STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

August 8, 2019

Immediately following the Committee on Codes, Regulations and Legislation meeting (Codes scheduled to begin at 9:15 a.m.)

90 Church Street 4th Floor, Room 4A & 4B, New York City

I. INTRODUCTION OF OBSERVERS

Jeffrey Kraut, Chair

II. APPROVAL OF MINUTES

June 6, 2019 Meeting Minutes

III. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

Sally Dreslin, Executive Deputy Commissioner of Health

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

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

C. Report of the Office of Public Health Activities

Brad Hutton, Deputy Commissioner, Office of Public Health

IV. REGULATION

Report of the Committee on Codes, Regulations and Legislation

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

For Adoption

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

For Information

19-07 Amendment of Sections 405.7 and 751.9 of Title 10 NYCRR (Patients' Bill of Rights)

19-18 Amendment of Sections 405.5 and 405.19 of Title 10 NYCRR (Registered Nurses in the Emergency Department)

19-04 Amendment of Subpart 5-1 of Title 10 NYCRR (Maximum Contaminant Levels (MCLs))

V. HEALTH POLICY

Report on the Activities of the Health Planning Committee

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

VI. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

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

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Residential Health Care Facilities - Construction

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	191132 C	Canterbury Woods (Erie County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services - Construction

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	191174 C	Memorial Hospital for Cancer and Allied Diseases (Westchester County) Mr. Kraut - Interest	Contingent Approval

Ambulatory Surgery Centers - Construction

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	191215 C	Syracuse Surgery Center (Onondaga County) Mr. Kraut - Interest	Contingent Approval

Diagnostic and Treatment Centers - Construction

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	191147 C	New York Hotel Trades Council and Hotel Association of New York City Health Center (Kings County) Mr. Kraut - Interest	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	182236 B	Precision SC, LLC d/b/a PrecisionCare Surgery Center (Suffolk County)	Contingent Approval

2.	191095 B	Hauppauge SC, LLC d/b/a The Center for Advanced Spine and Joint Surgery (Suffolk County)	Contingent Approval
3.	191237 E	PBGS, LLC (Kings County)	Contingent Approval

Diagnostic and Treatment Centers – Establish/Construct

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	191196 B	Shakespeare Operating, LLC d/b/a Bronx Treatment Center (Bronx County)	Contingent Approval
2.	191245 E	Planned Parenthood of New York City Inc. t/b/k/a Planned Parenthood of Greater New York, Inc. (New York County)	Contingent Approval

Dialysis Services – Establish/Construct

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	182296 B	Novo Dialysis Flatlands, LLC (Kings County)	Contingent Approval
2.	191077 B	Cobble Hill Dialysis (Kings County)	Contingent Approval

Certificates

Certificate of Dissolution

Applicant	E.P.R.C. Recommendation
Jewish Care Services of Long Island, Inc.	Approval

Certificate of Amendment of the Certificate of Incorporation

Applicant	E.P.R.C. Recommendation
The Eastern Long Island Hospital Association	Approval
Rochester Primary Care Network, Inc.	Approval
Columbia-Greene Hospital Foundation	Approval

Restated Certificate of Incorporation

Applicant	E.P.R.C. Recommendation
Carthage Area Hospital, Inc.	Approval

Amended and Restated Certificate of Incorporation

Applicant	E.P.R.C. Recommendation
HealthCare Choices NY, Inc.	Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	191189 B	UWS ASC, LLC (New York County) Dr. Martin - Recusal	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

CON Applications

Dialysis Services – Establish/Construct

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	191136 E	Cowley Dialysis, LLC d/b/a Hutchinson River Dialysis (Bronx County) Mr. Kraut – Interest Dr. Gutiérrez - Opposed at EPRC	Contingent Approval

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

HOME HEALTH AGENCY LICENSURES

Affiliated with Assisted Living Program (ALPs)

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	182301 E	Brookhaven Home Care, LLC (Suffolk County)	Contingent Approval
2.	191097 E	Oyster Bay Manor Home Care, Inc. (Nassau County)	Contingent Approval

Changes in Ownership with Consolidation

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	191210 E	Supportive Home Care, LLC d/b/a Care365 Homecare (Kings County)	Approval

VII. NEXT MEETING

September 26, 2019 – NYC
October 10, 2019 – NYC

VIII. ADJOURNMENT

State of New York
Public Health and Health Planning Council

Minutes
June 6, 2019

The meeting of the Public Health and Health Planning Council was held on Thursday, June 6, 2019 at the New York State Department of Health Offices, 90 Church Street, 4th Floor CR 4 A/B, NYC. Vice Chair Dr. Jo Ivey Boufford presided.

COUNCIL MEMBERS PRESENT

Dr. John Bennett	Dr. Glenn Martin
Dr. Howard Berliner	Ms. Ellen Rautenberg
Dr. Jo Ivey Boufford	Mr. Peter Robinson
Dr. Lawrence Brown	Ms. Nilda Soto
Ms. Carver-Cheney	Mr. Hugh Thomas
Mr. Thomas Holt	Dr. Kevin Watkins
Dr. Gary Kalkut	Dr. Patsy Yang
Mr. Scott La Rue	Ms. Sally Dreslin – Ex-officio
Mr. Harvey Lawrence	

DEPARTMENT OF HEALTH STAFF PRESENT

Mr. Alex Damiani – via video Albany
Ms. Barbara DelCogliano – via video Albany
Ms. Alejandra Diaz
Ms. Shelly Glock
Mr. Mark Furnish
Mr. Mark Hennessey – via video Albany
Mr. Brad Hutton – via video Albany
Ms. Colleen Leonard
Mr. George Macko – via video Albany
Ms. Marthe Ngwashi
Mr. Mark Noe – via video Albany
Ms. Laura Palmer – via video Albany
Ms. Tracy Raleigh
Ms. Gilda Riccardi
Ms. Laura Santilli
Mr. Daniel Sheppard
Ms. Lisa Thomson
Mr. Richard Zahnleuter

INTRODUCTION

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

APPROVAL OF THE MINUTES OF APRIL 11, 2019

Dr. Boufford asked for a motion to approve the April 11, 2019 Minutes of the Public Health and Health Planning Council meeting. Ms. Rautenberg motioned for approval which was seconded by Mr. Holt. The minutes were unanimously adopted. Please refer to page 3 of the attached transcript.

ADOPTION OF THE 2020 PHHPC MEETING DATES

Dr. Boufford asked for a motion to adopt the 2020 PHHPC Meeting Dates. Ms. Carver-Cheney motioned for adoption which was seconded by Dr. Kalkut. The meeting dates were unanimously adopted. Please refer to page 3 of the attached transcript

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Dr. Boufford introduced Ms. Dreslin to give a report on the Department of Health report

Anniversary of D Day

Ms. Dreslin recognized the courage and valor of WWII veterans and as state commemorate the 75th anniversary of D-day and the allied landings in Normandy. Over 43,000 New Yorkers died in service to our State and nation over the course of WWII, and some of these heroes lost their lives on this day 75 years ago. Events would be occurring to honor WWII veterans and their families at all five of New York State's veterans' homes. Four of which are operated by the Department of Health.

Measles Outbreak

Ms. Dreslin stated that throughout April and May the measles outbreak in Rockland County has remained a primary focus. The CDC announced that reported cases of measles nationally had reached their highest level in 25 years. As of June 3, 2019, the Department confirmed the following number of measles cases from the outbreak outside of New York City. 256 in Rockland County; 38 in Orange County; 17 in Westchester County; and 5 in Sullivan County. The Department continues to work closely with health officials in the affected counties. Increasing vaccination rates and limiting the spread of measles remain our frontline strategies. Since the beginning of the outbreak last fall, local providers have administered 22,468 doses of MMR vaccine in Rockland County; 14,354 doses in Westchester County; 10,091 in Orange County. The Department has been very focused on summer camp. Given this outbreak and given that measles is still common in many parts of the world and can be spread by international travel. The Department has been providing local health departments with guidance and informational flyers and posters that camps and localities to ensure that they know about these vaccine preventable diseases. Vaccination recommendations for camp settings, and medical details about measles. The Department has also provided measles response playbooks and immunization record templates to local health departments and conducted emergency preparedness exercise for the Department, for the counties, and the CDC observed this exercise. The Department will also be providing statewide webinar for camp operators and camp health directors on June 12, 2019.

Spring Tick Surveillance

Ms. Dreslin noted that Spring tick surveillance is in full swing. By the end of July, the Department will have collected ticks at over 150 sites statewide. Since 2002 the Department has collected and tested over 100,000 ticks; more than any other state in the nation and we recently

posted tick collection testing results dating back to 2008 on our health data New York website. In May 2019, the 2018 tick collection data went live, and anything you want to know about ticks is on the Department's website. Promoting awareness and prevention behaviors is critical to controlling tick-borne diseases. The Department established a working group that met twice to discuss issues and gather feedback on a tick-borne disease response plan. The Department also published a tick-borne disease collaborative action plan. In addition, the Department has surveyed over 4,000 school nurses and school-based health clinics to evaluate their approach to ticks, and the Department was consulted when the CDC created a new nationwide tick surveillance handbook. The Department recently secured over $1.3 million in new and continued federal funding from the CDC and NIH for tick surveillance research and testing. Ms. Dreslin also noted that the Department has very excellent resources on the Department's website. There is a helpful video that shows how to properly remove a tick. With all of the Department's research, they have identified the Asian longhorn tick for the first time in New York State and has started an aggressive research and testing program on this tick.

Harmful Algae Blooms

Ms. Dreslin spoke on the topic of harmful algae blooms, also known as HABs pose another summertime threat in parts of the state. HABs occur when algae grow out of control in bodies of water and produce toxic or harmful effects on people, pets, and wildlife. The Department continues to work with the State Department of Environmental conservation on controlling HABs in our lakes and ponds, and to prevent potential impacts on public drinking water systems, encouraging New Yorkers to "know it, avoid it, and report it." Local eyes are critical in a timely response to HABs. The Department along with the Department of Environmental Conservation has been working to offer regulated beach operators' guidance on responding to HABs. This consultation has been very successful. Even with HABs occurring more frequently at New York beaches, the number of HAB related illnesses remains very low, partly because of the responsiveness of the beach operators. The Department will continue to sample for the HAB related toxin microcystin at public drinking water systems and working with water system operators to help them develop and implement a HAB response plan.

Congenital Cytomegalovirus and Candida Auris Infection

Ms. Dreslin stated that in May, the Department held two very well-attended day-long events in Manhattan, specifically designed for expert clinicians. The Department convened an expert panel meeting on congenital cytomegalovirus known as CMV to explore more effective ways to prevent, screen, evaluate, and manage this common virus that can, nonetheless, have very serious consequences during pregnancy. Congenital CMV can cause chronic health issues and even death in newborns. This virus is often a-symptomatic, it can seem like something that is come out of the blue and many people just do not know enough about it. The panel focused especially on how we can better educate New Yorkers on the dangers, if a woman contracts CMV for the first time during pregnancy or has a recurrent infection after previous exposure.

Ms. Dreslin stated the second event, the Department partnered with the healthcare association of New York State and with Greater New York Hospital Association to bring together hospital leaders and expert personnel for an important conversation about how to prevent and manage candida auris infections. Particularly in regard to targeted admission screening. Most attendees have been working diligently over the past several years to collect data on the infection so that we can learn better methods to prevent and control this drug resistant disease. The Department is using input from this meeting to refine our screening recommendations. As of May 31, 2019, New York has confirmed 334 clinical cases, 481 surveillance cases, and four probable cases of C-auris. The Wadsworth Center has developed a rapid molecular test PCR test that can be performed directly from a swab which allows for rapid screening of people who are at higher risk for infection.

Suicide Prevention Taskforce

Ms. Dreslin explained that the Department has been closely involved in the work of the New York State Suicide Prevention Taskforce, a diverse group of experts that Governor Cuomo assembled following his 2017 announcement of the initiative. The Taskforce reviewed current services and policies focusing on higher risk cohorts of Latina youth, LGBTQ individuals, and veterans, and made recommendations for more effective suicide prevention activities. The Taskforce's report has just been released with recommendations that include the launch of the "Communities United for a Suicide-Free New York; A Statewide Initiative to Unify Activities and Jumpstart Progress to Reduce Suicides." An important goal of the Taskforce is the strengthen the capacity of local communities to address local needs and populations at risk. This includes supporting families and individuals experiencing specific economic adversities. With state guidance, New York communities can provide effective suicide prevention practices and build a more connected resilient community.

2019 Public Health Innovation Award

Lastly, Ms. Dreslin proudly announced that in May, the Department was honored to receive the 2019 Public Health Innovation Award from the National Network of Public Health Institutes for our Health Across All Policies, Age Friendly New York initiative. Last fall Governor Cuomo signed an executive order that directs all state agencies to adopt and implement the principles of age-friendly livable communities and preventative public health into all relevant programs, policies, and funding. At the Department of Health, the Department updated and expanded our 2019-24 prevention agenda, a blueprint for insuring health equity across populations who experience disparities and health outcomes to incorporate the Governor's vision for Health Aging. The Department made a commitment to ensure that all New Yorkers are able to age in place healthfully in communities of their own choosing. New York State's Health Across all Policies Age Friendly New York is a groundbreaking initiative because it relies on collaborative entrepreneurial and interdisciplinary governance. Public-Private partnerships, sustainable holistic community development and engaged relations with local governments.

Ms. Dreslin concluded her report. To read the complete report and questions from the Members, please see pages 4 through 19 of the attached transcript.

Office of Primary Care and Health Systems Management Activities

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

Mr. Sheppard began his report and spoke on the noted that we are heading into hurricane season. The Department developed and operates the health evacuation center (HEC) which coordinates the preparation and execution of the evacuation of hospitals, nursing homes, and adult care facilities in the New York City region in the event of a hurricane, serious coastal storm or any other major event that might require the mass transfer of patients from hospitals and residents of long term care facilities. The HEC is a great example of proactive emergency preparedness and collaboration between state, local governments, and industry stakeholders. On May 15, 2019 CMS awarded New York a national quality, safety and oversight achievement award for our emergency preparedness resident protection systems. This includes not just the HEC, but also the Evacuation of Facilities in Disaster Systems, which is a way of identifying patients and residents, residents particularly long term care facilities by affixing to them and identifying wristband that this was grown out of our experience with Sandy where there were a couple of unfortunate instances where in the evacuation of residents, particularly residents who had cognitive difficulties trying to identify where they came from, their medical histories, medication. New York won four of these awards, previous awards were for improving the hospital survey process, reducing the use of antipsychotic drugs in nursing homes, and improving nursing home complaint handling process.

Mr. Sheppard further stated that as indicated by the award just mentioned, improving the nursing home complaint process had been a major area focus for OPCHSM. One aspect of this is making sure that healthcare workers know the best way to share information with the Department about alleged regulatory violations. In collaboration with SEIU 1199 the Department has been conducting training sessions regarding how to go about filing a complaint. Mr. Hennessey has given presentations in Buffalo, Rochester, and Syracuse. The added benefit of these sessions is that the Department staff learns a great deal in these somewhat informal training sessions or meetings about hospitals and some of the challenges and good things about working in these facilities and helps us in our overall work. This helps improve the quality of the complaints that the Department receives and that is a benefit to the Department, to people complaining and some benefit to the facilities as well.

Mr. Sheppard noted that on May 3, 2019, CMS released draft guidance for hospital co-location with other hospitals or healthcare facilities. Healthcare is becoming more of a team sport than ever with value-based delivery models, integration of behavioral medical care, need for facilities to providers to work together to create efficiencies. The Department has been working hard through regulatory modernization and other efforts to make it easier on the State side for providers to collaborate. With the draft guidance that CMS came out with, it makes it easier for licensed providers to share the same physical space and deliver better patient centered care. New York other states have been talking to CMS about this for some time, and the Department really welcome this draft guidance as an important step forward. Comments on the guidance are due July 2, 2019 and the Department has been working with our sister agencies as well as industry stakeholders on the responses.

Mr. Sheppard lastly advised that the Department continues its efforts to streamline the CON process. The recent work of the Department's ureau of Architecture and Engineering Review (BAER). The BAER and the Department has rolled out electronic reviews of architectural drawings. All plan submissions are now sent electronically through the Department and all the information including the Department staff comments is stored electronically in one project folder that everybody can access, everybody involved in the CON approval process. This has reduced the design plan review times by 30 to 40 percent. Reason why review times going down is it reduces the turning from telephone calls back and forth, teleconferences, all the requests for information that typically were handled in an ad-hoc way are now handled electronically through this system. It also provides a linkage for all the whole chain of documentation to the regional office staff that have to do pre-opening surveys on the facilities when they open. Also in the streamlining mode, BAER has rolled out guidance and training on completion of the CON architectural schedules and these include both narrative and checklists for the FGI standards and life safety code requirements, as well as the varying programmatic requirements between hospitals and long term care facilities and outpatient facilities that often can, that providers or their design consultants can sometimes not know what we're looking for in each situation, the checklists organize all of that. This process change has improved the quality of the design submissions that the Department receives and as a result reduce the amount of back and forth and reduce review times.

Mr. Sheppard also stated that there is now a new module of NYSECON for review of adult care facility applications. This is expected to reduce review times for these applications as well.

Mr. Sheppard concluded his report. Please see pages 19 through 30 of the attached transcript.

Office of Public Health Activities

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

Mr. Hutton began his report by stating that the Department convened a stakeholder process to get input from different perspectives on ways that the Department can change and update the regional perinatal center program.

Mr. Hutton gave a brief update on maternal mortality. There are several items that have come out of the work of the listening sessions and the Taskforce including progress with respect to implementation of maternal mortality review board, a data center to begin to look more at some of the outcomes, and then also some training for hospital industry professionals in particular.

Dr. Boufford mentioned that Public Health Committee met on June 5, 2019 to take stock of what progress had been made in the maternal mortality area, and the Committee members were very pleased to get a very comprehensive report from Ms. Tobias about a number of these issues and the committee members had some questions. Dr. Boufford also noted that the Committee continues to have oversight of the Prevention Agenda and heard a really good initial presentation by colleagues from the Center for Environmental Health and the Department on violence.

Mr. Hutton concluded his report. To review the complete report, see pages 30 through 34 of the attached transcript.

REGULATION

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

Report of the Committee on Codes, Regulation and Legislation

For Adoption

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

Mr. Holt described for adoption the proposed Addition of Section 16.70 and Amendment of Part 89 of Title 10 NYCRR (Body Scanners in Local Correctional Facilities). Dr. Yang urged the Department in its preoperational survey to also look at local jail capabilities to track multiple exposures, due to multiple infractions or multiple detentions. Dr. Yang also recommended that it consider excluding females. Mr. Holt motioned to adopt, Dr. Berliner seconded the motion. The motion carried. Please see pages 34 and 35 of the transcript.

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

Mr. Holt described for adoption the proposed Amendment of Sections 709.14 and 405.29 of Title 10 NYCRR (Cardiac Catheterization Laboratory Centers). Dr. Bennett had questions relating to the proposed amendment. Mr. Holt motioned to adopt, Dr. Yang seconded the motion. The motion carried. Please see pages 35 through 39 of the transcript to view the comments and vote.

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

Mr. Holt described the proposed Amendment of Parts 69, 400 and 405 and Addition of Part 795 to Title 10 NYCRR (Midwifery Birth Center Services). Mr. Holt motioned to adopt. Dr. Watkins seconded the motion. Dr. Bennett had questions pertaining to the proposed amendments. Dr. Boufford suspended the discussion and vote on the motion until further Department staff could answer Dr. Bennett's questions.

For Information

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

Mr. Holt presented For Information Amendment of Sections 415.2 and 415.3 of Title 10 NYCRR (Residents' Rights). Please see pages 43 and 44 of the attached transcript.

HEALTH POLICY

Dr. Boufford then moved to the next item on the agenda and introduced Dr. Rugge to give the activities Report of the Committee on Health Planning.

Dr. Rugge began his report and advised that they held a joint committee meeting of the Health Planning Committee and the Establishment and Project Review Committee to consider ambulatory surgery centers and the goal is to improve access for patients to care, both by making it more efficient and also making those surgical services more affordable. The Committee's recognize that if those new ambulatory surgical centers jeopardize the viability of hospitals and their community, they are not improving access, but limiting or sacrificing it. There is a balancing act that comes before us again and the need to be aware of and alert to.

Dr. Rugge stated that in 2001 Section 709.5 of Title 10 was adopted for Council to be able to indeed certify and by extension regulate ambulatory surgical centers and just four years ago, this Council provided guidance for the establishment of five-year limited life for ambulatory surgical centers and with that the Council's ability to monitor the availability of charity care and meeting Medicaid requirements for those organizations.

Dr. Rugge also noted that financial feasibility also has a new meaning at a time when we have so many hospitals, depending on direct financial assistance to even stay alive. Financial feasibility ties them both to the ambulatory surgical center and it is financial feasibility and the impact on the hospitals in this community. A complicated set of parameters to understand and to deal with. It is in that context that the joint committee meeting was held to try to understand how best to address applications from ambulatory surgical centers in communities where their hospitals may be at risk. Those hospitals being defined as critical access hospitals or as sole community hospitals or as hospitals on the dole. Getting direct assistance to stay viable. That led to both discussion among committee members and also on behalf of the public with key points including the need for validation of data from both the ambulatory surgical centers and from the affected hospitals and patient migration, patient selection becomes very difficult and complicated item. Dr. Rugge stated that the Department is now hard at work taking these conversations, mobilizing and formalizing these into a new set of policy guidelines for the Council to follow.

Dr. Rugge concluded his report. To review the complete report, see pages 44 through 57 of the attached transcript.

REGULATION

Dr. Boufford returned to the motion for adoption of the Amendment of Parts 69, 400 and 405 and Addition of Part 795 to Title 10 NYCRR (Midwifery Birth Center Services).

The original motion was by Mr. Holt to adopt the amendment and seconded Dr. Watkins. After members questions and discussion, the members voted on the motion to adopt. The motion to adopt failed. Please see pages 39 through 43 and 57 through 78 of the attached transcript for the complete discussion.

Dr. Boufford then moved to the next item on the agenda and introduced Dr. Kalkut to give the Report of the Committee on Establishment and Project Review.

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Dr. Gary Kalkut, Vice Chair, Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Ambulatory Surgery Centers - Construction

Number	Applicant/Facility	Council Action
191120 C	The Northway Surgery and Pain Center (Saratoga County)	Contingent Approval

Dr. Kalkut called application 191120 and motioned for approval. Mr. Robinson seconds the motion. The motion to approve carries. Please see pages 78 and 79 of the transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services - Construction

Number	Applicant/Facility	Council Action
191083 C	Staten Island University Hospital (Richmond County) Mr. Kraut – Recusal (not present at meeting) Dr. Strange – Recusal (not present at meeting)	Contingent Approval

Residential Health Care Facilities - Construction

Number	Applicant/Facility	Council Action
172351 C	Bronx Center for Rehabilitation & Health Care (Bronx County) Dr. Kalkut - Interest	Contingent Approval

Dr. Kalkut calls applications 191083 and notes for the record that Mr. Kraut and Dr. Strange have declared conflicts but are not present at the meeting. Dr. Kalkut then calls application 172351 and notes for the record that he is declaring an interest. Dr. Kalkut motions for approval. Mr. Robinson seconds the motion. The motion to approve carries. Please see pages 79 and 80 of the transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

Number	Applicant/Facility	Council Action
182326 B	Triborough ASC, LLC d/b/a Triborough Ambulatory Surgery Center (Bronx County)	Contingent Approval
191060 E	Long Island Ambulatory Surgery Center (Suffolk County)	Approval

Diagnostic and Treatment Centers – Establish/Construct

Number	Applicant/Facility	Council Action
191107 E	City Wide Health Facility Inc. (Kings County)	Contingent Approval

Dr. Kalkut called applications 182326, 191060 and 191107 and motions for approval, Mr. Robinson seconds the motion. Dr. Berliner requests that application 191060 be removed from the batch. Dr. Kalkut motions to approve applications 182326 and 191107, Mr. Robinson seconds the motion. The motion carries. Please see pages 80 and 81 of the transcript.

Dr. Kalkut then called application 191060 and motions for approval, Mr. Robinson seconds the motion. Dr. Berliner expressed his concern with the applicant's low charity care. After a lengthy discussion among members and staff the application was called to a vote. The application to approve carried with Dr. Berliner opposing the application. Please see pages 81 through 102 of the attached transcript.

Dialysis Services – Establish/Construct

Number	Applicant/Facility	Council Action
182068 B	Freedom Dialysis of Riverdale, LLC (Bronx County)	Contingent Approval
182140 E	DSI Newburgh, LLC (Orange County)	Contingent Approval

Dr. Kalkut called application 182068 and 182140 and motioned for approval. Mr. Robinson seconds the motion. The motion carries. Please see pages 102 and 103 of the transcript.

Certified Home Health Agencies – Establish/Construct

Number	Applicant/Facility	Council Action
181319 E	Tri-Borough Certified Health Systems of the Hudson Valley LLC (Westchester County)	Contingent Approval

Dr. Kalkut introduced application 181319 and motioned for approval. Mr. Robinson seconds the motion. The motion to approve carries. Please see pages 103 and 104 of the attached transcript.

Certificates

Certificate of Dissolution

Applicant	Council Action
F.E.G.S. ProCare Health Services, Inc.	Approval
F.E.G.S. Home Care Services, Inc.	Approval
M.J.G.N.H.C., Inc.	Approval
Mount Sinai Diagnostic & Treatment Center	Approval

Dr. Kalkut calls F.E.G.S. ProCare Health Services, Inc., F.E.G.S. Home Care Services, Inc., M.J.G.N.H.C., Inc. and Mount Sinai Diagnostic & Treatment Center for consent for Dissolution. Dr. Kalkut motions for approval, Mr. Robinson seconds the motion. The motion carries. Please see pages 104 and 105 of the transcript.

Certificate of Amendment of the Certificate of Incorporation

Applicant	Council Action
HQ-WCHN Health System, Inc.	Approval

Dr. Kalkut calls the Certificate of Amendment of the Certificate of Incorporation of HQ-WCHN Health System, Inc. and motions for approval. Mr. Robinson seconds the motion. The motion carries. Please see page 106 of the transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

Number	Applicant/Facility	Council Action
191019 E	Bronx SC, LLC d/b/a Empire State Ambulatory Surgery Center (Bronx County) Dr. Martin – Recusal	Contingent Approval
191027 E	North Queens Surgical Center (Queens County) Dr. Martin - Recusal	Contingent Approval

Dr. Kalkut calls applications 191019 and 191027 and notes for the record that Dr. Martin has a conflict and has exited the meeting room. Dr. Kalkut motions for approval, Mr. Robinson seconds the motion. The motion to approve carries with Dr. Martin's recusal. Dr Martin returns to the meeting room. Please see pages 106 through 108 of the transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

Number	Applicant/Facility	Council Action
181259 E	Mohawk Valley Eye Surgery Center (Montgomery County)	Contingent Approval

Dr. Kalkut introduced application 181259 and motioned for approval. Mr. Robinson motioned for approval. The motion to approve carried. Please see pages 108 through 110 of the attached transcript.

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

HOME HEALTH AGENCY LICENSURES

Changes in Ownership with Consolidation

191080 E	Always Compassionate Home Care, Inc. (Suffolk County)	Contingent Approval

Serious Concern/Access

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

Number	Applicant/Facility	Council Action
191117 B	Saratoga Partners North (Saratoga County)	Contingent Approval

Lastly, Dr. Kalkut called applications 191080, 182247, and 191117 and motioned for approval. Mr. Robinson seconds the motion. The motion to approve carries. Please see pages 110 and 111 of the transcript.

ADJOURNMENT:

Dr. Boufford announced the upcoming PHHPC meetings and adjourned the public portion of the meeting and moved to executive session to hear the Report on the Health Personnel and Interprofessional Relations.

NEW YORK STATE DEPARTMENT OF HEALTH

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

FULL COUNCIL MEETING

TRANSCRIPT

JUNE 6, 2019

90 CHURCH STREET, NY, NY 10001

JO BOUFFORD: Good morning. I'm Jo Boufford, the Vice Chair of the Council, and I have the privilege to call to order the meeting of the Public Health and Health Planning Council. Welcome members. Welcome deputy commissioner Sally Dreslin, participants, and observers. Let me go through the mechanics of the meeting which should be reasonably familiar but it's important to review them each time. Let me remind everyone that this meeting is subject to the open meetings law and is being broadcast over the internet. The webcast are accessed at the Department of Health's website and the on-demand webcast will be available no later than 7 days after the meeting for a minimum of 30 days and then a copy will be retained by the Department for four months. Some suggestions and ground rules, because there is synchronized captioning, please, we ask everyone not to talk over each other. The first time you speak, if you'd please identify yourself and as a council member or as DOH Staff. And also remember that the microphones are hot; they will pick up

every sound and side conversation otherwise as well as rustling papers, and as a reminder for the audience, there's a form that needs to be filled out before you enter the meeting room on the tables outside the door. It's required by the Joint Commission on Public Ethics in accordance with executive law section 166, and it's posted on the Department of Health's website for the next time, and you can find it outside. But please do fill it out and make sure you leave it after the meeting is over and you are able to fill the form out in the future before you come. So I thank you for your cooperation in addressing these duties.

So let me review the agenda for today. We have Department of Health reports and we will hear from deputy commissioner Dreslin providing a report on the overall department activities. Mr. Sheppard will given an update on the activities of the Office of Primary Care and Health Systems management. Mr. Hutton in Albany will give an update on the Office of Public Health Activities. Mr. Holt presenting regulations for adoption and information. Under health policy, Dr. Rugge will give an update on the activities of the Health Planning Committee. Under the Project Review Recommendations and Establishment Actions, category project review recommendations, Dr. Robinson, Dr. Kalkut will be reporting on a number of CON applications that were reviewed at the committee. On professional affairs, the council will move into executive session immediately following

the completion of our business to consider one case arising under public health law section 2801B. And members of the council and most of our guests who regularly attend meetings are familiar with the decision made some time ago to reorganize the agenda by topics or categories which captures the roles and responsibilities of the council. So CON applications are batched. So we always pause at this point to ask if any members would like to pull an application out for individual consideration in the vote. Seeing no such indication, we'll stay with the batching arrangement, and I think with that we will begin the formal agenda. So thank you all for coming.

First of all we need to adopt the minutes from the last meeting. They have been made available. Do I have a motion to do so? OK. Ms. Rautenberg. Second? Mr. Holt? All in favor? Opposed? Minutes are adopted. And we'll begin with… I'm sorry? Oh, I'm sorry, thank you. Good thing Peter is here. Otherwise I wouldn't know what to do at these meetings. OK. Adoption of the 2020 PHHPC meeting days which were provided in the package here listed. Could I hear a motion to adopt? All in favor? Ms. Carver-Cheney and Dr. Kalkut. He's the closest one. Kevin. All in favor? Opposed? Meeting times are adopted. OK. And now we'll hear from deputy commissioner Dreslin.

SALLY DRESLIN: Thank you very much. How about now? OK… Thanks.

