### **Economic and Technological Feasibility:**

This proposal is economically and technically feasible.

**Minimizing Adverse Impact:**

There is no adverse impact.

**Small Business and Local Government Participation:**

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

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

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

**STATEMENT IN LIEU OF  
JOB IMPACT STATEMENT**

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

## **SUMMARY OF EXPRESS TERMS**

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

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

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

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

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

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

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

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

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

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

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



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

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

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

A new Article 10 is added to read as follows:

## Article 10 – Midwifery Birth Centers

### Part 795 Midwifery Birth Centers

§ 795.1 Definitions. As used in this Part:

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

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

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

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

§ 795.2 Administrative requirements. The operator shall ensure that:

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

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

§ 795.3 Service restrictions. The operator shall ensure that:

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

§ 795.4 Midwifery birth center transfer procedures.

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

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

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

- (a) is a licensed midwife or physician;

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

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

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

§ 795.6 Clinical staff. The operator shall ensure that:

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

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

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

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



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

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

- (d) postpartum care including:
  - (1) care in the midwifery birth center to be provided for a minimum of four hours and a maximum of 24 hours after the third stage of labor is complete;
  - (2) a physical assessment of the newborn with the required eye prophylaxis in accordance with sections 12.2 and 12.3 of this Title and newborn screening tests in accordance with Part 69 of this Title;
  - (3) birth registration in accordance with section 4130 of the Public Health Law;
  - (4) a physical assessment of the patient in accordance with established protocols including the evaluation of Rh status, need for Rh prophylaxis and the patient's ability to feed the infant prior to discharge from the center; and
  - (5) the transfer to the newborn's medical record of a patient's HIV test result, if one exists; and
- (e) discharge and follow-up including:
  - (1) a program for discharge and follow-up of the patient and infant in their home for the immediate postpartum period unless arrangements have been made for the infant to be seen by another health care provider. The home visits may be performed by licensed professional nursing staff from the midwifery birth center, if the facility is approved under article 36 of the Public Health Law, or through an agreement with a certified or licensed

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

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

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

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

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

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

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

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

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

§ 795.11 Midwifery birth center accreditation.

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

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

§ 795.12 Application for establishment.

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

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



## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

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

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

### **Legislative Objectives:**

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

## **Needs and Benefits:**

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

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

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

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

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

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

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

## **COSTS:**

### **Costs to Private Regulated Parties:**

According to a national accreditation organization for midwifery birth centers, the Commission on the Accreditation of Birth Centers, typical fee structures for birth centers are as follows: a new birth center would be charged an initial registration fee of 4,000 dollars and a follow-up visit fee, one year later of 3,300 dollars. After that, a 250 dollar-per-month fee is assessed during the lifetime of the accreditation. All of these costs are

subject to change. Foundation grants may be available to potentially cover half of the costs for the initial and follow-up visit.

**Costs to State and Local Governments:**

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

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

**Costs to the Department of Health:**

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

**Local Government Mandates:**

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

**Paperwork:**

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

**Duplication:**

There are no duplicative or conflicting rules.

**Alternatives:**

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

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

**Federal Standards:**

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

**Compliance Schedule:**

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

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

### **Effect of Rule:**

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

### **Compliance Requirements:**

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

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

### **Professional Services:**

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

**Compliance Costs:**

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

**Economic and Technological Feasibility:**

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

**Minimizing Adverse Impact:**

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

**Small Business and Local Government Participation:**

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



## RURAL AREA FLEXIBILITY ANALYSIS

### Types and Estimated Numbers of Rural Areas:

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

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

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

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

There are no birth centers currently operating in rural areas.

## **Reporting, Recordkeeping, Other Compliance Requirements and Professional Services:**

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

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

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

## **Costs:**

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

**Minimizing Adverse Impact:**

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

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

**Rural Area Participation:**

The Department held meetings to seek input from practitioners in rural settings. The Department conducted outreach with state and national professional associations of midwifery birth centers, as well as representatives of midwives, midwifery birth centers, and general hospitals. This included practitioners practicing and intending to practice in rural settings. The proposed regulation will have a 60-day public comment period.

## **JOB IMPACT STATEMENT**

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

Pursuant to the authority vested in the Public Health and Health Planning Council and subject to approval by the Commissioner of Health by Sections 2800 and 2803-c of the Public Health Law, Sections 415.2 and 415.3 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended to be effective upon publication of a Notice of Adoption in the New York State Register to read as follows:

Section 415.2 is amended to add a new subdivision (v) to read as follows:

(v) Local Contact Agency shall mean an agency designated by the Department to accept referrals of nursing home residents that wish to receive information about services in the community. Local Contact Agencies shall contact referred nursing home residents and provide them with information and counseling on available home- and community-based services. Local Contact Agencies shall also either assist residents directly with transition services or refer residents to organizations that assist with transition services, as appropriate.

Section 415.3(a) is amended to read as follows:

(a) The facility shall ensure that all residents are afforded their rights to a dignified existence, self-determination, respect, full recognition of their individuality, consideration and privacy in treatment and care for personal needs, and communication with and access to persons and services inside and outside the facility. The facility shall protect and

promote the rights of each resident, and shall encourage and assist each resident in the fullest extent possible exercise of these rights as set forth in subdivisions (b) – [(h)] (i) of this section. The facility shall also consult with the residents in establishing and implementing facility policies regarding residents’ rights and responsibilities.

(1) The facility shall advise each member of the staff of his or her responsibility to understand, protect and promote the rights of each resident as enumerated in this section.

(2) The facility shall fully inform the resident and the resident’s designated representative both orally and in writing in a method of communication that the individuals understand the resident’s rights and all rules and regulation governing resident conduct and responsibilities during the stay in the facility. Such notification shall be made prior to or upon admission and during the resident’s stay. Receipt of such information, and any amendments to it, shall be acknowledged in writing. A summary of such information shall be provided by the Department and posted in the facility in large print and in language that is easily understood.

(3) The written information provided pursuant to paragraph (2) of this subdivision shall include but not be limited to a listing of those resident rights and facility responsibilities enumerated in subdivisions (b) through [(h)] (i) of this section. The facility’s policies and procedures shall also be provided to the resident and the resident’s designated representative upon request.

(4) The facility shall communicate to the resident an explanation of his or her responsibility to obey all reasonable regulations of the facility and to respect the personal rights and private property of other residents.

(5) Any written information required by this Part to be posted shall be posted conspicuously in a public place in the facility that is frequented by residents and visitors, posted at wheelchair height.

Subdivisions (c) and (d) of section 415.3 of Title 10 of the NYCRR are re-lettered (d)-(e) and a new subdivision (c) is added to read as follows:

(c) Right to Information on Home and Community-Based Services. The nursing home shall ensure that all residents are provided with information on home and community-based services and community transitions programs that may be available to support the resident in returning to the community. To ensure that all residents are afforded the right to exercise their right to live in the most integrated setting, the facility shall:

(1) advise all residents upon admission, of their right to live in the most integrated and least restrictive setting, with considerations for the resident's medical, physical, and psychosocial needs;

(2) provide all residents upon admission with information on home and community-based services and community transition programs;

(3) refer all residents to the Local Contact Agency or a community-based provider of the resident or designated representative's choosing whenever the resident requests information about returning to the community, or whenever the resident requests to talk to someone about returning to the community during any state or federally mandated assessment;

(4) post in a public area of the facility, at wheelchair height, contact information for the Local Contact Agency;

(5) have staff available to discuss options for discharge planning, with consideration for the resident's medical, physical, and psychosocial needs; and

(6) ensure that all discharge activities align with subdivision (i) of this section.

Subdivision (e) of section 415.3 is re-lettered (f) and amended to read as follows:

[(e)] (f) Right to Clinical Care and Treatment. (1) Each resident shall have the right to:

(i) adequate and appropriate medical care, and to be fully informed by a physician in a language or in a form that the resident can understand, using an interpreter when necessary, of his or her total health status, including but not limited to, his or her medical condition including diagnosis, prognosis and treatment plan. Residents shall have the right to ask questions and have them answered;

(ii) refuse to participate in experimental research and to refuse medication and treatment after being fully informed and understanding the probable consequences of such actions;

(iii) choose a personal attending physician from among those who agree to abide by all federal and state regulation and who are permitted to practice in the facility;

(iv) be fully informed in advanced about care and treatment and of any changes in that care of treatment that may affect the resident's well-being;

(v) participate in planning care and treatment or changes in care and treatment. Residents adjudged incompetent or otherwise found to be incapacitated under the laws of the State



of New York shall have such rights exercised by a designated representative who will act in their behalf in accordance with State law;

(vi) self-administer drugs of the interdisciplinary team, as defined by Section 415.11, has determined for each resident that this practice is safe.

(2) With respect to its responsibilities to the resident, the facility shall:

(i) inform each resident of the name, office address, phone numbers and specialty of the physician responsible for his or her own care.

(ii) except in a medical emergency, consult with the resident immediately if the resident is competent, and notify the resident's physician and designated representative within 24 hours when there is:

(a) an accident involving the resident which results in injury requiring professional intervention;

(b) a significant improvement or decline in the resident's physical, mental, or psychosocial status in accordance with generally accepted standards of care and services;

(c) a need to alter treatment significantly; or

(d) a decision to transfer or discharge the resident from the facility as specified in subdivision [(h)] (i) of this section; and

(iii) provide all information a resident or the resident's designated representative when permitted by State law, may need to give informed consent for an order not to resuscitate and comply with the provisions of section 405.53 if this Subchapter regarding orders not to resuscitate. Upon resident request the facility shall furnish a copy of the pamphlet, "Do Not Resuscitate Orders – A Guide for Patients and Families".

Subdivisions (f)-(h) of section 415.3 are re-lettered (g)-(i).

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

Section 2800 of Article 28 of the Public Health Law provides that the Department of Health (Department) has the central and comprehensive responsibility for the development and administration of the State's policies with respect to hospital and residential health care facilities, including nursing homes, in order to provide for the protection and promotion of the health of the inhabitants of the state.

Section 2803-c of Article 28 of the Public Health Law provides, in part, that the Commissioner shall require every nursing home and facility providing health related services to adopt and make public a statement of the rights and responsibilities of the patients who are receiving care in such facilities. Section 2003-c sets forth the minimum content of such a statement and requires that each facility provide a copy of the statement to each patient prior to, or at, the time of admission to the facility.

### **Legislative Objectives:**

The proposed rule accords with the legislative objectives of PHL §§ 2800 and 2803-c, which are to protect and promote the health and rights of all nursing home residents, and to ensure that nursing home residents are made aware of their rights prior to, or at, their admission to such a facility.

