

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

**COMMITTEE DAY**

**AGENDA**

*July 18, 2019*

*10:15 a.m. Health Planning Committee*

*Establishment and Project Review Committee immediately following the Health Planning Committee Meeting*

*Empire State Plaza, Concourse Level, Meeting Rooms 2-4, Albany*

**I. WELCOME AND INTRODUCTION**

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

**II. Ambulatory Surgery Centers - Policy regarding Review Criteria for considering Impact on Local Hospitals**

Tracy Raleigh, Director, Center for Planning, Licensure and Finance

**III. Integrated Outpatient Services**

Mark Furnish, Director, Center for Health Care Policy and Resource Development

**IV. COMMITTEE MEMBER DISCUSSION AND QUESTIONS AND ANSWERS**

**V. PUBLIC COMMENT**

**VI. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW**

Gary Kalkut, M.D. Vice Chair

**A. Applications for Construction of Health Care Facilities/Agencies**

**Acute Care Services – Construction**

**Exhibit # 1**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1. 191174 C	Memorial Hospital for Cancer and Allied Diseases (Westchester County)

**Ambulatory Surgery Centers – Construction**

**Exhibit # 2**

<u>Number</u>	<u>Applicant/Facility</u>
1. 191215 C	Syracuse Surgery Center (Onondaga County)

**Diagnostic and Treatment Center – Construction**

**Exhibit # 3**

<u>Number</u>	<u>Applicant/Facility</u>
1. 191147 C	New York Hotel Trades Council and Hotel Association of New York City Health Center (Kings County)

**Residential Health Care Facility – Construction**

**Exhibit # 4**

<u>Number</u>	<u>Applicant/Facility</u>
1. 191132 C	Canterbury Woods (Erie County)

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

**Ambulatory Surgery Centers - Establish/Construct**

**Exhibit # 5**

<u>Number</u>	<u>Applicant/Facility</u>
1. 181193 B	Northern New York ASC, LLC d/b/a Northern New York Center for Surgery (Jefferson County)
2. 182236 B	Precision SC, LLC d/b/a PrecisionCare Surgery Center (Suffolk County)
3. 191095 B	Hauppauge SC, LLC d/b/a The Center for Advanced Spine and Joint Surgery (Suffolk County)
4. 191189 B	UWS ASC, LLC (New York County)
5. 191237 E	PBGS, LLC (Kings County)

**Diagnostic and Treatment Center - Establish/Construct**

**Exhibit # 6**

<u>Number</u>	<u>Applicant/Facility</u>
1. 191196 B	Shakespeare Operating, LLC d/b/a Bronx Treatment Center (Bronx County)
2. 191245 E	Planned Parenthood of New York City Inc. t/b/k/a Planned Parenthood of Greater New York, Inc. (New York County)

**Dialysis Center - Establish/Construct**

**Exhibit # 7**

<u>Number</u>	<u>Applicant/Facility</u>
1. 182296 B	Novo Dialysis Flatlands, LLC (Kings County)
2. 191077 B	Cobble Hill Dialysis (Kings County)
3. 191136 E	Cowley Dialysis, LLC d/b/a Hutchinson River Dialysis (Bronx County)

**C. Home Health Agency Licensures**

**Exhibit # 8**

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

<u>Number</u>	<u>Applicant/Facility</u>
1. 182301 E	Brookhaven Home Care, LLC (Suffolk County)
2. 191097 E	Oyster Bay Manor Home Care, Inc. (Nassau County)

**Changes of Ownership with Consolidation**

<u>Number</u>	<u>Applicant/Facility</u>
1. 191210 E	Supportive Home Care, LLC d/b/a Care365 Homecare (Kings County)

**D. Certificates**

**Exhibit # 9**

**Certificate of Dissolution**

Applicant

Jewish Care Services of Long Island, Inc.

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

Applicant

The Eastern Long Island Hospital Association

Rochester Primary Care Network, Inc.

Columbia-Greene Hospital Foundation

**Restated Certificate of Incorporation**

Applicant

Carthage Area Hospital, Inc.

**Amended and Restated Certificate of Incorporation**

Applicant

HealthCare Choices NY, Inc.



**Project # 191174-C**

**Memorial Hospital for Cancer and Allied Diseases**

**Program:** Hospital  
**Purpose:** Construction

**County:** Westchester  
**Acknowledged:** May 30, 2019

**Executive Summary**

**Description**

This application is in response to the Department's February 27, 2019 solicitation of proposals for a time-limited demonstration project to allow observation services at cancer care centers located at hospital extension clinics. Part 705 of Title 10 of the New York Codes, Rules and Regulations authorizes the Commissioner of Health to approve such demonstrations to evaluate the medical efficacy, cost effectiveness, efficiency, and need for innovations in health services before they may be considered as usual, customary and generally accepted modalities of patient care. This application was the only response to the solicitation.

Memorial Hospital for Cancer and Allied Disease (MHCAD), a 514-bed, voluntary not-for-profit, Article 28 hospital affiliate of Memorial Sloan-Kettering Cancer Center (MSKCC) located at 1275 York Avenue, New York (New York County), requests approval to provide a two-bed observation service at the existing cancer care hospital extension clinic, MSK Westchester, located at 500 Westchester Avenue, Harrison (Westchester County). This project is associated with CON 171290 that was approved by the Public Health and Health Planning Council (PHHPC) on April 26, 2018. The project was initially for the construction of six examination rooms and two observation beds, however the project was revised in December 2017 to operate all eight rooms as examination rooms because the regulations only allow for observation services in an inpatient setting.

The Department determined that a broad authorization for extension site-based

observation services is not prudent without the opportunity to evaluate the overall impact on patients, cost, quality and utilization/services of other health care providers in the communities where these programs were established. Under these circumstances, it was determined that a statewide Part 705 demonstration project was appropriate to evaluate the proposed model. In April 2018, the PHHPC approved a Part 705 demonstration proposal to allow observation beds at cancer care centers located at hospital extension clinics.

MHCAD's proposed observation services would ensure 24/7 on-site clinical coverage commensurate with a hospital-based observation unit, as well as 24/7 dietary, laboratory, radiology and pharmacy services. The demonstration will be limited to five years and MHCAD will provide periodic reports and a final report to the Department as required.

**OPCHSM Recommendation**

Contingent approval with an expiration of the service five years from the date of final approval.

**Need Summary**

There will be no Need recommendation of this project because it is a demonstration project under Part 706 of Title 10 of the New York Codes, Rules and Regulations.

**Program Summary**

Based on the results of this review, a favorable recommendation can be made regarding the facilities 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 CON as the observation beds at the Westchester site have already been constructed under CON 171290. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$4,092,925,000	\$4,093,135,000
Expenses	<u>\$3,871,514,000</u>	<u>\$3,871,596,000</u>
Net Income	\$221,411,000	\$221,539,000

## **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 services five years from the date of final approval, contingent upon:**

1. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. The SHC drawings must demonstrate that the facility meets the minimum FGI 2014 edition 2014 requirements for 2.2 Specific Requirements for General Hospitals 2.2-3.2 Observation Units. [AER]
2. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03. [AER]
3. Submission of a commitment to submit semi-annual reports for the duration of the demonstration project. The reports must be submitted no later than 60 days after the end of each six-month period and must include, at a minimum, the following information solely related to the care provided to cancer patients:
  - a. Utilization rates for the extension clinic observation beds and observation beds operated elsewhere in the hospital.
  - b. Average charge and cost for the extension clinic observation beds and observation beds operated elsewhere in the hospital.
  - c. Patient satisfaction/experience data for the extension clinic observation beds and observation beds operated elsewhere in the hospital. The applicant hospital should include the patient satisfaction/experience measures that are proposed to be used in its application.
  - d. Medical and nursing staff experience, including the primary care physician's experience regarding communication and timeliness of information.
  - e. Comorbidity analysis of extension clinic versus hospital patients (i.e., what types of patients are being seen at the extension clinic compared to those being seen at the hospital).
  - f. Projected impact on case mix at hospital location(s) where the demonstration project patients previously would have been treated.
  - g. Telemedicine use by extension clinic physicians and mid-level providers, to capture the volume, type and outcome of telemedicine modalities used. The Department will provide more details prior to the commencement of demonstration adult cancer service delivery at the approved extension clinic site.
  - h. Metrics related to timeliness of diagnostic and treatment services received by patients at the extension clinic versus those at hospital location(s). For example, to what degree have patient wait times for visits/services declined? To what degree have wait times in hospital location(s) declined as a result of patients being seen at the extension clinic?
  - i. A description of each extension clinic's adult cancer patient population, including but not limited to age categories, length of stay, diagnoses requiring observation stays, treatments provided during observation stays, discharge locations, and reasons for readmission to any setting in subsequent 30 days, if applicable. [HSP]

**Approval conditional upon:**

1. The project must be completed within six months from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Submission of reports, as described in the corresponding contingency, every six months for the duration of the project. [HSP]
3. Submission of a final report no later than 90 days after the end of the demonstration project. [HSP]
4. The provider is required to report adverse events related to the diagnosis, treatment, and care of adult cancer patients at the extension clinic site. The Department will provide additional information regarding the reporting of adverse events prior to the commencement of demonstration adult cancer service delivery at the approved extension clinic site. [HSP]
5. The facility's policies and procedures must reflect the requirements that services are limited to patients over the age of 18 with a primary diagnosis of cancer and patients must be undergoing active treatment for cancer (not in remission) and be ambulatory. [HSP]

**Council Action Date**

**August 8, 2019**



## **Program Analysis**

### **Program Description**

Memorial Hospital for Cancer and Allied Diseases proposes the use of clinic space at Memorial Sloan Kettering (MSK) Westchester, their extension clinic located at 500 Westchester Avenue, Harrison (Westchester County), for two observation beds.

Memorial Sloan Kettering states that the examination rooms and observation beds at MSK Westchester would help alleviate overcrowding at the urgent care center and in the Clinical Decisions Unit (CDU) at Memorial Hospital Manhattan site. The addition of observation beds to the MSK Westchester ambulatory location will accommodate the increasing need for observation care in patients with cancer diagnosis in an environment that can accommodate the needs of the patient who do not require and emergency room evaluation or inpatient stay. They specify that the proposed observation bed services would ensure 24/7 on-site clinical coverage commensurate with a hospital-based observation unit, as well as 24/7 availability of required dietary, laboratory medicine, radiology and pharmacy services. They state that the availability of observation services at MSK Westchester, will greatly enhance the quality and safety of clinical services available to oncology patients within the MSK Westchester catchment area.

The CDU at Memorial Hospital has been in operation since 2015. The projection for the two observation beds at MSL Westchester is an average daily census of 0.7 with an annual full year volume of 240 visits. Any patient requiring a more extensive work up or admission are currently transported to the urgent care center or to the main campus in Manhattan. Those patients whose medical condition is emergent or unstable and require an emergency response are sent via ambulance to a local emergency department.

The observation beds at MSK Westchester have already been constructed as part of MSK Westchester's Symptom Care Clinic CON project (#171290), which has been surveyed and approved for commencement of operations by Metropolitan Area Regional Office.

The hospital satisfactorily addressed each required item in the February 27, 2019 Cancer Observation Bed Extension Clinic Demonstration solicitation letter. Staffing levels will be 21.0 FTEs in the first year and by 21.0 in the third year.

### **Compliance with Applicable Codes, Rules and Regulations**

The medical staff will continue to ensure that the 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 expertise. The Facility's admissions policy includes anti-discrimination provisions regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability or source of payment. All procedures are performed in accordance with all applicable federal and state codes, rules and regulations. The Facility's accreditation is a Medicare deemed survey done by The Joint Commission to insure we comply with all regulations. A sliding fee scale is in place for those without insurance and provisions are made for those who cannot afford services.

This facility has no outstanding Article 28 surveillance or enforcement actions in the past 10 years 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

Memorial Hospital states that the proposed project will advance the Prevent Chronic Diseases priority area of the Prevention Agenda 2013-2018 by supporting three focus areas:

- Focus Area 1: Healthy Eating and Food Security
- Focus Area 3: Tobacco Prevention
- Focus Area 4: Preventive Care and Management

They state that goals within these focus areas are integrated into the services provided to patients in observation status at the site, to the extent applicable, citing screening services and tobacco use cessation treatment services as examples. Memorial Hospital also noted that psychosocial assessment of patients in observation status at MSK Westchester will include identification of food security issues.

The applicant states that eight Memorial Hospital interventions supporting the Prevention Agenda will have applicability at MSK Westchester:

1. Tobacco Treatment Program (TTP)
2. Immigrant Health and Cancer Disparities Services (IHCD)
3. F.O.O..D
4. Integrated Cancer Care Access Network (ICANN)
5. The Taxi Network
6. Health Windows
7. Arab American Breast Cancer Education and Referral Program (AMBER)
8. Screenings

Memorial Hospital engages local community partners from multiple sectors in its Prevention Agenda efforts. They cite several indicators they are tracking to measure the performance of their interventions, and their progress toward achieving local Prevention Agenda goals. In 2017 Memorial Hospital spent \$15,222,196 on community health improvement services, representing 0.364% of total operating expenses.

## Financial Analysis

### Operating Budget

The applicant submitted the current results (2018) of MHCAD, and the projected first- and third-year operating budgets, in 2019 dollars, summarized below (000s):

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Day</u>	<u>Total</u>	<u>Per Day</u>	<u>Total</u>	<u>Per Day</u>	<u>Total</u>
<u>Inpatient Revenues</u>						
Comm - FFS & MC	\$6,894.93	\$565,246	\$6,895.41	\$565,879	\$6,895.54	\$565,924
Medicare - FFS & MC	\$3,398.43	\$242,366	\$3,398.65	\$242,633	\$3,398.76	\$242,661
Medicaid - FFS & MC	\$2,423.70	\$39,659	\$2,424.38	\$39,709	\$2,424.52	\$39,716
Private Pay	\$9,825.45	\$18,069	\$9,841.02	\$18,137	\$9,837.40	\$18,150
Un-/Under-insured	\$6,426.67	\$1,928	\$6,426.67	\$1,928	\$6,426.67	\$1,928
Other #		\$232,935		\$233,142		\$233,159
Bad Debt		<u>(\$6,688)</u>		<u>(\$6,698)</u>		<u>(\$6,699)</u>
Total Inpatient		\$1,093,515		\$1,094,730		\$1,094,839
<u>Outpatient Revenues</u>						
Comm - FFS & MC	\$2,171.19	\$1,632,561	\$2,172.08	\$1,633,518	\$2,172.13	\$1,633,577
Medicare - FFS & MC	\$1,312.59	\$698,535	\$1,313.08	\$698,919	\$1,313.13	\$698,952
Medicaid - FFS & MC	\$344.59	\$22,629	\$344.59	\$22,631	\$344.55	\$22,631
Private Pay	\$658.49	\$12,907	\$658.76	\$12,915	\$658.78	\$12,916
Other #		\$654,966		\$655,077		\$655,086
Bad Debt		<u>(\$24,850)</u>		<u>(24,865)</u>		<u>(\$24,866)</u>
Total Outpatient		\$2,996,748		\$2,998,195		\$2,998,296
Total Revenue		\$4,090,263		\$4,092,925		\$4,093,135

	<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>Inpatient Expenses</u>						
Operating		\$940,432		\$940,728		\$940,752
Capital		\$37,101		\$37,101		\$37,101
Total		\$977,533		\$977,829		\$977,853
<u>Outpatient Expense</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Operating		\$2,734,808		\$2,738,475		\$2,738,533
Capital		\$155,210		\$155,210		\$155,210
Total		\$2,890,018		\$2,893,685		\$2,893,743
<u>Total Expenses</u>						
Operating		\$3,675,240		\$3,679,203		\$3,679,285
Capital		\$192,311		\$192,311		\$192,311
Total		\$3,867,551		\$3,871,514		\$3,871,596
Net Income		<u>\$222,712</u>		<u>\$221,411</u>		<u>\$221,539</u>
Total Patient Days		171,799		171,979		171,994
Visits		1,372,072		1,372,312		1,372,332

# Other revenue consists of: Retail and Specialty Pharmacy, Medical Practice Revenue, Contributions and Investment Income, Assets released from restrictions, Grants and Contracts.

Utilization by payor source for inpatient services is identical for current, first and third years.

<u>Payor</u>	<u>Current, 1<sup>st</sup> and 3<sup>rd</sup> Year</u>
Comm - FFS & MC	47.72%
Medicare - FFS & MC	41.51%
Medicaid - FFS & MC	9.52%
Private Pay	1.07%
Uninsured/Charity	0.18%

Utilization by payor source for outpatient services is identical for current, first and third years.

<u>Payor</u>	<u>Current, 1<sup>st</sup> and 3<sup>rd</sup> Year</u>
Comm - FFS & MC	54.80%
Medicare - FFS & MC	38.79%
Medicaid - FFS & MC	4.79%
Private Pay	1.43%
Charity Care	0.19%

### **Capability and Feasibility**

There are no project costs associated with this CON. There is no working capital need associated with this application, as the facility has been in operation for many years. Any future working capital needs will be provided by MSKCC, which has significant positive working capital of \$625,600,000.

The submitted budget indicates an excess of revenues over expenses of \$221,411,000 and \$221,539,000 during the first and third years of operations, respectively. Revenue and expense assumptions are based on the experience of the existing services provided within M HCAD, adjusted for the projected volume and patient utilization.

BFA Attachment A is the financial summary of MSKCC, which shows the entity maintained a positive working capital position, a positive net asset position and an average annual excess of operating revenues over expenses of \$341,672,000 for the period shown.

BFA Attachment B is the financial statements of Memorial Hospital for Cancer and Allied Diseases, which shows the entity maintained both positive net asset and working capital positions and had a net income of \$222,713,000 for 2018.

## **Attachments**

BFA Attachment A 2017 – 2018 MSKCC Financial Summary, Audited  
BFA Attachment B 2018 Financial Summary, Memorial Hospital for Cancer and Allied Diseases  
HSP Attachment Demonstration Project Solicitation Letter



Project # 191215-C
Syracuse Surgery Center

Program: Diagnostic and Treatment Center
Purpose: Construction
County: Onondaga
Acknowledged: May 2, 2019

Executive Summary

Description

Syracuse Surgery Center, LLC, an Article 28 freestanding ambulatory surgery center (FASC) located at 3400 Vickery Road, Syracuse (Onondaga County), requests approval to renovate space to change from a single specialty to a multi-specialty FASC. The Center was approved by the Public Health and Health Planning Council (PHHPC) under CON 111196 as a single specialty FASC specializing in ophthalmology services and became operational June 4, 2012. Subsequently, indefinite life operating certification was approved effective February 2, 2018 (CON 171297). The Center currently operates three days a week and has the capacity to handle additional surgical cases. A physician Board-certified in Otolaryngology, Head and Neck Surgery and Facial Plastic and Reconstructive Surgery approached the Center expressing interest in performing cases at the Center. To be able to accommodate additional surgery types, the Center requests to be certified for multi-specialty surgical services and will initially add ENT and facial plastic/reconstructive surgery services.

The current facility is 5,650 square feet and consists of two operating rooms and six pre-op/post-op beds. The applicant is proposing to perform minor renovations that involve minimal work, with no change to the number of operating rooms, patient spaces or square-footage of the facility. The Center will continue to operate under its original 10-year lease, which provides for two additional five-year renewal options.

Bryant Carruth, M.D. will serve as Medical Director. The applicant submitted an executed Transfer Agreement with Crouse Hospital. The Center is accredited by The Joint Commission.

OPCHSM Recommendation

Contingent Approval

Need Summary

Upon approval as a multi-specialty FASC, the Center will initially add ENT and facial plastic/reconstructive surgeries and anticipates additional opportunities to serve the under-insured population

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 \$276,676 will be funded via equity of \$56,676 and a five-year equipment financing loan for \$220,000 at 5.0% interest. NBT Bank has provided a letter of interest at the stated terms. The proposed budget is as follows:

Table with 3 columns: Category, Year One, Year Three. Rows: Revenues (\$3,159,244 vs \$3,299,086), Expenses (1,960,564 vs 2,112,060), Gain/(Loss) (\$1,198,680 vs \$1,187,026)

## **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 equipment loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
4. The submission of Engineering (MEP) Drawings, per SHC guidelines, for review and approval, as described in BAER Drawing Submission Guidelines DSG-03. [AER]

#### **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. Construction must start on or before October 1, 2019 and construction must be completed by November 1, 2019, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

### **Council Action Date**

**August 8, 2019**

## Need Analysis

### Analysis

The service area is Onondaga County. The table below shows the number of patient visits at ambulatory surgery centers in Onondaga County for 2017 and 2018.

ASC Type	Facility Name	Total Patient Visits	
		2017	2018
Multi-Specialty	Camillus Surgery Center	2,462	1,901
Gastroenterology	Digestive Disease Center of Central NY	11,389	19,887
Gastroenterology	Endoscopic Procedure Center	6,005	5,986
Gastroenterology	Endoscopy Center of Central NY	4,148	7,435
Pain Management	Heritage One-Day Surgery	16,851	17,977
Pain Management	Specialists' One-Day Surgery Center	14,778	16,685
Orthopedics	Specialists' One-Day Surgery Center (opened 3/27/19)	N/A	N/A
Multi-Specialty	Specialty Surgery Center of Central NY	12,685	13,644
Gastroenterology	Syracuse Endoscopy Associates	6,762	6,590
Ophthalmology	Syracuse Surgery Center	1,491	1,790
Gastroenterology	University Gastroenterology at the Philip G. Holtzapple Endoscopy Center	2,160	1,694
Orthopedics	Upstate Orthopedics Ambulatory Surgery Center	5,501	5,609
<b>Total Visits</b>		<b>84,232</b>	<b>99,198</b>

Source: SPARCS

From 2017 to 2018, Onondaga County experienced a 17.8% increase in ambulatory surgery visits.

The Center began operation in June 2012 and has been granted permanent life. The Center has contracts with the following Medicaid managed care plans: Fidelis and Molina Healthcare. The Center already has a relationship with Syracuse Community Health Center (an FQHC), and will contact them 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.

### Conclusion

Approval of this project will enhance access to multi-specialty surgery services for the residents of Onondaga County.

## Program Analysis

### Program Description

Dr. Bryant Carruth will continue as the facility Medical Director and the existing transfer and affiliation agreement with Crouse Hospital will remain in effect. Staffing levels will increase by 3.0 FTEs in the first year and by 4.3 in the third year to accommodate the additional procedures projected. There will be minor construction to accommodate the new services.

### Compliance with Applicable Codes, Rules and Regulations

The medical staff will continue to ensure that the 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 expertise. The Facility's admissions policy includes anti-discrimination provisions regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability or source of payment. All procedures are performed in accordance with all applicable federal and state codes, rules and regulations. The Facility's accreditation is a Medicare deemed survey done by The Joint Commission to insure we comply with all regulations. A sliding fee scale is in place for those without insurance and provisions are made for those who cannot afford services.

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 cost for renovations and the acquisition of movable equipment is estimated at \$276,676, broken down as follows:

Renovation & Demolition	\$16,950
Design Contingency	1,695
Construction Contingency	1,695
Moveable Equipment	\$252,834
Application Fee	2,000
Processing Fee	<u>1,502</u>
Total Project Cost	\$276,676

Project costs are based on a construction start of October 1, 2019, and a one-month construction period.

Total project costs are \$276,676 and will be funded via equity of \$56,676 and a five-year equipment financing loan for \$220,000 at 5.0%. NBT Bank has provided a letter of interest at the stated terms.



## Operating Budget

The applicant has submitted their current year results (2018), and the first and third-year operating budgets, in 2019 dollars, summarized below:

Revenues	Current Year		Year One		Year Three	
	Per Proc.	Total	Per Proc.	Total	Per Proc.	Total
Medicaid FFS	\$818.67	\$2,456	\$724.83	\$4,349	\$711.43	\$4,980
Medicaid MC	\$453.20	27,645	\$530.11	\$57,252	\$537.99	\$64,559
Medicare FFS	228.30	584,893	\$254.17	\$689,048	\$260.19	\$714,753
Medicare MC	535.42	442,793	\$552.20	\$508,575	\$555.94	\$524,810
Commercial FFS	\$770.91	1,353,714	\$770.80	\$1,667,233	\$770.93	\$1,744,611
Commercial MC	\$0	0	\$765.62	\$48,234	\$771.00	\$60,138
Private Pay	\$1,289.31	<u>81,793</u>	\$1,238.61	<u>\$184,553</u>	\$1,226.72	<u>\$185,235</u>
Total Revenues		\$2,593,294		\$3,159,244		\$3,299,086
<b>Expenses</b>						
Operating	\$220.57	\$1,180,071	\$248.25	\$1,523,488	\$266.15	\$1,684,730
Capital	<u>57.94</u>	<u>310,000</u>	<u>71.22</u>	<u>437,076</u>	<u>\$67.51</u>	<u>\$427,330</u>
Total Expenses	\$278.52	\$1,490,071	\$319.47	\$1,960,564	\$333.66	\$2,112,060
Net Income		<u>\$1,103,223</u>		<u>\$1,198,680</u>		<u>\$1,187,026</u>
Procedures		5,350		6,137		6,330
Cost/Procedure		\$278.52		\$319.47		\$333.66

Utilization by payor source for the current (2018), first and third year is as follows:

Payor	Current Year		Year One		Year Three	
	Proc.	%	Proc.	%	Proc.	%
Medicaid FFS	3	0.06%	6	0.38%	7	0.41%
Medicaid MC	61	1.14%	108	5.97%	120	6.02%
Medicare FFS	2,562	47.88%	2,711	18.93%	2,747	18.88%
Medicare MC	827	15.46%	921	11.94%	944	11.94%
Commercial FFS	1,756	32.82%	2,163	51.72%	2,263	51.73%
Commercial MC	0	0.00%	63	8.01%	78	7.96%
Private Pay	141	2.64%	149	1.02%	151	1.02%
Charity Care	<u>0</u>	<u>0.00%</u>	<u>16</u>	<u>2.03%</u>	<u>20</u>	<u>2.04%</u>
Totals	5,350	100.00%	6,137	100.00%	6,330	100.00%

The following is noted with respect to the submitted budget:

- The Medicare (FFS & MC) payment rates are based on the 2018 Medicare Fee Schedule.
- Commercial (FFS & MC) and Private Pay rates are projected at 110% of the Medicare rates.
- Medicaid (FFS & MC) payments are projected at 90% of the Medicare payment rates.
- Current Year results noted above differ slightly from the unaudited 2018 year-end financials due to cash basis reporting. The current year, as shown, is conservatively presented compared to the unaudited financials.
- The cost per procedure increases from Year One to Year Three are due to added specialties and volume.

## Capability and Feasibility

Total project costs of \$276,676 will be funded via equity of \$56,676 and a five-year equipment financing loan for \$220,000 at 5.00%.

The submitted budget projects net income of \$1,198,680 and \$1,187,026 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 2015-2017 Audited Financial Statements of Syracuse Surgery Center, LLC, which indicates the Center had positive working capital and net asset positions and an operating income of \$976,973. BFA Attachment B is their internal financial statements as of December 31, 2018, which indicates the Center has maintained positive working capital and equity and generated a net income of \$1,281,352. BFA Attachment C is their Internal financial statements as of March 31, 2019, which indicates the Center has maintained positive working capital and equity and generated a net income of \$283,343.

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

## **Attachments**

BFA Attachment A 2015 - 2017 Audited Financial Statements - Syracuse Surgery Center, LLC  
BFA Attachment B Internal Financials as of December 31, 2018 - Syracuse Surgery Center, LLC  
BFA Attachment C Internal Financials as of March 31, 2019 – Syracuse Surgery Center, LLC



Project # 191147-C
New York Hotel Trades Council and Hotel Association of New York City Health Center

Program: Diagnostic and Treatment Center County: Kings
Purpose: Construction Acknowledged: March 20, 2019

Executive Summary

Description

New York Hotel Trades Council and Hotel Association of NYC Health Center, Inc. (HCI), a voluntary not-for-profit corporation, requests approval to construct an Article 28 diagnostic and treatment center (D&TC) extension clinic at 265 Ashland Place, Brooklyn (Kings County) and relocate their Brooklyn Health Center extension clinic located at 68-80 Schermerhorn Street in Brooklyn to the newly constructed facility. The distance between the old and new location is 0.9 miles. HCI also operates four other health care centers in New York City. HCI is licensed to provide Medical Services-Primary Care, Medical Services-Other Medical Specialties, and dental. The services are provided exclusively to unionized hotel and motel workers, their dependents and retirees pursuant to a collective bargaining contract.

Rick Walquist, D.O., who is Board-certified in Internal Medicine, will be the Medical Director for the Brooklyn Health Center site. The applicant has a Transfer and Affiliation Agreement for backup and emergency services with Maimonides Medical Center, which is located 3.5 miles (24 minutes travel time) from the Center.

As background, HCI was established in 1949 under Federal law as a health benefit plan and regulated by the Employee Retirement Income Security Act (ERISA). In 1949 and again in 1975, the New York Legislature passed enabling legislation authorizing the creation of HCA as a

not-for-profit corporation for the delivery of "medical, surgical, optical and dental care" at one or more health centers, to unionized employees in the hotel trade and their families. Under the 1975 amendments, HCI's clinical sites were required to be established under Article 28 of the Public Health Law.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no change to services as a result of the relocation of the clinic. The number of projected visits is 126,500.

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 \$110,016,142 has been funded via applicant's liquid resources. The proposed budget is as follows:

Table with 3 columns: Revenues, Expenses, Gain/(Loss) and 2 sub-columns: Year One, Year Three. Values include \$31,284,000 and \$33,283,000.

## **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 State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
3. 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 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. Construction must start on or before December 1, 2019 and construction must be completed by June 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]

### **Council Action Date**

**August 8, 2019**

## Need and Program Analysis

### Background

The primary service area is Kings County. The Health Center offers family medical and dental services to unionized hotel and motel workers, their spouses, their dependents and retirees that work in hotels and motels throughout New York City. The new location is only 0.9 miles from its current location. The center's hours of operation will be Monday through Friday from 7 am until 7 pm, and the pharmacy is open on Saturday and Sunday from 9 am until 5 pm. The number of projected visits is 126,500 in Year One and 137,250 in Year Three. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

There will be no change in FTEs, and the transfer and affiliation agreement will remain in place with Maimonides Medical Center, which is 3.5 miles and 24 minutes away

### Compliance with Applicable Codes, Rules and Regulations

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

### Conclusion

Approval will provide continued access to the healthcare services to the unionized hotel and motel workers and their families in Brooklyn. 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 for the acquisition of land, construction and of moveable equipment is \$110,016,142 broken down as follows:

Land	\$19,000,000
New Construction	83,578,000
Architect/Engineering Fees	5,002,000
Movable Equipment	1,678,813
IT & Telecommunications	153,561
CON Application Fee	2,000
CON Processing Fee	<u>601,768</u>
Total Project Cost	\$110,016,142

Per the applicant, the land was purchased on April 26, 2013, in an arm's length transaction from an unrelated party. The property was originally an unoccupied parking lot of approximately 19,136 square feet (0.439302 acres) with no permanent structures.

The project was started on May 1, 2015, and completed on November 15, 2017, a thirty-one-month construction period. The project costs were paid from the applicant's liquid resources. Upon review, some renovations will be required to meet Article 28 standards. Total reimbursable costs are determined to be \$0.00 due to construction occurring prior to CON review and approval.

BFA Attachment A is 2016 and 2017 certified financial statement for The New Trades Council and Hotel Association of New York City, Inc., Health Center Inc. The cash flow statement shows disbursements totaling \$102,801,435 for the purchase of property and equipment during 2016 and 2017.

### Operating Budget

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

<u>Revenues</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit.</u>	<u>Total</u>	<u>Per Visit.</u>	<u>Total</u>
Medicare - MC#	\$272.73	\$3,000,000	\$280.00	3,220,000	\$277.55	3,400,000
All Other*	\$249.83	<u>27,335,000</u>	\$244.03	<u>28,064,000</u>	\$239.06	<u>29,883,000</u>
Total Revenues		\$30,335,000		\$31,284,000		\$33,283,000
 <u>Expenses</u>						
Operating	\$225.35	\$27,135,000	\$222.01	\$28,084,000	\$219.18	\$30,083,000
Capital	<u>26.58</u>	<u>3,200,000</u>	<u>\$25.30</u>	<u>\$3,200,000</u>	<u>\$23.32</u>	<u>\$3,200,000</u>
Total Expenses	\$251.93	\$30,335,000	\$247.31	\$31,284,000	\$242.50	\$33,283,000
Net Income/(Loss)		<u>\$0</u>		<u>\$0</u>		<u>\$0</u>
Visits		120,413		126,500		137,250
Cost Per Visit		\$51.93		\$247.31		\$242.50

# Medicare Part B & D services to Medicare eligible retirees of the union.

\*All Other represents the New York Hotel Trades Council and Hotel Association of New York City, Inc. Health Benefits Fund. This is an employee benefit provided via negotiated contract. The Health Benefit Fund provides outpatient health benefits to Hotel Council participants exclusively through the Health Center.

Utilization by payor source for years one and three is summarized below:

<u>Payor</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicare – MC	11,000	9%	11,500	9%	12,250	9%
All Other	<u>109,413</u>	<u>91%</u>	<u>115,000</u>	<u>91%</u>	<u>125,000</u>	<u>91%</u>
Total	120,413	100%	126,500	100%	137,250	100%

The following is noted with respect to the submitted budget:

- The Center is an ERISA-funded entity and is restricted to serving eligible union members, retirees, and their dependents. Accordingly, apart from a cost reimbursement contract with the Center for Medicare & Medicaid Services (CMS) to cover Medicare-eligible retirees Part B & D services, the Center is not funded by government insurance programs.
- Expense assumptions are based upon historical data and changes in membership.
- Utilization assumptions are based upon historical data and changes in membership.

The Health Center is primarily supported through a collective bargaining agreement between the hotel & motel employees' union (New York Hotel and Motel Trades Council, AFL-CIO) and the employer association (Hotel Association of New York City, Inc.). The latest bargaining agreement is for a period from July 1, 2012 through June 26, 2026. Per the terms of the agreement, the participating employer contributes 25.5% of the union employee's wages to the New York Hotel Trades Council and Hotel Association of NYC Health Center, Inc's Health Benefit Fund (Health Benefit Fund). The Health Benefit Fund provides the participates with their health benefits through a direct re-imbusement of all operating and capital costs (including construction) of the Health Center.

The collective bargaining agreement also includes a "liquid reserves" provision, in that cash/investments must remain above 25% of the following year's projected operating costs. If at any time liquid reserves fall below the 25%, the contributing employers are obligated to increase their contributions to bring it back in line.

Health Benefit Fund is a trust and governed by a declaration of trust. Its Board of Trustees are appointed by New York Hotel and Motel Trades Council, AFL-CIO and Hotel Association of New York City, Inc. Health Benefit Fund is the sole corporate member of the Health Center.

**Capability and Feasibility**

Total project costs of \$110,016,142 has been funded via applicant's liquid resources. Working capital is estimated at \$491,334 based on two months of third year incremental expenses, which will be fund from operations. Review of BFA Attachment A, certified financial statement for The New Trades Council and Hotel Association of New York City, Inc., Health Center Inc. shows \$74,330,391 in net assets and \$44,192,413 increase in unrestricted net assets as of December 31, 2017.

The Center projects to break even in both the first and third years. The budget appears reasonable.

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

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**Attachments**

BFA Attachment A New York Hotel Trades Council and Hotel Association of NYC, Inc. Health Center, Inc. 2016 and 2017 Certified Financial Statement



Project # 191132-C
Canterbury Woods

Program: Residential Health Care Facility
Purpose: Construction

County: Erie
Acknowledged: March 19, 2019

Executive Summary

Description

Episcopal Church Home & Affiliates Life Care Community, Inc. d/b/a Canterbury Woods, a not-for-profit, Article 46 Continuing Care Retirement Community (CCRC) located at 725 Renaissance Drive, Williamsville (Erie County), requests approval to construct an addition to the CCRC's skilled nursing unit and certify two additional Article 28 residential health care facility (RHCF) beds. The skilled nursing unit (Article 28 assets) is located on the first floor of the main campus building known as Oxford Village. The proposed two-bed addition will add 914 square feet to the northwest end of the unit. The project includes minor renovations to the existing 31,272 square foot 48-bed RHCF. Upon Public Health and Health Planning Council (PHHPC) approval, the total RHCF bed count will increase to 50 certified beds. There will be no change in services provided.

In October 2017, Canterbury Woods constructed a satellite campus in Buffalo, New York as an expansion to its Williamsville campus. The satellite campus, known as Canterbury Woods Gates Circle (CWGS), contains 53 independent living apartments and five enhanced assisted living apartments, but no RHCF beds. A required actuarial analysis done in December 2017 predicted that the 48 RHCF beds at Williamsville would be sufficient to serve the needs of all residents of their community, even with the addition of the 53 independent living apartments at CWGC. However, recent experience indicates that the need for skilled nursing care is greater than predicted and is expected to continue to increase. Canterbury Woods is required to provide skilled nursing care to its residents and is contractually obligated to

pay for the entire cost of a resident's stay at another skilled nursing facility if it has insufficient availability within its own RHCF. From January 2016 through April 2018, Canterbury Woods' residents spent a total of 1,486 days receiving care at outside nursing homes at a cost of about \$225,000 to the CCRC. This two-bed expansion of skilled nursing facility beds will improve the satisfaction of its residents and positively impact the finances of Canterbury Woods, which can be passed along to all residents of the Life Care Community.

OPCHSM Recommendation

Contingent Approval

Need Summary

The RHCF beds to be added by this application are statutorily exempt from a determination of public need.

Program Summary

The existing skilled nursing unit will be able to accommodate the two additional resident beds with adequate services that support resident care.

Financial Summary

Total project cost of \$566,453 for the construction will be funded from accumulated funds of Canterbury Woods. The proposed budget is as follows:

Table with 3 columns: Category, Year One, Year Three. Rows: Revenues, Expenses, Gain/(Loss).



CCRCs are generally structured so that operating losses generated in the skilled nursing facility are offset by income earned and cash flow generated by the independent living portion of the operation. Using existing resources and projected future cash flows, the CCRC expects to be able to fully fund any operating losses from the skilled nursing facility. BFA Attachment C is the balance sheet projections for 2020 and 2022, which indicate sufficient liquid resources to fund project's cash needs.

## **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 State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-04. [AER]
3. 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 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 15, 2019 and construction must be completed by May 15, 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 operator shall submit a plan to maintain resident services and safety during construction to the Western Regional Office and must receive approval for such plan prior to the commencement of construction. [LTC]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

### **Council Action Date**

**August 8, 2019**

## Program Analysis

### Program Review

Canterbury Woods is a Continuing Care Retirement Community located at 725 Renaissance Drive Williamsville, New York. The Canterbury Woods campus is 62 acres and offers independent living, assisted living, short-term rehabilitation, and skilled nursing services. The skilled nursing program is currently 48 beds and offers inpatient and outpatient therapy services. Canterbury Woods proposes to construct two additional private resident rooms and increase their certified capacity from 48 to 50 residential healthcare facility beds.

The addition will be constructed on the first floor of the Oxford Village skilled nursing unit. The addition will add a total of 914 sf. to the existing unit. The space will be composed of two private resident rooms that are 226 sf. each. The rooms will have an ADA compliant toilet room that are 48 sf. each. The remaining 366 sf. of space is for an eight-foot-wide corridor that serves both the new resident rooms and extends access to the new exterior exit. The services that support resident care on the skilled nursing unit will be able to accommodate the two additional beds. The resident dining space features a main dining room and two private dining areas able to seat up to 51 residents. The resident central bathing facilities on the unit features two bath suites. The bath suites each feature a shower or bath tub option for bathing. The central shower rooms can accommodate the additional two resident rooms added to the unit.

### Compliance

Canterbury Woods currently has no outstanding civil monetary penalties or pending enforcements.

### Quality Review

<i>Facility</i>	<i>Ownership Since</i>	<i>Overall</i>	<i>Health Inspection</i>	<i>Quality Measure</i>	<i>Staffing</i>
Canterbury Woods	Current	****	**	*****	****
	07/1999 Data 01/2009	*****	*****	***	****

*Data date: 5/2019*

### Project Analysis and Conclusion

The addition to the end of the northwest wing of the Oxford Village skilled nursing unit will result in limited disruptions for the existing residents during construction. The existing skilled nursing unit will be able to accommodate the two additional resident beds with adequate services that support resident care and dining room space. The two additional skilled nursing beds will allow more of the current residents residing in the independent and assisted living patio homes and apartments to continue their stay in the community as their care needs increase.

## Financial Analysis

### Total Project Cost and Financing

Total project cost for construction is estimated at \$566,453, broken down as follows:

New Construction	\$312,295
Renovation & Demolition	\$1,317
Site Development	\$29,441
Design Contingency	\$34,305
Construction Contingency	\$17,153
Architect/Engineering Fees	\$84,675
Construction Manager Fees	\$72,479
Movable Equipment	\$7,500
Telecommunications	\$2,200
Application Fees	\$2,000
Additional Processing Fees	<u>\$3,088</u>
Total Project Cost	\$566,453

Project costs are based on a construction start date of September 15, 2019, with an eight-month construction period.

The total construction cost of \$566,453 will be funded from accumulated funds of Canterbury Woods. BFA attachment B presents the financial statements of the Canterbury Woods, which show sufficient resources to meet the total project costs.

### Operating Budget

The applicant submitted the Article 28 operation's current year results for 2017, and the projected first- and third-year operating budgets, in 2019 dollars, as summarized below:

	Current (2017)		Year One (2020)		Year Three (2022)	
	Per Diem	Total (48 beds)	Per Diem	Total (50 beds)	Per Diem	Total (50 beds)
<b>Revenues</b>						
Medicaid	\$182.72	\$195,148	\$182.72	\$195,148	\$182.72	\$195,148
Medicare-FFS	\$551.03	394,537	\$551.03	394,537	\$551.03	394,537
Medicare-MC	\$204.51	103,482	\$204.51	103,482	\$204.51	103,482
Private Pay	\$519.90	470,512	\$524.37	647,070	\$532.76	657,429
All Other *		<u>1,901,924</u>		<u>1,949,422</u>		<u>1,952,317</u>
Total Revenues		\$3,065,603		\$3,289,659		\$3,302,913
<b>Expenses</b>						
Operating	\$300.89	\$5,211,163	\$291.66	\$5,243,100	\$291.66	\$5,243,100
Capital	<u>21.65</u>	<u>374,958</u>	<u>21.66</u>	<u>389,383</u>	<u>22.46</u>	<u>403,732</u>
Total Expenses	\$322.54	\$5,586,121	\$313.32	\$5,632,483	\$314.12	\$5,646,832
Net Income (Loss)		<u>(\$2,520,518)</u>		<u>(\$2,342,824)</u>		<u>(\$2,343,919)</u>
Patient Days		17,319		17,977		17,977
Utilization %		98.9%		98.5%		98.5%

\*All other Revenues include monthly fees under life care contracts with CCRC's residents.

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

- The Current Year reflects the facility's 2017 SNF inpatient revenues and expenses.
- Medicaid revenues are based on the facility's current 2019 Medicaid Regional Pricing rate. The Current Year Medicare rate is the actual daily rate experienced by the facility during 2017 and expected to remain the same for Year One and Year Three. Private pay revenues are based on the current daily rates experienced of the facility during 2017 and adjusted for inflation.
- Expense and staffing assumptions are based on the Current Year expenses adjusted for two additional beds. There are no incremental salaries and benefits projected as the applicant believes the expansion can be staffed with current FTE staffing levels.
- The operating loss generated in the skilled nursing facility is offset by income earned and cash flows generated by the independent living portion of the CCRC's operations.
- Utilization for 2017 with 48 beds was 98.9%. Projected utilization for 50 beds for Year One and Year Three is 98.5%.
- Utilization by payer source for the first and third years is anticipated as follows:

Payor	Current Year		Year One		Year Three	
	Days	%	Days	%	Days	%
Medicaid	1,068	6%	1,068	6%	1,068	6%
Medicare-FFS	716	4%	716	4%	716	4%
Medicare-MC	506	3%	506	3%	506	3%
Private Pay	905	5%	1,234	7%	1,234	7%
Other-Monthly fees	<u>14,124</u>	<u>82%</u>	<u>14,453</u>	<u>80%</u>	<u>14,453</u>	<u>80%</u>
Total	17,319	100%	17,977	100%	17,977	100%

### Capability and Feasibility

The total project cost of \$566,453 will be funded from accumulated funds of Canterbury Woods. BFA Attachment B is the financial statements of the Canterbury Woods, which shows sufficient resources to meet the total project costs.

The incremental working capital requirement (determined as a minimum of the third-year incremental costs) is \$60,711. Any added working capital needs will be funded from Canterbury Woods' liquid resources and cash flows. Review of BFA Attachment B shows that Canterbury Woods has sufficient liquid resources to meet this requirement.

The CCRC's Article 28 operation projects first- and third-year losses of \$2,342,824 and \$2,343,919, respectively. The RHCF's operating losses are expected to be offset by the CCRC's liquid resources, operating cash flow and net income. BFA Attachment C, Canterbury Woods' pro forma balance sheet, indicates sufficient liquid resources to fund the project's cash needs. The budget appears reasonable.

BFA Attachment B, Canterbury Woods' 2016-2018 Financial Summary and their 2017 and 2018 certified financial statements, show positive working capital, negative net assets and negative operating income, with average occupancy of the RHCF at 98%. The company's negative net assets and negative operating income are a function of how CCRCs are financed and how they account for entrance fees in New York State. Specifically, during the first decade or so of a CCRC's operations, depreciation and amortization are recorded as expenses with no revenue offset from entrance fees. Due to U.S. Generally Accepted Accounting Principles and the refundability provisions of CCRC contracts in New York, no amount of the 90% refundable portion of Type-A entrance fees is taken into income. This creates a mismatch between revenues and expenses in the initial years. From 2010 to 2016, Canterbury Woods had positive operating income (much of the equipment was fully depreciated by 2010). However, starting in 2017 with the opening of CWGC, the cycle of depreciation expense outpacing revenues began again. The losses are expected to continue for the foreseeable future, as depreciation expense on the \$42 million expansion will drive book losses. The losses are not a sign of financial distress but are typical and expected in a CCRC's lifecycle.

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## **Attachments**

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- BFA Attachment A Financial Summary - Episcopal Church Home & Affiliates Life Care Community, Inc. d/b/a Canterbury Woods 2017 and 2018 Certified Financial Statements
- BFA Attachment B Pro Forma Balance Sheet

181193 B  
Northern New York ASC, LLC d/b/a  
Northern New York Center for Surgery

To Be Distributed Under Separate Cover



Project # 182236-B
Precision SC, LLC d/b/a PrecisionCare Surgery Center

Program: Diagnostic and Treatment Center County: Suffolk
Purpose: Establishment and Construction Acknowledged: November 16, 2018

Executive Summary

Description

Precision SC, LLC d/b/a PrecisionCare Surgery Center (PrecisionCare), an existing New York limited liability company, requests approval to establish and construct a single-specialty Article 28 freestanding ambulatory surgery center (FASC) to be located at 28 Research Way, East Setauket (Suffolk County). The FASC will specialize in orthopedics, including spine procedures. Suffolk County will be the primary service area. The Center will have four operating rooms in approximately 14,800 square feet of leased space in an existing one-story building.

Catholic Health System of Long Island, Inc. (CHSLI) is the active parent/co-operator of St. Francis Hospital, as well as Good Samaritan Hospital Medical Center, St. Catherine of Siena Medical Center, St. Charles Hospital, Mercy Medical Center, and St. Joseph's Hospital. The proposed Center represents CHSLI's goal to partner with local physicians to create the single-specialty FASC in the community. The procedures are currently being performed at three of the six acute care hospitals within CHSLI (Good Samaritan Hospital Medical Center, St. Catherine of Siena Medical Center and St. Charles Hospital).

The proposed ownership of the Center consists of 12 Class A members (11 orthopedic surgeons and one neurosurgeon) collectively owning 49.9% membership units, one Class B member, Precision SC Holdings, LLC, consisting of two individuals collectively owning 9.8% membership units, and one Class C member, St. Francis Hospital, a New York not-for-profit corporation with 40.3% membership units.

The proposed ownership is as follows:

Table with 2 columns: Precision SC, LLC and %. Rows include Class A Members (12 Individual Physicians, 4.1583% each) at 49.9%, Class B Member (Precision SC Holdings, LLC) at 9.8%, and Class C Member (St. Francis Hospital) at 40.3%.