Good morning. Welcome. I have to begin today on a somber note. With the sad news that Commissioner Zucker's father passed away on Sunday at the age of 99. Dr. Saul Zucker was much loved and respected pediatrician and an anesthesiologist practicing medicine until he was 90 years old. Dr. Zucker was very proud of his father and shared with us many wonderful stories about him and I know that the Council joins the Department in extending our deepest sympathy to Dr. Zucker and his family.

I also want to mention that New York is recognizing the courage and valor of WWII veterans today. As we as a state commemorate the 75th anniversary of D-day and the allied landings in Normandy. Over 43,000 New Yorkers died in service to our State and nation over the course of WWII, and some of these heroes lost their lives on this day 75 years ago. Today's events honor WWII veterans and their families at all five of New York State's veterans' homes. Four of which are operated by the Department of Health.

Throughout April and May the measles outbreak in Rockland County has remained a primary focus. Last week the CDC announced that reported cases of measles nationally had reached their highest level in 25 years. As of June 3, 2019, the Department confirmed the following number of measles cases from the

outbreak outside of New York City. 256 in Rockland County; 38 in Orange County; 17 in Westchester County; and 5 in Sullivan County. We continue to work closely with health officials in the affected counties. Increasing vaccination rates and limiting the spread of measles remain our frontline strategies. Since the beginning of the outbreak last fall, local providers have administered 22,468 doses of MMR vaccine in Rockland County; 14,354 doses in Westchester County; 10,091 in Orange County. And as you can imagine with the season coming, we've been very focused on summer camp. Given this outbreak and given that measles is still common in many parts of the world and can be spread by international travel. We've been providing local health departments with guidance and informational flyers and posters that camps and localities to ensure that they know about these vaccine preventable diseases. Vaccination recommendations for camp settings, and medical details about measles. We've provided measles response playbooks and immunization record templates to local health departments and conducted emergency preparedness exercise for the Department, for the Counties, and the CDC observed this exercise. We'll also be providing statewide webinar for camp operators and camp health directors on June 12.

Spring Tick surveillance is in full swing this spring – that's unfortunate. By the end of July we'll have collected

ticks at over 150 sites statewide. Since 2002 the Department has collected and tested over 100,000 ticks; more than any other state in the nation and we recently posted tick collection testing results dating back to 2008 on our health data New York website. Last month the 2018 tick collection data went live, so anything you want to know about Ticks we have up on the website. Promoting awareness and prevention behaviors is critical to controlling tick-borne diseases. We established a working group that met twice to discuss issues and gather feedback on a tick-borne disease response plan. And we also published a tick-borne disease collaborative action plan. We surveyed over 4000 school nurses and school-based health clinics to evaluate their approach to ticks, and we were consulted when the CDC created a new nationwide tick surveillance handbook. And we recently secured over $1.3 million in new and continued federal funding from the CDC and NIH for tick surveillance research and testing. And we have some very excellent resources on our website. We have a very helpful video that shows how to properly remove a tick. It's very good viewing for those who need it, when they need it. And we've also of note, with the research that we're doing have identified the Asian longhorn tick for the first time in New York State – this was last year – and we started an aggressive research and testing program on this tick in particular.

Harmful algae blooms, also known as HABs pose another summertime threat in parts of the state. They occur when algae grow out of control in bodies of water and produce toxic or harmful effects on people, pets, and wildlife. The Department continues to work with the State Department of Environmental conservation on controlling HABs in our lakes and ponds, and to prevent potential impacts on public drinking water systems, encouraging New Yorkers to "know it, avoid it, and report it." Local eyes are critical in a timely response to HABs. With DEC, we've been working to offer regulated beach operators guidance on responding to HABs. This consultation has been very successful. Even with HABs occurring more frequently at New York beaches, the number of HAB related illnesses remains very low, partly because of the responsiveness of the beach operators. We'll continue to sample for the HAB related toxin microcystin at public drinking water systems and working with water system operators to help them develop and implement a HAB response plan.

In May we held two very well-attended day-long events here in Manhattan, specifically designed for expert clinicians. We convened an expert panel meeting on congenital cytomegalovirus known as CMV to explore more effective ways to prevent, screen, evaluate, and manage this common virus that can, nonetheless, have very serious consequences during pregnancy. Congenital CMV

can cause chronic health issues and even death in newborns. Because this virus is often a-symptomatic, it can seem like something that's come out of the blue and many people just don't know enough about it. The panel focused especially on how we can better educate New Yorkers on the dangers, if a woman contracts CMV for the first time during pregnancy or has a recurrent infection after previous exposure. For the second event, we partnered with the healthcare association of New York State and with Greater New York Hospital Association to bring together hospital leaders and expert personnel for an important conversation about how to prevent and manage candida auris infections. Particularly in regard to targeted admission screening. Most attendees have been working diligently over the past several years to collect data on the infection so that we can learn better methods to prevent and control this drug resistant disease. We're using input from this meeting to refine our screening recommendations. As of May 31, New York has confirmed 334 clinical cases, 481 surveillance cases, and four probable cases of C-auris. And as I discussed at last month's meeting, Wadsworth Center has developed a rapid molecular test PCR test that can be performed directly from a swab which allows for rapid screening of people who are at higher risk for infection. The DOH has been closely involved in the work of the New York State suicide prevention taskforce, a diverse group of

experts that Governor Cuomo assembled following his 2017 announcement of the initiative. The taskforce reviewed current services and policies focusing on higher risk cohorts of Latina youth, LGBTQ individuals, and veterans, and made recommendations for more effective suicide prevention activities. The taskforce's report has just been released with recommendations that include the launch of the "Communities United for a Suicide-Free New York; A statewide initiative to unify activities and jumpstart progress to reduce suicides." An important goal of the taskforce is the strengthen the capacity of local communities to address local needs and populations at risk. This includes supporting families and individuals experiencing specific economic adversities. With state guidance, New York communities can provide effective suicide prevention practices and build a more connected resilient community.

Finally, last month the Department was honored to receive the 2019 public health innovation award from the National Network of Public Health Institutes for our Health Across All Policies, Age Friendly New York initiative. Last fall Governor Cuomo signed an executive order that directs all state agencies to adopt and implement the principles of age-friendly livable communities and preventative public health into all relevant programs, policies, and funding. At the Department of Health, we updated and expanded our 2019-24 prevention agenda, a blueprint

for insuring health equity across populations who experience disparities and health outcomes to incorporate the Governor's vision for Health Aging. We made a commitment to ensure that all New Yorkers are able to age in place healthfully in communities of their own choosing. New York State's Health Across all Policies Age Friendly New York is a groundbreaking initiative because it relies on collaborative entrepreneurial and interdisciplinary governance. Public-Private partnerships, sustainable holistic community development and engaged relations with local governments.

So, these are some of the higher profile activities that we've been engaged in over the last several months, and will continue to be in the months ahead. Thank you.

JO BOUFFORD: OK, we have time for questions for deputy commissioner. Comments? Dr. Soto.

NILDA SOTO: Nilda Soto, Council member. You mentioned how many measles vaccinations have already been administered. Does the Department have any sense of how many children are still not vaccinated, percentage?

SALLY DRESLIN: We do have statistics that are up on the website for the schools that indicate what the percentages are

for religious exemptions and for medical exemptions, and it's county by county data. So, it's available. I don't have it off the top of my head, but it is available.

NILDA SOTO: I just meant like, overall. I mean, I've seen and heard the messages, so the campaigns have been out there.

SALLY DRESLIN: And overall New York State has very high rates of childhood vaccination. We are, I believe, close to 96 percent on a statewide average, but what you have are pockets of areas where there's undervaccination, and unfortunately that becomes the method of transmission. We so have been very, and I'm very happy to hear that you've seen the message because I think the numbers show that our message is getting out on the importance and the safety and the effectiveness of vaccination, and in cooperation with the local health departments we've been making available points of dispense pods to help people get vaccinated, working with local healthcare providers to encourage them as we can see they're listening to push vaccination amongst their patients. So we'll continue to push vaccination as well as to work to control spread.

JO BOUFFORD: Other questions? Comments? Howard.

HOWARD BERLINER: Commissioner, just wondering, with the epidemic seemingly winding down of measles, at least in terms of numbers of new cases, is the Department preparing any special plans to deal with the potential epidemic next year? The Commissioner PSA aside?

SALLY DRESLIN: Did you see it? It was excellent.

HOWARD BERLINER: I was surprised – I'm sorry about his father, I was hoping he'd be here to take kudos for that.

SALLY DRESLIN: For those of you who haven't seen it, Dr. Zucker recorded a public service announcement on vaccination and how he vaccinates his children. It's a wonderful PSA, so hopefully you'll see that in the next several weeks.

No.

Not helpful.

JO BOUFFORD: Getting too relaxed.

SALLY DRESLIN: So I would say that the… we still continue to see new cases of measles so it is not where we want it to be. It used to be that we did not see these types of numbers. So we

are working incredibly aggressively through the summer as we move into another environment where people are closely quartered and transmission is, the situation is amenable to transmission. So we're working very hard. We are not standing down at all, and I think the increased awareness is great, is really important, but we're going to continue pushing forward aggressively on maintaining the message that vaccines are safe and effective and that this is really important for people to be vaccinated.

GLENN MARTIN: Couple of things. One, now that it looks like recreational cannabis will not go through the legislature and people may calm down a little bit and we can look at facts, would it be possible to get some sort of report or summary of our experiences with medical marijuana to date in New York State? I don't think we've seen that and I know there's a website to keep things up to date, but if it hasn't been maybe for our next meeting we could work it into an agenda.

SALLY DRESLIN: So we do the two year reports. We have the second two year report that came out about nine months ago. There are statistics on the website that talk about the numbers of certified patients and the numbers of enrolled practitioners. And there's regs that are up to date on there. But I'd be happy

to talk offline if there's additional information that you're looking for.

GLENN MARTIN: That'd be great. That'd be very helpful. Thank you. The other thing is, and it's just sort of a personal pet peeve and politically incorrect so I'll say it, you talk about suicide-free or zero suicide which I know is sort of the buzz word, personally I think that is a bad mistake. Unfortunately, psychiatric illnesses have fatal outcomes in a non-insignificant in number cases. I'd love it to get it down to zero, but it's a little bit like asking physicians who treat fatal illnesses to get it down to zero. You can try. But it's not probably going to be an obtainable goal, I'm afraid to say, and I know I can get yelled at by my colleagues but it's one of those things where I think we set ourselves up for something that may not be completely feasible or ever appropriate, so I will just say that and then move on.

SALLY DRESLIN: No, I appreciate that feedback.

JO BOUFFORD: Ms. Rautenberg and then Mr. Robinson.

ELLEN RAUTENBERG: Hi, I've been approached by a couple of women's advocates around potential changes to the birth

certificate around surrogacy. Is that something that we are going to be seeing soon, or…

SALLY DRESLIN: So, there is the bill that would legalize surrogacy that is still in the legislature. So until there's a determination on the outcome of that bill which is a priority of the Governor's but it still have not been passed by the legislature yet. It would be premature really to discuss.

ELLEN RAUTENBERG: Particularly around having a birth certificate change…

SALLY DRESLIN: Oh, if it's not necessarily New York State-based. Sorry.

ELLEN RAUTENBERG: Oh.

SALLY DRESLIN: Is that what you're asking? If someone…

ELLEN RAUTENBERG: I'm not quite sure what I'm asking. They said I should be listening for it here, because they would like to speak on it.

SALLY DRESLIN: So we can talk afterwards about what you're hearing and we can sort through what you're looking for.

ELLEN RAUTENBERG: Sure.

PETER ROBINSON: So just back to the measles issue again, and I know that there has been at least some discussions about the notion of eliminating the religious exemption for vaccination. Where does the Department and the State stand on that at the moment? Where do we think we're going? Do you think we're going to be advocating for that? Or do we believe that this educational strategy that we have underway is how we want to address this continued gap in undervaccinations in certain populous.

SALLY DRESLIN: Right. There is the bills that are in the state legislature, which if you read the papers this morning and previous days we know that they're struggling to gain enough support to make it through passage. So, we continue to work with the education and to push vaccination and counties on their own are taking actions which is in their legal authority to do in the areas where there are outbreaks. So I think we still continue to look at what all the actions are. We feel that our message is being heard with these high numbers of MMR vaccine

rates and the real responsiveness we're getting around preparing for camp season, so I think we'll just have to see how things continue to play out.

KEVIN WATKINS: Good morning. It appears that anti-vaxxers have really been able to take a hold on social media to talk about how the impact or not to actually vaccinate children. What are we going to do on… I'm happy to see Dr. Zucker on his PSA campaign, but what are we going to do to attack social medial and to tap down on some of those anti-vaxxers?

SALLY DRESLIN: So we don't unfortunately control all of social media. But we are making a tremendous effort from the Department of Health with our social media accounts, with the PSAs. We have information at travel sites like Thruway rest areas in targeted press literature in the communities where we're seeing the outbreak happen. I know that in the news there's been discussion about some of that messaging on things like facebook and twitter and I don't have insight into how those companies are looking at combatting that sort of information but I think we continue to redirect marketing funds towards a pro-vaccine approach and towards the importance of it. So within our resources, we are shifting and encouraging folks

to get vaccinated and trying to get that message out in the most creative ways that we have at our disposal.

BRAD HUTTON: Sally, can I add to that?

SALLY DRESLIN: Yes, please.

BRAD HUTTON: It's Brad. I think Dr. Watkins, we're also increasingly trying to focus on vaccine hesitant parents, where I think we can have a great deal of impact on influencing them to priorities getting vaccination. We hear increasingly as part of outbreak response about families who aren't absolutely opposed to vaccination, they just have heard conflicting information and they've chosen to delay getting that first or second dose of MMR. So I think that's where we're having a fair amount of success in Rockland and other parts of the outbreak are influencing those parents decisions.

GARY KALKUT: Thanks very much for the report and all the discussion about measles. I think the emphasis does need to be on vaccines. There have been some recent public meetings where measles was discussed as sort of an innocuous disease and not something that requires if there is any risk in vaccine, and certainly that's been promoted. And I'm not sure how to message

that, but measles is not innocuous, obviously. Certainly worldwide in the United States and somehow that needs to be blended into a message without overdoing it or scaring anybody. It is a childhood disease. Most people do well, but there's clearly measurable morbidity and mortality related to measles in children. Also pregnant women and immunocompromised.

SALLY DRESLIN: Absolutely agree. And we see, we're seeing high mortality rates in other countries where there are measles outbreaks. We're not seeing them as much in the United States. We have good nutrition, we have good hygiene and we have a robust medical system, but I hear you and completely agree with you.

JO BOUFFORD: Any other comments? Questions? Just want to add on the award sort of congratulations to the Department but I think just to remind the council that we are in fact the sort of regulatory… we're sort of by, what do you call it, statute direction, overseeing this work that got the award. So this group should be congratulated as well. It's not sort of over here in the Governor's office. We have been asked by the Governor to really oversee the health across all policies, the age-friendly, and obviously the prevention agenda. So I just

wanted to remind you of the contribution all of you have made by being as involved as you have. And thank you for that.

OK, so we're ready to move on. Thank you very much, Commissioner Dreslin. Mr. Sheppard will now give an update on the activities of the Office of Primary Care and Health Systems Management.

DAN SHEPPARD: Good morning. So, couple of topics here. So as we're heading into hurricane season, this year we wanted to share some good news related to our efforts on preparedness. So as many of you know, the Department developed and operates the health evacuation center, we call it the HEC, with no K, which coordinates the preparation and execution of the evacuation of hospitals, nursing homes, and adult care facilities in the New York City region in the event of a hurricane, serious coastal storm or any other major event that might require the mass transfer of patients from hospitals and residents of long term care facilities. The HEC is a great example of proactive emergency preparedness and collaboration between state, local governments, and industry stakeholders. CMS seems to think so too. On May 15, 2019 they awarded New York a national quality, safety and oversight achievement award for our emergency preparedness resident protection systems. This includes not just the HEC, but also our EFIDS application which is an awkward

acronym but it's Evacuation of Facilities in Disaster Systems, and basically what is it is a way of identifying patients and residents, residents particularly long term care facilities by affixing to them and identifying wristband that this was grown out of our experience with Sandy where there were a couple of unfortunate instances where in the evacuation of residents, particularly residents who had cognitive difficulties trying to identify where they came from, their medical histories, medication needs, etc. It's a very innovative McGuyver-like solution to that. And again, in recognition that both were I think the quote from the award is they were products of "outstanding leadership in crafting creative solutions, both HEC and EFIDS." So New York is now actually won four of these awards, these CMS awards in a row, and previous awards were for improving the hospital survey process, reducing the use of antipsychotic drugs in nursing homes, and improving nursing home complaint handling process. So, kudos to lots of staff in the Department and OPCHSM as well as other areas who have all contributed to those efforts. On other fronts, as indicated by the award just mentioned, improving the nursing home complaint process had been a major area focus for OPCHSM. One aspect of this is making sure that healthcare workers know the best way to share information with the Department about alleged regulatory violations. In collaboration with SEIU 1199 the Department's

been conducting training sessions regarding how to go about filing a complaint. Mark Hennessy the Director of our Center for Healthcare Provider Services and oversight has given presentations in Buffalo, Rochester, and Syracuse. And an added benefit of these sessions is that the Department staff learns a great deal in these somewhat informal training sessions or meetings about hospitals and some of the challenges and good things about working in these facilities and helps us in our overall work. And also very much helps improve the quality of the complaints that we get, and that's a benefit to the Department's benefit to people complaining and some benefit to the facilities too, because it, a lot of training is really about making sure that things are being reported are actionable, how to characterize them, and very much tying them closer to regulations rather than sort of random concerns and complaints. So on another topic, on May 3, CMS released draft guidance for hospital co-location with other hospitals or healthcare facilities. As I think I reported to the council in the past, healthcare is becoming more of a team sport than ever. Value-based delivery models, integration of behavioral medical care, need for facilities to providers to work together to create efficiencies. We've been working hard through our regulatory modernization and other efforts to make it easier on the State side for providers to collaborate. But what we've run into time

and time again is some relatively rigid federal guidelines that were posing barriers. So the guidance at CMS, the draft guidance at CMS came out with, makes it easier for licensed providers to share the same physical space and deliver better patient centered care. We and other states have been talking to CMS about this for some time, and we really welcome this draft guidance as an important step forward. Comments on the guidance are due July 2, and we're working with our sister agencies as well as industry stakeholders on the responses.

Finally, in our continued efforts to streamline the CON process, I wanted to highlight the recent work of our Bureau of Architecture and Engineering Review, or BAER. The first item I wanted to highlight is the rollout of electronic reviews of architectural drawings. All plan submissions are now sent electronically through the Department of Health and all the information including the DOH staff comments is stored electronically in one project folder that everybody can access, everybody involved in the CON approval process. This has reduced the design plan review times by 30 to 40 percent. Reason why review times going down is it reduces the turning from telephone calls back and forth, teleconferences, all the requests for information that typically were handled in an ad-hoc way are now handled electronically through this system. … we're not experiencing lost drawings, and also it provides a

linkage for all the whole chain of documentation to the regional office staff that have to do pre-opening surveys on the facilities when they open. So, I think it's saved a lot of time and money on both the state and provider point of view. Also in the streamlining mode, VAR has rolled out guidance and training on completion of the CON architectural schedules and these include both narrative and checklists for the FGI standards and life safety code requirements, as well as the varying programmatic requirements between hospitals and long term care facilities and outpatient facilities that often can, that providers or their design consultants can sometimes not know what we're looking for in each situation, the checklists organize all of that. Again, this process change has improved the quality of the design submissions that we're getting and as a result reduce the amount of back and forth and reduce review times.

One last CON item I want to mention is the recent rollout of our NYSECO, our electronic CON process, new module of NYSECON for review of adult care facility applications. And this is expected to reduce review times for these applications as well. Now big sexy stuff but a lot of the small stuff happening behind the scenes that really makes a huge difference and builds on the work of this council and streamlining CON process. So thank you very much.

JO BOUFFORD: Thank you. Let me ask, may I start with a question while others think of their questions. You used the term "shared space" in a kind of euphemistic way. Does this deal with the issue of primary care and behavioral health that had been a concern previously?

DAN SHEPPARD: It can. The shared, this all centers around how do two separately licensed providers deliver services as themselves, not in a contractual way where one provider is actually doing the billing but where they're both functioning in a single space. So yes, it would allow that. At this point, and this is part of how we fit in to some of the comments, the guidance seems to be focused on hospitals and hospitals working with each other and other providers. One of the areas that we want to explore and comment on and their folks were far more expert than I am were doing the deep digging in this is clarifying and it does the guidance apply to non-hospitals that are working together and if that's not the case it will certainly be on our priority list.

JO BOUFFORD: It should certainly be a priority for us. We talked about this a good bit in the public health planning committee.

Other questions for Mr. Sheppard? Dr. Berliner.

HOWARD BERLINER: Dan, in the last couple of days a list of low quality nursing homes that CMS has kept circulated, several of them are in New York. Is the Department doing anything proactive to kind of keep a watch on them in particular?

DAN SHEPPARD: So that list actually, it's always interesting when you're on one side of the process to see how the other side of the process looks at things. Our understanding is that list is a list provided by federal staff at CMS to a senate committee. Some of that information is actually public information already. The special focus facilities are already on the website. As some of you may know, there are CMS authorizes each state to have a certain number of special focus facilities. In our case it's three. And there are actually some on that list that have since graduated and have been replaced by others. That list also had a number of pending facilities and those are facilities because we have special focus facilities, you graduate or you close and they come off the list. That are essentially the ones that are to be considered for the next round. And so that's, I guess, a glimpse of that list is sort of a glimpse of the daily interaction between us as the state

survey agency, the Department of Health as the state survey agency and CMS in and reflects just as you're asking, the rigorous and ongoing oversight that the Department on behalf of under our state hat as well as our federal hat does every day on these facilities.

LAWRENCE BROWN: Thank you. Lawrence Brown. Member of the council. Dan, I was wondering if you could remind us about the progress of the Department with respect to how we are advising persons who submit applications pertaining to their embracing of the prevention agenda. To what extent. Where are we with respect to that. Sure, I can tag-team with Tracy, but I think as Tracy has mentioned and I'll tee it off, it's now incorporated in the staff reports that the council gets. But Tracy.

TRACY RALEIGH: Thank you. Tracy Raleigh. Dr. Brown, just to elaborate on what Dan said, we have and you will see in the exhibits for hospitals that come before you with projects whether they be establishment or construction, an analysis of the applicant's response to a series of questions that we ask and have incorporated into the CON review process, with respect to the prevention agenda. So we're asking for them to tell us if the project relates directly to the prevention agenda topic. If

it doesn't we want to know broadly what are the focus areas of the prevention agenda that they're working on. We want to have them tell us about the collaboration with the local health departments, in particular our public health staff, are looking at the amount of money expended. Generally, and reported to the Department on the prevention agenda initiatives.

LAWRENCE BROWN: I just want to be clear because sometimes I find that I don't hear well enough, so if you can help me out with respect to that. I think I heard you focus on hospitals. So, are we planning on embracing other areas of healthcare such as in terms of the prevention agenda.

TRACY RALEIGH: Yes, so we started with the hospital roll out. And absolutely correct; we're planning to roll it out to the long-term care arena. That's a little bit more challenging in terms of what questions we're asking, but it'll be in line with the age-friendliness initiatives. And then again, we will roll it out where appropriate to primary, D&TC clinics, not sure if it's relevant to certain provider categories such as renal dialysis, but we do plan to roll it out to other institutions.

LAWRENCE BROWN: If you could keep us informed about the stages of the roll out, if it's 2020, 2021, when do we expect t have it with certain other components of the healthcare system.

TRACY RALEIGH: Sure, and this is a joint initiative with our Office of Public Health so we'll certainly try to come back to you with a timeline on that.

JO BOUFFORD: Yeah, I think a lot of this movement dates from the retreat that we had almost three years ago coming up this September, and so I think now that the acute care facility application process is sort of embedded and moving along, it was very clear from the beginning that we would begin with the free standing ambulatory care, including all the specialties. I think people were interested in looking at all of the types, dialysis surge, etc., you're correct, there would be different reasons for that, but I don't think anyone was shying away from it. And I think Mark Kissinger was going to provide something for us on this CON for the long-term care facilities around age-friendly as well as the prevention agenda. So, we're still watching. So I think that would be really nice to get a sense of timetable so it's back on the calendar, we can track it in the committee activities. Because I think you had all mentioned we would need

to have a consultation process to move it forward. Thanks. Mr. Lawrence.

HARVEY LAWRENCE: Harvey Lawrence, council. Is there sort of an update on the telehealth and participation of MCOs in the program and whether their participation is mandated?

DAN SHEPPARD: I think, Mr. Lawrence, I'll have to get back to you on that. I'm not tracking the question entirely, but it sounds like it's a combination of reimbursement question as well as operational programmatic regulations. There is a workgroup that is an interagency workgroup with OMH and OASAS, OPWDD involved actually, and some aspects of it that is looking at both on the reimbursement side and the program guideline side. And sort of come back to you with an update from those efforts and a timeline.

JO BOUFFORD: any other questions or comments for Mr. Sheppard? OK, fine. So we'll move to – thank you very much – we'll move to Mr. Hutton in Albany for the report of the office of public health.

BRAD HUTTON: Good morning. In the interest of time, Sally covered a fair number of high profile activities in the Office

of Public Health. I'm going to yield the balance of my time for the good of the order here this morning.

JO BOUFFORD: So you're endorsing everything. Any questions for Mr. Hutton? There may be something people have interacted with him about they'd like to ask him specifically? No? One of the issues that came up yesterday, I don't want to let you off completely, was the, we talked about the progress of the sort of recertification process for the perinatal, regional perinatal center process was started a couple of years ago and I know it's probably complicated. Maybe in the context of the public health committee's discussion yesterday of where we are on maternal mortality as we began to take up our next issue on violence prevention. So I wonder if maybe you can comment on that.

BRAD HUTTON: Sure, with respect to the first item, we have convened a stakeholder process to get input from lots of different perspectives on ways that we can change and update our regional perinatal center program that the work of that group has really concluded and we're at the point where we're working on proposed revisions to the regulations that would be introduced into public comment here in the near future. So that's something to look forward to, and also we've made a lot

of progress over the last year on that second item, Jo, related to maternal mortality and there are several items that have come out of the work of the listening sessions and the taskforce including progress with respect to implementation of maternal mortality review board, a data center to begin to look more at some of the outcomes, and then also some bias training for hospital industry professionals in particular, but not exclusively. So, I think we have a lot of good work that you'll be seeing in the next year with respect to improving our outcomes for maternal mortality and morbidity.

JO BOUFFORD: If I may just, since Brad didn't take the time to just very quickly, yesterday the public health committee did have a meeting to take stock of what progress had been made in the maternal mortality area, and I think we were very pleased to get a very comprehensive report from Lauren Tobias about a number of these issues and the committee members had some questions about others naturally, so, I think the sense from that discussion was because of the Governor's commission there's a set of agenda items that have priority at this point in time, some things, some unfinished business and the group would like to keep working with the Department to sort of take a look, keep tracking progress there. Everything that's happening for the commission report isn't everything, and there's a lot of work

that the Department's doing that's going on. And then just to finish, we did have our first conversation about the decision that was made by the committee before Christmas actually, to start working as, we'd like to have one issue that we're trying to move the needle on in addition to the oversight of the prevention agenda. This one's going to be violence prevention in the context of the prevention agenda. So it's really really good initial presentations by colleagues from the Center for Environmental Health and the Department, and I think the fact that we have the Health Across All initiative going now, I mean, there were at least five or six other departments that were mentioned that are already in contact with the Department working on this issue and a lot of other opportunities. So I think we're very enthusiastic and where Laura Santilli is, we're going to write up a sort of summary of the issues, the data that people wanted to see more of, and who is kind of managing certain kinds of programs. A suicide report was mentioned as well, and we'll be coming back to you, to the council over the next while to give you an update on what we think the key issues are there and how the council could be involved. So the perinatal center issue is important because in the revise it was really also including attention to the mothers as well as the babies, the historical regulatory structure had been largely

focused on high risk neonates and now an increase of a balance… I see you leaning forward…

SALLY DRESLIN: I just wanted to add one add-on to what Brad mentioned in addition to the morbidity dashboard and the implicit bias training and the taskforce, there's also an investment in community health workers and other evidence-based approach that really sort of is effective in preventing and reducing maternal mortality and morbidity. So it's a high priority, particularly for Dr. Zucker and he participated in a lot of the listening sessions and I think was very profoundly impacted.

JO BOUFFORD: And that report is available to everyone. It was sent out to the committee and I think it's put on the website for everyone to take a look at if you'd like, on the commission report and recommendations as well as our historical document.

Any other comments from any other colleagues that were there yesterday? Or any other issues for Mr. Hutton? Ok, we'll move on then. And Mr. Holt will give us a report on the committee on codes, regulations, and legislation.

THOMAS HOLT: Thank you and good morning. At today's meeting the committee on codes, regulation and legislation the committee reviewed four proposals; three of which were up for adoption and one was for information. First being for adoption, body scanners and local correctional facilities. This proposal would amend part 16 of Title 10 pertaining to ionizing radiation and updates and requirements regarding the use of body imaging scanning equipment. The committee voted to recommend adoption to the full council and I so move. Do I have a second? Thank you. Alex Damiani from the Department is available to answer any questions that the council members may have.

JO BOUFFORD: Do I have a motion to approve? Dr. Yang, you have a question?

PATSY YANG: Just want to briefly repeat a comment, which is that I would urge the Department in it's preoperational survey to also look at local jail capabilities to track multiple exposures, due to multiple infractions or multiple detentions. And I would also recommend that it consider excluding females. Thanks.

JO BOUFFORD: Any other comments. Questions? All in favor?

[aye]

Opposed? Abstentions? Motion is passed.

THOMAS HOLT: Second being for adoption, cardiac catheterization in laboratory centers. This proposal would update the current certificate of need regulations for cardiac percutaneous coronary intervention of PCI consistent with the recommendations of the Department's regulatory modernization initiative. Committee voted to recommend adoption to the full council, and I so move.

JO BOUFFORD: Second, Dr. Yang. Any comments? Questions? On this item? Dr. Bennett.

JOHN BENNETT: So, first of all I think this has been great work. As someone whose spent 20 years in the cardiac cath lab, I think we're ensuring that the regulations are keeping up with the current practice and the technology, so I want to commend the work on that. I do have one question; as I got through the materials and reviewed it again, there's a statement as of the effective date of the regulations there will be no additional diagnostic cardiac cath labs shall be approved. So the way I'm understanding that is that because we're obviously not closing all future PCI facilities, right? But so what we're doing is saying that if you apply to have a purely diagnostic lab, we

won't even consider it? I need that as a … and if so, I'm just interested in what the rationale for that was? Or am I reading it wrong? But it does say it here.

DAN SHEPPARD: I don't think we're going to be able to answer… I don't think there was an intent to no longer have…

TRACY RALEIGH: Preclude diagnostic caths.