**Needs and Benefits:**

This rule furthers the Department's efforts to promote the right of all nursing home residents to live in the most integrated setting possible.

In 1999, the United States Supreme Court, in *Olmstead v. L. C. by Zimring*, 527 U.S. 581 (1999), ruled that the segregation of individuals with disabilities violated title II of the Americans with Disabilities Act (ADA). The Court ruled that individuals with disabilities must be provided services through community-based organizations when (1) such services are appropriate; (2) the affected persons do not oppose community-based treatment; and (3) community-based services can be reasonably accommodated.

Since the *Olmstead* decision, the Department has sought to ensure that individuals are afforded the right to live in the most integrated setting possible. The Department currently oversees and operates the federally funded Money Follows the Person program, which provides transition assistance and support to those residents of nursing homes that express a desire to return to the community. Residents are asked on at least a quarterly basis if they wish to receive information about returning to the community. Any resident that answers affirmatively is to be referred to the Local Contact Agency and connected with a Transition Specialist who will assist them with transitioning to community living, as appropriate.

To further the State's efforts to encourage and facilitate community-based living for individuals with disabilities, Governor Andrew M. Cuomo released his Able New York agenda, a multi-agency initiative aimed at enhancing accessibility to state programs and services for New Yorkers with disabilities. This proposal is part of a series of actions to support the Able New York agenda and promote community living for New Yorkers.

**Costs:**

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

There will be little to no additional cost to regulated entities for the implementation of or continuing compliance with the regulation. Currently, nursing homes are required to provide a statement of residents' rights to the resident and their designated representative prior to or upon admission. This proposed regulation will require nursing homes to replace their existing resident rights materials with an amended version, requiring some cost for the printing of the materials. Nursing homes will also be required to replace their existing signage with new signage that includes the amended residents' rights.

**Costs to State and Local Governments:**

The proposed changes are not expected to impose any costs upon State or local governments, unless they operate a nursing home. In such cases, the impact will be the same as for regulated entities, discussed above.

**Costs to the Department of Health:**

The Department owns and operates five veterans' homes. The impact on these facilities will be the same as for regulated entities, discussed above.

**Local Government Mandates:**

The proposed regulations do not impose any new mandates on local governments, except where they operate nursing homes. In such cases, the impact will be the same as for regulated parties, discussed above.

**Paperwork:**

All nursing homes will be expected to replace their residents' rights signage and replace their residents' rights materials as soon as they are available from the Department. Nursing homes may be subject to review upon annual survey to ensure compliance with the rule.

**Duplication:**

This rule does not duplicate, overlap, or conflict with any other legal requirements of the state or federal government. This rule aligns with the federal resident rights guidelines outlines in Section 483.10 of Title 42 (Health) of Code of Federal Regulations.

**Alternatives:**

Alternatives considered included issuing a mandate requiring nursing facilities to provide information to all residents on the availability of home and community-based services. This alternative was not chosen as the issuance of a mandate would be duplicative of what is already required of nursing facilities. The amendment language proposed provides additional clarity to the type of information to be provided to nursing facility residents upon admission and builds upon the requirement of nursing facilities to

ensure that residents are made aware of their rights prior to, or at, their admission to a nursing facility.

**Federal Standards:**

This rule meets the minimum standards set forth in Section 483.10 of Title 42 (Health) of Code of Federal Regulations.

**Compliance Schedule:**

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

**Contact Person:**

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**STATEMENT IN LIEU OF  
REGULATORY FLEXIBILITY ANALYSIS**

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

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

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



**STATEMENT IN LIEU OF  
JOB IMPACT STATEMENT**

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



Project # 191120-C
The Northway Surgery and Pain Center

Program: Diagnostic and Treatment Center
Purpose: Construction
County: Saratoga
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:

Table with 3 columns: Category, Year One, Year Three. Rows: Revenues (\$6,583,504 vs \$6,980,770), Expenses (2,965,305 vs 3,033,845), Gain/(Loss) (\$3,618,199 vs \$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
<b>Total Visits</b>		<b>20,342</b>	<b>26,472</b>

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.

**Financial Analysis**

**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
Private/Sliding Scale	\$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	\$432,176	\$759.54	\$432,176	\$759.54	\$432,176
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:

<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 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%
Private/Sliding Scale	519	4.27%	525	4.22%	533	4.14%
Workers' Comp.	1,712	14.08%	1,712	13.75%	1,712	13.29%
Other	<u>569</u>	<u>4.67%</u>	<u>569</u>	<u>4.57%</u>	<u>569</u>	<u>4.42%</u>
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 # 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:

<b>Incremental</b>	<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

<b>Enterprise</b>	<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.

### **Prevention Agenda**

The applicant stated that prevention of chronic disease is a priority of their local Prevention Agenda efforts. However, they did not specify how the proposed project would address that priority. SIUH did specify programs and interventions (separate from the proposed project) that they are implementing to support local Prevention Agenda goals. Examples include:

- Breast Cancer Patient Navigation Program
- Cancer Services Program of Staten Island
- Annual National Cancer Survivors Day Event at SIUH
- American Heart Association Training Site
- Prenatal Care Services and Breastfeeding Workshops
- Supplemental Nutrition Program for Women, Infants, and Children (WIC)
- Tackling Youth Substance Abuse Coalition
- Take Care New York Initiative (in partnership with NYS DOHMH)

The applicant stated that they have partnered with local Staten Island elected officials, social service agencies, and other healthcare providers in their Prevention Agenda efforts.

In 2017, Staten Island University Hospital's two facilities (North and South) collectively spent \$1,686,270 on community health improvement services, representing 0.19% of total operating expenses.

### **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	<u>\$35,387,054</u>

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	<u>\$35,387,054</u>

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:

	Current Year		Year One		Year Three	
	Per Visit	Total	Per Visit	Total	Per Visit	Total
<b>Revenues</b>						
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
<b>Expenses</b>						
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 # 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 2<sup>nd</sup> to 6<sup>th</sup> 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
<b>Expenses</b>						
Operating	\$311.34	\$22,301,624	\$285.13	\$32,983,822	\$284.90	\$32,983,822
Capital	47.11	3,374,804	66.75	7,721,586	65.11	7,537,550
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 # 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, general orthopedic, and oculoplastic surgery procedures. The Center will be housed in approximately 6,456 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:

Table with 2 columns: Members, %
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](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](mailto: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
<b>Total Visits</b>		<b>41,084</b>	<b>44,292</b>

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%
<b>Total</b>	<b>3,000</b>	<b>100.0%</b>	<b>3,632</b>	<b>100.0%</b>

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

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

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

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:

- 21<sup>st</sup> 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. 21<sup>st</sup> Century sought restitution in excess of \$475,000.00. The case was settled on March 13, 2018 and 21<sup>st</sup> 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:	6,456 square feet (net) located at 550 East 180 <sup>th</sup> 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; 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 FFS	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

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of June 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to Establish and construct a new multi-specialty ambulatory surgery center at 550 East 180th Street, Bronx, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

182326 B

FACILITY/APPLICANT:

Triborough ASC, LLC d/b/a Triborough  
Ambulatory Surgery Center

APPROVAL CONTINGENT UPON:

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission 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](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](mailto: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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 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	-----	<b>100%</b>
<i>Vance Vanier, MD (75%)</i>		
<i>Jeffrey L. Martin, MD (12.5%)</i>		
<i>John G. Passarelli, MD (12.5%)</i>		
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>

**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](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](mailto: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%	-----
<b>*Sight Medical Doctors, PLLC</b>	-----	<b>100.0%</b>
<i>*Vance Vanier, MD (75%)</i>		
<i>*Jeffrey L. Martin, MD (12.5%)</i>		
<i>*John G. Passarelli, MD (12.5%)</i>		
<b>TOTAL</b>		<b>100.0%</b>

***\*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 membersm 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. *		\$3,789		\$3,789		\$3,789
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	\$54.57	\$1,077,076	\$54.16	\$1,100,981	\$53.34	\$1,150,395
Total Expenses	\$553.37	\$10,921,315	\$555.12	\$11,284,500	\$559.20	\$12,059,777
Net Income		\$2,802,097		\$2,850,501		\$2,935,814
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

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of section 2801-a of the Public Health Law, on this 6th day of June 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby approves the following application to transfer of 100% ownership interest to one (1) new member PLLC comprised of three individual members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:  
191060 E

FACILITY/APPLICANT:  
Long Island Ambulatory Surgery Center

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](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](mailto:hospinfo@health.ny.gov) [HSP]



**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 Count), 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%
<b>TOTAL</b>	<b>100.0%</b>	<b>100.0%</b>

*\*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.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of June 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer of 70% ownership interest to three (3) new members from current sole member, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

191107 E

City Wide Health Facility Inc.

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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 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:

Table with 2 columns: Name and Percentage. Rows: 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:

Table with 3 columns: Category, Year One, Year Three. Rows: Revenues (\$1,703,664 vs \$3,407,329), Expenses (1,883,884 vs 3,052,569), Gain/(Loss) (\$180,220 vs \$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](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](mailto: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](http://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 <sup>st</sup> Year / 3 <sup>rd</sup> 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%
<b>Total</b>	<b>100%</b>

**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:

Revenues	Year One		Year Three	
	Per Visit	Total	Per Visit	Total
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
Expenses				
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:

Payor	Year One		Year Three	
	Visits	%	Visits	%
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

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of June 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a 12-station chronic renal dialysis diagnostic and treatment center in the Schervier Nursing Care Center located at 2975 Independence Avenue, Bronx, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

182068 B

FACILITY/APPLICANT:

Freedom Dialysis of Riverdale, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed 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](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](mailto:hospinfo@health.ny.gov) [HSP]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 182140-E
DSI Newburgh, LLC

Program: Diagnostic and Treatment Center
Purpose: Establishment
County: Orange
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:

Table with 2 columns: Operator Name, Percentage. Row: DSI Dutchess Dialysis, Inc. 100%

Table with 2 columns: Member Name, Percentage. Row: 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 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](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](mailto: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
<b>DSI Dutchess Dialysis, Inc</b>	<b>51.0%</b>
Stephen M. Pirri, President	
James D. Shelton, Vice President & Treasurer	
David Eldridge, Sr. Vice President of Finance	
Thomas L. Weinberg, Chairman	
<b>Paul Feldman, MD</b>	<b>24.5%</b>
<b>Yong Wen, MD</b>	<b>24.5%</b>
<b>Total</b>	<b>100.0%</b>

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 Seller'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
Medicare FFS	4,488	8,100	8,734
Medicare MC	365	675	1,209
Medicaid FFS	65	1	1
Medicaid 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



RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of June 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish DSI Newburgh, LLC as the new operator of a sixteen (16)-station chronic renal dialysis diagnostic and treatment center currently operated by DSI Dutchess Dialysis, Inc. at 39-47 North Plank Road, Newburgh. DSI Dutchess Dialysis, Inc. is a wholly-owned subsidiary of U.S. Renal Care, Inc., and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

182140 E

DSI Newburgh, LLC

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 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](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](mailto:hospinfo@health.ny.gov) [HSP]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 181319-E**

**Tri-Borough Certified Health Systems  
of the Hudson Valley, LLC**

**Program:** Certified Home Health Agency

**County:** Westchester

**Purpose:** Establishment

**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)

<b>CHHA Quality of Patient Care Star Ratings as of April 10, 2019</b>	
<b>New York Average: 3.5 out of 5 stars    National Average: 3.5 out of 5 stars</b>	
<b>CHHA Name</b>	<b>Quality of Care Rating</b>
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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 6th day of June 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to establish Tri-Borough Certified Health Systems of the Hudson Valley, LLC as the new operator of Datahr Home Health Care, Inc., an existing special needs Certified Home Health Agency, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER

APPLICANT/FACILITY

181319 E

Tri-Borough Certified Health Systems of the Hudson Valley LLC

APPROVAL CONTINGENT UPON:

1. Submission of an executed building lease agreement, acceptable to the Department of Health.  
[BFA]

APPROVAL CONDITIONED UPON:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Services are limited to the special pilot program population of individuals in Dutchess, Putnam and Westchester Counties diagnosed as being developmentally disabled. [CHA]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



## 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](mailto: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

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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](mailto: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 15<sup>th</sup> 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 13<sup>th</sup> 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




RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 6th day of June 2019, approves the filing of the Certificate of Dissolution of F.E.G.S. ProCare Health Services, Inc., dated as attached.



## 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

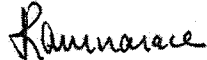
Re: Proposed Certificate of Dissolution of F.E.G.S. Home Care Services, Inc.

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](mailto: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.

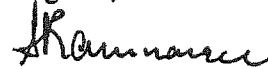
Dear Ms. Frost:

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](mailto: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

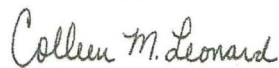
Re: Certificate of Dissolution of F.E.G.S. Home Care Services, Inc.

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  
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.

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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

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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 *24<sup>th</sup>* 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. 33-4683011  
Qualified in Nassau County  
Certificate Expiration New York County,  
County of New York, March 30, 1986





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.

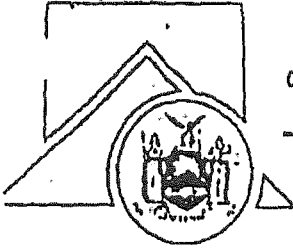
Date:

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

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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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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 6th day of June 2019, approves the filing of the Certificate of Dissolution of F.E.G.S. Home Care Services, Inc., dated as attached.



## 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.)

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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) <u>01 / 01 / 2017</u> and Ending (mm/dd/yyyy) <u>05 / 31 / 2018</u>		
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: <input checked="" type="checkbox"/> 7A only <input type="checkbox"/> EPTL only <input type="checkbox"/> DUAL (7A & EPTL) <input type="checkbox"/> 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
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: <b>"Department of Law"</b>
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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](http://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

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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 Registrat on 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

<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

Yes  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
----------------------	------------------------

## 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	<p style="text-align: center;"><b>VERIFIED PETITION FOR APPROVAL OF CERTIFICATE OF DISSOLUTION</b></p>
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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.

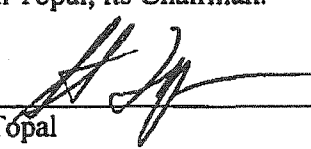
10. Any required governmental approvals of the Plan are set forth in the Plan and are attached to the Certificate of Dissolution.

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 21<sup>st</sup> day of August, 2018 by Steven Topal, its Chairman.

  
\_\_\_\_\_  
Steven Topal  
Chairman




Verification

STATE OF NEW YORK )

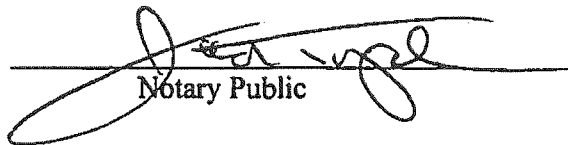
COUNTY OF New York ) : ss.:

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.

908963

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:

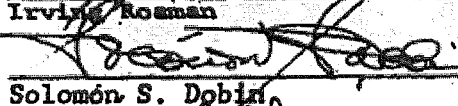
Howard and Dumont Avenues  
Brooklyn, New York

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 2<sup>nd</sup> 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

*64*  
  
DONALD G. DICKSON, M.D.  
DEPUTY COMMISSIONER

The undersigned, a Justice of the Supreme Court of  
the State of New York, <sup>2<sup>nd</sup> JUDICIAL DISTRICT</sup> 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

*2<sup>nd</sup> JUDICIAL DISTRICT*

*8*

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

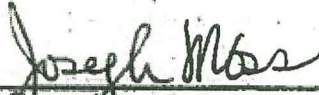
The following is a true copy of a resolution duly adopted by the Board of Directors of METROPOLITAN JEWISH GERIATRIC CENTER, at a meeting of said Board on May 11, 1971.

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 UNIT  
*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 21<sup>st</sup> day of June, 1971.

  
Irving Roaman, President

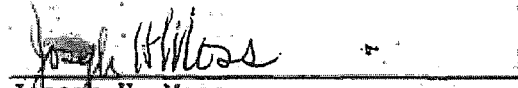
  
Joseph H. Moss, Secretary




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  
21<sup>st</sup> 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.

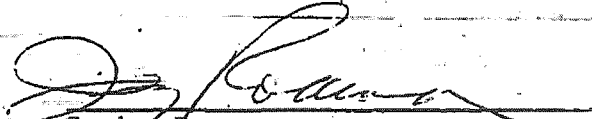
2. That JOSEPH H. MOSS is the Secretary of  
METROPOLITAN JEWISH GERIATRIC NURSING HOME COMPANY, INC.,  
mentioned in the foregoing Certificate and was such  
Secretary at the time of the consent mentioned therein to  
extend the existence of the corporation.

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.

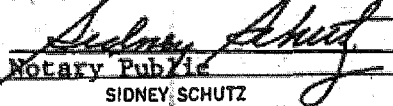
a quorum was present.

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  
21<sup>st</sup> 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 BAEHR, 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. DENT.  
HOLLIS S. INGRAHAM, M.D.  
EX OFFICIO

928078

*memo*  
*5/19/71*

*(1)*  
*Kingco New York*

*908982-11*

CERTIFICATE OF AMENDMENT OF  
CERTIFICATE OF INCORPORATION

- of -

<sup>OF</sup>  
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  
*John P. Tomp*  
Secretary of State  
*OK*

*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



930011

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.


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.

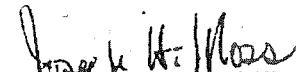
  
Irving Roaman, President

  
Joseph H. Moss, Secretary

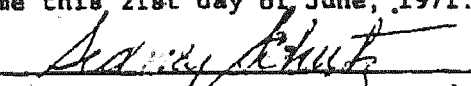
STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

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 SCHÜTZ  
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.

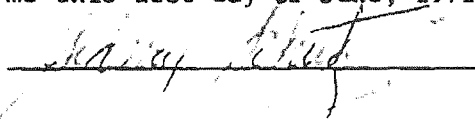
5. That the Certificate of Incorporation of this

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

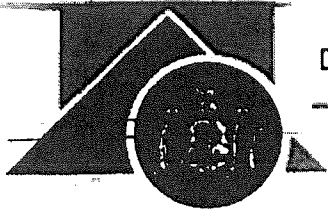
By \_\_\_\_\_

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 \$ 3

*ms*

*John P. ...*

Secretary of State

*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", 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 13<sup>th</sup> day of September, 1971.

  
Irving Rosman

  
Solomon S. Robin

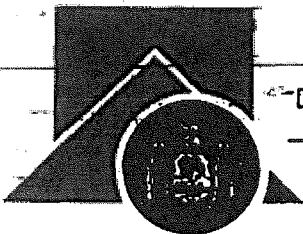
  
Philip Gelfer

Incorporators.

STATE OF NEW YORK )  
                          ) ss.:  
COUNTY OF NEW YORK )

On this 13<sup>th</sup> 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. HOACH, M.D.

HOWARD A. RUSK, M.D.  
JOHN M. WALSH  
WILLIAM H. WISELY, D. ENG.  
HOLLIS S. INGRAM, M.D.  
EX OFFICIO

4

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:


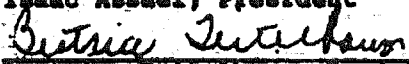
M.J.G. Nursing Home Company, Inc.  
4915 Tenth Avenue  
Brooklyn, New York 11219

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 )

COUNTY OF ALBANY )

ISSAC ASSAEL, being duly sworn deposes and says, that he is the President of M.J.G. Nursing Home Company, Inc., the corporation named in and described in the foregoing certificate. That he has read the foregoing certificate and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matter he believes it to be true.

*Issac Assael*  
Issac Assael

Sworn to before me this  
13th day of May, 1985

*James W. Santenison*  
NOTARY PUBLIC  
Qualified in Albany County  
Commission Expires March 24, 1987

STATE OF NEW YORK )

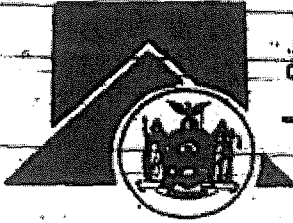
COUNTY OF ALBANY )

BEATRICE TEITELBAUM, being duly sworn deposes and says, that she is the Secretary of M.J.G. Nursing Home Company, Inc., the corporation named in and described in the foregoing certificate. That she has read the foregoing certificate and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matter she believes it to be true.