Steven Puopolo, M.D., a Class A member and Board-certified orthopedic surgeon, will be the Medical Director of the Center. All Class A members will be practicing physicians at the Center. St. Charles Hospital will serve as back-up hospital to the FASC.

Concurrently under review is The Center for Advances Spine and Joint Surgery's CON (#191095), in which St. Francis Hospital is also a proposed member, to establish and construct a multispecialty FASC in Suffolk County. The applicant indicated that PrecisionCare will focus on providing more comprehensive orthopedic services, including foot/ankle, hand/upper extremity, hip/knee joint replacement, and shoulder and spine surgeries; whereas The Center for Advances Spine and Joint Surgery will provide more specialized orthopedic services in spine, joint replacement and interventional pain management surgeries.



**OPCHSM Recommendation**

Contingent Approval

**Need Summary**

The number of projected procedures is 1,754 in Year One and 2,420 in Year Three, Medicaid at 2.4% and Charity Care at 2.0%.

**Program Summary**

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

**Financial Summary**

The total project cost of \$10,376,199 will be met via \$884,199 members' equity, a \$592,000 tenant improvement allowance from the landlord, and a bank loan for \$8,900,000 at 6% interest with a seven-year term. TD Bank has provided a letter of interest. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$5,858,322	\$8,713,258
Expenses	<u>\$6,007,404</u>	<u>8,595,542</u>
Gain / (Loss)	(\$149,082)	\$117,716

## **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 loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed Development and Administrative Service Agreement, acceptable to the Department of Health. [BFA]
7. Submission of a copy of the amended operating agreement of the applicant addressing the representative governance issue, which are 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-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 8, 2019 and construction must be completed by November 7, 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 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]
4. 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]
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**

**August 8, 2019**

## Need Analysis

### Analysis

The service area is Suffolk County. The table below shows the number of patient visits at ambulatory surgery centers in Suffolk County for 2017 and 2018.

Specialty Type	Facility Name	Patient Visits	
		2017	2018
Gastroenterology/ Pain Mgt	Advanced Surgery Center of Long Island	7,107	7,876
Gastroenterology	Digestive Health Center of Huntington	3,020	3,155
Gastroenterology	Great South Bay Endoscopy Center, LLC	5,838	6,198
Gastroenterology	Island Digestive Health Center	5,771	5,565
Gastroenterology	Island Endoscopy Center <sup>2</sup>	5,573	0
Multi	Long Island Ambulatory Surgery Center	15,857	15,265
Orthopedics	Long Island Hand and Orthopedic Surgery Center	751	651
Multi	Melville Surgery Center	6,243	6,542
Multi	North Shore Surgi-Center <sup>1</sup>	0	0
Multi	Port Jefferson ASC (opened 2/13/18)	N/A	N/A
Multi	Progressive Surgery Center <sup>3</sup>	1,008	1,208
Multi	South Shore Surgery Center <sup>3</sup>	5,007	8,160
Multi	Suffolk Surgery Center <sup>2</sup>	6,107	0
	Totals	62,282	54,620

<sup>1</sup> No SPARCS data was found for 2017 or 2018

<sup>2</sup> No SPARCS data was found for 2018

<sup>3</sup> 2018 data is an estimation, based upon partial year information

The number of projected procedures is 1,754 in Year One and 2,420 in Year Three. The applicant estimates that all the projected cases are currently being performed at three of the six acute care hospitals within the Catholic Health Services of Long Island (CHSLI). The table below shows the projected payor source utilization for Years One and Three.

Projections	Year One		Year Three	
	Volume	%	Volume	%
Comm Ins.	895	51.0%	1,234	51.0%
Medicare	453	25.8%	624	25.8%
Medicaid	42	2.4%	59	2.4%
Private Pay	56	3.2%	78	3.2%
Charity Care	35	2.0%	48	2.0%
Other	273	15.6%	377	15.6%
Total	1,754	100.0%	2,420	100.0%

To serve the underinsured population, the center intends to obtain contracts with the following Medicaid Managed Care plans: Healthfirst, HealthPlus, Fidelis and Community Health Plan. The center will adopt a financial assistance policy with a sliding fee scale once operational. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

### Conclusion

Approval of this project will allow for the additional access to orthopedic ambulatory surgery services for the communities within Suffolk County.

## Program Analysis

### Program Description

Proposed Operator	Precision SC, LLC
Doing Business As	PrecisionCare Surgery Center
Site Address	28 Research Way East Setauket, NY 11733 (Suffolk County)
Surgical Specialties	Orthopedics
Operating Rooms	4
Procedure Rooms	0
Hours of Operation	Monday through Friday from 7:00 am – 5:00 pm
Staffing (1 <sup>st</sup> / 3 <sup>rd</sup> Year)	15.12 FTEs / 18.60 FTEs
Medical Director	Steven Puopolo, M.D.
Emergency, In-Patient & Backup Support Services Agreement and Distance	Expected to be provided by: St. Charles Hospital 4.3 miles / 14 minutes
After-hours access	After-hours access to surgical providers using a call service to provide patients access to an on-call provider for urgent/emergent issues

### Character and Competence

The membership of Precision SC, LLC is as described on the chart below:

Name	Membership
<b>Individual Physician Members (Class A)</b>	
	<b>49.9%</b>
John J. Brennan, M.D.	4.1583%
Anthony Cappellino, M.D.	4.1583%
Morgan N. Chen, M.D.	4.1583%
Dimitrios C. Christoforou, M.D.	4.1583%
Lorenzo Gamez, M.D.	4.1583%
Jeffrey D. Hart, D.O.	4.1583%
Gregg J. Jarit, M.D.	4.1583%
Christopher M. Mileto, M.D.	4.1583%
Douglas M. Petraco, M.D.	4.1583%
Steven M. Puopolo, M.D., <i>Medical Director</i>	4.1583%
Michael J. Sileo, M.D.	4.1583%
Sathish J. Subbaiah, M.S., M.D.	4.1583%
<b>Class B Member</b>	
Precision SC Holding, LLC	<b>9.8%</b>
Christopher Bishop (50%) Matthew Lau (50%)	
<b>Class C Member</b>	
St. Francis Hospital*	<b>40.3%</b>

*\*Character and Competence Review conducted on 23 Board Members*

A full Character and Competence Review was conducted on all proposed members. The individual physician members are Board-certified or Board-eligible in their respective specialties and have (or will have) admitting privileges at St. Charles Hospital, the center's proposed back-up hospital. The Class B Member is comprised of two individual members employed by Regent Surgical, which will provide consulting and administrative services to PrecisionCare, and one corporate member, St. Francis Hospital, an acute care hospital that is part of Catholic Health System of Long Island, Inc., an integrated health system comprised of six acute care hospitals.

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. Cappellino** disclosed a civil suit filed in February 2016 related to a patient who alleged a slip and fall on ice in his office's parking lot.

**Dr. Cristoforou** disclosed one pending malpractice suit in 2014 related to a patient he treated for a non-surgical work-related injury. The patient later had surgery on his hand with another surgeon and had complications. The case is currently pending.

**Dr. Jarit** disclosed being named in a medical malpractice case filed on April 15, 2015 which alleged negligent repair of an anterior cruciate ligament (ACL) tear resulting in the graft failing. The case is currently pending (on the trial calendar).

**Dr. Petraco** disclosed several malpractice cases. However, only the cases which occurred during the 10-year look-back period are disclosed in this report. Three pending malpractice cases currently in the discovery phase of litigation relating to allegations of improper hip replacement technique; knee replacement performed improperly; and knee replacement surgery which resulted in a knee infection and need for multiple surgeries and eventual knee fusion, respectively. He also disclosed one settled malpractice case in October 2017 (date of incident not provided) for \$160,000 related to an allegation of failure to diagnose and treat a total hip replacement dislocation (THA) in a timely fashion

**Dr. Puopolo** disclosed two medical malpractice cases. In the first case, a patient was treated for a distal humerus fracture with operative fixation and subsequent contracture release. The patient had additional surgery with another surgeon. In December 2012, with his permission, Dr. Puopolo's insurance company settled the case (with a "minor permanent injury" award). The second case involves a patient who underwent a left thumb pulley release in June of 2012. The postoperative course was complicated by acute wrist synovitis. The patient was treated by rheumatology and developed a left wrist infection and had subsequent surgery with Dr. Puopolo. The patient developed wrist arthritis and had eventual wrist fusion. The suit against Dr. Puopolo (and the rheumatologist) 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.

On or about April 10, 2017, and prior to the commencement of administrative enforcement actions, **St. Joseph Hospital** paid a \$3,000 civil penalty and entered into a Stipulation of Settlement with the New York State Department of Labor Asbestos Control Bureau for violations of the Department of Labor Industrial Code.

On April 26, 2017, the Department issued a Stipulation and Order and assessed a \$6,000 fine to **St. Charles Hospital** for violations of 10 NYCRR Part 405. Specifically, Immediate Jeopardy was identified on April 14, 2016 during an allegation survey when it was determined that the facility lacked adequate policies and procedures for the investigation abuse allegations.

On May 2, 2017, the Department issued a Stipulation and Order and assessed a \$2,000 fine on **Good Samaritan Hospital** for findings during a complaint investigation. Specifically, Immediate Jeopardy was identified on July 25, 2016 when it was determined that the facility lacked CPR and First Aid training for security guards who are involved in the application of restraints.

## Integration with Community Resources

PrecisionCare aims to promote health education and an aggressive outreach program for the benefit of the surrounding community to increase awareness about the services offered. Methods of outreach will include advertising within the local area, attendance at community fairs and notification to local physicians, hospitals, Article 28 outpatient centers, local community groups, social service agencies and churches. Particular emphasis will be placed on outreach to community providers serving the underserved and uninsured. The Center will also look to establish an outreach plan to the underserved, which will include the development of referral arrangements with FQHCs and other community-based providers. The Center will align with St. Francis Hospital and Catholic Health System of Long Island to ensure access to primary care services. Further, the members have stated a commitment to serve all persons in need of specialty care without regard to race, sex, age, religion, creed, sexual orientation, personal characteristics, source of payment or ability to pay. Charity care and a discounted fee scale will be available for persons uninsured or unable to pay the full charge for services.

The center is committed to implementing an electronic medical record (EMR) system that qualifies under the Meaningful Use provisions of the HITECH Act within 18 months of opening and will consider joining a regional health information organization (RHIO) or qualified health information exchange (HIE).

## 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

## Total Project Cost and Financing

The total project cost for renovations and movable equipment is estimated at \$10,376,199 broken down as follows:

Renovation & Demolition	\$4,355,000
Design Contingency	435,500
Construction Contingency	435,500
Architect/Engineering Fees	373,746
Other Fees	312,530
Movable Equipment	3,792,383
Financing Costs	46,430
Interim Interest Expense	566,364
Application Fee	2,000
Additional Processing Fee	<u>56,746</u>
Total Project Cost	\$10,376,199

Project costs are based on a construction start date of November 8, 2019, with a 12-month construction period.

The financing for this project will be as follows:

Improvement Allowance from the Landlord	\$ 592,000
Members' Equity	844,199
Bank loan (6.0% interest, 7-yr. term)	<u>8,900,000</u>
Total	\$10,376,199

TD Bank has provided a letter of interest for the bank loan. The landlord, 28 Research Way, LLC, is comprised of the proposed Class A members of Precision SC, LLC. BFA Attachment A shows that 28 Research Way, LLC has sufficient equity to fund the landlord's leasehold improvement contribution.

BFA Attachments A through E show sufficient resources to meet the equity requirement.

**Lease Rental Agreements**

The applicant has submitted a draft lease rental agreement for the site to be occupied:

Premises:	Approx. 14,800 sq. ft. located at 28 Research Way, East Setauket, NY 11733
Landlord:	28 Research Way, LLC
Tenant:	Precision SC, LLC
Term:	20 Years
Rental:	Base rent for total leased space is \$518,000 per year for the 1st year. Rent will increase at 3% of the base year rent for years 2 - 10.
Provisions:	Tenant is responsible for real estate taxes, insurance, utilities and maintenance

The applicant has submitted an affidavit stating the lease between the property owner and the lessee is a non-arm’s length arrangement due to common ownership. Common ownership between lessor and lessee consists of the proposed Class A member physicians.

The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square footage rental. Precision SC, LLC will initially be the only tenants in the building with the potential of other tenants in the future. The FASC will have a separate entrance for its patients.

**Capital Contributions**

The capital contribution requirements for Class A, Class B and Class C members are detailed under Section 3.2 (a)(i) of the draft operating agreement. Class A, Class B and Class C members are expected to make an aggregate contribution of \$2,150,000 in exchange for 100 capital contribution units. Class A members will collectively contribute \$1,072,850 in exchange for 49.9 Class A units or 49.9% ownership. Class B members will collectively contribute \$211,229.12 in exchange for 9.8 Class B units or 9.8% ownership. Class C member will contribute \$865,920.89 in exchange for 40.3 Class C units or 40.3% ownership.

The capital contributions will take place in two phases as follows:

- Phase I to take place upon execution of the Contribution Agreement (expected to be on or around February 18, 2019), with Class A, Class B and Class C members contributing \$249,500, \$49,123.05 and \$201,376.95, respectively.
- Phase II will take place within 90 days of receipt of PHHPC approval of this CON, with Class A, Class B and Class C members contributing \$823,350, \$162,106.06 and \$664,543.94, respectively.

**Developmental and Administrative Services Agreement**

The applicant has submitted a draft Developmental and Administrative Services Agreement (DASA), summarized as follows:

Contract Provider:	Regent Surgical Management, LLC
Facility Operator:	Precision SC, LLC d/b/a PrecisionCare Surgery Center
Terms:	7 years with an automatic three-year renewal.
Development Services Provided:	Assist in developing organizational and governance framework, meeting with investors, pro forma and financial projections, sourcing of capital, price and term negotiation with lenders, financial/operational analysis, CON oversight, licensure and accreditation, evaluation of policies and procedures, new IT requirements, selection of architectural services, planning/review/coordination of construction project, equipment and software selection, human resource functions, employee hiring and training, implement clinical protocols and credentialing.
Development Fee:	\$150,000 paid in two equal installments of \$75,000; first installment due upon receipt of financing by third party lender; second installment due upon the date first patient is treated and payor is billed.
Administrative Services Provided:	Assist in coordinating and obtaining required licensing and accreditation, acquisition and maintenance of supplies, develop and implement protocols, personnel recruitment and training, implement/oversee accounting/budgeting

	and financial reporting functions, quality management metrics, compliance monitoring, contractual relationships, web-site development, publications and public relations.
Administrative Fee:	\$278,000 (\$23,166.67/month)

Regent Surgical Management, LLC, a Nevada Limited Liability Company, will be providing all the above services. PrecisionCare retains ultimate control in all final decisions associated with the services. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

The applicant has advised that the Class B members, Christopher Bishop and Matthew Lau, are not members of Regent Surgical Management, LLC. Regent Surgical Management, LLC is wholly owned by Regent Surgical Health, LLC, which is wholly owned by Regent Surgical Health Holdings, Inc. Regent Surgical Health Holdings, Inc. is wholly owned by Regent Surgical Health ESOP Trust, where all ESOP shares are held in trust by the trustee, GreatBanc Trust. All employees are employed by RSHQ, LLC, which is wholly owned by Regent Surgical Health, LLC. Mr. Bishop and Mr. Lau will continue to be employees of RSHQ, LLC post establishment of PrecisionCare Surgery Center. BFA Attachment I present the Organizational Chart of the Regent entities. Affidavits attesting to the relationship between the various Regent entities and the employment of Mr. Bishop and Mr. Lau as employees of RSHQ, LLC have been provided.

### Operating Budget

The applicant has submitted an operating budget, in 2019 dollars, for Years One and Three:

	<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>				
Commercial	\$4,190.04	\$3,750,082	\$4,456.87	\$5,499,778
Medicare	\$2,681.36	1,214,656	\$2,952.67	1,842,467
Medicaid	\$1,842.10	77,368	\$2,110.14	124,498
Private Pay	\$1,595.45	89,345	\$1,810.77	141,240
All Other*	\$2,662.53	<u>726,871</u>	\$2,931.76	<u>1,105,275</u>
Total Revenue		\$5,858,322		\$8,713,258
<u>Expenses</u>				
Operating	\$2,444.59	\$4,287,813	\$2,894.96	\$7,005,789
Capital	<u>980.38</u>	<u>1,719,591</u>	<u>656.92</u>	<u>1,589,753</u>
Total	\$3,424.97	\$6,007,404	\$3,551.88	\$8,595,542
Net Income / (Loss)		<u>(\$149,082)</u>		<u>\$117,716</u>
Total Procedures		1,754		2,420
Cost per Procedure		\$3,424.97		\$3,551.88

\* All Other includes Workers' Compensation and No Fault.

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

<u>Payor</u>	<u>Years One &amp; Three</u>
Commercial	51.0%
Medicare	25.8%
Medicaid	2.4%
Private Pay	3.2%
Charity Care	2.0%
All Other	<u>15.6%</u>
Total	100.0%



The following is noted with respect to the submitted budget:

- The number and mix of staffing were determined by the historical experience of the proposed physician members, Regent Surgical Management, LLC and CHSLI in providing ambulatory surgery services.
- Revenues and operating expenses are based on the experience of the proposed physician members, St. Francis Hospital, and CHSLI in providing ambulatory surgery services.
- The Medicaid rate is based on the downstate region's Medicaid APG base rate of \$116.24, which is adjusted based on the given procedure's APG weight, plus the downstate capital add-on rate of \$89.37.
- Commercial, Self-Pay and All Other rates are projected based on a percentage of the 2018 Medicare fee-for-service (FFS) rate, ranging from 170% for Commercial FFS payors down to 50% for Self-Pay/All Other payors.
- The Workers' Compensation is based on 175% of the Medicaid APG rate.
- The Medicare rate is based on the 2018 Medicare FFS rate with Medicare Managed care estimated at 95% of the FFS rate.

### **Capability and Feasibility**

Project cost of \$10,376,199 will be met with \$884,199 in members' equity, a \$592,000 tenant improvement allowance from landlord, and a bank loan for \$8,900,000 at 6.25% interest with a seven-year term. TD Bank has provided a letter of interest.

Working capital requirements are estimated at \$1,432,590 based on two months of third year expenses. The working capital will be funded via members' equity of \$932,590 and a bank loan for \$500,000 for a three-year term at 5.25% interest. TD Bank has provided a letter of interest. BFA Attachment A is the physician members' personal net worth statements, which indicate sufficient resources overall to fund the equity requirements. Dr. Steven M. Puopolo, a Class A member of Precision SC, LLC, provided an affidavit confirming his willingness to contribute personal resources disproportionate to his membership interest to cover any equity shortfall for Dr. Christopher M. Mileto.

The submitted budget projects a net loss of \$149,082 and net income of \$117,716 during Years One and Three of operations, respectively. The projected loss during Year One is based on a conservative estimate of how many cases will be seen at the Center during the first year while staffing at a level that would cover Year Two level of procedures. Precision SC, LLC has provided an affidavit that they will cover the projected first year loss.

Medicare and Medicaid reimbursement rates are based on the current and projected federal and state government rates for FASCs. The Private Pay rates reflect anticipated adjustments to be negotiated based on industry norms and the experience of CHSLI. Commercial reimbursement rates are based on the historical experience of the surgeons in providing orthopedic ambulatory surgery services. The budget appears reasonable.

BFA Attachment B is CHSLI's 2017 certified financial statements, which shows the entity maintained positive working capital, a positive net equity position, and had a net operating income of \$71,963,000 for the period. BFA Attachment C is CHSLI's 2018 certified financial statements, which shows the entity has maintained positive working capital, a positive net equity position, and had a net operating income of \$81,737,000.

BFA Attachment D is St. Francis Hospital's 2017 certified financial statements, which shows the entity maintained positive working capital, a positive net equity position, and had a net operating income of \$86,174,000 for the period. BFA Attachment E is St. Francis Hospital's 2018 certified financial statements, which shows the entity has maintained positive working capital, a positive net equity position, and had a net operating income of \$97,780,000.

BFA Attachment F is the Pro-Forma balance sheet for Precision SC, LLC, which shows the operation will start with \$2,408,790 in members' equity, which includes the \$592,000 tenant improvement allowance from landlord.

## Supplemental Information

### Surrounding Hospital Responses

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas.

**Facility:** St. Charles Hospital -- **No Response**  
200 Belle Terre Road  
Port Jefferson, New York 11777

**Facility:** Stony Brook University Hospital Hospital -- **No Response**  
Health Sciences Center SUNY  
Stony Brook, New York 11794

**Facility:** John T Mather Memorial Hospital -- **No Response**  
75 North Country Road  
Port Jefferson, New York 11777

### DOH Comment

In the absence of comments from hospitals in the area of 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	Net Worth Statement of Proposed Members of PrecisionCare Surgery Center
BFA Attachment B	Catholic Health Services of Long Island – December 31, 2017 certified financial statements
BFA Attachment C	Catholic Health Services of Long Island – December 31, 2018 certified financial statements
BFA Attachment D	St. Francis Hospital – December 31, 2017 certified financial statements
BFA Attachment E	St. Francis Hospital – December 31, 2018 certified financial statements
BFA Attachment F	Pro-Forma Balance Sheet
BFA Attachment G	Precision SC, LLC Organizational Chart and list of Members
BFA Attachment H	Capital Contributions and Membership Units
BFA Attachment I	Organizational Chart of Regent Entities
BHFP Attachment	Map



Project # 191095-B
Hauppauge SC, LLC d/b/a The Center for Advanced Spine and Joint Surgery

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

Executive Summary

Description

Hauppauge SC, LLC d/b/a The Center for Advanced Spine and Joint Surgery (CASJS, the Center), an existing New York limited liability company, requests approval to establish and construct a multi-specialty Article 28 freestanding ambulatory surgery center (FASC) to be located at 526 Route 111, Hauppauge (Suffolk County). The FASC will initially provide orthopedic, including spine procedures and pain management services. Suffolk County will be its primary service area. The Center will have four operating rooms in approximately 12,600 square feet of leased space in an existing one-story building.

Catholic Health System of Long Island, Inc. (CHSLI) is the active parent/co-operator of St. Francis Hospital, as well as Good Samaritan Hospital Medical Center, St. Catherine of Siena Medical Center, St. Charles Hospital, Mercy Medical Center, and St. Joseph's Hospital. The proposed Center represents CHSLI's goal to partner with local physicians to create the multispecialty FASC in the community.

The proposed ownership of the Center consists of nine individual Class A members collectively owning 49.0% membership units, one Class B member, Hauppauge Holdco, LLC, consisting of two individuals collectively owning 10.0% membership units, and one Class C member, St. Francis Hospital, a New York not-for-profit corporation with 41.0% membership units.

The proposed ownership is as follows:

Table with 2 columns: Ownership Entity and Percentage. Includes Hauppauge SC, LLC (Class A Members: 9 Individual Physicians at 49%), Class B Member (Hauppauge Holdco, LLC at 10%), and Class C Member (St. Francis Hospital at 41%).

David Weissberg, M.D., a Class A member and Board-certified orthopedic surgeon, will be the Medical Director of the Center. All Class A members will be practicing physicians at the Center. St. Catherine of Siena Medical Center will serve as back-up hospital to the FASC.

Concurrently under review is PrecisionCare Surgery Center's CON (#182236), in which St. Francis Hospital is also a proposed member, to establish and construct a single-specialty FASC in Suffolk County. The applicant indicated that PrecisionCare will focus on providing more comprehensive orthopedic services, including foot/ankle, hand/upper extremity, hip/knee joint replacement, and shoulder and spine surgeries; whereas CASJS will provide more specialized orthopedic services in spine, joint replacement and interventional pain management surgeries.

**OPCHSM Recommendation**

Contingent Approval

**Need Summary**

The number of projected procedures is 1,693 in Year One and 2,890 in Year Three, with Medicaid at 3.2% and Charity Care at 2.0%.

**Program Summary**

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

**Financial Summary**

The total project cost of \$9,370,908 will be met via \$1,405,636 members' equity, and a bank loan for \$7,965,272 at 6.25% interest with a seven-year term. TD Bank has provided a letter of interest. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,872,047	\$7,180,066
Expenses	<u>4,579,801</u>	<u>6,058,891</u>
Gain / (Loss)	(\$707,754)	\$1,121,175

## **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 lease agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed loan commitment for project costs, 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 a copy of the executed and amended operating agreement of the applicant, which are acceptable to the Department. [CSL]
7. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
8. Submission of MEP Engineering (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]

#### **Approval conditional upon:**

1. The project must be completed within two years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before November 8, 2019 and construction must be completed by June 17, 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 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]
4. 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]
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**

**August 8, 2019**

## Need Analysis

### Analysis

The service area is Suffolk County. The table below shows the number of patient visits at ambulatory surgery centers in Suffolk County for 2017 and 2018.

Specialty Type	Facility Name	Patient Visits	
		2017	2018
Gastroenterology/ Pain Mgt	Advanced Surgery Center of Long Island	7,107	7,876
Gastroenterology	Digestive Health Center of Huntington	3,020	3,155
Gastroenterology	Great South Bay Endoscopy Center, LLC	5,838	6,198
Gastroenterology	Island Digestive Health Center	5,771	5,565
Gastroenterology	Island Endoscopy Center <sup>2</sup>	5,573	0
Multi	Long Island Ambulatory Surgery Center	15,857	15,265
Orthopedics	Long Island Hand and Orthopedic Surgery Center	751	651
Multi	Melville Surgery Center	6,243	6,542
Multi	North Shore Surgi-Center <sup>1</sup>	0	0
Multi	Port Jefferson ASC (opened 2/13/18)	N/A	N/A
Multi	Progressive Surgery Center <sup>3</sup>	1,008	1,208
Multi	South Shore Surgery Center <sup>3</sup>	5,007	8,160
Multi	Suffolk Surgery Center <sup>2</sup>	6,107	0
	Totals	62,282	54,620

<sup>1</sup> No SPARCS data was found for 2017 or 2018

<sup>2</sup> No SPARCS data was found for 2018

<sup>3</sup> 2018 data is an estimation, based upon partial year information

The number of projected procedures is 1,693 in Year One and 2,890 in Year Three. The applicant estimates that approximately 60% of the projected procedures are currently being performed at other freestanding ambulatory surgery centers. An additional 17% are being performed at local hospitals (Good Samaritan Hospital Medical Center, St. Catherine of Siena Medical Center and St. Francis Hospital). The table below shows the projected payor source utilization for Years One and Three.

Projections	Year One		Year Three	
	Volume	%	Volume	%
Comm Ins	564	33.3%	962	33.3%
Medicare	312	18.4%	532	18.4%
Medicaid	55	3.2%	92	3.2%
Private Pay	17	1.0%	29	1.0%
Charity Care	34	2.0%	57	2.0%
Other	711	42.1%	1,218	42.1%
Total	1,693	100.0%	2,890	100.0%

To serve the underinsured population, the center intends to obtain contracts with the following Medicaid Managed Care plans: Healthfirst, HealthPlus, Fidelis and EmblemHealth. The center will work with social services agencies, safety-net providers and community-based organizations to reach out to the under-insured individuals in the service area. The center will adopt a financial assistance policy with a sliding fee scale once operational. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

### Conclusion

Approval of this project will allow for the additional access to multi-specialty ambulatory surgery services for the communities of Suffolk County.

## Program Analysis

### Program Description

Proposed Operator	Hauppauge SC, LLC
Doing Business As	The Center for Advanced Spine and Joint Surgery
Site Address	111 Route 526 Hauppauge, NY 11788 (Suffolk County)
Surgical Specialties	Multi-Specialty
Operating Rooms	4
Procedure Rooms	0
Hours of Operation	Monday through Friday from 7:00 am - 5:00 pm
Staffing (1 <sup>st</sup> / 3 <sup>rd</sup> Year)	29.0 FTEs / 29.0 FTEs
Medical Director	David Weissberg M.D.
Emergency, In-Patient & Back-up Support Services Agreement and Distance	St. Catherine's of Siena Medical Center 3.9 miles / 11 minutes
After-hours access	Patient will have the phone number of the on-call service which will be available 24 hours/day, 7 days/week to refer the patient the on-call physician.

### Character and Competence

The membership of Hauppauge SC, LLC is as described below:

<b>Names</b>	<b>Membership</b>
<b>Individual Physician Members (Class A)</b>	<b>49%</b>
Arjang Abbasi, D.O.	5.765%
Sushil Basra, M.D.	5.765%
Hargovind Dewal, M.D.	5.765%
Thomas Dowling, Jr, M.D.	5.765%
Christopher Friends, M.D.	2.880%
Zachariah George, M.D	5.765%
Laurence Mermelstein, M.D.	5.765%
Joseph Sanelli, D.O.	5.765%
David Weissberg, M.D.	5.765%
<b>Class B Member</b>	<b>10%</b>
<b>Hauppauge SC Holdings, LLC</b> Christopher Bishop (50%) Matthew Lau (50%)	
<b>Class C Member</b>	
St. Francis Hospital*	<b>41%</b>

\*Character and Competence Review conducted on 23 Board Members

A Character and Competence Review was conducted on the representatives of the St. Francis Hospital Board of Trustees, each of the Class A Members and Class B Members.

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. Frendo** disclosed four settled and one pending malpractice cases. One claim alleged a negligent spinal fusion. Dr. Frendo was the surgical assist. The suit was closed on September 16, 2013. Another claim alleged a negligent laminectomy. Dr. Frendo was the surgical assist on this surgery. The suit was closed on December 5, 2014. Another claim alleged a failure to timely and properly diagnose thoracic stenosis. The suit was closed on June 7, 2017. These suits were closed with no indemnity paid. The fourth suit alleged a failure to perform an MRI and diagnose a spinal cord abscess and a fracture in a 59-year-old woman. The patient refused treatment and was transferred to another facility. The suit was settled on July 3, 2018 for \$900,000. The pending claim was opened on October 9, 2018, alleges negligent performance of back surgery on a patient with complaints of chronic pain after lumbar laminectomy.

**Dr. Dewal** disclosed one pending malpractice case and one closed malpractice case. On or about July 9, 2014, the defendant alleges that he was scheduled for surgery and unknown complication arose. The case is pending. On or about May 27, 2010 the defendant alleged a failure of instrumentation. The case was dismissed.

**Dr. Dowling** disclosed one pending malpractice claim and one settled malpractice claim. The pending claim alleges the patient was scheduled for surgery and then complications arose. The settled claim alleged a negligent repair of a dural tear and lumbar laminectomy. The claim was settled for \$1.1 million dollars and was closed in December 26, 2016.

**Dr. Mermelstein** disclosed two open and two settled malpractice claims. The first open claim, filed on November 27, 2012, open malpractice claim alleges failure to diagnose a post-operative infection in a 62-year-old patient. The second open claim, filed on January 14, 2014, alleges a negligently performed laminectomy. The first settled claim alleged wrongful death as a result over-medication with pain medication after the patient had back surgery on May 15, 2009. The next settled claim alleged a negligently performed cervical hardware removal that resulted in pain and loss of function.

**Dr. Sanelli** disclosed one malpractice claim alleging a complication from a cervical epidural steroid injection in July 2011. The case was settled.

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.

On or about April 10, 2017, and prior to the commencement of administrative enforcement actions, **St. Joseph Hospital** paid a \$3,000 civil penalty and entered into a Stipulation of Settlement with the New York State Department of Labor Asbestos Control Bureau for violations of the Department of Labor Industrial Code.

On April 26, 2017, the Department issued a Stipulation and Order and assessed a \$6,000 fine to **St. Charles Hospital** for violations of 10 NYCRR Part 405. Specifically, Immediate Jeopardy was identified on April 14, 2016 during an allegation survey when it was determined that the facility lacked adequate policies and procedures for the investigation abuse allegations.

On May 2, 2017, the Department issued a Stipulation and Order and assessed a \$2,000 fine on **Good Samaritan Hospital** for findings during a complaint investigation. Specifically, Immediate Jeopardy was identified on July 25, 2016 when it was determined that the facility lacked CPR and First Aid training for security guards who are involved in the application of restraints.

### **Integration with Community Resources**

The Applicant is committed to providing charity care for persons without the ability to pay the full charge or who is uninsured. The Applicant has indicated that as part of its commitment to outreach to serve the underinsured population will include negotiation of contracts with several Medicaid Managed Care plans and development of referral arrangements with area federally qualified health centers (FQHCs). The



Applicant will adopt a sliding fee schedule and is committed to treating all patients on the basis of need without discrimination due to any personal characteristics or ability to pay.

The Applicant plans on using an electronic medical record (EMR) system and will consider participating in one or more Accountable Care Organizations (subject to its eligibility to do so) and may also consider participating in a regional health information organization (RHIO) and/or Health Information Exchange (HIE).

**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**

**Total Project Cost and Financing**

The total project cost for renovations and movable equipment is estimated at \$9,370,908 broken down as follows:

Renovation & Demolition	\$3,842,500
Design Contingency	384,250
Construction Contingency	384,250
Architect/Engineering Fees	368,848
Other Fees	390,000
Movable Equipment	3,394,826
Financing Costs	46,106
Interim Interest Expense	506,881
Application Fee	2,000
Additional Processing Fee	<u>51,247</u>
Total Project Cost	\$9,370,908

Project costs are based on a construction start date of November 8, 2019, with a seven-month construction period.

The financing for this project will be as follows:

Members' Equity	\$1,405,636
Bank loan (6.25% interest, 7-yr. term)	<u>7,965,272</u>
Total	\$9,370,908

TD Bank has provided a letter of interest for the bank loan. BFA Attachments A, C and E show sufficient resources to meet the equity requirement.

**Lease Rental Agreements**

The applicant has submitted a draft lease rental agreement for the site to be occupied:

Premises:	Approx. 12,650 sq. ft. located at 526 Route 111, Hauppauge, NY 11788
Landlord:	Hauppauge Route 111 Associates, LLC.
Tenant:	Hauppauge, SC LLC.
Term:	10 Years with the right to renew the lease for two 5-year terms
Rental:	Base rent for total leased space is \$278,300 per year (\$23,191.67 monthly) for the 1st year. Rent will increase at 2.5% of the base year rent for years 2 through 10.
Provisions:	Tenant is responsible for real estate taxes, insurance, utilities, repairs and maintenance.

The applicant has submitted an affidavit stating the lease between the property owner and the lessee is an arm's length arrangement.

The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square footage rental. Hauppauge SC, LLC will be the only tenant in the building. The FASC will have a separate entrance for its patients.

**Capital Contributions**

The capital contribution requirements for Class A, Class B and Class C members are detailed under Section 3.2 (a)(i) of the draft operating agreement. Class A and Class B members are expected to make an aggregate contribution of \$1,950,000 in exchange for 100 capital contribution units. Class A members will collectively contribute \$955,500 in exchange for 49 Class A units or 49% ownership. Class B members will collectively contribute \$195,000 in exchange for 10 Class B units or 10% ownership. Class C member will contribute \$799,500 in exchange for 41 Class C units or 41% of ownership.

The capital contributions will take place in two phases as follows:

- Phase I took place upon execution of the Contribution Agreement on December 18, 2018, with Class A, Class B and Class C members contributing \$210,000, \$50,000, and \$205,000 respectively.
- Phase II will take place within 90 days of receipt of PHHPC approval of this CON, with Class A, Class B and Class C members contributing \$745,500, \$145,000, and \$594,500, respectively.

BFA Attachment H lists the Class A, Class B, and Class C members’ total cash capital contributions.

**Developmental and Administrative Services Agreement**

The applicant has submitted an executed Developmental and Administrative Services Agreement, summarized as follows:

Date:	February 4, 2019
Contract Provider:	Regent Surgical Management, LLC
Facility Operator:	Hauppauge SC, LLC d/b/a The Center for Advanced Spine and Joint Surgery
Terms:	7 years with an automatic three-year renewal.
Development Services Provided:	Assist in developing organizational and governance framework; planning, review, coordination of construction project; meeting with investors; develop pro forma and financial projections; secure bank loans, price and term negotiation with lenders; financial/operational analysis; CON oversight; Medicare certification, licensure and accreditation; evaluation/recommendation of policies/procedures; recommend vendors for equipment, supplies, IT support, inventory management; advise and oversee human resource matters, employee hiring and training, salaries and benefits; evaluate/recommend insurance options; oversee boards and committees; implement clinical protocols and credentialing.
Development Fee:	\$180,000 paid in two equal installments of \$90,000; first installment due upon receipt of financing by third party lender; second installment due upon the date first patient is treated and payor is billed.
Administrative Services Provided:	Assist in coordinating and obtaining required Medicare certification/accreditation; advise/oversee acquisition and maintenance of supplies and capital equipment; coordinate in obtaining/monitoring all relevant permits, licenses, certifications; advise on operational, intellectual property and OSHA manuals and protocols; oversee personnel training/education; implement/oversee billing and collection, fee schedules and payor contracts; accounting/budgeting and financial reporting functions; quality management metrics; compliance monitoring; contractual relationships; web-site development; publications and public relations.
Administrative Fee:	\$168,861 (\$14,071.75/month) during the first year of Administrative Term \$244,378 (\$20,364.83/month) during the second year of Administrative Term

Regent Surgical Management LLC, a Nevada Limited Liability Company, will be providing all the above services. Hauppauge SC, LLC retains ultimate control in all final decisions associated with the services. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

The applicant has advised that the Class B members, Christopher Bishop and Matthew Lau, are not members of Regent Surgical Management, LLC. Regent Surgical Management, LLC is wholly owned by Regent Surgical Health, LLC, which is wholly owned by Regent Surgical Health Holdings, Inc. Regent Surgical Health Holdings, Inc. is wholly owned by Regent Surgical Health ESOP Trust, where all ESOP shares are held in trust by the trustee, GreatBanc Trust. All employees are employed by RSHQ, LLC, which is wholly owned by Regent Surgical Health, LLC. Mr. Bishop and Mr. Lau will continue to be employees of RSHQ, LLC post establishment of PrecisionCare Surgery Center. BFA Attachment I present the Organizational Chart of the Regent entities. Affidavits attesting to the relationship between the various Regent entities and the employment of Mr. Bishop and Mr. Lau as employees of RSHQ, LLC have been provided.

### Operating Budget

The applicant has submitted an operating budget, in 2019 dollars, for Years One and Three:

	Year One		Year Three	
	Per Visit	Total	Per Visit	Total
<u>Revenues</u>				
Commercial	\$2,464	\$1,389,445	\$2,792	\$2,686,352
Medicare	\$1,858	579,754	\$2,131	1,133,582
Medicaid	\$1,354	74,461	\$1,430	131,595
Private Pay	\$1,181	20,074	\$1,549	44,917
All Other*	\$2,543	<u>1,808,313</u>	\$2,614	<u>3,183,620</u>
Total Revenue		\$3,872,047		\$7,180,066
<u>Expenses</u>				
Operating	\$1,709.42	\$2,894,041	\$1,556.22	\$4,497,485
Capital	<u>995.72</u>	<u>1,685,761</u>	<u>540.28</u>	<u>1,561,405</u>
Total	\$2,705.14	\$4,579,802	\$2,096.50	\$6,058,890
Net Income (Loss)		<u>(\$707,755)</u>		<u>\$1,121,176</u>
Total Procedures		1,693		2,890
Cost per Procedure		\$2,705.14		\$2,096.50

\* All Other includes Workers' Compensation and No Fault.

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

Payor	Years One & Three
Commercial	33.3%
Medicare	18.4%
Medicaid	3.2%
Private Pay	1.0%
Charity Care	2.0%
All Other	<u>42.1%</u>
Total	100.0%

The following is noted with respect to the submitted budget:

- The number and mix of staffing were determined by the historical experience of the proposed physician members, Regent Surgical Management, LLC and CHSLI in providing ambulatory surgery services.
- Payor mix is based on the experience of the proposed physician members, St. Francis Hospital and CHSLI in providing ambulatory surgery services.
- The Medicaid rate is based on the downstate region's Medicaid APG base rate of \$116.24, which is adjusted based on the given procedure's APG weight, plus the downstate capital add-on rate of \$89.37. Level one and Level two spine procedures have a principal procedure rate of \$2047.01 and \$2,482.64, respectively.

- Commercial, Self-Pay and All Other rates are projected based on a percentage of the 2019 Medicare fee-for-service (FFS) rate, ranging from 145% for Commercial FFS payors, down to 50% for Self-Pay/All Other payors.
- The Workers' Compensation is based on 254% of the Medicaid APG rate.
- The Medicare rate is based on the 2019 Medicare FFS rate with Medicare Managed care estimated at 90% of the FFS rate.
- All Other includes Workers' Compensation and No Fault.

### **Capability and Feasibility**

Project cost of \$9,370,908 will be met with \$1,405,636 in members' equity, and a bank loan for \$7,965,272 at 6.25% interest with a seven-year term. TD Bank has provided a letter of interest.

Working capital requirements are estimated at \$1,009,815 based on two months of third year expenses. The working capital will be funded via members' equity of \$509,815 and a bank loan for \$500,000 for a three-year term at 5.25% interest. TD Bank has provided a letter of interest. BFA Attachments A and E are the proposed members' personal net worth statements and internal financial statements, which indicate sufficient resources overall to fund the equity requirements.

The submitted budget projects a net loss of \$707,754 and net income of \$1,121,175 during Years One and Three of operations, respectively. The projected loss during Year One is based on a conservative estimate of how many cases will be seen at the Center during the first year while staffing at a level that would cover Year Two level of procedures. Hauppauge SC, LLC has provided an affidavit that they will cover the projected first year loss.

Medicare and Medicaid reimbursement rates are based on the current and projected federal and state government rates for FASCs. The Private Pay rates reflect anticipated adjustments to be negotiated based on industry norms and the experience of CHSLI. The budget appears reasonable.

BFA Attachment B is CHSLI's 2017 certified financial statements, which shows the entity maintained positive working capital, a positive net equity position, and had a net operating income of \$71,963,000 for the period. BFA Attachment C is CHSLI's internal financial statements as of December 31, 2018, which shows the entity has maintained positive working capital, a positive net equity position, and had a net operating income of \$21,385,000.

BFA Attachment D is St. Francis Hospital's 2017 certified financial statements, which shows the entity maintained positive working capital, a positive net equity position, and had a net operating income of \$86,174,000 for the period. BFA Attachment E is St. Francis Hospital's internal financial statements as of December 31, 2018, which shows the entity has maintained positive working capital, a positive net equity position, and had a net operating income of \$58,998,000.

BFA Attachment F is the Pro-Forma balance sheet for Hauppauge SC, LLC, which shows the operation will start with \$1,915,451 in members' equity.

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

## Supplemental Information

### Surrounding Hospital Responses

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas.

**Facility:** St. Catherine of Siena Medical Center -- **No Response**  
50 Route 25A  
Smithtown, New York 11787

**Facility:** University Hospital -- **No Response**  
Health Sciences Center SUNY  
Stony Brook, New York 11794

**Facility:** Southside Hospital -- **No Response**  
301 East Main Street  
Bay Shore, New York 11706

**Facility:** Huntington Hospital -- **No Response**  
270 Park Avenue  
Huntington, New York 11743

**Facility:** St. Francis Hospital -- **No Response**  
100 Port Washington Boulevard  
Roslyn, New York 11576

### Opposition

The Department did receive opposition from an existing ambulatory surgery center in Suffolk County. The essence of the opposition was the currently available resources within the county and that a new FASC will only create a shift in where cases are performed.

### DOH Comment

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	Net Worth Statement of Proposed Members of CASJS Surgery Center
BFA Attachment B	Catholic Health Services of Long Island – December 31, 2017 certified financial statements
BFA Attachment C	Catholic Health Services of Long Island – December 31, 2018 internal financial statements
BFA Attachment D	St. Francis Hospital – December 31, 2017 certified financial statements
BFA Attachment E	St. Francis Hospital – December 31, 2018 internal financial statements
BFA Attachment F	Pro-Forma Balance Sheet
BFA Attachment G	Hauppauge SC, LLC Organizational Chart and list of Members
BFA Attachment H	Capital Contributions and Membership Units
BHFP Attachment	Map



Project # 191189-B
UWS ASC, L.L.C.

Program: Diagnostic and Treatment Center County: New York
Purpose: Establishment and Construction Acknowledged: April 12, 2019

Executive Summary

Description

UWS ASC, L.L.C. (UWS, the Center), an existing New York limited liability company, requests approval to establish and construct a single-specialty, Article 28 freestanding ambulatory surgical center (FASC) in the specialty of gastroenterology. The Center will be located in an existing building at 2101-2115 Broadway, New York (New York County). The applicant will lease space on the sub-cellar floor of the building and will have four procedure rooms, pre-operative and recovery areas, and the requisite support space.

The proposed ownership of the Center is as follows:

Table with 2 columns: Entity Name and Percentage. Includes UWS ASC, L.L.C., Mount Sinai Ambulatory Ventures, Inc. (85%), Merritt Healthcare Holdings UWS LLC (15%), Matthew Searles (42.75%), William Mulhall (33.25%), Richard Searles (19%), and Kerri Ubaldi (5%).

Mount Sinai Ambulatory Ventures, Inc. (MSAV) is an existing not-for-profit corporation whose sole passive member is Mount Sinai Health System, Inc. (MSHS). Merritt Healthcare Holdings UWS LLC is a Delaware limited liability company authorized to do business in New York State.

All of the proposed surgical cases will originate from Mount Sinai facilities. The applicant has identified 42 physicians that currently practice within the MSHS Division of Gastroenterology who are interested in performing procedures at

the Center. All have admitting privileges at Mount Sinai West.

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 9,885 in Year One and 10,486 in Year Three, with Medicaid at 15.0% and Charity Care at 2.0% each year.

Program Summary

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

Financial Summary

Total project costs of \$10,197,495 will be met with \$128,749 equity from MSAV, a Landlord contribution of \$891,000, and a \$9,177,746 bank loan over ten years at 7% interest. Valley National Bank has submitted a letter of interest for the construction loan. The proposed budget is as follows:

Table with 3 columns: Category, Year One, Year Three. Rows include Revenues, Expenses, and Net Income.

## **Recommendations**

### **Health Systems Agency**

There will be no HSA recommendation for this project.

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

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the 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]
3. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
  - a. Data displaying actual utilization including procedures;
  - b. Data displaying the breakdown of visits by payor source;
  - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - d. Data displaying the number of emergency transfers to a hospital;
  - e. Data displaying the percentage of charity care provided;
  - f. The number of nosocomial infections recorded during the year reported;
  - g. A list of all efforts made to secure charity cases; and
  - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of an executed loan commitment for project costs, acceptable to the Department of Health. [BFA]
6. Submission of an executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
7. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of the applicants amended and executed Administrative Services Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed Resolution of the Board of Trustees of Mount Sinai Ambulatory Ventures, Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of the authority to do business in New York for Merritt Healthcare Holdings UWS LLC, 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-01. [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 January 1, 2020 and construction must be completed by November 1, 2020, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
4. The staff of the facility must be separate and distinct from the staff of other 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**



## Need Analysis

### Analysis

The service area consists of New York County. The table below shows the number of patient visits for ambulatory surgery centers in New York County for 2017 and 2018.

Type	Facility Name	Patient Visits	
		2017	2018
Gastroenterology	Carnegie Hill Endo	11,753	12,280
Multi	East Side Endoscopy	9,513	8,833
Multi	Fifth Avenue Surgery Center	2,006	4,037
Gastroenterology	Gramercy Park Digestive Disease Center	13,648	11,972
Multi	Gramercy Surgery Center, Inc	3,367	3,105
Multi	Greenwich Village ASC, (opened 10/13/17)	20	594
Orthopedics	HSS ASC of Manhattan (opened 9/13/17)	N/A	1,895
Gastroenterology	Kips Bay Endoscopy Center	10,152	16,928
Gastroenterology	Liberty Endoscopy Center (opened 1/13/17)	1,698	5,240
Gastroenterology	Manhattan Endoscopy Center	14,664	12,606
Gynecology	Manhattan Reproductive Surgery Center (opened 3/27/19)	N/A	N/A
Multi	Manhattan Surgery Center	6,835	6,581
Ophthalmology	Mid-Manhattan Surgi-Center	3,347	3,180
Multi	Midtown Surgery Center <sup>1</sup>	2,412	2,998
Ophthalmology	Retinal Ambulatory Surgery Center of New York	4,437	4,179
Multi	SurgiCare of Manhattan <sup>1</sup>	3,967	4,342
Gastroenterology	The Endoscopy Center of New York	12,538	13,377
Gastroenterology	West Side GI <sup>1</sup>	18,032	17,484
<b>Total Visits</b>		<b>118,389</b>	<b>129,631</b>

<sup>1</sup> 2018 data is an estimation, based upon partial year information

All the proposed procedures are currently being performed at Mount Sinai facilities. The number of projected procedures is 9,885 in Year One and 10,486 in Year Three. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Medicaid MC	1,483	15.0%	1,573	15.0%
Medicare FFS	3,460	35.0%	3,670	35.0%
Medicare MC	494	5.0%	524	5.0%
Commercial FFS	1,186	12.0%	1,258	12.0%
Commercial MC	2,965	30.0%	3,146	30.0%
Private Pay	99	1.0%	105	1.0%
Charity Care	198	2.0%	210	2.0%
<b>Total</b>	<b>9,885</b>	<b>100.0%</b>	<b>10,486</b>	<b>100.0%</b>

The Center initially plans to obtain contracts with the following Medicaid Managed care plans: Fidelis, Health First, AmidaCare, Empire Health Plus and United Community Plan. The Center plans to utilize its affiliation with the Mount Sinai Health System, to reach out to the under-insured population in the service area. The proposed center will work with both the Institute for family Health and Ryan Health (two FQHCs) to develop referral and other collaborative arrangements to improve access to the under-insured.