DAN SHEPPARD: You're looking at the narrative. Not the regs…

JOHN BENNETT: It says, well, on the documents that we were given, I've got page 28. So it kind of surprised me. It says, "paragraph three subdivision E of section 405.29 is amended to read as follows: Diagnostic cardiac catheterization services. As of the effective date of these regulations, no additional diagnostic cardiac cath services shall be…"

DAN SHEPPARD: I think that's old. I think that's existing language.

[I think that's existing regulation that's already in place, and we're not adding anything to that.]

JOHN BENNETT: So there is a moratorium then on… so you can't even apply to have a new diagnostic cath lab?

[Yeah, based on that reg. but that's, like I said, that's not something we're adding today.]

So we're not adding that today. So I was reading that a little bit out of context.

JO BOUFFORD: So it has been the regulation.

JOHN BENNETT: But it has been the regulation. So you can't apply for a new purely diagnostic cath lab? But you can apply for a new PCI center, obviously.

[Correct]

Because we have approved them.

DAN SHEPPARD: And now that you mention it I'm not I guess, in my five years we've never seen an application for a diagnostic.

JOHN BENNETT: Clinically, it kind of makes sense to me, but so I'm not necessarily opposed to it, it's just that I thought it was an interesting exclusion. But it's not new. OK. SO it's a moot point.

JO BOUFFORD: Any other questions or comments on this item? All in favor?

[Aye]

Opposed? Any abstentions? The motion passes.

THOMAS HOLT: Third item for adoption relates to midwifery birth centers. The proposal would create a new part 795 of Title 10 establishing regulations for midwifery birth centers, NBCs. The committee voted to recommend adoption to the full council, and I so move.

JO BOUFFORD: Second? Dr. Watkins. Open for discussion. Questions? Yes, Dr. Bennett.

JOHN BENNETT: So I have two questions, topics of somewhat concern. One is, and again I hope I'm reading the right thing. There was a lot to get through here and I was rereading it on the train. It says that… it seems as though a lot of the intent here is to hopefully rightful expand birthing centers to rural

areas. That's, as I read, the intent of the public policy. And we see that in one part it talked about the surface travel time to reach a perinatal center. And it lists… it says that for current, under the current rule for physician-led birth centers it's 20 minutes. And under this rule for a midwifery birth center it's going to be two hours. So I guess I have a couple of questions there. And I'll kind of list them. One is, how was the two hours determined? What is it based on? Is it based on, to do an analogy as a cardiologist, we have time to cath lab things that are based on clinical data as to how quickly you need to get to services. So, what is the two hours based on? And two, I was a little struck by the fact that the way I think this is written, the way I understand this if you're a physician-owned birth center and you wanted to be in a rural area, you would have a 20-minute standard. But if you're a midwifery birth center and you wanted to be in a rural area – the way I read this and I may be wrong – you have a two-hour standard. And so I would argue they should be the same because the item here is the rural location, not whether it's owned by a physician or owned by a midwife. And then I'll go to another topic, and I know this is a lot so forgive me, concern was there's another comment that, and I didn't quite understand it because of my admitted not too much knowledge in this area, but the regulations utilize the approach of allowing accreditation instead of traditional

surveillance. So I need to understand a little bit about what that means and here's my concern and my question to the Department; are we lowering our standards? Is this a side or a possibility to lower our standards for these centers as to other standards. So questions on two different areas.

JO BOUFFORD: Some staff person from the office?...

Find the person who might have answers.

DAN SHEPPARD: We're trying to track down the subject matter person who presented it at committee on this. I think just generally I would answer, we're not lowering standards. I think we're recognizing that with proper patient selection children, babies can be delivered under different kinds of settings under different supervision or under different types of clinicians. And so I think on the risk side or on the standard side, no, we're absolutely not lowering standards. We're just making an option available in instances where clearly laid out in the reg where there is a standard for patient selection as well as planning for transfer and other, in the event that something unexpected happens.

JOHN BENNETT: So, in the follow up and to be fair and to be frank, I'm not kind of satisfied with that answer about the

standards. Because I don't really know what it means when you say we're not going to use surveillance any more. Does that mean you're not going to watch what they do? What does that mean?

DAN SHEPPARD: Just as is the case with many types of facilities there would be an accrediting body that would provide the oversight and both preop surveys as well as investigation of complaints.

SALLY DRESLIN: I think it's a similar model that we use in our office-based surgeries where there's an accrediting organization that does routine surveys of the facility. We get that information, and as the State we reserve the right to go in at any time if we wish to do an inspection of our own.

JOHN BENNETT: So I'll say it again; why is it different in the midwife centers compared to – the way I'm reading it – the physician-owned centers? Why is it different? Why are there different standards?

SALLY DRESLIN: And I think we will certainly follow up with you because it doesn't look like Mark is in the room, but I know that these topics came up and were, the subject of robust discussion in the stakeholder meetings which included both

midwives and representatives from ACOG and other sort of entities that could speak to the perspective that you're voicing those concerns from. So I apologize that we don't have the right person in the room.

JO BOUFFORD: Might we if we waited and came back to this item? Check and let us know? Why don't we put this item aside for the moment and then keep moving on? Is that alright with you? Come back to important questions. And then Mr. Holt, you have one other item for consideration? Information.

THOMAS HOLT: I've just been advised that Mark's available in 15 minutes.

JO BOUFFORD: OK, fine. We'll come back to that again.

THOMAS HOLT: Thank you. So for information, we had a matter regarding resident rights and this proposal would amend part 415 of Title 10, nursing home minimum standards, to specify upon admission information regarding discharge rights including information on home and community-based services in community transition programs, and since this proposal was presented for information, there was no vote. And Laura Palmer from the

Department is available if there are any questions from the full council.

JO BOUFFORD: Anyone have questions about this item? Thank you very much then. We'll move on then have Dr. Rugge move into report on the Health Planning Committee, and right after you finish perhaps we'll be ready to go back to the other item.

JOHN RUGGE: I'll try the 15 minutes.

JO BOUFFORD: 15 minutes John.

JOHN RUGGE: The joint committee meetings of the staffing committee and planning committee did meet to consider ASCs and I find it irresistible to set up the context a little bit which means going back to time almost to D-day 73 years ago with the passage of the Hill-Burton Act. For the first time government making a substantial investment in healthcare; $4 billion. A billion dollars was really a lot of money for a meeting the top priority healthcare which was the construction of hospitals. Because there was some really new technologies that could only be given in hospitals. Cardiac caths for example. Total hip replacement be another recent invention. And with so many communities clamoring for hospitals there had to be

a way of distributing the money or designating the money that the feds delegated that to the states through complicated ever changing mechanisms, and to get a Hill-Burton ward meant having a certificate of need. That's how we did it. 25 years later, by the early 70s, there were shocks to the system. One is healthcare costs had dramatically increased to almost five percent of the GDP. Almost five percent. In addition, the discovery of Roamers Law which entailed that in this case in health care, supply creates demand instead of meeting demand, creating a bed means you're going to fill that bed and sustain the cost. At that point, was the mid-70s, was reversed. Instead of being a way to designate the construction of new hospital, it became the road block to hospitals either creating new institutions or even expanding services or building additions. And at the same time CON was expanded from just meeting need and defining need to including character and competence, and also financial feasibility because financial feasibility now had a direct impact on government. If one were certified as services needed, about half the revenue would come from government, and therefore was a high concern that financial feasibility be defined. So, the related regulatory tool for controlling costs was, cost control. Reimbursement. The establishment of reimbursement during the 80s through (NIFRAM) down to the last dollar of what hospitals were allowed to charge

or be reimbursed. That flipped a decade later. So in the 90s we relied on market forces. And so it was to be determined by the market and the context of CON that the system should be shaped and if you will, cost controlled. We've of course, together, done a wonderful job instead of now being almost at five percent of GDP we're almost at 20 percent of GDP for healthcare. Remarkable evolution for which we can take some of the credit I suppose. So, now we have a new set of circumstances with so many services that required a hospital stay, now going to ambulatory settings or going to the home setting. Think cardiac cath. Now being delivered certainly in ambulatory settings. Think total hip replacement which we're on the verge of doing as day surgery in ambulatory settings. Think IVs and oxygen monitoring now done in the home setting. No longer requiring hospital visits or certainly not stays. And so we have stresses on hospitals that I see as very new. A movement of key services out of the hospital setting all together, but also for not only rural, but smaller city hospitals, recognition that so much care in hospitals need to be given by subspecialists which require a big population. And so hospitals that once were considered major and indispensable are now extraordinarily vulnerable because of services moving in two directions; to the larger hospital systems and into the community of home settings. Its our role in this context to both apply CON, but also to help continually

redesign CON, probably not reverse it. It had to be done 50 years ago, but to adapt and update and keep up with the changing medical world. Which brings us to the ambulatory surgical centers, whose goal is obviously to improve access for patients to care, both by making it more efficient and also making those surgical services more affordable. And yet we come to recognize that if those new ambulatory surgical centers jeopardize the viability of hospitals and their community, we are not improving access, but limiting or sacrificing it. So there's a balancing act that comes before us again, and again, and again. We need to be aware of and alert to.

In 2001 section 709.5 of Title 10 was adopted for us to be able to indeed certify and by extension regulate ambulatory surgical centers and just four years ago, this council provided guidance for the establishment of five-year limited life for ambulatory surgical centers. And with that and our ability to monitor the availability of charity care and meeting Medicaid requirements for those organizations.

Where am I? And financial feasibility also has a new meaning at a time when we have so many hospitals, depending on direct financial assistance to even stay alive. So financial feasibility ties them both to the ambulatory surgical center and it's financial feasibility and the impact on the hospitals in this community. A complicated set of parameters to understand

and to deal with. It is in that context that the joint committee meeting was held to try to understand how best to address applications from ambulatory surgical centers in communities where their hospitals may be at risk. Those hospitals being defined as critical access hospitals or as sole community hospitals or as hospitals on the dole. Getting direct assistance to stay viable. That led to both discussion among committee members and also on behalf of the public with key points including the need for validation of data from both the ambulatory surgical centers and from the affected hospitals. And patient migration, patient selection becomes very difficult and complicated item. We've reviewed it again, and again. What is the Medicaid percentage? What is the rate of uninsured of these centers? And part of this is simply the availability and the knowledge. We've talked about marketing to FQHCs for example. But also I think offline there is another conundrum and that is ambulatory surgical centers, at least in some cases, select which cases they feel are appropriate for their setting and which may require a higher level of clinical need and vulnerability and therefore need to be in a more secure inpatient setting. And strange to tell it can be that the Medicaid and the uninsured just have the higher level of vulnerability and need to go into the hospital setting in a way that can be really perverse and undermine the intention of

everything we're trying to do. How to read the tea leaves as no small part of our challenge. There's also in that discussion consideration of whether we should be defining a red zone whereby in a certain service area served by one or another of these vulnerable hospitals we would simply not entertain an application for an ASC. Open question. Some of the endorsement and discussion of the benefit of pursuing joint ventures and seen that already this morning and in turns of one way to help bring services together and to bring systems together, great systems that we really haven't known yet, and now in this world I would contend, there's no longer hospital centered, certainly not in the way it used to be, but it requires a variety of services in a time where we're actually redefining what a hospital is. Complicated environment. There's also another consideration that we all need to be addressing and do address and that is business of mission creep. That services given in the office setting then become certified to give in the ambulatory article 28 surgical setting. And what we've seen in increase in volume. Projections of volumes are very conservative and they increase and then have an impact that we could not have anticipated or factored into our equation in terms of hospitals. And the other creep is from single service surgical sites mobilizing into multispecialty suites. All of which somehow I think the sense of the committee is we need to get a grip on. We

need to be very conscious of, and we need to be aware that whatever we do by way of policy formation and implementation need to be sensitive to further changes in time because one thing is sure, this change will continue and probably accelerate. So with that, our understanding is this Department is now hard at work taking these conversations, mobilizing and formalizing these into a new set of policy guidelines for the council to follow, and then in the future to investigate and revise again and again. So, this is I hope, under the aspect of the work this council can do by way of thinking and reviewing and trying to now only keep up with the times, but shape the time to make sure that care really is available and accessible and affordable to all of us in New York. Thank you.

JO BOUFFORD: Thank you. Very thoughtful. I think you put an issue in context which we don't often do so it's very, very helpful. Comments or questions for Dr. Rugge? Yes, Dr. Bennett?

JOHN BENNETT: So, thank you John, for taking us through that history too. It's important to remember where we've been so we don't make mistakes in the future, make the mistakes of the past.

I will say, there's one thing that scares me that you said, and I think along with my theme of remembering the consumer

which I think this process has, this entire CON process although well-meaning has without meaning to it has ignored the consumer for all too long. Because it has not considered the effect on cost. And the thing that you scared me, and I know this isn't THE proposal, but when you talked about red zones, you're effectively giving an institution a monopoly in a service in an area, and we know what that leads to. That will lead to higher costs and it will not decrease utilization. Let me say that again; that will lead to higher cost and it will not decrease utilization. So I mean, I don't expect to debate that now, but I just think that as the Department looks at this stuff, this is something I've been saying for two years now, you must consider the effects on the cost to the consumer, and that is something that this process, this CON process in my humble opinion, has not been – with all good intentions, has not been successful in doing, and that is proven by your opening statements of what has happened to the cost of healthcare as we continue to do what we've been doing. So I just raise that caution to the Department.

JOHN RUGGE: Just to be clear, certainly I wasn't suggesting there should be a red zone, but simply mentioning this was a bullet point brought up by members of the public. Elaborating on that, that's a nice introduction to say in the

same way public need was reversed as a consideration of CON. We need to think about what financial feasibility means. Why in the world are we looking at making sure that a new service is going to be profitable. That's not a matter of us in public. We can't do a better job than entrepreneurs are doing in terms of developing their service. Our concern should be the financial feasibility for the public. And indeed, that was the initial concern. It was the insurance in the context of NIFRAM and CON was making an approval and meant the state was going to be obliged to pay for that service, and we needed to make sure that it was cost effective. Now we're, I think, in a very archaic way going through these numbers, oh, financial approval, make a nice profit. That's not our business. We should be reconsidering that.

HARVEY LAWRENCE: I guess it sort of gets at the question of what healthcare is? Is it a commodity like any other commodity? Or is it more of a public good? And I think the question of a red zone was not necessarily to protect the dominant players in the market but to in some way mitigate the potential demise of a safety net institution in a community where once that safety net institution is gone, the ASC or private provider is unlikely to increase the number of Medicaid patients that it would see. And that to realize that there are

two different markets at work in these communities. The market with the commercial payers, and then a market where the uninsured and the Medicaid payers. So I think the nature, the conversation around red zone is essentially to say, well, how do we protect safety net institutions from being dissolved or destroyed in the process? And that's not to say that there shouldn't be competition, but at some level, I don't see a lot of competition for the uninsured and for the people that do not have the ability to pay for services.

JOHN RUGGE: I think that's important commentary Harvey, and that what we're trying to do is protect the provision of services rather than protect individual providers. And what we're knowing is providers are morphing in very significant ways, and we're not, as a council, I don't think it's our business to block the morphing but to observe it, to watch it, to encourage the right kind of change to assure that all New Yorkers do have those services available.

JO BOUFFORD: Other comments, questions? Dr. Martin.

GLENN MARTIN: Yes, I know we're not going to get into a long argument today, but I have concerns a little bit like Mr. Lawrence has in that I don't think we can just simply -- and I

know I'll simplify it, I know that's not what you're saying – that we can't simply ignore the profitability of something or the entrepreneurial aspect of it if it has the potential for being extraordinarily disruptive. I mean, clearly we know in other industries, it's not this one, people are perfectly capable of building something that's unprofitable simply to disrupt the market there for other purposes that benefit them. They didn't really care whether or not it was going to succeed but it accomplished what they needed to do. Such shenanigans can certainly occur in healthcare also, so I think we still have an obligation to keep an eye on those sorts of things, whether or not Northwell makes money or Sinai or anyone else is not a direct concern. However, the economic things can't be totally split off in these discussions. And I know it's not what you're suggesting but it's not as clear.

JO BOUFFORD: Any other questions, comments, on this item? OK, fine, thank you.

JOHN RUGGE: I can only hope that we've through these conversations given immense help to you, Tracy, and DOH staff in coming back with modulated form that we can change it 10 years from now again.

TRACY RALEIGH: I will say that we are, and I appreciate the comments and the discussion. It was a very – we were attempting to try to take a very narrow question, but it often expands into the balancing act between preservation of central services in a community with the desire to promote cost effective modes of care, such as ambulatory surgery. We are looking at our financial review process for the questions that were raised. It's statutorily required to look at financial feasibility. I do believe and share the opinion that we should be at least looking at whether a proposed service is sustainable and able to continue. But we are looing at ways to streamline that in addition to ways, and we've heard it from the payer community directly, ways to incorporate consumer lens.

JOHN RUGGE: I think this is so pertinent to our early discussion about marrying services by two organizations in the same setting. And I think (Sue Ann) can be and the council can be directed to how do we encourage the marriage of various providers to provide care more efficiently? That's a landmark and important development. So that we as a council are leaders of the change and monitors of change rather than simply holding things back.

JO BOUFFORD: We'll wrap this up. Any other concerns, questions? Important conversation. I'm sure we'll take it up again as the specifics get in front of us. I think we have our subject matter expert on midwifery births in Albany. We had two questions. Do you want to sort of quickly refrain the two questions you had about, so they come directly from you about this proposal?

JOHN BENNETT: So, I have two questions. One relates to the transportation distances, and I notice that the distances in the rural areas was set, the time to transportation for approval was set at two hours. So I have a general question; is that based on geography? Is that based on any science? I made the analogy that for cardiac surgery centers to be back up for PCI we know how time and heart muscle correlate pretty well. So we have some science around it. So I wanted to know what that two hours was based on. So that's number one. Number two, the other question was I noticed that while it seems like the intent is to improve rural access to birthing centers which is noble and proper, it seems like the travel thing, the two hours versus 20 minutes, the way it's written it seems like, if a physician-owned center wanted to do a rural area it would need a 20 minute connection, whereas a midwifery – that's the way the language reads to me – the midwifery center would have a two hour distance limit, and

that obviously doesn't make any sense. And then a third question is I'm concerned about this issue, and I don't really know what it means says that they will move from surveillance to accreditation for the quality checks. And my question was, to me, unless you can convince me otherwise, that sounds like we have different quality standards for these midwife centers versus the physician centers. And I need to be very clear that we don't.

JO BOUFFORD: OK, let me invite you to comment. This is Peter who? I'm sorry, I didn't get his last name.

MARK HENNESSY: I just want to make sure you can hear me? OK, great. Thanks for the questions. So, could I kind of answer your questions in a sort of one single answer? Because I think it's actually helpful I think for an active discussion about how this all played out. So we had a series of meetings that we undertook with a variety of different organizations. We talked with operators of current birth centers which are doctor led birth centers as you point out. We talked with representatives of the hospital associations. We talked with midwives and also national association for midwife birth centers as well as the New York State Association for Midwife Birth Centers. If I'm butchering the names of the organizations I apologize. But, we

had very active discussion. Really the issue of the two hour, the 20 minute, 20 mile, 20 minute standard versus the two hour standard came up in a variety of different discussions that we had. The consensus among the group that we were consulting with was that they'd rather move to a different standard than the one that exists right now. I know your question kind of encounters that the physician led birth centers have a standard that's set in regulation right now. There was discussion at the table by organizations that represent the doctor led birth centers that they also are interested in taking a look at that different standard for the types of birth centers that they operate. I think you are absolutely accurately capturing that one of the issues that was broadly discussed was the idea of providing for rural access. We have a variety of settings across New York where there was some indication by all parties that they'd like to see enhanced rural access for midwifery birth centers in areas of the state where they think this would certainly help to solve a need that exists. So that was definitely part of the discussion that took place. In relation to your question about why the two hour standard, it's a standard that we have utilized in other settings that we have in regulatory standards, and just to sort of encounter your point though, I think it is something that we could look at in terms of looking at in the doctor led birth centers as well. Although I will say obviously the topic

of discussion today are the midwifery birth centers. Does that help on the first two questions that you had? And then I will definitely discuss the accreditation one afterwards. I think they're so sort of related but separate that I want to make sure to address your questions.

JOHN BENNETT: I mean, it sort of does. It sounds obvious to me that there's obviously no science between the two-hours. It sounds like, I don't know how the two hours came about. I still don't understand why you would have a different standard for time transport based on who owns it. It doesn't make any sense to me.

MARK HENNESSY: Well, in terms of trying to determine whether two hours is the appropriate standard, we did actually overlay a map of all of the existing hospitals within New York State and take a look at whether it was within the area that would allow for these birth centers to open up, to make sure that there was allowance for the hospitals to be located within a relative geographic distance. So there was an analysis that was undertaken to take a look and make sure that there would be availability of those services.

JOHN BENNETT: So the way I interpret that answer is the two hours was a geographic determination, not based on looking at the clinical scenarios that might occur and what the time to effective management would be.

MARK HENNESSY: And you know, that…

JOHN BENNETT: I might argue that two hours is a long time if you have a pregnancy gone bad and a delivery. That's an awful long time. And I will tell you that I'm not comfortable with that. But I'm a cardiologist, but as a father and a grandfather I'm not comfortable with that. You can answer my next question.

MARK HENNESSY: So on the accreditation side, we worked again with the commission on accreditation of birth centers as well as the American Association of Birth Centers. There was consensus among all of the organizations that we worked with that they were good groups to be working for and working with in terms of looking at standards that are out there. The strongpoint of working with these national accrediting organizations is they have specialized individuals and a broad areas of expertise that they can bring to the table in terms of what the standard should be. We have also again, just to touch on a question you didn't ask, but I will bring up, we have also

had interest posed on the idea of looking at that for other birth centers as well. Having said that, we do believe that the standards that are put in place by the national group, the American association birth centers are very strong standards. They have standards that look at physical plant, standards that look at requirements for what happens in case of an emergency, and a variety of other protective elements that really focused on the idea of making sure that these are safe environments for moms, families, babies, people that are involved in birth as it's taking place. So, I will say we also use accreditation as a method for carrying out surveillance activities in a variety of other settings right now. We utilize that specifically. One that comes to mind is actually in hospitals that do have accrediting organizations that go in and perform reviews in lieu of surveillance activities undertaken by Department officials and we work very closely with those accrediting organizations. We would do the same in this case. We would be exchanging information back and forth. As you can see with in the regulations there's a requirement that when they do see issues that those things are being reported to us, and it would be the same sort of relationship we have with all the other accrediting organizations that we work with today.

JO BOUFFORD: Can I just ask, there's a sort of theme that I think I heard, I'm not sure. You have a set of regulations for physician-owned birthing centers now which involve a 30 minute transport time and surveillance approach to regulatory oversight. And you're accrediting a new set of birthing centers which are midwifery birthing centers and you're suggesting new, two-hour transport and accreditation with follow up surveillance for those new centers. I heard you, what it sounded like was that the doctor-owned centers were not averse to this because they think they might change, but for some reason you decided not to change the current standards so that there's a consistency between the two, which I think intuitively it feels a little strange, but I'm hearing it's sort of like we have a set of standards that would have to be changed and we're starting with a new batch of things, which probably is where we ought to be going with the other ones, but we don't want to change those. Now, is that a fair statement? Not quite more or less. I'm trying to understand a little, some sort of explanation for what seems a bit sort of… judgement is always exercised about what's reasonable or not. I think the only thing I wanted to say is having, I don't know if you've ever read the patient disclosure risk forms for birthing centers. If you did, you'd be surprised that there are any patients in them because they're incredibly rigorous and I think appropriately so. I just

want to put that out there, because this has been an issue that's been the case from the beginning of the creation of birthing centers 30 years ago in the city, was what are the risk factors and how do you, the sort of patient disclosure and what do you have to sign on for at risks you're having to take. So, anyway. Patient selection was not a trivial issue here I think when we talked about it earlier. Could you answer something Mark? Respond to that? Or Dan, was nodding his head. I don't know.

MARK HENNESSY: So, Dan if you want to start this off, and I'll, or how would you like me to do it?

DAN SHEPPARD: I was just going to say that what you're saying is factually accurate. I think that there are two tracks. I think it's fair to ask the question and it's fair to have an opinion that we should've combined the two, but in the interest, we have, I think the start with that we are implementing that this regulation is before you pursuant to a law that was enacted authorizing a different midwifery led birth center, and so that's the beginning of the process. Decisions were made along the way in the interest of implementing this statute to do it in parallel with the work that is being done on the physician-led birth centers. And I think, I don't want to anticipate whether

that process aligns; I think you made some very logical points that I think others will make, or have made, but just what Dr. Boufford said is essentially a good factual characterization and I think led to some of your questions.

PETER ROBINSON: I'm very mindful of the comments that Dr. Bennett made about the concerns about quality and safety and the risks inherent in two hour time to the referral center. My question really relates to selection criteria for patients that are going to be eligible to be cared for in those midwifery centers and those that are higher risk that have to be scheduled for delivery at places where the appropriate level of more technical and higher levels of care might be available.

DAN SHEPPARD: I can start. And I think the regulations before you are, and a lot of rigor in developing them require patient selection criteria for …

SALLY DRESLIN: It's also part of the professional responsibility of a licensed midwife to ensure that they're appropriately delivering and working with a patient in the appropriate setting for their risk factor. As Dr. Boufford said, there are disclosures, etc., for going to a birth center in the first place. But there is a strong desire among many many women

to have a midwife experience for their birth. And that's what the law that passed, as Dan mentioned, was trying to get at to provide that option for women in all parts of the state. Not just adhering to the proper care standards of a licensed mid-wife who was overseen by the state education department. It's a full-on choice by the patients to have this experience. And so we try to find a balance between all of these different competing positions on it.

JO BOUFFORD: Dr. Rugge and then Dr. Brown and then Dr. Martin.

JOHN RUGGE: If we had the benefit of expert clinical commentary regarding the two-hour delay, that really is concerning. An unexpected brief delivery, two hours away from a c-section sounds very scary.

SALLY DRESLIN: I think Mark can speak to the partipants.

MARK HENNESSY: Unfortunately I couldn't hear the question. If you could repeat it.

JOHN RUGGE: I mumble. Have we had the benefit of expert clinical commentary regarding the two hour interval from a problem to delivery in the hospital setting?

MARK HENNESSY: We had extensive consultation with people representing birth centers as well as doctors. We had representatives from hospitals participating in discussions that we had about the distance issue. So I don't know if that's an answer? Is that helpful?

JOHN RUGGE: Semi-answer.

JO BOUFFORD: I think he said New York State ACOG was involved in all these conversations as well.

JOHN RUGGE: And their attention was drawn to the two-hour interval? The two-hour timeframe? And …

MARK HENNESSY: The discussion centered on how the 20 minute limit was really outside of what would be… 20 minute limit was too constrictive. The discussion about the two-hour issue was one that that happened at different parts of the discussion. We have used that standard in other settings based on decisions that were made previously, so we were trying to create some

additional consistency in these settings are utilized in other ones.

JOHN RUGGE: I'm not sure that makes clinical sense. That in the event of a bad outcome from a cardiac cath that's very different than a bad outcome from a delivery of a child. Seems like this needs to be really specifically honed in on what are the risks to that baby and to that mom in the event of the need for a two-hour transfer.

MARK HENNESSY: The one thing I would posit and I think it's been sort of touched on but I will go back there is these are intended to be the lowest-risk patients. These are intended to be uncomplicated pregnancies. And within the regulation as it stands today, the requirement is if there are indications of complication or concern, that a transfer is required under those circumstances. And ….

JOHN RUGGE: Do we have data on how many of those uncomplicated deliveries become complicated? Is it zero? Or almost zero? Do we know?

MARK HENNESSY: Our understanding is that it's a very very low rate given this circumstance, but I don't have a number that

I can point to and tell you a percentage. Just being honest about that.

JO BOUFFORD: … see often in these situations that decision would be made early in the labor and the patient would be transferred. I mean, it's really no one here is interested in taking on risk, unnecessary risk. I think midwives are more risk averse even than many physicians in some instances, but I think very often that particular, if something didn't – first of all the person would've probably been screened out of the delivery and the midwifery center in the first place if there were any complications like a chronic disease or other kinds of situations, and then once the labor started, if anything looked like it was going south… I mean I don't know the two-hour, I can't speak to that, but I think they would immediately be transferred. It wouldn't be waiting until the last minute. That's just the practice I'm familiar with in birthing centers. Dr. Brown and the Dr. Martin and them Mr. Lawrence. And then Dr. Dreslin.

LAWRENCE BROWN: Madam chair, I'm getting the sense that there's some ureadiness and I think we can continue these conversations but I'm getting the sense that there's some desire for some more level of comfort, because just the appearance, I

hear what you're saying, we have questions about what was the data, what was the science, and we didn't really get an answer that was fullfiling, and the most sensitive thing probably in healthcare is the mother and child. So it's kind of difficult in fact to embrace this without sufficient more support. And I do appreciate that the Department is trying to do the best it can. Certainly try to respond to a statute that's a law. I think there are many ways to do that. But it just seems that this way is raising more questions than answering them.

JO BOUFFORD: Dr. Martin, Ms. Dreslin, then Dr. Rugge.

GLENN MARTIN: I guess what I was going to ask is Dr. Bennett has picked out two instances where there's a clear discrepancy between the birthing centers run by midwives and by physicians. Are there any others? I would ask, I guess our subject matter expert, because they're not side by side. Are there any differences other than we talked about the two-hours versus 20 minutes, and accreditation versus surveillance.

MARK HENNESSY: There's the key difference that one is led by a midwife versus being a led by a physician. There is the, although you kind of touched on it, there's the call to setting the standards by a national evidence-based standard setting

organization. Those are the key differences between the proposals.

GLENN MARTIN: So the standards for admission, transfers and the like, the risk and everything that we've been talking about would be identical for those two difference services? No matter who ran it? Or they'd be differences that are allowed under the regs. I'm just not sure I understand.

MARK HENNESSY: Our adjustments here were attending toward the idea of having low risk patients in these settings. And so that was one other key difference.

JO BOUFFORD: Dr. Rugge, you want to speak?

JOHN RUGGE: Just to build on Dr. Brown's point, it just seems that we're passing new policy that's inconsistent with existing policy. This is a less than fully developed proposal. And it would be more comfortable if we had consistency across the spectrum.

JO BOUFFORD: I think so, the questions are being asked also the data is not available around are there different risk rankings for patients that are eligible to deliver in different

places. That's missing information which is information that can be gathered and made available in the conversation. If it makes a difference, I don't know. Dr. Kalkut.

GARY KALKUT: I would agree with Dr. Brown and Dr. Rugge about are we ready. And as good as risk adjustments are, there are holes in risk adjustment. Things happen post partum whether it's a midwife or a physician, and what is that time period to account for those kind of clinical scenarios.

JO BOUFFORD: Mr. Lawrence, sorry if I missed you in your last round here. I'm going to ask for some legal counsel advice here just to get the sense of the group and whether we want to skip to a deferral versus an up/down vote I don't know.