*Beatrice Teitelbaum*  
Beatrice Teitelbaum

Sworn to before me this  
13th day of May, 1985

*James W. Santenison*  
NOTARY PUBLIC  
JAMES W. SANTENISON  
Notary Public in the State of New York  
Qualified in Albany County  
Commission Expires March 24, 1987



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

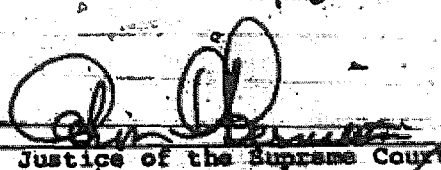
I, DAVID AXELROD, M.D., Commissioner of Health of the State of New York, do this 18<sup>th</sup> day of July, 1985, pursuant to Section 2854 of the Public Health Law and Section 804 of the Not-for-Profit Corporation Law, certify that I consent to the filing of the Certificate of Amendment of the Certificate 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

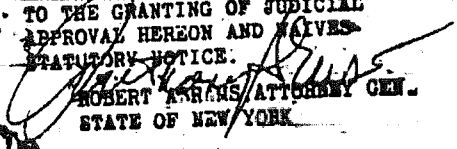
The undersigned, a Justice of the Supreme Court of the State of New York, Second Judicial District, wherein is located the principal office of MJC NURSING HOME COMPANY, INC., hereby approves the within Certificate of Amendment to the Certificate of Incorporation of MJC NURSING HOME COMPANY, INC. and 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  
1908

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

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LAW OFFICES  
TOBIN AND DEMPFF  
100 STATE STREET  
ALBANY, N. Y. 12207

6081211  
1908

***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:

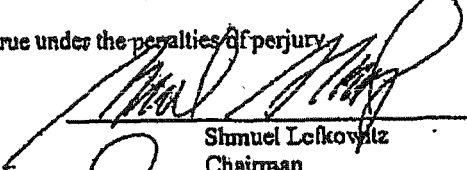
- (a) The purposes for which the Corporation is formed are to provide administrative and financial services that are incidental to, connected with, or in advancement of the operation of a residential health care facility pursuant to the terms and provisions of the Public Health Law, and the rules and 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



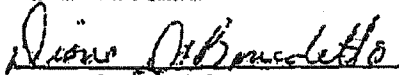
Samuel Lefkowitz  
Chairman



Robert E. Learner  
Assistant Secretary

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF KINGS )

On this 12<sup>th</sup> 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.

  
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

8

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 5<sup>th</sup>  
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

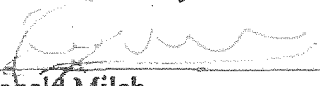
Ronald Milch

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

\_\_\_\_\_  
Shrnel 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](http://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>	Employer Identification Number (EIN) <u>23-7123076</u>
<input type="checkbox"/> Name Change	Mailing Address	NY Registration Number <u>15-38-94</u>
<input type="checkbox"/> Initial Filing	<u>6323 7TH AVENUE</u>	Telephone: <u>(718) 491-7261</u>
<input checked="" type="checkbox"/> Final Filing	City / State / Zip <u>BROOKLYN, NY, 11220</u>	Email:
<input type="checkbox"/> Amended Filing	Website:	
<input type="checkbox"/> Reg ID Pending		
Check your organization's registration category: <input checked="" type="checkbox"/> 7A only <input type="checkbox"/> EPTL only <input type="checkbox"/> DUAL (7A & EPTL) <input type="checkbox"/> 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: <b>"Department of Law"</b>
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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](http://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 <b>Professional Fund Raiser (PFR)</b>, in addition to other activities, conducts solicitation of contributions and/or handles the donations (Article 7A, 171-a 4)</p> <p>A <b>Fund Raising Counsel (FRC)</b> 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 <b>Commercial Co-Venturer (CCV)</b> 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

**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
----------------------	------------------------

## 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


RESOLUTION


RESOLVED, that the Public Health and Health Planning Council, on this 6th day of June 2019, approves the filing of the Certificate of Dissolution of M.J.G.N.H.C., Inc., dated August 21, 2018.



## 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

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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, 15<sup>th</sup> 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 *5<sup>th</sup>*  
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

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.

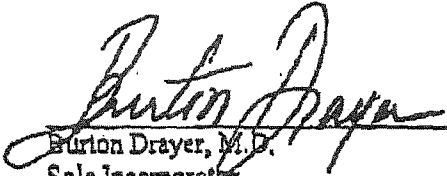
**THIRTEENTH:** The duration of the Corporation shall expire on January 23, 2007, unless extended thereafter by the Public Health Council.

**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.

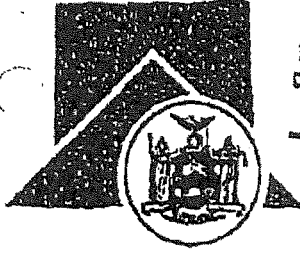


Burton Drayer, M.D.  
Sole Incorporator  
c/o The Mount Sinai Hospital  
One Gustave Levy Place  
New York, New York 10029

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 7, 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

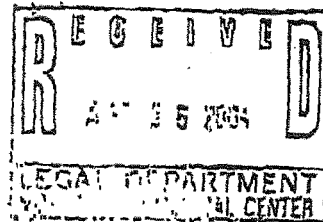
Dear Mr. Alge:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 23<sup>rd</sup> 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.

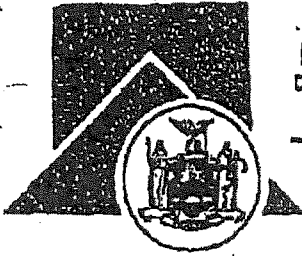
Sincerely,

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, 4<sup>th</sup> Floor, 8<sup>th</sup> Avenue between W. 33<sup>rd</sup> and @. 34<sup>th</sup> 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  
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BY: owl  
*NY*

FILED

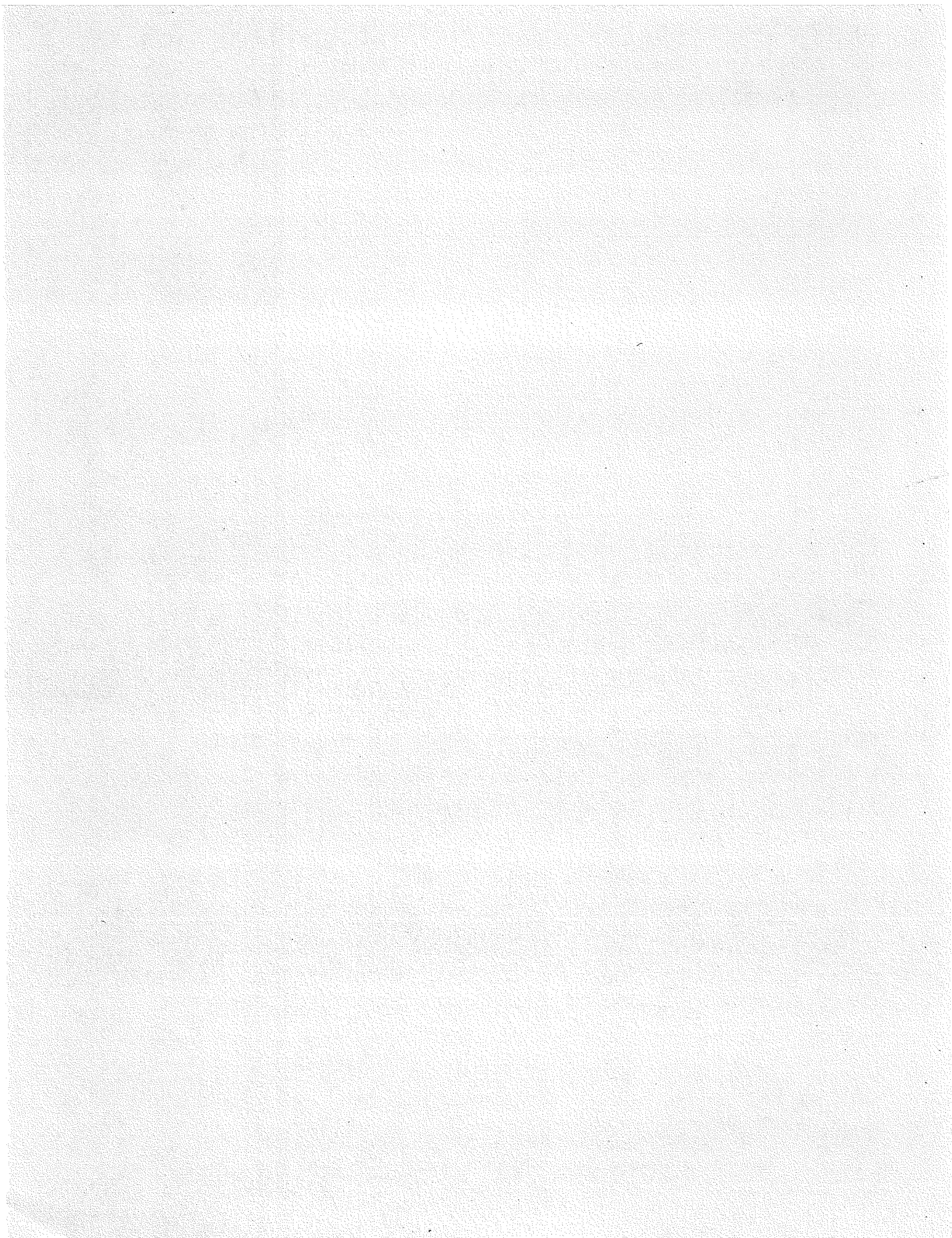
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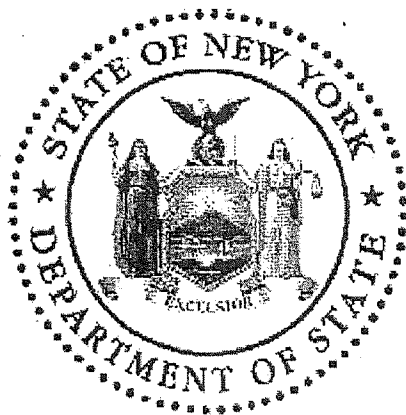
*8-*

040430000525



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.

A handwritten signature in cursive script that reads "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.

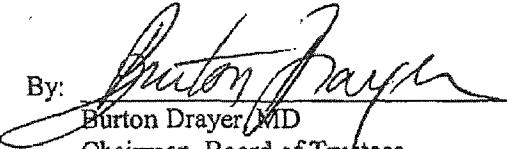
FOURTH: Article Thirteenth of the Certificate of Incorporation of the Corporation, which set forth the duration of the Corporation, is hereby amended to revive the existence of the Corporation and then establish its duration as follows:

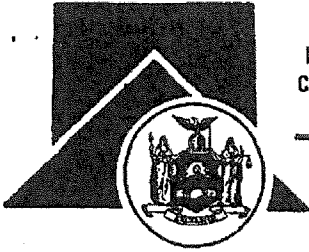
The duration of the Corporation shall have a perpetual life.

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 3<sup>rd</sup> 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**

Form 990-EZ

Short Form Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

OMB No. 1545-1150

2017

Open to Public Inspection

Department of the Treasury Internal Revenue Service

Do not enter social security numbers on this form as it may be made public. Go to www.irs.gov/Form990EZ for instructions and the latest information.

Form header section A through L, including organization name (MOUNT SINAI DIAGNOSTIC & TREATMENT CENTER), EIN (45-0537391), and tax-exempt status (501(c)(3)).