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 gastroenterology services in free-standing setting for the residents of New York County.

<b>Program Analysis</b>
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**Program Description**

Proposed Operator	UWS ASC, L.L.C.
Site Address	2101-2115 Broadway Suite SC-1 New York, New York 10023 (New York County)
Surgical Specialties	Single Specialty: Gastroenterology
Operating Rooms	0
Procedure Rooms	4
Hours of Operation	Monday through Friday 7 am to 5 pm The Center will have weekend and/or evening procedures available, if needed, to accommodate scheduling issues.
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	23.00 FTEs / 23.00 FTEs
Medical Director(s)	David Greenwald, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Is expected to be provided by: Mount Sinai West 2.2 Miles / 10 minutes
On-call service	Patients who require assistance during off-hours will call the on-call service and be directed to the Center's on-call physician.

**Character and Competence**

The ownership of UWS ASC, L.L.C. is:

Member Name	Interest
<b>Mount Sinai Ambulatory Ventures, Inc</b> <i>Vicki LoPachin, MD</i> <i>Donald Scanlon</i> <i>Brent Stackhouse</i>	85%
<b>Merritt Healthcare Holdings UWS, LLC</b> <i>Matthew Searles (42.75%)</i> <i>Richard Searles (19.00%)</i> <i>William Mullhall (33.25%)</i> <i>Kerri Ubaldi (5.000%)</i>	15%
<b>TOTAL</b>	<b>100%</b>

The managers of UWS ASC, LLC will be Matthew Searles and Brent Stackhouse.

**Dr. Vicki LoPachin** has been employed at the Mount Sinai Health System for six years. She has served as the Chief Medical Officer and Senior Vice President of Mount Sinai Health System. She previously served as the Medical Director North Shore University Hospital. She received her medical degree from State University of New York at Stony Brook School of Medicine. She completed her internal medicine residency at Mount Sinai Hospital.

**Mr. Donald Scanlon** has been with the Mount Sinai System for over 15 years. His current position is the as the Chief Financial Officer,

**Mr. Brent Stackhouse** has been employed with the Mount Sinai Health System for over 4 years. He is the current Vice President, Network Development and Population Health, of Mount Sinai Ventures. He was previously employed as the Executive Director of Strategy for the Fund for Public Health in New York. His experience has given him insight into compliance and clinical quality of ASC. He has implemented new marketing strategies, comprehensive training, metric based tracking, and partner cross-promotion to increase physician client base. He developed alternative revenue sources to reduce reliance on grant and public funding. He facilitates the development of a management services organization and align the Network.

**Mr. Matthew Searles** has worked for Merritt Healthcare Holdings for 18 years. His current position is Manager and Developer of ASCs. He previously provided mergers and acquisitions and healthcare investment banking services to clients.

**Mr. Robert Searles** has been employed by Merritt Healthcare for over 10 years. He currently develops and manages the ASCs. He also buys and sells side advisory services to ASCs and hospitals. He has completed over \$2 billion in healthcare transactions.

**Mr. William Mullhall** has been employed by Merritt Healthcare Holdings for 14 years. He current position is Senior Partner. He is responsible for the construction and design and all clinical operations of the facilities.

**Ms. Kerri Ubaldi** is a Registered Nurse with 29 years of experience. She has been employed at Merritt Healthcare Holdings for over 6 years. Her current position is the Vice President of Operations. She is responsible for the overall quality, operational, and financial aspects of the facilities. She is involved with the development of the ASCs, inclusive of construction, hiring, policy and procedure development, regulatory readiness, infection prevention, quality improvement, and management.

**Dr. David Greenwald** is the proposed Medical Director for the facility. He is the current Director of Clinical Gastroenterology and Endoscopy at Mount Sinai Medical Center. He is board certified in Internal Medicine and Gastroenterology. He is a Diplomate of the National Board of Medical Examiners. He received his medical degree from Albert Einstein College of Medicine in Bronx. He completed his residency and fellowship at Columbia Presbyterian Medical Center in New York.

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.

*Thomas et al. vs. Coghill et al.*

- *Action was commenced against multiple defendants in 2015. Mount Sinai Ambulatory Ventures, Inc, under the corporation's previous name Beth Israel Ambulatory Care Services Corp., joined the lawsuit as a defendant in 2016. The lawsuit alleges medical negligence due to a failure to diagnose breast cancer in a timely manner. The counsel for the plaintiff has agreed to dismiss Mount Sinai Ambulatory Surgery Ventures, Inc as a defendant. A motion will be made to the judge to approve the stipulation of dismissal.*

*Bronx SC, LLC d/b/a Empire State Ambulatory Surgery Center (affiliated with Mount Sinai Health System):*

- *Hector Luis Garcia, deceased, by Amanda Elizabeth Rodriguez as Administrator of the Estate of Hector Luis Garcia v. Global Property Services, Inc. et al. The lawsuit was filed in 2016 and alleges that the patient suffered a laryngospasm and went into respiratory arrest during surgery. An airway could not be immediately established, and the patient died. The case is pending.*
- *Juanita Mammolejos a/k/a Juanita Marnolejos Perez and Arnold Jose Lopez v. Montefiore Medical Center, Amr A. El-Sanduby, M.D., NY Medical Arts, P.C., and Bronx SC, LLC d/b/a Empire State Ambulatory Surgery Center. The lawsuit was filed in 2017 and alleges medical*

*negligence in performing a cervical epidural injection. The patient claims this resulted in a spinal cord infarction. The patient suffered a respiratory arrest in the surgery center's recovery room following the procedure and was transferred to a tertiary care center. The case remains pending.*

- *Lucille Patterson v. John A. DeBello D.P.M., Empire State Ambulatory Surgery Center and New York Foot Care Services, PLLC. Index No. 23360/2017E. The case alleges medical negligence resulting in gangrene and amputation of the toe following surgery. The case was dismissed in October 2018 due to the plaintiff's failure to comply with orders of the Court. There is a motion in the court docket to vacate the dismissal and restore the case.*
- *John Garcia v. Dennis Nachmann D.P.M., Jian Zhang D.P.M., Bronx Foot Rehab Associates, Empire State Ambulatory Surgery center, Icahn School of Medicine at Mount Sinai, and Garret T. Desman, M.D. Index No. 23394/2018E. The case alleges a failure to diagnose melanoma in a timely fashion. The case 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**

For those patients who do not identify a primary care provider (PCP), the Applicant will educate patients regarding the availability of primary care services offered by local providers, including those services offered by Mount Sinai West. The Applicant is committed to serving all persons in need of services and there will be no discrimination based on personal characteristics or ability to pay. There is a financial assistance policy with a sliding fee schedule. The Applicant will utilize its affiliation with Mount Sinai Health System to reach out to the underserved population by reaching out to its affiliates to promote enhanced access to gastroenterology services. The Applicant has proposed an operating budget that includes 15% Medicaid, demonstrating the Center's expected outreach to this traditionally underserved population.

The Center intends on using an Electronic Medical Record (EMR) program and will consider participating in a 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

### Lease Rental Agreement

The applicant has submitted an executed lease agreement summarized below:

Date	January 22, 2019
Premises:	Approx. 12,992 square feet, sub-lower level at 2101-2115 Broadway, New York, NY
Landlord:	Ansonia Commercial LLC
Tenant:	UWS ASC, L.L.C.
Term:	15 Years and two (2) additional consecutive five (5) year periods, with notice not less than twelve (12) months prior to the expiration of the original term
Rental:	Year 1 \$1,200,000 Year 2 \$1,230,000 Year 3 \$1,285,750 Year 4 \$1,317,894 Year 5 \$1,365,841 Year 6 – 15 escalation of 2.5% annually
Provisions:	Maintenance, insurance, taxes, and utilities

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.

### Administrative Services Agreement

The applicant has submitted a draft administrative services agreement (ASA), summarized below:

Facility Operator:	UWS ASC, L.L.C.
Contractor:	Merritt Healthcare Holdings UWS LLC
Services Provided:	Financial Management Services, Strategic Planning and Development, Policies and Procedures, Contracting Services, Personnel, Supplies, Utilities/Waste Management, Operating Licenses and Banking, Billing and Collection Services.
Term:	Initial 5-Year term with automatic successive 1-Year renewals thereafter
Compensation:	\$250,000 in Year 1, escalation of 3% annually

Merritt Healthcare Holdings UWS LLC, the ASA provider, is a member of the applicant. It is noted that the draft ASA acknowledges the reserve powers that cannot be delegated and provides that the Facility Operator retains ultimate control in all of the final decisions associated with the facility. The executed ASA must include an attestation that the applicant understands that there are powers that must not be delegated and that they will not willfully engage in any such illegal delegation.

### Total Project Cost and Financing

Total project costs for renovations and the acquisition of movable equipment is estimated at \$10,197,495, broken down as follows:

Renovation & Demolition	\$6,080,256
Design Contingency	608,026
Construction Contingency	608,026
Architect/Engineering Fees	703,194
Other Fees (Consulting)	520,000
Movable Equipment	1,025,227
Telecommunications	182,000
Financing Costs	137,666
Interim Interest Expense	275,332
Application Fee	2,000
Additional Processing Fee	<u>55,768</u>
Total Project Cost	\$10,197,495

Project costs are based on a construction start date of January 1, 2020, with an eleven-month construction period.

The applicant's financing plan appears as follows:

Bank Loan (7% interest, self-amortizing 10-year term)	\$9,177,746
Equity (Landlord contribution)	891,000
Equity contribution from (Applicant)	<u>128,749</u>
Total	\$10,197,495

The Lease Agreement provides that the building owner will contribute \$891,000 equity (Tenant Fund) towards the cost of construction. Equity contributions from the applicant are based on the proposed members' percentage ownership interest. A letter of interest has been submitted by Valley National Bank for the construction loan at the stated terms.

### Operating Budget

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

	Year One		Year Three	
	Per Proc.	Total	Per Proc.	Total
<u>Revenues</u>				
Medicaid MC	\$399.92	\$593,076	\$400.00	\$629,194
Medicare FFS	\$473.95	\$1,639,855	\$474.04	\$1,739,722
Medicare MC	\$474.22	\$234,265	\$474.30	\$248,532
Commercial FFS	\$1,000.13	\$1,186,152	\$1,000.31	\$1,258,389
Commercial MC	\$1,600.21	\$4,744,608	\$1,599.99	\$5,033,555
Private Pay	\$567.92	\$56,224	\$568.08	\$59,648
Bad Debt		<u>(\$422,709)</u>		<u>(\$448,452)</u>
Total Revenues		\$8,031,471		\$8,520,588
<u>Expenses</u>				
Operating	\$427.52	\$4,226,052	\$415.97	\$4,361,816
Capital	<u>\$256.94</u>	<u>\$2,539,854</u>	<u>\$240.64</u>	<u>\$2,523,381</u>
Total Expenses	\$684.46	\$6,765,906	\$656.61	\$6,885,197
Net Income		<u>\$1,265,565</u>		<u>\$1,635,391</u>
Procedures		9,885		10,486

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

Payor	Year One		Year Three	
	Proc.	%	Proc.	%
Medicaid MC	1,483	15.0%	1,573	15.0%
Medicare FFS	3,460	35.0%	3,670	35.0%
Medicare MC	494	5.0%	524	5.0%
Commercial FFS	1,186	12.0%	1,258	12.0%
Commercial MC	2,965	30.0%	3,146	30.0%
Private Pay	99	1.0%	105	1.0%
Charity Care	<u>198</u>	<u>2.0%</u>	<u>210</u>	<u>2.0%</u>
Total	9,885	100.0%	10,486	100.0%

Revenue, expense and utilization assumptions are based on the combined historical experience of the proposed physician members of UWS ASC, L.L.C., Mount Sinai Hospital, as well as the experience of other FASCs in New York State. The applicant has submitted physician referral letters in support of utilization projections.

### **Capability and Feasibility**

Project costs of \$10,197,495 will be met with a \$9,177,746 bank loan over ten years at 7% interest, \$891,000 via a Landlord contribution, and \$128,749 in equity from the applicant members. Valley National Bank has provided a letter of interest for the interest for the loan. BFA Attachments A and B reveal sufficient resources for the members' equity contributions.

Working capital requirements are estimated at \$1,147,532 based on two months of third year expenses and will be provided through \$573,766 equity of the proposed members and a bank loan of \$573,766 at 5.75% over five years. A loan letter of interest from Valley National Bank has been submitted by the applicant for working capital. BFA Attachment A is a summary of the net worth statements of the proposed members of UWS ASC, L.L.C., which indicates the availability of sufficient funds for the stated levels of equity. MSHS has submitted a letter indicating it intends to provide cash equity to be used to fund capital and working capital equity needs. BFA Attachment D is the pro forma balance sheet of UWS ASC, L.L.C. as of the first day of operation, which indicates positive members' equity of \$1,593,516.

The submitted budget indicates a net profit of \$1,265,565 and \$1,635,391 for the first and third year, respectively. The budget appears reasonable.

BFA Attachment B indicates Mount Sinai Hospital has maintained positive working capital and net asset positions and had an operating income of \$205,167,000 and \$209,321,000 as of December 31, 2017 and December 31, 2018, respectively.

Subject to the noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner.

## **Supplemental Information**

### **Surrounding Hospital Responses**

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas.

**Facility:** Mount Sinai West -- **No Response**  
1000 Tenth Avenue  
New York, New York 10019

**Facility:** Lenox Hill Hospital -- **No Response**  
100 East 77th Street  
New York, New York 10021

**Facility:** Memorial Hospital for Cancer and Allied Diseases -- **No Response**  
1275 York Avenue  
New York, New York 10065

### **DOH Comment**

In the absence of comments from hospitals in the area of 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.

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## **Attachments**

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BFA Attachment A Net Worth Statements of Members of UWS ASC, L.L.C.  
BFA Attachment B 2017 & 2018 Certified Financial Statements of Mount Sinai Hospital  
BFA Attachment C Organizational Chart of UWS ASC, L.L.C.  
BFA Attachment D Pro Forma Balance Sheet





Project # 191237-E
PBGS, LLC

Program: Diagnostic and Treatment Center County: Kings
Purpose: Establishment Acknowledged: May 14, 2019

Executive Summary

Description

PBGS, LLC, a proprietary Article 28 diagnostic and treatment center (DTC) located at 14 DeKalb Avenue, Brooklyn (Kings County), requests approval for indefinite life certification. The D&TC was approved by the Public Health and Health Planning Council (PHHPC) under CON 112032 as a single-specialty freestanding ambulatory surgery center (FASC) specializing in gynecological services. PHHPC approval was for a conditional five-year limited life and the Center began operation effective October 2, 2014. The FASC continues to operate under the original lease submitted under CON 112032. There will be no change in services provided and the Center is not proposing to expand or renovate the facility.

Dmitry Bronfman, M.D. is the sole member/manager of the Center and serves as the facility's Medical Director. The Center has a transfer agreement with Brooklyn Hospital Center-Downtown Campus located at 121 DeKalb Avenue, which is 1.5 miles (six minutes) from the Center.

PBGS, LLC has maintained their Medicare deemed status certification and is currently accredited through the Joint Commission (current certification expires on October 3, 2021).

OPCHSM Recommendation

Contingent Approval

Need Summary

Data submission by the applicant, a contingency of CON 112032, has been completed. Based on CON 112032, the Center projected 4,838 visits in Year Three, with Medicaid visits projected at 55.5 % and Charity Care projected at 2.0% for Year Three. The total number of visits was 6,676 in Year Three (2017), with actual Charity Care at 0.8 % and Medicaid at 57.8 %. 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 budget is as follows:

Table with 3 columns: Category, Year One, Year Three. Rows: Revenues (\$8,947,127 vs \$8,954,947), Expenses (6,923,642 vs 6,929,691), Net Income (\$2,023,485 vs \$2,025,256).

## **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 amended and fully executed Lease Agreement, acceptable to the Department. [CSL]

#### **Approval conditional upon:**

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

### **Council Action Date**

**August 8, 2019**

## Need and Program Analysis

### Background

The primary service area is Kings County. The table below provides Year Three utilization, projections and actual, by payor, for CON 112032, and projections for Year One following approval.

Payor	CON 112032 Projected Year 3 (2017)	CON 112032 Actual Year 3 (2017)	CON 191237 Projections Year 1
Medicaid FFS	9.6%	17.4%	17.4%
Medicaid MC	45.9%	40.4%	40.4%
Medicare- FFS	0.3%	0.2%	0.2%
Medicare MC	0.0%	0.2%	0.2%
Comm Ins FFS	11.7%	24.7%	24.7%
Comm Ins MC	22.5%	0.0%	0.0%
Self-Pay	8.0%	16.3%	16.3%
Charity Care	2.0%	0.8%	0.8%
Total	100.00%	100.00%	100.00%

The table below provides information on projections and utilization by visits for Year One (2015-1<sup>st</sup> full year) and Year Three (2017) based on CON 112032.

CON 112032- Visits	Year 1 (2015)		Year 3 (2017)	
Downtown Brooklyn	Projected	Actual	Projected	Actual
Total	4,560	5,947	4,838	6,676

The Center currently has Medicaid Managed Care contracts with the following health plans: Healthfirst, Metro Plus, Fidelis, Blue Cross f/k/a Amerigroup and HIP Medicaid. The center has established a referral relationship with MIC – Women’s Health Clinics – Brooklyn. The center also gets referrals from the GYN clinics of Brooklyn, Methodist and Maimonides hospitals. This center’s Medicaid utilization has been strong during their limited-life, 28.1% in 2015, 54.1% in 2016, 57.8% in 2017, and 44.2% in 2018. The center’s charity care utilization has been slightly less than the projected level of 2%.

### 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

Per the PHHPC Ad Hoc Committee recommendation, the department should exercise flexibility to evaluate each ASC according to its totality of its proposed and actual volume of service to the underserved whether Medicaid, Charity Care or a combination of the two. The center's Medicaid utilization has been strong each year, above 25% each year. Charity care utilization was less than the preferred 2% level, but the center has shown reasonable efforts through their referral arrangements with local womens' clinics and hospitals. All these facts reflect the center's commitment to the under-insured, thereby showing reasonable efforts to provide service to the underserved patients in Kings County.

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

## Financial Analysis

### Operating Budget

The applicant has submitted their current year (2017) operating budget and the first and third years subsequent to receiving indefinite life operating certification, as shown below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>			
Medicaid FFS	\$773,948	\$797,166	\$797,863
Medicaid MC	1,186,780	1,222,383	1,223,452
Medicare FFS	5,723	5,895	5,900
Medicare MC	6,301	6,490	6,496
Commercial FFS	6,626,700	6,825,501	6,831,465
Private Pay	<u>87,080</u>	<u>89,692</u>	<u>89,771</u>
Total Revenues	\$8,686,532	\$8,947,127	\$8,954,947
<u>Expenses</u>			
Operating	\$6,006,058	\$6,186,240	\$6,191,645
Capital	<u>715,924</u>	<u>737,402</u>	<u>738,046</u>
Total Expenses	\$6,721,982	\$6,923,642	\$6,929,691
Net Income	<u>\$1,964,550</u>	<u>\$2,023,485</u>	<u>\$2,025,256</u>
Utilization (Procedures)	6,676	6,877	6,883
Cost Per Procedures	\$1,006.89	\$1,006.78	\$1,006.78

Utilization by payor during the current year and the first and third years after receiving indefinite life are 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	1,161	17.4%	1,196	17.4%	1,197	17.4%
Medicaid MC	2,698	40.4%	2,779	40.4%	2,781	40.4%
Medicare FFS	11	.2%	11	.2%	11	.2%
Medicare MC	17	.3%	18	.3%	18	.3%
Commercial FFS	1,647	24.6%	1,696	24.6%	1,698	24.6%
Private Pay	1,091	16.3%	1,124	16.3%	1,125	16.3%
Charity Care	<u>51</u>	<u>.8%</u>	<u>53</u>	<u>.8%</u>	<u>53</u>	<u>.8%</u>
Total	6,676	100%	6,877	100%	6,883	100%

**Capability and Feasibility**

There are no project costs associated with this application. The submitted budgets indicate net income of \$2,023,485 and \$2,025,256 during the first and third year, respectively. Revenues are based on current reimbursement methodologies. The submitted budgets are reasonable.

BFA Attachment A is the 2016 and 2017 certified financial statements of PBGS, LLC. As shown, the facility had a positive average working capital position and a positive net asset position between 2016 and 2017. Also, the entity achieved an average net income of \$3,236,957 for the years 2016 and 2017.

BFA Attachment B is the internal financial statements of PBGS, LLC as of May 31, 2019. As shown, the entity had a positive working capital position, a positive net asset position, and achieved a net income of \$1,504,569 through May 31, 2019.

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

<b>Attachments</b>
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BFA Attachment A    Financial Summary – 2016 and 2017 certified financial statements of PBGS, LLC  
BFA Attachment B    Financial Summary – May 31, 2019 internal statements of PBGS, LLC



Project # 191196-B
Shakespeare Operating, LLC d/b/a Bronx Treatment Center

Program: Diagnostic and Treatment Center County: Bronx
Purpose: Establishment and Construction Acknowledged: May 2, 2019

Executive Summary

Description

Shakespeare Operating LLC, an existing New York limited liability company whose sole member is Nidhi Sahgal, M.D., requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) to be located at 1250 Shakespeare Avenue, Bronx (Bronx County). The five-exam room D&TC will be housed in 1,900 square feet of leased space on the first floor of an existing single-story building. The applicant requests certification for Medical Services – Primary Care and Medical Services – Other Medical Specialties, as well as to provide Podiatry, Psychological and Nutritional services. Upon approval by the Public Health and Health Planning Council (PHHPC) the Center will do business as Bronx Treatment Center.

OPCHSM Recommendation

Contingent Approval

Need Summary

The number of projected visits is 15,102 in Year One and 19,63 in Year Three. The primary proposed service area is a Medically Underserved Area and a Health Professional Shortage Area for Primary Care.

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 \$788,470 will be met with \$88,470 member's equity and a bank loan of \$700,000 for a ten-year term at an indicative rate of Cost of Funds + 2.75-3.25%. Bank of America Merrill Lynch has provided a letter of interest for the financing. The proposed budget is as follows:

Table with 3 columns: Category, Year One, Year Three. Rows: Revenues (\$2,196,630 vs \$2,855,876), Expenses (1,938,551 vs 2,474,135), Net Income (\$258,079 vs \$381,741).

## 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 bank loan commitment for project costs, acceptable to the Department of Health. [BFA]
3. Submission of an executed copy of the articles of organization from the applicant, acceptable to the Department. [CSL]
4. Submission of an executed copy of the lease agreement from the applicant, acceptable to the Department. [CSL]
5. Submission of an executed copy of the operating agreement from the applicant, acceptable to the Department. [CSL]
6. Submission of a copy of the certificate of assumed name from the applicant, acceptable to the Department. [CSL]
7. Submission of a copy of the anti-kickback and self-referral law affidavit from the applicant, acceptable to the Department. [CSL]

#### 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.
2. Construction must start on or before December 15, 2019 and construction must be completed by June 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 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]
4. 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]
5. 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

August 8, 2019

# Need Analysis

## Background and Analysis

The center expects to provide the following services: primary medical care, medical specialist care, including cardiology services, nutritional, podiatry and psychological outpatient care. The goal of this project is to integrate mental and behavioral health services within a primary care environment resulting in the improved access and continuity of care for the residents within Bronx County. Initially, the center's hours of operation will be Monday through Friday from 8 am until 4 pm, and Saturday from 8 am until 12 pm. The hours of operation will be extended based upon demand, and it is anticipated that by the third year of operation, the weekday hours will be from 8 am until 8 pm.

The primary service area includes the neighborhoods in the Highbridge and Concourse sections of Bronx County, which includes the following zip codes: 10452, 10453, 10456 and 10457. The secondary service area is the rest of Bronx County. The Highbridge area is designated as Health Professional Shortage Area for Primary Care services and a Medically Underserved Area.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition. It shows that the PQI rate for the primary service area is significantly higher than the New York State rate.

### Hospital Admissions per 100,000 Adults for Overall PQIs

PQI Rates: 2016	Service Area	New York State
All PQI's	2,501	1,363

Source – DOH data, 2019

The number of projected visits is 15,102 in Year One and 19,633 in Year Three. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

## Conclusion

Approval for this project will provide for the improved access to a variety of medical services for residents of Bronx County.



## Program Analysis

### Program Description

The Shakespeare Operating, LLC d/b/a/ Bronx Treatment Center requests approval to establish and construct a new Article 28 Diagnostic and Treatment Center to be located at 1250 Shakespeare Avenue in Bronx (Bronx County).

Proposed Operator	Shakespeare Operating, LLC d/b/a/ Bronx Treatment Center
Site Address	1250 Shakespeare Avenue Bronx, NY 10452 (Bronx County)
Certified Services	Medical Services - Primary Care Medical Services – Other Medical Specialties
Hours of Operation	Monday through Friday, 8 AM to 4 PM Saturdays 8 AM to 12 PM
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	14 FTEs / 22 FTEs
Medical Director(s)	Nidhi Sahgal, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Bronx-Lebanon Hospital 1.3 miles / 10 minutes away

### Character and Competence

**Nidhi Sahgal M.D.**, the sole member and proposed Medical Director, earned her medical degree from Georgetown University. She completed her General Surgery residency at Northshore University Hospital. Dr. Sahgal has over 20 years as a reconstructive breast surgeon. Currently, she is the owner and manager of her private surgery practice for 17 years. She has been an active participant in various hospital committees.

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 member has met the standard for approval as set forth in Public Health Law §2801-a(3).

## Financial Analysis

### Total Project Cost and Financing

Total project cost of \$788,470 for the leasehold improvements for renovations and moveable equipment are broken down as follows:

Renovation & Demolition	\$396,550
Design Contingency	39,655
Construction Contingency	39,655
Planning Consultant Fees	20,000
Architect /Engineering Fees	75,000
Construction Manager Fees	50,000
Other Fees	20,000
Moveable Equipment	54,178
Telecommunications	73,130
Financing Costs	3,500
Interim Interest Expense	10,500
CON Fee	2,000
Additional Processing Fee	<u>4,302</u>
Total Project Cost	<u>\$788,470</u>

Project costs are based on a construction start date of December 15, 2019, and a six and a half-month construction period.

The applicant's financing plan is as follows: \$88,470 member's equity and a \$700,000 loan for a ten-year term with interest at Cost of Funds + 2.75-3.25%. Bank of America Merrill Lynch has provided a letter of interest for the loan. BFA attachment A is the net worth statement of Nidhi Sahgal, M.D., which indicates sufficient resources to meet the equity requirements of this application

### Lease Agreement

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

Date:	October 1, 2018
Premises:	1,900 square feet of space at 1250 Shakespeare Ave Bronx NY 10452
Owner:	1250 Shakespeare Realty LLC
Tenant:	ProHealth Practice Management LLC
Security:	\$16,000 deposit paid
Rental:	Base rent \$96,000 annually (\$8,000 per month) for year one, 3% increase thereafter. Base rent includes \$10,500 annual rent for parking area. Additional payments for cost of electricity and common area management.
Term:	10 years
Provisions:	Lessee shall be responsible for real estate taxes, maintenance, personal property insurance and pro rata share of electricity, water and gas.

Dr. Nidhi Sahgal, the proposed operator of Bronx Treatment Center, is the wife of Sumir Sahgal (landlord), the owner of 1250 Shakespeare Realty LLC. Vicky Montero is the sole member of Pro Health Practice Management LLC, an unrelated party. The original lease arrangement is an arm's length agreement.

**Assignment of Lease**

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

Date:	April 2, 2019
Premises:	1250 Shakespeare Ave Bronx NY 10452
Assignor:	ProHealth Practice Management LLC
Assignee:	Shakespeare Operating LLC

Upon assignment of the lease agreement, the lease arrangement becomes a non-arm's length agreement. Letters from two New York real estate brokers were submitted attesting to the reasonableness of the rent.

**Operating Budget**

The applicant submitted their first-year and third-year operating budget, in 2019 dollars, as shown below:

	<u>Year One</u>		<u>Year Three</u>	
<u>Revenues</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Medicaid FFS	\$220.04	\$66,452	\$219.86	\$86,406
Medicaid MC	\$176.77	1,601,713	\$176.77	2,082,351
Medicare FFS	\$134.05	101,208	\$134.05	131,638
Medicare MC	\$110.40	333,408	\$110.40	433,430
Commercial FFS	\$77.69	70,387	\$77.69	91,519
Commercial MC	\$77.69	<u>23,462</u>	\$77.69	<u>30,532</u>
Total Revenue		\$2,196,630		\$2,855,876
<u>Expenses</u>				
Operating	\$115.26	\$1,740,653	\$115.94	\$2,276,237
Capital	<u>\$13.10</u>	<u>197,898</u>	<u>\$10.08</u>	<u>197,898</u>
Total Expenses	\$128.37	\$1,938,551	\$126.02	\$2,474,135
Net Income		<u>\$258,079</u>		<u>\$381,741</u>
Visits		15,102		19,633
Cost/Visit		\$128.36		\$126.02

Utilization by payor source during first and third years is broken down as follows:

	<u>Year One</u>		<u>Year Three</u>	
<u>Payor</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid FFS	302	2%	393	2%
Medicaid MC	9,061	60%	11,780	60%
Medicare FFS	755	5%	982	5%
Medicare MC	3020	20%	3,926	20%
Commercial FFS	906	6%	1,178	6%
Commercial MC	302	2%	393	2%
Charity Care	<u>756</u>	<u>5%</u>	<u>981</u>	<u>5%</u>
Total	15,102	100%	19,633	100%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on similar Article 28 D&TCs operating in the same geographic location within the five boroughs of New York City, with similar square footage, licensed services and patient volume. The Medicare and Medicaid rates are based on the New York City APG rates for the proposed license services.
- All HMO and Commercial rates are based on the average rates from similar existing D&TCs in the five boroughs of New York City.
- The utilization is based on the proposed member's private practice.
- Charity Care was based on the patients serviced within the New York City geographical location.
- Staffing and administrative expenses are based on similar facilities used in the budget model along with the actual overhead expenses of depreciation and rent.

**Capability and Feasibility**

The total project cost is \$788,470 funded via \$88,470 member's equity and a \$700,000 loan for a ten-year term with interest at Cost of Funds + 2.75-3.25%. Bank of America Merrill Lynch has submitted a letter of interest.

Working capital requirements are estimated at \$412,356 based on two months of third year expenses and will be satisfied via members' equity. BFA Attachment A provides the net worth of Nidhi Sahgal, M.D., which indicates the availability of sufficient funds for stated levels of equity. BFA Attachment B, the pro forma balance sheet for the applicant, indicates that the facility will initiate operations with members equity of \$589,239.

The submitted budget indicates the facility will generate net income of \$258,079 and \$381,741 in the first and third years, respectively. Revenues are based on prevailing reimbursement methodologies for D&TC primary medical care, nutritional, podiatry and psychological services.

Based on the preceding, 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	Net Worth of Nidhi Sahgal, M.D.
BFA Attachment B	Pro Forma Balance Sheet, Shakespeare Operating LLC
BHFP Attachment	Map



Project # 191245-E
Planned Parenthood of Greater New York, Inc.

Program: Diagnostic and Treatment Center
Purpose: Establishment
County: Schenectady
Acknowledged: May 23, 2019

Executive Summary

Description

Five Planned Parenthood corporations, all Article 28 entities operating Diagnostic and Treatment Centers (D&TCs), request approval to merge, with Planned Parenthood of New York City, Inc. as the surviving entity and to be renamed Planned Parenthood of Greater New York, Inc.

The corporations, all not-for-profit affiliates of Planned Parenthood Federation of America, are as follows:

- Planned Parenthood of New York City, Inc.
Planned Parenthood Mohawk Hudson, Inc.
Planned Parenthood of Nassau County, Inc.
Planned Parenthood of the Southern Finger Lakes, Inc.
Planned Parenthood of the Mid-Hudson Valley, Inc.

The entities are currently licensed as Article 28 D&TCs and provide primary care and family planning related services in the communities they serve. There will be no change to the services provided. Each entity operates a number of licensed extension clinic sites. A listing of all the sites is presented in the Need and Program section of the exhibit.

The stated goal of the merger is to create a unified entity capable of delivering quality care while achieving administrative, technical and

clinical support service efficiencies. The applicant has provided a draft Agreement and Plan of Merger to acquire the assets and all debts and liabilities of the D&TCs, contingent upon obtaining all necessary approvals including the approval of the Public Health and Health Planning Council (PHHPC). There is no purchase price associated with the merger, as the surviving entity is taking over all debts and liabilities of the other four corporations.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no change to locations or services as a result of the merger.

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 or purchase prices associated with this application. The budget is as follows:

Table with 3 columns: Category, Year One, Year Three. Rows: Revenues, Expenses, Net Income.

## **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 Department of Health closure plan approval letter for Planned Parenthood of New York City, Inc.'s mobile extension clinic Community Outreach Mobile Medical Unit (Facility ID 6843). [PMU]
2. Submission of an executed plan of merger agreement, acceptable to the Department of Health. [BFA]
3. Submission of a photocopy of an amended and executed Certificate of Merger of Planned Parenthood of the Mid-Hudson Valley, Inc. (PPMHV), Planned Parenthood Mohawk Hudson, Inc. (PPMH), Planned Parenthood of Nassau County, Inc. (PPNC), Planned Parenthood of New York City, Inc. (PPNYC), and Planned Parenthood of the Southern Finger Lakes, Inc. (PPSFL) into PPNYC, acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed Resolution of the Board of Directors of PPMHV, PPMH, PPNC, and PPSFL, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Plan of Merger of PPMHV, PPMH, PPNC, PPNYC, and PPSFL into PPNYC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed Merger Agreement of PPMHV, PPMH, PPNC, PPNYC, and PPSFL into PPNYC, acceptable to the Department. [CSL]
7. Submission of a photocopy of amended and executed Lease Agreements for PPMHV and PPMH, acceptable to the Department. [CSL]
8. Submission of a photocopy of a list of the Board of Directors of Planned Parenthood of Greater New York, Inc., acceptable to the Department. [CSL]
9. Submission of a photocopy of the amended bylaws of Planned Parenthood of Greater New York, Inc., acceptable to the Department. [CSL]

#### **Approval conditional upon:**

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

### **Council Action Date**

**August 8, 2019**

## Need and Program Analysis

### Background and Analysis

The merger will result in one main site and 28 extension clinics (including one part-time clinic) across the state. The clinics are in the following counties: Bronx, Kings, New York, Queens, Richmond, Nassau, Orange, Ulster, Sullivan, Dutchess, Saratoga, Schoharie, Schenectady, Fulton, Madison, Montgomery, Oneida, Steuben, Chemung, Tompkins and Warren. There will be no changes in services as a result of the merger.

The number of projected visits is 92,635 in Year One and 106,083 in Year Three. The applicant is projecting a Medicaid utilization of approximately 50% in years one and three. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

Main Site	
<b>Margaret Sanger</b> 26 Bleeker Street New York, New York 10012	
Extension Clinics	
<b>Joan Malin Brooklyn Planned Parenthood Health Center</b> 44 Court Street Brooklyn, New York 11201	<b>Bronx Planned Parenthood Health Center</b> 349 East 149 <sup>th</sup> Street Bronx, New York 10451
<b>Staten Island Planned Parenthood Health Ctr</b> 23 Hyatt Street Staten Island, New York 10301	<b>Project St Beat Mobile Health Center</b> 26 Bleeker Street New York, New York 10012
<b>Diane L. Max Planned Parenthood Health Ctr</b> 21-41 45 <sup>th</sup> Road Long Island City, New York 11101	<b>Planned Parenthood Mohawk Hudson, Inc</b> 1040 State Street Schenectady, New York, 12305
<b>Planned Parenthood Mohawk Hudson, Inc</b> 543 Bay Road Queensbury, New York 12804	<b>Planned Parenthood Mohawk Hudson, Inc</b> 603 Seneca Street Oneida, New York 13412
<b>Planned Parenthood Mohawk Hudson, Inc</b> 109 Legion Drive Cobleskill, New York 12043	<b>Planned Parenthood Mohawk Hudson, Inc</b> 236 Washington Street Saratoga Springs, New York 12866
<b>Planned Parenthood Mohawk Hudson, Inc</b> 1673 Route 9 Clifton Park, New York 12065	<b>Planned Parenthood Mohawk Hudson, Inc</b> 1424 Genesee Street Utica, New York 13502
<b>Planned Parenthood Mohawk Hudson, Inc</b> 400 North Perry Street Johnstown, New York 12095	<b>Planned Parenthood Mohawk Hudson, Inc</b> 111 East Chestnut Street Rome, New York 13440
<b>Planned Parenthood Mohawk Hudson, Inc</b> Kem Plaza 4803 Route 30, Perth Road Amsterdam, New York 12010	<b>Planned Parenthood of Nassau Co Inc</b> 540 Fulton Avenue Hempstead, New York 11550
<b>Mobile Van Extension Clinic</b> 530 Fulton Road Hempstead, New York 11550	<b>PP of Nassau County Glen Cove</b> 110 School Street Glen Cove, New York 11542
<b>PP of Nassau County Massapequa</b> 35 Carmens Road Massapequa, New York 11758	<b>PP of the Southern Finger Lakes Inc</b> 620 West Seneca Street Ithaca, New York 14850

<b>Extension Clinics</b>	
<b>PP Southern Finger Lakes at Corning</b> 135 Walnut Street Corning, New York 14830	<b>PP Southern Finger Lakes at Elmira</b> 755 East Church Street Elmira, New York 14901
<b>PP Southern Finger Lakes at Hornell</b> 111 Seneca Street Hornell, New York 14843	<b>Planned Parenthood of the Mid-Hudson Valley</b> 17 Noxon Street Poughkeepsie, New York 12601
<b>Planned Parenthood of the Mid-Hudson Valley</b> 136 Lake Street Newburgh, New York 12550	<b>Planned Parenthood of the Mid-Hudson Valley</b> 21 Grand Street Kingston, New York 12401
<b>Planned Parenthood of the Mid-Hudson Valley</b> 7 Coates Drive Goshen, New York 10924	<b>Planned Parenthood of the Mid-Hudson Valley</b> 14 Prince Street Monticello, New York 12701
<b>Watkins Glen Planned Parenthood (part time clinic)</b> 106 N 4 <sup>th</sup> Street Watkins Glen, New York 14891	

### **Compliance with Applicable Codes, Rules and Regulations**

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

### **Conclusion**

There will be no changes in locations or services as a result of the merger of these five corporations. 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**

### **Agreement and Plan of Merger**

The applicant submitted a Draft Agreement and Plan of Merger, summarized below:

Purpose:	To create a unified entity, capable of achieving efficiencies in the delivery of administrative, technical, and clinical support services, providing quality care, and expanding access to services to advance and achieve the corporation's charitable purpose.
Merging Entities:	Planned Parenthood of the Mid-Hudson Valley, Inc., Planned Parenthood Mohawk Hudson, Inc., Planned Parenthood of Nassau County, Inc., Planned Parenthood of the Southern Finger Lakes, Inc. and Planned Parenthood of New York City, Inc.
Survivor Entity:	Planned Parenthood of New York City, Inc. to be renamed Planned Parenthood of Greater New York, Inc.
Assets Acquired:	All Assets associated with the operations of the D&TCs
Assumed Liabilities:	All debts, liabilities and duties of the Merging entities
Purchase Price:	\$0

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. Currently, the facilities have no outstanding Medicaid liabilities.

### Lease Rental Agreement

Several of the entities merging into Planned Parenthood of New York City, Inc. have leased sites. The leases will be transferred over to the new entity, Planned Parenthood of Greater New York, Inc., with no other changes.

### Operating Budget

The applicant submitted the Current Year (2017) of Planned Parenthood of New York City, Inc. (consolidated entity inclusive of all programs), and the projected first- and third-year operating budgets post-merger, in 2019 dollars, summarized below:

Revenues	Current Year		Year One		Year Three	
	Per Vst.	Total	Per Vst.	Total	Per Vst.	Total
Medicare (FFS/MC)	\$0	\$0	\$146.76	\$136,931	\$239.84	\$274,377
Medicaid (FFS/MC)	\$409.67	\$18,051,611	\$344.64	\$31,030,961	\$359.68	\$35,250,097
Commercial (FFS)	\$237.74	\$5,241,239	\$215.12	\$11,925,354	\$207.76	\$12,130,319
Private Pay/Other	\$144.62	\$1,711,121	\$153.89	\$3,255,472	\$149.04	\$3,446,165
Under/Uninsured <sup>1</sup>	\$38.58	\$235,150	\$38.60	\$351,605	\$38.60	\$365,201
Other Oper. Rev. <sup>2</sup>		\$41,602,205		\$61,255,301		\$59,805,984
Non-Oper. Rev.		<u>\$2,010,253</u>		<u>\$4,001,585</u>		<u>\$4,001,585</u>
Total Revenues		\$68,851,579		\$111,957,209		\$115,273,728
<u>Expenses</u>						
Operating	\$569.52	\$47,860,982	\$567.81	\$100,315,982	\$540.72	\$102,802,441
Capital	\$39.31	\$3,303,353	\$31.01	\$5,478,353	\$28.28	\$5,396,353
Total Expenses	\$608.83	\$51,164,335	\$598.82	\$105,794,335	\$569.10	\$108,198,794
Gain/(Loss) <sup>3</sup>		<u>\$17,687,244</u>		<u>\$6,162,874</u>		<u>\$7,074,934</u>
Utilization (Visits)		84,037		176,672		190,120

<sup>1</sup> Under/Uninsured represents sliding scale revenue per charity care policy.

<sup>2</sup> Other Operating revenue includes DSRIP funding, Family Planning Grants, Donations/Contributions, Investment Income, Other Grants, Contracts and EHR.

<sup>3</sup> Planned Parenthood of New York City, Inc.'s 2017 net income includes two (2) non-recurring gains related to donations and investments that boosted the consolidated entity's net income by over \$13 million. This extraordinary gain is attributed to an \$8.655 million donation from an anonymous donor and a gain on investments of \$4.366 million. Per the 2017 financial statements (BFA Attachment A), the anonymous donation is shown as the variance between 2016-2017 Direct Contributions on the income statement and the gain on investments is shown as the variance between Net Realized and Unrealized Gain on Investments, Net of Fees.

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

Payor	Current Year	Year One	Year Three
Medicare (FFS/MC)	0%	0.52%	0.60%
Medicaid (FFS/MC)	52.44%	50.97%	51.55%
Commercial (FFS)	26.23%	31.38%	30.71%
Private Pay/Other	14.08%	11.97%	12.16%
Charity/Under/Uninsured	7.25%	5.16%	4.98%

Charity Care/Under/Uninsured is expected to be approximately 5% across the merged entities. The applicant stated that their policy is to assess individuals based on ability to pay 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 purchase prices or project costs associated with this application. There is no working capital need associated with this application, as all the facilities are going concerns that have been in operation for many years. Any future working capital needs will be provided by the survivor entity, Planned Parenthood of Greater New York, Inc., which has significant positive working capital of \$47,167,457.

The submitted budget projects net income of \$6,162,874 and \$7,074,934 in Years One and Three, respectively. The submitted budget is reasonable.

BFA Attachment A is the 2016-2018 certified financial statements of Planned Parenthood of New York City, Inc. As shown, the entity achieved an average positive working capital position, an average positive net asset position and generated an average net income from operations of \$11,318,609 for the period 2016-2017, and a net loss of \$10,916,593 for the period ending December 31, 2018. The 2018 loss was due to donations returning to the standard level compared to the huge increase experienced in 2017. The loss will be funded using the organization's assets. Post-merger it is expected that organizational efficiencies will result in an improved operating position for all five merging entities.

BFA Attachment B is the Pro Forma balance sheet of Planned Parenthood of Greater New York, Inc., which shows the operation will start with members' equity of \$185,999,237.

BFA Attachment E is the 2016-2017 certified and the internal financial statements of the merging entities as of December 31, 2018. As shown, the entities achieved an average positive working capital position, an average positive net asset position and all entities except Planned Parenthood of Mohawk Hudson, Inc. generated an average net income from operations for the 2016-2018 period. The loss for Mohawk Hudson was caused by the State's removal of the cost of living adjustment from grants, the lack of increase in reimbursement rates and the continued increase in costs (including staff recruitment costs) at the level of 4-6%. It is believed that the merger will result in opportunities that improve revenue and free up resources to reach more underserved patients.

## **Attachments**

BFA Attachment A	2016-2018 Certified Financial Statements of Planned Parenthood of New York, Inc.
BFA Attachment B	Pro Forma Balance sheet for Planned Parenthood of Greater New York, Inc.
BFA Attachment C	Current Organization Chart
BFA Attachment D	Proposed Organization Chart
BFA Attachment E	2016-2017 Certified and 2018 Internal Financial Statements of the merged entities



**Project # 182296-B  
Novo Dialysis Flatlands LLC**

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

**Executive Summary**

**Description**

Novo Dialysis Flatlands LLC, an existing New York limited liability company, requests approval to establish and construct a 27-station, Article 28 renal dialysis center to be located in leased space at 2306 Nostrand Avenue, Brooklyn (Kings County). The applicant requests certification for Chronic Renal Dialysis and Home Hemodialysis Training and Support services. The building is currently a single-story, ground floor medical practice with 10,000 square feet of space. Construction is underway to build a second-floor addition into which the current first floor tenant will be relocated. The ground floor space will then be renovated to house the dialysis center, which will have 27 treatment stations, an exam room, patient training rooms, and the requisite support spaces. The applicant will lease the clinic space from 2294 Nostrand Holding LLC. There is no relationship between the landlord and tenant.

The proposed ownership of the Center is:

Proposed Operator	
Novo Dialysis Flatlands LLC	
<u>Members</u>	<u>%</u>
<b>Novo Dialysis LLC</b>	<b>90%</b>
Aditya Mattoo, M.D. (100%)	
<b>Arye Kremer, M.D.</b>	<b>10%</b>

Subodh Saggi, M.D., who is Board-Certified in Internal Medicine and Nephrology, will serve as Medical Director. The Center has a Transfer and Affiliation Agreement with SUNY Downstate Medical Center, which is located 2.1 miles from the proposed site, to serve as back-up hospital.

**OPCHSM Recommendation**

Contingent Approval

**Need Summary**

Kings County ranks 52<sup>nd</sup> of 62 counties in health outcomes. The local area is in a designated Primary Care Health Professional Shortage Area (HPSA), includes a large presence of at-risk populations, and lacks dialysis services in the target zip code.

**Program Summary**

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

**Financial Summary**

Total project costs of \$2,891,147 will be met via \$420,374 equity from the proposed members, \$225,000 landlord contribution, and a bank loan for \$2,245,773 at either Option 1 : Prime+0% with a floor of 2.50% and/or 30 LIBOR+2.75% with a floor of 2.75% or Option 2: Fixed rate pricing tied to the equivalent year SWAP index 2.75% with a floor of 3.50% for terms of 3 years or less, 4% for terms of 4-5 years and 5.0% for terms of 6-7 years. Payment terms will be interest only during the construction period, followed by the balance fully amortized over 60 months. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,586,702	\$7,760,106
Expenses	<u>\$3,047,216</u>	<u>\$5,350,243</u>
Net Income	(\$460,514)	\$2,409,863

## 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 building lease, 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 of an executed bank loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed copy of the application for authority of the applicant, acceptable to the Department. [CSL]
6. Submission of a completed and executed copy of the lease agreement of the applicant, acceptable to the Department. [CSL]
7. Submission of an executed copy of the operating agreement of the applicant, 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. The submission of Engineering (MEP) 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 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. Construction must start on or before December 1, 2019 and construction must be completed by May 31, 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 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]
4. The applicant must facilitate the registering or updating as necessary of the facility to the Department's Health Commerce System (HCS). The HCS is a 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 and Treatment Centers at 518-402-1004. [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

August 8, 2019

## Need Analysis

### Analysis

The primary service area for the new facility will be Kings County, which had a population estimate of 2,582,830 for 2018. The percentage of the population aged 65 and over was 13.9% and the nonwhite population percentage was 50.5%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Kings County and New York State are shown below.