HARVEY LAWRENCE: I guess not being a physician I have been trying to follow the discussion and scrolling with it, but I think there are two issues, three issues that I've heard from Dr. Bennett. The first two related to time and the differential difference between midwife and clinicians, and I thought what I understood that there's an existing statute and that this is something new, and so they've taken an opportunity to expand the time arise in this particular statute. And as a clinician could also want to make that change at some point if they had an

opportunity to. With regard to surveillance versus accreditation, it seems that the quality, there may be a better chance at having higher quality under accreditation than under surveillance depending on the frequency of the surveillance or who's doing the surveillance. So with regard to the use of the facility, you know, I'm assuming here, and again, not being a clinician, that this is not a facility or birthing centers will not be one in which high-risk pregnancies will be directed. And that they will be pulled out of the population and this is typically for the normal deliveries. And that both the provider as well as the institution involved will be looking to accept only those types of deliveries. And so most deliveries I would assume, this would be pretty straight forward. And it is moving, and to your point about cost, I assume, that would be less costly option for most families and for the healthcare delivery system overall. But again, to the extent that you're minimizing your risk by looking at only the normal deliveries, I don't necessarily have a problem with what I've heard so far, because I think deliveries in this setting should take, we should have more of them, and not fewer. And I think if you look at the rest of the world we treat pregnancies and deliveries a lot different, and I can't say we have a completely better outcomes than other parts of the world.

JO BOUFFORD: Thanks, very helpful comments. Dr. Brown.

LAWRENCE BROWN: I felt compelled to share something with the council because I had an opportunity about 10 years ago to chair a meeting commission that was established by the substance abuse and mental health service administration. The background was that the review of addiction treatment programs had been under the food and drug administration. And in 2000 the federal government decided to transition that to the substance abuse and mental health services administration. Under the FDA there were visits by FDA to these facilities on some frequency. I mean, wasn't that quite frequent, but the federal government decided that we were going to have a less, maybe less expensive approach and use accreditation. So, during the process, I had the benefit of talking to the accrediting bodies and aske them, can you provide me unequivocal data with respect to quality? Now, again, this was 10 years ago. I'll acknowledge that. But I think we need to be really clear about the issue about what are we really, what's the target here. If the target is quality than the issue is that how are we really able to say without any doubt that a accreditation by itself helps to meet that quality mark? I just wanted to share that with you because I think we may be… there is certainly in healthcare a lot more

accreditation that we've heard about the model that's being used.

JO BOUFFORD: Well, hospitals are accredited. Every few years.

LAWRENCE BROWN: That's correct. And, you know, there's sometimes for people in the community wonder about that. But putting that aside for the moment, but I just want to make sure that when we talk about this because there's nothing more sacra-saint than the mother and child. And just the appearance of something that we are getting a lesser standard has an impact that we might really, even though risk may be very low, you just need one occasion, you just need one time, and then that will come up about whether or not we had enough data to really say that this is the way to go. And please forgive me, thank you for the time madam chair.

SALLY DRESLIN: I just want to hit again a couple of points. I mean, I appreciate everybody's comments. Again, to reiterate, these are low risk pregnancies and there's a professional standard by which midwives are required to practice the midwife led birth centers are required to affiliation agreements with hospitals. These regulations were actually done within the

context also of the perinatal regionalization revamp. So these types of issues which is why those final regulations had not come out yet. As Brad said, we're poised to move those, but these were done in concert so that we understand the relationships between the level one places and the birth centers where moms and babies are delivering. I mean, as I will say again, there's parts of this state where there are zero options to give birth. And the special nature of the mother and the baby is reinforced for many women in the context of a midwife involved delivery. And they desperately want that experience. It's a factor of patient choice, of having options, and I think that the fact that we are requiring the affiliation agreements that were starting with low-risk patients, that we would engage in the transfer early on at the very first signs of any problems, that these are patient choices, the patients have very few choices in many parts of the state, we feel that given an incredible variety of stakeholders and some very intense sessions led by Mark on very specific topics, weighing the pros and cons I feel like we've come up with a very strong set of regulations that provides both for patient safety, both the mother, we're very tuned into maternal morbidity and mortality believe me, and the newborn, and also respecting patient choice and the realities of the rural nature of this state, north of New York City.

JO BOUFFORD: Just to add to me, I can't imagine a 20 minute transport time does anything for rural areas, frankly. I would be pretty surprised if it did. It's hard to get from the upper east side to Roosevelt Hospital in Manhattan for 20 minutes. I mean, I think these are real issues. This parallel development process I think is unfortunate in a sense it raises, I mean, having, I just have to say, having been involved in conversations about birthing centers for the better part of 30-35 years, these are exactly the kinds of issues people are very concerned about. It's also the reason nothing happened for a very, very long time in terms of establishing centers. So, may be best that we vote. I have a question for legal counsel. It's a question, if for some reason, if the council does not wish to move forward with this, what is the … does it go back for, we have just a motion for up or down at this moment. Could you advise us on how we might proceed to give us more flexibility or have a second vote?

RICHARD ZAHNLEUTER: Richard Zahnleuter, general counsel for the health department. If I recall correctly there's no motion pending. You had a motion to discuss and I think the discussion has occurred. So, with no motion pending you have a full range of options available. There can be a motion to…

JO BOUFFORD: I think he did a move or approval and it was seconded actually.

RICHARD ZAHNLEUTER: Sorry, I thought that was a comment that your committee recommended approval and then you made a motion to discuss that.

JO BOUFFORD: No, he so moved approval and it was seconded.

RICHARD ZAHNLEUTER: I know, but I thought that the motion was to discuss, rather than to approve.

JO BOUFFORD: No, it was not.

RICHARD ZAHNLEUTER: ok, so then If you have a motion to approve on the floor, then you have to take a vote on that. Call a vote.

JO BOUFFORD: Right. But what are the implications if it is defeated for revisiting. Obviously law has been passed and regulations have to be developed. What would that look like?

RICHARD ZAHNLEUTER: If you as a body decide not to vote in favor of approval, then the regulation does not get enacted. Now you can revisit it at another date or you can amend your motion and just table it. There are other options available.

JO BOUFFORD: So we'll call the question. So, all in favor of… I'm sorry… all in favor of the proposal to approve the amendment as presented say aye?

[Aye]

May we have a hand raise? How many hands up? OK, and all opposed? Please raise your hands? What was that? It doesn't pass. So would you need any action from us or the Department would take it from here in terms of revisiting and coming back from us. OK, Fine. Thank you very much. Really important discussion and appreciate the give and take and the learning process.

OK, I think we are now ready to go into with Dr. Kalkut the report of the committee on establishment and project review.

GARY KALKUT: Thank you. As mentioned earlier, we're going to batch these CON applications into categories and I would start with applications for ambulatory surgery centers, for construction, it's 191120C, Northway Surgery and Pain Center in

Saratoga County. This is to certify an existing single specialty pain management ambulatory center located at 1596 Route 9 in Clifton Park, as a multispecialty ambulatory surgery center. The applicant is currently operating under a limited life which expires 10/18/2020. Both the Department and the committee recommend approval with a condition and contingency with no change in the operating certificate expiration date. And I so move.

JO BOUFFORD: Moved and seconded by Mr. Robinson. Any discussion? Questions? Any staff comments? OK, all in favor, aye?

[aye]

Opposed? Any abstentions. Motion passes.

GARY KALKUT: Next is applications for acute care construction, acute care services construction. 191083C, Staten Island University Hospital in Richmond County. There had been a conflict and recusal by Mr. Kraut and Dr. Strange, both of whom are not attending today. This is to construct a cancer center with co-located adult and pediatric ambulatory cancer and infusion services. The Department recommended approval with

condition and contingencies. The committee recommended approval with condition and contingencies with one member abstaining.

Second is 172351C, Bronx Center for Rehabilitation and Healthcare in Bronx County. I declared an interest here. This is to perform renovations to expand the facility. It will accommodate 123 new beds for a new certified capacity of 323 beds. These additional beds will be offset by the closure of University Center for Rehabilitation and Nursing which has 46 beds and Williams Bridge Manor Nursing Home of 77 beds also in the Bronx. Both the Department and the committee recommend approval with conditions and contingencies, and I so move.

JO BOUFFORD: Second, Mr. Robinson. Any discussion on this item, these two items? No. All in favor?

[Aye]

Opposed? Any abstentions? Motion passes.

GARY KALKUT: Next are applications for establishment and construction. First is 182326B, Tri-borough ASC LLC d/b/a tri-borough Ambulatory Surgery Center in Bronx County. This is to establish and construct a new multispecialty ambulatory surgery center at 550 East 180 St. in the Bronx. The Department recommends approval with condition and contingencies with an expiration of the operating certificate five years from the date

of issuance. And the committee recommended approval with conditions and contingencies with the same five year operating certificate expiration from the date of issuance.

Next, 191060E, Long Island Ambulatory Surgery Center of Suffolk County. This is to transfer 100 percent of ownership to one new member, PLC comprised of three individual members. Both the Department and the committee recommend approval with conditions.

Next is 191107E, Citywide Health Facility in Kings County. This is to transfer 70 percent ownership to three new members from a current sole member. Both the Department and the committee recommend approval with condition and contingencies.

Why don't I stop there, and I so move.

JO BOUFFORD: Moved and seconded for the applications raised. Dr. Berliner?

HOWARD BERLINER: Can we pull 191060E, Long Island Ambulatory Surgery Center out of the batch?

JO BOUFFORD: Which one, where is that?

GARY KALKUT: Long Island Surgery Center.

JO BOUFFORD: This is one he just suggested.

There was an opportunity to do that earlier which would've been good, but anyway…. Alright. Pull it out now. So we're only voting on the one. The Tri-Borough and Citywide we did. Tri-borough and Citywide, all in favor?

[Aye]

Opposed? Abstentions? OK, those two pass. Shall we go to 191060E, Dr. Berliner, you have concerns?

HOWARD BERLINER: Yeah, so the concern is that this is a place with zero percent charity care and as I recollect from the committee meeting a projection of zero percent charity care. The explanation at the time in part was that because it was mostly doing ophthalmological procedures where the vast majority of care is rendered by… payment is rendered by Medicare and that that was OK. But this is a multispecialty center. And as a multispecialty center since it can, I don't recall how it got that designation if it was only going to do ophthalmology, but as a multispecialty center, they can basically do zero percent charity care even for non-ophthalmological services. And I just want to bring that to the council's attention and wonder if there's a way that we can approve this only as a single-

specialty center? Or require some change from the proposed owners?

JO BOUFFORD: Ms. Raleigh? In the committee, was there any specific insight on this discussion? You were in the committee? Sorry, I wasn't sure. Ms. Raleigh would you like to address.

TRACY RALEIGH: yeah, I think at the meeting you had raised this issue, Dr. Berliner, and also asked for the history of the facility going back to when it had originally opened, and I think just to add, respond to your comment, I mean, the policy guidance under which we're operating is to look at a combined charity care and Medicaid percentage, and so I think with that in mind we did go back and look at the cost report data going back in time. And there has been Medicaid percentages that range from high of 20 percent to a low of 11 percent over time, and im looking in this application, they do about 10 or 11 percent today. So, that's a consideration here as well, along with, it is correct; it is multispecialty, so I just wanted to add that to the discussion.

JO BOUFFORD: Does that address your concern? And reimburse issue.

Do you want to say anything more about it? I think that generally those percentages are … they're historically, Medicaid has been the major focus. I mean, obviously charity care is a factor as well.

HOWARD BERLINER: I mean, yes, that's true, although when we started this looking at Medicaid and charity care, Medicaid was in large part fee-for-service. Now that's been eliminated, and you know, it seems to me somewhat foolhardy for any center to operate without some kind of contract with a Medicaid managed care center. So the fact that Medicaid is a somewhat higher number I think is also irrelevant to the issue of providing charity care. And especially, this is so open ended because it's a multi-specialty center that's only doing one specialty. But we give it the permission to do as many specialties as it wants. But not… once we do this…

TRACY RALEIGH: Just to add and clarify and hopefully maybe this will help too, this was not, this was a transfer of membership interest. So, it wasn't, I just want to make sure, it wasn't an expansion of single specialty to multispecialty. This center has been in operation for a long time, is not subject to unlimited life under our current policy, so we're approving the establishment of a transfer of membership interest.

HOWARD BERLINER: yes, but this would then therefore be our last chance to have something to say about…

TRACY RALEIGH: I'm not discounting your observations on the operation of the center, but it is not subject to a limited life.

GARY KALKUT: Tracy, in the write up, charity care is really not listed. There is headings for "other" and "private pay." So unless I'm missing it I don't see charity care specifically called out in here.

TRACY RALEIGH: I think it is in the other category.

GARY KALKUT: It's about one percent… OK. I'm looking at the tables, Dr. Berliner.

TRACY RALEIGH: We're just checking. We're just verifying.

GARY KALKUT: Doesn't change the issue of the multispecialty.

JO BOUFFORD: Dr. Rugge, just Dr. Rugge then Mr. Lawrence. Sorry.

JOHN RUGGE: If, have hospitals in the service area commented upon this change and have they been given an opportunity to do so?

TRACY RALEIGH: I'm looking at staff, and I'm not aware that we've received any comments from hospitals.

JOHN RUGGE: As a matter of course, would hospitals be alert to the change and the opportunity to comment?

TRACY RALEIGH: Under the current policy when there's a transfer of membership interest, it's only when there's a new established ambulatory surgery center entering the area. So this is a change in member interest.

JOHN RUGGE: So the hospitals would not have been…

TRACY RALEIGH: Would not have been notified, although any provider is able to publicly view the NYSECON system and look at what applications have been filed.

JO BOUFFORD: Let me ask you a question; when you say change in membership, that doesn't refer to the issue of the fact that it only does ophthalmologic surgery now, but is able to do other surgeries. That decision was made before at which time the consultation would have occurred. So this membership change, can you just define exactly what that means? Because I think the question of were others given an opportunity to comment when it was established, does it cover what they're now doing and what they could do? Right? That's kind of what you're focusing on?

TRACY RALEIGH: Right. So, as explained in the exhibit, there is certain listing of doctors that currently own the ambulatory surgery center who are exiting, and there is a new group called Site Medical Doctors comprised of three doctors that are coming in.

JO BOUFFORD: But it doesn't change the basis of the fact that although it's only doing a single surgery, it's able, it was authorized initially to do multiple surgeries. That consultation would've taken place at that time.

TRACY RALEIGH: That's correct.

HARVEY LAWRENCE: I tend to share Dr. Berliner's feelings about the charity care and Medicaid. So would it be appropriate to offer a friendly amendment that they be required to report on their efforts to pursue and to expand to get to a two percent threshold on charity care?

JO BOUFFORD: Advice from our colleagues in the Department in terms of having that kind of target for other applications. In terms of percentage threshold.

TRACY RALEIGH: Consistent with how we've treated as a policy matter, we prefer to have those discussions as a policy matter as opposed to on the backs of an application. But as an alternative, just for clarity, we, this particular application does not have a limitation on it's operating certificate. But is proposing a change in it's membership interest. So, as a policy matter, if we take up ambulatory surgery round II, we could consider whether we want to continue to impose, continued monitoring of charity care and Medicaid on those ambulatory surgery centers which do not have any restrictions. I think you're proposing here, which we could also I would suggest be a motion made that a contingency be placed on this particular application to provide such reporting on charity care.

HARVEY LAWRENCE: Not only reporting but that they demonstrate the good faith effort to pursue to get to a two percent threshold.

JO BOUFFORD: I guess my question is, when they were originally approved, was that, I mean, because I'm trying to get at what were the policy frameworks expectations around charity care?

TRACY RALEIGH: I think with this one I'm looking for staff maybe in Albany to help, but this institution goes back in time. It may predate our guidance and…

JO BOUFFORD: So a number that exists that didn't have a requirement at that time.

TRACY RALEIGH: That's right.

HARVEY LAWRENCE: So they are aware of the two percent requirement? Is that what I'm hearing?

JO BOUFFORD: I don't know, how do you manage that in terms of…

TRACY RALEIGH: They certainly since this body has taken this issue up are very much aware of the efforts and the need to have the outreach. I'm just technically saying that in our policy guidance right now we wouldn't … there's no limitation on the operating certificate.

JO BOUFFORD: You say limitation, you mean there's no conditions.

TRACY RALEIGH: That means they're in other instances when there's a newly established ASC there's a five-year period.

JO BOUFFORD: I don't think that's really what we're talking about. I think, my sense is that there was a sort of, establishment of this entity predated a sort of expectation around the target for Medicaid and charity care, right? And now that this is open again, you're raising the question as to whether they should be applied.

HOWARD BERLINER: And just to make it clear, there's not a requirement… it's an expectation. It's a goal. But 0.0 is hard number to ignore.

JOHN RUGGE: Technical question is, is it within the rights of the authority of the council to impose a limited life based on this condition because of a change of membership?

TRACY RALEIGH: Again, I would suggest that we take that up not on the backs of this application, but in a policy forum. So, because that is not our current policy.

JO BOUFFORD: I think John is asking if you're looking at the limited issue of membership change, what does that open up? What are the options open up for putting conditions on or doing something else other than dealing with a membership change? Because it's obviously a different, not a whole establishment issue or change of services or anything.

TRACY RALEIGH: I think as a policy matter… we would perhaps going forward that if there is a, and I think we talked about this, if there's a whole change in the ownership of an ASC, it should reset perhaps the clock. But I'm just suggesting that we do that holistically from a point forward, rather than on the backs of an application.

DAN SHEPPARD: Just a matter of process; again, this is not on this specific merits, I think it's just something for the

council to consider. It builds on what Tracy is saying, let me just say more direct way which is, the facts I've heard is that, well, … I just want to clarify a fact; just that when this applicant was, when this facility was originally licensed, it was not, there was not a policy, the policy with respect to participation in Medicaid, uninsured, did not exist. Is that correct? OK. And this is the first time that application is coming before…

TRACY RALEIGH: I'd have to verify that. That it's the first.

DAN SHEPPARD: So just generally, and I think we've had this discussion before, I think this council has wide latitude in what it can require, impose, on a given application. I think the practice we've adhered to which I think is a sound and rationale practice is we have not made policy on individual transactions. I think particularly in this case we have in parallel going a planning effort on ambulatory surgery, on looking at our policies with respect to ambulatory surgery centers that will result in, I suspect result in changes to how we handle these. So this application comes to you in midstream of that. I wouldn't be so presumptuous as to tell the council, what they can and can't do, but I would just remind the council

that we have had a practice which I think our actions not be arbitrary and capricious that don't make policy based on individual transactions.

PETER ROBINSON: So, Mr. Sheppard, I'd just them to follow up on that. So we establish a series of recommendations as a result of that ad-hoc taskforce on ambulatory surgery that applied to new applications. The question really then becomes can we broadly apply that to existing operators that are past their limited life such that first in terms of reporting and accountability, but then secondly the opportunity to then in some proactive way intervene with some kind of recommendations regarding continued licensure or other kinds of remedies in order to get people to the right level of compliance.

DAN SHEPPARD: I think, Mr. Robinson, if I'm understanding what you're saying, I think that sounds like a potential change in policy which would appropriately be vetted through our planning committee efforts which people would have an opportunity to comment on…

PETER ROBINSON: Right, that's what I was asking. Because I agree that the whole issue of looking at trying to get to this issue on the backs of an individual application is not

the appropriate way to do it. I think the way to do it is to actually have this go back to the planning committee or ad-hoc committee to review those policies and make some broader recommendations on policy

TRACY RALEIGH: I was just going to echo Dan and say we do have this opportunity here because we just talked about the ambulatory surgery centers, so we can add that to our items.

JO BOUFFORD: Sounds like it's a really importance consideration…

TRACY RALEIGH: And get back you on that.

LAWRENCE BROWN: I do appreciate and understand that we want to be consistent and that makes sense. I think it just goes to demonstrate that this, even given our good intentions about saying going forward there is some downside of that because when an applicant comes, and I'm not suggesting on this particular applicant, but I'm suggesting when things change in an application before us, I'm not sure that I particularly embrace the policy to say that because you were grandfathered in, grandmothered in, you don't have to adhere. I'm just saying, gives the appearance that they then do not, other than

encouragement, which is I think what Dr. Berliner was suggesting, to encourage them to come to the point even if we don't have the desire to in fact, make it applicable to them based on the policy that we had previously. Because I think not sharing with them that we would like to encourage them to do this is really then ignoring a policy that we did pass about the fact about Medicaid and persons charity care. So that's my point is the fact that I think what that ad-hoc committee, we probably do need to revisit that because other applications are going to come before us that we need to be able to say how we approach that for those. But I do understand my colleagues about not having this particular applicant other than Dr. Berliner's point, encouraging them to in fact, can they share with us what their efforts are going to be to be able to get to that point.

HOWARD BERLINER: I think there are actually two problems that I see with this particular surgery center. One is the low percentage of charity care, but we also understand that with ophthalmological centers that comes with the territory for the most part. But the second part is, and the part I'm most concerned about is that it was approved as a multispecialty center even though it's only doing one specialty. Under the rules that we… if they don't change the membership by 10 percent, they can add in lots of new doctors who might be

working in areas where we expect them to provide charity care, but we won't have any control over it. So one possibility I would raise since it's bring bought or proposed to be bought by a place that I assume is given it's site, medical doctors that they're about ophthalmology, can we change it's designation from multispecialty to single specialty in order to approve this? Because that would actually, I think, answer the question without violating…

JO BOUFFORD: That seems like a bigger change than really basically saying perhaps they need to be subject to with this change, be subject to the new standards that have been used for other similar activities. Yeah.

JOHN RUGGE: I totally get it in terms of the need to be consistent with applying our policies. By the same token, it seems that this is an institution or organization look to reestablish itself by changing this membership. And in so doing, it seems that we're not asking to cease and desist, we're saying you will now be subject to our now more modern understanding and responsibilities, and that includes a five-year limited life in which we will look at your percentage of charity care. That seems to be consistent rather than inconsistent to me.

JO BOUFFORD: I don't disagree. I don't know if we can – can we do that? If people wish to do that. So just easier, better than changing the original establishment purposes which would be a problem. I'm just,… can I just ask if the staff could respond to that piece of it and then we'll get comments from other colleagues.

TRACY RALEIGH: Sure. I think as Dan said, this body can do, and I look to legal counsel what has a lot of power to do what deems appropriate, and I will bring up that we did have this as an item, in our policy discussion, so the preference of staff would be to take this up holistically and not take it up on this application, but I do defer to counsel…

JO BOUFFORD: Yeah, you made that clear. I think we understand. Mr. Lawrence and then Dr. Kalkut.

HARVEY LAWRENCE: Yeah, I thought that I was attempting to offer a rather innocuous amendment which simply said that they would make a good faith effort to report and to pursue a two percent threshold. And I don't see how that changes anything, simply makes them aware that there's an expectation. It doesn't offer, doesn't suggest that they will be punished if they fail to even make a good faith effort. It is very

innocuous. But it does, I think at some point relay in a more firm way an expectation.

JO BOUFFORD: Dr. Kalkut, last comment. I think we need to move on.

GARY KALKUT: I think conflating the single specialty, multispecialty and the issue of charity care and what the expectation is is probably too big a deal, and is a real policy question about once they have unlimited life, how we regulate that. That has to be a policy question. A suggestion seems reasonable to me while avoiding some of the larger policy issues.

JO BOUFFORD: Maybe I would ask if we can maybe ask if the Dr. Kalkut who I think moved this originally would take a friendly amendment from Mr. Lawrence just adding the words …

GARY KALKUT: Do I need to withdraw that? We did not have a motion.

JO BOUFFORD: We didn't have a motion because it was pulled after we had the motion. OK. So now we have no motion. So would you please, would you like to give us a motion as to…

We have a couple of options on the table. One of them is encouragement, one of them is making them subject to current standards for these kinds of facilities. I think those were the two that the group raised.

GARY KALKUT: And it's my choice to …

JO BOUFFORD: That's what the chair gets to do.

GARY KALKUT: And again, this is Long Island Ambulatory Surgery Center and their approved with conditions. I would add a contingency for an advisement to the organization to about the current standards and notice of interventions of how they are trying to meet that.

TRACY RALEIGH: May I suggest, I'll suggest a contingency for reporting on their outreach efforts and to encourage charity care?

JO BOUFFORD: Progress against current standards… would be more like it?

JOHN RUGGE: The actual percentage of charity care.

TRACY RALEIGH: And their percentages of charity care performance.

JO BOUFFORD: you're very solemnonic. I think that was well done.

GARY KALKUT: I don't know about solemn, and I so move.

JO BOUFFORD: And we have a second from Mr. Robinson. Are there any questions? Is everyone clear on the resolution?

RICHARD ZAHNLEUTER: Can I clarify first? There was a motion pending.

JO BOUFFORD: There was not. We pulled it out.

RICHARD ZAHNLEUTER: Oh, I see. Because of where we had to treat this specially from that group of three.

GARY KALKUT: Dr. Berliner made the request to pull it out.

RICHARD ZAHNLEUTER: OK. So what you have then is your motion to approve with a contingency as suggested by you, Dr. Kalkut…

JO BOUFFORD: And seconded by Mr. Robinson.

RICHARD ZAHNLEUTER: Great. OK.

JO BOUFFORD: Any further discussion?

JOHN RUGGE: Just editorial comment. Reply to Tracy. Totally clear we need to not be capricious to be very careful in making the changes we proposed, but I think rather than relying on the laborious time consuming process for intervention, that the change comes with opportunity, and we have an application such as this, there's the opportunity to make a very clear that there is an expectation on the part of this council for the provision of charity care. And we don't need to wait for a planning process to deal with this kind of discussion is really important and the value of the council.

JO BOUFFORD: That's fair enough. And I think this resolution does speak to that for this particular application and it's something to keep in mind going forward.

JO BOUFFORD: OK, ready for a vote. All in favor? [Aye]

Opposed? Dr. Berliner is opposed. Abstentions? No abstentions. The motion carries.

Back to dialysis services. I think we were there.

We did the other two. Yes we did. We did vote. And then we came back to yours.

GARY KALKUT: Application …

It's yours.

Application 182068B, Freedom Dialysis of Riverdale, LLC in Bronx County. This is to establish and construct a 12 station chronic renal dialysis diagnostic and treatment center in Chervier Nursing Care Center located at 2975 Independence Avenue in the Bronx. Both the Department and the Committee recommend an approval with conditions and contingencies.

182140E, DSI Newburgh, LLC in Orange County. This is to establish DSI Newburgh LLC as the new operator of a 16 station chronic renal dialysis diagnostic and treatment center operated by DSI Dutchess Dialysis Inc., at 3947 North Plank Road in Newburgh. DSI Dutchess Dialysis is a wholly owned subsidiary of US Renal Care Inc. Both the Department and the committee

recommended approval with conditions and contingencies. And I so move.

JO BOUFFORD: (inaudible)

GARY KALKUT: Just because it was this.

JO BOUFFORD: Any comments or questions about the two proposals? No? All in favor then?

[Aye]

Opposed? Abstentions? The two pass.

GARY KALKUT: 181319E, Tri-borough Certified Home Health Systems of Hudson Valley LLC in Westchester County. This is to establish Tri-borough Certified Health Systems of the Hudson Valley LLC as the new operator of DATER Home Healthcare, and existing special needs certified home health agency. Both the Department and the committee recommend approval with condition and contingencies. And I so move.

JO BOUFFORD: Second? Mr. Robinson. Any discussion? All in favor?

[Aye]

Opposed? Any abstentions? Motion passes.

GARY KALKUT: Then there's a group of certificates. Certificates of dissolution by FEGS PRO CARE Health Services. Fegs Homecare Services MDNHC Inc., and Mt. Sinai Diagnostic and Treatment Center, and I so move.

JO BOUFFORD: Can I ask a question in the conversation, do these dissolutions which basically would mean services going away, do they have, are there any discussion of potential impact of loss of service?

GARY KALKUT: Just closure plans. I don't think there was a discussion.

JO BOUFFORD: No concerns about that.

GARY KALKUT: I don't think any concerns were raised.

JO BOUFFORD: Ok, thank you.

GARY KALKUT: Tracy, you want to comment?

TRACY RALELIGH: At the EPRC meeting there was no discussion on these applications.

JO BOUFFORD: No discussion on these applications. Because it send their services…

TRACY RALEIGH: On dissolutions. There was no…

JO BOUFFORD: Services are going away, but that, has that already been discussed in some other context?

BARBARA DELCOGLIANIO: Hi, this is Bee DelCogliano. These come after closure plans are approved and the sites are actually closed. This is just the cleanup of the legal documents.

JO BOUFFORD: Thank you very much. That's very helpful. Because we don't see too many of these. So that's helpful to clarify.

Any other concerns, questions on these? All in favor?

[Aye]

Opposed? Any abstentions? No. Motion passes.

GARY KALKUT: Next, certificate of amendment of the certificate of incorporation for HQWCHN Health Systems Inc. Both the Department and the Committee recommend approval. And I so move.

JO BOUFFORD: Motion. Second? Can I second. Mr. Robinson whispers he seconded. Any discussion, questions about this action? No. All in favor?

[Aye]

Any opposed? Any abstentions? Motion passes.

GARY KALKUT: Next is application for ambulatory surgery centers for establishment and construction. 191019E, Bronx SCLLC d/b/a Empire State … I'm sorry. Dr. Martin. There's a conflict and recusal.

JO BOUFFORD: Show that Dr. Martin is leaving the room.

GARY KALKUT: Dr. Martin has left the room. Oh, he is?

JO BOUFFORD: He's almost left the room.

GARY KALKUT: Oh, my god, I thought I heard the door over there.

JO BOUFFORD: Somebody else left the room. Now he's left the room.

GARY KALKUT: At a faster rate too. This is to transfer 70 percent membership interest to a new member. LLC with four individual members. The Department recommends approval with conditions and contingencies with no change in the operating certificate expiration date, as does the committee. And I so move.

JO BOUFFORD: you mentioned both of these.

GARY KALKUT: OH they're both recusals by Dr. Martin. Second is 191027E, North Queens Surgical Center in Queens County. Again, conflict and recusal of Dr. Martin who has left the room. Transfer 75 percent ownership to a new member, LLC with four individual members and the transfer of 13 members. Both the Department recommends approval with conditions and contingencies with no change in the operating certificate as does the committee, and I so move.

JO BOUFFORD: Thank you. Moved and seconded. Any discussion? Questions about these applications? All in favor?

[Aye]

Opposed? Any abstentions? No. Motion passes.

Please ask Dr. Martin to come back in. There he is.

GARY KALKUT: Thank you. Next is 181259E, Mohawk Valley Eye Surgery Center in Montgomery County. This is a request for indefinite life for CON 112179. Approval by the Department is recommended and committee approval was recommended with one member abstaining. And I so move.

JO BOUFFORD: Moved and seconded. Any discussion? Questions on this? Yes, Mr. Lawrence.

HARVEY LAWRENCE: I think during the committee we had asked that we follow up with the FQHC to determine the nature of the relationship with the FQHC to determine whether there were referrals for charity care or simply refer Medicaid?

JO BOUFFORD: Did you get that information?