Part I Revenue, Expenses, and Changes in Net Assets or Fund Balances (see the instructions for Part I) Check if the organization used Schedule O to respond to any question in this Part I

Table with 21 rows and 3 columns: Description, Line Number, and Amount. Rows include Revenue (1-9), Expenses (10-17), and Net Assets (18-21).

For Paperwork Reduction Act Notice, see the separate instructions. Form 990-EZ (2017)



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.

Form 990-EZ (2017) questions 33-45b regarding organizational activities, financials, and compliance. Includes questions about IRS reporting, business income, political expenditures, loans, and tax shelter transactions.



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 \_\_\_\_\_ Check  if self-employed PTIN P00740769

Firm's name ▶ ERNST & YOUNG U.S. LLP Firm's EIN ▶ 34-6565596

Firm's address ▶ 5 TIMES SQUARE Phone no. 212-773-3000

May the IRS discuss this return with the preparer shown above? See instructions . . . . .  Yes  No

NEW YORK, NY 10036-6530

**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](http://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)						
<b>Total</b>						

For Paperwork Reduction Act Notice, see the Instructions for Form 990 or 990-EZ.

Schedule A (Form 990 or 990-EZ) 2017

JSA  
7E1210 1.000

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PAGE 5

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

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 Gross receipts from admissions, merchandise sold or services performed; 3 Gross receipts from activities that are not an unrelated trade or business; 4 Tax revenues levied for the organization's benefit; 5 The value of services or facilities furnished by a governmental unit; 6 Total; 7a Amounts included on lines 1, 2, and 3 received from disqualified persons; 7b Amounts included on lines 2 and 3 received from other than disqualified persons; 7c Add lines 7a and 7b; 8 Public support.

Section B. Total Support

Table with 7 columns: (a) 2013, (b) 2014, (c) 2015, (d) 2016, (e) 2017, (f) Total. Rows include: 9 Amounts from line 6; 10a Gross income from interest, dividends, payments received on securities loans, rents, royalties, and income from similar sources; 10b Unrelated business taxable income (less section 511 taxes) from businesses acquired after June 30, 1975; 10c Add lines 10a and 10b; 11 Net income from unrelated business activities not included in line 10b; 12 Other income; 13 Total support; 14 First five years.

Section C. Computation of Public Support Percentage

Table with 3 columns: Description, Line Number, Percentage. Rows: 15 Public support percentage for 2017; 16 Public support percentage from 2016 Schedule A, Part III, line 15.

Section D. Computation of Investment Income Percentage

Table with 3 columns: Description, Line Number, Percentage. Rows: 17 Investment income percentage for 2017; 18 Investment income percentage from 2016 Schedule A, Part III, line 17.

- 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.
19b 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.
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 <b>Part VI</b> 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 <b>Part VI</b> 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 <b>Part VI</b> 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 <b>Part VI</b> 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 <b>Part VI</b> 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 <b>Part VI</b> 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 <b>Part VI</b> , 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 <b>Type I or Type II only.</b> Was any added or substituted supported organization part of a class already designated in the organization's organizing document?		
c <b>Substitutions only.</b> 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 <b>Part VI</b> .		
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 <b>Part VI</b> .		
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 <b>Part VI</b> .		
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 <b>Part VI</b> .		
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.		
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	<b>Total annual distributions.</b> 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	<b>Total of lines 3a through e</b>			
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	<b>Excess distributions carryover to 2018.</b> 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](http://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**

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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 <sup>J</sup>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 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 1<sup>st</sup> day of January to the 31<sup>st</sup> 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.

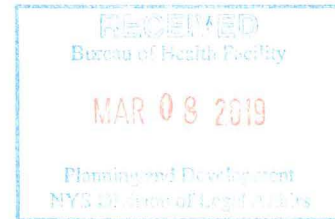
#### **14.02. REVIEW**

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 Health 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](mailto: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

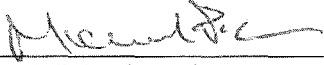
Medical Director

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 11/05/10

**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>
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.

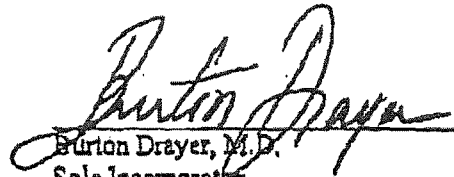
**THIRTEENTH:** The duration of the Corporation shall expire on January 23, 2007, unless extended thereafter by the Public Health Council.

**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.

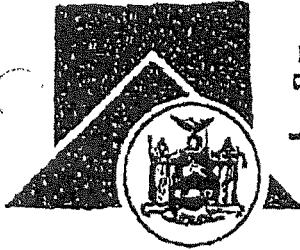
**FIFTEENTH:** All references herein: (i) to the Internal Revenue Code shall be deemed to refer to the Internal Revenue Code of 1986, as now in force or hereafter amended; (ii) to the Not-For-Profit Corporation Law shall be deemed to refer to said Not-For-Profit Corporation Law of the State of New York 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



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

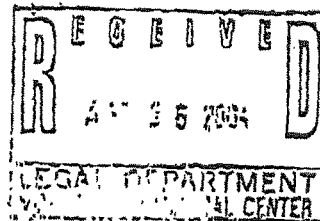
Dear Mr. Alge:

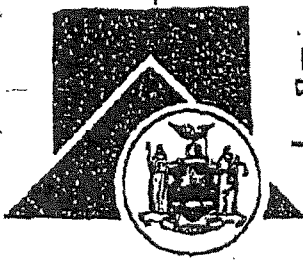
AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 23<sup>rd</sup> day of January, 2004, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Mount Sinai Diagnostic & Treatment 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, 4<sup>th</sup> Floor, 8<sup>th</sup> Avenue between W. 33<sup>rd</sup> and @. 34<sup>th</sup> 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

TAXES

BY: *Dwl*

*MY*

FILED

2004 APR 30 PM 12:08

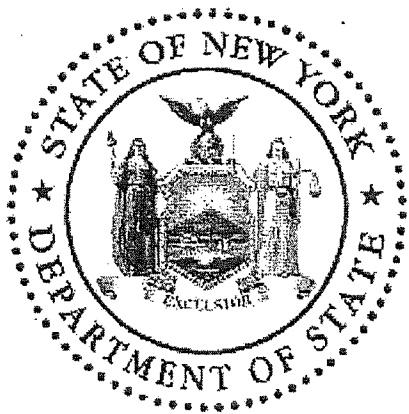
92 (N) - 1001-1001

*8-*

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.

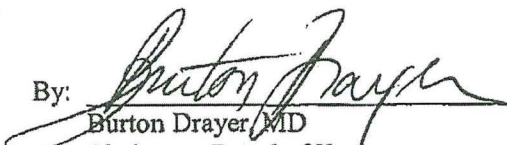
FOURTH: Article Thirteenth of the Certificate of Incorporation of the Corporation, which set forth the duration of the Corporation, is hereby amended to revive the existence of the Corporation and then establish its duration as follows:

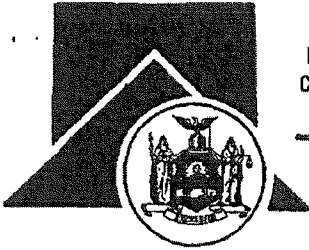
The duration of the Corporation shall have a perpetual life.

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 3<sup>rd</sup> 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 6th day of June 2019, approves the filing of the Certificate of Dissolution of Mount Sinai Diagnostic & Treatment Center, dated February 5, 2019.



## 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

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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 Cammisa, 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 6th day of June 2019 approves the filing of the Certificate of Amendment of Certificate of Incorporation of HQ-WCHN Health System, Inc., dated as attached.



**Department of Health** **Public Health and Health Planning Council**

**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 5<sup>th</sup> 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%
<b>Total</b>	<b>100.0000%</b>	<b>100.0000%</b>

The members of Surgicore 5<sup>th</sup> 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 5<sup>th</sup> 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 5<sup>th</sup> Avenue, LLC valued at \$4.07M as of April 22, 2019. Surgicore 5<sup>th</sup> 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%
<b>*Surgicore Fifth Avenue LLC</b>	-----	<b>70.0%</b>
<b>*Anthony DeGradi (25%)</b>		
<b>*Feliks Kogan (25%)</b>		
<b>*Wayne Hatami (25%)</b>		
<b>*Leonid Tylman (25%)</b>		
<b>TOTAL</b>	<b>100.00%</b>	<b>100.00%</b>

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

The proposed managers upon approval will be Dr. Lambert, Dr. Wilson, Dr. Aljian, 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.

**5<sup>th</sup> 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 5<sup>th</sup> 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:

Revenues	Current Year (2017)		Year One		Year Three	
	Per Proc.	Total	Per Proc.	Total	Per Proc.	Total
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
<b>Expenses</b>						
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:

Payor	Current Year	Year One	Year Three
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 5<sup>th</sup> 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 5<sup>th</sup> 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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## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of June 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 70% membership interest to Surgicore 5th Avenue LLC, a new incoming member with four individual members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

191019 E

FACILITY/APPLICANT:

Bronx SC, d/b/a Empire State Ambulatory  
Surgery Center

APPROVAL CONTINGENT UPON:

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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 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:

Table with 3 columns: Member, Current %, Proposed %. Lists 27 members and their respective ownership percentages before and after the change.

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 5<sup>th</sup> Avenue, LLC valued at \$4.07M as of April 22, 2019. The members and Surgicore 5<sup>th</sup> 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 Hendrdzadeh, 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%
<b>*Surgicore Fifth Avenue LLC</b>	-----	<b>75.0%</b>
<b>*Anthony DeGradi (25%)</b>		
<b>*Feliks Kogan (25%)</b>		
<b>*Wayne Hatami (25%)</b>		
<b>*Leonid Tylman (25%)</b>		
<b>TOTAL</b>	<b>100.00%</b>	<b>100.00%</b>

**\*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.

**5<sup>th</sup> 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 <sup>th</sup> 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 5<sup>th</sup> 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>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>
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	2,135,040	1,820.15	6,184,881	1,820.15	6,184,881
<b>Total Revenues</b>		<b>\$8,432,259</b>		<b>\$10,476,664</b>		<b>\$10,516,773</b>
<b>Expenses</b>						
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>
<b>Total Expenses:</b>	<b>\$1,825.89</b>	<b>\$8,830,023</b>	<b>\$1,610.65</b>	<b>\$10,077,848</b>	<b>\$1,617.78</b>	<b>\$10,153,203</b>
<b>Net Income (Loss)</b>		<b><u>(\$397,764)</u></b>		<b><u>\$398,816</u></b>		<b><u>\$363,570</u></b>
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>
<b>Total Procedures</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

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 5<sup>th</sup> 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 5<sup>th</sup> Avenue, LLC valued at \$4.07M as of April 22, 2019. The members and Surgicore 5<sup>th</sup> 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 5<sup>th</sup> 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 5<sup>th</sup> 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of June 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to Transfer of 75% ownership interest to a new member LLC with four individual members and the withdrawal of 13 members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

191027 E

North Queens Surgical Center

APPROVAL CONTINGENT UPON:

**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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 181259-E
Mohawk Valley Eye Surgery Center

Program: Diagnostic and Treatment Center
Purpose: Establishment
County: Montgomery
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:

Table with 3 columns: Category, Year One, Year Three. Rows: Revenues (\$1,009,557 vs \$1,267,985), Expenses (775,730 vs 927,022), Net Income (\$233,827 vs \$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 (2015-1<sup>st</sup> 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	\$177.98	\$241,513	\$206.77	\$241,513	\$161.55	\$241,513
Total Expenses	\$637.22	\$864,704	\$664.15	\$775,730	\$620.08	\$927,022
Net Income		\$294,644		\$233,827		\$340,963
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.)	10	0.74%	10	0.17%	0	0.00%
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.