	Kings County	New York State
Ages 65 and Over	13.9%	16.4%
Nonwhite	50.5%	30.3%

Source: U.S. Census 2019

### Need Projection

Chronic End Stage Renal Disease (Dialysis) Stations / Need Projected Through 2021							
County	Existing Stations	Pending Stations	Total Current Stations	Total Need 2021	Unmet Need 2021	County-wide Stations Under Review	Unmet Need After Approval
	a	b	c	d	e	f	g
			( a + b )		( d - c )		( e - f )
<b>Kings</b>	<b>900</b>	<b>402</b>	<b>1302</b>	<b>1227</b>	<b>-75</b>	<b>51</b>	<b>-126</b>
As of June 26, 2019							
Column (a): Existing Stations: Stations in Operation							
Column (b): Pending Stations: Includes projects with Contingent Approval and projects, excluding this application, with recommendations of approval by the Bureau of Public Need Review, but not yet approved.							
Column (f): Stations Under Review: Includes the subject application and all other active CONs under review for in the service area.							

In 2017 there were approximately 4,500 patients receiving dialysis treatment in Kings County. There are currently 900 existing stations which can treat approximately 4,050 patients based on the departmental standard of freestanding facilities: 4.5 patients utilizing 2.5 shifts, per station. The industry routinely runs at approximately 3 shifts per station. There are 402 stations in the pipeline which can treat approximately 1,809 additional patients per established guidelines. Local factors submitted in support of this project include:

- Novo Dialysis would serve the residents of Brooklyn with emphasis on the dialysis patients living in and around the neighborhoods known as Flatbush/Midwood and East Flatbush. This area is a Primary Care, Health Professional Shortage Area (HPSA).
- According to the 2016 County Health Rankings, Brooklyn ranks 52nd out of 62 counties in New York State with respect to health outcomes.
- The service area for Novo Dialysis is a predominantly minority neighborhood with high poverty rates.
- Travel is often difficult over short distances in Brooklyn, a dialysis clinic only a few miles, or even blocks, away may require excessive travel time.
- There are currently no operational dialysis services available in the applicant's zip code.

### Conclusion

Approval will provide a proximate resource for an at-risk population.

## Program Analysis

### Program Description

Proposed Operator	Novo Dialysis Flatlands, LLC
Doing Business As	Novo Dialysis Flatlands
Site Address	2306 Nostrand Avenue Brooklyn, NY 11210 (Kings County)
Approved Services	Chronic Renal Dialysis (27 Stations) Home Hemodialysis Training and Support
Hours of Operation	Monday-Wednesday-Friday: 7am -7pm Tuesday-Thursday-Saturday: 7am-7pm
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	15.7 FTEs / 31.7 FTEs
Medical Director(s)	Saggi Subodh, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by SUNY Downstate Medical Center 2.2 miles / 12 minutes

### Character and Competence

The proposed membership of Novo Dialysis Flatlands, LLC is provided below:

Name	Interest
<b>Novo Dialysis, LLC</b>	<b>90.0%</b>
Aditya Mattoo, MD (100%), <i>manager</i>	
<b>Arye Kremer, MD, <i>manager</i></b>	<b>10.0%</b>

**Dr. Mattoo** is a practicing physician, board-certified in internal medicine with sub-certification in nephrology. He has over 12 years of experience caring for and managing patients with end-stage renal disease who have received a kidney transplant or are undergoing dialysis. In addition to his medical degree, Dr. Mattoo reported that he has earned a master's degree in Business Administration from NYU Stern School of Management with a focus on entrepreneurship and healthcare administration.

**Dr. Kremer** is a practicing physician, board-certified in internal medicine. He has over two years' experience caring for and managing patients with end stage renal disease undergoing dialysis as the Assistant Professor of Medicine in the Division of Nephrology at SUNY Downstate Medical Center. He has also served as their Director of the Inpatient Dialysis Unit since July 2018.

The Medical Director for the Center will be **Subodh Saggi, MD**. Dr. Saggi is also a practicing physician, board-certified in internal medicine with sub-certification in nephrology. He has spent the last 10 years at SUNY Ambulatory Parkside Dialysis Center serving as its medical director. He is also a Professor of Medicine and Director of Extracorporeal Therapies at SUNY Downstate Medical Center. Dr. Saggi has been an Advisory Board Member of the ESRD Network for eight year and has served on the Dialysis Advisory Committee for the past three years.

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**

**Total Project Cost and Financing**

Total project cost for renovation, equipment and fees is estimated at \$2,891,147 broken down as follows:

Renovation & Demolition	\$1,530,000
Design Contingency	153,000
Construction Contingency	153,000
Fixed Equipment	214,200
Architect/Engineering Fees	122,400
Other Fees	75,000
Movable Equipment	575,076
Financing Costs	10,000
Interim Interest Expense	40,668
Application Fee	2,000
Processing Fee	<u>15,803</u>
Total Project Cost	\$2,891,147

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

The applicant's financing plan is as follows:

Equity (from proposed members)	\$420,391
Landlord Contribution	225,000
Bank Loan	<u>2,245,773</u>
Total	\$2,891,147

The bank loan will be under one of two options. Option 1: Prime + 0% with a floor of 2.50% and/or 30 LIBOR+2.75% with a floor of 2.75% or Option 2: Fixed rate pricing tied to the equivalent year SWAP index 2.75% with a floor of 3.50% for terms of 3 years or less, 4% for terms of 4-5 years and 5.0% for terms of 6-7 years. Payment terms will be interest only during the construction period, followed by a balance fully amortized over 60-months.

City National Bank has submitted a letter of interest for the financing at the stated amount and terms listed above.

BFA Attachment A is a summary of the proposed members' net worth, which indicates sufficient resources proportional to ownership interest to cover the equity requirement.

**Lease Agreement**

The applicant has submitted a draft lease for the site to be occupied. The terms are summarized below:

Premises:	Approximately 10,000 square feet located at 2306 Nostrand Avenue, Ground Floor, Brooklyn, New York 10012
Lessor:	2294 Nostrand Holding LLC
Lessee:	Novo Dialysis Flatlands LLC
Term:	10 years and 9 months with two 5-year renewal options
Rental:	Year 1-3: \$350,000 annually (approximately \$35.0 per sq. ft.) Year 4: \$357,000 annually (approximately \$35.7 per sq. ft.) Year 5: \$364,140 annually (approximately \$36.4 per sq. ft.) Year 6-20: 2% annually increases each year.
Provisions:	Lessee pays maintenance fees and other operating charges including gas, electric, water, sewer, insurance, building personnel costs, repairs and taxes based on use.

The applicant has provided an affidavit attesting that the lease is an arm’s length agreement, as there is no relationship between landlord and tenant. The applicant has submitted letters from two New York realtors attesting to the rent reasonableness.

**Operating Budget**

The applicant has submitted an operating budget for the first and third years, in 2018 dollars, which is summarized below:

	<u>Year One</u>		<u>Year Three</u>	
<u>Revenues</u>	<u>Per Treat.</u>	<u>Total</u>	<u>Per Treat.</u>	<u>Total</u>
Commercial - MC	\$409.95	\$214,812	\$409.95	\$644,436
Medicare - FFS	\$304.74	1,730,290	\$304.72	5,190,869
Medicare - MC	\$296.93	544,864	\$296.98	1,634,593
Medicaid - FFS	\$227.54	19,796	\$226.68	59,389
Medicaid - MC	\$211.98	129,730	\$212.09	389,189
Bad Debt		(52,790)		(158,370)
Total Revenue		\$2,586,702		\$7,760,106
 <u>Expenses</u>				
Operating	\$219.77	\$1,919,939	\$161.93	\$4,243,980
Capital	\$129.04	1,127,277	\$42.21	1,106,263
Total	\$348.81	\$3,047,216	\$204.15	\$5,350,243
 Net Income/(Loss)		 (\$460,514)		 \$2,409,863
 Treatments		 8,424		 25,272

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

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial - MC	6.0%	6.0%
Medicare - FFS	65.0%	65.0%
Medicare - MC	21.0%	21.0%
Medicaid - FFS	1.0%	1.0%
Medicaid - MC	7.0%	7.0%
Total	100.0%	100.0%

Revenue assumptions are based upon current reimbursement methodologies by payor for dialysis services. Expense and utilization assumptions are based on historical trends of other dialysis centers in the area and the past experience of the proposed operators. Revenue and expense assumptions also include a review by the applicant of cost reports and financial statements of other providers located in NYC. Once fully operational, the Center will be operating six days per week and averaging 2.5 shifts per day. The applicant stated that any initial operating losses will be covered by the members.



### **Capability and Feasibility**

Total project costs of \$2,891,147 will be met via \$420,374 equity from the proposed members, a \$225,000 landlord contribution, and a bank loan for \$2,245,773 at either Option 1: Prime + 0% with a floor of 2.50% and/or 30 LIBOR+2.75% with a floor of 2.75% or Option 2: Fixed rate pricing tied to the equivalent year SWAP index 2.75% with a floor of 3.50% for terms of 3 years or less, 4.5% for terms of 4-5 years and 5.0% for terms of 6-7 years. Payment terms will be interest only during the construction period, followed by the balance fully amortized over 60 months. Prepayment penalties apply for both options. City National Bank has provided a letter of interest for the financing at the stated terms. BFA Attachment A indicates sufficient resources for the equity contribution.

The working capital requirement is estimated at \$1,352,221 based on two months of the third-year expenses plus a net loss projected in year one. The proposed members will provide \$797,994 in equity and a \$554,227 working capital loan at the same terms as the construction loan listed above. City National Bank has provided a letter of interest for the working capital financing at the stated terms.

BFA Attachment B is the pro-forma balance sheet of Novo Dialysis Flatlands LLC as of the first day, which indicates the operations will begin with positive members' equity of \$1,443,368.

The submitted budget projects a net profit/(loss) of (\$460,514) and \$2,409,863 during the first and third years, respectively. Revenue assumptions are based upon current reimbursement methodologies by payor for dialysis services. Expense and utilization assumptions are based on historical trends of other dialysis centers in the area and past experience of the proposed operators. Revenue and expense assumptions also includes a review by the applicant of cost reports and financial statements of other providers located in NYC. The Year One loss is due to the Center not being fully operational and is expected in the first year of operations. Once fully operational, the Center will be operating six days per week and averaging 2.5 shifts per day. The applicant stated that any initial operating losses will be covered by the members. The budget appears reasonable.

Subject to the noted contingencies, 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	Net Worth Statement of proposed members
BFA Attachment B	Pro Forma Balance Sheet of Novo Dialysis Flatlands LLC
BFA Attachment C	Organization Chart



Project # 191077-B Cobble Hill Dialysis

Program: Diagnostic and Treatment Center County: Kings
Purpose: Establishment and Construction Acknowledged: February 21, 2019

Executive Summary

Description

Cobble Hill Dialysis, Inc., a to-be-formed New York limited liability company, requests approval to establish and construct a 12-station, Article 28 chronic renal disease center within Cobble Hill Health Center, Inc., a 364-bed, voluntary not for profit, Article 28 residential health care facility (RHCF) located at 380 Henry Street, Brooklyn (Kings County). The RHCF includes two buildings linked at their basement and cellar levels. Existing basement space totaling 5,623 gross square feet will be renovated to house the dialysis program. Both buildings have dedicated elevator services and egress stairs for access to the proposed clinic location, allowing RHCF residents to have access to the dialysis center from all five floors of the RHCF. The target population to be served includes the residents of the RHCF, as well as the residents of the surrounding community within Kings County.

The proposed sole member of Cobble Hill Dialysis, Inc. will be Cobble Hill Health Lifecare, Inc., a Delaware not for profit corporation. Marie-Alex Michel, M.D., who is board certified in Nephrology and Internal Medicine, will serve as Medical Director. Transfer Agreements are being negotiated with Brooklyn Hospital Center and New York-Presbyterian Brooklyn Methodist Hospital for backup emergency care.

The applicant will lease the dialysis space from Cobble Hill Health Center, Inc. There is a relationship between the building's owner/landlord and the tenant in that the entities will have mirror boards.

OPCHSM Recommendation

Contingent Approval

Need Summary

There was previously a five-station dialysis unit operated by an un-related party that recently closed. RHCF residents that were being treated in the unit were forced to find a new location for services. Many of these residents were discharged to other nursing home facilities as transportation for dialysis services to an off-site facility presented numerous challenges. The availability of dialysis services within the RHCF complex will help ensure that the nursing home's residents in need of dialysis receive it in an efficient, less stressful manner.

Program Summary

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

Financial Summary

Total project costs of \$2,227,885 will be met via accumulated funds from Cobble Hill Health Center, Inc. and Subsidiary. The proposed budget is as follows:

Table with 3 columns: Category, Year One, Year Three. Rows: Revenues, Expenses, Net Income/Loss.

## **Recommendations**

### **Health Systems Agency**

There will be no HSA recommendation for this project.

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

#### **Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
4. Submission of an executed Assignment and Assumption Agreement for the Administrative Consulting Agreement, acceptable to the Department of Health. [BFA]
5. Submission of documentation of Cobble Hill Health Lifecare, Inc.'s authority to do business in New York State, acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of amended and executed Lease Agreement, acceptable to the Department. [CSL]
7. Submission of a photocopy of an amended and executed Certificate of Incorporation, acceptable to the Department. [CSL]
8. Submission of a photocopy of the authority to do business in New York, acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed Resolution of the Board of Directors, acceptable to the Department. [CSL]
10. Submission of a photocopy of the amended bylaws, acceptable to the Department. [CSL]
11. Submission of a photocopy of an amended and executed Administrative Services Agreement, acceptable to the Department. [CSL]
12. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
13. 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 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. Construction must start on or before November 1, 2019 and construction 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 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]

4. The applicant must facilitate the registering or updating as necessary of the facility to the Department's Health Commerce System (HCS). The HCS is a 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 and Treatment Centers at 518-402-1004. [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**  
**August 8, 2019**

## Need Analysis

### Analysis

The primary service area for the new facility will be Kings County, which had a population estimate of 2,582,830 for 2018. The percentage of the population aged 65 and over was 13.9%. The nonwhite population percentage was 50.5%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Kings County and New York State are shown below.

	Kings County	New York State
Ages 65 and Over	13.9%	16.4%
Nonwhite	50.5%	30.3%

Source: U.S. Census 2019

### Need Projection

Chronic End Stage Renal Disease (Dialysis) Stations / Need Projected Through 2021							
County	Existing Stations	Pending Stations	Total Current Stations	Total Need 2021	Unmet Need 2021	County-wide Stations Under Review	Unmet Need After Approval
	a	b	c	d	e	f	g
			( a + b )		( d - c )		( e - f )
<b>Kings</b>	<b>900</b>	<b>402</b>	<b>1302</b>	<b>1227</b>	<b>-75</b>	<b>51</b>	<b>-126</b>
As of June 26, 2019							
Column (a): Existing Stations: Stations in Operation							
Column (b): Pending Stations: Includes projects with Contingent Approval and projects, excluding this application, with recommendations of approval by the Bureau of Public Need Review, but not yet approved							
Column (f): Stations Under Review: Includes the subject application and all other active CONs under review for in the service area.							

In 2017 there were approximately 4,500 patients receiving dialysis treatment in Kings County. There are currently 900 existing stations which can treat approximately 4,050 patients based on the departmental standard of freestanding facilities: 4.5 patients utilizing 2.5 shifts, per station. The industry routinely runs at approximately 3 shifts per station. There are 402 stations in the pipeline which can treat approximately 1,809 additional patients per established guidelines. Local factors submitted in support of this project include:

- The clinic will be located within the Cobble Hill Nursing Facility, eliminating the need to go off-site for services and reducing the burden on nursing home residents in need of dialysis services.
- Cobble Hill previously had a 5-station clinic which closed due to its size and financial viability. 12 residents transferred to other nursing homes when the clinic closed. The applicant estimates it loses between 6-10 referrals per week due to the lack of on-site dialysis.
- Cobble Hill currently has 13 residents who need to be transported to receive dialysis care.
- An analysis of the 11201 zip code supports the need for stations in this location. There are two operational clinics of six and 25 stations, respectively. While occupancy data is available only for the 25-station clinic, it shows occupancy of 150%.

### Conclusion

The availability of dialysis services within the RHCF complex will help ensure that the nursing home's residents in need of dialysis receive it in an efficient, less stressful manner, as well as provide an additional resource to patients residing in the community.

## Program Analysis

### Program Description

Proposed Operator	Cobble Hill Dialysis, Inc
Doing Business As	Cobble Hill Dialysis Center
Site Address	380 Henry Street Brooklyn, NY 11201 (Kings County)
Approved Services	Chronic Renal Dialysis (12 Stations)
Shifts/Hours/Schedule	Initially, the clinic will operate 3 days/week then Monday-Wednesday-Friday 6:30 am-6:30pm Tuesday-Thursday-Saturday 6:30am-6:30pm Sun: As needed for religious accommodations
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	9.2 FTEs / 19.1 FTEs
Medical Director(s)	Marie-Alex Michel, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by: Brooklyn Hospital Center 1.7 miles / 17 minutes

### Character and Competence

The board of directors of Cobble Hill Dialysis Center, Inc. is comprised of:

<u>Name</u>	<u>Title</u>
Joan Millman	<i>Director</i>
Thomas Spath	<i>Director</i>
Peter Yatrakis	<i>Director</i>

**Ms. Millman** retired from the NYS Assembly in 2014. She reported that, during her time in the Assembly, she assisted in the drafting of legislation and worked with a variety of city, state and federal agencies to assist constituents in resolving issues.

**Mr. Spath**, an attorney with 40 years of experience, is currently employed by a firm that specializes in intellectual property law. In addition to his responsibilities to clients, he also manages personnel and the operations of the firm's Patent Department.

**Mr. Yatrakis** reported that he is retired.

**Ms. Millman** and **Messrs. Spath** and **Yatrakis** each have several years of experience serving on the board of directors at Cobble Hill Health Center and Your Choice at Home (certified home health agency).

Disclosure information was similarly submitted and reviewed for the proposed medical director, **Marie-Alex Michel, MD**. Dr. Michel is a board-certified practicing nephrologist with over 30 years of experience. She earned her medical degree in Haiti and completed a nephrology fellowship at Long Island College Hospital. Since 1992, Dr. Michel has been the Nephrology Division Chief at Woodhull Medical and Mental Health Center and has been the Nephrology Attending at Ridgewood Dialysis Center since 1998.

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**

**Total Project Cost and Financing**

Total project costs for renovations, equipment and fees is estimated at \$2,227,885 broken down as follows:

Renovation & Demolition	\$1,445,708
Architect/Engineering Fees	144,110
Other Fees	75,000
Movable Equipment	548,892
CON Fee	2,000
Additional Processing Fee	<u>12,175</u>
Total Project Cost	\$2,227,885

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

The applicant will finance the \$2,227,885 project cost via accumulated funds from Cobble Hill Health Center, Inc. and Subsidiary. BFA Attachment B shows sufficient funds.

**Administrative Consulting Agreement**

The applicant has submitted an executed Administrative Consulting Agreement (ACA). The terms of the agreement are summarized below:

Date:	August 10, 2018
Facility:	Cobble Hill Health Center
Consultant:	Geripro Dialysis Consultants, LLC
Services Rendered:	Gather documentation for Certificate of Need application and assist with submission; review and make recommendations regarding working drawings, facility design and specifications; Establish corporate entity for the dialysis center; Coordinate and attend site visits with contractors/architect; Create clinical and log forms; Train staff on accounting, billing and revenue management systems; Monitor construction to ensure compliance with environmental and life safety codes; Draft organizational documents; Coordinate billing and collections; Perform monthly financial analysis; Assist in recruitment, retention, and compensation evaluations; Develop and revise policy and procedures; advise in quality assurance; Perform medical record audits; Address interdepartmental issues; Develop ordering process; Audit drug utilization; perform monthly inventory review; make recommendations for strategic growth; track referral turnaround times; monitor hospital readmissions; establish best practice processes to meet benchmarks in efficiency; address operational issues; develop staff and training program; negotiate pricing for supplies and equipment; develop and maintain facility formulary for drugs and supplies.

Term:	Yearly
Compensation:	\$85,000 startup service fee to be paid in seven installments. Administrative & Management Service Fee of \$6,000 monthly following opening approval.

Cobble Hill Health Center retains ultimate control in all final decisions associated with the services. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

### Assignment and Assumption Agreement

The applicant has submitted an executed Assignment and Assumption Agreement for the assignment of the assets associated with the Administrative Consulting Agreement as shown below:

Date:	April 10, 2019
Assignor:	Cobble Hill Health Center, Inc.
Assignee:	Cobble Hill Dialysis, Inc.
Services Rendered:	All assignor's interest to assignee and Assignee has agreed to assume all of the duties and obligations under the Agreement.

### Lease Agreement

The applicant has submitted a draft lease agreement for the site to be occupied, the terms of which are summarized below:

Premises:	5,623 square feet in the basement level of 380 Henry Street, Brooklyn, New York 11201
Landlord:	Cobble Hill Health Center, Inc.
Tenant:	Cobble Hill Dialysis, Inc.
Term:	Five years and extended for successive one-year periods.
Rent:	\$77,000 annually (\$6,416.67 per month)
Provisions:	Insurance, maintenance and utilities will be paid for by applicant.

The applicant indicated that when the project commenced, and the layout was discussed, there was an initial impression that the overall space needed for the proposed dialysis would be 3,500 square feet. Revisions to the plans have increased the total space to the current proposal of 5,623 square feet. While the draft lease states 3,500 square feet, that number will be increased in the final version as required to properly define the premises. The rent will not change as to what is proposed in the financial projections.

The applicant submitted an affidavit that the lease is a non-arm's length agreement, as there is a relationship between the landlord and the tenant. The applicant has submitted letters from two New York realtors attesting to the rent reasonableness.

### Operating Budget

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

	Year One		Year Three	
	Per Visit	Total	Per Visits	Total
<u>Revenues</u>				
Commercial MC	\$349.96	\$589,680	\$349.96	\$1,179,360
Medicare MC	\$300.03	1,095,120	\$299.99	2,190,240
Medicaid MC	\$285.80	80,309	\$285.80	160,618
Bad Debt		(35,302)		(70,605)
Total Revenues		\$1,729,807		\$3,459,613



	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visits</u>	<u>Total</u>
<u>Expenses</u>				
Operating	\$238.69	\$1,340,473	\$219.69	2,467,781
Capital	<u>\$75.08</u>	<u>421,636</u>	<u>\$37.54</u>	<u>421,636</u>
Total Expenses	\$313.77	\$1,762,109	\$257.23	\$2,889,417
Net Income/(Loss)		<u>(\$32,302)</u>		<u>\$570,196</u>
Treatments		5,616		11,233
Cost Per Visit		\$313.77		\$257.23

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

- Revenue assumptions are based upon current reimbursement methodologies by payor for chronic renal dialysis services.
- Expense and utilization assumptions are based on the experience of other dialysis centers within Kings County and the contiguous county region.
- Rent is based on a cost allocation of the initially proposed space for the dialysis center, which equates to \$22.00 per square foot x 3,500 square feet. While the draft lease states 3,500 square feet, that number will be increased in the final version to properly define the premises. The annual rent will not change as a result in the increase in square footage of the dialysis center.
- The proposed Center will be open six days per week, although patient census will remain low at the onset. Once fully operational, the Center will continue operating six days per week.
- Utilization by payor source for the first and third years is as follows:

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial	1,685	30%	3,370	30%
Medicare	3,650	65%	7,301	65%
Medicaid	<u>281</u>	<u>5%</u>	<u>562</u>	<u>5%</u>
Total	5,616	100%	11,233	100%

The applicant provided a conservative utilization projection to reflect start-up issues and ramp-up of the dialysis center. The applicant will provide equity to cover any first-year operating loss that may occur because of the ramp-up of operations.

### **Capability and Feasibility**

The total project costs of \$2,227,885 will be met with equity of \$2,227,885 from Cobble Hill Health Center, Inc. and Subsidiary.

Working capital requirements are estimated at \$481,570 based on two months of Year Three expenses. Cobble Hill Health Center, Inc. will provide the \$481,570 in equity. BFA Attachment B is the 2018 internal financial statements of Cobble Hill Health Center, Inc., which indicates sufficient funds to meet the working capital requirement. BFA Attachment C is the pro forma balance sheet of Cobble Hill Dialysis as of the first day, which indicates the operations will begin with positive retained earnings of \$2,160,562.

The submitted budget projects a net loss of \$32,302 for the first year and net income of \$570,196 for the third year. Medicare and Medicaid reflect prevailing reimbursement methodologies. All other revenues assume current reimbursement methodologies. Cobble Hill Health Center, Inc. has submitted an affidavit that they will provide additional funding, if necessary, to cover any net operating losses. The budget appears reasonable.

BFA Attachment B is a summary of Cobble Hill Health Center, Inc and Subsidiary's Internal Financial Statement as of December 31, 2018. As shown, the entity maintained a positive working capital position, an average positive net asset position and generated a loss of \$661,358. To improve operations the applicant implemented the following measures, and expect the improvements will result in a surplus for full year 2019:

- Introduced a new admissions and marketing team to enhance relationships with area hospitals to improve patient census and payor mix in the second half of the year;
- Worked on a facility-wide initiative to ensure reimbursements reflect the level of care provided to the residents; and
- Reduced some large expenses, like workers' compensation and major medical, and will continue to seek other ways of reducing expenses where appropriate.

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

## **Attachments**

- |                  |   |
|------------------|---|
| BFA Attachment A | 2016 and 2017 Certified Financials of Cobble Hill Health Center, Inc. and Subsidiary    |
| BFA Attachment B | December 31, 2018 Internal Financials of Cobble Hill Health Center, Inc. and Subsidiary |
| BFA Attachment C | Pro Forma Balance Sheet of Cobble Hill Dialysis.  |



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

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

**Executive Summary**

**Description**

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

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

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

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

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

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

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

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

**OPCHSM Recommendation**

Contingent Approval

**Need Summary**

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

**Program Summary**

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

**Financial Summary**

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

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

## **Recommendations**

### **Health Systems Agency**

There will be no HSA recommendation for this project.

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

#### **Approval contingent upon:**

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of a copy of Cowley LLC Operating Agreement 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/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]

### **Council Action Date**

**August 8, 2019**

## Need and Program Analysis

### Program Description

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

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

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

### Character and Competence

The proposed membership of Cowley Dialysis, LLC are:

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

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

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

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

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

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

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

### **Compliance with Applicable Codes, Rules and Regulations**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Conclusion**

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).



## Financial Analysis

### Financial Analysis

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

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

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

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

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

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

### Lease Agreement

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

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

### Assignment and Assumption of Lease Agreement

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

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

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

### Consulting and Administrative Services Agreement

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

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

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

## Operating Budget

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

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

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

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

The following is noted regarding the submitted budgets:

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

## Capability and Feasibility

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

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

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

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

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

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

## **Attachments**

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



Project # 182301-E
Brookhaven Home Care, LLC

Program: LHCSA
Purpose: Establishment

County: Suffolk
Acknowledged: December 27, 2018

Executive Summary

Proposal

Brookhaven Home Care, LLC, a proposed limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. This LHCSA will be associated with the Assisted Living Program to be operated by Brookhaven Care Center. The LHCSA and the ALP will have identical membership.

The proposed members are:

Table with 4 columns: Name, Percentage, Name, Percentage. Rows include Rachel Lifshutz (20%), Ethan A. Marcovici, Esq. (20%), Tammy Kahane (10%), Elias Marcovici (20%), Esther Zeidman (20%), and Eric Mendel (10%).

The applicant proposes to provide the following health care services:

- Nursing
Home Health Aide
Personal Care

The applicant will be restricted to serving the residents of the associated Assisted Living Program in Suffolk County from an office located at 111 Beaver Dam Road, Brookhaven, New York 11719.

Recommendation

Office of Primary Care and Health Systems Management

Approval, contingent upon:

- 1. Submission of a photocopy of the applicant's amended and executed Articles or Organization, acceptable to the Department. [CSL]
2. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. [CSL]

Approval, conditional upon:

- 1. The Agency is restricted to serving the residents of the associated Assisted Living Program.

Council Action Dates

Establishment and Project Review - July 18, 2019
Public Health and Health Planning Council - August 8, 2019

# Review

## Character and Competence

The proposed membership of Brookhaven Home Care, LLC is comprised of the following individuals:

### Rachel Lifshutz – 20%

Compliance Consultant, Surfside Manor Home for Adults  
Compliance Officer, Kings Adult Care Center

### Elias Marcovici – 20%

Managing Member, Blake Properties LLC

### Ethan A. Marcovici, Esq. – 20%

General Counsel, Blake Partners LLC

### Esther Zeidman – 20%

Compliance **Consultant**, Surfside Manor Home for Adults  
Compliance Officer, Mermaid Home for Adults  
Affiliation  
Beacon Rehabilitation and Nursing Center (NH, 2006-2016)

### Tammy Kahane – 10%

Speech Language Pathologist; Service Coordinator, Self Employed

### Eric Mendel – 10%

Operator of multiple Licensed Home Care Services Agencies, a Certified Home Health Agency and an Assisted Living Program.

#### Affiliations

Metrostar Home Care, LLC (LHCSA, 2015 – Present)  
Assisted Home Care, LLC d/b/a Prime Assisted Home Care (LHCSA, 2016 – Present)  
Prime Home Health Services, LLC (CHHA, 2007 – Present)  
Central Assisted Living, LLC (ALP, 2008 – Present)  
Central Assisted Living, LLC d/b/a Central Home Care (LHCSA, 2008 – Present)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List. A search of the individual named above on the New York State Unified Court System revealed that the individual is currently registered and has no disciplinary actions taken against them.

A seven-year review of the operations of the affiliated facilities/ agencies was performed as part of this review (unless otherwise noted). The information provided by the Division of Home and Community Based Services, the Bureau of Quality and Surveillance and the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

<b>CHHA Quality of Patient Care Star Ratings as of June 24, 2019</b>	
<b>New York Average: 3 out of 5 stars National Average: 3.5 out of 5 stars</b>	
<b>CHHA Name</b>	<b>Quality of Care Rating</b>
Prime Home Health Services, LLC	4.5 out of 5 stars

## Conclusion

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.



**Project # 191097-E**

**Oyster Bay Manor Home Care, Inc.**

**Program:** LHCSA  
**Purpose:** Establishment

**County:** Nassau  
**Acknowledged:** March 5, 2019

**Executive Summary**

**Proposal**

Oyster Bay Manor Home Care Inc. d/b/a Oyster Bay Manor Home Care, a for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Oyster Bay Manor Home Care will be associated with the Assisted Living Program, Oyster Bay Manor Senior Residence, Inc. d/b/a Oyster Bay Manor. The ownership of the LHCSA and the ALP are identical.

The LHCSA will be restricted to serving the residents of the associated Assisted Living Program in Rockland County from an office located at 150 South Street, Oyster Bay, New York 11771.

The applicant proposes to provide the following health care services:

- Nursing
- Home Health Aide
- Personal Care

**Recommendations**

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

**Approval contingent upon:**

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

**Approval conditional upon:**

1. The Agency is restricted to serving the residents of the associated Assisted Living Program. [CHA]

**Council Action Date**

Establishment and Project Review - July 18, 2019  
Public Health and Health Planning Council - August 8, 2019

## Review

### Character and Competence

Oyster Bay Manor Home Care, Inc. has authorized 200 shares of common stock, which are owned as follows:

**Rachel Dombrowsky** – 150 Shares  
Administrator, Oyster Bay Manor

#### Affiliations

- Oyster Bay Manor (AH, 1994 – present)
- Oyster Bay Manor Senior Residence d/b/a Harbor House (AH/ALR, 2002 – present)
- Brookville Home Care LLC (LHCSA, 2014 – present)

**Nicholas Mormando** – 50 Shares  
Retired

#### Affiliations

- Oyster Bay Manor Senior Residence d/b/a Harbor House (AH/ALR – 2007 – present)

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List. A seven-year review of the operations of the affiliated facilities/ agencies was performed as part of this review.

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

- **Oyster Bay Manor, Inc.** was fined seven hundred and eighty dollars (\$780.00) pursuant to a stipulation and order dated August 7, 2017 for inspection findings on December 16, 2016; and March 16, 2017 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487 Sections 487.4(b)(9).
- **Oyster Bay Senior Residence, Inc.** d/b/a Harbor House was fined a civil penalty in the amount of twenty thousand dollars (\$20,000) pursuant to Section 460-d of the Social Services Law, in accordance to a stipulation and order dated December 20, 2011 for inspection findings on July 17, 2007; July 3, 2008; January 21, 2009; December 11, 2009; February 19, 2010 and August 3, 2010 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487.

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.

### 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.





**Project # 191210-E**

**Supportive Home Care, LLC d/b/a Care365 Homecare**

**Program:** LHCSA  
**Purpose:** Establishment

**County:** Kings  
**Acknowledged:** May 2, 2019

**Executive Summary**

**Proposal**

Supportive Home Care, LLC d/b/a Care365 Homecare, a limited liability company, requests approval to merge two licensed home care services agencies into one new licensed agency under Article 36 of the Public Health Law.

The sole member of Supportive Home Care, LLC is Avi Phillipson.

Supportive Home Care, LLC d/b/a Care365 Homecare has purchased the assets of two licensed home care agencies:

1. Barksdale Home Care Services Corporation, and
2. Tov-Care Home Health Services, LLC d/b/a Care365

Upon approval, the licenses of Barksdale Home Care Services Corporation and Tov-Care Home Health Services, LLC will be surrendered, and a new license will be issued to Care365 Homecare with the existing sites becoming sites of the newly formed LHCSA.

The applicant will provide Nursing, Personal Care Aide, and Home Health Aid services.

Care365 Homecare will serve the counties already approved for the two existing LHCSAs: Bronx, Kings, New York, Queens, Richmond and Westchester Counties.

**Recommendations**

**Office of Primary Care and Health Systems Management  
Approval**

**Council Action Date**

Establishment and Project Review - July 18, 2019

Public Health and Health Planning Council - August 8, 2019

## **Review**

### **Character and Competence**

The sole member of Supportive Home Care, LLC d/b/a Care365 Homecare is Avi Phillipson.

#### **Avi Phillipson – 100%**

Operations Manager, Standard & Preferred Insurance Co.

##### Affiliations

Bronx Gardens Rehabilitation & Nursing Center (SNF, 11/30/2016 – Present)

Cold Spring Hills Center for Nursing and Rehabilitation (SNF, 6/2016 – Present)

Ross Center for Nursing and Rehabilitation (SNF, 6/2016 – Present)

Seagate Rehabilitation and Nursing Center (SNF, 12/2014 – Present)

The Plaza Rehabilitation & Nursing Center (SNF, 5/4/2017 - Present)

A search of the individual 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 affiliated facilities/agencies was performed as a part of this review (unless otherwise noted). The information provided by the Bureau of Quality and Surveillance has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.


### **Conclusion**

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.



## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Richard J. Zahnleuter  
General Counsel 

**Date:** July 2, 2019

**Subject:** Dissolution: Jewish Care Services of Long Island, Inc.

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Jewish Care Services of Long Island, 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 following payment of the liabilities of the Corporation, the Corporation will have no assets to distribute.

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](http://www.garfunkelwild.com)

FILE NO.: 12261.0058

June 12, 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

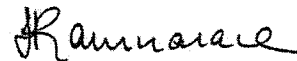
Re: Proposed Certificate of Dissolution of Jewish Care Services of Long Island, Inc.

Dear Mr. Chin:

Per your request of June 11, 2019, please note that Jewish Care Services of Long Island, 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 interest 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.

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NEW YORK

NEW JERSEY

CONNECTICUT

# PHHPC

## ***PUBLIC HEALTH AND HEALTH PLANNING COUNCIL***

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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 Jewish Care Services of Long Island, Inc.

Dear Ms. Ramnarace:

I have received your letter dated March 26, 2019, regarding the Certificate of Dissolution of Jewish Care Services of Long Island, 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 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 Jewish Care Services of Long Island, Inc.

Dear Mr. Schweitzer:

I enclose a copy of the proposed Certificate of Dissolution of Jewish Care Services of Long Island, 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.

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NEW YORK

NEW JERSEY

CONNECTICUT

CERTIFICATE OF DISSOLUTION

OF

JEWISH CARE SERVICES OF LONG ISLAND, INC.

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

I, Lynn Berger, Vice President and Secretary of Jewish Care Services of Long Island, Inc. hereby certify:

1. The name of this Corporation is Jewish Care Services of Long Island, 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 \_\_\_\_\_, 20\_\_, 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 Jewish Care Services of Long Island, Inc. this 19<sup>th</sup> day of JUNE, 2019.



Name: Lynn Berger

Title: Vice President and Secretary



CERTIFICATE OF DISSOLUTION  
OF  
FECS 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

----- X  
 In the Matter of the Application of :  
 Jewish Care Services of Long Island, Inc. :  
 :  
 For Approval of Plan of :  
 Dissolution and Distribution of Assets pursuant to :  
 Section 1002 of the Not-for-Profit :  
 Corporation Law. :  
 ----- X

VERIFIED PETITION  
 AG # \_\_\_\_\_

TO:  
 THE ATTORNEY GENERAL OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK

Petitioner, Jewish Care Services of Long Island, Inc. (the "Corporation"), by Lynn Berger, Vice President, Secretary and Director of the Corporation for its Verified Petition respectfully alleges:

1. Jewish Care Services of Long Island, Inc., whose principal office is located in the county of New York, was incorporated pursuant to New York's Not-for-Profit Corporation Law on March 18, 1977. A copy of the Certificate of Incorporation (and all amendments) is attached as Exhibit A.
2. The names, addresses and titles of the Corporation's officers and directors are as follows:

<u>Name</u>	<u>Title</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

3. The purposes for which the Corporation was organized are as follows:
  - a. To provide social services and other non-health related enrichment services to convalescent, physically disabled and other home-bound persons, such as individual and family counseling but not to include psychological, medical and psychiatric counseling, housekeeping, and similar services.

- b. To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors or officers except as permitted under Article 5 of the Not-for-Profit Corporation Law, provided, however, the corporation shall not be directly or indirectly engage in or include among its purposes any of the activities described in Section 757 of the Executive Law or Sections 404 (b)-(q) of the Not-for-Profit Corporation Law.
4. The Corporation is a charitable corporation.
5. The assets of the Corporation and their fair market value are as follows:

Cash: \$27,021.00
6. The Corporation's liabilities are as follows:

Legal fees for dissolution process (including publication of notice to potential creditors): \$6,500.00

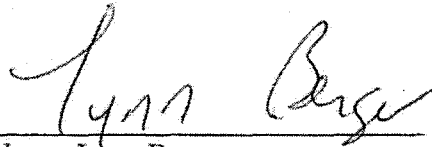
Accounting fees for dissolution process: \$3,000.00

Unsecured debt owed to Federation Employment and Guidance Services, Inc.: \$744,014.00.
7. No gifts, property or other assets of the Corporation are held for restricted use.
8. The Corporation is contemplating a dissolution and the assets of the Corporation are to be distributed in accordance with the Plan of Dissolution and Distribution of Assets. The Corporation is dissolving because it ceased operations in March 2015 and its parent corporation in winding down post-bankruptcy filing.
9. Following payment of the liabilities of the Corporation, the Corporation will have no assets to distribute.
10. The By-laws of the Corporation provide that the Corporation shall have a sole member, Federation Employment and Guidance Service, Inc.
11. By Unanimous Written Consent of the Board of Directors of the Corporation signed as of September 21, 2016, (a copy of which is attached as Exhibit B), a Plan of Dissolution and Distribution of Assets (the "Plan") was adopted and authorizes the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. A certified copy of the Plan, executed by the duly authorized officers is attached as Exhibit C.
12. After the Board of Directors approved the Plan, the sole corporate member received it as required by N-PCL Section 1002(a). The member approved the Plan by Written Consent dated as of September 21, 2016. A copy of the Written Consent of the member is attached as Exhibit D.

13. Consent is required by the New York State Department of Taxation and Finance, along with the approval of the Attorney General of the State of New York of the dissolution of the Corporation.
14. After the Plan of Dissolution and Distribution of Assets is approved by either the Attorney General or the Supreme Court pursuant to Section 1002(d) of the Not-for-Profit Corporation Law, the Corporation shall publish a notice in accordance with Section 1007(a) of the Not-for-Profit Corporation Law requiring all creditors and claimants to present their claims. A copy of the Notice is attached hereto as Exhibit E. Any claims received will be managed in accordance with Section 1007(b) of the Not-for-Profit Corporation Law.
15. No previous application for approval of the Plan of Dissolution and Distribution of Assets of the Corporation has been made.

WHEREFORE, petitioner requests that the Attorney General approve the Plan of Dissolution and Distribution of Assets of Jewish Care Services of Long Island, Inc., a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1002.

IN WITNESS WHEREFORE, the Corporation has caused this Petition to be executed as of this 21<sup>st</sup> day of September, 2016, by



Name: Lynn Berger

Title: Vice President, Secretary and Director



**EXHIBIT A**

**Certificate of Incorporation (and all amendments)**

CERTIFICATE OF INCORPORATION

OF

JEWISH CARE SERVICES OF LONG ISLAND, 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 that:

FIRST: The name of the corporation is JEWISH CARE SERVICES OF LONG ISLAND, 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 type of corporation which the corporation shall be under Section 201 of the Not-for-Profit Corporation Law is Type B.

FOURTH: The corporation is formed for the following purpose or purposes:

To provide social services and other non-health related enrichment services to convalescent, physically disabled and other homebound persons, such as individual and family counseling but not to include psychological, medical and psychiatric counseling, housekeeping, and similar services.

To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors or officers except as permitted under Article 5 of the Not-for-Profit Corporation Law; provided, however, the corporation shall not directly or indirectly engage in or include among its purposes any of the activities described in Section 757.

of the Executive Law or Sections 404(b)-(g) of the Not-for-Profit Corporation Law.

To have in furtherance of its not-for-profit corporate purposes all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law, including the power to provide home health aide personnel to established home health agencies and other public agencies through contracts, but only in furtherance of the corporate purposes, together with the power to solicit grants and contributions for the foregoing purposes, but subject to any limitations contained in this Certificate of Incorporation or in the laws of the State of New York, and provided that nothing herein contained shall authorize the corporation to operate a hospital or to provide hospital service, health related services or home health agency services as defined in Article 28 of the Public Health Law.

FIFTH: The office of the corporation is to be located in the County of Queens, State of New York.

SIXTH: The territory in which the activities of the corporation are principally to be conducted is the State of New York.

SEVENTH: The name and address of each of the initial directors of the corporation are as follows:

<u>NAME</u>	<u>ADDRESS</u>
George Rothman	70-25 Yellowstone Boulevard Forest Hills, N.Y. 11375
Melvin Frankel	420 Beach 27th Street Far Rockaway, N.Y. 11691
Isabel L. Fantel	123-30 83rd Avenue Kew Gardens, N.Y. 11415

EIGHTH: The duration of the corporation is to be perpetual.



NINTH: The post office address within the State of New York to which the Secretary of State shall mail a copy of any notice required by law is c/o Guggenheimer & Untermyer, 80 Pine Street, New York, New York 10005.

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, 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 activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of 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 the corresponding provision of any future United States Internal Revenue Law) 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 any subsequent Federal tax laws).

2. The corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code of 1954 (or corresponding provisions of any subsequent Federal tax laws); shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code of 1954 (or corresponding provisions of any subsequent Federal tax laws); shall not retain any excess business holdings as defined in

FOURTH: 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, 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 activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of 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 the corresponding provision of any future United States Internal Revenue Law) 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 any subsequent Federal tax laws).

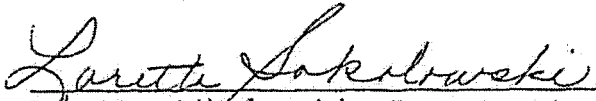
2. The corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code of 1954 (or corresponding provisions of any subsequent Federal tax laws); shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code of 1954 (or corresponding provisions of any subsequent Federal tax laws); shall not retain any excess business holdings as defined in

Section 4943(c) of the Internal Revenue Code of 1954 (or corresponding provisions of any subsequent Federal tax laws); shall not make any investments in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code of 1954 (or corresponding provisions of any subsequent Federal tax laws); and shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code of 1954 (or corresponding provisions of any subsequent Federal tax laws).

3. 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 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 the corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine.

ELEVENTH: Prior to the delivery of this Certificate of Incorporation to the Department of State for filing, any approvals or consents which are required by the Not-for-Profit Corporation Law or by any other statute of the State of New York before this Certificate of Incorporation may be filed in the Department of State will be endorsed upon this Certificate of Incorporation or annexed thereto, as the case may be.

Subscribed and affirmed by me as true under the penalties of perjury on February 4, 1977

  
Loretta Sokolowski, Incorporator  
42 East 17th Street  
Bayonne, New Jersey 07002

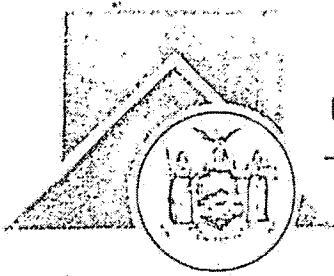
Notice of Application Waived  
(This is not to be deemed an  
approval on behalf of any  
Department or Agency of the  
State of New York, nor an  
authorization of activities  
otherwise limited by law.)

Dated: March 8, 1977

LOUIS J. LEFKOWITZ  
Attorney General

By: *Carol B. [Signature]*  
Assistant Attorney General  
*Bozicevic*





STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
ALBANY 12237

# PUBLIC HEALTH COUNCIL

February 14, 1977

Charles S. Guggenheimer, Esq.  
80 Pine Street  
New York, New York 10005

RE: Jewish Care Services of  
Long Island, Inc.

Dear Mr. Guggenheimer:

The proposed Certificate of Incorporation of Jewish Care Services of Long Island, 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 home health agency, as defined in Article 28 of the Public Health Law.

Paragraph (4) of said certificate contains a provision that the corporation is not authorized to operate a hospital or to provide hospital service, health related service or home health agency services, as defined in Article 28 of the Public Health Law.

Sincerely yours,

Marianne K. Adams  
Executive Secretary

COUNCIL

NORMAN S. MOORE, M.D.  
CH. A. RYAN  
BLONOVA P. BOND  
EDMOND E. BROWN  
JOSEPH R. FONTANETTA, M.D.  
WILLIAM LEE FROST

MORTON P. HYMAN  
Msgr. Charles Fahey  
W. KENNETH BILAND, D.O.  
JOHN F. ROACH, M.D.

HOWARD A. RUSK, M.D.  
JOHN M. WALSH  
Kenneth Woodward, M.  
COMMISSIONER OF HEALTH  
ROBERT P. WHALER, M.D.  
EX OFFICIO

JUN 6 1977

FILING RECEIPT  
CERTIFICATE OF INCORPORATION

STATE OF NEW YORK \_\_\_\_\_ DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS AND STATE RECORDS  
ALBANY

*P-J*  
ams

FILING RECEIPT - MISC.