TRACY RALEIGH: Yes, we did take your question, if I may, we did take your question back to the applicant and that information was emailed out to you. Their direct response to your question. They noted I think the question was explained in detail the referral relationship with the FQHC, Hometown Health Center, and they answered that Hometown Health provides medical services through physicians in mid-levels. This particular operator the ASC is the only full time ophthalmologist in the area, and ophthalmology referrals are made to the owner. It's a sole owner doctor who is the sole medical staff member of the ASC. If a patient requires surgery it is performed by him. So there is a … basically responding there is a referral relationship and he does accept all referrals from the FQHC. And they did also go on to say that the website does have enrollment specialists on site to help with qualifying uninsured patients. So one of the comments on this application was that there was a decrease in the level of uninsured in the area as well. When you combine that with the specialty services of ophthalmology which tends to be Medicare, the numbers are low, but I don't know if that's responsive to your question.

HARVEY LAWRENCE: Oh, it is. Thank you.

JO BOUFFORD: Thank you. Any other questions or comments? Move to a vote then. All in favor?

[aye]

Opposed? Abstentions? Motion passes. Move on to the last batch.

GARY KALKUT: OK. Home health agencies licensure. 191080E, Always Compassionate Homecare Inc., in Suffolk County. And 182247E, Aides at Home Inc., in Nassau County. Contingent approval as indicated in the staff report is recommended by the Department and the committee. And the last is 191117B, Saratoga Partners North in Saratoga County. This is to establish and construct a new multispecialty ambulatory surgery center to be located at Four Medical Drive in Malta. The Department recommended approval with conditions and contingencies as did the special EPRC committee meeting this morning, and I so move.

JO BOUFFORD: Seconded by Mr. Robinson. Any comments, questions, on these applications? Vote, all in favor?

[aye]

Opposed? Any abstentions? No. Motion is passed.

GARY KALKUT: And that concludes the report of the establishment and project review committee.

JO BOUFFORD: I think this ends the public session of the state public health and health planning council and we'll move into executive session. Ask the audience members to please leave the room to focus on a health personnel interprofessional relations issue.

[end of audio]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) a need to alter treatment significantly; or

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

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

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

REGULATORY IMPACT STATEMENT

Statutory Authority:

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

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

Legislative Objectives:

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

Needs and Benefits:

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

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

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

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

Costs:

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

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

Costs to State and Local Governments:

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

Costs to the Department of Health:

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

Local Government Mandates:

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

Paperwork:

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

Duplication:

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

Alternatives:

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

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

Federal Standards:

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

Compliance Schedule:

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

Contact Person:

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STATEMENT IN LIEU OF

REGULATORY FLEXIBILITY ANALYSIS

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

STATEMENT IN LIEU OF

RURAL AREA FLEXIBILITY ANALYSIS

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

STATEMENT IN LIEU OF

JOB IMPACT STATEMENT

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

Pursuant to the authority vested in the Public Health and Health Planning Council and Commissioner of Health by section 2803 of the Public Health Law, sections 405.7 and 751.9 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) are hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register:

Paragraph (10) of subdivision (c) of section 405.7 of Title 10 is amended to read as follows:

(10) Receive all the information you need to give informed consent for an order not to resuscitate. You also have the right to designate an individual to give this consent for you if you are too ill to do so. If you would like additional information, please ask for a copy of the pamphlet "[Do Not Resuscitate Orders] Deciding About Health Care - A Guide for Patients and Families."

Subdivision (l) of section 751.9 is amended to read as follows:

(l) express complaints about the care and services provided and to have the center investigate such complaints. The center is responsible for providing the patient or his/her designee with a written response within 30 days if requested by the patient indicating the findings of the investigation. The center is also responsible for notifying the patient or his/her designee that if the patient is not satisfied by the center response, the patient may complain to the New York State Department of [Health's Office of Health Systems Management] Health;

Subdivisions (p) and (q) of section 751.9 are amended, and new subdivisions (r) and (s) are added to read as follows:

(p) authorize those family members and other adults who will be given priority to visit consistent with your ability to receive visitors; [and]

(q) when applicable, make known your wishes in regard to anatomical gifts. Persons sixteen years of age or older may document their consent to donate their organs, eyes and/or tissues, upon their death, by enrolling in the NYS Donate Life Registry or by documenting their authorization for organ and/or tissue donation in writing in a number of ways (such as health care proxy, will, donor card, or other signed paper). The health care proxy is available from the center[.];

(r) view a list of the health plans and the hospitals that the center participates with; and

(s) receive an estimate of the amount that you will be billed after services are rendered.

REGULATORY IMPACT STATEMENT

Statutory Authority:

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

PHL § 24 requires diagnostic and treatment centers (D&TCs) to disclose the health care plans in which they are participating providers and the hospitals with which they are affiliated; and it also requires D&TCs to make available estimates of the amounts patients will be billed.

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection of the health of the residents of the State by promoting the efficient provision and proper utilization of high quality health services at a reasonable cost.

PHL § 24 is intended to protect D&TC patients against unknowingly receiving care from out-of-network providers, resulting in surprise medical bills.

Needs and Benefits:

Under PHL §24, D&TC patients have the right to receive information regarding the health plans and the hospitals that the center participates with and an estimate of the amount that the patient will be billed after services are rendered. The purpose of this disclosure is to ensure that patients have the information that they need to make decisions about their healthcare and to protect themselves against receiving unexpected bills. This proposed regulation revises the

D&TC Patients' Bill of Rights to inform patients of their rights under PHL §24 by adding new subdivisions (r) and (s) to 10 NYCRR §751.9. The proposed regulation mirrors similar provisions in the Patients' Bill of Rights applicable to general hospitals under 10 NYCRR 405.7.

The proposed amendment to Section 405.7 reflects a change to the Department publication that patients can request to provide them with additional information regarding medical decision-making, resuscitation, health care proxies and other end-of-life decision-making. This information was updated to implement the Family Health Care Decisions Act, effective in 2010. This regulation amendment will bring the regulations into conformance with the current Department publications.

The amendment to Section 751.9(l) deletes a reference to a Department office that has been renamed.

COSTS:

Costs to Private Regulated Parties:

This amendment is a clarification of rights that patients already have in New York State. D&TCs will incur minimal costs to change the Patients' Bill of Rights made available to patients. D&TCs may also need to update training materials for staff.

Costs to Local Government:

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

Costs to the Department of Health:

The proposed regulatory changes will not result in any additional operational costs to the Department of Health, other than to provide for translations of the newly updated Bills of Rights.

Costs to Other State Agencies:

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

Local Government Mandate:

The proposed regulations do not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

D&TCs are already required to make the Patients' Bill of Rights available to patients. Therefore, the proposed regulations should not increase their paperwork.

Duplication:

There are no relevant State regulations which duplicate, overlap or conflict with the proposed regulations.

Alternatives:

The alternative would be to take no action, which would result in a lack of consistency

between PHL §24 and the Patients' Bill of Rights.

Federal Standards:

The proposed regulations do not duplicate or conflict with any federal regulations.

Compliance Schedule:

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

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REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect of Rule:

The proposed regulation will apply to all diagnostic and treatment centers (D&TCs) in New York State. This proposal will not impact local governments or small business unless they operate a general hospital or D&TC. In such case, the flexibility afforded by the regulations is expected to minimize any costs of compliance as described below.

Compliance Requirements:

These regulations will require D&TCs to change their Patients' Bill of Rights.

Professional Services:

This proposal will not require any additional use of professional services.

Compliance Costs:

Compliance costs are minimal, as they only require editing and reprinting the Patients' Bill of Rights.

Economic and Technological Feasibility:

This proposal is economically and technically feasible.

Minimizing Adverse Impact:

The anticipated impact of the proposal is minimal. D&TCs are already required to make

the Patients' Bill of Rights available to patients.

Small Business and Local Government Participation:

Organizations that include D&TCs as members were consulted on the proposed regulations. Additionally, the proposed regulation will have a 60-day public comment period.

Cure Period:

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

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (http://quickfacts.census.gov). Approximately 17% of small health care facilities are located in rural areas.

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

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

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

There are approximately 90 diagnostic and treatment centers (D&TCs) in rural areas.

Reporting, Recordkeeping, Other Compliance Requirements and Professional Services:

The proposed regulation is applicable to those D&TCs located in rural areas and is expected to impose minimal costs, because regulated facilities are already required to make the Patients' Bill of Rights available to patients. Because the proposed regulatory requirements can be incorporated into existing processes, they are not expected to increase the administrative burden on these entities.

Costs:

D&TCs are already required to post the Patients' Bill of Rights in areas that are highly visible to patients. The cost of the small wording change to the Patients' Bill of Rights will be insubstantial.

Minimizing Adverse Impact:

The impact is minimal.

Rural Area Participation:

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

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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

Pursuant to the authority vested in the Public Health and Health Planning Council and Commissioner of Health by section 2803 of the Public Health Law, sections 405.5 and 405.19 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) are hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register:

A new paragraph (7) is added to subdivision (a) of section 405.5, to read as follows:

(7) Nursing services personnel employed in specialty areas, including, but not limited to, emergency services, must complete training and education specific to the specialty area. Nursing services personnel must be periodically reevaluated for competency and ongoing education and training provided to maintain competency in the specialty area.

Subparagraphs (ii) and (iii) of paragraph (2) of subdivision (d) of section 405.19 are amended to read as follows:

(ii) Emergency services supervising nurses shall be licensed and currently registered and possess current, comprehensive knowledge and skills in emergency health care. They shall [have at least one year of clinical experience,] be able to demonstrate skills and knowledge necessary to perform basic life support measures, and be current in ACLS and PALS or have current training and experience equivalent to ACLS and PALS, and meet the competency requirements of Section 405.5(a)(7);

(iii) Registered professional nurses in the emergency service shall be licensed and currently registered professional nurses who possess current, comprehensive knowledge and skills in emergency health care. They shall have [at least one year of clinical experience, have] successfully completed an emergency nursing orientation program, [and] be able to demonstrate skills and knowledge necessary to perform basic life support measures and meet the competency requirements of Section 405.5(a)(7). Within one year of assignment to the emergency service, each emergency service nurse shall be current in ACLS and PALS or have current training and experience equivalent to ACLS and PALS [and shall maintain current competence in ACLS as determined by the hospital].

REGULATORY IMPACT STATEMENT

Statutory Authority:

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

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection of the health of the residents of the State by promoting the efficient provision and proper utilization of high quality health services at a reasonable cost.

The Department of Health, pursuant to former PHL §2807-h(1), has granted hospitals limited waivers of 405.19(d)(2)(iii), allowing them to develop new graduate training programs based on training, education, and competency assessment. This authority expired on July 1, 2017. See L. 2014, Ch. 60, Pt. C, §67-b. Nevertheless, the results of these programs have been very successful. Therefore, removing the need to secure a waiver and allowing a training, education and competency-based program through regulation is sound public policy.

Needs and Benefits:

The nursing shortages that currently exist both nationally and in New York State are expected to increase as both the age of the general population and working nurses increases. Similarly, shortages of nurses that work in high-stress specialty areas, such as critical care and the emergency department, will continue to occur during this nurse shortage and as hospitals

struggle with improving the recruitment and retention rates of new and seasoned nurses.

Recruiting nurses for emergency departments, specifically, is made even more challenging by current requirements, in 10 NYCRR Section 405.19, that all nurses working in emergency departments have one year of clinical experience and possess current, comprehensive knowledge and skills in emergency care. This results in hospitals being unable to recruit new graduates. Often, once these new graduates attain the required year of clinical experience, they are unwilling to transfer to the emergency department, preferring to use their newly gained competencies in the clinical area in which they were trained.

The Department of Health, pursuant to former PHL §2807-h(1), has granted hospitals limited waivers of 405.19(d)(2)(iii), allowing them to develop new graduate training programs based on training, education, and competency assessment. This authority expired on July 1, 2017. See L. 2014, Ch. 60, Pt. C, §67-b. Nevertheless, the results of these programs have been very successful.

The proposed regulations will allow hospitals to keep pace with demand for highly trained, emergency department nurses by allowing hospitals to recruit new graduate nurses to work in the emergency department, following a training, education and competency monitoring program developed and administered by the hospital's nursing education program required by 10 NYCRR Section 405.5. By eliminating the one year requirement, hospitals will be able to recruit new graduates and train them for work specifically in the emergency department. Similar to learning experiences in other parts of the hospital, new graduates would develop their clinical competencies by working alongside experienced staff who would supervise and mentor the new staff. This approach could also be adapted for float nurses who may have one year of experience but in a clinical specialty that does not specifically translate to emergency department

competency.

Patient safety and quality of care will be maintained, despite eliminating this nursing experience requirement, as hospitals will be responsible for developing, implementing and monitoring a training and education program that will allow nurses to obtain required skills while gaining invaluable experience within the emergency department.

COSTS:

Costs to Private Regulated Parties:

This amendment will allow general hospitals to expand their current nurse training programs to include curriculum for emergency department new graduates. Health care facilities will incur minimal costs in order to implement these programs.

Costs to Local Government:

This proposal will not impact local governments unless they operate a general hospital, in which case costs will be the same as costs for private entities.

Costs to the Department of Health:

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

Costs to Other State Agencies:

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

Local Government Mandate:

The proposed regulations do not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

General hospitals will be required to develop, implement and monitor nurse training programs for the emergency department, as they are currently required to do for other parts of the hospital. The regulation may initially increase paperwork as programs are in development, but overall the impact should be minimal.

Duplication:

There are no relevant State regulations which duplicate, overlap or conflict with the proposed regulations.

Alternatives:

The alternative would be to take no action, which represents no change in current requirements for general hospitals. However, the barrier to recruiting newly graduated nurses in emergency departments would still exist, making it increasingly difficult for hospitals to address their staffing shortages.

Federal Standards:

The proposed regulations do not duplicate or conflict with any federal regulations.

Compliance Schedule:

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

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REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect of Rule:

The proposed regulation will apply to all general hospitals with emergency departments in New York State. This proposal will not impact local governments or small business unless they operate a general hospital. In such cases, the flexibility afforded by the regulations is expected to minimize any costs of compliance as described below.

Compliance Requirements:

These regulations will require general hospitals to develop, implement and monitor training programs for emergency department nurses. This requirement expands requirements for nursing training and education that currently exist in Section 405.5.

Professional Services:

General hospitals are already required to have nursing training programs; however, this amendment will make the programs available to new graduate nurses who are interested in emergency nursing.

Compliance Costs:

Compliance costs are minimal, as they build upon existing requirements for nursing training and education found in Section 405.5.

Economic and Technological Feasibility:

This proposal is economically and technically feasible.

Minimizing Adverse Impact:

The anticipated adverse impact of the proposal is minimal. General hospitals, through their training programs, will ensure patient safety while new graduates are gaining competency and skill.

Small Business and Local Government Participation:

Organizations that include general hospitals as members were consulted on the proposed regulations. Additionally, the proposed regulation will have a 60-day public comment period.

Cure Period:

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

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (http://quickfacts.census.gov). Approximately 17% of small health care facilities are located in rural areas.

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.Chenango County
.Clinton County
.Columbia County
.Cortland County
.Delaware County
.Essex County
.Franklin County
.Fulton County
.Genesee County
.Greene County
.Hamilton County
.Herkimer County
.Jefferson County
.Lewis County
.Livingston County
.Madison County
.Montgomery County
.Ontario County
.Orleans County
.Oswego County
.Otsego County
.Putnam County
.Rensselaer County
.Schenectady County
.Schoharie County
.Schuyler County
.Seneca County
.St. Lawrence County
.Steuben County
.Sullivan County
.Tioga County
.Tompkins County
.Ulster County
.Warren County
.Washington County
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.Wyoming County
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The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

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

There are 47 general hospitals, approximately 90 diagnostic and treatment centers (D&TCs), 159 nursing homes, and 92 certified home health agencies in rural areas.

Reporting, Recordkeeping, Other Compliance Requirements and Professional Services:

The proposed regulation is applicable to those general hospitals located in rural areas and is expected to impose minimal costs. Because the proposed regulatory requirements can be incorporated into existing processes, they are expected to minimally increase the administrative burden on these entities.

Costs:

General hospitals are already required to have nurse training and education programs. The cost of developing these training programs should be minimal.

Minimizing Adverse Impact:

The impact is minimal.

Rural Area Participation:

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

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 225 of the Public Health Law, Subpart 5-1 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 5-1.52, Table 3 is amended to read as follows:

Table 3. Organic Chemicals Maximum Contaminant Level Determination

Contaminants	MCL (mg/L)	Type of water system	Determination of MCL violation
General organic chemicals		Community, NTNC and Noncommunity	If the results of a monitoring sample analysis exceed the MCL, the supplier of water shall collect one to three more samples from the same sampling point, as soon as practical, but within 30 days. An MCL violation occurs when at least one of the confirming samples is positive[1] and the average of the initial sample and all confirming samples exceeds the MCL.
Principal organic contaminant (POC)	0.005		
Unspecified organic contaminant (UOC)	0.05		
Total POCs and UOCs	0.1		
Disinfection byproducts[2,3]		Community and NTNC	For systems required to monitor quarterly, the results of all analyses at each monitoring location per quarter shall be arithmetically averaged and shall be reported to the State within 30 days of the public water system's receipt of the analyses. A violation occurs if the average of the four most recent sets of quarterly samples at a particular monitoring location (12-month locational running annual average (LRAA)) exceeds the MCL. If a system collects more than one sample per quarter at a monitoring location, the system shall average all samples taken in the quarter at that location to determine a quarterly average to be used in the LRAA calculation. If a system fails to complete four consecutive quarters of monitoring, compliance with the MCL will be based on an average of the available data from the most recent four quarters. An MCL violation for systems on annual or less frequent monitoring that have been increased to quarterly monitoring as outlined in Table 9A, is determined after four quarterly samples are taken.
Total trihalomethanes	0.080		
Haloacetic acids	0.060		
		Transient noncommunity	Not applicable.

Table 3. Organic Chemicals Maximum Contaminant Level Determination (continued)

Contaminants	MCL (mg/L)	Type of Water System	Determination of MCL violation
Specific Organic Chemicals		Community, NTNC and Noncommunity	If the results of a monitoring sample analysis exceed the MCL, the supplier of water shall collect one to three more samples from the same sampling point, as soon as practical, but within 30 days. An MCL violation occurs when at least one of the confirming samples is positive[1] and the average of the initial sample and all confirming samples exceeds the MCL.
Alachlor	0.002		
Aldicarb	0.003		
Aldicarb sulfone	0.002		
Aldicarb sulfoxide	0.004		
Atrazine[4]	0.003		
Benzo(a)pyrene	0.0002		
Carbofuran	0.04		
Chlordane	0.002		
Di(2-ethylhexyl)phthalate	0.006		
Dibromochloropropane (DBCP)	0.0002		
2,4-D	0.05		
Dinoseb	0.007		
1,4-Dioxane	0.0010		
Diquat	0.02		
Endrin	0.002		
Ethylene dibromide (EDB)	0.00005		
Heptachlor	0.0004		
Heptachlor epoxide	0.0002		
Hexachlorobenzene	0.001		
Lindane	0.0002		
Methoxychlor	0.04		
Methyl-tertiary-butyl-ether (MTBE)	0.010		
Pentachlorophenol	0.001		
Perfluorooctanesulfonic acid (PFOS)	0.0000100		
Perfluorooctanoic acid (PFOA)	0.0000100		
Polychlorinated biphenyls (PCBs)[5]	0.0005		
Propylene glycol	1.0		
Simazine	0.004		
Toxaphene	0.003		
2,4,5-TP (Silvex)	0.01		

2,3,7,8-TCDD (Dioxin) Vinyl chloride	0.00000003 0.002		

[1] A sample is considered positive when the quantity reported by the State approved laboratory is greater than or equal to the method detection limit.
[2] For systems monitoring yearly or less frequently, the sample results for each monitoring location is considered the LRAA for that monitoring location. Systems required to conduct monitoring at a frequency that is less than quarterly shall monitor in the calendar month identified in the monitoring plan developed under section 5- 1.51(c). Compliance calculations shall be made beginning with the first compliance sample taken after the compliance date.
[3] Systems that are demonstrating compliance with the avoidance criteria in section 5-1.30(c), shall comply with the TTHM and HAA5 LRAA MCLs; however the LRAA MCLs are not considered for avoidance purposes. For avoidance purposes, TTHMs and HAA5s are based on a running annual average of analyses from all monitoring locations.
[4] Syngenta Method AG–625, "Atrazine in Drinking Water by Immunoassay," February 2001, available from Syngenta Crop Protection, Inc., 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419. Telephone: 336–632–6000, may not be used for the analysis of atrazine in any system where chlorine dioxide is used for drinking water treatment. In samples from all other systems, any result for atrazine generated by Method AG–625 that is greater than one-half the maximum contaminant level (MCL) (in other words, greater than 0.0015mg/L or 1.5 µg/L) must be confirmed using another approved method for this contaminant and should use additional volume of the original sample collected for compliance monitoring. In instances where a result from Method AG–625 triggers such confirmatory testing, the confirmatory result is to be used to determine compliance
[5] If PCBs (as one of seven Aroclors) are detected in any sample analyzed using EPA Method 505 or 508, the system shall reanalyze the sample using EPA Method 508A to quantitate PCBs (as decachlorobiphenyl). Compliance with the PCB MCL shall be determined based upon the quantitative results of analyses using Method 508A.

Section 5-1.52, Table 9C is repealed and replaced with the following:

Table 9C. Additional Organic Chemicals - Minimum Monitoring Requirements

Contaminant		Type of water system	Initial requirement[1]	Continuing requirement where detected[1,2,3,4]	Continuing requirement where not detected[1]
Alachlor Aldicarb Aldicarb sulfone Aldicarb sulfoxide Aldrin Atrazine Benzo(a)pyrene Butachlor Carbaryl Carbofuran Chlordane Dalapon Di(2-ethylhexyl)adipate Di(2-ethylhexyl)phthalate Dibromochloropropane Dicamba 2,4-D Dieldrin Dinoseb 1,4-Dioxane Diquat Endothall Endrin	Ethylene Dibromide Glyphosate Heptachlor Heptachlor epoxide Hexachlorobenzene Hexachlorocyclopentadiene 3-Hydroxycarbofuran Lindane Methomyl Methoxychlor Metolachlor Metribuzin Oxamyl (vydate) Pentachlorophenol Perfluorooctanesulfonicacid (PFOS) Perfluorooctanoic acid (PFOA) Picloram Polychlorinated biphenyls Propachlor Simazine 2,3,7,8-TCDD (Dioxin) 2,4,5-TP (Silvex) Toxaphene	Community and Nontransient Noncommunity serving 3,300 or more persons[3]	Quarterly sample per source, for one year[5]	Quarterly	One sample every eighteen months per source[6,7,8]
		Community and Nontransient Noncommunity serving fewer than 3,300 persons and more than 149 service connections	Quarterly samples per entry point, for one year[6,7,8]	Quarterly	Once per entry point every three years[6,7,8]
		Community and Nontransient Noncommunity serving fewer than 3,300 persons and fewer than 150 service connections	Quarterly samples per entry point for one year[6,7,8]	Quarterly	Once per entry point every three years[6,7,8]

		Noncommunity excluding NTNC	State discretion[9]	State discretion[9]	State discretion[9]

Table 9C (continued)

[1]The location for sampling of each ground water source of supply shall be between the individual well and at or before the first service connection and before mixing with other sources, unless otherwise specified by the State to be at the entry point representative of the individual well. Public water systems which take water from a surface water body or watercourse shall sample at points in the distribution system representative of each source or at entry point or points to the distribution system after any water treatment plant.

[2]The State may decrease the quarterly monitoring requirement to annually provided that system is reliably and consistently below the MCL based on a minimum of two quarterly samples from a ground water source and four quarterly samples from a surface water source. Systems which monitor annually must monitor during the quarter that previously yielded the highest analytical result. Systems serving fewer than 3,300 persons and which have three consecutive annual samples without detection may apply to the State for a waiver in accordance with footnote 6.

[3]If a contaminant is detected, repeat analysis must include all analytes contained in the approved analytical method for the detected contaminant.

[4]Detected as used in the table shall be defined as reported by the State approved laboratory to be greater than or equal to the method detection levels.

[5]The State may allow a system to postpone monitoring for a maximum of two years, if an approved laboratory is not reasonably available to do a required analysis within the scheduled monitoring period.

[6]The State may waive the monitoring requirement for a public water system that submits information every three years to demonstrate that a contaminant or contaminants was not used, transported, stored or disposed within the watershed or zone of influence of the system.

[7]The State may reduce the monitoring requirement for a public water system that submits information every three years to demonstrate that the public water system is invulnerable to contamination. If previous use of the contaminant is unknown or it has been used previously, then the following factors shall be used to determine whether a waiver is granted.

a. Previous analytical results.
b. The proximity of the system to a potential point or nonpoint source of contamination. Point sources include spills and leaks of chemicals at or near a water treatment facility or at manufacturing, distribution, or storage facilities, or from hazardous and municipal waste landfills and other waste handling or treatment facilities. Nonpoint sources include the use of pesticides to control insect and weed pests on agricultural areas, forest lands, home and gardens, and other land application uses.
c. The environmental persistence and transport of the pesticide or PCBs.
d. How well the water source is protected against contamination due to such factors as depth of the well and the type of soil and the integrity of the well casing.
e. Elevated nitrate levels at the water supply source.
f. Use of PCBs in equipment used in production, storage or distribution of water.

[8]The State may allow systems to composite samples in accordance with the conditions in Appendix 5-C of this Title.

[9]State discretion shall mean requiring monitoring when the State has reason to believe the MCL has been violated, the potential exists for an MCL violation or the contaminant may present a risk to public health.

SUMMARY OF REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority for the proposed revisions is set forth in Public Health Law (PHL) sections 201 and 225. Section 201(1)(l) of the PHL establishes the powers and duties of the New York State Department of Health (Department), which include the supervision and regulation of the sanitary aspects of public water systems. Section 225 of the PHL sets forth the powers and duties of the Public Health and Health Planning Council (PHHPC), which include the authority to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. Further, section 225(5)(a) of the PHL allows the SSC to deal with any matter affecting the security of life or health, or the preservation or improvement of public health, in New York State.

Legislative Objective:

The legislative objective of sections 201 and 225 of the PHL is to ensure that PHHPC, in conjunction with the Commissioner of Health, protect public health by adopting drinking water sanitary standards. In accordance with that objective, this regulation amends the SSC by revising Part 5 to enhance current protections governing public water systems. Furthermore, this amendment will update the SSC in accordance with the recommendations of the Drinking Water Quality Council, by establishing specific maximum contaminant levels (MCLs) for perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS) and 1,4-dioxane.

Needs and Benefits:

In 2017, New York State (NYS) identified PFOA, PFOS and 1,4-dioxane as emerging contaminants in drinking water. That same year, the Drinking Water Quality Council (DWQC) was created, with direction to recommend MCLs for these emerging contaminants. After discussions and deliberations, the DWQC recommended MCLs to the Department for PFOA, PFOS and 1,4-dioxane. Specifically, the DWQC recommended: an MCL of 10.0 parts per trillion (ppt) (or, expressed in different units, 0.0000100 milligrams per liter (mg/L)) for PFOA; 10.0 ppt (or 0.0000100 mg/L) for PFOS; and 1.0 part per billion (ppb) (or 0.0010 mg/L) for 1,4-dioxane.

From 2015 through 2018, the Department coordinated targeted sampling of 278 public water systems for PFOA and PFOS. The 278 public water systems were mainly medium (serving 3,300 to 10,000 persons) to small (serving less than 3,300 persons) community water systems and non-transient noncommunity systems typically with a groundwater source located near a potential source of PFOA and/or PFOS. The results of this testing are shown in Figures 1A and 1B.

Figure 1A.

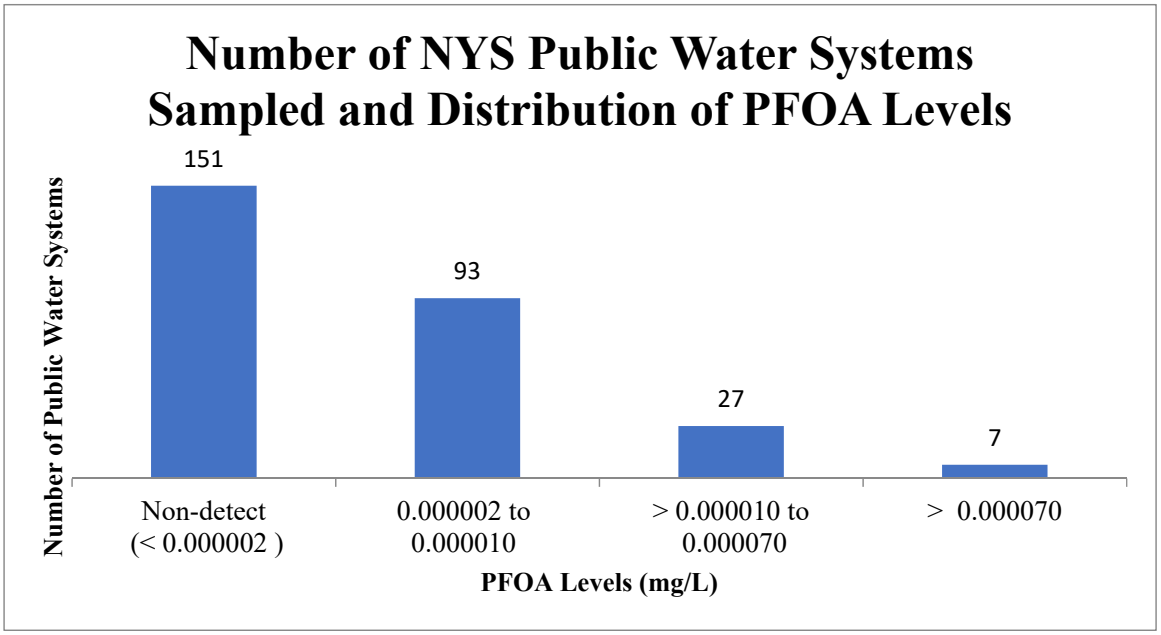
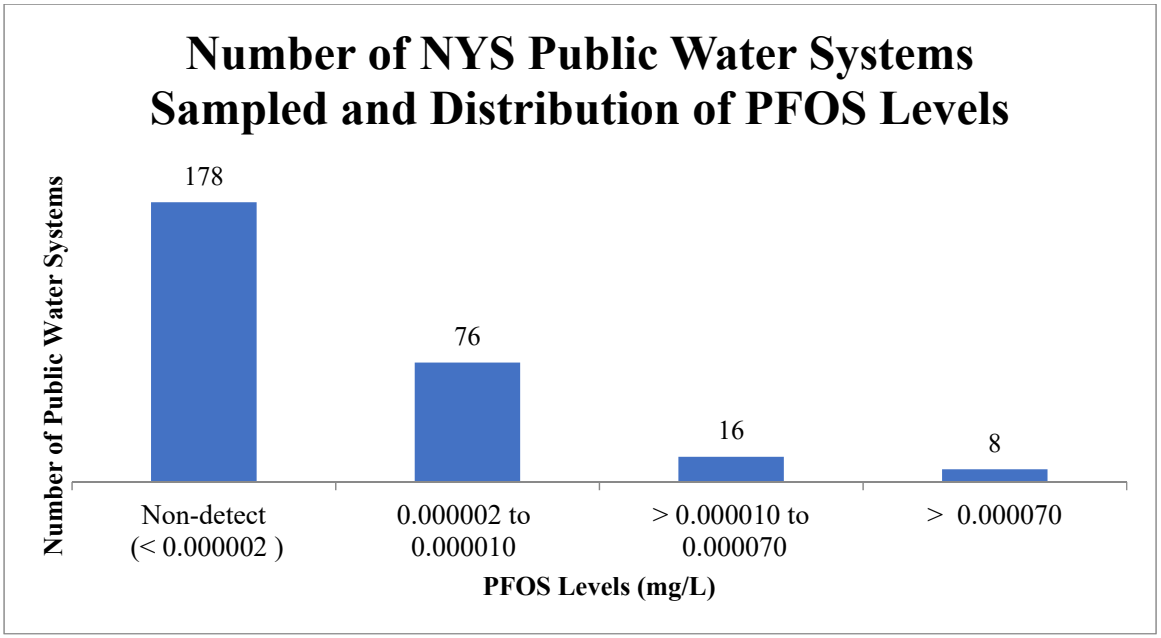


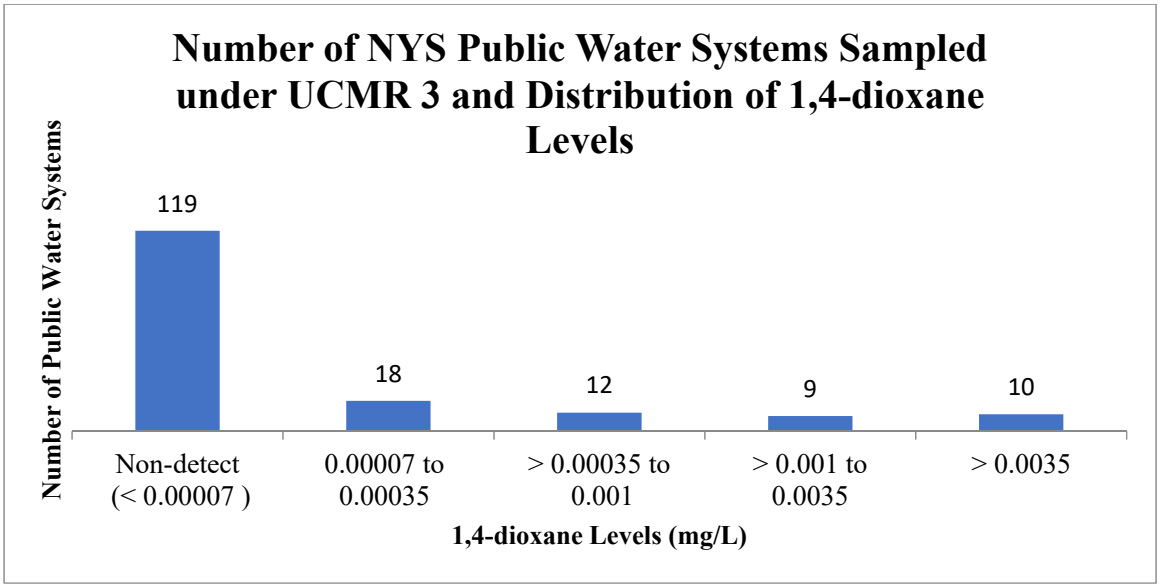
Figure 1B.