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**Attachments**

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BFA Attachment A    2016 and 2017 Certified Financial Statements, Mohawk Valley Eye Surgery Center



RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of section 2801-a of the Public Health Law, on this 6th day of June 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby approves the following application for indefinite life for CON #112179, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

181259 E

FACILITY/APPLICANT:

Mohawk Valley Eye Surgery Center

**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:

<b>Always Compassionate Holdings, Inc</b> – 90 Shares	<b>Susan Fechtmann, LPN</b> – 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 40 <sup>th</sup> 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 6th day of June 2019, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY:

191080 E

Always Compassionate Home Care, Inc.

APPROVAL CONTINGENT UPON:

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

APPROVAL CONDITIONAL UPON

N/A

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.

**Application Number:** 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

<b>CHHA Quality of Patient Care Star Ratings as of 04/23/2019</b>	
<b>New York Average:</b> 3.5 out of 5 stars <b>National Average:</b> 3.5 out of 5 stars	
<b>CHHA Name</b>	<b>Quality of Care Rating</b>
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.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 6th day of June 2019, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY:

182247 E

Aides at Home, Inc.

APPROVAL CONTINGENT UPON:

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

APPROVAL CONDITIONAL UPON

N/A

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 191117-B
Saratoga Partners North

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

Executive Summary

Description

Saratoga Partners North, LLC, a to-be-formed limited liability company, requests approval to establish and construct a multi-specialty Article 28 freestanding ambulatory surgery center (FASC) to be located at 4 Medical Park Drive, Malta (Saratoga County). The FASC will be housed in leased space in a to-be-constructed two-story building adjacent to and physically connected to Malta Med Emergent Care, an Article 28 diagnostic and treatment center (D&TC) that provides 24/7 urgent and emergent care services.

Saratoga Partners North Realty, LLC, a to-be-formed limited liability company with common members to the proposed FASC operator, will be the realty owner and landlord to the applicant. The first floor of the new building will house the FASC which will have six operating rooms. The second floor will be dedicated to non-Article 28 activities including private physician offices. The FASC will be named Saratoga Partners North.

The proposed members of Saratoga Partners North, LLC and their ownership percentages are as follows:

Table with 2 columns: Member Name and Ownership Percentage. Rows include Albany Medical Center Hospital (25.5%), Saratoga Hospital (25.5%), and Capital Region North, LLC (49.0%) with a note about 18 physician members.

Capital Region North, LLC is an existing New York limited liability company formed in February 2019 that consists of 18 individual orthopedic physician members, each with equal ownership in the company. BFA Attachment B presents a

listing of the members of Capital Region North, LLC.

Two of the applicant members, Albany Medical Center Hospital and Saratoga Hospital, are corporate members of Healthcare Partners of Saratoga, LTD, which operates Malta Med Emergent Care, the Article 28 D&TC.

Jared T. Roberts, M.D., an orthopedic surgeon, will serve as Medical Director. The applicant will enter into a Transfer and Affiliation Agreement with Saratoga Hospital (10.3 miles travel distance) and Albany Medical Center (28.4 miles travel distance).

The Center will enter into a services agreement with Capital Region North, LLC, a member of the applicant, for operational and management advisory services (business office and billing support, human resources, IT support, and compliance issues).

The FASC will focus on providing orthopedic surgeries related to the treatment of conditions resulting from osteoarthritis and related overuse syndromes. According to the applicant, the proposed location will allow for efficient leveraging of the Malta Medical Campus which has the existing D&TC, as well as sports medicine, rehabilitation and athletic training capabilities on-site. Adding an FASC on the campus has the potential to create an all-inclusive destination for the treatment of patients with advanced osteoarthritis.

OPCHSM Recommendation
Contingent Approval

**Need Summary**

The projected number of procedures is 3,000 in Year One and 4,064 in Year Three, with Medicaid accounting for approximately 4% and Charity Care for approximately 2%, annually.

**Program Summary**

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

**Financial Summary**

Total project costs of \$18,888,473 will be financed via \$2,149,980 equity (landlord), a \$6,738,493 equipment lease for a seven-year term at 4.26% interest (operator), and a \$10,000,000 bank loan with a 10-year term, 25-year amortization period and variable interest rate estimated at 4.50% to 5.05% (landlord).

The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$12,642,700	\$21,032,100
Expenses	<u>11,888,605</u>	<u>19,661,723</u>
Net Income	\$754,095	\$1,370,377

## **Recommendations**

### **Health Systems Agency**

There will be no HSA recommendation for this project.

### **Office of Primary Care and Health Systems Management**

#### **Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed sublease agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed services agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed equipment lease, acceptable to the Department of Health. [BFA]
6. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of a working capital loan commitment, acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of an amended and executed Consulting or Administrative Services Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicants Articles of Organization, acceptable to the Department. [CSL]
10. Submission of a photocopy of applicants Operating Agreement, acceptable to the Department. [CSL]
11. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-04. [AER]
12. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [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 November 18, 2019 and construction must be completed by January 8, 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. Prior to commencing Total Joint Replacement surgeries, submit the following to the Capital District Regional Office:
  - a. A description of the facility's pre-procedure patient selection process for Total Joint Replacement procedures (i.e. factors assessed and used to determine risk category, process used to carry out assessment and risk determination, delineation of inclusion and exclusion criteria regarding patient to be cared for by the facility, etc.).
  - b. A description of the facility's process for determining safe post-anesthesia discharge and/or home readiness (i.e. the identification of plans for management of potential complications and emergencies associated with procedures performed, sedation/anesthesia administered, and patient population served).
  - c. A description of the facility's discharge plan for patients' post-Total Joint Replacement, including the plan for patients who require greater than 23 hours recovery.

4. For the first half of the year Total Joint Replacement surgeries are performed, submit the number of Total Joint procedures performed at the facility and the number which required discharge to an acute care facility. [HSP]
5. 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]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospitals/docs/hcs\\_access\\_forms\\_new\\_clinics.pdf](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](mailto:hospinfo@health.ny.gov) [HSP]
7. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

**Council Action Date**  
**June 6, 2019**

## Need Analysis

### Background

The service area is Saratoga County. The center will have six operating rooms. The number of projected procedures is 3,000 in Year One and 4,064 in Year Three, with Medicaid at approximately 4% and Charity Care at approximately 2%, annually.

The table below shows the number of patient visits at ambulatory surgery centers in Saratoga County for 2017 and 2018.

Specialty Type	Facility Name	Patient Visits	
		2017	2018
Ophthalmology	The New York Eye Surgical Center	3,363	3,439
Pain management	Northway Surgery & Pain Center	10,877	12,058
Multi	OrthoNY Surgical Suites (opened 2/1/19)	N/A	N/A
Gastroenterology	Saratoga-Schenectady Endoscopy Center, LLC	12,232	14,002
Multi	Saratoga Surgery Center (hospital extension clinic) <sup>1</sup>	8,302	8,106
<b>Total Visits</b>		<b>34,774</b>	<b>37,605</b>

<sup>1</sup> 35% of projected procedures are currently being performed at this site

The number of projected procedures is 3,000 in Year One and 4,064 in Year Three. The applicant reports that 24% of projected procedures are currently being performed in either Albany Medical Center or Saratoga Hospital, 35% are currently being performed in a hospital extension clinic operated by Saratoga Hospital, and the remaining 41% are currently being performed in an office-based setting. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Medicaid FFS	55	2%	82	2%
Medicaid MC	55	2%	81	2%
Medicare FFS	400	13%	569	14%
Private Pay	30	1%	41	1%
Commercial FFS	30	1%	41	1%
Commercial MC	2,370	79%	3,169	78%
Charity Care	60	2%	81	2%
<b>Total</b>	<b>3,000</b>	<b>100%</b>	<b>4,064</b>	<b>100%</b>

The applicant is committed to serving all persons in need without regard to ability to pay or source of payment. Both Albany Medical Center and Saratoga Hospital are members of the proposed center. The center will follow the guidelines of both hospital's outreach programs in providing service to the under-insured. To serve the underinsured population, the center intends to obtain contracts with the following Medicaid Managed Care plans: CCPHP Govt and Fidelis. The center will adopt a financial assistance policy with a sliding fee scale once operational.

### Conclusion

Approval of this project will provide an additional resource for ambulatory surgery services for the communities within Saratoga County.

## Program Analysis

### Program Description

<b>Proposed Operator</b>	Saratoga Partners North, LLC
<b>Doing Business As</b>	Saratoga Partners North
<b>Site Address</b>	4 Medical Park Drive Malta, NY 12020 (Saratoga County)
<b>Surgical Specialties</b>	Multi-Specialty, including but not limited to: Orthopedic Surgery, Joint Surgery, Neurosurgical Surgery
<b>Operating Rooms</b>	6
<b>Procedure Rooms</b>	0
<b>Hours of Operation</b>	Monday through Friday 6 am to 5 pm
<b>Staffing (1<sup>st</sup> / 3<sup>rd</sup> Year)</b>	27.5 FTEs / 32.0 FTEs
<b>Medical Director</b>	Jared T. Roberts M.D.
<b>Emergency, In-Patient and Back-up Support Services Agreement and Distance</b>	Saratoga Hospital 11 miles /18 minutes Albany Medical Center 30 miles/35 minutes
<b>After-hours access</b>	Every patient will be provided with the physician's after-hours phone number on their discharge instructions. In addition, the night attendant message on the phone system will instruct all patients how to contact the physician on call or to be directed to the hospital/call 911 in case of emergency.