TYPE OF CERTIFICATE	
Incorporation - Not-For-Profit	Type B
CORPORATION NAME	DATE FILED
JEWISH CARE SERVICES OF LONG ISLAND, INC.	March 18, 1977
FILM NO.	
41 Queens	A 386183-7
LOCATION OF PRIN. OFFICE	

FILER AND ADDRESS  
Guggenheimer & Untermyer  
80 Pine St.  
New York, NY 10005

6 DOLLAR FEE TO COUNTY

FEEES AND/OR TAX PAID AS FOLLOWS:

<input checked="" type="checkbox"/> CHK.	<input type="checkbox"/> M.O.	<input type="checkbox"/> CASH	\$	50
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\$ 50	FILING		
\$	TAX		
\$	CERTIFIED COPY		
\$	CERTIFICATE	TOTAL \$	50

REFUND OF \$ TO FOLLOW

*JK*

MARIO M. CUOMO  
SECRETARY OF STATE

**EXHIBIT B**

**Unanimous Written Consent of the Board of Directors**



**UNANIMOUS WRITTEN CONSENT OF THE  
BOARD OF DIRECTORS**

**OF**

**JEWISH CARE SERVICES OF LONG ISLAND, INC.**

The undersigned, being the Board of Directors of Jewish Care Services of Long Island, Inc., a New York State Not-for-Profit corporation (the "Corporation"), hereby consents to the adoption of the following resolution(s) without a meeting pursuant to Section 614 of the Not-for-Profit Corporation Law of the State of New York:

**WHEREAS**, the Corporation has determined that it is in the best interest of the Corporation to dissolve; and

**WHEREAS**, the Corporation has assets and liabilities;

**NOW THEREFORE BE IT:**

**RESOLVED**, that the attached Plan of Dissolution and Distribution of Assets is hereby adopted, and the same shall be presented to the sole corporate member for approval;

**RESOLVED**, that the officers of the Corporation be, and they hereby are, authorized and directed to cause the Corporation to be dissolved in accordance with the attached Plan of Dissolution; and be it further

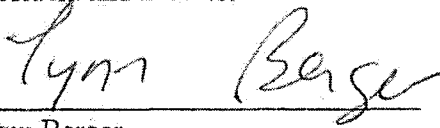
**RESOLVED**, that any and all actions heretofore or hereafter taken by the officers of the Corporation, in the name and on behalf of the Corporation in connection with the foregoing resolutions, be, and they hereby are, ratified, confirmed and approved in all respects as the acts and deeds of the Corporation.

This Unanimous Written Consent (this "Consent") may be executed in two or more counterparts, all of which together shall be deemed to be one and the same instrument. Delivery by facsimile or electronic mail (PDF) of a counterpart signature page hereto shall constitute execution and delivery of such counterpart of this Consent.

IN WITNESS WHEREOF, the undersigned have executed this Consent as of this 21<sup>st</sup> day of September, 2016.

---

M. Joseph Levin  
President and Director

  
Lynn Berger  
Vice President, Secretary and Director

---

Burton Strauss, Jr.  
Vice President, Treasurer and Director

This Unanimous Written Consent (this "Consent") may be executed in two or more counterparts, all of which together shall be deemed to be one and the same instrument. Delivery by facsimile or electronic mail (PDF) of a counterpart signature page hereto shall constitute execution and delivery of such counterpart of this Consent.

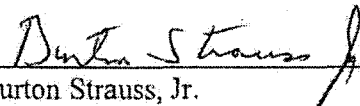
IN WITNESS WHEREOF, the undersigned have executed this Consent as of this 21<sup>st</sup> day of September, 2016.

---

M. Joseph Levin  
President and Director

---

Lynn Berger  
Vice President, Secretary and Director

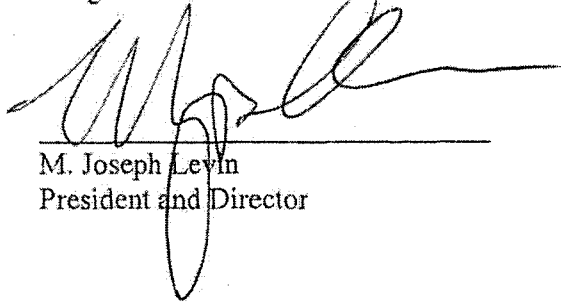


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Burton Strauss, Jr.  
Vice President, Treasurer and Director

This Unanimous Written Consent (this "Consent") may be executed in two or more counterparts, all of which together shall be deemed to be one and the same instrument. Delivery by facsimile or electronic mail (PDF) of a counterpart signature page hereto shall constitute execution and delivery of such counterpart of this Consent.

IN WITNESS WHEREOF, the undersigned have executed this Consent as of this 21<sup>st</sup> day of September, 2016.



---

M. Joseph Levin  
President and Director

---

Lynn Berger  
Vice President, Secretary and Director

---

Burton Strauss, Jr.  
Vice President, Treasurer and Director

**EXHIBIT C**

**Plan of Dissolution and Distribution of Assets**

PLAN OF DISSOLUTION  
AND DISTRIBUTION OF ASSETS  
OF  
JEWISH CARE SERVICES OF LONG ISLAND, INC.

The Board of Directors of Jewish Care Services of Long Island, Inc. (the "Board" of the "Corporation"), does hereby resolve and recommend to the sole corporate member for approval that the Corporation be dissolved. The Board adopted this resolution by Unanimous Written Consent dated as of September 21, 2016. All of the Board's Directors determined that dissolution was advisable and in the best interest of the Corporation.

1. Upon resolution of the Board of Directors adopting this Plan of Dissolution and Distribution of Assets, the Board shall submit the plan to the sole corporate member for approval.
2. Approval is required by the Office of the State Attorney General. The Department of Taxation and Finance of the state of New York must consent to the dissolution of the Corporation.
3. All outstanding debts owing to the corporation shall be collected as expeditiously as possible.
4. The Corporation has assets that are not legally required to be used for any particular purpose. The Corporation's assets and liabilities are estimated as follows:

Assets (cash):           \$27,021.00

Liabilities:

Legal fees for dissolution process (including publication of  
notice to creditors):   \$6,500.00

Accounting fees for dissolution process: \$3,000.00

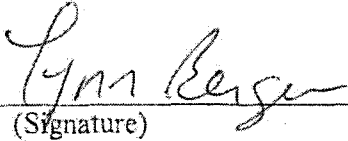
Unsecured debt owed to Federation Employment and  
Guidance Service, Inc.:   \$744,014.00

5. After payment of the debts and liabilities of the Corporation, the Corporation will have no assets.

6. After the Plan of Dissolution and Distribution of Assets is approved by either the Attorney General or the Supreme Court pursuant to Section 1002(d) of the Not-for-Profit Corporation Law, the Corporation shall publish a notice in accordance with Section 1007(a) of the Not-for-Profit Corporation Law requiring all creditors and claimants to present their claims. A copy of the Notice is attached hereto as Exhibit E. Any claims received will be managed in accordance with Section 1007(b) of the Not-for-Profit Corporation Law.
7. Within two hundred seventy days after the date of Attorney General approval of this Plan of Dissolution and Distribution of Assets (or an order of the Supreme Court approving the Plan), the corporation shall carry out the Plan.
8. A Certificate of Dissolution pursuant to Section 1003 of the not-for-profit law shall be signed by an authorized director or officer and all required approvals shall be attached thereto.

### Certification

I, Lynn Berger, Vice President, Secretary and Director of Jewish Care Services of Long Island, Inc., hereby certify under penalty of perjury that the within Plan of Dissolution and Distribution of Assets was duly approved by Unanimous Written Consent of the Board of Directors of the Corporation dated as of September 21, 2016, and the within Plan of Dissolution and Distribution of Assets was duly submitted to the sole corporate member of the Corporation and was approved by Written Consent of the member dated as of September 21, 2016.

  
\_\_\_\_\_  
(Signature)

Dated the 21st day of  
September, 2016



**EXHIBIT D**

**Written Consent of Sole Member**

WRITTEN CONSENT OF THE

SOLE MEMBER

OF

JEWISH CARE SERVICES OF LONG ISLAND, INC.

The undersigned, being the sole member of Jewish Care Services of Long Island, Inc., a New York State Not-for-Profit corporation (the "Corporation"), hereby consents to the adoption of the following resolution(s) without a meeting pursuant to the Not-for-Profit Corporation Law of the State of New York:

**WHEREAS**, the Corporation has determined that it is in the best interest of the Corporation to dissolve; and

**WHEREAS**, the Corporation has assets and liabilities;

**NOW THEREFORE BE IT:**

**RESOLVED**, that the attached Plan of Dissolution and Distribution of Assets, as adopted by the Corporation's Board of Directors (the "Board") pursuant to Unanimous Written Consent dated as of this 21<sup>st</sup> day of September, 2016, and recommended by the Board to the member, is hereby approved; and be it further

**RESOLVED**, that the officers of the Corporation be, and they hereby are, authorized and directed to cause the Corporation to be dissolved in accordance with the attached Plan of Dissolution and Distribution of Assets; and be it further

**RESOLVED**, that any and all actions heretofore or hereafter taken by the officers of the Corporation, in the name and on behalf of the Corporation in connection with the foregoing resolutions, be, and they hereby are, ratified, confirmed and approved in all respects as the acts and deeds of the Corporation.

**IN WITNESS WHEREOF**, the undersigned has executed this consent as of this 21<sup>st</sup> day of September, 2016.

FEDERATION EMPLOYMENT AND  
GUIDANCE SERVICE, INC.

By: 

Name: Allen Alter

Title: President

**EXHIBIT E**  
**Form of Notice to Creditors**

**FORM OF**  
**NOTICE OF DISSOLUTION**

NOTICE IS HEREBY GIVEN, that Jewish Care Services of Long Island, Inc., a New York Not-For-Profit Corporation (the "Corporation"), whose principal office is located at c/o Federation Employment and Guidance Service, Inc., 2 Park Ave., 20<sup>th</sup> Floor, New York, New York 10016, has voluntarily elected to dissolve, wind up and liquidate the Corporation.

In accordance with Section 1007 of the Not-for-Profit Corporation Law of the State of New York, all persons having a claim against the Corporation (other than a claim in a pending action, suit or proceeding) may present their claims against the Corporation as follows:

1. All claims must be presented in writing and in detail and must contain sufficient information reasonably to inform the Corporation of the identity of the claimant and the substance of the claim.
2. All claims must be sent to the Corporation's mailing address as follows:  
  
Jewish Care Services of Long Island, Inc.  
c/o Federation Employment and Guidance Services, Inc.  
2 Park Avenue, 20<sup>th</sup> Floor  
New York, NY 10016
3. All claims must be received by the Corporation by \_\_\_\_\_, 2016.  
[SHALL NOT BE LESS THAN SIX MONTHS *AFTER* THE FIRST PUBLICATION OF SAID NOTICE].
4. All claims not received by the date in paragraph 3 above shall be barred.

\* \* \* \*



CERTIFICATE OF DISSOLUTION

OF

JEWISH CARE SERVICES OF LONG ISLAND, INC.

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

I, Lynn Berger, Vice President and Secretary of Jewish Care Services of Long Island, Inc. hereby certify:

1. The name of this Corporation is Jewish Care Services of Long Island, 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 \_\_\_\_\_, 20\_\_ , 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 Jewish Care Services of Long Island, Inc. this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Name: Lynn Berger  
Title: Vice President and Secretary

CERTIFICATE OF DISSOLUTION  
OF  
FECS 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

JEWISH CARE SERVICES OF LONG ISLAND, 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 that:

FIRST: The name of the corporation is JEWISH CARE SERVICES OF LONG ISLAND, 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 type of corporation which the corporation shall be under Section 201 of the Not-for-Profit Corporation Law is Type B.

FOURTH: The corporation is formed for the following purpose or purposes:

To provide social services and other non-health related enrichment services to convalescent, physically disabled and other home-bound persons, such as individual and family counseling but not to include psychological, medical and psychiatric counseling, housekeeping, and similar services.

To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors or officers except as permitted under Article 5 of the Not-for-Profit Corporation Law; provided, however, the corporation shall not directly or indirectly engage in or include among its purposes any of the activities described in Section 757

of the Executive Law or Sections 404(b)-(g) of the Not-for-Profit Corporation Law.

To have in furtherance of its not-for-profit corporate purposes all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law, including the power to provide home health aide personnel to established home health agencies and other public agencies through contracts, but only in furtherance of the corporate purposes, together with the power to solicit grants and contributions for the foregoing purposes, but subject to any limitations contained in this Certificate of Incorporation or in the laws of the State of New York, and provided that nothing herein contained shall authorize the corporation to operate a hospital or to provide hospital service, health related services or home health agency services as defined in Article 28 of the Public Health Law.

FIFTH: The office of the corporation is to be located in the County of Queens, State of New York.

SIXTH: The territory in which the activities of the corporation are principally to be conducted is the State of New York.

SEVENTH: The name and address of each of the initial directors of the corporation are as follows:

<u>NAME</u>	<u>ADDRESS</u>
George Rothman	70-25 Yellowstone Boulevard Forest Hills, N.Y. 11375
Melvin Frankel	420 Beach 27th Street Far Rockaway, N.Y. 11691
Isabel L. Fantel	123-30 83rd Avenue Kew Gardens, N.Y. 11415

EIGHTH: The duration of the corporation is to be perpetual.

NINTH: The post office address within the State of New York to which the Secretary of State shall mail a copy of any notice required by law is c/o Guggenheimer & Untermeyer 80 Pine Street, New York, New York 10005.

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, 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 activities of the corporation shall be the carrying on of propoganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of 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 the corresponding provision of any future United States Internal Revenue Law) 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 any subsequent Federal tax laws).

2. The corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code of 1954 (or corresponding provisions of any subsequent Federal tax laws); shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code of 1954 (or corresponding provisions of any subsequent Federal tax laws); shall not retain any excess business holdings as defined in

90 Pine Street, New York, New York 10005.

ARTICLE FOURTH: 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, 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 activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of 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 the corresponding provision of any future United States Internal Revenue Law) 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 any subsequent Federal tax laws).

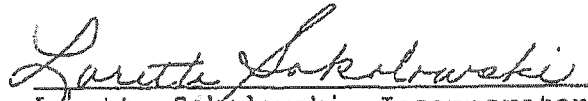
2. The corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code of 1954 (or corresponding provisions of any subsequent Federal tax laws); shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code of 1954 (or corresponding provisions of any subsequent Federal tax laws); shall not retain any excess business holdings as defined in

Section 4943(c) of the Internal Revenue Code of 1954 (or corresponding provisions of any subsequent Federal tax laws); shall not make any investments in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code of 1954 (or corresponding provisions of any subsequent Federal tax laws); and shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code of 1954 (or corresponding provisions of any subsequent Federal tax laws).

3. 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 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 the corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine.

ELEVENTH: Prior to the delivery of this Certificate of Incorporation to the Department of State for filing, any approvals or consents which are required by the Not-for-Profit Corporation Law or by any other statute of the State of New York before this Certificate of Incorporation may be filed in the Department of State will be endorsed upon this Certificate of Incorporation or annexed thereto, as the case may be.

Subscribed and affirmed by me as true under the penalties of perjury on February 4, 1977

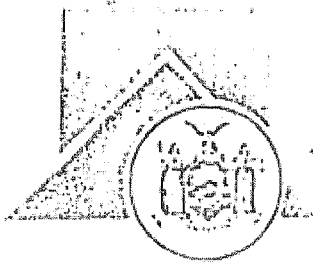
  
Loretta Sokolowski, Incorporator  
42 East 17th Street  
Bayonne, New Jersey 07002

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: March 8, 1977

LOUIS J. LEFKOWITZ  
Attorney General

By: *[Signature]*  
Assistant Attorney General  
*Basora*



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
ALBANY 12231

PUBLIC HEALTH COUNCIL

February 14, 1977

Charles S. Guggenheimer, Esq.  
80 Pine Street  
New York, New York 10005

RE: Jewish Care Services of  
Long Island, Inc.

Dear Mr. Guggenheimer:

The proposed Certificate of Incorporation of Jewish Care Services of Long Island, 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 home health agency, as defined in Article 28 of the Public Health Law.

Paragraph (4) of said certificate contains a provision that the corporation is not authorized to operate a hospital or to provide hospital service, health related service or home health agency services, as defined in Article 28 of the Public Health Law.

Sincerely yours,

*Marianne K. Adams*  
Marianne K. Adams  
Executive Secretary

COUNCIL

NEWMAN S. MOORE, M.D.  
S. L. RYAN  
EUGENE P. BOND  
DOROTHY E. BRON  
JOSEPH R. FONTANETTA, M.D.  
WILLIAM LEE FROST

MORTON P. RYMAN  
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W. KENNETH RILAND, D.O.  
JOHN F. ROACH, M.D.

HOWARD A. RUSK, M.D.  
JOHN M. WALSH  
Kenneth Woodward, M.D.  
COMMISSIONER OF HEALTH  
ROBERT P. KHALLEN, M.D.  
EX OFFICIO







## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Richard J. Zahnleuter  
General Counsel

**Date:** June 24, 2019

**Subject:** Certificate of Amendment of the Certificate of Incorporation of Eastern Long Island Hospital Association Relative to Application #161325, an Application which Received PHHPC Establishment Final Approval on June 5, 2019

---

Application #161325 allows Stony Brook University Hospital (SBUH), a 603-bed academic medical center located at 101 Nicolls Rd, Stony Brook (Suffolk County), to certify Eastern Long Island Hospital (ELIH), a 90-bed community hospital located at 201 Manor Place, Greenport (Suffolk County), as a division of SBUH through an Integration and Affiliation Agreement (IAA). Public Health and Health Planning Council approval and execution of the IAA between the Eastern Long Island Hospital Association, the owner and operator of ELIH, and the State University of New York (SUNY), allows for SBUH to operate ELIH under the SBUH's Medicare and Medicaid provider numbers. Such approval does not change authorized services or number or types of beds. Two extension clinics are also included in the SBUH acquisition.

Part of the legal review of the application involved reviewing the Certificate of Amendment of the Certificate of Incorporation of Eastern Long Island Hospital Association to allow it to amend its Certificate of Incorporation to change its corporate purposes, thereby, signifying the asset acquisition by SBUH, previously approved by PHHPC on June 5, 2019. However, the Certificate cannot be filed with the New York State Department of State without having PHHPC's consent to file attached thereto. Therefore, PHHPC is being asked to grant consent to the filing.

The document has been reviewed. There is no legal objection to the proposed Certificate of Amendment of the Certificate of Incorporation of ELIHA and it is in legally acceptable form.

Attachments

**RESOLUTION OF THE BOARD OF TRUSTEES  
OF  
THE EASTERN LONG ISLAND HOSPITAL ASSOCIATION**

May 22, 2019

The undersigned, Secretary, with the authority to act on behalf of the members of the board of trustees (the Board) of The Eastern Long Island Hospital Association, a not-for-profit corporation existing under the Not-for-Profit Corporation Law of the State of New York as a charitable corporation ("ELIHA"), hereby consent to and adopt as of the date first written above, pursuant to the Laws of the State of New York, by this resolution approved by the Board at a meeting, the following resolutions with the same force and effect as if they had been adopted at a duly convened meeting:

NOW THEREFORE, BE IT:

RESOLVED, that the Board on November 20, 2017 authorized and approved ELIHA's execution and delivery of the Integration and Affiliation Agreement between the ELIHA and The State University of New York acting through Stony Brook University Hospital ("SBUH"), which was executed on January 19, 2018 and approved by the New York State Attorney General, New York State Director of the Division of Budget and the New York State Comptroller on or before April 3, 2019, and all other agreements, contracts and documents that are necessary to effectuate the affiliation of ELIHA with SBUH (the "Transaction"), as well as ELIHA's performance of the Transactions contemplated therein; and

FURTHER RESOLVED, that as a result of the Transaction, the purposes of ELIHA will change post-closing and, thus, the Certificate of Incorporation of ELIHA must be amended as set forth and attached hereto; and

FURTHER RESOLVED, that based on ELIHA's requested private letter ruling from the Internal Revenue Service ("IRS") on May 20, 2016 that upon the closing of the Transaction and lease of its property, plant and equipment to SBUH, ELIHA will continue to be an organization under 501(c)(3); the leasing of the healthcare facilities and property is a purpose substantially related to the exempt purpose of ELIHA for purposes of 501(c)(3) and will not result in any unrelated trade or business; and the income from the lease will not constitute debt financed unrelated trade or business income, ELIHA must amend its Certificate of Incorporation as requested by the IRS in a letter dated September 6, 2016 consistent with Rev. Rul. 80-309 and ELIHA represented to the IRS by letter dated September 27, 2016 that it would so amend its purposes to include "establishing, operating, and maintain or leasing a hospital" as one such purpose; and

FURTHER RESOLVED, that the President of the Board or the Chief Executive Officer ("CEO") of ELIHA be, and each of them hereby is, authorized and empowered to execute and deliver, for and on behalf of ELIHA, any agreements, documents and instruments necessary to effectuate the foregoing resolutions and any exhibits, annexes or attachments thereto, in each case, with such changes therein, additions thereto, omissions therefrom or amendments thereto as the President, CEO and the attorneys for ELIHA may deem necessary, advisable or appropriate,

with such execution and delivery by the President or the CEO to be conclusive evidence of such authorization and approval; and

FURTHER RESOLVED, that all actions heretofore taken by the President or CEO, or both of them, in connection with the foregoing resolutions be and hereby are, ratified, confirmed and approved as the act and deed of ELIHA, including, but not limited to, working with consultants and outside counsel to obtain the required and necessary approval of the New York State Department of Health and Attorney General's office of such amendment to the Certificate of Incorporation and filing such amendment with the New York Department of State; and

FURTHER RESOLVED, that this consent may be executed by facsimile or PDF and in counterparts.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the undersigned Secretary have hereunto executed this written consent as of the date first stated above.

By: Helene V. Fall  
Name: Helene V. Fall  
Title: Secretary of the Board of Trustees, The  
Eastern Long Island Hospital Association

**CERTIFICATE OF AMENDMENT**  
**OF THE**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**THE EASTERN LONG ISLAND HOSPITAL ASSOCIATION**

Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, being the President and Chief Executive Officer of The Eastern Long Island Hospital Association (the "Corporation"), hereby certifies:

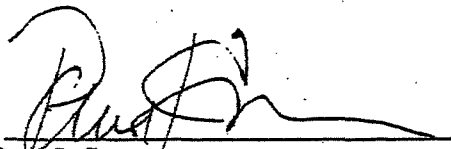
1. The name of the corporation is The Eastern Long Island Hospital Association and that is the name under which the Corporation was originally incorporated.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State on August 3, 1905.
3. The Corporation was formed pursuant to an Act of the Legislature of the State of New York passed on May 8, 1895, entitled "An Act Relating to Membership Corporations".
4. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law of the State of New York.
5. The Certificate of Incorporation of the Corporation, as previously amended, is hereby further amended as follows: paragraph THIRD of the Certificate of Incorporation is revised to exclude from the Corporation's purposes the construction, ownership, maintenance and operation of a Hospital and other facilities in accordance with Articles 28, 33, 36 and 40 of the New York State Public Health Law, and paragraph THIRD shall be amended in its entirety to read as follows:

"The purposes for which the Corporation is formed is any purpose for which corporations may be organized under the Not-For-Profit Corporation Law of the State of New York and as a charitable corporation under Section 201 of the Not-For-Profit Corporation Law of the State of New York, including:

- (A) establish, operate and maintain or lease a hospital and related facilities;
- (B) to promote the health of the people in the communities on the North Fork and Shelter Island of Long Island by participating in an affiliation with the State University of New York, acting through Stony Brook University Hospital ("SUNY/SBUH"), pursuant to a series of agreements providing for the operation of Eastern Long Island Hospital and related medical facilities by SUNY/SBUH under specified conditions, and actively supporting the development of facilities and resources needed to provide health care services to the people in those communities; and
- (C) to do anything and everything reasonably and lawfully necessary, proper, suitable or convenient for the achievement of the foregoing purposes for the furtherance of said purposes."

6. This Amendment to the Certificate of Incorporation of the Corporation was authorized by vote of the Board of Trustees of the Corporation at a duly held meeting of the Board held on May 22, 2019. The Corporation has no members.

7. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is 201 Manor Place, Greenport, New York 11944, Attention: President.

  
Paul J. Connor  
President and CEO



## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Richard J. Zahnleuter  
General Counsel

**Date:** July 2, 2019

**Subject:** Rochester Primary Care Network, Inc.: Corporate Name Change

---

Rochester Primary Care Network, Inc. (the "Corporation") is a licensed Article 28 entity which provides access to individualized health care and wellness-related education. The Corporation seeks to change its corporate name to Mosaic Health, Inc. in an effort to reflect the Corporation's growth beyond the city of Rochester. Please see the attached letter from Edward H. Townsend, Esq. of Harter, Secrest & Emery, LLP for further details. The Corporation seeks PHHPC approval of the proposed name change.

PHHPC approval of the corporate name change is required pursuant to 10 NYCRR § 600.11(a)(2) and Not-for-Profit Corporation Law § 804(a).

There is no objection to the corporate name change and the Certificate of Amendment of the Certificate of Incorporation of Rochester Primary Care Network, Inc. is in legally acceptable form.

Attachments



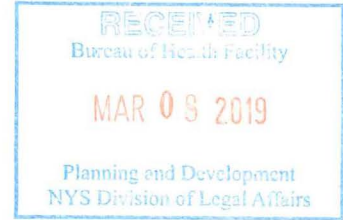
Harter Secret & Emery LLP

CELEBRATING 125 YEARS



WWW.HSELAW.COM

March 6, 2019



**Certified Mail--Return Receipt Requested**

New York State Department of Health  
Public Health and Health Planning Council  
Corning Tower, Room 1805  
Albany, NY 12237  
Attn: Colleen M. Leonard, Executive Secretary

Re: Rochester Primary Care Network, Inc.

Dear Sir or Madam,

Enclosed is a proposed Certificate of Amendment of the Certificate of Incorporation of Rochester Primary Care Network, Inc. ("RPCN") by which RPCN is proposing to change its corporate name. Also enclosed is the original Certificate of Incorporation of RPCN with all amendments previously approved and filed, and the documentation which we intend to provide to the New York Attorney General with a request for approval.

RPCN is proposing to change its corporate name in order to reflect its growth beyond the city of Rochester to encompass various regions throughout upstate New York. The name change will also promote RPCN's mission of providing access to compassionate, individualized health care and wellness-related education for everyone, regardless of financial, cultural, or social barriers. The Certificate of Amendment also reflects a change in RPCN's address for service of process and classifies RPCN as a "charitable organization" as opposed to a "Type B organization."

Please review the Certificate of Amendment of RPCN and provide us with your written confirmation that you have no objection to its being filed with the New York Department of State. In addition, we respectfully request to appear on the March/April Public Health and Health Planning Council meeting agenda.

Thank you for your attention in this matter. Please contact our office if additional information is required.

Very truly yours,

Harter Secret & Emery LLP

Edward H. Townsend  
DIRECT DIAL: 585.231.1254  
EMAIL: ETOWNSEND@HSELAW.COM

EHT:vlb

Enclosures

cc: New York State Department of Health  
Division of Legal Affairs  
Empire State Plaza, Room 2482, Tower Building  
Albany, New York 12237-0026  
Attn: Marthe JB Ngwashi



CERTIFICATE OF AMENDMENT

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
ROCHESTER PRIMARY CARE NETWORK, INC.**

Under Section 803 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is Rochester Primary Care Network, Inc.

SECOND: The Certificate of Incorporation of the corporation was filed by the Department of State on April 1, 1987.

THIRD: The corporation is a corporation as defined in subparagraph (5) of Paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.

FOURTH: The Certificate of Incorporation is hereby amended to affect the following changes:

A. Paragraph "1" relating to the name of the corporation is hereby changed, so that Paragraph "1" shall read in its entirety as follows:

"1. The name of the corporation is Mosaic Health, Inc."

B. Paragraph "6" relating to the type of corporation shall be eliminated in its entirety and replaced with a new Paragraph "6" which shall read as follows:

"6. The corporation is a charitable corporation under Section 201 of the Not-for-Profit Corporation Law. "

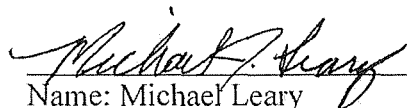
C. Paragraph "9" relating to the address to which the Secretary of State, as agent of the corporation, shall mail a copy of process in any action against the corporation is hereby changed, so that Paragraph "9" shall read in its entirety as follows:

"9. The Secretary of State of the State of New York is hereby designated as the agent of the corporation upon whom process in any action or proceeding against it may be served, and the address to which the Secretary of State shall mail a copy of process in any action or proceeding against the corporation which may be served upon him or her is Mosaic Health, Inc., 1 South Washington St., Suite 300, Rochester, New York 14614."

FIFTH: This Amendment of the Certificate of Incorporation was authorized by a vote of a majority of the entire Board of Directors.

SIXTH: The Secretary of State of the State of New York is hereby designated as the agent of the corporation upon whom process in any action or proceeding against it may be served, and the address to which the Secretary of State shall mail a copy of process in any action or proceeding against the corporation which may be served upon him or her is Mosaic Health, Inc., 1 South Washington St., Suite 300, Rochester, New York 14614.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Amendment on this  
15<sup>th</sup> day of February 2019.

  
Name: Michael Leary  
Title: President and CEO

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
ROCHESTER PRIMARY CARE NETWORK, INC.**

Under Section 803 of the Not-for-Profit Corporation Law

Filed by:  
Edward H. Townsend, Esq.  
Harter Secrest & Emery LLP  
1600 Bausch & Lomb Place  
Rochester, New York 14604-2711

ORIGINAL CERTIFICATE OF INCORPORATION AND PREVIOUSLY FILED/APPROVED  
AMENDMENTS

**RESOLUTIONS  
ADOPTED AT THE JULY 10, 2018 MEETING  
OF THE BOARD OF DIRECTORS  
OF ROCHESTER PRIMARY CARE NETWORK, INC.**

**WHEREAS**, the Board of Directors (the "Board") of Rochester Primary Care Network, Inc. (the "Corporation") desire to change the Corporation's corporate name from "Rochester Primary Care Network, Inc." to "Mosaic Health, Inc.";

**WHEREAS**, the name change will reflect the Corporation's growth beyond the city of Rochester to various regions throughout upstate New York and promote the Corporation's mission; and

**WHEREAS**, at its meeting on July 10, 2018, by a vote of the majority of the Directors present at that meeting, the Board formally voted and approved the change the Corporation's corporate name to "Mosaic Health, Inc."

**NOW, THEREFORE, IT IS:**

**RESOLVED**, that at the July 10, 2018 meeting of the Board, at which a quorum was present, the motion to change the Corporation's corporate name to "Mosaic Health, Inc." was made by Mr. Hustleby, seconded by Mr. Haizlip, and approved by ten out of the eleven Directors present at the meeting.

**RESOLVED**, that Michael Leary, the Corporation's President and CEO of RPCN, individually or in connection with any other officer of the Corporation, is authorized, directed and empowered, in the name and on behalf of the Corporation, to take any and all such actions as may be necessary or appropriate, and to negotiate, execute and deliver any and all such instruments, certificates, documents, affidavits and agreements, as such officers may deem necessary or appropriate to carry out the purpose and intent of the foregoing resolutions, including a Certificate of Amendment related to the change of the Corporation's corporate name to "Mosaic Health, Inc." (the "Certificate"). The taking of any and all such actions and executions and delivery of any such documents being conclusive evidence of the approval thereof by the Board of RPCN without further action.

**RESOLVED**, that any and all actions taken by any officer of the Corporation, in the name and on behalf of the Corporation, prior to the date of these resolutions in connection with the purpose and intent of the foregoing resolutions, including making any filings related to the Certificate, be, and the same hereby are approved, ratified, and confirmed in all respects.


*[Signature page follows]*

IN WITNESS WHEREOF, the undersigned have voted to approve the corporate name change, as set forth in the foregoing resolutions, at the July 10, 2018 meeting of the Board and have executed these Resolutions as of \_\_\_\_\_, 2019:

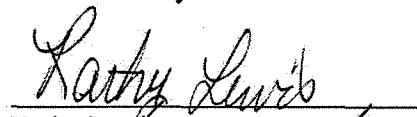
  
Freddie Caldwell

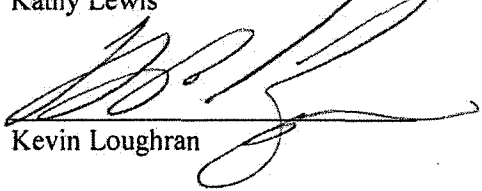
✓  
\_\_\_\_\_  
Dominic Galante MD

  
Jerry Giudici

  
George Hanzlip

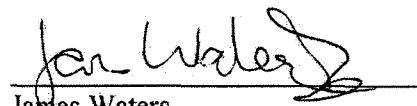
✓  
\_\_\_\_\_  
Susan Hustleby

  
Kathy Lewis

  
Kevin Loughran

\_\_\_\_\_  
Pat Malin

\_\_\_\_\_  
George Scharr

  
James Waters

**Maria Colon**

---

**From:** Dominic Galante <dgalantemd@gmail.com>  
**Sent:** Thursday, March 21, 2019 4:07 PM  
**To:** Maria Colon  
**Subject:** Re: FW: Mosaic Health Name Change - DOH Follow Up [HSELAW-WORKSITE.FID791291]

Here you go Maria! Let me know if you need anything else.

Thank you,

Dominic

IN WITNESS WHEREOF, the undersigned have signed this document in accordance with the provisions of the following resolutions, at the July 18, 2018 meeting of the Board and have executed these Resolutions as of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Dominic Galante

\_\_\_\_\_  
George Tostano

\_\_\_\_\_  
S. Scott

\_\_\_\_\_  
Katie

\_\_\_\_\_  
Katie

\_\_\_\_\_  
Pete

\_\_\_\_\_  
George

\_\_\_\_\_  
Renee

On Thu, Mar 21, 2019 at 3:49 PM Dominic Galante <dgalantemd@gmail.com> wrote:  
Ok, thanks.

On Thu, Mar 21, 2019 at 3:47 PM Maria Colon <mac@rpcn.org> wrote:

You can scan it back to us.



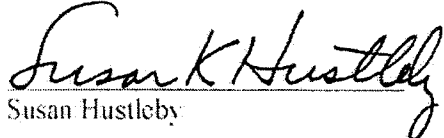
IN WITNESS WHEREOF, the undersigned have voted to approve the corporate name change, as set forth in the foregoing resolutions, at the July 10, 2018 meeting of the Board and have executed these Resolutions as of \_\_\_\_\_, 2019:

\_\_\_\_\_  
Freddie Caldwell

\_\_\_\_\_  
Dominic Galante MD

\_\_\_\_\_  
Jerry Giudici

\_\_\_\_\_  
George Haizlip

  
\_\_\_\_\_  
Susan Hustleby

\_\_\_\_\_  
Kathy Lewis

\_\_\_\_\_  
Kevin Loughran

\_\_\_\_\_  
Pat Malin

\_\_\_\_\_  
George Scharr

\_\_\_\_\_  
James Waters

**IN WITNESS WHEREOF**, the undersigned have voted to approve the corporate name change, as set forth in the foregoing resolutions, at the July 10, 2018 meeting of the Board and have executed these Resolutions as of \_\_\_\_\_, 2019:

\_\_\_\_\_  
Freddie Caldwell

\_\_\_\_\_  
Dominic Galante MD

\_\_\_\_\_  
Jerry Giudici


\_\_\_\_\_  
George Haizlip

\_\_\_\_\_  
Susan Hustleby

\_\_\_\_\_  
Kathy Lewis

\_\_\_\_\_  
Kevin Loughran

\_\_\_\_\_  
Pat Malin

  
\_\_\_\_\_  
George Scharr

\_\_\_\_\_  
James Waters

*STATE OF NEW YORK*

*DEPARTMENT OF STATE*

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

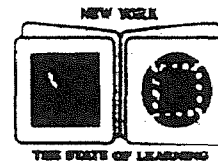


WITNESS my hand and official seal of the Department of State, at the City of Albany, on November 10, 2010.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

B478321



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

COUNSEL AND DEPUTY COMMISSIONER FOR LEGAL AFFAIRS

January 22, 1987

DC

TO: Department of State  
Bureau of Corporations

FROM: Office of Counsel and  
Deputy Commissioner for Legal Affairs

BY: Mary L. Gammon  
Legal Assistant

*Mary L. Gammon*  
fw-

SUBJECT: ROCHESTER PRIMARY CARE NETWORK,  
INC.

REFERENCE: Proposed Certificate of Incorporation

The attached document was submitted to this office for review to determine whether the provisions of section 216 of the Education Law require the consent of the Commissioner of Education to its filing with the Department of State, or whether the Education Department would have any objections to its filing.

After review it is the opinion of this office that there is no necessity for the Commissioner to consent to filing, and that we have no objection to such filing.

This waiver of consent to filing is granted with the understanding and upon the conditions set forth on the reverse side of this memorandum.

Atts.

This waiver of consent to filing is granted with the understanding that nothing contained in the annexed document shall be construed as authorizing the corporation to engage in the practice of law, except as provided by subdivision 7 of section 495 of the Judiciary Law, or of any of the professions designated in Title VIII of the Education Law, or to use any title restricted by such law, or to conduct a school for any such profession, or to hold itself out to the public as offering professional services.

This waiver of consent to filing is granted with the further understanding that nothing contained in the annexed document shall be construed as authorizing the corporation to operate a nursery school, kindergarten, elementary school, secondary school, institution of higher education, cable television facility, educational television station pursuant to section 236 of the Education Law, library, museum, or historical society, or to maintain an historic site.

This waiver of consent to filing shall not be deemed to be or to take the place of registration for the operation of a private business school in accordance with the provisions of section 5002 of the Education Law, nor shall it be deemed to be, or to take the place of, a license granted by the Board of Regents pursuant to the provisions of section 5001 of the Education Law, a license granted by the Commissioner of Motor Vehicles pursuant to the provisions of section 394 of the Vehicle and Traffic Law, a license as an employment agency granted pursuant to section 172 of the General Business Law, or any other license, certificate, registration, or approval required by law.

d

CERTIFICATE OF INCORPORATION

OF

ROCHESTER PRIMARY CARE NETWORK, INC.

Under Section 402 of the Not-for-Profit Corporation  
Law of the State of New York.

\* \* \* \* \*

The undersigned, for the purpose of forming a  
corporation pursuant to Section 402 of the Not-for-Profit  
Corporation Law of the State of New York hereby certifies:

1. The name of the Corporation shall be Rochester  
Primary Care Network, Inc.

2. The Corporation is a corporation as defined in  
Section 102(a)(5) of the Not-for-Profit Corporation Law.

3. The purposes for which the Corporation is being  
formed are:

(a) For charitable and educational purposes,  
including, for such purposes, the making of distributions to  
organizations that qualify as exempt organizations under the  
Internal Revenue Code;

(b) To coordinate, plan and secure funding for  
the provision of quality health care services, particularly to  
the medically indigent, by free-standing and hospital-based  
primary care providers and

To engage in educational activities related  
to this end;

3

(c) To solicit contributions to support the operations of existing hospitals, as that term is defined in Section 2801 of the Public Health Law of the State of New York.

4. In addition to 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.

5. Nothing herein contained shall authorize the Corporation to establish or operate a hospital or to provide hospital service or health related service, a certified home health agency, a hospice, a health maintenance organization or a comprehensive health services plan as provided for by Articles 28, 36, 40 and 44, respectively, of the Public Health Law.

6. The Corporation is a Type B corporation as defined in Section 201 of the Not-for-Profit Corporation Law.

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

8. The names and addresses of the initial Directors of this Corporation are as follows:

<u>Name</u>	<u>Address</u>
Frederic J. Buse	274 Avalon Drive Rochester, New York 14618
Terry Cotton	125 Hunter's Run Victor, New York 14564
Mary DeRouen	50 Chestnut Street Rochester, New York 14604

Donald Ginsberg	90 Quentin Road Rochester, New York 14609
Richard Greene	500 East Avenue Rochester, New York 14607
David Huddleston	22 Anthony Street Rochester, New York 14619
Steven Richardson	316 Campbell Road Brockport, New York 14420
Margery Rosen	144 Irving Road Rochester, New York 14618
Ivette Salgado	640 Hudson Avenue Rochester, New York 14621
Thomas Toole	70 Bragdon Place Rochester, New York 14604
Margery Wilson	172 Glen Haven Road Rochester, New York 14609

9. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: 500 East Avenue, Rochester, New York 14607.

10. Notwithstanding any other provision of this Certificate, ~~this Corporation shall not~~ carry on any activities not permitted to be carried on by: (a) a corporation exempt from federal income tax under Internal Revenue Code Section 501(c)(3); or (b) a corporation to which contributions are deductible under Internal Revenue Code Section 170(c)(2).

11. No part of the income of the Corporation shall inure to the benefit of any trustee, director or officer of the

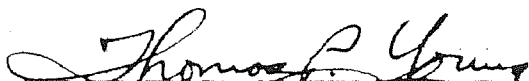
-5-



Corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation affecting one or more of its purposes), and no trustee, director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

12. In the event of dissolution, all of the remaining assets and property of the Corporation shall, after payment of any necessary expenses thereof, be distributed to such organizations as shall qualify under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, subject to an order of a Justice of the Supreme Court of the State of New York.


IN WITNESS WHEREOF, the undersigned has signed this Certificate of Incorporation on January 15, 1987 and affirms the statement contained herein as true under the penalties of perjury.

  
Thomas P. Young, Sole Incorporator  
1800 Lincoln First Tower  
Rochester, New York 14604

6

The undersigned, a Justice of the Supreme Court of the Seventh Judicial District, does hereby approve the foregoing Certificate of Incorporation and consents that the same be filed.

Dated: March 23, 1987

  
Justice of the Supreme Court

OK DFL 3/23/87

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STATE OF NEW YORK  
DEPARTMENT OF LAW  
ALBANY 12224

ROBERT ABRAMS  
ATTORNEY GENERAL

Telephone: (518) 474-7206

RECEIVED

JAN 22 1987

GOLDSTEIN, GOLDMAN  
KESSLER & UNDERBERG

JAMES G. MCSPARRON  
DEPUTY FIRST ASSISTANT  
ATTORNEY GENERAL

January 20, 1987

Thomas P. Young, Esq.  
Goldstein, Goldman, Kessler & Underberg, Esqs.  
1800 Lincoln First Tower  
Rochester, New York 14604

Dear Mr. Young:

RE: ROCHESTER PRIMARY CARE NETWORK, INC.

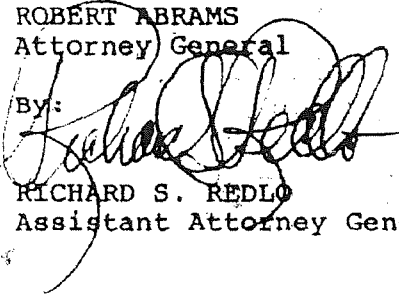
Due and timely service of the notice of application for the approval of the proposed certificate of incorporation of the above-entitled organization is hereby admitted.

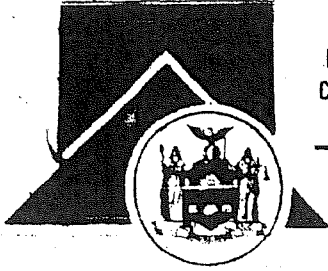
The Attorney General does not intend to appear at the time of application.

Very truly yours,

ROBERT ABRAMS  
Attorney General

By:

  
RICHARD S. REDLO  
Assistant Attorney General



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

Morton P. Hyman  
Chairman

March 6, 1987

**RECEIVED**

MAR 16 1987

**GOLDSTEIN, GOLDMAN  
KESSLER & UNDERBERG**

Mr. Thomas P. Young  
Incorporator  
1800 Lincoln First Tower  
Rochester, NY 14604

Dear Mr. Young:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 27th day of February, 1987, I hereby certify that the Certificate of Incorporation of Rochester Primary Care Network, Inc. dated January 15, 1987 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.

Sincerely,

*Karen S. Westervelt*  
Karen S. Westervelt  
Acting Executive Secretary

Attachment

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CERTIFICATE OF INCORPORATION  
OF  
ROCHESTER PRIMARY CARE NETWORK, INC.

Under Section 402 of the Not-for-Profit Corporation  
Law of the State of New York.

\* \* \* \* \*

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STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED APR 1 - 1987

AMOUNT OF CHECK \$ 600  
FILING FEE \$ 50  
TAX \$  
COUNTY FEE \$  
COPY \$  
CERT \$  
REFUND \$  
SPEC HAYBLE \$ 10

BY *[Signature]*  
1 year

LAW OFFICES  
GOLDSTEIN GOLDMAN KESSLER & UNDERBERG  
1100 LINCOLN FIRST TOWER  
ROCHESTER, NEW YORK 14604

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***STATE OF NEW YORK***

***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on November 10, 2010.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

F991117000620

AIDE-2A

CERTIFICATE OF CHANGE  
OF

AIDE-2A


ROCHESTER PRIMARY CARE NETWORK, INC.

Under Section 603-A of the Not-for-Profit Corporation Law.

The undersigned, being the President of Rochester Primary Care Network, Inc. (the "Corporation"), hereby certifies:

1. The name of the Corporation is Rochester Primary Care Network, Inc.
2. The certificate of incorporation of the Corporation was filed by the Department of State on April 1, 1987.
3. Paragraph 9 of the certificate of incorporation of the Corporation is hereby changed to change the post office address to which the secretary of state shall mail a copy of any process against the Corporation served upon him to c/o the Corporation, 259 Monroe Avenue, Rochester, New York 14607.
4. The change was authorized by vote of the Board of Directors of the Corporation.

10 December 1999  
Date

  
Arthur Collier, President

F 991117000620

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CERTIFICATE OF

CHANGE

OF

ROCHESTER PRIMARY CARE NETWORK, INC.

STATE OF NEW YORK  
DEPARTMENT OF STATE

NOV 17 1999

FILED  
TAKS  
BY: JAA  
MORRIS

Filed by:

Kristine E. Peacock  
Accelerated Information & Document Filing, Inc.  
90 State Street, Suite 836  
Albany, New York 12207

CUSTOMER REFERENCE #: 4032

AIDF-24

Drawdown

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***STATE OF NEW YORK***

***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on November 10, 2010.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

100430000085

**CERTIFICATE OF MERGER  
OF  
THE RUSHVILLE HEALTH CENTER, INC.  
INTO  
ROCHESTER PRIMARY CARE NETWORK, INC.**

**Under Section 904 of the Not-for-Profit Corporation Law**

The undersigned, Ellen Gage, being the Chairperson of the Board of Directors of The Rushville Health Center, Inc., and Charmaine Bennett, being the Chairperson of the Board of Directors of Rochester Primary Care Network, Inc., hereby certify that:

1. The names of the constituent corporations are The Rushville Health Center, Inc. and Rochester Primary Care Network, Inc., both of which are New York not-for-profit corporations. The Rushville Health Center, Inc. was incorporated under the name Rushville Community Information and Referral, Inc.
2. The Rushville Health Center, Inc. shall be merged into Rochester Primary Care Network, Inc., and Rochester Primary Care Network, Inc. shall be the surviving corporation. The effective date of the merger shall be May 1, 2010.
3. Rochester Primary Care Network, Inc. has no members, and such corporation is the sole member of The Rushville Health Center, Inc. Neither constituent corporation has holders of any capital contributions or subventions. The surviving corporation shall have no members.
4. The Certificate of Incorporation of The Rushville Health Center, Inc. was filed under the name Rushville Community Information and Referral, Inc. by the New York Department of State on December 22, 1976, and the Certificate of Incorporation of Rochester Primary Care Network, Inc. was filed by the New York Department of State on April 1, 1987.
5. The amendments or changes to the certificate of incorporation of the surviving corporation to be effected by the merger are as follows:
  - A. Sub-Paragraph (d) is added to Paragraph 3 of the Certificate of Incorporation of Rochester Primary Care Network, Inc. in order to permit Rochester Primary Care Network, Inc. to operate after the merger the diagnostic and treatment center formerly operated by The Rushville Health Center, Inc and to enlarge its area of operation. Such Sub-Paragraph shall read in its entirety as follows:

Paragraph 3. (d). To operate, administer and maintain an independent diagnostic and treatment facility as defined in Public Health Law Section 2801(1) to be located in Rushville, New York and future additional extension clinics throughout New York State with the prior approval of the New York State Department of Health.
  - B. Paragraph 5 is amended in order to permit the operation of such diagnostic and treatment center and shall read in its entirety as follows:

100430000085

Paragraph 5. Except as put forth in this Certificate of Merger, nothing herein contained shall authorize the Corporation to provide a certified home health agency, a hospice, a health maintenance organization or a comprehensive health services plan as provided in Articles 36, 40 and 44, respectively, of the Public Health Law.

6. The merger was authorized with respect to each constituent corporation in the following manner:

A Plan of Merger was adopted by the Board of Directors of The Rushville Health Center, Inc. at a meeting held on April 30, 2009, by a vote of the majority of the directors, a quorum being present at the time. The sole member of such corporation adopted the Plan by executing a written consent.

A Plan of Merger was adopted by the Board of Directors of Rochester Primary Care Network, Inc. at a meeting held on February 23, 2009, by a vote of the majority of the directors, a quorum being present at the time. Such corporation had no members, so such Plan was deemed approved by the members upon being adopted by the Board, as provided in Section 903(a)(3) of the New York NPCL.

IN WITNESS WHEREOF, the parties hereto have signed this Certificate this 26 day of January, 2010 and hereby affirm the truth of the statements contained herein under penalties of perjury.