From 2013 through 2015 public water systems across NYS, under the United States Environmental Protection Agency (US EPA) Unregulated Contaminant Monitoring Rule

3 (UCMR 3), tested for 1,4-dioxane. All large public water systems (serving 10,000 persons or more) and 32 randomly selected medium and small water systems (serving less than 10,000 persons) in NYS conducted testing. Figure 2 shows that 11 percent (%) of the water systems tested had 1,4-dioxane levels above the DWQC's recommended MCL of 0.0010 mg/L.

Figure 2.



Based on the UCMR3 data, 51% of the samples from Long Island public water systems had levels of 1,4-dioxane above the reporting level of 0.00007 mg/L compared to 6% for NYS excluding Long Island.

The Department provided the DWQC with technical information on a range of health-based drinking water values for PFOA, PFOS and 1,4-dioxane after an evaluation of the available health effects information on the chemicals from toxicological studies. These values included current national and state guidelines and advisory levels, as well as

potential health based values developed by the Department. Based on their review of this information, the DWQC recommended an MCL of 0.0000100 mg/L for PFOA and PFOS as individual compounds, which is within the range of the potential health based water values presented to the DWQC by the Department (0.000006 to 0.000070 mg/L for PFOA and 0.000008 to 0.000070 mg/L for PFOS). The DWQC recommended an MCL of 0.0010 mg/L for 1,4-dioxane, which is within the range of current national and state guidelines and advisory levels presented by the Department (0.00035 to 0.2 mg/L).

In the absence of federal regulations governing PFOA, PFOS and 1,4-dioxane in drinking water, and after consideration of the recommendations provided by the DWQC, the Department is proposing to amend 10 NYCRR Part 5 to establish MCLs for these contaminants. The Department is proposing an MCL of 0.0000100 mg/L for PFOA and PFOS as individual contaminants, and 0.0010 mg/L for 1,4-dioxane. These MCLs will apply to all public water supplies regulated by the Department and provide a sufficient margin of protection against adverse health effects in the most sensitive populations, including fetuses during pregnancy, breastfed infants, and infants bottle fed with formula reconstituted using tap water. In addition, the MCLs provide a sufficient margin of protection for lifetime exposure through drinking water for the general population.

Compliance Costs

Cost to Private Regulated Parties:

There are approximately 7,200 privately owned public water systems in NYS. Of these, an estimated 2,100 systems serve residential suburban areas, manufactured housing communities and apartment buildings, residential and non-residential health care

facilities, industrial and commercial buildings, private schools and colleges, and other facilities. The remaining 5,100 privately owned public water systems serve restaurants, convenient stores, motels, campsites and other transient systems. Costs will include initial monitoring, continued routine monitoring and treatment in the event of a MCL exceedance for PFOS, PFOA and/or 1,4-dioxane.

Monitoring and treatment costs for privately-owned public water systems is dependent upon the system size, the number of affected entry points/sources and the concentration of each contaminant. The exact costs for monitoring and treatment of PFOS, PFOA and 1,4-dioxane for public water systems, including privately-owned public water systems, cannot be determined due to several variables. The cost for a single PFOA/PFOS analysis is between $200-$300 per sample. The cost of a single 1,4-dioxane analysis is between $100-$250.

It is estimated that approximately 21% of all public water systems, including privately-owned public water systems, will have levels of PFOA or PFOS above the proposed MCLs of 0.0000100 mg/L. For small systems serving less than 3,300 persons, capital and annual maintenance costs are estimated to be approximately $400,000 and $25,000, respectively. For medium systems (serving 3,300 or more persons but less than 10,000 persons), capital and annual maintenance costs are estimated to be approximately $2,400,000 and $125,000, respectively. For large systems (serving 10,000 persons or more), capital and annual maintenance costs are estimated to be approximately $15,000,000 and $725,000, respectively.

It is estimated that eighty-nine (89) public water *facilities,* (a single public water system may be comprised of multiple public water facilities), will have a detection of 1,4-dioxane above the proposed MCL of 0.0010 mg/L. The average cost of treatment for 1,4-dioxane is estimated to be $3,570,000 per system, with an estimated average annual operation and maintenance cost of approximately $150,000 per system.

Public water systems will likely make rate adjustments to accommodate these additional capital and operational costs.

Cost to State Government:

State agencies that operate public water systems will be required to comply with the proposed amendments. There are approximately 250 State-owned or operated facilities with a public water system. Examples of such facilities are State-owned schools, buildings, correctional facilities, Thruway services areas, and any other State-owned structure or property that serves an average of at least 25 individuals daily at least 60 days out of the year.

Costs will include initial monitoring for PFOA, PFOS and/or 1,4-dioxane, continued routine monitoring, and treatment in the event of a MCL exceedance. These potential costs will be the same as the costs to private regulated parties.

The proposed regulation will also impose administrative costs to the Department relating to implementation and oversight of the drinking water monitoring requirements including

review and approval of sampling schedules; review and reporting of sample results; providing technical assistance to the public water suppliers; review and approval of plans (i.e., treatment plans); and activities associated with enforcement and public notification of MCL exceedances.

Additionally, the Department and NYS Department of Environmental Conservation (NYSDEC) will incur costs associated with the investigation, remediation, and long-term monitoring associated with the release of these contaminants.

Although the proposed regulations do not apply to private wells, costs will be incurred by NYSDEC, as the lead agency for investigating, remediating, and monitoring of contaminated sites, as the MCLs will be used by the NYSDEC as guidance to determine whether a private well in NYS is contaminated by PFOA, PFOS and/or 1,4-dioxane. There are an estimated 800,000 private water supply wells in NYS. At this time, it is not possible to estimate the number of private wells that might be affected by contamination and, therefore, associated costs to NYSDEC cannot be determined.

Cost to Local Government:

The regulations will apply to local governments—including towns, villages, counties, cities, and authorities or area wide improvement districts—which own or operate a public water system subject to this regulation. There are approximately 1,500 public water systems that are owned or operated by local governments.

Costs will include initial monitoring for PFOA, PFOS and/or 1,4-dioxane, continued routine monitoring, and treatment in the event of a MCL exceedance. These potential costs will be the same as the costs to private regulated parties.

Local health departments that regulate drinking water will also incur administrative costs related to local implementation and oversight of the drinking water monitoring requirements including review and approval of sampling schedules; review and reporting of sample results; providing technical assistance to the public water suppliers; review and approval of plans (i.e., treatment plans); and activities associated with enforcement and public notification of MCL exceedances.

Local Government Mandates:

Local governments will be required to comply with this regulation as noted above.

Paperwork:

The additional monitoring, reporting, recordkeeping and paperwork needed for PFOA, PFOS and 1,4-dioxane is expected to be minimal because operators of public water supplies are currently required to keep such records for existing MCLs, and these regulations only add three additional chemicals. The reporting and recordkeeping requirements will increase if MCLs are exceeded and/or treatment is required.

Duplication:

There will be no duplication of existing State or federal regulations.

Alternatives:

One alternative is to maintain the existing MCL of 0.05 mg/L that applies to all unspecified organic chemicals when no chemical-specific MCL exists. Another alternative is to wait for the US EPA to issue a federal MCL. Based on DWQC deliberations and the additional analysis done by the Department it was determined that the current MCL of 0.05 mg/L, which is a generic standard for a broad class of organic chemicals is not protective of public health for these three specific chemicals. Waiting for the US EPA to set a new MCL was impractical due to the prevalence and concerns surrounding PFOA, PFOS and 1,4-dioxane. Therefore, the Department determined that adoption of the DWQC MCL recommendations for PFOA, PFOS and 1,4-dioxane is in the best interest of protecting the public health of NYS residents.

Federal Standards:

There is no federal MCL for PFOA, PFOS or 1,4-dioxane.

Compliance Schedule:

The MCLs will be immediately effective upon publication of a Notice of Adoption in the New York State Register. Public water systems serving 10,000 persons or more must begin monitoring within 60 days of adoption. Water systems serving 3,300 to 9,999 people must begin monitoring within 90 days of adoption and water systems serving less than 3,300 must begin monitoring within 6 months of adoption.

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REGULATORY IMPACT STATEMENT

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PFOA, PFOS and 1,4-dioxane are anthropogenic chemicals that have been manufactured or used throughout the United States. PFOA and PFOS have been used for their emulsifier and surfactant properties in fire-fighting foam, polishes, and cleaners. PFOA has also been used in fluoropolymers (e.g. Teflon), cosmetics, lubricants, paints, coatings, laminates, adhesives and photographic films. 1,4-dioxane has been used as a stabilizer for chlorinated solvents, as a laboratory reagent and as a solvent in the manufacture of other chemicals. 1,4-dioxane is also found in paint strippers, antifreeze, dyes, greases, detergents, cosmetics and other consumer products.

PFOA and PFOS are no longer manufactured in the United States, but there may be some limited ongoing uses of these chemicals. The use of 1,4-dioxane as a solvent and solvent stabilizer has decreased because of the phase out of many chlorinated solvents, but it is

still used as a chemical intermediate and laboratory solvent, and can be found in some consumer products.

From 2015 through 2018, the Department coordinated targeted sampling of 278 public water systems for PFOA and PFOS. The 278 public water systems were mainly medium (serving 3,300 to 10,000 persons) to small (serving less than 3,300 persons) community water systems and non-transient noncommunity systems typically with a groundwater source located near a potential source of PFOA and/or PFOS. The results of this testing are shown in Figures 1A and 1B.

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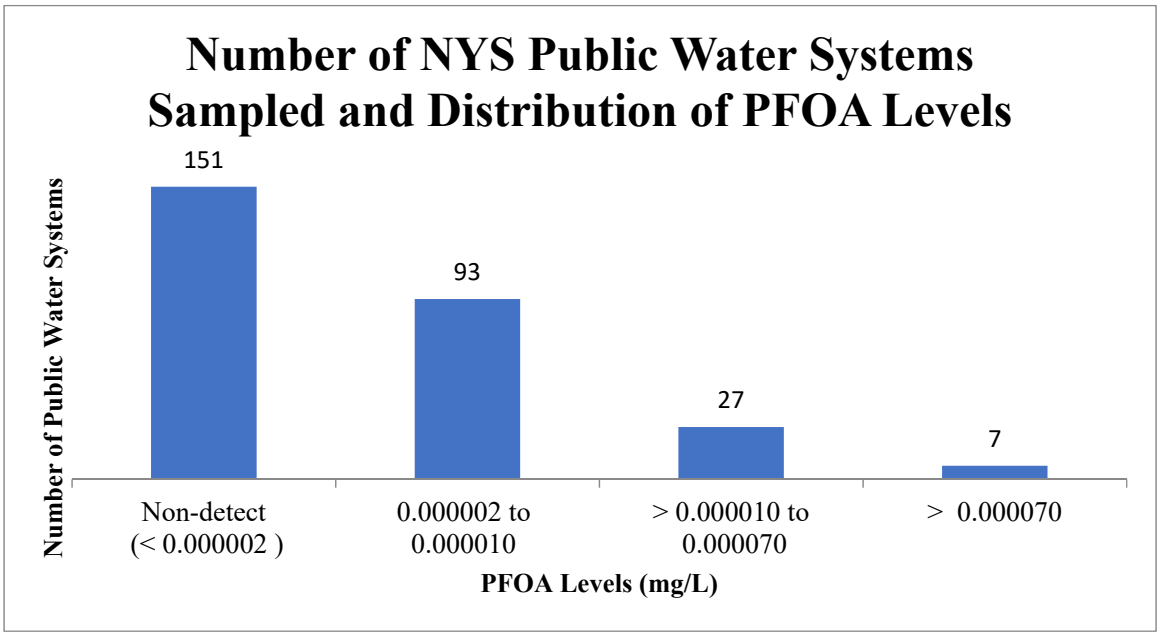
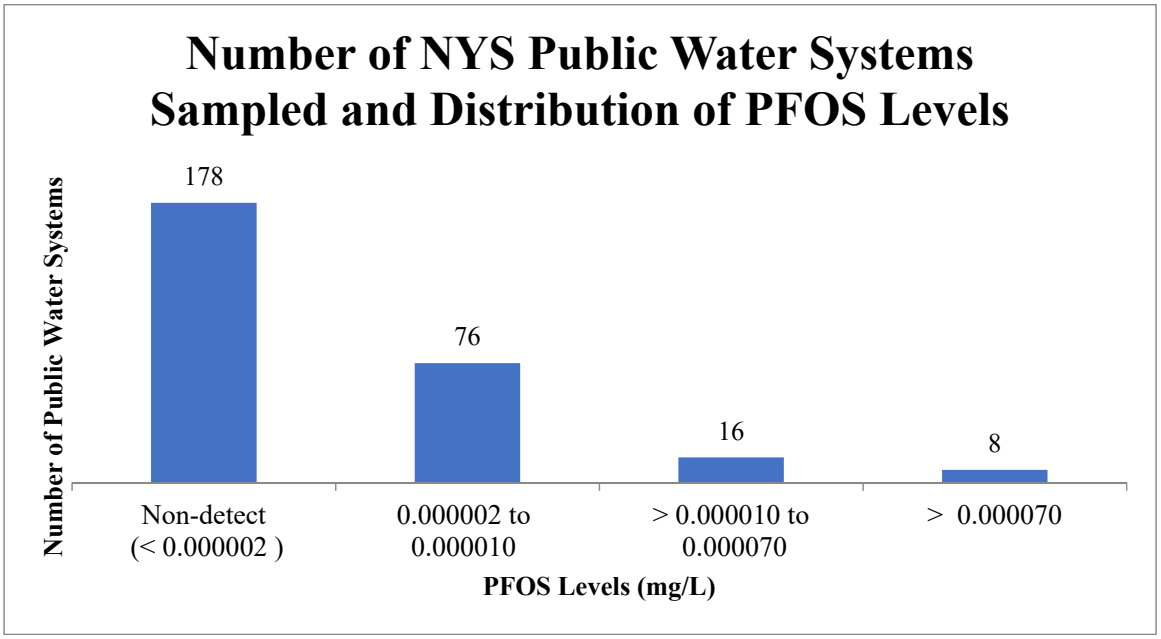
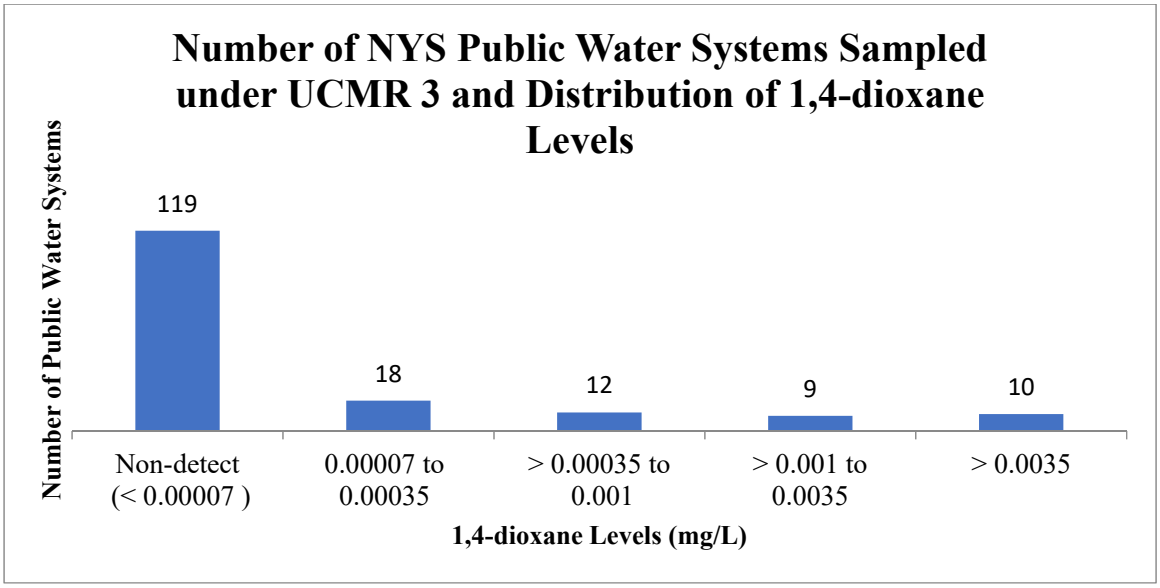


Figure 1B.



From 2013 through 2015 public water systems across NYS, under the United States Environmental Protection Agency (US EPA) Unregulated Contaminant Monitoring Rule 3 (UCMR 3), tested for 1,4-dioxane. All large public water systems (serving 10,000 persons or more) and 32 randomly selected medium and small water systems (serving less than 10,000 persons) in NYS conducted testing. Figure 2 shows that 11 percent (%) of the water systems tested had 1,4-dioxane levels above the DWQC's recommended MCL of 0.0010 mg/L.

Figure 2.



Based on the UCMR3 data, 51% of the samples from Long Island public water systems had levels of 1,4-dioxane above the reporting level of 0.00007 mg/L compared to 6% for NYS excluding Long Island.

The toxicity of PFOA has been extensively reviewed, evaluated and summarized by several authoritative bodies, including the US EPA, the Agency for Toxic Substances and Disease Registry (ATSDR), Health Canada, and the states of New Jersey and Minnesota. These evaluations indicate associations between increased PFOA exposure in humans and an increased risk for several types of health effects. These include effects on the liver, kidney, immune system, thyroid gland, cholesterol levels, uric acid levels, pre-eclampsia (a complication of pregnancy that includes high blood pressure), ulcerative colitis, development effects, and kidney and testicular cancer. Exposure to PFOA has also been shown to cause several adverse health effects in laboratory animals. PFOA caused cancer of the liver, pancreas, and testis in rats exposed for their lifetimes. Noncancer health effects caused by PFOA exposure in animals include liver toxicity, kidney toxicity,

developmental toxicity and immune system toxicity. The US EPA considers PFOA to have suggestive evidence of carcinogenic potential.

The toxicity of PFOS has also been extensively reviewed, evaluated and summarized by several authoritative bodies, including the US EPA, ATSDR, Health Canada, European Food Safety Authority, the Organization for Economic Co-operation and Development and the states of New Jersey and Minnesota. These evaluations indicate associations between increased PFOS exposure in humans and an increased risk for several health effects, including increases in total serum cholesterol, triglycerides, and uric acid, altered immune response, and effects on reproduction and development. PFOS exposure has also been shown to cause several adverse health effects in laboratory animals including liver and thyroid cancer in rats exposed for their lifetimes. Noncancer effects caused by PFOS in animals include effects on the liver, immune system, cholesterol levels, and the developing nervous system, and reduced survival in offspring born to rats. The US EPA considers PFOS to have suggestive evidence of carcinogenic potential.

The toxicity of 1,4-dioxane has been extensively reviewed, evaluated and summarized by the US EPA and ATSDR. 1,4-dioxane causes liver cancer in several species of laboratory animals (rats, mice and guinea pigs) exposed to high levels for their lifetimes. Other cancers caused by 1,4-dioxane in laboratory animals include breast cancer and cancer of the peritoneum and nasal cavity. Laboratory animals exposed to large amounts of 1,4-dioxane in drinking water for long periods of time also had noncancer health effects on the liver, kidney, nasal cavity and respiratory system. Based on sufficient evidence for

carcinogenicity in animals, the USEPA classifies 1,4-dioxane as likely to be carcinogenic to humans by all routes of exposure, and the United States Department of Health and Human Services includes 1,4-dioxane in its list of chemicals that are reasonably anticipated to be human carcinogens.

The Department provided the DWQC with technical information on a range of health-based drinking water values for PFOA, PFOS and 1,4-dioxane after an evaluation of the available health effects information on the chemicals from toxicological studies. These values included current national and state guidelines and advisory levels, as well as potential health based values developed by the Department. Based on their review of this information, the DWQC recommended an MCL of 0.0000100 mg/L for PFOA and PFOS as individual compounds, which is within the range of the potential health based water values presented to the DWQC by the Department (0.000006 to 0.000070 mg/L for PFOA and 0.000008 to 0.000070 mg/L for PFOS). The DWQC recommended an MCL of 0.0010 mg/L for 1,4-dioxane, which is within the range of current national and state guidelines and advisory levels presented by the Department (0.00035 to 0.2 mg/L).

In the absence of federal regulations governing PFOA, PFOS and 1,4-dioxane in drinking water, and after consideration of the recommendations provided by the DWQC, the Department is amending 10 NYCRR Part 5 to establish MCLs for these contaminants. The Department is proposing an MCL of 0.0000100 mg/L for PFOA and PFOS as individual contaminants, and 0.0010 mg/L for 1,4-dioxane. These MCLs will apply to all public water supplies regulated by the Department and provide a sufficient margin of

protection against adverse health effects in the most sensitive populations, including fetuses during pregnancy, breastfed infants, and infants bottle fed with formula reconstituted using tap water. In addition, the MCLs provide a sufficient margin of protection for lifetime exposure through drinking water for the general population.

These regulations will amend 10 NYCRR 5-1.52, Table 3, to list PFOA, PFOS and 1,4-dioxane and their proposed MCLs. In addition, these regulations will amend 10 NYCRR 5-1.52, Table 9C, to include these three contaminants in the current minimum monitoring requirements for additional organic chemicals. Table 9C was also amended to remove references to "Group 1" and "Group 2" chemicals as these groupings are outdated and no longer relevant. The MCLs apply to finished water. Initial monitoring for community and non-transient noncommunity public water systems will be quarterly for one year depending on system size. Monitoring at transient noncommunity public water systems will be at the Department's discretion. Previous testing conducted using an Environmental Laboratory Approval Program (ELAP) approved method and laboratory may satisfy some or all of the initial monitoring requirements at the Department's discretion, or the local health department's discretion in consultation with the Department. Specifically, sample results for PFOA and PFOS analyzed after June 1, 2016 may be used to satisfy the initial monitoring requirements for 2019-20. Sample results for 1,4-dioxane analyzed after June 14, 2017 may be used to satisfy the initial monitoring requirements for 2019-20.

Compliance Costs

Cost to Private Regulated Parties:

There are approximately 7,200 privately owned public water systems in NYS. Of these, an estimated 2,100 systems serve residential suburban areas, manufactured housing communities and apartment buildings, residential and non-residential health care facilities, industrial and commercial buildings, private schools and colleges, and other facilities. The remaining 5,100 privately owned public water systems serve restaurants, convenient stores, motels, campsites and other transient systems. Costs will include initial monitoring, continued routine monitoring and treatment in the event of a MCL exceedance for PFOS, PFOA and/or 1,4-dioxane.

Monitoring and treatment costs for privately-owned public water systems is dependent upon the system size, the number of affected entry points/sources and the concentration of each contaminant. The exact costs for monitoring and treatment of PFOS, PFOA and 1,4-dioxane for public water systems, including privately-owned public water systems, cannot be determined due to several variables. The cost for a single PFOA/PFOS analysis is between $200-$300 per sample. The cost of a single 1,4-dioxane analysis is between $100-$250.

It is estimated that approximately 21% of all public water systems, including privately-owned public water systems, will have levels of PFOA or PFOS above the MCLs of 0.0000100 mg/L. For small systems serving less than 3,300 persons, capital and annual maintenance costs are estimated to be approximately $400,000 and $25,000, respectively.

For medium systems (serving 3,300 or more persons but less than 10,000 persons), capital and annual maintenance costs are estimated to be approximately $2,400,000 and $125,000, respectively. For large systems (serving 10,000 persons or more), capital and annual maintenance costs are estimated to be approximately $15,000,000 and $725,000, respectively.

It is estimated that eighty-nine (89) public water *facilities,* (a single public water system may be comprised of multiple public water facilities), will have a detection of 1,4-dioxane above the MCL of 0.0010 mg/L. The average cost of treatment for 1,4-dioxane is estimated to be $3,570,000 per system, with an estimated average annual operation and maintenance cost of approximately $150,000 per system.

Public water systems will likely make rate adjustments to accommodate these additional capital and operational costs.

Cost to State Government:

State agencies that operate public water systems will be required to comply with the proposed amendments. There are approximately 250 State-owned or operated facilities with a public water system. Examples of such facilities are State-owned schools, buildings, correctional facilities, Thruway services areas, and any other State-owned structure or property that serves an average of at least 25 individuals daily at least 60 days out of the year.

Costs will include initial monitoring for PFOA, PFOS and/or 1,4-dioxane, continued routine monitoring, and treatment in the event of a MCL exceedance. These potential costs will be the same as the costs to private regulated parties.

The proposed regulation will also create administrative costs to the Department relating to implementation and oversight of the drinking water monitoring requirements including review and approval of sampling schedules; review and reporting of sample results; providing technical assistance to the public water suppliers; review and approval of plans (i.e., treatment plans); and activities associated with enforcement and public notification of MCL exceedances.

Additionally, the Department and NYS Department of Environmental Conservation (NYSDEC) will incur costs associated with the investigation, remediation, and long-term monitoring associated with the release of these contaminants.

Although the proposed regulations do not apply to private wells, costs will be incurred by NYSDEC, as the lead agency for investigating, remediating, and monitoring of contaminated sites, as the MCLs will be used by the NYSDEC as guidance to determine whether a private well in NYS is contaminated by PFOA, PFOS and/or 1,4-dioxane. There are an estimated 800,000 private water supply wells in NYS. At this time, it is not possible to estimate the number of private wells that might be affected by contamination and therefore costs to NYSDEC cannot be determined.

Cost to Local Government:

The regulations will apply to local governments—including towns, villages, counties, cities, and authorities or area wide improvement districts—which own or operate a public water system subject to this regulation. There are approximately 1,500 public water systems that are owned or operated by local governments.

Costs will include initial monitoring for PFOA, PFOS and/or 1,4-dioxane, continued routine monitoring, and treatment in the event of a MCL exceedance. These potential costs will be the same as the costs to private regulated parties.

Local health departments that regulate drinking water will also incur administrative costs related to local implementation and oversight of the drinking water monitoring requirements including review and approval of sampling schedules; review and reporting of sample results; providing technical assistance to the public water suppliers; review and approval of plans (i.e., treatment plans); and activities associated with enforcement and public notification of MCL exceedances.

Local Government Mandates:

Local governments will be required to comply with this regulation as noted above.

Paperwork:

The additional monitoring, reporting, recordkeeping and paperwork needed for PFOA, PFOS and 1,4-dioxane is expected to be minimal because operators of public water

supplies are currently required to keep such records for existing MCLs, and these regulations only add three additional chemicals. The reporting and recordkeeping requirements will increase if MCLs are exceeded and/or treatment is required.

Duplication:

There will be no duplication of existing State or federal regulations.

Alternatives:

One alternative is to maintain the existing MCL of 0.05 mg/L that applies to all unspecified organic chemicals when no chemical-specific MCL exists. Another alternative is to wait for the US EPA to issue a federal MCL. Based on DWQC deliberations and the additional analysis done by the Department it was determined that the current MCL of 0.05 mg/L, which is a generic standard for a broad class of organic chemicals is not protective of public health for these three specific chemicals. Waiting for the US EPA to set a new MCL was impractical due to the prevalence and concerns surrounding PFOA, PFOS and 1,4-dioxane. Therefore, the Department determined that adoption of the DWQC MCL recommendations for PFOA, PFOS and 1,4-dioxane is in the best interest of protecting the public health of NYS residents.

Federal Standards:

There is no federal MCL for PFOA, PFOS or 1,4-dioxane.

Compliance Schedule:

The MCLs will be immediately effective upon publication of a Notice of Adoption in the New York State Register. Public water systems serving 10,000 persons or more must begin monitoring within 60 days of adoption. Water systems serving 3,300 to 9,999 people must begin monitoring within 90 days of adoption and water systems serving less than 3,300 must begin monitoring within 6 months of adoption.

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REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESS AND LOCAL GOVERNMENTS

Effect on Small Business and Local Governments:

Many of the public water systems affected by the new regulations are owned or operated by either small businesses or local governments. The Department does not maintain information on the exact number of the public water systems owned by small businesses. There are approximately 1500 water systems owned by local governments.