### Character and Competence

Saratoga Partners North, LLC is a physician-hospital joint venture whose members are Capital Region North, LLC; Albany Medical Center Hospital; and The Saratoga Hospital. The members of Capital Region North, LLC are orthopedic surgeons.

<u>Member Name</u>	<u>Interest</u>
<b>Capital Region North, LLC</b> Richard Alfred, MD; R. Alley, MD; Robert Cheney, MD; Cory Czalka, MD; Shankar Das, MD; John DiPreta, MD; Michael Flaherty, MD; Marc Fuchs, MD; Andrew Gerdeman, MD; Robert Hedderman, MD; Jordan Lisella, MD; Andrew Mase, MD; Daniel Phelan, MD; David Quinn, MD; Jared Roberts, MD; James Scheneider, MD, Richard Whipple, MD; George Zanaros, MD	<b>49.0%</b>
<b>Albany Medical Center</b> Frances Albert; Ramundo Archibold, Jr; James Barba; Mary Gail Beibel; Robert Cushing; Joyce Defazio; R. Wayne Diesel; Sharon Duker; Anthony Durante; Peter Elitzer; Steven Frisch, MD; Margaret Gillis; David Golub; Douglas Hamlen; Peter Heerwagen; James Jackson; Rith Mahoney; Morris Massny; Lillian Moy; Jphn Nigro; John O'Connor; Steven Parnes, MD; Daniel Pickett; Havidan Rodriguez; Janice Smith; Jeffrey Sperry; Carolyn Stefanco; Jeffrey Stone; Todd Tidgewell; Omar Usman; Candace Weir	<b>25.5%</b>
<b>The Saratoga Hospital</b> Jared Roberts, MD; Angelo Calbone; Robert Cushing; Susan Dake; Steven Frisch, MD; Miachel Iacolucci; Frank Messa, Donna Montalto; Marianne Murarn; Alan Oppenheim; John Roohan; Theresa Skaine; Keith Stewart; Michael Toohey; Heather Ward; Michael West; Janice White; Kevin Ronayne	<b>25.5%</b>
<b>Total</b>	<b>100%</b>



Saratoga Partners North, LLC will be managed by a Board of Manager consisting of seven managers; two managers each from Albany Medical Center Hospital and The Saratoga Hospital, and three managers from Capital Region North, LLC. The proposed managers are: Steven M Frisch, M.D.; Frances Albert; David Quinn; Michael Flaherty, M.D.; Jared Roberts, M.D.; Angelo Calbone, and Kevin Ronayne.

A Character and Competence Review was conducted on each Board of Directors member of Albany Medical Center Hospital and The Saratoga Hospital, and on each of the 18 physician members of Capital Region North, LLC.

The proposed Medical Director is **Dr. Jared Roberts**. He graduated from Albany Medical College with his degree in Medicine. He completed his residency at Albany Medical Center and his fellowship at Anderson Clinic Total Joint Arthroplasty in Virginia. He is board-certified in Orthopedic Surgery. He is a partner at Capital Region Orthopaedic Associates and serves on the management committee of Capital Region Ambulatory Surgery Center, LLC where he has provided management and oversight.

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. Parnes disclosed being named in three medical malpractice cases. In the first case, the patient alleged an error related to a procedure/test/treatment. The claim remains open. In the second case, the patient alleged a complication from a procedure/treatment/test. On November 7, 2017, Dr. Parnes was discontinued from the suit and no payment was made on his behalf. The suit was closed on July 10, 2018. In the final case, the patient alleged that after right and left stapedectomy was performed negligently, that it caused a loss of taste and tongue sensitivity. The case remains open.*

*Dr. Quinn disclosed being named in a medical malpractice case filed on May 20, 2016 which alleged failure to timely treat and properly perform. No indemnity payment was made. The case was closed on June 5, 2017.*

*Dr. Zanos disclosed being named in a medical malpractice case filed on April 20, 2012 which alleged a stress fracture after arthroscopic decompression many weeks post-operatively. The case was dismissed by a jury verdict of not guilty against the physician.*

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.

**Saratoga Hospital Board of Directors disclosed the following affiliations:**

**Wesley Health Care Center, Inc**

- On December 28, 2016 the Department issued a Stipulation and Order (S&O) and a \$10,000 fine to Wesley Health Care Center, Inc for deficient practice related to Quality of Care and Administration identified on a survey concluded on August 22, 2016. Specifically, the facility did not ensure that the resident was provided with care plan interventions, ensure the resident received the estimated amount of fluids necessary to meet their daily needs, and staff was not aware of who was responsible for monitoring intake.
- On March 9, 2016 the Department issued a Stipulation and Order (S&O) and a \$6,000 fine to Wesley Health Care Center, Inc for deficient practice related to multiple deficiencies identified on a survey concluded on September 24, 2015. Specifically, the facility did not ensure that systems were in place to administer, monitor, and supervise residents who required respiratory care to ensure the resident received the proper treatment and care.

- On January 21, 2016 the Department issued a Stipulation and Order (S&O) and a \$12,000 fine to Wesley Health Care Center, Inc for deficient practice related to Quality of Care and Notify of Changes identified on a survey concluded on July 31, 2014. Specifically, the facility did not notify the physician and family representative after a patient fell resulting in injury.

**Albany Medical Center Hospital Board of Directors Disclosed the following affiliations:**

**Greene Meadows Nursing and Rehabilitation Center**

- On May 22, 2017 the Department issued a Stipulation and Order (S&O) and a \$10,000 fine to Greene Meadows Nursing and Rehabilitation Center for deficient practice related to Quality of Care multiple deficiencies identified on a survey concluded on July 21, 2016. Specifically, the facility did not ensure that upon changes in the resident's condition on multiple dates, that a qualified person performed a thorough assessment, that a physician was immediately consulted, and that the resident's family was immediately contacted.
- On January 21, 2016 the Department issued a Stipulation and Order (S&O) and a \$18,000 fine to Greene Meadows Nursing and Rehabilitation for deficient practice related to multiple deficiencies identified on a survey concluded on February 3, 2014 and March 2, 2014. The deficiencies identified on February 3, 2014 were Significant Changes in Condition-Complications and/or Life Threatening; Quality of Care Highest Practicable Potential; Quality of Care No Significant Medication Errors; Administration. The deficiencies that were identified on March 2, 2014 were Quality of Care Accident Free Environment. Specifically, the facility failed to ensure that a physician was immediately informed of a significant change in a resident's condition. The facility failed to provide the necessary care and treatment after the resident was given wrong medication. The facility failed to have effective systems in place to ensure that physicians orders were obtained, transcribed, and administered as ordered by the physician. The facility also did not ensure the resident's environment remain as free from accident hazards as possible and that each resident receive adequate supervision and assistive devices to prevent accidents.
- On January 13, 2016 the Department issued a Stipulation and Order (S&O) and a \$10,000 fine to Greene Meadows Nursing and Rehabilitation Center for deficient practice related to Quality of Care Pressure Sores, Prevention, Pressure Sores with Admission identified on a survey concluded on June 6, 2014. Specifically, the facility did not ensure that a resident at risk for developing pressure sores received proper monitoring, a timely dietary assessment, or an updated care plan after the development of pressure sores.
- On January 5, 2016 the Department issued a Stipulation and Order (S&O) and a \$8,000 fine to Greene Meadows Nursing and Rehabilitation Center for deficient practice related to multiple deficiencies identified on a survey concluded on November 3, 2013. Specifically, the facility did not ensure the residents were free from abuse and mistreatment. The facility failed to thoroughly investigate and report to the Department all alleged violations involving abuse, neglect, and mistreatment, including injuries of unknown origin. The Administration failed to ensure staff recognize and report potential abuse of residents resulting in the failure by the nursing home to investigate and protect residents.
- On February 7, 2013 the Department issued a Stipulation and Order (S&O) and a \$1,000 fine to Greene Meadows Nursing and Rehabilitation Center for deficient practice related to Quality of Care multiple deficiencies identified on a survey concluded on February 7, 2013. Specifically, the facility did not provide each resident with sufficient fluids to maintain proper hydration. The facility did not maintain a system to monitor and record the fluid and dietary intake of the residents.

**Onondaga Center for Rehabilitation and Nursing**

- On November 23, 2018 the Department issued a S&O and \$10,000 fine against Onondaga Center for Rehabilitation and Nursing for deficient practice related to Quality of Care identified on a survey concluded on August 3, 2018. Specifically, the facility did not have a qualified person assess a resident after a fall nor was there a follow up assessment by a qualified person. The RN and physician were not notified timely of the fall.
- On November 23, 2018 the Department issued a S&O and \$2,000 fine against Onondaga Center for Rehabilitation and Nursing for deficient practice related to Multiple Deficiencies identified on a survey concluded on August 31, 2018. Specifically, the facility did not ensure that staff followed policies and procedures to search for a possible missing resident and account for the presence of all residents in the facility when an alarm sounded for a missing resident.

- On April 12, 2018 the Department issued a S&O and \$22,000 fine against Onondaga Center for Rehabilitation and Nursing for deficient practice related to Treatment/Services to Prevent/Heal Pressure Ulcers; Nutrition/Hydration Status Maintenance; Residents are Free from Significant Med Errors identified on a survey concluded on February 9, 2018. Specifically, the facility did not ensure that residents who had pressure ulcers received care and services to promote healing and to prevent new pressure ulcers from developing. The facility did not ensure the residents maintained acceptable parameters of nutritional status or were offered sufficient fluid intake to maintain proper hydration and health. The facility omitted five doses of a narcotic pain reliever from a resident due to unavailability and did not document evidence of the omission. Also, a resident did not receive their insulin due a recommendation of change from the pharmacy that resulted in the insulin being discontinued and the physician not being notified.

**Integration with Community Resources**

The Applicant will serve all patients needing care, regardless of their ability to pay or the source of payment. The members of the Applicant operate 23 outpatient sites offering primary care and they jointly operate a DTC located next to the proposed facility that offers Urgent Care and primary care on the second floor. Saratoga Partners North will verify benefits for all patients prior to their surgical procedure. If the patient needs additional assistance with their benefits they will be directed to an Outreach Coordinator at either Albany Medical Center or Saratoga Hospital to further assist them.

The facility intends to contract with two Medicaid managed care plans. The Applicant plans to reach out to the underserved community through referral services and patient navigators at the member hospitals.

The facility will utilize an electronic medical record system. The Applicant is considering becoming part of an ACO or Medical Home. The Applicant plans to integrate into a RHIO, HIXNY.