THE RUSHVILLE HEALTH CENTER, INC.

By: *Bileen Gage*  
Name: Bileen Gage  
Title: Chairperson

ROCHESTER PRIMARY CARE NETWORK, INC.

By: *Charmaine Bennett*  
Name: Charmaine Bennett  
Title: Chairperson

SECTION  
APPROVAL  
RECEIPT OF  
SERVICES  
AND NO OBJECTION  
MISSION OF THE  
30 DAYS HEREAFTER.  
4/13/2010  
DATE  
MATTER TO THE COURT  
ASSISTANT

At an Ex-Parte proceeding of  
The Supreme Court of the  
State of New York, held in  
And for the County of Monroe, at  
\_\_\_\_\_ on the 19<sup>th</sup> day of  
April 2010

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF MONROE

PRESENT:

HON:

Justice

\_\_\_\_\_  
In the Matter of the Application )  
of )  
Rochester Primary Care Network, Inc. )  
and )  
The Rushville Health Center, Inc. )  
)  
For an order approving their Plan of Merger )  
Under Section 907 of the Not-for-Profit )  
Corporation Law and authorizing the filing )  
of the Certificate of Merger under Section 904 )  
of the Not-for-Profit Corporation Law. )  
\_\_\_\_\_

ORDER

Index No. \_\_\_\_\_

Rochester Primary Care Network, Inc. and The Rushville Health Center, Inc. having duly made joint application for an order, pursuant to Section 907 of the Not-for-Profit Corporation Law, approving the Plan of Merger of said corporations and authorizing the filing of a Certificate of Merger in accordance with Section 904 of the Not-for-Profit Corporation Law, and said application having regularly come on to be heard, and it appearing that the interests of the constituent corporations and the public interest will not be adversely affected by the proposed merger, and that the New York State Department of Health has approved the merger of the corporations, and that the Attorney General having no objection thereto, and that the approval of no other governmental agency is required.

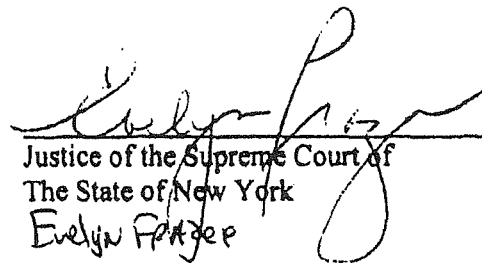
NOW THEREFORE, it is

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APR 15 2010  
STATE OF NEW YORK

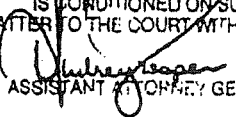
ORDERED, that the Plan of Merger between Rochester Primary Care Network, Inc. and The Rushville Health Center, Inc. be and the same hereby is approved, and it is further

ORDERED, that the Certificate of Merger is authorized to be filed by the Department of State in accordance with Section 904 of the Not-for Profit Corporation Law, to which certificate a certified copy of this order shall be annexed.

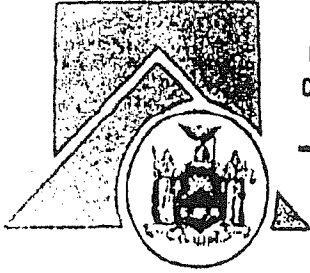
Dated: April 19, 2010  
Rochester, New York

  
Justice of the Supreme Court of  
The State of New York  
Evelyn Fudge

THE ATTORNEY GENERAL HAS NO OBJECTION  
TO THE GRANTING OF JUDICIAL APPROVAL  
HEREON, KNOWING 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 30 DAYS HEREAFTER.

  
ASSISTANT ATTORNEY GENERAL

4/13/2010  
DATE



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

---

April 29, 2010

Mr. Mike Leary  
Senior Vice President, Administration  
Rochester Primary Care Network  
259 Monroe Avenue, Level B  
Rochester, New York 14607

Re: Certificate of Merger of The Rushville Health Center, Inc. into  
Rochester Primary Care Network, Inc.

Dear Mr. Leary:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken  
at a meeting of the Public Health Council held on the 11th day of September, 2009,  
I hereby certify that the Certificate of Merger of The Rushville Health Center, Inc. into  
Rochester Primary Care Network, Inc., dated February 26, 2009 is approved.

Sincerely,

Colleen M. Frost  
Executive Secretary

/cf



AFFIDAVIT FOR APPROVAL BY ATTORNEY GENERAL



\_\_\_\_\_  
In the Matter of the Application of )  
 )  
 )

ROCHESTER PRIMARY CARE NETWORK, )  
INC. )  
 )  
 )

AFFIDAVIT

For approval and authorization of the filing of a )  
Certificate of Amendment to the Certificate of )  
Incorporation under Section 803 of the Not-for-Profit )  
Corporation Law )  
\_\_\_\_\_ )

TO: THE ASSISTANT ATTORNEY GENERAL OF THE STATE OF NEW YORK

Michael Leary, President and CEO of Rochester Primary Care Network, Inc., respectfully swears:

1. That he is the President of Rochester Primary Care Network, Inc., a not-for-profit corporation duly organized and existing under the laws of the State of New York with its principal office at 259 Monroe Avenue, Rochester, New York 14607 (the "Corporation").

2. That the proposed Certificate of Amendment of the Certificate of Incorporation is set forth in Exhibit A attached hereto. The Certificate of Incorporation, as amended, is set forth in Exhibit B.

3. The proposed Certificate of Amendment will change the name of the Corporation to "Mosaic Health, Inc."

4. The Corporation has not previously sought or obtained the approval sought by this Application.

**WHEREFORE**, the Corporation requests that the Attorney General approve the Certificate of Amendment of the Certificate of Incorporation, pursuant to Section 803 of the Not-for-Profit Corporation Law, and it authorize the filing thereof.

**ROCHESTER PRIMARY CARE NETWORK, INC.**

By: \_\_\_\_\_  
Michael Leary, President and CEO

Sworn to before me this  
\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

EXHIBIT A

CERTIFICATE OF AMENDMENT

EXHIBIT B

CERTIFICATE OF INCORPORATION



## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Richard J. Zahnleuter  
General Counsel

**Date:** July 3, 2019

**Subject:** Columbia-Green Hospital Foundation: Corporate Name Change

---

Columbia-Green Hospital Foundation has asked PHHPC to approve a change of its corporate name to "Columbia Memorial Health Foundation", as a corporate decision. PHHPC previously approved a corporate name change in 1999 from Columbia-Green Community Hospital Foundation to Columbia-Green Hospital Foundation.

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 Columbia-Green Hospital Foundation is in legally acceptable form.

Attachments.

Certificate of Amendment  
Of the  
Certificate of Incorporation  
Of  
**Columbia-Greene Hospital Foundation**  
(Pursuant to section 803 of the Not-For-Profit Corporation Law)

I, the undersigned, the Chairman of the Board of **Columbia-Greene Hospital Foundation** hereby certify:

1. The name of the corporation is **Columbia-Greene Hospital Foundation**. The original name of the corporation when it was formed was **Columbia-Greene Community Hospital Foundation**.
2. The certificate of incorporation was filed with the Department of State on **April 9, 1993**.
3. The law the corporation was formed under is Section 402 of the Not-For-Profit Corporation Law.
4. The corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.
5. The certificate of incorporation is amended as follows:

Article "1" of the certificate of incorporation, regarding the name of corporation, is amended to read in its entirety as follows:

"1. The name of the corporation is: **Columbia Memorial Health Foundation**."

6. The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is:

**c/o Columbia Memorial Health Foundation, 71 Prospect Avenue, Hudson, NY 12534**

7. The amendment to the Certificate of Incorporation was authorized by a meeting of the sole Member of the Foundation.

IN WITNESS WHEREOF, this Certificate has been signed this 21st day of June 2019 by the undersigned who affirms that the statements made herein are true under the penalties of perjury.



Name: **Patti Matheney Schrom**

Title: **Chairman of the Board of Columbia-Greene Hospital Foundation**

**HW - DRAWDOWN**

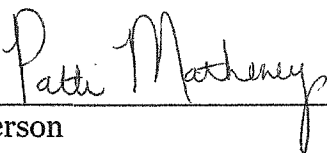
RESOLUTION OF THE BOARD OF TRUSTEES  
OF THE COLUMBIA-GREENE HOSPITAL FOUNDATION  
AT A REGULAR MEETING DULY CALLED AND HELD ON APRIL 13, 2019

CHANGING NAME OF CORPORATION

RESOLVED, that the name of Columbia-Greene Hospital Foundation, is changed to Columbia Memorial Health Foundation, and it is FURTHER RESOLVED, that the Officers of Columbia-Greene Hospital Foundation are hereby directed to file in New York State a certificate setting forth the aforementioned change.

I, Patti Matheney, certify that I am the duly appointed Chairperson of the Columbia-Greene Hospital Foundation, and that the above resolutions were adopted by the board of trustees and that such resolutions are now in full force and effect.

IN WITNESS THEREOF, I certify this is a true and correct copy.

  
\_\_\_\_\_  
Chairperson

April 13, 2019  
\_\_\_\_\_  
Date

990610000509

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF

COLUMBIA-GREENE COMMUNITY HOSPITAL FOUNDATION

Under Section 803. of the Not-for-Profit Corporation Law

We, the undersigned, being the Chair and Secretary of Columbia-Greene Community Hospital Foundation, do hereby certify:

(1) The name of the corporation is Columbia-Greene Community Hospital Foundation (the "Foundation").

(2) The certificate of incorporation of the Foundation was filed by the Department of State on the 9th day of April, 1993.

(3) The Foundation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and is a Type B corporation as defined in 201 of the Not-for-Profit Corporation Law. It shall continue to be a Type B corporation after the filing of this certificate of amendment.

(4) The certificate of incorporation of the Foundation is amended in the following respects:

(A) Paragraph 1. of the certificate of incorporation of the Foundation, which sets forth the name of the corporation, is hereby amended to read as follows:

1. The name of the corporation is Columbia-Greene Hospital Foundation.

(B) Paragraphs 3. and 10. of the certificate of incorporation are hereby amended to reflect the withdrawal of Hudson Valley Health and Services Corp., a New York not-for-profit corporation referred to therein, as the sole corporate member of The Columbia Memorial Hospital (formerly Columbia-Greene Medical Center, Inc.) by deleting therefrom all references to Hudson Valley Health and Services Corp. and inserting in place thereof "The Columbia Memorial Hospital."

(C) Paragraph 8. of the certificate of the Foundation, which sets forth the sole member of the corporation, is hereby amended to read as follows:



8. The sole member of the corporation is the Board of Trustees of the corporation. As such, the Board of Trustees shall be entitled to all rights and powers of a member under the laws of the State of New York and the certificate of incorporation and by-laws of the corporation.

(5) This amendment to the certificate of incorporation of the Foundation was duly authorized by the unanimous vote of the sole member entitled to vote thereon at a meeting of members.

(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 served upon him as agent of the corporation is 71 Prospect Avenue, Hudson, NY 12534.

IN WITNESS WHEREOF, the undersigned have subscribed this certificate and affirm the statements herein as true under the penalties of perjury this 23rd day of February, 1999.

Clara Kellner  
Clara Kellner, Chair

Mary Daggett  
Mary Daggett, Secretary

2

APPROVAL and CONSENT

I, JOHN G. COUNOR, A Justice of the Supreme Court of the Third Judicial District, hereby approve the foregoing Certificate of Amendment to the Certificate of Incorporation and consent that same be filed.

Dated: JUNE 30 <sup>Hudson</sup>, N.Y.

June , 1999

John G. Coumor  
JOHN G. COUNOR  
J.S.C.

3



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

May 26, 1999

Mr. Joel Buckman  
Attorney-at-Law  
445 Park Avenue - 20th Floor  
New York, New York 10022

Re: Certificate of Amendment of the Certificate of Incorporation of Columbia - Greene  
Community Hospital Foundation

Dear Mr. Buckman:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 21st day of May, 1999, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment to the Certificate of Incorporation of Columbia - Greene Community Hospital Foundation, dated February 23, 1999.

Sincerely,

A handwritten signature in cursive script that reads "Donna Peterson".

Karen S. Westervelt  
Executive Secretary

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RESOLUTION

RESOLVED, that the Public Health Council, on this 21<sup>st</sup> day of May, 1999, approves the filing of the Certificate of Amendment of the Certificate of Incorporation of ~~Columbia-Greene Community Hospital Foundation~~, hereafter to be known as Columbia-Greene Hospital Foundation, dated February 23, 1999.

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990610000509

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
COLUMBIA-GREENE COMMUNITY HOSPITAL FOUNDATION

FILED

JUN 10 2 13 PM '99

STATE OF NEW YORK  
DEPARTMENT OF STATE

JUN 10 1999

FILED  
TAXS  
BY: JAN  
Columbia

JUN 10 11 05 AM '99

RECEIVED

Joel Buchman, Esq.  
445 Park Avenue  
New York, NY 10022

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CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF

COLUMBIA-GREENE HOSPITAL FOUNDATION  
(Under Section 803 of the Not-for-Profit Corporation Law)

I, the undersigned, the Chairman of the Board of COLUMBIA-GREENE HOSPITAL FOUNDATION hereby certify:

1. The name of the corporation is COLUMBIA-GREENE HOSPITAL FOUNDATION (hereinafter sometimes referred to as the "Foundation"). The original name of the Foundation when it was formed was COLUMBIA-GREENE COMMUNITY HOSPITAL FOUNDATION.

2. The Certificate of Incorporation of the Foundation was filed by the Department of State on April 9, 1993. The Foundation was formed under Section 402 of the Not-for-Profit Corporation Law of the State of New York.

3. The Foundation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law of the State of New York.

4. The Certificate of Incorporation of the Foundation is amended in the following respect: Paragraph 8. of the Certificate of Incorporation of the Foundation, which sets forth the sole member of the Foundation, is hereby amended and as amended and restated shall read in full:

"8. The sole member of the corporation is The Columbia Memorial Hospital. As such, The Columbia Memorial Hospital shall be entitled to all rights and powers of a member under the laws of the State of New York and the certificate of incorporation and by-laws of the corporation."

3069773v.8

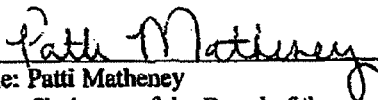
150127000324

5. This amendment to the Certificate of Incorporation of the Foundation was authorized by meeting of the sole Member of the Foundation.

6. The Secretary of State is designated as agent of the Foundation upon whom process against the Foundation may be served. The address to which the Secretary of State shall mail a copy of any process against the Foundation served upon him is:

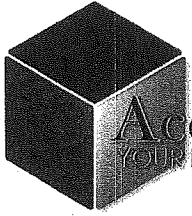
Columbia-Greene Hospital Foundation  
71 Prospect Avenue  
Hudson, New York 12534

IN WITNESS WHEREOF, this Certificate has been signed this 20<sup>th</sup> day of January, 2015 by the undersigned who affirms that the statements made herein are true under the penalties of perjury.

  
Name: Patti Matheny  
Title: Chairman of the Board of the  
Columbia-Greene Hospital Foundation







**Accumera LLC**  
YOUR INCORPORATION SOLUTION

911 Central Avenue, #101, Albany, NY 12206  
Toll Free: (888) 467-1289 • Int'l: (518) 937-9117 • Fax: (518) 937-9128  
info@accumera.com • www.accumera.com

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Public Health and Health Planning Council  
Attn: Colleen M. Leonard  
Center for Health Care Facility Planning, Licensure and Finance  
Corning Tower, Room 1805  
Albany, New York 12237

REF: **Columbia-Greene Hospital Foundation**  
**Amendment of Name to:**  
**Columbia Memorial Health Foundation**

Dear Ms. Leonard;

Further to our email correspondence, enclosed please find a copy of the proposed name amendment and supporting documents for the above referenced name change. Included are the following:

- Proposed Name Amendment
- NY DOS Rejection
- 2015 Certificate of Amendment of Member
- 1999 Certificate of Amendment of Purpose and Member
- 1993 Certificate of Incorporation

Please review the documents and, if all is in order, issue an approval letter to file the amendment.

When completed please return the approval letter to us at **Accumera LLC, 911 Central Ave., #101, Albany, NY 12206.**

Thank you for your assistance in this matter. If you have any questions, please contact me at (518) 937-9117.

Sincerely,

  
Frank Orlando  
Member

F930409000172

CERTIFICATE OF INCORPORATION

OF

COLUMBIA-GREENE COMMUNITY HOSPITAL FOUNDATION

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

IT IS HEREBY CERTIFIED THAT:

1. The name of the corporation is COLUMBIA-GREENE COMMUNITY HOSPITAL FOUNDATION.

2. 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 B corporation.

3. The purpose or purposes for which the corporation is formed are as follows:

(a) The corporation is organized and shall be operated exclusively for the charitable purpose of supporting and assisting Columbia-Greene Medical Center, Inc., a New York not-for-profit corporation exempt from Federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and such other organizations as are operated, supervised, or controlled by or in connection with Hudson Valley Health and Services Corp., a New York not-for-profit corporation exempt from Federal income tax pursuant to Section 501(c)(3) of the Code, and as are described in either Section 509(a)(1) or 509(a)(2) of the Code (the "Affiliated Organizations").

(b) Without limiting the generality of the foregoing, the corporation's purposes include assisting Columbia-Greene Medical Center, Inc., and the Affiliated Organizations to develop, expand, and fund their services by: (i) soliciting contributions for Columbia Greene Medical Center, Inc., and the Affiliated Organizations, (ii) mobilizing and coordinating the efforts of community leaders; (iii) providing a focal point and recipient for philanthropic support; (iv) stimulating such sources of support as gifts, bequests and devises, charitable lead and remainder trusts,

pooled income funds, and providing for the effective management thereof; (v) granting or loaning funds to Columbia-Greene Medical Center, Inc., the Affiliated Organizations; and (vi) promoting the work and charitable mission of Columbia-Greene Medical Center, Inc., and the Affiliated Organizations through activities including ~~seminars~~ publications, addresses, public relations efforts, and special events.

4. Notwithstanding any other provisions of these articles, the corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under Section 501(c)(3) of the Code or by a corporation contributions to which are deductible under Section 170(c)(2) of the Code, or corresponding provisions of any subsequent Federal tax law. No part of the net earnings of the corporation shall inure to the benefit of its directors, officers, or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation). No part of the activities of the corporation shall be 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.
5. In furtherance of its corporate purposes, the corporation shall have all the general powers enumerated in Section 202 of the Not-For-Profit Corporation Law, together with the power to solicit and receive grants, bequests, and contributions for the corporate purposes.
6. Nothing contained herein shall authorize this corporation to establish or operate a hospital or to provide hospital service or health related service, a certified home health agency, a hospice, a health maintenance organization, or a comprehensive

health services plan, as provided for by Articles 28, 36, 40 and 44, respectively, of the Public Health Law.

7. Nothing herein shall authorize this corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Not-For-Profit Corporation Law, Section 404(b-n), (p-s) and (u-v).

8. The sole member of the corporation is Hudson Valley Health and Services Corp. As such, Hudson Valley Health and Services Corp. shall be entitled to all rights and powers of a member under the laws of the State of New York, this Certificate of Incorporation, and the Bylaws of the corporation.

9. The names and addresses of the initial members of the Board of Trustees of the corporation are as follows:

Virginia Cairns-Callan  
Route 66, P.O. Box 58  
Malden Bridge, NY 12115

Gail L.K. Cashen  
RD 2, Box 203  
Ghent, NY 12075

John J. Faso  
14 Sylvester Street  
Kinderhook, NY 12106

Peter Fingar  
234 Main Street  
Germantown, NY 12526

Jerome A. French  
Box 9, Route 203  
Chatham, NY 12037

Morton Ginsberg  
4 Cornwall Avenue  
Great Barrington, MA 01230

Myra Ginsberg  
4 Cornwall Avenue  
Great Barrington, MA 01230

Lewis H. Hartman  
530 East 88th Street  
New York, NY 10128

Clara Kellner  
Mountain Range Farm  
Germantown, NY 12526

Raymond Kennedy  
745 Warren Street  
Hudson, NY 12534

Richard Koskey  
502 Union Street  
Hudson, NY 12534

Ramon J. Rodriguez  
71 Prospect Avenue  
Hudson, NY 12534

Craig Thorn III  
R.D. #2  
Hudson, NY 12534

James Kingsbury  
P.O. Box 213  
Richmond Road  
North Chatham, NY 13132

Carmi Rapport  
19 Riverview Boulevard  
Hudson, NY 12534

Bernard Stickle  
Star Route Box 85  
Hudson, NY 12534

M. Scott Wood, Jr.  
Harmon Heights Road  
Chatham, NY 12037

10. In the event of dissolution, all of the remaining assets and property of the corporation shall, after necessary expenses and liabilities thereof have been paid, be distributed to Hudson Valley Health and Services Corp., provided it then qualifies under Sections 501(c)(3) and 170(c)(2) of the Code, or corresponding provisions of any subsequent Federal tax law, to receive charitable contributions, subject to an order of a Justice of the Supreme Court of the State of New York, and no director or officer of the corporation or any private individual shall be entitled to share in the distribution of any corporate assets on dissolution.
11. The office of the corporation is to be located in the County of Columbia, State of New York.
12. The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him is:

Columbia-Greene Community Hospital Foundation  
71 Prospect Avenue  
Hudson, New York 12534

13. The subscriber is over the age of 18 years.

IN WITNESS WHEREOF, this Certificate has been subscribed on December 27,  
1992, by the undersigned, who affirms that the statements made herein are true under the  
penalties of perjury.

  
Carol A. Hyde

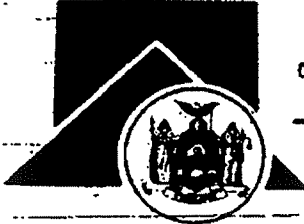
Address: 9 Thurlow Terrace  
Albany, NY 12203

CONSENT

The undersigned, being a Justice of the Supreme Court of the State of New York in the Third Judicial District, does hereby approve the foregoing Certificate of Incorporation of Columbia-Greene Community Hospital Foundation.

Signed at Hudson, New York, 12 day of March, 1993.

  
\_\_\_\_\_  
Supreme Court Justice



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

February 7, 1993

Ms. Carol A. Hyde  
Iseman, Cunningham, Riester & Hyde  
Attorneys & Counselors at Law  
9 Thurlow Terrace  
Albany, NY 12203

Re: Certificate of Incorporation of Columbia-Greene  
Community Hospital Foundation

Dear Ms. Hyde:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 29th day of January, 1993, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Columbia-Greene Community Hospital Foundation, dated December 22, 1992.

Sincerely,

Karen S. Westervelt  
Executive Secretary

?



**RESOLUTION**

RESOLVED, that the Public Health Council, on this 29th day of January, 1993, approves the filing of the Certificate of Incorporation of Columbia-Greene Community Hospital Foundation, dated December 22, 1992.

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930409000172

CERTIFICATE OF INCORPORATION  
OF  
COLUMBIA-GREENE COMMUNITY HOSPITAL FOUNDATION

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

Filed by:  
Iseman, Cunningham, Riester & Hyde  
9 Thurlow Terrace  
Albany, New York 12203

NH-Type B

APR 5 1993

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED APR 09 1993

TAX \$  
BY: *[Signature]*

APR 9 10 09 AM '93

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930409000178



## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Richard J. Zahnleuter  
General Counsel

**Date:** July 3, 2019

**Subject:** Restated Certificate of Incorporation of The Carthage Area Hospital

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The Carthage Area Hospital (the "Hospital") has restated its Certificate of Incorporation to comport with requirements of the United States Department of Agriculture, of which the Hospital intends to apply for financing of a new hospital building. As a result, the Hospital has undertaken to making other amendments, including changing its name from "Carthage Area Hospital, Inc." to "Carthage Area Hospital," clarifying the Article 28 purposes of the corporation, and changing the principal office location. Please see the attached letter from David N. Hoffman, Esq., Carthage Area Hospital's Chief Compliance Officer, for further details.

The Hospital presents the proposed restatement to PHHPC for approval and PHHPC approval is required pursuant to 10 NYCRR § 600.11(a)(2) and Not-for-Profit Corporation Law § 804(a)(i).

There is no legal objection to the proposed Restated Certificate of Incorporation of The Carthage Area Hospital.

Attachments

**RESTATED CERTIFICATE OF INCORPORATION**

**OF**

**CARTHAGE AREA HOSPITAL, INC.**

Under Section 805 of the Not-For-Profit Corporation Law

The undersigned, Gary Rowe, being the President of Carthage Area Hospital, Inc. (the "Corporation"), does hereby certify:

1. The name of the Corporation is Carthage Area Hospital Inc.

2. The Certificate of Incorporation was filed by the New York State Secretary of State on November 5, 1921. The original name under which the Corporation was formed was Carthage Hospital. A Certificate of Report of Existence of Carthage Hospital was filed May 26, 1952. A Certificate of Change was filed August 31, 1962, to decrease the number of directors from 23 to 18. A Certificate of Change of Name was filed September 14, 1962, to change the Corporation's name to Carthage Area Hospital Association. A Certificate of Change of Name was filed October 25, 1967, to change the Corporation's name to Carthage Area Hospital, Inc. A Certificate of Type of Not-For-Profit Corporation was filed December 26, 1973, to state the Corporation was a Type B Not-For-Profit Corporation.

3. The Certificate of Incorporation is now in full force and effect and is hereby amended to effect the following changes authorized in Section 801 of the Not-For-Profit Corporation Law ("NPCL"):

A. To change the Corporation's name to Carthage Area Hospital.

B. To update the purposes of the Corporation by deleting paragraph SECOND and replacing it with the following:

The purposes for which the Corporation is to be formed are: to own, operate, and maintain a hospital in the Greater Carthage area, County of Jefferson, State of New York, to provide medical, surgical and other general hospital services, health related services and nursing care and treatment to the sick, the invalid, infirm, disabled or convalescent persons and other persons in need of such services in the County of Jefferson and adjoining communities, as such hospital is defined in Article 28 of the New York Public Health Law, including the operation of health clinics.

C. To add a provision stating the powers of the Corporation as paragraph THIRD.

D. To amend the provisions of paragraph THIRD, regarding the location of the principal office, by deleting paragraph THIRD and replacing it with paragraph FOURTH, to read as follows:

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

E. To omit the provision regarding the number of directors from paragraph FOURTH.

F. To omit the provision relating to the names and addresses of the initial directors of the Corporation pursuant to Section 805(c) of the NPCL from paragraph FIFTH.

G. To add a provision stating that the Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law as paragraph FIFTH.

H. To omit the provision regarding vacancies on the Board of Directors from paragraph SIXTH.

I. To add a provision stating that the Corporation is a charitable corporation as defined in Section 201 of the Not-For-Profit Corporation Law as paragraph SIXTH.

J. To omit the provision regarding the time for holding an annual meeting from paragraph SEVENTH.

K. To add the provision relating to the qualification of the Corporation as exempt from federal income tax under the Internal Revenue Code Section 501(c)(3) as paragraph SEVENTH.

L. To add the provision relating to the distribution of the Corporation's income in any taxable year in which the Corporation is a private foundation as described in the Internal Revenue Code Section 509(a) as paragraph EIGHTH.

M. To add the provision relating to the limitation of the personal liability of directors and officers to the Corporation as paragraph TENTH.

N. To add the provision relating to the distribution of assets and property of the Corporation in the event of dissolution as paragraph ELEVENTH.

4. The Certificate of Incorporation is hereby amended and restated to read as herein set forth in full:

**FIRST:** The name of the Corporation is **CARTHAGE AREA HOSPITAL** (hereinafter referred to as the "Corporation").

**SECOND:** The purposes for which the Corporation is to be formed are: to own, operate, and maintain a hospital in the Greater Carthage area, County of Jefferson, State of New York, to provide medical, surgical and other general hospital services, health related services and nursing care and treatment to the sick, the invalid, infirm, disabled or convalescent persons and other persons in need of such services in the County of Jefferson and adjoining communities, as such hospital is defined in Article 28 of the New York Public Health Law, including the operation of health clinics.

**THIRD:** The Corporation shall have the power to:

(a) To take and hold by bequest, gift, purchase or lease, for any of its purposes, any property real or personal, without limitation as to the amount or value, except subject to such limitations, if any, as imposed by law; to convey such property, and to invest and reinvest principal and to deal with and expand the income and principal of the Corporation in such manner as in the judgment of its officers and directors best promotes its purposes; and

(b) To have and exercise all powers necessary and convenient to effect its corporate purposes and do any other act in furtherance of its corporate purpose authorized or permitted by the laws of the State of New York; provided however, that the Corporation shall conduct no activities for pecuniary profit or financial gain of any member, director, trustee or officer of the Corporation, except to the extent permitted under the Not-For-Profit Corporation Law ("NPCL").

**FOURTH:** The principal office of the Corporation is to be located in the County of Jefferson, State of New York.

**FIFTH:** The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

**SIXTH:** The Corporation is a charitable corporation as defined in Section 201 of the NPCL.

**SEVENTH:** Notwithstanding any other provision of this Certificate, the Corporation is organized exclusively for one or more of the purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1986, as now in effect or hereafter amended (the "Code"), and intends at all times to qualify and remain qualified as exempt from federal income tax under Code Section 501(c)(3), and, in connection therewith:

(a) The Corporation is not formed for and shall not be conducted nor operated for pecuniary profit or financial gain, and no part of the net earnings of the Corporation shall inure to the benefit of or be distributed to any member, trustee, director or officer of the Corporation or any private individual or individuals, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered to or for the Corporation, and no member, trustee, director or officer of the Corporation or any private individual shall be entitled to

share in the distribution of any of the corporate assets of the Corporation upon its dissolution;

(b) No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Code Section 501(h)), and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidates for public office; and

(c) The Corporation shall not engage in or include among its purposes any activities not permitted to be carried on by a corporation exempt from federal income taxation under Code Section 501(c)(3), or corresponding section of any future federal tax law.

**EIGHTH:** In any taxable year in which the Corporation is a private foundation as described in Section 509(a) of the Code, the Corporation shall distribute its income for said period at such time and manner as not to subject it to tax under Section 4942 of the Code and the Corporation shall not: (a) engage in any act of self-dealing as defined in Section 4941(d) of the Code; (b) retain any excess business holdings as defined in Section 4943(c) of the Code; (c) make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; or (d) make any taxable expenditures as defined in Section 4945(d) of the Code or corresponding provisions of any subsequent federal tax law.

**NINTH:** 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 address to which the Secretary of State shall mail a copy of any process accepted on behalf of the Corporation is 1001 West Street, Carthage, New York 13619.

**TENTH:** No director or officer of the Corporation shall be personally liable to the Corporation for monetary damages for breach of duty as a director or officer unless such liability is based upon a judgment or other final adjudication adverse to the director or officer which establishes that:

(a) the acts or omissions of the director or officer were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated;


(b) the officer or director personally gained in fact a financial profit or other advantage to which the officer or director was not legally entitled; or

(c) the director or officer is liable to the Corporation pursuant to Section 719 of the NPCL. If the NPCL is amended to authorize the further elimination or limitation of the liability of directors or officers, the limitation on personal liability established by this Certificate of Incorporation shall be further expanded to the fullest extent permitted by the amended NPCL.

**ELEVENTH:** In the event of dissolution, the assets and property of the Corporation remaining after expenses and liabilities have been paid shall be distributed to another organization exempt under Section 501(c)(3) of the Code, pursuant to a determination of the Board of Directors of the Corporation, upon approval of a Justice of the Supreme Court of the State of New York. The dissolution of the Corporation and any distribution of its assets incident thereto shall be subject to such laws, if any, then in force as may require the approval thereof or consent thereof by any court or judge having jurisdiction or by any governmental department or agency or official thereof.

5. The Restated Certificate of Incorporation was duly authorized by a vote of the majority of the entire Board of Directors of the Corporation. The Corporation has no members.

IN WITNESS WHEREOF I have made, executed and acknowledged this Restated Certificate of Incorporation this 30<sup>th</sup> day of April 2019.

  
\_\_\_\_\_  
Gary Rowe, President



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RESTATED CERTIFICATE OF INCORPORATION  
OF  
CARTHAGE AREA HOSPITAL

Under Section 805 of the Not-For-Profit Corporation Law

Filed by: Marjorie Pepe, Paralegal  
Bousquet Holstein PLLC  
110 West Fayette Street, Suite 1000  
Syracuse, New York 13202

# PHHPC

## ***PUBLIC HEALTH AND HEALTH PLANNING COUNCIL***

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

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

April 8, 2019

David N. Hoffman, Esq.  
Carthage Area Hospital  
1001 West Street  
Carthage, NY 13619

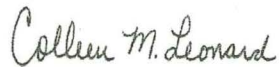
Re: Restated Certificate of Incorporation of Carthage Area Hospital

Dear Mr. Hoffman:

I have received your letter dated April 5, 2019, regarding the Restated Certificate of Incorporation of Carthage Area Hospital for approval under Section 805 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



*The Place for Personal Care*

April 5<sup>th</sup>, 2019

Public Health and Health Planning Council  
Center for Health Care Facility Planning, Licensure and Finance  
Corning Tower, Room 1805  
Albany, New York 12237

Attn.: Colleen M. Leonard, Executive Secretary  
[colleen.leonard@health.ny.gov](mailto:colleen.leonard@health.ny.gov)

Dear Ms. Leonard,

In follow up to our email communication, attached is the executed proposed restated certificate of incorporation that we would like to file with the Secretary of State. As I have explained, Carthage has been asked by the United States Department of Agriculture (USDA) to file this amendment in order to move forward with the planning process for applying for financing for a new hospital building. Once preliminary USDA approval is obtained, we will, of course, be filing a full CON application with the Department of Health.

We need a letter stating that the Department of Health (Department), Public Health and Health Planning Council, "consents" to the filing, which simply clarifies that Carthage can lawfully operate facilities in the Village of West Carthage, as well as in the Village of Carthage proper. As you can see from the attached letter from the Department of State, they will not accept the representation from the Department that it does not "object" to the filing of the revised certificate, they require the Department's actual consent. As I have explained to the Department, we currently operate our CAH Medical Center and two school-based clinics in West Carthage, with DOH approval. You will note from the attached copy of our DOH operating certificate that each location is listed as being in Carthage, though they are all located west of the Black River, which places them in the Village of West Carthage.

I have also attached the earlier versions of our certificates of incorporation, dating back to our formation in 1921, in case they are needed for your review.

Please let me know if you need anything else from me.

Very truly yours,

David N. Hoffman, Esq.  
Chief Compliance Officer  
[dhoffman@CAHNY.org](mailto:dhoffman@CAHNY.org)

STATE OF NEW YORK  
DEPARTMENT OF STATE

ONE COMMERCE PLAZA  
99 WASHINGTON AVENUE  
ALBANY, NY 12231-0001  
WWW.DOS.NY.GOV

ANDREW M. CUOMO  
GOVERNOR

ROSSANA ROSADO  
SECRETARY OF STATE

March 20, 2019

41 - COGENCY GLOBAL INC. - 41  
Drop box: 18

RE: Amendment of CARTHAGE AREA HOSPITAL, INC.

Dear Sir/Madam:

Thank you for your recent submission. The enclosed document(s) has been reviewed pursuant to the appropriate statutes. We regret we have not been able to file this document(s) and it is being returned to you for the following reasons:

You must obtain a consent from the Attorney General's Office or form the Justice Supreme Court.

Pursuant to statute, certificates of amendment, filed under the Not-For-Profit Corporation Law, must:

- (1) make a statement of the subject matter of the amendment  
and
- (2) state the full text of the paragraph to be amended.

For example, an amendment changing the corporate name would read as follows:

Paragraph first of the certificate of incorporation relating to the name is hereby amended to read as follows:

First: The name of the corporation is \_\_\_\_\_.(list new name)

The bracketed material must be deleted.

You will also need consent from public health and health planning council.

As you submitted the certificate for filing under the Expedited Handling option, your account has been debited \$25.



Department  
of State

I hope you find the above information to be of assistance. If I may provide any further information to clarify this matter to ensure we are able to file your document upon its re-submission, please do not hesitate to contact me at the number listed below.

Please return a copy of this letter with your re-submission to facilitate the processing of your certificate(s).

Sincerely,

Ann Marie  
Division of Corporations  
(518)473-2492

190320000859

RESTATED CERTIFICATE OF INCORPORATION  
OF  
CARTHAGE AREA HOSPITAL

Under Section 805 of the Not-For-Profit Corporation Law

Filed by: Marjorie Pepe, Paralegal  
Bousquet Holstein PLLC  
110 West Fayette Street, Suite 1000  
Syracuse, New York 13202

①  
Ct. I - 11/5/1921

CERTIFICATE OF INCORPORATION  
of  
CARTHAGE HOSPITAL

We, the undersigned, all being persons of full age  
all citizens of the United States, and all residents of the  
County of Jefferson, and State of New York, desiring to form  
a corporation for the purpose of erecting, establishing and  
maintaining a hospital and Dispensary in the Village of  
Carthage, New York, pursuant to the provisions of §130 of  
the Membership Corporations Law, do hereby certify as follows:

FIRST. The name of the proposed corporation is:

CARTHAGE HOSPITAL

SECOND. The particular object for which the  
corporation is to be formed is: To erect, establish and  
maintain a hospital and dispensary in the Village of Carthage,  
New York.

THIRD. The principal office of the corporation is  
to be located in the Village of Carthage, County of Jefferson,  
and State of New York.

FOURTH. The number of its directors is to be  
twenty-three.

FIFTH. The names and places of residence of the  
directors of said corporation until its first annual meeting are  
as follows:

NAMES	PLACES OF RESIDENCE
1. David W. Balmut	Carthage, N.Y.
2. Orman H. Braman	Carthage, N.Y.
3. Fred W. Coburn	Carthage, N.Y.
4. A. Lion Carter	Carthage, N.Y.
5. Nathan Chaufy	Carthage, N.Y.

NAMES	PLACES OF RESIDENCE
7. Helen S. Francis	Carthage, N.Y.
8. Jennie C. Calvin	Carthage, N.Y.
9. Edward H. Muller	Carthage, N.Y.
10. Louise G. Johnson	Carthage, N.Y.
11. Jennie J. Johnson	Carthage, N.Y.
12. Carl W. Lasher	Carthage, N.Y.
13. Charles E. Morris	Carthage, N.Y.
14. Eva S. Outterson	Carthage, N.Y.
15. Fred J. Quinn	Carthage, N.Y.
16. Charles J. Reeder	Carthage, N.Y.
17. Edwin A. Simonds	Carthage, N.Y.
18. Dell W. Surway	Carthage, N.Y.
19. John L. Strickland	Carthage, N.Y.
20. Willard H. Van Allen	Carthage, N.Y.
21. Edward Villars	Carthage, N.Y.
22. Clarence T. Wright	Carthage, N.Y.
23. George D. Walker	Carthage, N.Y.

SIXTH. All vacancies in the Board of Directors occurring at any time, or for any cause, shall be filled without unnecessary delay by a majority vote of the remaining members of the Board.

SEVENTH. The time for holding the annual meetings of the said corporation shall be on the second Monday of May of each year at 7:30 o'clock P.M.

IN WITNESS WHEREOF we have made, signed and acknowledged this certificate in duplicate on this 16th day of August, in the

year one thousand nine hundred and twenty-one

1. *Edwin A. Simonds*  
 2. *John L. Strickland*  
 3. *George D. Walker*  
 4. *Edwin A. Simonds*  
 5. *John L. Strickland*  
 6. *George D. Walker*



STATE OF NEW YORK )  
COUNTY OF JEFFERSON ) SS:

On this 17th day of August, 1921, before me, personally  
came, Fred W. Coburn, Edwin A. Simonds, A. Bion Carter,  
Lucien G. Johnson, Edward Villars, and Willard B. Van Allen, to  
me known and known to me to be the persons described in and who  
made and signed the foregoing certificate, and severally, duly  
acknowledged to me that they had made, signed and executed  
the same.

W. S. Ward  
Notary Public.

STATE OF NEW YORK )  
COUNTY OF JEFFERSON ) SS:

WILLIAM S. WARD, being duly sworn, says he is an attorney  
and counselor at law, and resides in the Village of Carthage,  
County of Jefferson, New York. That deponent personally knows  
Fred W. Coburn, Edwin A. Simonds, A. Bion Carter, Lucien G.  
Johnson, Edward Villars and Willard B. Van Allen, the persons  
described in and who signed the foregoing certificate of  
incorporation and deponent states of his own knowledge that each  
of said persons is a citizen of the United States, a resident  
of the State of New York, and of the Village of Carthage in said  
state, and is of full age.  
Sworn to before me this 18th day  
of August, 1921.

William S. Ward  
Notary Public.

STATE OF NEW YORK  
STATE BOARD OF CHARITIES

The Capitol at Albany

-----  
In the Matter of the  
Incorporation

of

Carthage Hospital  
-----

WHEREAS, Application has been made to the State Board of Charities for its approval of the incorporation of CARTHAGE HOSPITAL and

WHEREAS, On due inquiry and investigation it appears to said Board desirable and proper that such hospital shall be so incorporated.

NOW THEREFORE, In pursuance of and in conformity with the provisions of Chapter forty of the Laws of the State of New York enacted February 17, 1909, the said State Board of Charities hereby certifies that it approves of the incorporation of the said Carthage Hospital, the certificate of incorporation of which is hereunto annexed.

In Witness Whereof, the said Board has this eleventh day of October 1921 caused these presents to be subscribed by its President and attested by its Secretary and its official seal to be hereunto affixed.

(L.S.)

WILLIAM R. STEWART

President

Attest: Charles H. Johnson

Secretary

CERTIFICATE OF INCORPORATION

of

CARTHAGE HOSPITAL

We, the undersigned, all being persons of full age, all citizens of the United States, and all residents of the County of Jefferson, and State of New York, desiring to form a corporation for the purpose of erecting, establishing and maintaining a hospital and Dispensary in the Village of Carthage, New York, pursuant to the provisions of §130 of the Membership Corporations Law, do hereby certify as follows:

FIRST. The name of the proposed corporation is:  
CARTHAGE HOSPITAL

SECOND. The particular object for which the corporation is to be formed is: To erect, establish and maintain a hospital and dispensary in the Village of Carthage, New York.

THIRD. The principal office of the corporation is to be located in the Village of Carthage, County of Jefferson, and State of New York.

FOURTH. The number of its directors is to be twenty-three.

FIFTH. The names and places of residence of the directors of said corporation until its first annual meeting are as follows:

NAMES	Places of Residence
1. David W. Balmat	Carthage, N.Y.
2. Orman H. Braman	Carthage, N.Y.
3. Fred W. Coburn	Carthage, N.Y.
4. A. Bion Garter	Carthage, N.Y.
5. Reuben Chaufy	Carthage, N.Y.
6. Frances J. Crooks	Carthage, N.Y.
7. Helen S. Francis	Carthage, N.Y.
8. Jennie C. Galvin	Carthage, N.Y.
9. Howard H. Haller	Carthage, N.Y.
10. Lucien G. Johnson	Carthage, N.Y.
11. Jennie J. Johnson	Carthage, N.Y.
12. Carl W. Lasher	Carthage, N.Y.
13. Charles E. Norris	Carthage, N.Y.

- |                          |                |
|--------------------------|----------------|
| 14. Eva S. Outterson     | Carthage, N.Y. |
| 15. Fred J. Quinn        | Carthage, N.Y. |
| 16. Charles J. Reeder    | Carthage, N.Y. |
| 17. Edwin A. Simonds     | Carthage, N.Y. |
| 18. Dell W. Sarvay       | Carthage, N.Y. |
| 19. John L. Strickland   | Carthage, N.Y. |
| 20. Willard B. Van Allen | Carthage, N.Y. |
| 21. Edward Villars       | Carthage, N.Y. |
| 22. Clarence T. Wright   | Carthage, N.Y. |
| 23. George D. Walker     | Carthage, N.Y. |

SIXTH. All vacancies in the Board of Directors occurring at any time, or for any cause, shall be filled without unnecessary delay by a majority vote of the remaining members of the Board.

SEVENTH. The time for holding the annual meetings of the said corporation shall be on the second Monday of May of each year at 7:30 o'clock P.M.

In Witness Whereof we have made, signed and acknowledged this certificate in duplicate on this 16th day of August, in the year One Thousand Nine Hundred and Twenty-one.

- |                                    |   |
|------------------------------------|---|
| 1. FRED W. COBURN<br>(F.W. COBURN) | 2. LUCIEN G. JOHNSON<br>(L. G. JOHNSON) |
| 3. EDWIN A. SIMONDS                | 4. EDWARD VILLARS                       |
| 5. A. BION CARTER                  | 6. WILLARD B. VAN ALLEN                 |

STATE OF NEW YORK    )  
                          ) SS:  
COUNTY OF JEFFERSON )

On this 17th day of August, 1921, before me, personally came, Fred W. Coburn, Edwin A. Simonds, A. Bion Carter, Lucien G. Johnson, Edward Villars, and Willard B. Van Allen, to me known and known to me to be the persons described in and who made and signed the foregoing certificate, and severally, duly acknowledged to me that they had made, signed and executed the same.

(L.S.)           W. S. Ward   Notary Public

STATE OF NEW YORK    )  
                          ) SS:  
COUNTY OF JEFFERSON )

William S. Ward, being duly sworn, says he is an attorney and counselor at law, and resides in the Village of Carthage, County of Jefferson, New York. That deponent personally knows Fred

W. Coburn, Edwin A. Simonds, A. Dion Carter, Lucien G. Johnson,  
Edward Villars and Willard B. Van Allen, the persons described in  
and who signed the foregoing certificate of incorporation and deponent  
states of his own knowledge that each of said persons is a citizen of  
the United States, a resident of the State of New York, and of the  
Village of Carthage in said state, and is of full age.

WILLIAM S. WARD

Sworn to before me this 18th day  
of August, 1921.

Vera H. Arnot Notary Public

I, a Justice of the Supreme Court of the State of  
New York, do hereby approve the foregoing certificate of incorporation  
of the CARTHAGE HOSPITAL.

Dated Oct. 29, 1921.

CLAUDE B. ALVERSON

Justice, Supreme Court

Recorded Nov. 7, 1921 at 3:45 P.M.

Fred H. Moore Clerk

I, a Justice of the Supreme Court of the State of  
New York, do hereby approve the foregoing certificate of  
incorporation of the CARTHAGE HOSPITAL.

Dated Oct 29 1921. Charles B. Abraham,  
Justice, Supreme Court.

STATE OF NEW YORK, }  
Jefferson County Clerk's Office } ss.

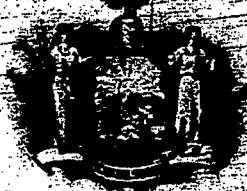
I, FRED H. MOORE, County Clerk of the County of Jefferson,  
and Clerk of the Supreme and County Courts in and for said County,  
the same being Courts of Records, do hereby certify that I have com-  
pared the foregoing copy of Certificate of Incorporation  
of CARTHAGE HOSPITAL

herewith annexed with the original recorded Nov. 7, 1921 at  
3:45 P.M. in Book 6 of Certificates at page 264

in this office, and that the same is a true and correct transcript thereof  
and of the whole of said original.

In Witness Whereof, I have hereunto set my hand and  
affixed the seal of said Courts, at the City of Watertown, N.Y., this 19th  
day of December 1938.

Fred H. Moore CLERK.  
By David J. Sheldon DEPUTY CLERK.



State of New York  
**State Board of Charities**  
 The Capital at Albany

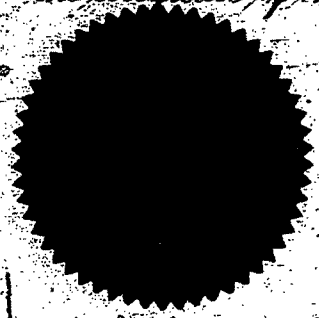
In the Matter of the Incorporation  
 of  
Carthage Hospital

Whereas Application has been made to the State Board of Charities for its approval of the incorporation of Carthage Hospital and

Whereas On due inquiry and investigation it appears to said Board desirable and proper that such hospital shall be so incorporated

Now Therefore In pursuance of and in conformity with the provisions of Chapter forty of the Laws of the State of New York enacted February 17, 1909 the said State Board of Charities hereby certifies that it approves of the incorporation of the said Carthage Hospital.

the certificate of incorporation of which is herewith annexed.



In Witness Whereof the said Board has this eleventh day of October 1921 caused these presents to be subscribed by its President and attested by its Secretary and its official seal to be herewith affixed.