Reporting and Recordkeeping and Other Compliance Requirements:

The obligations on small businesses and local governments are the same as for all owners or operators of public water systems. The regulations require additional monitoring, reporting, recordkeeping and public notification requirements for three additional contaminants, PFOA, PFOS and 1,4-dioxane. These requirements will increase if MCLs are exceeded and/or treatment is required.

Local health departments that regulate drinking water will also incur administrative costs related to local implementation and oversight of the drinking water monitoring requirements including review and approval of sampling schedules; review and reporting of sample results; providing technical assistance to the public water suppliers; review and approval of plans (i.e., treatment plans); and activities associated with enforcement and public notification of MCL exceedances.

Professional Services:

Public water systems impacted by the amended regulations will require the services of a laboratory to analyze samples for PFOA, PFOS and 1,4-dioxane. The laboratory must be approved by the Department under its Environmental Laboratory Approval Program (ELAP). Sufficient laboratory capability and capacity is anticipated to be available to process the initial staggered testing demands and future testing. If an MCL is exceeded, a licensed professional will be required to design changes to the public water system to meet the MCL.

Compliance Costs:

Cost to Private Regulated Parties and Local Governments:

A small business or local government will incur the same costs as other regulated parties. Costs will include initial monitoring, continued routine monitoring, and treatment in the event of a MCL exceedance for PFOS, PFOA and 1,4-dioxane.

Monitoring and treatment costs for small businesses and local government owned public water systems is dependent upon the system size, the number of affected entry points/sources and the concentration of each contaminant. The exact costs for monitoring and treatment of PFOS, PFOA and 1,4-dioxane for public water systems, including privately-owned public water systems, cannot be determined due to several variables. The cost for a single PFOA/PFOS analysis is between $200-$300 per sample. The cost of a single 1,4-dioxane analysis is between $100-$250. For small systems serving less than 3,300 persons, capital and annual maintenance costs are estimated to be approximately $400,000 and $25,000, respectively. For medium systems (serving 3,300 or more persons

but less than 10,000 persons), capital and annual maintenance costs are estimated to be approximately $2,400,000 and $125,000, respectively. For large systems (serving 10,000 persons or more), capital and annual maintenance costs are estimated to be approximately $15,000,000 and $725,000, respectively.

It is estimated that eighty-nine (89) public water *facilities,* (a single public water system may be comprised of multiple public water facilities), will detect 1,4-dioxane above the MCL of 0.0010 mg/L. The average cost of treatment for 1,4-dioxane is estimated to be $3,570,000 per system, with an estimated average annual operation and maintenance cost of approximately $150,000 per system.

Public water systems will likely make rate adjustments to accommodate these additional capital and operational costs.

Local health departments that regulate drinking water will also incur administrative costs related to local implementation and oversight of the drinking water monitoring requirements including review and approval of sampling schedules; review and reporting of sample results; providing technical assistance to the public water suppliers; review and approval of plans (i.e., treatment plans), and activities associated with enforcement, including public notification of MCL exceedances.

Economic and Technological Feasibility:

These regulations are economically and technologically feasible for small businesses and local governments. Analytical methods exist for accurate sample analysis to detect PFOA, PFOS and 1,4-dioxane. There are also technologically feasible treatment solutions for all three contaminants. Treatment may present a greater challenge to smaller systems that typically have less resources including financial and technical expertise than larger systems.

Minimizing Adverse Impact:

The Department has included several provisions that minimize the impacts on regulated parties. Previous testing conducted using an ELAP approved method and laboratory may satisfy some or all of the initial monitoring requirements at the Department's discretion, or the local health department's discretion in consultation with the Department; sampling frequency will decrease after the first year if a contaminant (or the contaminants) is/are not detected at a public water system; the start of initial sampling is proposed to be staggered, requiring large systems to test first (within 60 days of adoption) and providing more time for smaller systems such that water systems serving between 3,300 to 10,000 persons should sample within 90 days of adoption and water systems serving less than 3,300 persons must begin sampling within 6 months of adoption.

In addition, New York State offers programs to support public water systems with infrastructure investments including but not limited to treatment and development/connection to alternate sources of water. Programs include the Drinking Water State Revolving Fund which provides market rate, low to no interest loans and

grants available to many municipally and privately-owned public water systems based on need and financial hardship. In addition, the New York State Clean Water Infrastructure Act of 2017 invests $2.5 billion in clean and drinking water infrastructure projects and water quality protection across the State. It provides funding to the New York State Water Infrastructure Improvement Act of 2017 (WIIA) for grants to assist municipalities with water quality infrastructure. A separate $200 million has been provided to support grants for drinking water projects that will address emerging contaminants such as PFOA, PFOS or 1,4-dioxane.

Small Business and Local Government Participation:

Small business and local governments were not specifically consulted on this proposal, however the MCLs set forth in this proposed rule were recommendations from the Drinking Water Quality Council (DWQC) which met numerous times in a public forum and were also recorded. The recordings are publicly available on the Department's web-site. During each DWQC meeting, members of the public were allowed to comment, and comments were provided to the Department outside of the meetings. Based on the information available it is not possible to determine the number of small businesses that participated during the meetings or provided comments, but from sign in sheets at the meetings some businesses did participate in the meetings. All comments provided by the public were made available to the DWQC for their consideration.

RURAL AREA FLEXABILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

These regulations apply to rural areas of the state, where approximately 6,400 small public water systems are located, in the same manner as the rest of the state.

Reporting, Record keeping and Other Compliance Requirements

Reporting and Recordkeeping:

The obligations imposed on rural area public water systems are the same as for all owners or operators of public water systems. The regulations require additional monitoring, reporting, recordkeeping and public notification requirements for three additional contaminants, PFOA, PFOS and 1,4-dioxane. These requirements will increase if MCLs are exceeded and/or treatment is required.

Professional Services:

Like all public water systems, rural area public water systems impacted by the amended regulations will require the services of a laboratory to analyze samples for PFOA, PFOS and 1,4-dioxane. The laboratory must be approved by the Department under its Environmental Laboratory Approval Program (ELAP). Sufficient laboratory capability and capacity is anticipated to be available to process the initial staggered testing demands and future testing. If an MCL is exceeded, a licensed professional will be required to design changes to the public water system to meet the MCL.

Compliance Costs:

Rural area public water systems will incur the same costs as other regulated parties. Costs will include initial monitoring, continued routine monitoring, and treatment in the event of a MCL exceedance for PFOS, PFOA and 1,4-dioxane. There are approximately 7,200 privately-owned water systems. Of these, an estimated 2,100 systems serve residential suburban areas, manufactured housing communities and apartment buildings, residential and non-residential health care facilities, industrial and commercial buildings, private schools and colleges, and other facilities. The remaining 5,100 privately-owned systems, such as those at restaurants, motels and campsites, serve transient populations.

Monitoring and treatment costs for rural area public water systems is dependent upon the system size, the number of affected entry points/sources and the concentration of each contaminant. The exact costs for monitoring and treatment of PFOS, PFOA and 1,4-dioxane for public water systems, including rural area public water systems, cannot be determined due to several variables. The cost for a single PFOA/PFOS analysis is between $200-$300 per sample. The cost of a single 1,4-dioxane analysis is between $100-$250. For small systems serving less than 3,300 persons, capital and annual maintenance costs are estimated to be approximately $400,000 and $25,000, respectively. For medium systems (serving 3,300 or more persons but less than 10,000 persons), capital and annual maintenance costs are estimated to be approximately $2,400,000 and $125,000, respectively. For large systems (serving 10,000 persons or more), capital and annual maintenance costs are estimated to be approximately $15,000,000 and $725,000, respectively.

It is estimated that eighty-nine (89) public water *facilities*, (a single public water system may be comprised of multiple public water facilities), will have a detection of 1,4-dioxane above the MCL of 0.0010 mg/L. The average cost of treatment for 1,4-dioxane is estimated to be $3,570,000 per system, with an estimated average annual operation and maintenance cost of approximately $150,000 per system.

Economic and Technological Feasibility:

These regulations are economically and technologically feasible for rural area public water systems. Analytical methods exist for accurate sample analysis to detect PFOA, PFOS and 1,4-dioxane. There are also technologically feasible treatment solutions for all three contaminants. Treatment may present a greater challenge to smaller systems that typically have less resources including financial and technical expertise than larger systems.

Minimizing Adverse Economic Impact on Rural Areas:

The Department has included several provisions that minimize the impacts on regulated parties. Previous testing conducted using an ELAP approved method and laboratory may satisfy some or all of the initial monitoring requirements at the Department's discretion, or the local health department's discretion in consultation with the Department; sampling frequency will decrease after the first year if a contaminant (or the contaminants) is/are not detected at a public water system; the start of initial sampling is proposed to be staggered, requiring large systems to test first (within 60 days of adoption) and providing more time for smaller systems such that water systems serving between 3,300 to 10,000

persons should sample within 90 days of adoption and water systems serving less than 3,300 persons must begin sampling within 6 months of adoption.

In addition, New York State offers programs to support public water systems with infrastructure investments including but not limited to treatment and development/connection to alternate sources of water. Programs include the Drinking Water State Revolving Fund which provides market rate, low to no interest loans and grants available to many municipally and privately-owned public water systems based on need and financial hardship. In addition, the New York State Clean Water Infrastructure Act of 2017 invests $2.5 billion in clean and drinking water infrastructure projects and water quality protection across the State. It provides funding to the New York State Water Infrastructure Improvement Act of 2017 (WIIA) for grants to assist municipalities with water quality infrastructure. A separate $200 million has been provided to support grants for drinking water projects that will address emerging contaminants such as PFOA, PFOS or 1,4-dioxane.

Rural Area Participation:

Rural area stakeholders were not specifically consulted on this proposal, however the MCLs set forth in this proposed rule were recommendations from the Drinking Water Quality Council (DWQC) which met numerous times in a public forum and were also recorded. The membership of the DWQC included members from rural areas. The recordings are publicly available on the Department's web-site. During each DWQC meeting, members of the public could comment, and comments were provided to the

Department outside of the meetings. Based on the information available it is not possible to determine the exact number of rural stakeholders that participated during the meetings or provided comments, but from sign in sheets at the meetings rural communities attended DWQC meetings. All comments provided by the public were made available to the DWQC for their consideration.

JOB IMPACT STATEMENT

Nature of the Impact:

The Department expects there to be a positive impact on jobs or employment opportunities. A subset of public water system owners will likely hire firms or individuals to assist with regulatory compliance. Public water systems impacted by this amendment will require the professional services of a certified or approved laboratory to perform the analyses for PFOA, PFOS and 1,4-dioxane, which may create a need for additional laboratory capability and capacity. Additionally, a subset of owners will require the services of a licensed professional engineer to design facilities to meet the MCLs through treatment, or to access an alternate source.

Categories and Numbers Affected:

The Department anticipates no negative impact on jobs or employment opportunities as a result of the proposed regulations.

Regions of Adverse Impact:

The Department anticipates no negative impact on jobs or employment opportunities in any particular region of the state.

Minimizing Adverse Impact:

Not applicable.

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 191132-C
Canterbury Woods

Program: **Residential Health Care Facility** ***County:*** **Erie**
Purpose: **Construction** ***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:

	Year One	Year Three
Revenues	$3,289,659	$3,302,913
Expenses	5,632,483	5,646,832
Gain/(Loss)	($2,342,824)	($2,343,919)

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

Facility	*Ownership Since*	*Overall*	*Health Inspection*	*Quality Measure*	*Staffing*
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	$3,088
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	Per Diem	Total	Per Diem	Total
Revenues		(48 beds)		(50 beds)		(50 beds)
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 *		1,901,924		1,949,422		1,952,317
Total Revenues		$3,065,603		$3,289,659		$3,302,913
Expenses						
Operating	$300.89	$5,211,163	$291.66	$5,243,100	$291.66	$5,243,100
Capital	21.65	374,958	21.66	389,383	22.46	403,732
Total Expenses	$322.54	$5,586,121	$313.32	$5,632,483	$314.12	$5,646,832
Net Income (Loss)		($2,520,518)		($2,342,824)		($2,343,919)
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:

	Current Year		Year One		Year Three	
Payor	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	14,124	82%	14,453	80%	14,453	80%
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.

Attachments

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

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

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:

	Year One	Year Three
Revenues	$4,092,925,000	$4,093,135,000
Expenses	$3,871,514,000	$3,871,596,000
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):

	Current Year		Year One		Year Three	
Inpatient Revenues	Per Day	Total	Per Day	Total	Per Day	Total
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		($6,688)		($6,698)		($6,699)
Total Inpatient		$1,093,515		$1,094,730		$1,094,839
Outpatient Revenues	Per Visit	Total	Per Visit	Total	Per Visit	Total
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		($24,850)		(24,865)		($24,866)
Total Outpatient		$2,996,748		$2,998,195		$2,998,296
Total Revenue		$4,090,263		$4,092,925		$4,093,135

	Current Year		Year One		Year Three	
Inpatient Expenses	**Per Visit**	**Total**	**Per Visit**	**Total**	**Per Visit**	**Total**
Operating		$940,432		$940,728		$940,752
Capital		$37,101		$37,101		$37,101
Total		$977,533		$977,829		$977,853
Outpatient Expense	**Per Visit**	**Total**	**Per Visit**	**Total**	**Per Visit**	**Total**
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
Total Expenses						
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		$222,712		$221,411		$221,539
		.				
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.

Payor	Current, 1st and 3rd Year
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.

Payor	Current, 1st and 3rd Year
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

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 191215-C
Syracuse Surgery Center

Program: **Diagnostic and Treatment Center** ***County:*** **Onondaga**
Purpose: **Construction** ***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:

	Year One	Year Three
Revenues	$3,159,244	$3,299.086
Expenses	1,960,564	2,112,060
Gain/(Loss)	$1,198,680	$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
Total Visits		**84,232**	**99,198**

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 o 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	1,502
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:

	Current Year		Year One		Year Three	
Revenues	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	81,793	$1,238.61	$184,553	$1,226.72	$185,235
Total Revenues		$2,593,294		$3,159,244		$3,299,086
Expenses						
Operating	$220.57	$1,180,071	$248.25	$1,523,488	$266.15	$1,684,730
Capital	57.94	310,000	71.22	437,076	$67.51	$427,330
Total Expenses	$278.52	$1,490,071	$319.47	$1,960,564	$333.66	$2,112,060
Net Income		$1,103,223		$1,198,680		$1,187,026
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:

	Current Year		Year One		Year Three	
Payor:	Proc.	%	Proc.	%	Proc.	%
Medicaid FFS	3	0.06%	6	0.10%	7	0.11%
Medicaid MC	61	1.14%	108	1.76%	120	1.90%
Medicare FFS	2,562	47.88%	2,711	44.16%	2,747	43.39%
Medicare MC	827	15.46%	921	15.01%	944	14.91%
Commercial FFS	1,756	32.82%	2,163	35.25%	2,263	35.75%
Commercial MC	0	0.00%	63	1.03%	78	1.23%
Private Pay	141	2.64%	149	2.43%	151	2.39%
Charity Care	0	0.00%	16	0.26%	20	0.32%
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

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

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:

	Year One	Year Three
Revenues	$31,284,000	$33,283,000
Expenses	31,284,000	33,283,000
Gain/(Loss)	$0	$0

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 heathcare 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	601,768
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:

	Current Year		Year One		Year Three	
Revenues	Per Visit	Total	Per Visit.	Total	Per Visit.	Total
Medicare - MC[#]	$272.73	$3,000,000	$280.00	3,220,000	$277.55	3,400,000
All Other*	$249.83	27,335,000	$244.03	28,064,000	$239.06	29,883,000
Total Revenues		$30,335,000		$31,284,000		$33,283,000
Expenses						
Operating	$225.35	$27,135,000	$222.01	$28,084,000	$219.18	$30,083,000
Capital	26.58	3,200,000	$25.30	$3,200,000	$23.32	$3,200,000
Total Expenses	$251.93	$30,335,000	$247.31	$31,284,000	$242.50	$33,283,000
Net Income/(Loss)		$0		$0		$0
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:

	Current Year		Year One		Year Three	
Payor	Visits	%	Visits	%	Visits	%
Medicare – MC	11,000	9%	11,500	9%	12,250	9%
All Other	109,413	91%	115,000	91%	125,000	91%
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, retires, 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-imbursement 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.

Attachments

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

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

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:

Precision SC, LLC	
Class A Members	%
12 Individual Physicians (4.1583% each)	**49.9%**
Class B Member	
Precision SC Holdings, LLC	**9.8%**
Christopher Bishop (50%)	
Matthew Lau (50%)	
Class C Member	
St. Francis Hospital	**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:

	Year One	Year Three
Revenues	$5,858,322	$8,713,258
Expenses	$6,007,404	8,595,542
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 executed and amended operating agreement which is 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. Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: 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 [2]	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 [1]	0	0
Multi	Port Jefferson ASC (opened 2/13/18)	N/A	N/A
Multi	Progressive Surgery Center [3]	1,008	1,208
Multi	South Shore Surgery Center [3]	5,007	8,160
Multi	Suffolk Surgery Center [2]	6,107	0
	Totals	62,282	54,620

[1] *No SPARCS data was found for 2017 or 2018*
[2] *No SPARCS data was found for 2018*
[3] *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.

	Year One		Year Three	
Projections	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 (1st / 3rd 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
Individual Physician Members (Class A)	**49.9%**
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%
Doulgas M. Petraco, M.D.	4.1583%
Steven M. Puopolo, M.D., *Medical Director*	4.1583%
Michael J. Sileo, M.D.	4.1583%
Sathish J. Subbaiah, M.S., M.D.	4.1583%
Class B Member	
Precision SC Holding, LLC	**9.8%**
Christopher Bishop (50%) Matthew Lau (50%)	
Class C Member	
St. Francis Hospital*	**40.3%**

**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	56,746
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)	8,900,000
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:

	Year One		Year Three	
	Per Proc.	Total	Per Proc.	Total
Revenues				
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	726,871	$2,931.76	1,105,275
Total Revenue		$5,858,322		$8,713,258
Expenses				
Operating	$2,444.59	$4,287,813	$2,894.96	$7,005,789
Capital	980.38	1,719,591	656.92	1,589,753
Total	$3,424,97	$6,007,404	$3,551.88	$8,595,542
Net Income / (Loss)		($149,082)		$117,716
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:

Payor	Years One & Three
Commercial	51.0%
Medicare	25.8%
Medicaid	2.4%
Private Pay	3.2%
Charity Care	2.0%
All Other	15.6%
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/Al 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of August 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a single-specialty Article 28 freestanding ambulatory surgery center to be located at 28 Research Way, East Setauket and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:	FACILITY/APPLICANT:
182236 B	Precision SC, LLC d/b/a PrecisionCare Surgery Center

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 executed and amended operating agreement which is 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. Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: 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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

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:

Hauppauge SC, LLC	
Class A Members	%
9 Individual Physicians (5.765% each)	**49%**
Class B Member	
Hauppauge Holdco, LLC	**10%**
Christopher Bishop (50%)	
Matthew Lau (50%)	
Class C Member	
St. Francis Hospital	**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:

	Year One	Year Three
Revenues	$3,872,047	$7,180,066
Expenses	4,579,801	6,058,891
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/facilites/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
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 [2]	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 [1]	0	0
Multi	Port Jefferson ASC (opened 2/13/18)	N/A	N/A
Multi	Progressive Surgery Center [3]	1,008	1,208
Multi	South Shore Surgery Center [3]	5,007	8,160
Multi	Suffolk Surgery Center [2]	6,107	0
	Totals	62,282	54,620

[1] *No SPARCS data was found for 2017 or 2018*
[2] *No SPARCS data was found for 2018*
[3] *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.

	Year One		Year Three	
Projections	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 (1st / 3rd 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:

Names	**Membership**
Individual Physician Members (Class A)	**49%**
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 Frends, 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%
Class B Member	**10%**
Hauppauge SC Holdings, LLC Christopher Bishop (50%) Matthew Lau (50%)	
Class C Member	
St. Francis Hospital*	**41%**

**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	51,247
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)	7,965,272
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
Revenues				
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	1,808,313	$2,614	3,183,620
Total Revenue		$3,872,047		$7,180,066
Expenses				
Operating	$1,709.42	$2,894,041	$1,556.22	$4,497,485
Capital	995.72	1,685,761	540.28	1,561,405
Total	$2,705.14	$4,579,802	$2,096.50	$6,058,890
Net Income (Loss)		($707,755)		$1,121,176
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	42.1%
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 received 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of August 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new multi-specialty ambulatory surgery center to be located at 526 Route 111, Hauppauge and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:	FACILITY/APPLICANT:
191095 B	Hauppauge SC, LLC d/b/a The Center for Advanced Spine and Joint Surgery

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/facilites/hospitals/docs/hcs_access_forms_new_clinics.pdf.
   Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

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:

	Year One	Year Three
Revenues	$8,947,127	$8,954,947
Expenses	6,923,642	6,929,691
Net Income	$2,023,485	$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 (2015-1st 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 ofBrooklyn, 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:

	Current Year	Year One	Year Three
Revenues			
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	87,080	89,692	89,771
Total Revenues	$8,686,532	$8,947,127	$8,954,947
Expenses			
Operating	$6,006,058	$6,186,240	$6,191,645
Capital	715,924	737,402	738,046
Total Expenses	$6,721,982	$6,923,642	$6,929,691
Net Income	$1,964,550	$2,023,485	$2,025,256
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:

	Current Year		Year One		Year Three	
Payor	Proc.	%	Proc.	%	Proc.	%
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	51	.8%	53	.8%	53	.8%
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.

Attachments

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of August 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application for indefinite Life CON #112032 and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:	FACILITY/APPLICANT:
191237 B	PBGS, LLC

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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

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 19,633 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:

	Year One	Year Three
Revenues	$2,196,630	$2,855,876
Expenses	1,938,551	2,474,135
Net Income	$258,079	$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 Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: 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 are 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 (1st Year / 3rd 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	4,302
Total Project Cost	$788,470

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:

	Year One		Year Three	
Revenues	Per Visit	Total	Per Visit	Total
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	23,462	$77.69	30,532
Total Revenue		$2,196,630		$2,855,876
Expenses				
Operating	$115.26	$1,740,653	$115.94	$2,276,237
Capital	$13.10	197,898	$10.08	197,898
Total Expenses	$128.37	$1,938,551	$126.02	$2,474,135
Net Income		$258,079		$381,741
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:

	Year One		Year Three	
Payor	Visits	%	Visits	%
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	756	5%	981	5%
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 prosed 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.

Attachments

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of August 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a diagnostic and treatment center to be located at 1250 Shakespeare Avenue, Bronx, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:	FACILITY/APPLICANT:
191196 B	Shakespeare Operating, LLC d/b/a Bronx Treatment Center

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
   Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: 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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 191245-E
Planned Parenthood of New York City, Inc. t/b/k/a Planned Parenthood of Greater New York, Inc.

Program: **Diagnostic and Treatment Center** ***County:*** **New York**
Purpose: **Establishment** ***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:

	Year One	Year Three
Revenues	$111,957,209	$115,273,728
Expenses	$105,794,335	$108,198,794
Net Income	$6,162,874	$7,074,934

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
Margaret Sanger 26 Bleeker Street New York, New York 10012

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

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

	Current Year		Year One		Year Three	
Revenues	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[1]	$38.58	$235,150	$38.60	$351,605	$38.60	$365,201
Other Oper. Rev.[2]		$41,602,205		$61,255,301		$59,805,984
Non-Oper. Rev.		$2,010,253		$4,001,585		$4,001,585
Total Revenues		$68,851,579		$111,957,209		$115,273,728
Expenses						
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)[3]		$17,687,244		$6,162,874		$7,074,934
Utilization (Visits)		84,037		176,672		190,120

[1] Under/Uninsured represents sliding scale revenue per charity care policy.

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

[3] 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of August 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application for a merger of five (5) Planned Parenthood corporations: New York City, Mid Hudson Valley, Mohawk Hudson, Nassau County and Southern Finger Lakes with Planned Parenthood of New York City, Inc. with a corporate name change, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:	FACILITY/APPLICANT:
191245 E	Planned Parenthood of New York City, Inc. t/b/k/a Planned Parenthood of Greater New York, Inc.

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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

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	
Members	%
Novo Dialysis LLC	**90%**
Aditya Mattoo, M.D. (100%)	
Arye Kremer, M.D.	**10%**

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 52nd 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:

	Year One	Year Three
Revenues	$2,586,702	$7,760,106
Expenses	$3,047,216	$5,350,243
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 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)**
Kings	**900**	**402**	**1302**	**1227**	**-75**	**51**	**-126**
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 an appropriate 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 (1st Year / 3rd Year)	15.7 FTEs / 31.7 FTEs
Medical Director(s)	Saggi Subod, 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
Novo Dialysis, LLC	**90.0%**
Aditya Mattoo, MD (100%), *manager*	
Arye Kremer, MD, *manager*	**10.0%**

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	15,803
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	2,245,773
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:

	Year One		Year Three	
Revenues	Per Treat.	Total	Per Treat.	Total
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
Expenses				
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:

Payor	Year One	Year Three
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.

Attachments

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of August 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new 27-station chronic renal dialysis center and home training program to be located at 2306 Nostrand Avenue, Brooklyn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:	FACILITY/APPLICANT:
182296 B	Novo Dialysis Flatlands, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed 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
   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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

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:

	Year One	Year Three
Revenues	$1,729,807	$3,459,613
Expenses	$1,762,109	$2,889,417
Net Income/Loss	($32,302)	$570,196

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 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)**
Kings	**900**	**402**	**1302**	**1227**	**-75**	**51**	**-126**
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 sunder 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 (1st Year / 3rd 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:

Name	Title
Joan Millman	*Director*
Thomas Spath	*Director*
Peter Yatrakis	*Director*

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	12,175
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
Revenues				
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

	Year One		Year Three	
	Per Visit	Total	Per Visits	Total
Expenses				
Operating	$238.69	$1,340,473	$219.69	2,467,781
Capital	$75.08	421,636	$37.54	421,636
Total Expenses	$313.77	$1,762,109	$257.23	$2,889,417
Net Income/(Loss)		($32,302)		$570,196
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:

	Year One		Year Three	
Payor	Visits	%	Visits	%
Commercial	1,685	30%	3,370	30%
Medicare	3,650	65%	7,301	65%
Medicaid	281	5%	562	5%
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.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of August 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new 12-station renal dialysis center to be located at 380 Henry Street, Brooklyn within the Cobble Hill Nursing Home, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:	FACILITY/APPLICANT:
191077 B	Cobble Hill Dialysis

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
   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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. | Department of Health

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.

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 serval 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

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, 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.

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

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

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

March 29, 2019

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

Re: Certificate of Dissolution of 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, 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.

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:

Name:	Office	Address
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 19th day of June, 2019.

Lynn Berger

Name: Lynn Berger
Title: Vice President and Secretary

CERTIFICATE OF DISSOLUTION

OF

FEGS 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

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.	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:

Name	Title	Address
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 21st day of September, 2016, by

Name: Lynn Berger
Title: Vice President, Secretary and Director

VERIFICATION

STATE OF NEW YORK)
:SS.:
COUNTY OF NEW YORK)

Lynn Berger, being duly sworn, deposes and says:

I am the Vice President, Secretary and Director of Jewish Care Services of Long Island, Inc., the corporation named in the above Petition and make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.

Lynn Berger
(Signature)

Sworn to before me this
21st day of September, 2016

Notary Public

BURTON S. WESTON
Notary Public, State of New York
No. 02WE4941755
Qualified in Nassau County
Commission Expires Aug. 29, 20 18

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)-(q) 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:

NAME	ADDRESS
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

80 Pine Street, New York, New York 10005.

FIFTH: 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

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 _____
~~Assistant~~ Attorney General
Associate

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

RICHARD P. ACKERMAN, being duly sworn, deposes and says that he is an attorney and counsellor at law and a member of the firm of Guggenheimer & Untermyer, attorneys for the subscriber of the annexed Certificate of Incorporation, and that no previous application for the approval of said Certificate of Incorporation by any Justice of the Supreme Court has ever been made.

Richard P. Ackerman

Subscribed and sworn to
before me this 25th day
of February, 1977.

Notary Public

JOHN W. GIBLIN, JR.
Notary Public, State of New York
No. 52-6507445
Qualified in Suffolk County
Certificate Filed in New York County
Commission Expires March 30, 1978

I, MARTIN RODELL, a Justice of the Supreme Court of the State of New York, ELEVENTH Judicial District, do hereby approve the annexed Certificate of Incorporation.

Dated: MARCH 9, 1977
JAMAICA, N.Y.

Justice of the Supreme Court of
the State of New York,
2ND Judicial Department

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

JUN 6 1977

FILING RECEIPT
CERTIFICATE OF INCORPORATION

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

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

LOCATION OF PRIN. OFFICE	FILM NO.
41 Queens	A 386183-7

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

6 DOLLAR FEE TO COUNTY

FEES AND/OR TAX PAID AS FOLLOWS:

[xx] CHK. [ ] M.O. [ ] CASH $ 50

$ 50 FILING
$ TAX
$ CERTIFIED COPY
$ CERTIFICATE

TOTAL $ 50
REFUND OF $ TO FOLLOW

MARIO M. CUOMO
SECRETARY OF STATE

R-662-518M

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 21st 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 21st 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 21st 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.

Lynn Berger

(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 21st 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 21st 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., 20th 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, 20th 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.

* * * *

In the Matter of the Application of Jewish Care Services of Long Island, Inc. Approval of Plan of Dissolution and Distribution of Assets pursuant to Section 1002 of the Not-for-Profit Corporation Law.	:	ATTORNEY GENERAL'S APPROVAL OF PLAN OF DISSOLUTION AND DISTRIBUTION OF ASSETS AG# _____

1. By Petition verified on _____, 2016, Jewish Care Services of Long Island, Inc., applied to the Attorney General pursuant to section 1002 of the Not-for-Profit Corporation Law for approval of a Plan of Dissolution and Distribution of Assets.

2. Based on a review of the Petition and its attachments, and the verification of Lynn Berger, of Jewish Care Services of Long Island, Inc., the Attorney General has determined that the corporation has complied with the provisions of Section 1002 of the Not-for-Profit Corporation Law applicable to the dissolution of not-for-profit corporations with assets.

3. The Plan of Dissolution and Distribution of Assets, the Plan is approved.

Eric T. Schneiderman
Attorney General of the State of New York

By:_____
Assistant Attorney General

Dated: _____

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:

Name:	Office	Address
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

FEGS 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 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)-(q) 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:

NAME	ADDRESS
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

80 Pine Street, New York, New York 10005.

FIFTH: 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

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 ~~Assistant~~ Attorney General
Bodian

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

In the Matter of the Application of Jewish Care Services of Long Island, Inc. Approval of Plan of Dissolution and Distribution of Assets pursuant to Section 1002 of the Not-for-Profit Corporation Law.	:	ATTORNEY GENERAL'S APPROVAL OF PLAN OF DISSOLUTION AND DISTRIBUTION OF ASSETS AG# DAG-AL-2018-47

1. By Petition verified on Sept. 21, 2016, Jewish Care Services of Long Island, Inc., applied to the Attorney General pursuant to section 1002 of the Not-for-Profit Corporation Law for approval of a Plan of Dissolution and Distribution of Assets.