**Conclusion**

The background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

**Financial Analysis**

**Lease Rental Agreement**

The applicant submitted a draft sublease rental agreement for the site that they will occupy, summarized below:

Premises:	28,500 square feet located at 4 Medical Park Drive, Malta, New York
Sublessor:	Saratoga Partners North Realty, LLC
Sublessee:	Saratoga Partners North, LLC
Term:	18-year initial term with two extension terms of five years each
Rental:	Years 1-5: \$969,000 annually (\$34.00 per sq. ft.) Years 6-10: \$1,065,900 annually (\$37.40 per sq. ft.) Years 11-15: \$1,172,490 annually (\$41.14 per sq. ft.) Years 16-20: \$1,289,739 annually (\$45.35 per sq. ft.) Years 21-25: \$1,418,713 annually (\$49.78 per sq. ft.) Years 26-28: \$1,560,584 annually (\$49.78 per sq. ft.)
Additional Ground Rent:	Due to the accrual base rent payable by the Landlord under the Ground Lease, the Tenant shall pay the Landlord an annual amount of \$32,775, which shall increase at a rate of 10% at the commencement of each fifth lease year thereafter.
Provisions	The tenant will be responsible for real estate taxes, utilities and maintenance.

Saratoga Partners North Realty, LLC, a to-be-formed limited liability company whose members will be Saratoga Hospital and Albany Medical Center Hospital, will be the owner of the building that will house the FASC and will bear responsibility for financing the building's construction. Accordingly, the sublease

will be a non-arm's length lease arrangement in that the sublessor and sublessee will have common ownership. The sublessor will enter into a ground lease with Saratoga Hospital, the master landlord/ground lessor and member of both the applicant and realty entity. The applicant has submitted letters from two New York real estate brokers attesting to the reasonableness of the per square foot rental.

**Services Agreement**

The applicant submitted a draft management/administrative services agreement, summarized below:

Company/Contractor:	Capital Region North, LLC
Facility/Operator:	Saratoga Partners North, LLC
Term:	3 years, automatically renews for successive periods of one year each.
Services Provided:	Prepare/deliver to the Board monthly financial package/financial reports; develop timeline and oversee preparation of yearly budgets; review proposed contracts for services; evaluate opportunities to provide new clinical procedures and perform related feasibility analysis; advise as to measurement of financial performance; productivity and expense management; create and oversee a Quality Assurance Program for the Facility; and work directly with Owner's audit firm to approve the timely completion of the annual financial audit of the Facility.
Fee:	\$56,118.33 monthly (\$673,419.96 annually)

The members of Capital Region North, LLC are the orthopedic physicians who will have 49% ownership interests in Saratoga Partners North, LLC. The agreement requires that in conjunction with the performance of its duties, Capital Region North, LLC shall provide the Facility with a dedicated administrator and shall obtain prior written approval from the Facility Operator's Board prior to undertaking any major decisions as defined in Section 3(b) of the agreement.

**Total Project Cost and Financing**

Total project cost for new construction and the acquisition of moveable equipment is estimated at \$18,888,473 summarized below:

New Construction	\$7,937,313
Site Development	705,504
Design Contingency	1,142,480
Construction Contingency	571,240
Architect/Engineering Fees	712,014
Other Fees (Consultant)	356,250
Moveable Equipment	6,188,493
Telecommunications	550,000
Financing Costs	352,490
Interim Interest Expense	267,382
CON Fee	2,000
Additional Processing Fee	<u>103,307</u>
Total Project Cost	\$18,888,473

Project costs are based on a construction start date of November 18, 2019, and a 15-month construction period.

The applicant's financing plan appears as follows:

Equity (landlord)	\$2,149,980
Equipment Lease (4.26% interest, 7-year term)	6,738,493
Bank Loan	
(landlord, variable interest [est. 4.5% - 5.05%], 10 years, 25-year amortization)	<u>10,000,000</u>
Total	\$18,888,473

Banc of America Public Capital Corp has provided a letter of interest for the equipment lease at the stated terms. Berkshire Bank has provided a letter of interest for the construction loan. A balloon payment estimated at \$7,404,920 would be due after 10 years. Saratoga Hospital has provided a letter attesting that Saratoga Hospital and Albany Medical Center Hospital (proposed members of the to-be-established realty entity) will fund the balloon payment associated with the construction loan. The respective hospitals have sufficient funds to meet the balloon payment.

### Operating Budget

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

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid FFS	\$4,597.35	\$252,854	\$5,129.78	\$420,642
Medicaid MC	\$4,597.35	\$252,854	\$5,193.11	\$420,642
Medicare FFS	\$4,424.95	\$1,769,978	\$4,399.49	\$2,503,312
Private Pay	\$4,214.23	\$126,427	\$5,129.78	\$210,321
Commercial FFS	\$4,214.23	\$126,427	\$5,129.78	\$210,321
Commercial MC	\$4,267.58	<u>\$10,114,160</u>	\$5,380.76	<u>\$17,266,862</u>
Total Revenues		\$12,642,700		\$21,032,100
<u>Expenses</u>				
Operating	\$3,056.10	\$9,168,305	\$4,191.61	\$17,034,723
Capital	<u>906.77</u>	<u>2,720,300</u>	<u>646.41</u>	<u>2,627,000</u>
Total Expenses	\$3,962.87	\$11,888,605	\$4,838.02	\$19,661,723
Excess Revenues		<u>\$754,095</u>		<u>\$1,370,377</u>
Procedures		3,000		4,064

\* Capital expenses include the following: interest on the working capital loan and equipment lease, depreciation on the equipment, and the lease rental payments/real estate taxes.

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

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid FFS	2%	2%
Medicaid MC	2%	2%
Medicare FFS	13%	14%
Private Pay	1%	1%
Commercial FFS	1%	1%
Commercial MC	79%	78%
Charity Care	2%	2%

Revenue, expense and utilization assumptions are based on the experience of Capital Region Ambulatory Surgery Center (CRASC), an existing single specialty (orthopedics) FASC where the physicians currently practice. Revenues reflect current reimbursement rates by payor for similar procedures performed by the physicians at CRASC. The Year Three increase in reimbursement reflects the case mix and acuity of the cases anticipated to be performed by Year Three. The operating cost increase is related to the projected 35.5% increase in patient volume with a majority of the increase associated with Total Joint procedures which have a significantly higher medical/surgical supply cost per case. The applicant further indicated they will be adding providers to the practice after Year One and expanding services to include spine procedures. Overall, patient volume is anticipated to increase due to population growth in Saratoga County, especially for older adults.

## Capability and Feasibility

Total project cost estimated at \$18,888,473 will be met as follows: \$2,149,980 equity (landlord), a \$6,738,493 equipment lease for a seven-year term with interest at 4.26% (operating entity), and a \$10,000,000 bank loan for a 10-year term and 25-year amortization period at variable interest rate estimated at 4.50% to 5.05% (landlord). Banc of America Public Capital Corp has provided a letter of interest for the equipment lease at the stated terms. Berkshire Bank has provided a letter of interest for the construction loan. The construction loan will have a balloon payment estimated at \$7,404,920 after 10 years. Saratoga Hospital has provided a letter attesting that Saratoga Hospital and Albany Medical Center Hospital (proposed members of the to-be-established realty entity) will fund the balloon payment associated with the construction loan. The hospitals have sufficient funds to meet the balloon payment when due.

Working capital requirements are estimated at \$3,276,954 based on two months of third year expenses. The applicant will fund the working capital via \$1,638,482 equity from the proposed members of Saratoga Partners North, LLC and a bank loan for \$1,638,482 at a variable interest rate (4.5% to 5%) for a five-year term. Berkshire Bank has provided a letter of interest for the working capital loan at the stated terms. BFA Attachments A, C and D are the personal net worth statements of the individual physician members and the certified financial statements of Saratoga Hospital and Albany Medical Center, respectively, which indicate the availability of sufficient funds for the equity contribution to meet the total project cost and working capital equity contributions. The applicant provided an affidavit indicating that equity will be provided disproportionate to ownership interests. BFA Attachment E is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$1,678,477.

The submitted budget projects an excess of revenues over expenses of \$754,095 and \$1,370,377 during the first and third years. Revenues are based on current reimbursement methodologies for ambulatory surgery services. The submitted budget appears reasonable.

BFA Attachment C is the 2017 certified financial statements and 2018 internal financial statements of Saratoga Hospital and Affiliates. As shown, the entity had an average positive working capital position, an average positive net asset position, and achieved average net income of \$30,647,499 for the 2017 through 2018 period.

BFA Attachment D is the 2017 certified financial statements and 2018 internal financial statements of Albany Medical Center and Related Entities. As shown, the entity had an average positive working capital position, an average positive net asset position, and achieved average net income of \$64,316,000 for the 2017 through 2018 period.

## Conclusion

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

## Attachments

BFA Attachment A	Personal Net Worth Statement- Proposed individual members
BFA Attachment B	List of members of Capital Region North, LLC
BFA Attachment C	Financial summary- Saratoga Hospital and Affiliates
BFA Attachment D	Financial summary- Albany Medical Center and Related Entities
BFA Attachment E	Pro Forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of June 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new multi-specialty ambulatory surgery center to be located at 4 Medical Park Drive, Malta, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

191117 B

Saratoga Partners North

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed sublease agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed services agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed equipment lease, acceptable to the Department of Health. [BFA]
6. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of a working capital loan commitment, acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of an amended and executed Consulting or Administrative Services Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicants Articles of Organization, acceptable to the Department. [CSL]
10. Submission of a photocopy of applicants Operating Agreement, acceptable to the Department. [CSL]
11. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-04. [AER]
12. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [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 November 18, 2019 and construction must be completed by January 8, 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. Prior to commencing Total Joint Replacement surgeries, submit the following to the Capital District Regional Office:



- a. A description of the facility's pre-procedure patient selection process for Total Joint Replacement procedures (i.e. factors assessed and used to determine risk category, process used to carry out assessment and risk determination, delineation of inclusion and exclusion criteria regarding patient to be cared for by the facility, etc.).
  - b. A description of the facility's process for determining safe post-anesthesia discharge and/or home readiness (i.e. the identification of plans for management of potential complications and emergencies associated with procedures performed, sedation/anesthesia administered, and patient population served).
  - c. A description of the facility's discharge plan for patients' post-Total Joint Replacement, including the plan for patients who require greater than 23 hours recovery.
4. For the first half of the year Total Joint Replacement surgeries are performed, submit the number of Total Joint procedures performed at the facility and the number which required discharge to an acute care facility. [HSP]
  5. 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]
  6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospitals/docs/hcs\\_access\\_forms\\_new\\_clinics.pdf](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](mailto:hospinfo@health.ny.gov) [HSP]
  7. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.