William R. Stewart  
 PRESIDENT

ATTEST: Charles Johnson  
 SECRETARY



CERTIFICATE OF INCORPORATION

of

CARTHAGE HOSPITAL

We, the undersigned, all being persons of full age, all citizens of the United States, and all residents of the County of Jefferson, and State of New York, desiring to form a corporation for the purpose of erecting, establishing and maintaining a hospital and Dispensary in the Village of Carthage, New York, pursuant to the provisions of §150 of the Membership Corporations Law, do hereby certify as follows:

FIRST. The name of the proposed corporation is:

CARTHAGE HOSPITAL

137  
SECOND. The particular object for which the corporation is to be formed is: To erect, establish and maintain a hospital and dispensary in the Village of Carthage, New York.

THIRD. The principal office of the corporation is to be located in the Village of Carthage, County of Jefferson, and State of New York.

FOURTH. The number of its directors is to be twenty-three.

FIFTH. The names and places of residence of the directors of said corporation until its first annual meeting are as follows:

NAMES	PLACES OF RESIDENCE
1. David W. Balmat	Carthage, N.Y.
2. Orman H. Braman	Carthage, N.Y.
3. Fred W. Coburn	Carthage, N.Y.
4. A. Bion Carter	Carthage, N.Y.
5. Reuben Chaufy	Carthage, N.Y.
6. Frances J. Crooks	Carthage, N.Y.

NAMES	PLACES OF RESIDENCE
7. Helen S. Francis	Carthage, N.Y.
8. Jennie C. Galvin	Carthage, N.Y.
9. Howard H. Haller	Carthage, N.Y.
10. Lucien G. Johnson	Carthage, N.Y.
11. Jennie J. Johnson	Carthage, N.Y.
12. Carl W. Lasher	Carthage, N.Y.
13. Charles E. Norris	Carthage, N.Y.
14. Eva S. Otterson	Carthage, N.Y.
15. Fred J. Quinn	Carthage, N.Y.
16. Charles J. Reeder	Carthage, N.Y.
17. Edwin A. Simonds	Carthage, N.Y.
18. Dell W. Sarvay	Carthage, N.Y.
19. John L. Strickland	Carthage, N.Y.
20. Willard B. Van Allen	Carthage, N.Y.
21. Edward Villars	Carthage, N.Y.
22. Clarence T. Wright	Carthage, N.Y.
23. George D. Walker	Carthage, N.Y.

SIXTH. All vacancies in the Board of Directors occurring at any time, or for any cause, shall be filled without unnecessary delay by a majority vote of the remaining members of the Board.

SEVENTH. The time for holding the annual meetings of the said corporation shall be on the second Monday or May of each year at 7:30 o'clock P.M.

IN WITNESS WHEREOF we have made, signed and acknowledged this certificate in duplicate on this 16th day of August, in the year One Thousand Nine Hundred and Twenty-one.

1. *Edwin A. Simonds*  
 3. *A. H. [unclear]*  
 5. *A. H. [unclear]*

2. *Edwin A. Simonds*  
 4. *Edward Villars*  
 6. *Willard B. Van Allen*

3

STATE OF NEW YORK )  
COUNTY OF JEFFERSON ) SS:

On this 17th day of August, 1921, before me, personally came, Fred W. Coburn, Edwin A. Simonds, A. Bion Carter, Lucien G. Johnson, Edward Villars, and Willard B. Van Allen, to me known and known to me to be the persons described in and who made and signed the foregoing certificate, and severally, duly acknowledged to me that they had made, signed and executed the same.

*W. S. Ward*  
-----  
Notary Public.

STATE OF NEW YORK )  
COUNTY OF JEFFERSON ) SS:

WILLIAM S. WARD, being duly sworn, says he is an attorney and counselor at law, and resides in the Village of Carthage, County of Jefferson, New York. That deponent personally knows Fred W. Coburn, Edwin A. Simonds, A. Bion Carter, Lucien G. Johnson, Edward Villars and Willard B. Van Allen, the persons described in and who signed the foregoing certificate of incorporation and deponent states of his own knowledge that each of said persons is a citizen of the United States, a resident of the State of New York, and of the Village of Carthage in said state, and is of full age.

Sworn to before me this 18th day  
of August, 1921.

*William S. Ward*  
-----

9  
*Vera H. Arnot*  
-----  
Notary Public.

I, a Justice of the Supreme Court of the State of  
New York, do hereby approve the foregoing certificate of  
incorporation of the CARTHAGE HOSPITAL.

Dated

Oct 29 1921

Charles B. Johnson,

Justice, Supreme Court.

5

*187*

CERTIFICATE OF INCORPORATION

of

CARRIAGE HOSPITAL

STATE OF NEW YORK  
SECRETARY OF STATE

FILED NOV 5 - 1921

*W. B. Van Allen*  
SECRETARY OF STATE

*W. B. Van Allen*  
*Carriage Hospital*

**CERTIFICATE OF REPORT OF EXISTENCE OF**

CARTHAGE HOSPITAL

Exact Name of Corporation

②  
Cert. of Report of  
Existence  
5/26/1952

Pursuant to Section 57 of the Membership Corporations Law

1. The name of the corporation is CARTHAGE HOSPITAL  
Name of Corporation

The original name was CARTHAGE HOSPITAL  
If name has been changed, insert original name

2. The certificate of incorporation was filed in the Department of State on November 5, 1921  
Date of Incorporation

3. The corporation was formed pursuant to Section 130 of the Membership Corporations Law  
Cite Incorporation Statute

4. The existence of the foregoing corporation is hereby continued  
Charles J. Reeder  
Vice-President of Carthage Hospital

To be signed by an officer,  
trustee, director or five mem-  
bers in good standing.

103

State of New York )  
County of Jefferson ss.:

On this 20th day of May, 1952, before me personally appeared

Charles J. Reeder to me personally known and known to me to be the  
person(s) described in and who executed the foregoing certificate, and ( he ) (~~they~~) thereupon acknow-  
ledged to me that ( he ) (~~they~~) executed the same for the uses and purposes therein mentioned.

Helen R. Thomas  
Notary Public.

HELEN R. THOMAS  
NOTARY PUBLIC in the State of New York  
Residing in Jefferson County, No. 287  
Commission Expires March 20, 1953

County of Jefferson

NOTE: If the foregoing acknowledgment is taken without the State of New York, the signature of the notary public  
should be authenticated by a certificate of the clerk of the county in which such notary has power to act, or  
other proper officer.

40-103

**CERTIFICATE OF REPORT  
OF EXISTENCE OF**

**CARTHAGE HOSPITAL**  
Exact Name of Corporation

Pursuant to Section 57  
of the  
**MEMBERSHIP CORPORATIONS  
LAW**

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED MAY 26 1952

FILING FEE \$5.00

*Thomas J. Moran*  
Secretary of State

**SMITH & MORAN**  
Name of Filer

Attorneys at Law,  
Office & P. O. Address,  
Carthage, New York

CERTIFICATE OF CHANGE

Certificate of Change of Number of Directors pursuant to Section 30 of the Membership Corporations Law.

We, CHARLES S. HIRSCHY and ROBERT C. RICH, being respectively the President and the Secretary of Carthage Hospital certify

1. The name of this corporation is:

CARTHAGE HOSPITAL.

2. The Certificate of Incorporation was filed in the office of the Secretary of State on the 5th day of November, 1921.

3. The number of directors previously authorized is twenty-three (23).

4. The number of directors as decreased by this certificate shall hereafter be eighteen (18).

IN WITNESS WHEREOF, we have made and subscribed this certificate in triplicate this 25<sup>th</sup> day of August, 1962.

*Charles S. Hirschy*  
President  
*Robert C. Rich*  
Secretary

STATE OF NEW YORK )  
                          ) ss:  
COUNTY OF JEFFERSON )

On this 25<sup>th</sup> day of August, 1962, before me, personally came CHARLES S. HIRSCHY and ROBERT C. RICH, to me known to be the persons described in and who executed the foregoing Certificate of Change of Number of Directors, and they thereupon severally acknowledged to me that they executed the same.

*Millen F. Moran*  
MILLEN F. MORAN  
Notary Public in the State of New York  
Residing in Jefferson County  
My Commission Expires March 30, 1963

STATE OF NEW YORK )  
                          ) ss:  
COUNTY OF JEFFERSON )

CHARLES S. HIRSCHY and ROBERT C. RICH, being duly sworn, depose and say and each for himself deposes and says that he, CHARLES S. HIRSCHY, is President and he, ROBERT C. RICH, is Secretary of CARTHAGE HOSPITAL; that they have been duly author

LAW OFFICE OF  
MILLEN F. MORAN  
CANTON, N. Y.

3  
Cert. of Change  
8/31/1962



to execute and file the foregoing Certificate of Change of  
Number of Directors from twenty-three (23) to eighteen (18) by  
the concurring vote of a majority of the members of the corpora-  
tion present at an adjourned annual meeting held on the 24th day  
of July, 1962, upon notice pursuant to Section 43 of the Member-  
ship Corporations Law, held at the Carthage Elementary School,  
Carthage, New York, at 7:30 o'clock P. M.

*Charles S. ...*  
*Robert C. ...*

Subscribed and sworn to before me  
this 17<sup>th</sup> day of August, 1962.

*Richard ...*

Notary Public in the State of New York  
Residing in Hamilton County  
My Commission Expires March 10, 1963

STATE OF NEW YORK  
DEPARTMENT OF STATE  
A TRUE COPY OF THE ORIGINAL  
FILED IN THIS OFFICE ON

AUG 31 1962

WITHHELD BY HAND AND OFFICIAL  
SEAL OF THE DEPARTMENT OF  
STATE ON THE DATE ABOVE-  
MENTIONED.

*Constance K. ...*  
SECRETARY OF STATE

BY *John J. ...*

DEPUTY SECRETARY OF STATE

LAW OFFICE OF  
MILLER F. MORAN  
CARTHAGE, N. Y.

2

CERTIFICATE OF CHANGE

Certificate of Change of Number of Directors pursuant to Section 30 of the Membership Corporations Law.

We, CHARLES S. HIRSHEY and ROBERT C. RICH, being respectively the President and the Secretary of Carthage Hospital certify

1. The name of this corporation is:

CARTHAGE HOSPITAL.

2. The Certificate of Incorporation was filed in the office of the Secretary of State on the 5th day of November, 1921.

3. The number of directors previously authorized is twenty-three (23).

4. The number of directors as decreased by this certificate shall hereafter be eighteen (18).

IN WITNESS WHEREOF, we have made and subscribed this certificate in triplicate this 28<sup>th</sup> day of August, 1962.

311513

*Charles S. Hirschey*  
President

*Robert C. Rich*  
Secretary

STATE OF NEW YORK )

COUNTY OF JEFFERSON )

On this 28<sup>th</sup> day of August, 1962, before me, personally came CHARLES S. HIRSHEY and ROBERT C. RICH, to me known to be the persons described in and who executed the foregoing Certificate of Change of Number of Directors, and they thereupon severally duly acknowledged to me that they executed the same.

*Miller F. Moran*

STATE OF NEW YORK )

COUNTY OF JEFFERSON )

MILLER F. MORAN  
Notary Public in the State of New York  
Residing in Jefferson County  
My commission Expires March 30, 1963

CHARLES S. HIRSHEY and ROBERT C. RICH, being duly sworn, depose and say and each for himself deposes and says that he, CHARLES S. HIRSHEY, is President and he, ROBERT C. RICH, is Secretary of CARTHAGE HOSPITAL; that they have been duly authorized

LAW OFFICE OF  
MILLER F. MORAN  
CARTHAGE, N. Y.

to execute and file the foregoing Certificate of Change of  
Number of Directors from twenty-three (23) to eighteen (18) by  
the concurring vote of a majority of the members of the corpora-  
tion present at an adjourned annual meeting held on the 24th day  
of July, 1962, upon notice pursuant to Section 43 of the Member-  
ship Corporations Law, held at the Carthage Elementary School,  
Carthage, New York, at 7:30 o'clock P. M.

*Charles S. Ancker*  
*Robert C. Rich*

Subscribed and sworn to before me  
this 29<sup>th</sup> day of August, 1962.

*Miller F. Moran*

MILLER F. MORAN  
Notary Public in the State of New York  
Residing in Jefferson County  
My commission Expires March 30, 1963

11/5/21 200.9137  
Century Johnson Co  
P.L.

<b>CERTIFICATE OF CHANGE OF NUMBER OF DIRECTORS</b>
<i>[Signature]</i> <b>CARTHAGE HOSPITAL</b> 311543
Dated, August 29 <sup>th</sup> , 1962
<b>STATE OF NEW YORK DEPARTMENT OF STATE</b> FILED AUG 31 1962 TAX \$ <u>None</u> FILING FEE \$ <u>30</u>
<i>Catherine M. Quinn</i> Secretary of State <i>[Signature]</i>
LAW OFFICE OF <b>MILLER F. MORAN</b> CARTHAGE, NEW YORK

3

4

Change of Name

#1

9/14/1962

CERTIFICATE OF CHANGE OF NAME

Certificate of Change of Name of CARTHAGE HOSPITAL to CARTHAGE AREA HOSPITAL ASSOCIATION, pursuant to Section 40 of the General Corporation Law.

We, CHARLES S. HIRSCHBY and ROBERT C. RICH, being respectively the President and the Secretary of Carthage Hospital certify:

1. The name of this corporation is:

CARTHAGE HOSPITAL.

2. The Certificate of Incorporation was filed in the office of the Secretary of State on the 5th day of November, 1921.

3. The new name to be assumed by this corporation is:

CARTHAGE AREA HOSPITAL ASSOCIATION.

IN WITNESS WHEREOF, we have made and subscribed this certificate in triplicate this 29th day of August, 1962.

Charles S. Hirschby
President

Robert C. Rich
Secretary

3-13252

STATE OF NEW YORK )
: ss:
COUNTY OF JEFFERSON )

On this 26th day of August, 1962, before me, personally came CHARLES S. HIRSCHBY and ROBERT C. RICH, to me known to be the persons described in and who executed the foregoing Certificate of Change of Name, and they thereupon severally duly acknowledged to me that they executed the same.

Miller F. Moran

STATE OF NEW YORK )
: ss:
COUNTY OF JEFFERSON )

CHARLES S. HIRSCHBY and ROBERT C. RICH, being duly sworn, depose and say and each for himself deposes and says, that he, CHARLES S. HIRSCHBY, is President, and he, ROBERT C. RICH, is Secretary of CARTHAGE HOSPITAL; that they were duly authorized to execute and file the foregoing Certificate of Change of Name

of said corporation by the votes cast, in person or by proxy, of a majority of the members of record of the corporation entitled to vote on a change of name, and that such votes were cast at an adjourned annual meeting of the members called for that purpose upon like notice of that required for the annual meetings of the corporation, and that such meeting was held at the Carthage Elementary School, Carthage, New York, on July 24, 1962, at 7:30 o'clock P. M.

Charles S. Reichert  
Robert C. Rich

Subscribed and sworn to before me  
this 28<sup>th</sup> day of August, 1962.

Miller F. Moran

MILLER F. MORAN  
Notary Public in the State of New York  
Residing in Jefferson County  
My commission expires March 30, 1963

CERTIFICATE OF CHANGE  
OF NAME

313253

*J*

CARTHAGE HOSPITAL

*Carthage Hospital*

Dated, August 28<sup>th</sup>, 1962

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED SEP 14 1962

TAX \$

*None*

FILING FEE \$

*30*

*Carthage H. Hospital*

SEP 14 1962  
*[Signature]*

LAW OFFICE OF

MILLER J. MORAN

CARTHAGE, NEW YORK

5

Change of Name  
#20

845550

CERTIFICATE OF CHANGE OF NAME

Certificate of Change of Name of ~~CARTHAGE AREA HOSPITAL ASSOCIATION~~  
to ~~CARTHAGE AREA HOSPITAL, INC.~~, pursuant to Section 40 of the  
General Corporation Law.

We, CHARLES S. HIRSCHY and BENEDICT L. HANSEK, being  
respectively the President and the Secretary of Carthage Area  
Hospital Association, certify:

1. The name of this corporation is:  
CARTHAGE AREA HOSPITAL ASSOCIATION.
2. The original name of the corporation was Carthage  
Hospital.
3. The Certificate of Incorporation was filed in the  
Office of the Secretary of State on the 5th day of November, 1921.
4. The Certificate of Change of Name from Carthage  
Hospital to Carthage Area Hospital Association was filed in the  
office of the Secretary of State on the 14th day of September,  
1962.
5. The new name to be assumed by this corporation is:  
CARTHAGE AREA HOSPITAL, INC.

IN WITNESS WHEREOF, we have made and subscribed this  
certificate in triplicate this 13 day of October, 1967.

*Charles S. Hirschy*  
President

*Benedict L. Hansek*  
Secretary

STATE OF NEW YORK )  
                                  : ss:  
COUNTY OF JEFFERSON )

On this 13 day of October, 1967, before me personally  
came CHARLES S. HIRSCHY and BENEDICT L. HANSEK, to me known to  
be the persons described in and who executed the foregoing  
Certificate of Change of Name, and they thereupon severally duly  
acknowledged to me that they executed the same.

LAW OFFICE OF  
MORAN & GILBERT  
CARTHAGE, N. Y.

*William A. Moses*  
WILLIAM A. MOSES  
Notary Public in the State of New York  
Residing in Jefferson County  
My Commission expires March 30, 1968



STATE OF NEW YORK        )  
                                  : ss:  
COUNTY OF JEFFERSON.    )

CHARLES S. HIRSCHHEY and BENEDICT L. HANSEK, being duly sworn, depose and say and each for himself deposes and says that he, CHARLES S. HIRSCHHEY, is President, and he, BENEDICT L. HANSEK, is Secretary of CARTHAGE AREA HOSPITAL ASSOCIATION; that they were duly authorized to execute and file the foregoing Certificate of Change of Name of said corporation by the votes cast, in person or by proxy, of a majority of the members of record of the corporation entitled to vote on a change of name, and that such votes were cast at a special meeting of the members called for that purpose upon like notice of that required for the annual meetings of the corporation, and that such meeting was held at the office of the Carthage Area Hospital Association, Carthage, New York, on September 26, 1967, at 7:15 o'clock P. M.

Charles S. Hirschhey  
Benedict L. Hansek

Subscribed and sworn to before me  
this 13 day of October, 1967..

William S. Moses

WILLIAM S. MOSES  
Notary Public in the State of New York  
Residing in Jefferson County  
My Commission expires March 30, 1968

2 -

OCT 25 1967

STATE OF NEW YORK  
DEPARTMENT OF SOCIAL SERVICES



112 STATE STREET • ALBANY

HUGH R. JONES  
Chairman  
State Board of Social Welfare

GEORGE K. WYMAN  
Commissioner

October 24, 1967

Isidore Kantrowitz, Esq.  
Associate Attorney  
New York State Department of State  
162 Washington Avenue  
Albany, New York

Dear Mr. Kantrowitz:

Subject: Carthage Area Hospital Association

This will confirm our telephone conversation with respect to the above. The corporation was approved by the then State Board of Charities in October, 1921 and its purposes permit the corporation "to erect, establish and maintain a hospital and dispensary ...."

We were advised that the hospital operated by the corporation has received an Operating Certificate from the New York State Department of Health. This Department, therefore, would not have any objection to the change of name from "Carthage Area Hospital Association" to "Carthage Area Hospital."

Very truly yours,

A handwritten signature in cursive script, appearing to read "Arne E. Heggen".

ARNE E. HEGGEN  
Attorney-In-Charge  
Bureau of Charitable and  
Proprietary Organization  
Office of Counsel

*Memorandum*

*Carthage Hospital  
11/5/21  
Carthage 200 Q-137*

<p><i>Jefferson Co.</i></p> <p>CERTIFICATE OF CHANGE OF NAME</p>
<p>CARTHAGE AREA HOSPITAL <i>and</i> 9/14/62 ASSOCIATION</p> <p>TO</p> <p>CARTHAGE AREA HOSPITAL, INC. <i>✓</i></p>
<p>Dated, October 13 1967</p>
<p>LAW OFFICE OF MORAN &amp; GILBERT CARTHAGE, NEW YORK <i>307 State Street</i></p>

645350 - *Y*

*See above  
OK 1310/17  
9-11-67  
J. P. Moran*

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED OCT 25 1967  
TAX *None*  
FILING FEE \$ *30*

*John P. Moran*  
Secretary of State  
*MB*  
*23 Jefferson*



STATE OF NEW YORK        )  
                                  :SS:  
COUNTY OF JEFFERSON    )

CHARLES S. HIRSCHHEY and BENEDICT L. HANSEK, being duly sworn, depose and say and each for himself deposes and says that he, CHARLES S. HIRSCHHEY, is President, and he, BENEDICT L. HANSEK, is Secretary of CARTHAGE AREA HOSPITAL ASSOCIATION; that they were duly authorized to execute and file the foregoing Certificate of Change of Name of said corporation by the votes cast, in person or by proxy, of a majority of the members of record of the corporation entitled to vote on a change of name, and that such votes were cast at a special meeting of the members called for that purpose upon like notice of that required for the annual meetings of the corporation, and that such meeting was held at the office of the Carthage Area Hospital Association, Carthage, New York, on September 26, 1967, at 7:15 o'clock P. M.

Charles S. Hirschhey  
Benedict L. Hansek

Subscribed and sworn to before me  
this 13 day of October, 1967.

William S. Moses

WILLIAM S. MOSES  
Notary Public in the State of New York  
Residing in Jefferson County  
My Commission expires March 30, 1968

⑥  
Cert. of Type  
12/26/1973

1123170

CERTIFICATE OF TYPE

OF

NOT-FOR-PROFIT CORPORATION

OF

CARTHAGE AREA HOSPITAL, INC.

Under Section 113 of the Not-For-Profit Corporation Law

The undersigned, DELOR ELLIS and WARREN TALBOT, being respectively the President and the Secretary of the above named corporation, do hereby certify:

1. The name of the corporation is CARTHAGE AREA HOSPITAL, INC. The original name under which the corporation was formed was Carthage Hospital. The name was changed to Carthage Area Hospital Association by certificate filed with the Secretary of State on the 14th day of September, 1962, and the name of the corporation was changed from Carthage Area Hospital Association to Carthage Area Hospital, Inc., by certificate filed with the Secretary of State on October 25, 1967.

2. The Certificate of Incorporation was filed by the Department of State on November 5, 1921.

3. The corporation was formed pursuant to provisions of Section 130 of the Membership Corporations Law.

4. The post office address at which the Secretary of State shall mail a copy of any notice required by law is West Street Road, Carthage, New York, 13619.

5. That under Section 201 of the Not-For-Profit Corporation Law, it is a type B Not-For-Profit Corporation.

IN WITNESS WHEREOF, this certificate has been subscribed this 17th day of December, 1973 at the County of Jefferson by the undersigned who affirm that the statements made herein are true under the penalties of perjury

*Delor Ellis*  
DELOR ELLIS President  
*Warren C Talbot*  
WARREN TALBOT Secretary

STATE OF NEW YORK )

SS:

COUNTY OF JEFFERSON )

On this 17th day of December, 1973,

before me, personally came DELOR ELLIS and WARREN TALBOT, to me known to be the same persons described in and who executed the foregoing Certificate of Type and they thereupon severally duly acknowledged to me that they executed the same.



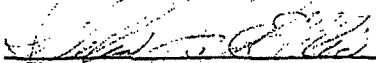
WILLIAM F. MORAN  
Notary Public in the State of New York  
Residing in Jefferson County  
My Commission Expires March 20, 1975

STATE OF NEW YORK )

SS:

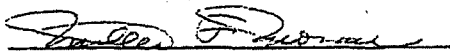
COUNTY OF JEFFERSON )

DELOR ELLIS and WARREN TALBOT, being duly sworn, depose and say and each for himself deposes and says, that he, DELOR ELLIS, is President, and he, WARREN TALBOT, is Secretary of CARTHAGE AREA HOSPITAL, 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 matters he believes it to be true.



Warren C. Talbot

Subscribed and sworn to before me  
this 17th day of December, 1973.



WILLIAM F. MORAN  
Notary Public in the State of New York  
Residing in Jefferson County  
My Commission Expires March 20, 1975

*Carthage Hospital  
11/5/73  
Jefferson Co*

*2009 137*

*A123470*

<p><i>not type in state</i></p> <p>CERTIFICATE OF TYPE</p>	<p>NOT-FOR-PROFIT CORPORATION</p> <p>of</p> <p>CARTHAGE AREA HOSPITAL, INC.</p>	<p>Dated, December 17, 1973</p>	<p>LAW OFFICE OF MILLER F. MORAN CARTHAGE, NEW YORK 13619</p> <p><i>207 State Street</i></p>
--	---	---------------------------------	--

*B*

*and 1/25/67*

*HA*

STATE OF NEW YORK  
DEPARTMENT OF STATE  
TAX \$ *None*  
FILING FEE \$ *10*  
FILED DEC 26 1973

*J. L. Long*  
Secretary of State

*23 Jefferson*

*Typed*

*3*



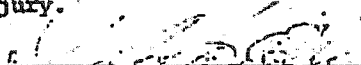
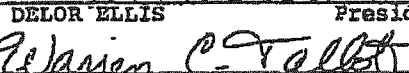
CERTIFICATE OF TYPE  
OF  
NOT-FOR-PROFIT CORPORATION  
OF  
CARTHAGE AREA HOSPITAL, INC.

Under Section 113 of the Not-For-Profit Corporation Law.

The undersigned, DELOR ELLIS and WARREN TALBOT, being respectively the President and the Secretary of the above named corporation, do hereby certify:

1. The name of the corporation is CARTHAGE AREA HOSPITAL, INC. The original name under which the corporation was formed was Carthage Hospital. The name was changed to Carthage Area Hospital Association by certificate filed with the Secretary of State on the 14th day of September, 1962, and the name of the corporation was changed from Carthage Area Hospital Association to Carthage Area Hospital, Inc., by certificate filed with the Secretary of State on October 25, 1967.
2. The Certificate of Incorporation was filed by the Department of State on November 5, 1921.
3. The corporation was formed pursuant to provisions of Section 130 of the Membership Corporations Law.
4. The post office address at which the Secretary of State shall mail a copy of any notice required by law is West Street Road, Carthage, New York, 13619.
5. That under Section 201 of the Not-For-Profit Corporation Law, it is a type B Not-For-Profit Corporation.

IN WITNESS WHEREOF, this certificate has been subscribed this 17th day of December, 1973, at the County of Jefferson by the undersigned who affirm that the statements made herein are true under the penalties of perjury.

 DELOR ELLIS	President
 WARREN TALBOT	Secretary

*Filed  
26, 1973*

STATE OF NEW YORK )  
 ) : SS:  
COUNTY OF JEFFERSON )


On this 17th day of December , 19 73,  
before me, personally came DELOR ELLIS and WARREN TALBOT, to  
me known to be the same persons described in and who executed  
the foregoing Certificate of Type and they thereupon severally  
duly acknowledged to me that they executed the same.



STATE OF NEW YORK )  
 ) : SS:  
COUNTY OF JEFFERSON )

WILLIAM F. MORAN  
Notary Public in the State of New York  
Residing in Jefferson County  
My Commission Expires March 22, 1975

DELOR ELLIS and WARREN TALBOT, being duly sworn,  
depose and say and each for himself deposes and says, that he,  
DELOR ELLIS, is President, and he, WARREN TALBOT, is Secretary  
of CARTHAGE AREA HOSPITAL, 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 matters he believes it to be true.



Warren P. Talbot

Subscribed and sworn to before me  
this 17th day of December, 1973.



WILLIAM F. MORAN  
Notary Public in the State of New York  
Residing in Jefferson County  
My Commission Expires March 22, 1975



Carthage  
Opcerts

*The Place for Personal Care*

April 5<sup>th</sup>, 2019

Public Health and Health Planning Council  
Center for Health Care Facility Planning, Licensure and Finance  
Coming Tower, Room 1805  
Albany, New York 12237

Attn.: Colleen M. Leonard, Executive Secretary  
[colleen.leonard@health.ny.gov](mailto:colleen.leonard@health.ny.gov)

Dear Ms. Leonard,

In follow up to our email communication, attached is the executed proposed restated certificate of incorporation that we would like to file with the Secretary of State. As I have explained, Carthage has been asked by the United States Department of Agriculture (USDA) to file this amendment in order to move forward with the planning process for applying for financing for a new hospital building. Once preliminary USDA approval is obtained, we will, of course, be filing a full CON application with the Department of Health.

We need a letter stating that the Department of Health (Department), Public Health and Health Planning Council, "consents" to the filing, which simply clarifies that Carthage can lawfully operate facilities in the Village of West Carthage, as well as in the Village of Carthage proper. As you can see from the attached letter from the Department of State, they will not accept the representation from the Department that it does not "object" to the filing of the revised certificate, they require the Department's actual consent. As I have explained to the Department, we currently operate our CAH Medical Center and two school-based clinics in West Carthage, with DOH approval. You will note from the attached copy of our DOH operating certificate that each location is listed as being in Carthage, though they are all located west of the Black River, which places them in the Village of West Carthage.

I have also attached the earlier versions of our certificates of incorporation, dating back to our formation in 1921, in case they are needed for your review.

Please let me know if you need anything else from me.

Very truly yours,

David N. Hoffman, Esq.  
Chief Compliance Officer  
[dhoffman@CAHNY.org](mailto:dhoffman@CAHNY.org)



**NEW YORK STATE DEPARTMENT OF HEALTH  
OPERATING CERTIFICATE**

*I do hereby certify that pursuant to authority conferred by law this operating certificate has been issued on the 7th day of February, 2017*

*to* **Meadowbrook Terrace Inc.**

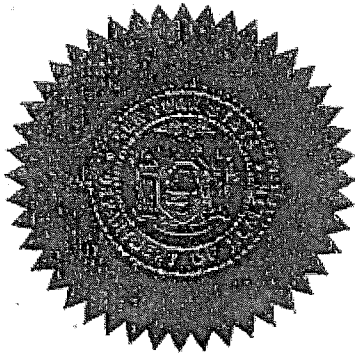
*to operate a* **NON-PROFIT ADULT HOME  
MAXIMUM CAPACITY: 60 RESIDENTS**

*to be known as* **Meadowbrook Terrace Assisted  
Living Facility**

*located at* **21957 Cole Road  
Carthage, NY 13619  
Jefferson County**

*In accordance with the regulations promulgated and adopted by the Department of Health as the statute provides. Programs authorized by the operating certificate: ADULT HOME-ASSISTED LIVING-58 RESIDENTS*

**AUTHORITY TO OPERATE THE ASSISTED LIVING PROGRAM IS EXPRESSLY  
CONDITIONED UPON COMPLIANCE WITH THE CONDITIONS APPENDED TO  
THE CERTIFICATE ISSUED ON 2/14/2013.**



In witness whereof, I have hereunto set my hand and affixed the official seal of the New York State Department of Health this 22nd day of February, 2017.

**MARK J. HENNESSEY**  
Director  
Center for Health Care  
Provider Services  
And Oversight

**Expiration Date: January 31, 2021**

**Number: 330-E-004**

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner of Health



New York State  
Office of Mental Health

## Operating Certificate

### Outpatient Facilities Class

I do hereby certify that pursuant to authority conferred by law this operating certificate has been issued on **October 1, 2015**

to: **Carthage Area Hospital**

to operate a: **Clinic Treatment Program**

to be known as: **Carthage Area Hospital Behavioral Health Clinic**

located at: **3 Bridge Street, Suite 7  
Carthage, NY 13619-1353**

in accordance with the rules and regulations made and established by the Commissioner as the statute provides.

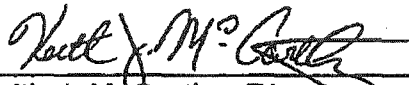
Authorized by this operating certificate:

Hours of Operation: **Monday- Friday: 8:00 am - 6:00 pm**

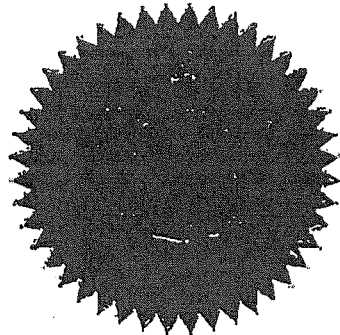
Population Served: **Adolescents, Adults, Children**

Optional Services: **Health Monitoring**

In witness whereof, I have hereunto set my hand on **October 9, 2015**

  
\_\_\_\_\_  
Keith J. McCarthy, Director  
Bureau of Inspection and Certification

Renewal Date: **September 30, 2018**  
Operating Certificate Number: **7731001A**



Facility Id 379  
Certificate No. 2238700C

Certified Beds - Total 35  
Coronary Care 4  
Maternity 8  
Medical / Surgical 10  
Pediatric 3  
Physical Medicine and Rehabilitation 10

State of New York  
Department of Health  
Office of Primary Care and Health Systems Management



OPERATING CERTIFICATE  
Primary Care Hospital - Critical Access Hospital

Effective Date: 05/17/2018  
Expiration Date: NONE

Carthage Area Hospital Inc  
1001 West Street  
Carthage, New York 13619

Operator: Carthage Area Hospital Inc  
Operator Class: Voluntary Not for Profit Corporation

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law for the service(s) specified.

Ambulatory Surgery - Multi Specialty	Clinical Laboratory Service	Coronary Care	Emergency Department	Lithotripsy
Maternity	Medical Services - Other Medical Specialties	Medical Services - Primary Care	Medical Social Services	Medical/Surgical
Pediatric	Physical Medical Rehabilitation	Radiology - Diagnostic	Saving Bed Program	Therapy - Occupational O/P
Therapy - Physical O/P				

Other Authorized Locations

Primary Care Hospital - Critical Access Hospital Extension Clinic  
CAH Medical Building  
117 North Mechanic Street  
Carthage, New York 13619

CAH Medical Center  
3 Bridge Street  
Carthage, New York 13619

Philadelphia Medical Center  
32787 US Route 11  
Philadelphia, New York 13673

School Based Primary Care Hospital - Critical Access Extension Clinic

Beaver River Central School  
9508 Artz Road  
Beaver Falls, New York 13305

Carthage High School  
36500 Route 26  
Carthage, New York 13619

Carthage Middle School  
21986 Cole Road  
Carthage, New York 13619

20180522 Deputy Director Office of Primary Care and  
Health Systems Management

This certificate must be conspicuously displayed on the premises.

Commissioner

**RESOLUTION**

**of the**

**Board of Directors of**

**CARTHAGE AREA HOSPITAL**

**To adopt a**

**RESTATED CERTIFICATE OF INCORPORATION**

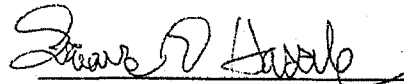
**OF**

**CARTHAGE AREA HOSPITAL**

**Under Section 805 of the Not-For-Profit Corporation Law**

The President of the Board of Carthage Area Hospital is authorized to execute the annexed RESTATED CERTIFICATE OF INCORPORATION OF CARTHAGE AREA HOSPITAL.

The above resolution was adopted by the Board of Directors of Carthage Area Hospital on the 30<sup>th</sup> day of April, 2019.

  
Secretary of the Board



## MEMORANDUM

**To:** Public Health and Planning Council (PHHPC)

**From:** Richard J. Zahnleuten  
General Counsel

**Date:** July 8, 2019

**Subject:** HealthCare Choices NY, Inc.: Proposed Certificate of Amendment of Certificate of Incorporation to Change Name, Expand Corporate Purposes, etc.

---

HealthCare Choices NY, Inc. (HCC) requests Public Health and Planning Council (PHHPC) approval of its proposed certificate of amendment and amendment and restatement of its certificate of incorporation.

HCC was initially formed on December 7, 1998, under New York Not-For-Profit Corporation Law (NPCL), as a subsidiary of the Institute for Community Living, Inc. (ICL), under the name "ICL HealthCare Choices, Inc." Its original purposes and powers were principally "(i) to conduct research into medical and other healthcare services required by indigent individuals who are mentally ill, mentally retarded or developmentally disabled, and their respective family members;...[and] (iii) to research the feasibility of establishing a diagnostic and treatment center or other health care facility dedicated to the delivery of medical or other health services to such individuals." Since 2001, HCC has been a PHHPC – established owner and operator of a multi-specialty diagnostic and treatment center in Brooklyn, New York. It currently owns and operates a multi-specialty D&TC at its principal office and corporate location 6209 16<sup>th</sup> Avenue, Bensonhurst, Brooklyn, and two multi-specialty extension D&TCs in East New York and in Long Island City, Queens. Since 2011, HCC has been a federally Qualified Health Center (FQHC).

In 2017 and 2018, HCC became independent from ICL. In September 2018, with the approval and consent of the Office of the Attorney General and OASAS, HCC submitted a certificate of amendment of its certificate of incorporation that was accepted for filing by the Department of State on September 14, 2018. Among the changes provided for in that certificate of amendment were (a) a change of name from ICL HealthCare Choices to HealthCare Choices NY, Inc. and (b) an expansion in the purposes of the corporation to include "the (operation of) chemical dependence, alcoholism and/or substance abuse services, within the meaning of Articles 19 and 32 of the Mental Hygiene Law...". In October 2018, HCC was authorized by the New York State Office of Alcoholism and Substance Abuse Services (OASAS) to operate a chemical dependence outpatient service pursuant to Articles 19 and 32 of the New York State Mental Hygiene Law.

HCC is now requesting PHHPC approval for a proposed certificate of amendment and amendment and restatement of its certificate of incorporation pursuant to Sections 801 and 804(a)(i) of the NPCL for the following changes to its certificate of incorporation:

- (a) To change its corporate name from "ICL HealthCare Choice Inc.) to "HealthCare Choices NY, Inc.";



- (b) To add to its corporate purposes the explicit authorization "to own and operate a Diagnostic and Treatment Center, and one or more duly authorized extension clinics, within the meaning of Article 28 of the Public Health Law and Rules and Regulations adopted (pursuant) thereto.... pursuant to the approval of and authorized by Operating Certificate(s) from the New York State Department of Health; and
- (c) To change the location of the office of the corporation, and the address to which the Secretary of State shall mail a copy of any process against the corporation served on the Secretary, to 6209 16<sup>th</sup> Avenue, Brooklyn, New York 11204, Attention: Maria Siebel, LCWS-R, CEO

Pursuant to NCPL Section 804 (a)(i) and 10 NYCRR section 600.11(a)(1), PHHPC must consent to these changes prior to the filing of the proposed certificate of incorporation of HCC.

The Board of Directors authorized the amendments to the certificate of incorporation by the affirmative vote of a majority of the entire board at a meeting duly called and held on March 19, 2019. There are no members of the corporation entitled to vote thereon separate from the Board of Directors; accordingly, the amendments have been duly-authorized in accordance with Section 802(a) of the NPCL.

The certificate of amendment and amendment and restatement of the certificate of incorporation of HCC, with supporting organizational documents of the corporation and resolutions of the Board of Directors authorizing the amendments are included for PHHPC's review. Two letters from Pamela Tindall-O'Brien, Esq., counsel to the applicant, explaining the need and desire for the amendments has been received and is also enclosed.

There is no legal objection to the change of name, the expansion of the corporate purposes of the corporation or the change in the principal office and address of the corporation. The certificate of incorporation submitted for approval is in legally acceptable form.

Attachments

**Pamela Tindall-O'Brien**  
**Attorney at Law**  
**1 West Lane**  
**Latham, New York 12110**  
**ptindallobrien@gmail.com**

April 18, 2019

Colleen Leonard, Executive Secretary  
Public Health and Health Planning Council  
Center for Health Care Facility Planning, Licensure and Finance  
Corning Tower, Room 1805  
Albany, New York 12237

Re: HealthCare Choices NY, Inc.  
Facility ID: 6272  
Certificate No. 7001299R

Dear Ms. Leonard:

ICL HealthCare Choices, Facility ID: 6272, Certificate No. 7001299R (copy Attached) has been operating as an Article 28 Diagnostic and Treatment Center since inception in 2000. On November 28, 2018, we submitted a letter to Barbara DelCogliano, Deputy Director of the New York State Department of Health Bureau of Project Management, requesting that the name on the Operating Certificate be changed. On behalf of my client, we are hereby withdrawing that letter of November 28, 2018. We will be submitting another letter regarding this issue shortly.

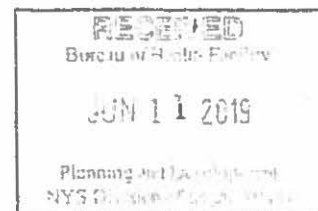
Thank you for your consideration in this matter.

Very truly yours,



Pamela Tindall-OBrien, Esq.

cc: Maria Siebel  
Phillip Silverman  
John Walters, Esq.



**Pamela Tindall-O'Brien**  
**Attorney at Law**  
**1 West Lane**  
**Latham, New York 12110**  
**ptindallobrien@gmail.com**

April 18, 2019

Colleen Leonard  
Executive Secretary, Public Health and Health Planning Council  
Center for Health Care Facility Planning, Licensure and Finance  
Corning Tower, Room 1805  
Albany, New York 12237

Re: HealthCare Choices NY, Inc.  
Facility ID: 6272  
Certificate No. 7001299R

Dear Ms. Leonard:

ICL HealthCare Choices Inc., Facility ID: 6272, Certificate No. 7001299R (copy Attached) has been licensed by the New York State Department of Health as an Article 28 Diagnostic and Treatment Center since 2000. It was a wholly owned subsidiary of the Institute for Community Living (ICL) until 2011, when it was designated as a Federally Qualified Health Center (FQHC), and had to change its corporate structure to comply with FQHC requirements.

All ties with The Institute for Community Living ("ICL") have since been severed, and ICL has requested that we remove the "ICL" from our legal name, which we have done. I have attached a copy of the name change from the NYS Secretary of State reflecting the new name: HealthCare Choices NY, Inc. (HCC).

We would like to revise our Operating Certificate to reflect the new name being "HealthCare Choices NY, Inc."

In addition to the name change, we hereby request Public Health and Health Planning Council approval of the Certificate of Amendment, previously approved by the Department of State, and the Attorney General's Office; and the attached Amendment and Restatement of the Certificate of Incorporation, which includes the name change and a clarification of/addition to the Corporate Purposes to more clearly reflect our status as a licensed Article 28 Diagnostic and Treatment Center.

I have enclosed the following: (i) the proposed Certificate of Amendment; (ii) the original certificate and its 2018 amendment; (iii) the bylaws; and (iv) Board Resolutions approving the changes in the Certificate of Incorporation. If there are any questions, or you need additional information, please contact me at (518) 439-1672 or [ptindallobrien@gmail.com](mailto:ptindallobrien@gmail.com).

Very truly yours,

A handwritten signature in cursive script that reads "Pamela Tindall-O'Brien".

Pamela Tindall-O'Brien, Esq.

cc: Maria Siebel

Phillip Silverman

John Walters, Esq.

March 26, 2019

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION

of

HEALTHCARE CHOICES NY, INC.

HealthCare Choices, NY, Inc. (the Corporation) was originally incorporated under Section 402 of the Not-For-Profit Corporation Law (NPCL) as "ICL HealthCare Choices, Inc." pursuant to a Certificate of Incorporation filed by the New York State Department of State on December 7, 1998. As subsequently amended pursuant to a Certificate of Amendment of the Certificate of Incorporation of the Corporation filed by the Department of State of the State of New York on September 14, 2018 (First Amendment), and as proposed to be further amended pursuant to the Certificate of Amendment of the Certificate of Incorporation of the Corporation being presented herewith (Second Amendment) to the New York Public Health and Health Planning Council, the Certificate of Incorporation of the Corporation, as amended to date, provides as follows:

1. The name of the corporation is HealthCare Choices NY, Inc. (the "Corporation").  
[changed First Amendment]
2. The Corporation is a corporation as defined in Section 102(a)(5) of the NPCL, and is a Type B corporation as defined in Section 201 of NPCL.
3. (a) The Corporation is organized exclusively for charitable, religious, educational and scientific purposes, including, for such purposes, the making of distributions to organizations under section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code") or the corresponding section of any future Federal tax code.  
  
(b) The specific purposes for which the Corporation is formed are:
  - (i) to conduct research into medical and other health care services required by indigent individuals who are mentally ill, mentally retarded or developmentally disabled, and their respective family members;
  - (ii) to conduct research and planning with respect to the development of delivery systems appropriate for the provision of medical and other health care services to such individuals;
  - (iii) to operate chemical dependence, alcoholism and/or substance abuse services, within the meaning of Articles 19 and 32 of the Mental Hygiene Law and the Rules and Regulations adopted pursuant thereto as each may be amended from time to time, which shall require as a condition precedent before engaging in the conduct of any such services an Operating Certificate from the

New York Office of Alcoholism and Substance Abuse Services; [added by First Amendment]

- (iv) to own and operate a Diagnostic and Treatment Center, and one or more duly authorized extension clinics, within the meaning of Article 28 of the Public Health Law and the Rules and Regulations adopted thereto, as amended from time to time, pursuant to the approval of and authorized by Operating Certificate(s) from the New York State Department of Health; [proposed to be added pursuant to Second Amendment]
  - (v) to research the feasibility of establishing a diagnostic and treatment center or other health care facility dedicated to the delivery of medical and other health care services to such individuals; and
  - (vi) conducting any and all lawful activities which may be necessary, useful or desirable for the furtherance, accomplishment or attainment of the forgoing purposes.
4. The Corporation shall not directly or indirectly engage in or include among its purposes any of the activities set forth in subsections (b) through (v) of Section 404 of the NPCL without having first obtained the approvals or consents required in such subsections. The Corporation shall not engage in the practice of the profession of medicine or any other profession required to be licensed under Title VIII of the Education Law of the State of New York, or operate a school or engage in any other activity requiring the approval of the New York State Commissioner of Education.
5. The Corporation shall not directly or indirectly participate in the ownership or operation of a diagnostic and treatment center, or any other facility licensed or certified pursuant to Article 28 of the New York State Public Health Law or any other statute or regulation, without first obtaining all applicable regulatory approvals and effecting appropriate amendments to this Certificate of Incorporation.
6. The principal office of the Corporation is located in the County of Kings within the State of New York. [changed First Amendment]
7. The names and addresses of the persons who are to serve as the initial directors of the Corporation until the first annual meeting of the Corporation are:

NAME

ADDRESS

Carol E. Garel, M.S.W.

54 Rutland Road  
Brooklyn, New York 11228

J. David Seay, Esq.

249 West 29<sup>th</sup> Street  
New York, New York 10001

Peter C. Campanelli, Psy. D.

6 Amelia Court  
Manalapan, New Jersey 07726\*

8. The Corporation hereby 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 may mail a copy of any process against the Corporation served upon the Secretary is: HealthCare Choices NY, Inc., 6209 16<sup>th</sup> Avenue, Brooklyn, NY 11204, Attention: Maria Siebel, LCSW-R, CEO. [Changed First Amendment]
9. No part of the income or earnings of the Corporation shall inure to the benefit of, nor shall any distribution of its property or assets be made to, any director, officer or employee of the Corporation, or any private individual, except that reasonable compensation may be paid for services rendered to or for the Corporation, and the Corporation may repay loans and contributions made to the Corporation.
10. No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except to the extent authorized in Section 501(h) of the Code), and the Corporation shall not intervene in, or participate in (including the publication or distribution of statements), any political campaign on behalf of, or in opposition to, any candidate for political office.
11. Notwithstanding any other provision of this Certificate of Incorporation, the Corporation shall not directly or indirectly carry on any activity which would prevent it from obtaining exemption from Federal income taxation as a corporation described in Section 501(c)(3) of the Code or cause it to lose such exempt status, or carry on any activity not permitted to be carried on by a corporation exempt from federal income taxation under Section 501(c)(3) of the Code.
12. Upon the dissolution of the Corporation, all of the assets and property of the Corporation after the payment of expenses and the satisfaction of all liabilities shall be distributed in accordance with the applicable provisions of the NPCL for one or more exempt purposes within the meaning of Section 501(c)(3) of the Code (or the corresponding section of any future Federal tax code), or shall be distributed to the Federal government, or to a state or local government, for a public purpose.

- 
- Since 2011, the Corporation has been a Federally-Qualified Health Center (FQHC). As a FQHC, the Corporation is required to have a board of directors composed at least 51% by patients to ensure those receiving care guide the decision-making of the entity. The current members of the 11-member board of directors of the Corporation are Damo Baliga (chair), Richard Brandt, James Fasolino, Mary Fritz, Edward Lai, Lisa Lubarsky, Stella Pappas, Michael Patterson, Ben Sher, Mary Torres, and Jerry Wind.

Thirteenth: The certificate of amendment was authorized by a vote of a majority of the entire board of directors. The corporation has no members.

Lisa B. Lubarsky

Board Chair

LISA B. LUBARSKY

(Print or Type Signer's Name)

July 10, 2019



CSC 45

CONSTITUTION OF INCORPORATION  
OF  
ICL HEALTHCARE SYSTEM, INC.

Under Section 801 of the Not-For-Profit Corporation Law

The undersigned, acting as the sole incorporator, for the purpose of forming a corporation pursuant to Section 802 of the Not-For-Profit Corporation Law of the State of New York (the "NFCCL"), hereby certifies as follows:

1. The name of the corporation is ICL Healthcare System, Inc. (the "Corporation").

2. The Corporation is a corporation as defined in Section 102(a)(8) of the NFCCL, and is a Type 3 corporation as defined in Section 201 of NFCCL.

3. (a) The Corporation is organized exclusively for charitable, religious, educational and scientific purposes, including, for such purposes, the making of distributions to organizations under Section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code") or the corresponding section of any future Federal tax code.

(b) The specific purposes for which the Corporation is formed are:

- (1) to conduct research into medical and other health care services required by indigent individuals who are mentally ill, mentally retarded or developmentally disabled, and their respective family members;

32

(13) to conduct research and planning with respect to the development of delivery systems appropriate for the provision of medical and other health care services to such individuals;

(14) to research the feasibility of establishing a diagnostic and treatment center or other health care facility dedicated to the delivery of medical and other health care services to such individuals; and

(15) conducting any and all lawful activities which may be necessary, useful or desirable for the furtherance, accomplishment or attainment of the foregoing purposes.

(16) In furtherance of the foregoing purposes set forth in this Paragraph 3, the Corporation shall have all of the general powers enumerated in Section 104 of the NYC and such other powers as are now or hereafter permitted by law for a corporation organized for the foregoing purposes, including, without limitation, the power to solicit grants and contributions for any corporate purpose and the power to maintain a fund or funds of real and/or personal property in furtherance of such purposes.

4. The Corporation shall not directly or indirectly engage in or include among its purposes any of the activities set forth in subsection (b) through (v) of Section 104 of the NYC, without having first obtained the approval or consent required in such subsections. The Corporation shall not engage in the practice of the profession of medicine or any other profession required to be licensed under Title VIII of the Education Law of the State of New York, or operate a school or engage in any other activity

requiring the approval of the New York State Commissioner of Education.

5. The Corporation shall not directly or indirectly participate in the ownership or operation of a diagnostic and treatment center, or any other facility licensed or certified pursuant to Article 28 of the New York State Public Health Law or any other statute or regulation, without first obtaining all applicable regulatory approvals and effecting appropriate amendments to this certificate of incorporation.

6. The principal office of the Corporation is to be located in the County of New York within the State of New York.

7. The names and addresses of the persons who are to serve as the initial directors of the Corporation until the first annual meeting of the Corporation are:

NAME	ADDRESS
Carol M. Gabel, M.S.N.	54 Bedford Road Brooklyn, New York 11218
J. David Seay, Esq.	343 West 23rd Street New York, New York 10011
Peter C. Campanelli, Psy.D.	6 Mulla Court Manhasset, New Jersey 07765

8. The Corporation hereby 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 against the Corporation served upon the Secretary is: ICE Healthcare Charities, Inc., c/o Institute For Community Living, Inc., 48 Mott Street, New York, New York 10014, Attention: Peter C. Campanelli, Psy.D.

8. No part of the income or earnings of the Corporation shall inure to the benefit of, nor shall any distribution of its property or assets be made to, any director, officer or employee of the Corporation, or any private individual, except that reasonable compensation may be paid for services rendered to or for the Corporation, and the Corporation may repay loans and contributions made to the Corporation.

9. No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except as the extent authorized in Section 501(b) of the Code), and the Corporation shall not incur any, or participate in (including the publication or distribution of statements), any political campaign on behalf of, or in opposition to, any candidate for public office.

10. Notwithstanding any other provision of this certificate of Incorporation, the Corporation shall not directly or indirectly carry on any activity which would prevent it from obtaining exemption from Federal income taxation as a corporation described in Section 501(c)(3) of the Code or cause it to lose such exempt status, or carry on any activity not permitted to be carried on by a corporation exempt from Federal income taxation under Section 501(c)(3) of the Code.

11. Upon the dissolution of the Corporation, all of the assets and property of the Corporation after the proper payment of expenses and the satisfaction of all liabilities shall be distributed in accordance with the applicable provisions of the EFCL for use or more exempt purposes within the meaning of Section

§ 110(3) of the Code (or the corresponding section of any future Federal tax code), or shall be distributed to the Federal Government, or to a state or local government, for a public purpose.

IN WITNESS WHEREOF, the undersigned has signed this Certificate this 24th day of November, 1958 and hereby affirms, under the penalties of perjury, that the statements contained therein have been examined by me and are true and correct.



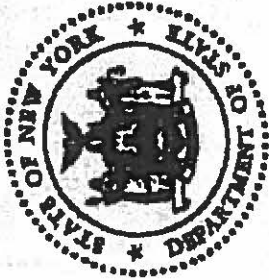
ALAN E. ROSENBLUM, Esq.  
State Representative  
Edward J. Conroy & Hoffman, L.L.P.  
138 West 57th Street  
New York, New York 10019



State of New York }  
Department of State }

I hereby certify that the enclosed 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 seal of the Department of State on DEC 08 1998



*J. Blawie*

Special Deputy Secretary of State

DEC-08 1998

N. Y. S. DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS AND STATE TAXES  
ALBANY, NY 12211-0001

FILING RECEIPT

CITY NAME: ICL HEALTHCARE CHOICES, INC.

DOCUMENT TYPE: DOMESTIC (NOT-FOR-PROFIT) CORPORATION TYPE: B COUNTY: NEWY  
SERVICE COMPANY: CSC NETWORKS/PRACTICE HALL SERVICE CODE: 49

FILED: 12/07/1998 DURATION: PERPETUAL CARR#: 98120700276 FILM #: 98120700285

ADDRESS FOR PROCESS EXIST DATE

THE CORPORATION C/O INSTITUTE FOR COMMUNITY LIVING 12/07/1998  
INC. ATT: PIER C CAMPANELLI  
NEW YORK, NY 10008 P.O. BOX 40 SECTOR ST.

REGISTERED AGENT

FILE # 110.00 PAYMENTS 110.00  
FILING : 75.00 CASH : 0.00  
TAX : 0.00 CHECK : 0.00  
CERT : 0.00 BILLED: 110.00  
COPIES : 10.00  
HANDLING: 25.00 REFUND: 0.00

LABONOV, LAMB, CHENIER & MACLEAN, L.L.C.  
125 WEST 58TH STREET  
NEW YORK, NY 10019

04454688 DOB-1025 (11/89)



4/1/23

NEW YORK DEPARTMENT OF TAXATION AND FINANCE  
ALBANY, NY 12231-0001

FILING RECEIPT  
POLYMERIZATION

UTILITY NAME: IC HEALTHCARE CHOICES, INC.

DOCUMENT TYPE: NAME RESERVATION (NEW) (DOM. NFR)

SERVICE COMPANY: \*\* NO SERVICE COMPANY \*\* SERVICE CODE: 00

AFFILIATE NAME: ALAN H. SOMMERGLAN, ESQ

FILED: 11/20/1998 EXPIRATION: 01/20/1999 CURRENT: 981120000080 FILM #: 981120000078

ADDRESS FOR PROCESS

REGISTERED AGENT

\*\* SUBMIT RECEIPT WITH FILING CERTIFICATE \*\*

FILER

ALAN H. SOMMERGLAN, ESQ.

LEHOSUP, LAMB, DRESBIE & WACHAR, L.L.C.  
125 WEST 55TH STREET  
NEW YORK, NY 10019

FILING : 10.00 CASH : 0.00

TAX : 0.00 CHECK : 10.00

CHRT : 0.00 BILLED : 0.00

COPIES : 0.00

HANDLING : 0.00

REFUND: 0.00

10.00 PAYMENTS 10.00

DOB-1025 (11/89)



Community Health Center

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**RESOLUTION OF THE BOARD OF DIRECTORS OF**

**ICL HEALTHCARE CHOICES**

**AT A MEETING OF THE BOARD ON NOVEMBER 21, 2017**

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WHEREAS, ICL HealthCare Choices Inc., hereinafter "HCC," was originally a subsidiary corporation of the Institute for Community Living, Inc. ("ICL"), and

WHEREAS, that relationship has been terminated by the parties, and

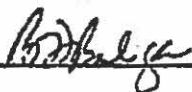
WHEREAS, with the end of the relationship, the Board of ICL Health Care Choices would prefer to do business with a name which better reflects the governance of HCC;

**NOW THEREFORE,**

A quorum of the Board of Directors of HCC being present, the majority of the Board members present therefore voted and approved the following resolution:

HCC Executive Director Marie Siebel is hereby empowered to file with the New York State Department of State, and with any other relevant government agencies, an application for a "Doing Business As", or "DBA" certificate for ICL HealthCare Choices in the name "HealthCare Choices."

Signed by the Chairman of the Board on November 21, 2017

  
\_\_\_\_\_

**RESOLUTION OF THE BOARD OF DIRECTORS OF**  
**HEALTHCARE CHOICES NY**  
**AT A MEETING OF THE BOARD ON MARCH 19 , 2019**

**WHEREAS**, ICL HealthCare Choices Inc., hereinafter "HCC," was originally a subsidiary corporation of the Institute for Community Living, Inc. ("ICL"), and

**WHEREAS**, that relationship was terminated by the parties, and

**WHEREAS**, with the end of the relationship, the Board of ICL Health Care Choices agreed to change the name of the Corporation to delete its ICL relationship, and

**WHEREAS**, on September 17, 2018, the New York State Department of State approved an Amendment to the Certificate of Incorporation which changed the name of the Corporation to HealthCare Choices NY, Inc.; added to the Corporate Purposes Clause the operation of substance abuse services and/or programs as might be authorized by the appropriate government authorities; changed the location of the principal office of the Corporation; and changed the address to which the New York State Secretary of State should mail a copy of process served to the New York State Department of State against the Corporation,

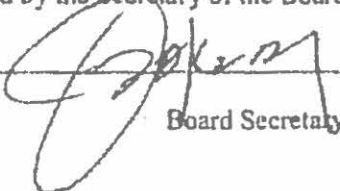
**WHEREAS**, the Certificate of Amendment does not appear to have been properly authorized by a majority of the entire board of directors,

**NOW THEREFORE**,

The entire Board was given proper notice of the vote on this Resolution to Ratify the Certificate of Amendment of September 17, 2018 prior to today's meeting. A majority of the Board of Directors of HCC being present, either in person or by telephone, voted and approved the following resolution:

The Board hereby ratifies and adopts in its entirety the Amendment to the Certificate of Incorporation of HealthCare Choices NY filed with the New York State Department of State on September 17, 2018.

Signed by the Secretary of the Board on March , 2019

  
\_\_\_\_\_  
Board Secretary



**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 September 17, 2018.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan W. Fitzgerald  
Executive Deputy Secretary of State

180914000 376



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  
89 Washington Ave.  
Albany, NY 12231-0001  
www.dos.ny.gov

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF**

**ICL HealthCare Choices, Inc.**

*(Name of Domestic Corporation)*

Under Section 803 of the Not-for-Profit Corporation Law

**FIRST:** The name of the corporation is:

**ICL HealthCare Choices, Inc.**

If the name of the corporation has been changed, the name under which it was formed is:

**SECOND:** The certificate of incorporation was filed by the Department of State on:

**December 7, 1998**

**THIRD:** The law the corporation was formed under is:

**New York State Not-for-Profit Law Section 806.**

**FOURTH:** The corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.

FIFTH: The certificate of incorporation is amended as follows:

Paragraph One of the Certificate of Incorporation regarding  
the Corporate Name

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is hereby [check the appropriate box]  added,  amended to read in its entirety as follows:

The name of the Corporation is HealthCare Choices NY, Inc.



Paragraph Three of the Certificate of Incorporation regarding

**the Corporate Purposes**

is hereby [check the appropriate box]  added  amended to read in its entirety as follows:

3. (a) The Corporation is organized exclusively for charitable, religious, educational and scientific purposes, including, for such purposes, the making of distributions to organizations under section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code") or the corresponding section of any future Federal tax code.

(b) The specific purposes for which the Corporation is formed are:

- (i) to conduct research into medical and other healthcare services required by indigent individuals who are mentally ill, mentally retarded or developmentally disabled, and their respective family members;
- (ii) to conduct research and planning with respect to the development of delivery systems appropriate for the provision of medical and other health care services to such individuals;
- (iii) to operate chemical dependence, alcoholism and/or substance abuse services, within the meaning of Articles 19 and 32 of the Mental Hygiene Law and the Rules and Regulations adopted pursuant thereto as each may be amended from time to time, which shall require as a condition precedent before engaging in the conduct of any such services an Operating Certificate from the New York State Office of Alcoholism and Substance Abuse Services;
- (iv) to research the feasibility of establishing a diagnostic and treatment center or other health care facility dedicated to the delivery of medical and other health care services to such individuals; and
- (v) conducting any and all lawful activities, which may be necessary, useful or desirable for the furtherance, accomplishment or attainment of the foregoing purposes.

Paragraph 6 of the Certificate of Incorporation reads as follows:

The principal office of the Corporation is to be located in the County of New York within the State of New York.

Paragraph 6 of the Certificate of Incorporation is hereby amended as follows:

The office of the Corporation is located in the County of Kings within the State of New York.

*(Remove this page if not needed)*

Paragraph 8 of the Certificate of Incorporation reads as follows

The Corporation hereby 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 against the Corporation served upon the Secretary is: ICL HealthCare Choices, Inc., 6209 16th Avenue,

Brooklyn NY 11204.

Paragraph 8 of the Certificate of Incorporation is hereby amended as follows.

The Corporation hereby 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 against the Corporation served upon the Secretary is: HealthCare Choices NY, Inc., 6209 16th Avenue, Brooklyn NY  
Attention: Maria Sabel, LCSW-R, CEO

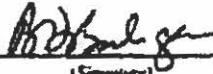
11204.

SIXTH: The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is:

HealthCare Choices NY, Inc.  
6209 16<sup>th</sup> Avenue, Brooklyn, NY 11204  
Attention: Maria Siebel, LCSW-R, CED.

SEVENTH: The certificate of amendment was authorized by: (Check the appropriate box)

- a vote of a majority of the members at a meeting.
- the unanimous written consent of the members entitled to vote thereon.
- a vote of a majority of the entire board of directors. The corporation has no members.

X   
(Signature)

Board Chairperson  
\_\_\_\_\_  
(Capacity of Signer)

Damo Belga  
\_\_\_\_\_  
(Print or Type Signer's Name)





STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

BARBARA D. UNDERWOOD  
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE  
CHARITIES BUREAU

The Attorney General hereby approves pursuant to N-PCL § 804(a)(ii)(A) the proposed Certificate of Amendment of the Certificate of Incorporation of ICL Healthcare Choices, Inc. Said approval is conditioned on submission to the Department of State for filing within 60 days hereafter. A copy of the filed certificate shall be provided to the Attorney General.

9-7-18

Date

A handwritten signature in cursive script that reads "Paula Gellman".

Paula Gellman  
Assistant Attorney General

**STATE OF NEW YORK**  
**OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES**  
**ALBANY, NEW YORK**

**KNOWN ALL PERSONS BY THESE PRESENTS:**

Pursuant to the provisions of Article 32 of the Mental Hygiene Law, and Section 805 of the Not-For-Profit Corporation Law, approval is hereby given to the filing of the Amended Certificate of Incorporation of

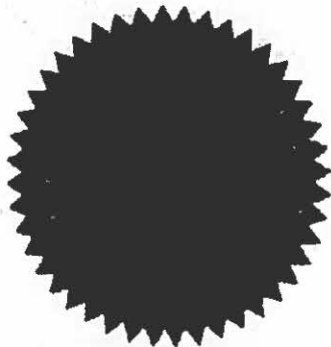
**HEALTHCARE CHOICES NY, INC.**

This approval shall not be construed as an authorization for the Corporation to engage in any activity for which the provisions of Article 32 of the Mental Hygiene Law require an Operating Certificate to be issued by the Office of Alcoholism and Substance Abuse Services unless said Corporation has been issued such Operating Certificate; nor shall it be construed to eliminate the need for the said Corporation to meet any and all of the requirements and conditions precedent set forth in Article 32 of such law and the regulations promulgated thereunder for issuance of said Operating Certificate.

IN WITNESS WHEREOF, this instrument is Executed and the Seal of the New York State Office of Alcoholism and Substance Abuse Services is affixed this 14<sup>th</sup> day of September, 2018

ROBERT A. KENT  
GENERAL COUNSEL  
NYS OASAS

By: Janet L. Paloski  
Director  
Bureau of Certification and  
Systems Management



*Janet Paloski*  
\_\_\_\_\_

376

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF

ICL HealthCare Choices, Inc.

(Name of Domestic Corporation)

Under Section 803 of the Not-for-Profit Corporation Law

Filer's Name Pamela Tindall-O'Brien, Esq.

Address 1 West Lane

City, State and Zip Code Latham, New York 12110

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. The certificate must be submitted with a \$38 filing fee.
3. This form was prepared by the New York State Department of State. It does not contain all optional provisions under the law. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores.
4. The Department of State recommends that all documents be prepared under the guidance of an attorney.
5. Please be sure to review Section 804 and Section 404 of the Not-for-Profit Corporation Law to determine if any consents or approvals are required to be attached to this certificate of amendment.

For Office Use Only

1cc

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED SEP 14 2018

TAXS \_\_\_\_\_

BY: KVA

RECEIVED

2018 SEP 14 AM 9:04

2018 SEP 14 AM 11:10 2018 SEP 14 PM 2:36

FILED

RECEIVED

414

**AMENDED AND RESTATED BYLAWS  
OF  
HEALTHCARE CHOICES NY, INC.**

**Revised: May 15, 2018**

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## **ARTICLE 1: CORPORATE NAME AND PRINCIPAL OFFICE**

**Section 1.1 Name.** The name of the corporation is HealthCare Choices NY, Inc. (the "Corporation").

**Section 1.2 Office.** The principal office of the Corporation is located at 6209 16<sup>th</sup> Avenue, Brooklyn, New York in the City of New York, Kings County and State of New York, and at such other offices as the Board of Directors (the "Board") may determine, from time to time.

## **ARTICLE 2: PURPOSES AND POWERS OF THE CORPORATION**

**Section 2.1 Purposes and Mission.** The purposes and mission of the Corporation, subject to the receipt of applicable regulatory approvals, shall be:

- a. to provide, either through the staff and supporting resources of the Corporation or through contracts or cooperative arrangements, effective and reliable primary, multi-specialty, and preventive health care in a personalized and compassionate manner to help people, especially those who are, or who are at risk for becoming, medically underserved, to optimize their health and well-being;
- b. to operate a diagnostic and treatment center or other healthcare facility dedicated to the delivery of medical and other healthcare services to individuals and their families, pursuant to Article 28 of the New York State Public Health Law, New York State Office of Alcoholism and Substance Abuse Services, New York State Office of Mental Health, applicable federal standards and other regulatory requirements;
- c. to conduct research and planning with respect to the development of delivery systems appropriate for the provision of medical and other healthcare services to such individuals;
- d. to disseminate the results of such research as required or necessary so as to educate the general public regarding the special needs of individuals who have mental illnesses, and intellectual and/or developmental disabilities, and their respective family members;
- e. to solicit and receive grants, contracts and funds from federal, state and local government agencies, foundations or any other sources, to further the corporate purposes;

- f. to borrow money, obligations for contracts and debts, issue notes and secure payment of the performances of its obligations and to do all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the Corporation; and
- g. to conduct any and all lawful activities which may be permissible as a not-for-profit corporation pursuant to Section 601(a) of the Not-For-Profit Law of the State of New York ("Not-For-Profit Law"), and such other activities as may be necessary, useful or desirable for the furtherance, accomplishment or attainment of any of the foregoing purposes.

Section 2.2 Powers. The Corporation is organized under the Not-For-Profit Law and shall have such powers as are now or may hereafter be granted by the Not-For-Profit Law, and these Bylaws, as each may be amended, from time to time.

### ARTICLE 3: MEMBERSHIP

Section 3.1 Membership Corporation. The Corporation, as a Type B not-for-profit corporation, pursuant to Section 601(a) of the Not-For-Profit Law, elects to be a membership corporation. The Corporation's Members shall consist solely of all individuals who are members of the Corporation's Board as elected in accordance with Article 4 below. Each such individual shall (i) remain a Member and (ii) maintain his/her capacity as a Member ("Membership"), only for so long as he/she is a Board member. There shall be no individual Membership rights independent of those granted to Members as members of the Board and all right to take actions by such individuals shall arise solely from their appointment as, and in their capacity as, Board members, as set forth in Article 4 below.

Section 3.2 Member Rights. Except as provided by law, all decision making authority will remain vested with the Corporation's Board.

Section 3.3 Transferability. Membership in the Corporation shall not be transferable; provided, however, that if an individual Member is no longer a member of the Board, he/she shall automatically forfeit his/her Membership, and if a new individual becomes a member of the Board, he/she shall automatically become a Member.

Section 3.4 Annual Meeting. The annual meeting of the Members shall be a joint meeting with the annual meeting of the Directors.

### ARTICLE 4: BOARD OF DIRECTORS

Section 4.1 Governance. The governance and management of the Corporation is vested in the Board, which shall have full legal authority, control and responsibility for the conduct of the affairs of the Corporation in accordance with the Not-For-Profit Law, these Bylaws, and other applicable law and regulations, and shall meet the regulations of 42 CFR §51c. 304, as amended from time to time, as set forth below in more detail in Section 4.2 of this Article 4. The Board may, except as otherwise provided by the laws of the State of New York or any other applicable law, delegate to committees of its own number, or to Officers of the Corporation, such powers as it may see fit. The Board shall have full power to adopt rules and regulations governing all actions which it takes, except as otherwise provided by the laws of the State of New York; provided, however, that the fundamental and basic purposes

and powers of the Corporation, and the limitations thereon, as expressed in the Certificate of Incorporation, as it may be amended from time to time, shall not thereby be amended or changed. Except as expressly provided herein, or as delegated by the Board, no individual Director shall have the authority to act on behalf of the Board or bind the Corporation in any manner. The duties and obligations of the Board shall include, but not be limited to:

- a. approving the selection, evaluation and dismissal of the Chief Executive Officer of the Corporation;
- b. establishing and periodically updating personnel policies and procedures, including selection and dismissal procedures, salary and benefit scales, employee grievance procedures, and equal opportunity practices;
- c. adopting and periodically updating policies for financial management practices, including a system to assure accountability for the Corporation's resources, approving and updating periodically a strategic plan for the Corporation, selecting an independent auditor and providing for and accepting an annual audit, approval of the annual budget of the Corporation, establishment of the Corporation's priorities, establishment of eligibility for services including criteria for partial payment schedules, and long range financial planning;
- d. evaluating the Corporation's activities including services utilization patterns, productivity of the Corporation, patient satisfaction, achievement of the Corporation's objectives, and development of a process for hearing and resolving patient grievances;
- e. assuring that the Corporation is operated in compliance with applicable Federal, State, and local laws and regulations;
- f. establishing and requiring compliance with a corporate compliance program and HIPAA and HITECH compliance programs;
- g. adopting and periodically updating health care policies including scope and availability of services, location and hours of services, and quality of care audit procedures;
- h. ensuring that all patients of the Center receive quality health care and services provided in accordance with all applicable federal and state statutes and regulations, and in accordance with generally accepted standards of professional practice; and
- i. satisfying all other duties, obligations and requirements imposed upon the Board by applicable federal and state statutes and regulations in connection with the operation of the Center;

**Section 4.2 Qualifications.**

- a. The Board membership shall comply with the Federal guidelines applicable to recipients of funds under Section 330 of the Public Health Service Act, and shall consist of individuals from the following three categories in the following proportions:
- (i) A majority of the Directors shall be individuals who are or will be served by the Corporation and who, as a group, represent the individuals being, or to be, served by the Corporation in terms of demographic factors, such as race, ethnicity, sex.
  - (ii) No more than two thirds (66%) of the non-patient Directors shall be individuals who derive more than ten (10) percent of their annual income from the health care industry.
  - (iii) The remaining Directors shall be representative of the communities in which the Corporation's catchment areas are located and shall be selected for their expertise in community affairs, local government, finance and banking, legal affairs, trade unions, and other commercial and industrial concerns, or social service agencies within such communities.
- b. No Director shall be an employee of the Corporation, or spouse or child, parent, brother or sister, or otherwise a relative by blood or marriage of such an employee.
- c. The Chief Executive Officer of the Corporation may be a non-voting, ex-officio member of the Board.
- d. Directors shall be elected consistent with the procedures set forth in Section 7.1(c) of these Bylaws.
- e. Each Director, and each nominee to serve as a Director, shall: (i) be elected by the Board; (ii) be at least eighteen (18) years of age; (iii) be a legal resident of the United States; (iv) exhibit an interest in the promotion and advancement of (x) mental health services for individuals with mental illnesses, mental retardation and/or developmental disabilities; alcohol and substance abuse issues; and/or (y) the provisions of primary health care services to all patients in need of those services; (v) not have a criminal conviction related to any matter including, but not limited to, the operation of a facility licensed by the Department of Mental Hygiene, the Department of Health, or the Department of Social Services; or any benefit reimbursement program funded by the local, state or federal government; (vi) not be the subject of a pending criminal investigation by either local, state or federal governmental authorities; and (vii) submit an application for directorship in the form, and pursuant to the schedule, set forth by Board action, as amended from time to time. The Board, in its discretion, may waive one or more of the requirements of this Section 4.2(e), provided that the provisions of Section 4.2(a)-(d) above shall not be waived.

**Section 4.3 Number of Directors.** The Board shall consist of no less than nine (9) and no more than thirteen (13) Directors, including ex-officio Directors. The exact number of

Directors of which the Board shall be composed may be increased or decreased, within the limits of this Section 4.3, by an action of the Board, acting by the affirmative vote of a majority of the Directors then in office. No decrease in the number of Directors shall shorten the term of any incumbent Director.

Section 4.4 Election of Directors. The Board shall elect the Directors of the Corporation every three (3) years during a meeting designated for this purpose, consistent with the composition requirements set forth above in Section 4.2.

Section 4.5 Term of Office. The Directors elected hereunder shall be divided into three (3) classes for the purpose of staggering their terms of office. The number of Directors in each class shall be as nearly equal as possible, and each class shall consist of approximately equal numbers from each of the categories set forth in Section 4.2(a) above. Initially, commencing on the date of the first annual meeting of the Directors following the adoption of these Amended and Restated Bylaws, the first class of Directors shall serve a term of one (1) year, the second class of Directors shall serve a term of two (2) years, and the third class of Directors shall serve a term of three (3) years. Thereafter, upon the expiration of his or her term, each Director shall be chosen for a full term of three (3) years and shall hold office until his or her successor is elected or appointed and qualified, or until such Director's death, resignation or removal. Directors may serve for no more than five (5) consecutive terms on the Board; provided, however, that the Board may extend the number of consecutive turns of a Director for good cause.

Section 4.6 Additional Directorships and Vacancies. Additional Directorships or vacancies may be filled by action of the Board, acting by the affirmative vote or a majority of the Directors then in office.

Section 4.7 Removal of Directors. The Board, acting by the affirmative vote of a majority of the Directors then in office, may remove any or all of the Directors, at any time, for cause. Causes that may result in removal include but are not limited to: (i) failure to meet the attendance requirements; (ii) failure to exercise the Duty of Loyalty, the Duty of Care, or Duty of Obedience; (iii) failure to report a material conflict of interest; (iv) performance of unethical or criminal conduct; or (v) conduct that impedes or obstructs the board's work.

Section 4.8 Resignation of Directors. Any Director may resign at any time upon giving written notice to the Chairperson, or Secretary of the Board. Such resignation shall take effect upon the date designated in the notice or if no date is specified, upon the date of its receipt by the Chairperson, , or Secretary. The acceptance of a resignation shall not be necessary to make it effective.

Section 4.9 Standard of Conduct of Directors. The Directors shall discharge their duties and responsibilities in good faith and with that degree of diligence, care and skill which ordinary prudent individuals in like positions exercise under similar circumstances. Directors will comply with all applicable Federal, state and local laws and regulations that pertain to serving on a board of directors for a not-for-profit corporation. The Directors may rely upon the written financial statements of the Corporation presented to them by the Treasurer, and/or independent certified public accountant acting on behalf of the Corporation, as fairly and accurately representing the financial condition of the Corporation.

**Section 4.10 Compensation of Directors.** A Director shall not receive any compensation for services provided by that Director to the Corporation. Notwithstanding anything herein to the contrary, a Director shall be reimbursed for all reasonable expenses directly related to the services provided by that Director to, or on behalf of, the Corporation provided such expenses have been incurred pursuant to policies adopted by the Board.

## **ARTICLE 5: MEETINGS OF THE BOARD**

**Section 5.1 Regular Meetings of the Board.** The Board shall meet on a monthly basis. The first regular meeting each Fiscal Year shall be held in January. Except as otherwise provided for in Section 5.5 below, the Chairperson shall determine the dates and times for the regular meetings and provide each Director with written notification, signed by the Chair, of the monthly meeting schedule not less than fourteen (14) days prior to the first regular Board Meeting of each Fiscal Year.

**Section 5.2 Annual Meeting.** The Annual Meeting of the Board shall be held during the month of March.

**Section 5.3 Special Meetings.** Special Meetings of the Board may be called at any time by the Chairperson or shall be called by any Officer of the Board upon the written request of ten percent (10%) of the Board.

**Section 5.4 Place of Meetings. Regular, Annual or Special Meetings** of the Board may be held at the office of the Corporation or at such other places as the Chairperson may determine. Upon action, during any Board meeting the Board may, in its sole discretion, convene an executive session at which only Directors shall present. Such executive session shall terminate upon action of the Board.

### **Section 5.5 Notice of Meetings and Waiver of Notice.**

- a. Except as otherwise provided for in Section 5.1 above, notice of a *Regular Meeting* of the Board shall: (i) be done in an email or in writing; (ii) state the time, date and place of the meeting; and (iii) state the purpose or purposes for which the meeting is called.
- b. Except as otherwise provided for in Section 5.1 above, notice shall be given by email or by first class United States mail, postage prepaid, or by overnight courier (such as Federal Express), to each Director at his address as such appears on the records of the Corporation. Such notice shall be given not less than five (5) business days before the meeting, and shall be deemed to have been given when sent by email or when deposited in the United States Mail or, if deposited with an overnight courier, the next business day.
- c. All *Special Meetings* of the Board shall be upon notice as set forth above, and shall state the purpose or purposes for which the meeting is called.
- d. Notwithstanding anything herein to the contrary, notice of a *Regular* or *Special* meeting of the Board need not be given to a Director who has signed a waiver of notice either before or after the meeting, or who attends the meeting and, prior to the meeting or at its commencement, does not protest the lack of notice.

**Section 5.6 Quorum, Vote, Action at a Meeting and Adjournment.**

- a. **Quorum.** At all meetings of the Board, a quorum for the transaction of business shall be a majority of Directors
- b. Each Director, other than the ex-officio Director, shall be entitled to one (1) vote. The ex-officio Director shall not be entitled to vote on motions or other actions placed before the Board.
- c. The vote of a majority of Directors present at the time of the vote, if a quorum is present at such time, shall constitute action by the Board unless otherwise specified hereunder or by the Not-For-Profit Law.
- d. If a quorum is not present at a noticed meeting of the Board, the Directors present at such meeting may adjourn the meeting, from time to time, until a quorum shall be present. Notice of any such adjournment shall be given to any Directors who were not present, and, unless announced at the meeting, to the other Directors.

**Section 5.7 Action by Directors without a Meeting.** A vote by the Board may be taken without a meeting if all the Directors consent in writing to the adoption of a resolution authorizing the action. The resolution and written consents thereto shall be filed with the minutes of the proceedings of the Board.

**Section 5.8 Telephonic Participation.** Any Director may participate in a meeting of the Board or a meeting of a committee of the Board on which the Director serves, by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at such meeting.

**Section 5.9 Minutes of Meetings.** Minutes of all meetings of the Board shall be maintained and regularly distributed to the Directors prior to the next regularly scheduled Board Meeting. Minutes shall reflect business conducted including findings, conclusions, and recommendations sufficient for review and analysis. Upon adoption by the Board, minutes shall be filed with the books and records of the Corporation.

**Section 5.10 Annual Report of the Board.** On an annual basis, the Board shall review a report verified by the Treasurer or verified by a majority of the Board or certified by an independent certified public accounting firm retained by the Board, showing in appropriate detail for the last twelve month period ending not more than six (6) months from the date of the Annual Meeting of the Board: (i) the assets and liabilities of the Corporation; (ii) the principal changes in assets and liabilities; (iii) the revenue and receipts of the Corporation, both restricted and unrestricted; and (iv) the expenses and disbursements of the Corporation.

**Section 5.11 Purchase, Sale, Mortgage and Lease of Real Property.** No purchase of real property shall be made by the Corporation, and the Corporation shall not sell, mortgage or lease real property unless authorized by the vote of two-thirds (2/3) of the entire Board.



## ARTICLE 6: OFFICERS

Section 6.1 Officers. The Officers of the Corporation shall be a Chairperson, Secretary, Treasurer and such other officers as the Board may, from time to time, determine (collectively, the "Officers").

Section 6.2 Election and Term of Office. At the Annual Meeting of the Directors, the Directors shall elect Officers from among the Directors. Each Officer shall be elected to serve and shall hold office until the earlier of: (i) the election of a duly qualified successor; or (ii) the expiration of his/her term as Director. The term of office shall be one year for the year following the adoption of these by-laws, and three years for every term thereafter.

Section 6.3 Chairperson. The Chairperson shall: (i) preside at all meetings of the Board; (ii) coordinate all activities of the Board; and (iii) serve as an ex-officio non-voting member of all Standing Committees. In the absence of the Chairperson, the Secretary shall preside at all meetings of the Board.

Section 6.4 Secretary. The Secretary shall: (i) record the proceedings of the Board; (ii) serve as custodian of the minutes of the corporate books, records and documents of the Corporation; (iii) be responsible for notifying Directors of all meetings of the Board; (iv) ensure that the Corporate Seal is secured in the office of the Corporation and that it is duly affixed to all instruments requiring it when authorized by the Board of Directors and attest to the same; and (v) perform all duties incumbent to the office of Secretary.

Section 6.5 Treasurer. The Treasurer shall oversee the Chief Financial Officer's performance of his/her duties, which include, but are not limited to, supervising the receipt and disbursement of all monies of the Corporation; maintaining records of all of the financial transactions of the Corporation; maintaining custody of all funds, securities, evidences of indebtedness and all other valuable documents of the Corporation; and shall perform all duties and acts incident to the office of the Treasurer including recommending to the Board at each Annual Meeting, action with regard to signatory authority for drafts on corporate funds and other financial obligations of the Corporation, as applicable.

Section 6.6 Chief Executive Officer. The Chief Executive Officer shall be the senior administrative officer of the Corporation. The Chief Executive Officer shall be appointed by action of the Board and serve at the pleasure of the Board. The Board shall have the sole authority to determine the compensation of the Chief Executive Officer. The Chief Executive Officer shall serve as an ex-officio non-voting Director in accordance with Section 6.3. Subject to Board approval, the Chief Executive Officer shall supervise and manage the business and affairs of the Corporation including, but not limited to, the authority to: (i) execute all contracts and instruments of conveyance in the name of the Corporation, unless otherwise specified by action of the Board; (ii) sign checks, drafts, notes and other orders for the payment of money in amounts fixed by action of the Board at each Annual Meeting; (iii) hire and discharge all staff; (iv) serve as an ex-officio non-voting member of all Board committees, except that the Chief Executive Officer shall not be a member of a committee the sole responsibility of which is the determination of his/her compensation; (v) arrange for the preparation of an annual budget for the review and approval of the Board; and (vi) perform all duties customarily incident to the office of the Chief Executive Officer. Notwithstanding the foregoing or any other provision of these Bylaws, the Chief Executive Officer may be removed, with or without cause, upon the affirmative vote of a majority of the entire Board.

**Section 6.7 Removal of Officers.** Each Officer may be removed by the Board in accordance with the voting provisions of Section 5.6 of these Bylaws.

**Section 6.8 Vacancies.** If an office becomes vacant, the Board may elect a qualified individual to fill such vacancy, and that individual shall hold office for the unexpired term of the predecessor and until a successor is elected and duly qualified to serve.

## **ARTICLE 7: COMMITTEES OF THE BOARD**

### **Section 7.1 Committees: Composition.**

a. **General.** The Board may designate from among the Directors, any standing or Ad Hoc committees, each consisting of three (3) or more Directors, including a chair (the "Committee Chair"). Notwithstanding any other provision of these Bylaws: (i) individuals who are not Directors may serve only as non-voting members of committees; (ii) any such individuals shall be approved by each of the Board, the Chairperson of the Corporation and the applicable Committee Chair; and (iii) no committees shall have more than two (2) such individuals serving as committee members. At a committee meeting, a quorum shall be a majority of the number of committee members eligible to vote. Action shall be by majority vote of committee members eligible to vote and present at the meeting. Each committee meeting shall have an agenda, and each committee shall submit a report of its meeting to the Board. Committees shall not have the authority to act on behalf of the Board. Each committee member and Committee Chair shall hold office until his or her successor is elected. Each committee shall have the powers specifically provided in these Bylaws, which are not inconsistent with New York State law or with the federal guidelines applicable to recipients of funds under Section 330 of the Public Health Services Act.

b.. **Finance Committee.** The Board shall designate from among the Directors to form a Finance Committee. The responsibilities of the Finance Committee shall include, but shall not be limited to, the following: (i) monitoring the financial operations of the Corporation and making recommendations to the Board regarding such operations, including, but not limited to, the Corporation's policies and procedures regarding eligibility for services, sliding fee scales, and long, range financial planning; (ii) assisting the Corporation's administration in developing the annual budget and any necessary amendments thereto; (iii) reviewing the Corporation's annual financial audit, and (iv) reviewing and proposing possible sources of additional funding for the Corporation.

**Section 7.2 Ad Hoc Committee.** An Ad Hoc Committee may be established by the Chairperson. An Ad Hoc Committee shall limit its activities to the accomplishment of the task for which it was appointed, and shall have no power to act except as specifically conferred by the Chairperson. Upon completion of its task, the Ad Hoc Committee shall be discharged by the Chairperson. Ad Hoc Committees may be established for, but not limited to, the following reasons:

- a. To recruit, screen and recommend candidates for openings on the Board, ensuring that nominees adequately represent all segments of the population of the catchment area, consistent with the requirements of Section 4.2 of Article IV of these Bylaws;
- b. To engage in strategic planning activities such as studying the demographics and specific health care and community needs of the Corporation's catchment areas and formulate recommendations to the Board concerning the creation of new programs and services, or elimination or modification of existing programs and services, which address such factors;
- c. To study pending and recent legislation affecting the health care industry, including legislation providing governmental grants or funds for the establishment, operation or provision of certain health care services, and advise the Board as to the future impact such legislation may have on the Corporation; and
- d. Plan or coordinate a special event;
- e. Plan or coordinate Chief Executive Officer transitions and searches; or
- f. Investigate an unusual problem or occurrence.

**ARTICLE 8: DISCLOSURE AND VOTING POLICY APPLICABLE TO DIRECTORS;  
LIMITATIONS**

Section 8.1 Conflicts of Interest. The Board has adopted and shall periodically review a written conflicts of interest policy, to address conflicts of interest or the appearance of conflicts of interest which shall be in compliance with the laws of the State of New York and Section 330 of the Public Health Service Act, 42 U.S.C. § 254b. Each Director has a fiduciary duty to the Corporation and must give his or her loyalty.

Section 8.2 Definitions. As used in this Article 8:

- a. "Affiliated Organization" means any organization, corporation, partnership or other entity which is owned or controlled by the Corporation.
- b. "Related Party" means as to a Director, any close relation whether by blood, marriage or cohabitation, including parents, spouse, or spousal equivalent, and all descendants of either the parents or spouse including child, sibling, niece, nephew, or cousin.
- c. "Substantial Financial Interest" means participation of a Director in any organization, corporation, partnership or other entity in which such Director and/or a Related Party has any financial interest that is valued at least to 10% of the net worth of the Director.
- d. "Transaction" means any transaction entered into by or with the Corporation including, but not limited to, the sale, purchase, rental, disposition, licensing, or exchange of any goods, services, or property.

Section 8.3 Board Approval of Transactions. The Corporation shall not enter into a proposed Transaction in which one or more Directors or a Related Party have a Substantial

Financial Interest, unless the Board in its sole discretion determines that the proposed Transaction shall be at least as fair and reasonable to the Corporation as would otherwise be obtainable by the Corporation from disinterested third parties.

Section 8.4 No Voting. A Director shall not vote on, or be counted in determining the quorum for any vote on, or participate in any discussions regarding a Transaction, between the Corporation and another entity in which the Director or a Related Party serves as an officer or director, or has a direct or indirect Substantial Financial Interest.

Section 8.5 Disclosure.

- a. Each Director shall complete, execute and return a Disclosure Statement, in a form adopted by the Board ("Disclosure Statement"), to the Secretary within thirty (30) days of more frequently taking office. Thereafter, in each succeeding year, in the month of January and if necessary, each Director shall complete, execute and return this Disclosure Statement to the Secretary.
- b. In addition to completing the Disclosure Statement in accordance with Section 8.5(a) above, each Director shall fully and voluntarily disclose to the Secretary any Substantial Financial Interest on the part of the Director or a Related Party in any Transaction, and the Secretary shall promptly make such disclosure a matter of record.

**ARTICLE 9: INDEMNIFICATION OF DIRECTORS, OFFICERS AND MEMBERS, AND INSURANCE**

Section 9.1 Indemnification. The Corporation shall indemnify its Directors, Officers and Members to the extent permitted by the Not-For-Profit Law.

Section 9.2 Insurance. Pursuant to Section 726 of the Not-For-Profit Law, and subject to subparagraph (b) thereof, the Corporation shall have the power to purchase and maintain insurance to indemnify, under the provisions of this Article 9: (i) the Corporation for any obligation which it incurs as a result of the indemnification of Directors and Officers; (ii) Directors and Officers where they are required to be indemnified by the Corporation; and (iii) Directors and Officers in instances in which they may not otherwise be indemnified by the Corporation, provided the contract of insurance covering such Directors and Officers provides, in a manner acceptable to the Superintendent of Insurance, for a retention amount and for co-insurance.

**ARTICLE 10: LIMITATIONS**

Section 10.1 Prohibition against Sharing in Corporate Earnings. No Director, Officer or employee of, or other person connected with, the Corporation, or any other private individual, shall receive at any time any of the net earnings or pecuniary profit from the operations of the Corporation, provided that this shall not prevent either the payment to any such person of reasonable compensation for services rendered to or for the benefit of the Corporation or the

reimbursement of expenses incurred by any such person on behalf of the Corporation, in connection with effecting any of the purposes of the Corporation, and no such person or persons shall be entitled to share in the distribution of any of the corporate assets upon the dissolution of the Corporation. All such persons shall be deemed to have expressly consented and agreed that upon such dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, the assets of the Corporation, after all debts have been satisfied, then remaining in the hands of the Board, shall be distributed in such amounts as the Board may determine, or as may be determined by a court of competent jurisdiction upon the application of the Board, exclusively to charitable, religious, scientific, literary or educational organizations that then qualify for exemption from Federal income taxation under Code 501(c)(3) and provide health care services to patients in the Corporation's service area.

Section 10.2 Exempt Activities. Notwithstanding any other provision of these By-Laws, no Director, Officer, employee or representative of the Corporation shall take any action or carry on any activity by or on behalf of the Corporation not permitted to be taken or carried on by an organization (i) exempt from Federal income tax under I.R.C. §501(a), as an organization described in I.R.C. §501(c)(3); (ii) that is a supporting organization described in I.R.C. §509(a)(3); and (iii) contributions to which are deductible under I.R.C. §170(c)(2).

## ARTICLE 11: MISCELLANEOUS

Section 11.1 Fiscal Year. The Fiscal Year of the Corporation shall begin on the first day of January, and end on the last day of December in each calendar year.

Section 11.2 Corporate Seal. The Corporate Seal shall be circular in form and have inscribed on it the name of the Corporation, the year of its organization, and the words "Corporate Seal" and "New York." The Secretary shall serve as custodian of the Corporate Seal. The Corporate Seal may be used by causing it or a facsimile thereof to be affixed, impressed or reproduced in any other manner.

Section 11.3 Gender. As used in these Bylaws, the neuter shall include the masculine and feminine, the masculine shall include the feminine, the singular shall include the plural and the plural shall include the singular, as the context may require.

Section 11.4 Amendment of Certificate of Incorporation and Amendment or Repeal of Bylaws.

- a. The Board shall have the power to make, alter, amend and repeal the By-Laws and Certificate of Incorporation of the Corporation by the affirmative vote of a majority of the Directors then in office, subject to obtaining necessary governmental approval for any such action; provided, however, that notice of the proposed amendment or amendments shall have been included in the meeting notice which is given to the Directors and, provided further, that no such action shall be taken that would adversely affect the qualification of the Corporation as an organization: (i) exempt from Federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as amended (hereinafter "I.R.C.") as an organization described in I.R.C. § 501(c)(3); (ii) that is a supporting organization described in I.R.C. § 509(a)(3); (iii) contributions to which are deductible under I.R.C. § 170(c)(2); (iv) entitled to receive Federal grants; or (v) designated as a Federally Qualified Health

**Center which receives a grant pursuant to Section 330 of the Public Health Service Act and the regulations promulgated thereunder.**



**RESOLUTION OF THE BOARD OF DIRECTORS OF**

**HEALTHCARE CHOICES NY, INC.**

**AT A MEETING OF THE BOARD ON 3/19/ , 2019**

**WHEREAS**, HealthCare Choices NY Inc., hereinafter "HCC," operates a Diagnostic and Treatment Center and extension clinics thereto, and

**WHEREAS**, those programs are licensed by the New York State Department of Health under duly authorized Operating Certificates, and

**WHEREAS**, the Purposes Clause of the HCC Certificate of Incorporation and amendments thereto does not fully reflect that purpose,

**NOW THEREFORE**,

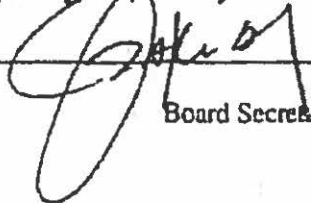
A quorum of the Board of Directors of HCC being present, by telephone or in person, and the majority of the Board members therefore voted and approved the following resolutions:

First, HCC Chief Executive Officer Director Maria Siebel is hereby empowered to obtain approval of the New York State Department of Health and thereafter with the New York State Department of State, and with any other relevant government agencies, to amend Paragraph 3(b)(iv) of the Corporation's Amended Certificate of Incorporation to add a new clause as follows:

...to own and operate a Diagnostic and Treatment Center, and one or more duly authorized extension clinics, within the meaning of Article 28 of the Public Health Law and the Rules and Regulations adopted thereto, as amended from time to time, pursuant to the approval of and authorized by Operating Certificate(s) from the New York State Department of Health.

Second, the Board further resolves to take all necessary action to obtain the approval of the New York State Department of Health for the Certificate of Amendment filed with New York State Department of State on September 18, 2018.

Signed by the Secretary of the Board on , 2019.

  
Board Secretary



Facility Id.  
Certificate No

6272  
7001299R

State of New York  
Department of Health  
Office of Primary Care and Health Systems Management

OPERATING CERTIFICATE

Diagnostic and Treatment Center

Effective Date: 07/26/2016  
Expiration Date: NONE

ICL Healthcare Choices Inc  
6209 16th Ave  
Brooklyn, New York 11204

Operator: ICL Healthcare Choices Inc  
Operator Class: Voluntary Not for Profit Corporation

It has been granted this Operating Certificate pursuant to Article 28

of the Public Health Law for the service(s) specified:

Dental O/P                      Medical Services - Primary Care                      Podiatry O/P                      Therapy - Occupational O/P                      Therapy - Physical O/P  
Therapy - Speech Language Pathology O/P

Other Authorized Locations


Diagnostic and Treatment Center Extension Clinic

ICL HealthCare Choices in Long Island City 21-10 Borden Avenue Long Island City, New York 11101	ICL Healthcare Choices, Inc. 179 Jamaica Avenue Brooklyn, New York 11207
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20170517 : Deputy Director Office of Primary Care and  
Health Systems Management

This certificate must be conspicuously displayed on the premises.



Commissioner