2. Based on a review of the Petition and its attachments, and the verification of Lynn Berger, of Jewish Care Services of Long Island, Inc., the Attorney General has determined that the corporation has complied with the provisions of Section 1002 of the Not-for-Profit Corporation Law applicable to the dissolution of not-for-profit corporations with assets.

3. The Plan of Dissolution and Distribution of Assets, the Plan is approved.

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

By: _____
Assistant Attorney General

Dated: 10/15/18

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of August 2019, approves the filing of the Certificate of Dissolution of Jewish Care Services of Long Island, Inc., dated June 19, 2019.

NEW YORK STATE OF OPPORTUNITY. | Department of Health

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 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of August 2019 approves the filing of the Certificate of Amendment of Certificate of Incorporation of The Eastern Long Island Hospital Association, dated as attached.

NEW YORK STATE OF OPPORTUNITY. | Department of Health

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

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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 Secrest & 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 Secrest & 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 15th 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 Haizlip

Susan Hustleby

Kathy Lewis

Kevin Loughran

Pat Malin

George Scharr

James Waters

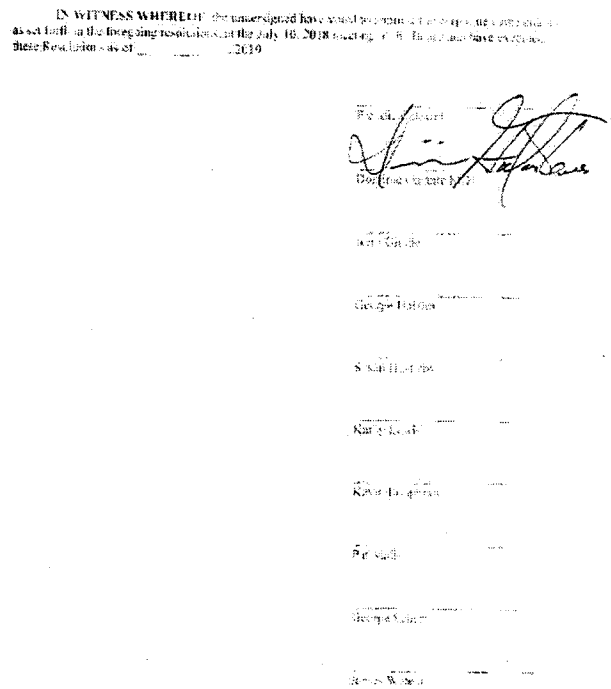
Maria Colon

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



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 Matin

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.

Daniel E. Shapiro
First Deputy Secretary of State

Rev. 06/07

B478321

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

COUNSEL AND DEPUTY COMMISSIONER FOR LEGAL AFFAIRS

DC

January 22, 1987

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

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.

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;

(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:

Name	Address
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

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

Thomas P. Young, Sole Incorporator
1800 Lincoln First Tower
Rochester, New York 14604

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

Arthur B Cannon
Justice of the Supreme Court

OK DFL 3/23/87

7

STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY 12224

ROBERT ABRAMS
ATTORNEY GENERAL

Telephone: (518) 474-7206

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

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
Acting Executive Secretary

Attachment

1 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.

* * * * * * * * * * *

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LAW OFFICES
GOLDSTEIN GOLDMAN KESSLER & UNDERBERG
1200 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.

Daniel E. Shapiro
First Deputy Secretary of State

Rev. 06/07

F99111700020

AIDF-24

CERTIFICATE OF CHANGE OF

AIDF-24

ROCHESTER PRIMARY CARE NETWORK, INC.

Under Section 803-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 November 1999
Date

Arthur Collier, President

F99111700062O

AIDF-24

CERTIFICATE OF

CHANGE

OF

ROCHESTER PRIMARY CARE NETWORK, INC.

STATE OF NEW YORK
DEPARTMENT OF STATE
NOV 17 1999
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TAX $ 0
BY: JAA
Monroe

Filed by:

Khristine E. Peacock
Accelerated Information & Document Filing, Inc.
90 State Street, Suite 836
Albany, New York 12207

CUSTOMER REFERENCE #: 4032

AIDF-24

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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.

Daniel E. Shapiro
First Deputy Secretary of State

Rev. 06/07

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:

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 25 day of January, 2010 and hereby affirm the truth of the statements contained herein under penalties of perjury.

THE RUSHVILLE HEALTH CENTER, INC.

By: Eileen Gage
Name: Eileen Gage
Title: Chairperson

ROCHESTER PRIMARY CARE NETWORK, INC.

By: Charmaine Bennett
Name: Charmaine Bennett
Title: Chairperson

STATE OF THE
IS C
MATTER TO
ASSISTANT
APPROVAL
RECEIPT OF
EMANDS SERVICE
AND NO OBJECTION
MISSION OF THE
30 DAYS HEREAFTER.
4/13/2010
DATE

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 19th 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

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 Frazee

THE ATTORNEY GENERAL HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE AND DEMANDS SERVICE OF THE FILED CERTIFICATE. SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 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

100430000085

CERTIFICATE OF MERGER

OF

ROCHESTER PRIMARY CARE NETWORK, INC.

AND

THE RUSHVILLE HEALTH CENTER, INC.

INTO

ROCHESTER PRIMARY CARE NETWORK, INC.

Under Section 904 of the Not-for-Profit Corporation Law

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STATE OF NEW YORK
DEPARTMENT OF STATE
FILED APR 30 2010
TAX $ tmb
BY: Monroe

LCS
DRAWDOWN - #AL

Harter Secrest & Emery LLP
1600 Bausch & Lomb Place
Rochester, New York 14604-2711

Customer Ref.# 30804

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AFFIDAVIT FOR APPROVAL BY ATTORNEY GENERAL

In the Matter of the Application of ROCHESTER PRIMARY CARE NETWORK, INC. 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	AFFIDAVIT

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of August 2019 approves the filing of the Certificate of Amendment of Certificate of Incorporation of Rochester Primary Care Network, Inc., dated February 15, 2019.

NEW YORK STATE OF OPPORTUNITY. Department of Health

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.

Patti Matheney Schrom

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-GREEENE 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.

Patti Matheney
Chairperson

April 13, 2019
Date

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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

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APPROVAL and CONSENT

I, JOHN G. COUMER, 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 3rd (Hyde), N.Y.

June , 1999

John G. Coumer
JOHN G. COUMER
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,

Donna Peterson

Karen S. Westervelt for
Executive Secretary

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RESOLUTION

RESOLVED, that the Public Health Council, on this 21st 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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CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

COLUMBIA-GREENE COMMUNITY HOSPITAL FOUNDATION

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STATE OF NEW YORK
DEPARTMENT OF STATE
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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."

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 20th day of January, 2015 by the undersigned who affirms that the statements made herein are true under the penalties of perjury.

Patti Matheney

Name: Patti Matheney
Title: Chairman of the Board of the
Columbia-Greene Hospital Foundation

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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)

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STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JAN 27 2015
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BY:

Filer:

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

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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

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

James Kingsbury
P.O. Box 213
Richmond Road
North Chatham, NY 13132

Richard Koskey
502 Union Street
Hudson, NY 12534

Carmi Rapport
19 Riverview Boulevard
Hudson, NY 12534

Ramon J. Rodriguez
71 Prospect Avenue
Hudson, NY 12534

Bernard Stickles
Star Route Box 85
Hudson, NY 12534

Craig Thorn III
R.D. #2
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 22, 1992, by the undersigned, who affirms that the statements made herein are true under the penalties of perjury.

Carol A. Hyde

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

Page 6

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

February 1, 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.

9304090001?2

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

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED APR 09 1993
TAX $
BY:

9

S30409000178

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of August 2019 approves the filing of the Certificate of Amendment of Certificate of Incorporation of Columbia-Greene Hospital Foundation, dated April 13, 2019.

NEW YORK STATE OF OPPORTUNITY. Department of Health

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 office 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 30th day of April 2019.

Gary Rowe

Gary Rowe, President

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

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

Colleen M. Leonard
Executive Secretary

cc: DLA

/cl

Carthage Area Hospital

The Place for Personal Care

April 5th, 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

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

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.

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)
CofI - 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. Balmat	Carthage, N.Y.,
2. Orman H. Brauman	Carthage, N.Y.,
3. Fred W. Coburn	Carthage, N.Y.,
4. A. Dion Carter	Carthage, N.Y.,
5. Reuben Chaufty	Carthage, N.Y.,

NAMES	PLACES OF RESIDENCE
7. Helen S. Francis	Carthage, N.Y.,
8. Jennie C. Galvin	Carthage, N.Y.,
9. Edward H. Haller	Carthage, N.Y.,
10. Louisa G. Johnson	Carthage, N.Y.,
11. Jennie J. Johnson	Carthage, N.Y.,
12. Carl W. Lauber	Carthage, N.Y.,
13. Charles E. Morris	Carthage, N.Y.,
14. Eva S. Patterson	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. Survay	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 occuring 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. [signature] 2. [signature]

3. [signature] 4. [signature]

5. [signature] 6. [signature]

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 C. 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)
) 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. Bion Carter, Lucien C. 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.

Wm. H. 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 Carter	Carthage, N.Y.
5. Reuben Chaufty	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 occuring 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. FRED W. COBURN (F.W. COBURN)	2. LUCIEN G. JOHNSON (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. 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.

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 1924. Charles B. Adams,

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 compared the foregoing copy of Certificate of Incorporation of CARTHAGE HOSPITAL

hereunto 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 W Moore CLERK.

By David L Sheldon DEPUTY CLERK.

VII.

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 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.*

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 §150 of the Membership Corporations Law, do hereby certify as follows:

FIRST. The name of the proposed corporation is:

CARTHAGE HOSPITAL

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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 Chaufty	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. 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 occuring 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. Fred McFogen
F. J. Quinn

2. Lucien G. Johnson
L. G. Johnson

3. Edwin A. Simonds

4. Edward Villars

5. A. Reed Coates

6. Willard B. Van Allen

3

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.

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. 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.

William S. Ward

Sworn to before me this 18th day of August, 1921.

Vera B. 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. Adams,

Justice, Supreme Court.

187

CERTIFICATE OF INCORPORATION

OF

CARTHAGE HOSPITAL

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED NOV 5 - 1921

[illegible]
SECRETARY OF STATE

R. B. Van Allen
Carthage N.Y.

(2)

Cert. of Report of Existence 5/26/1952

CERTIFICATE OF REPORT OF EXISTENCE OF

CARTHAGE HOSPITAL

Exact Name of Corporation

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 members 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) (~~she~~) thereupon acknowledged to me that (he) (~~she~~) 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. 267
Commission Expires March 30, 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. Curran

Secretary of State

SMITH & MORAN

Name of Filer

Attorneys at Law,
Office & P. O. Address,
Carthage, New York

11-34-50-100,000 (D-339)

(3)

Cert. of Change
8/31/1962

CERTIFICATE OF CHANGE

Certificate of Change of Number of Directors pursuant to Section 30 of the Membership Corporations Law.

We, CHARLES S. HIRSCHEY 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 24th day of August, 1962.

President

Secretary

STATE OF NEW YORK)
: ss:
COUNTY OF JEFFERSON)

On this 24th day of August, 1962, before me, personally came CHARLES S. HIRSCHEY 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.

MILLEN F. MORAN
Notary Public in the State of New York
Residing in Jefferson County
My Commission Expires March 30, 19__

STATE OF NEW YORK)
: ss:
COUNTY OF JEFFERSON)

CHARLES S. HIRSCHEY and ROBERT C. RICH, being duly sworn, depose and say and each for himself deposes and says that he, CHARLES S. HIRSCHEY, is President and he, ROBERT C. RICH, is Secretary of CARTHAGE HOSPITAL; that they have been duly author

LAW OFFICE OF
MILLEN 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 corporation present at an adjourned annual meeting held on the 24th day of July, 1962, upon notice pursuant to Section 43 of the Membership Corporations Law, held at the Carthage Elementary School, Carthage, New York, at 7:30 o'clock P. M.

Subscribed and sworn to before me
this 2nd day of August, 1962.

Notary Public in the State of New York
Residing in Jefferson County
My Commission Expires March 30, 1963

STATE OF NEW YORK
DEPARTMENT OF STATE
A TRUE COPY OF THE ORIGINAL
FILED IN THIS OFFICE ON

AUG 3 1962

WITNESS MY HAND AND OFFICIAL
SEAL OF THE DEPARTMENT OF
STATE ON THE DATE AFOREMENTIONED.

SECRETARY OF STATE

BY

DEPUTY SECRETARY OF STATE

LAW OFFICE OF
MILLER F. MORAN
CARTHAGE, N. Y.

CERTIFICATE OF CHANGE

Certificate of Change of Number of Directors pursuant to Section 30 of the Membership Corporations Law.

We, CHARLES S. HIRSCHEY 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 28th day of August, 1962.

Charles S. Hirschey
President

Robert C. Rich
Secretary

STATE OF NEW YORK)
:ss:
COUNTY OF JEFFERSON)

On this 28th day of August, 1962, before me, personally came CHARLES S. HIRSCHEY 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

MILLER 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. HIRSCHEY and ROBERT C. RICH, being duly sworn, depose and say and each for himself deposes and says that he, CHARLES S. HIRSCHEY, 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 corporation present at an adjourned annual meeting held on the 24th day of July, 1962, upon notice pursuant to Section 43 of the Membership Corporations Law, held at the Carthage Elementary School, Carthage, New York, at 7:30 o'clock P. M.

Charles S. Lusiks

Robert C. Rick

Subscribed and sworn to before me
this 28th 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

LAW OFFICE OF
MILLER F. MORAN
CARTHAGE, N. Y.

2

Mort 11/5/21 200 9137

Century Telephone Co of P L

CERTIFICATE OF CHANGE OF NUMBER OF DIRECTORS

311543

CARTHAGE HOSPITAL

Dated, August 28th 1962

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED AUG 31 1962
TAX $ None
FILING FEE $ 30 —

Caroline K. Simon
Secretary of State
By [illegible]

LAW OFFICE OF
MILLER F. MORAN
CARTHAGE, NEW YORK

M

(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. HIRSCHEY 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.

313252

Charles S. Hirschey
President

Robert C. Rich
Secretary

STATE OF NEW YORK)
:ss:
COUNTY OF JEFFERSON)

On this 29th day of August, 1962, before me, personally came CHARLES S. HIRSCHEY 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. HIRSCHEY and ROBERT C. RICH, being duly sworn, depose and say and each for himself deposes and says that he, CHARLES S. HIRSCHEY, 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

LAW OFFICE OF
MILLER F. MORAN
CARTHAGE, N. Y.

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 L. Kenichly

Robert C. Rich

Subscribed and sworn to before me
this 28th 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

LAW OFFICE OF
MILLER F. MORAN
CARTHAGE, N. Y.

CERTIFICATE OF CHANGE
OF NAME

313258

CARTHAGE HOSPITAL

Dated, August 28th 1962

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED SEP 14 1962
TAX $ NONE
FILING FEE $ 30

Caroline K. Simon
Secretary of State

LAW OFFICE OF
MILLER J. MORAN
CARTHAGE, NEW YORK

(5)
Change of Name
#20

#45350

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. HIRSCHEY 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. Hirschey
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. HIRSCHEY 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.

William S. Moses
WILLIAM S. MOSES
Notary Public in the State of New York
Residing in Jefferson County
My Commission expires March 30, 1968

LAW OFFICE OF
MORAN & GILBERT
CARTHAGE, N.Y.

STATE OF NEW YORK)
:ss:
COUNTY OF JEFFERSON.)

CHARLES S. HIRSCHEY and BENEDICT L. HANSEK, being duly sworn, depose and say and each for himself deposes and says that he, CHARLES S. HIRSCHEY, 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 Hirschey

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

LAW OFFICE OF
HAN & GILBERT
ARTHAGE, N. Y.

OCT 25 1967

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

112 STATE STREET • ALBANY

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,

ARNE E. HEGGEN
Attorney-In-Charge
Bureau of Charitable and
Proprietary Organization
Office of Counsel

3

Carthage Hospital
11/5/21
Carthage
2000-137

Jefferson Co

CERTIFICATE OF CHANGE OF NAME

645350 - 4

CARTHAGE AREA HOSPITAL ASSOCIATION and 9/14/62

TO

CARTHAGE AREA HOSPITAL, INC.

Name changed on 8/10/17 Certificate filed in 1018

Dated, October 13 1967

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED OCT 25 1967
TAX $ none
FILING FEE $ 30

John P. Lomenzo
Secretary of State
By 1113

23 Jefferson

LAW OFFICE OF
MORAN & GILBERT
CARTHAGE, NEW YORK
307 State Street

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. HIRSCHEY 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. Hirschey
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. HIRSCHEY 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.

William S. Moses
WILLIAM S. MOSES
Notary Public in the State of New York
Residing in Jefferson County
My Commission expires March 30, 1969

LAW OFFICES OF
MORAN & GILBERT
CARTHAGE, N.Y.

STATE OF NEW YORK)
:ss:
COUNTY OF JEFFERSON)

CHARLES S. HIRSCHEY and BENEDICT L. HANSEK, being duly sworn, depose and say and each for himself deposes and says that he, CHARLES S. HIRSCHEY, 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. Hirschey

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

LAW OFFICE OF
MORAN & GILBERT
CARTHAGE, N.Y.

(6)
Cert. of Type
12/26/1973

112140

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

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 Certifcate of Type and they thereupon severally duly acknowledged to me that they executed the same.

Miller F. Moran

MILLER F. MORAN
Notary Public in the State of New York
Residing in Jefferson County
My commission Expires March 30, 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.

Delor Ellis

Warren C. Talbot

Subscribed and sworn to before me
this 17th day of December, 1973.

Miller F. Moran

MILLER F. MORAN
Notary Public in the State of New York
Residing in Jefferson County
My commission Expires 3-30-75

2

Carthage Hospital
11/3/67
Jefferson Co
2009 137
A123470

CERTIFICATE OF TYPE

NOT-FOR-PROFIT CORPORATION

of

CARTHAGE AREA HOSPITAL, INC.

Dated, December 17, 1973

LAW OFFICE OF
MILLER F. MORAN
CARTHAGE, NEW YORK 13619
307 State Street

3

B

Cert. 10/25/67

B9

STATE OF NEW YORK
DEPARTMENT OF STATE
TAX $ None
FILING FEE $ 10
FILED DEC 26 1973
John P. Lomenzo,
Secretary of State
By

23 Jefferson
Type B

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

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 Certifcate of Type and they thereupon severally duly acknowledged to me that they executed the same.

SHARON F. MORAN
Notary Public in the State of New York
Residing in Jefferson County
My commission Expires March 30, 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.

Delor Ellis

Warren C. Talbot

Subscribed and sworn to before me
this 17th day of December, 1973.

SHARON F. MORAN
Notary Public in the State of New York
Residing in Jefferson County
My commission Expires March 30, 1975

Carthage
Op certs

Carthage
Area Hospital

The Place for Personal Care

April 5th, 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

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

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

State of New York
Department of Health
Office of Primary Care and Health Systems Management

Certified Beds - Total	35
Coronary Care	4
Maternity	8
Medical / Surgical	10
Pediatric	3
Physical Medicine and Rehabilitation	10

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	Swing 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

Kristi W Simmons

20180522 Deputy Director Office of Primary Care and Health Systems Management

This certificate must be conspicuously displayed on the premises.

Howard Zucker M.D.

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 30th day of April, 2019.

Secretary of the Board

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of August 2018, approves the filing of the Restated Certificate of Incorporation of Carthage Area Hospital, Inc., dated April 30, 2019.

NEW YORK STATE OF OPPORTUNITY. | Department of Health

MEMORANDUM

To: Public Health and Planning Council (PHHPC)

From: Richard J. Zahnleuter
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 16th 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 16th 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-Obrien, 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

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.

Very truly yours,

Pamela Tindall-OBrien

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 29th 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 16th 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.

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* 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

July 10, 2019

LISA B. LUBARSKY

(Print or Type Signer's Name)

9812070005555

CSC 45

CERTIFICATE OF INCORPORATION

OF

ICL HEALTHCARE CHOICES, INC.

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

* * *

The undersigned, acting as the sole incorporator, for the purpose of forming a corporation pursuant to Section 402 of the Not-For-Profit Corporation Law of the State of New York (the "NPCL"), hereby certifies as follows:

1. The name of the corporation is ICL HealthCare Choices, Inc. (the "Corporation").

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:

(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;

3 2

(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 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

(iv) conducting any and all lawful activities which may be necessary, useful or desirable for the furtherance, accomplishment or attainment of the foregoing purposes.

(c) In furtherance of the foregoing purposes set forth in this Paragraph 3, the Corporation shall have all of the general powers enumerated in Section 202 of the NPCL 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 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 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 H. Uzal, M.S.W.	84 Rutland Road Brooklyn, New York 11225
J. David Sony, Esq.	249 West 28th Street New York, New York 10001
Peter C. Companelli, 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 shall mail a copy of any process against the Corporation served upon the Secretary is: ICL HealthCare Choices, Inc., c/o Institute For Community Living, Inc., 40 Rector Street, New York, New York 10006, Attention: Peter C. Companelli, Psy.D.

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 public 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 proper payment of expenses and the satisfaction of all liabilities shall be distributed in accordance with the applicable provisions of the EPCL 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.

IN WITNESS WHEREOF, the undersigned has signed this Certificate this 24th day of November, 1998 and hereby affirms, under the penalties of perjury, that the statements contained therein have been examined by me and are true and correct.

Alan M. Dershowitz, Esq.
Sole Incorporator
Lowenfeld Lesh Gruenke & Dershowitz, L.L.P.
120 West 45th Street
New York, New York 10019

F98120700056

CSC 45

CERTIFICATE OF INCORPORATION

OF

ICE MILLENNIUM OPERATIONS, INC.

Under Section 402 of the Not-For-Profit Corporation Law of the State of New York

1cc

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED DEC 07 1998
TAX $ 5
BY: CSC
New York

Zeldes, Haub, Spears & Hanlon, L.L.P.
155 East 55th Street
New York, New York 10022
(212) 486-0900

04646.RBN

98120700057

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State of New York
Department of State }ss:

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 seal of the Department of State on DEC 08 1998

Special Deputy Secretary of State

DOS-1266 (3/97)

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE [redacted] ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: ICL HEALTHCARE CHOICES, INC.

DOCUMENT TYPE: DOMESTIC (NOT-FOR-PROFIT) CORPORATION TYPE: B COUNTY: NEW

SERVICE COMPANY: CSC NETWORKS/PRENTICE HALL SERVICE CODE: 45

FILED:12/07/1998 DURATION:PERPETUAL CASH#:981207000876 FILM #:981207000855

ADDRESS FOR PROCESS		EXIST DATE
THE CORPORATION	C/O INSTITUTE FOR COMMUNITY LIVING	12/07/1998
INC,ATT:PETER C CAMPANELLI	PSY,D., 60 RECTOR ST.	
NEW YORK, NY 10006		

REGISTERED AGENT

FILER				
	FEES	110.00	PAYMENTS	110.00
	FILING :	75.00	CASH :	0.00
LEBOEUF, LAMB, GREENE & MACRAE, L.L	TAX :	0.00	CHECK :	0.00
125 WEST 55TH STREET	CERT :	0.00	BILLED:	110.00
	COPIES :	10.00		
NEW YORK, NY 10019	HANDLING:	25.00		
			REFUND:	0.00

044548RES DOS-1025 (11/89)

4/1/93

S. T. . DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE [redacted] ALBANY, NY 12231-0001

FILING RECEIPT F98112010005ES

ENTITY NAME: ICC HEALTHCARE CHOICES, INC.

DOCUMENT TYPE: NAME RESERVATION (NRN) (DOM. NFP)

SERVICE COMPANY: ** NO SERVICE COMPANY ** SERVICE CODE: 00

APPLICANT NAME : ALAN H. SOMMERKLAR, ESQ

FILED:11/20/1998 DURATION:01/20/1999 CASH#:981120000080 FILM #:981120000078

ADDRESS FOR PROCESS

REGISTERED AGENT

** SUBMIT RECEIPT WHEN FILING CERTIFICATE **

FILER	FEES		PAYMENTS	
	FILING	10.00	CASH	0.00
ALAN H. SOMMERKLAR, ESQ.	TAX	0.00	CHECK	10.00
LEBOEUF, LAMB, GREENE & MACRAE, L.L	CERT	0.00	BILLED	0.00
125 WEST 55TH STREET	COPIES	0.00		
NEW YORK, NY 10019	HANDLING	0.00		
			REFUND	0.00

DOS-1025 (11/89)

HCC HealthCare Choices

Community Health Center

RESOLUTION OF THE BOARD OF DIRECTORS OF

ICL HEALTHCARE CHOICES

AT A MEETING OF THE BOARD ON NOVEMBER 21, 2017

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

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME : ICL HEALTHCARE CHOICES, INC.

DOCUMENT TYPE : ASSUMED NAME CERTIFICATE

FILER:

ICL HEALTHCARE CHOICES, INC.
6209 16TH AVENUE

BROOKLYN NY 11204

FILED: 01/29/2018
CASH#: 416677
FILM#: 20180129024

PRINCIPAL LOCATION

6209 16TH AVENUE

BROOKLYN
NY 11204

COMMENT:

ASSUMED NAME

HEALTHCARE CHOICES

SERVICE COMPANY : +++ NO SERVICE COMPANY +++ CODE:
BOX :

FEES	225.00	PAYMENTS:	250.00
FILING :	25.00	CASH :	
COUNTY :	200.00	CHECK :	250.00
COPIES :	.00	C CARD :	
MISC :	.00		
HANDLE :	.00		
		REFUND :	25.00

DO3HD108 DOS-281 (04/2007)

DUPLICATE

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.

Brendan W. Fitzgerald
Executive Deputy Secretary of State

Rev. 06/13

180914000376

NEW YORK STATE OF OPPORTUNITY.
Division of Corporations, State Records and Uniform Commercial Code

New York State
Department of State
DIVISION OF CORPORATIONS, STATE RECORDS AND UNIFORM COMMERCIAL CODE
One Commerce Plaza
99 Washington Ave.
Albany, NY 12231-0001
www.dos.ny.gov

CERTIFICATE OF 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.

180914000376

FIFTH: The certificate of incorporation is amended as follows:

Paragraph One of the Certificate of Incorporation regarding the Corporate Name

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 has 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 ChoicesNY, Inc. 6209 16th Avenue, Brooklyn NY 11204.
Attention: Maria Seibel, LCSW-R, CEO

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 16th Avenue, Brooklyn, NY 11204
Attention: Maria Sicbel, LCSW-R, CEO.

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 _____ Board Chairperson
(Signature) (Capacity of Signer)

Damo Beliga
(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

Paula Gellman
Assistant Attorney General

28 LIBERTY STREET, NEW YORK, NY 10005 • PHONE (212) 416-8401 • FAX (212) 416-8393 (Not for service of papers)
www.ag.ny.gov

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 14th day of September, 2018

ROBERT A. KENT
GENERAL COUNSEL
NYS OASAS

By: Janet L. Paloski
Director
Bureau of Certification and
Systems Management

Janet Paloski

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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 [redacted] 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.
2. The certificate must be submitted with a $30 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
TAX $
BY: KVA

RECEIVED
2018 SEP 14 AM 9:04

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2018 SEP 14 AM 11:
FILED
SEP 14 PM 2:36

4/4

AMENDED AND RESTATED BYLAWS
OF
HEALTHCARE CHOICES NY, INC.

Revised: May 15, 2018

TABLE OF CONTENTS

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 16th 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 (iv) 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 Corporations 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. 6272
Certificate No 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

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

Frank W Lenna

20170517 Deputy Director Office of Primary Care and Health Systems Management

This certificate must be conspicuously displayed on the premises.

Howard Zucker M.D.

Commissioner

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of August 2018, approves the filing of the Amended and Restated Certificate of Incorporation of HealthCare Choices NY, Inc., dated July 10, 2019.

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

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:

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%)	
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:

	Year One	Year Three
Revenues	$8,031,471	$8,520,588
Expenses	$6,765,906	$6,885,197
Net Income	$1,265,565	$1,635,391

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/facilites/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

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 [1]	2,412	2,998
Ophthalmology	Retinal Ambulatory Surgery Center of New York	4,437	4,179
Multi	SurgiCare of Manhattan[1]	3,967	4,342
Gastroenterology	The Endoscopy Center of New York	12,538	13,377
Gastroenterology	West Side GI [1]	18,032	17,484
Total Visits		**118,389**	**129,631**

[1] 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.

	Year One		Year Three	
Payor	**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%
Total	**9,885**	**100.0%**	**10,486**	**100.0%**

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.

Program Analysis

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 (1st Year / 3rd 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
Mount Sinai Ambulatory Ventures, Inc *Vicki LoPachin, MD* *Donald Scanlon* *Brent Stackhouse*	**85%**
Merritt Healthcare Holdings UWS, LLC *Matthew Searles (42.75%)* *Richard Searles (19.00%)* *William Mullhall (33.25%)* *Kerri Ubaldi (5.000%)*	**15%**
TOTAL	**100%**

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 Mamrmolejos 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 Stare 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 if the applicant. It is noted that the draft ASA acknowledgers 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	55,768
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)	128,749
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
Revenues				
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		($422,709)		($448,452)
Total Revenues		$8,031,471		$8,520,588
Expenses				
Operating	$427.52	$4,226,052	$415.97	$4,361,816
Capital	$256.94	$2,539,854	$240.64	$2,523,381
Total Expenses	$684.46	$6,765,906	$656.61	$6,885,197
Net Income		$1,265,565		$1,635,391
Procedures		9,885		10,486

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

	Year One		Year Three	
Payor	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	198	2.0%	210	2.0%
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.

Attachments

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of August 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a single specialty ambulatory surgery center to be located at 2101-2115 Broadway, New York providing gastroenterology services and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:	FACILITY/APPLICANT:
191189 B	UWS ASC, LLC

APPROVAL CONTINGENT UPON:

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the 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/facilites/hospitals/docs/hcs_access_forms_new_clinics.pdf.
   Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

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:

Current Operator	
Knickerbocker Dialysis, Inc.	100%

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

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

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

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

OPCHSM Recommendation

Contingent Approval

Need Summary

There are no plans to change the current provision of dialysis services. Cowley Dialysis, LLC (Cowley) intends to continue to offer all current existing services with no changes to 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:

	Year One	Year Three
Revenues	$935,825	$4,618,079
Expenses	1,944,276	4,194,528
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/facilites/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

August 8, 2019

Need and Program Analysis

Program Description

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

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

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

Character and Competence

The proposed membership of Cowley Dialysis, LLC are:

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

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

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

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

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

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

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

Compliance with Applicable Codes, Rules and Regulations

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

In 2011, the Company received an administrative subpoena from the OIG and request for documents from the U.S. Attorney's Office for the Eastern District of New York related to payments for infusion drugs covered by Medicaid composite payments for dialysis. The Company cooperated with the government and in March 2016 finalized and executed a settlement agreement with the State of New York and the U.S. Department of Justice.

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 April 2013, HCP was one of several defendants served with a civil complaint filed by a former employee of SCAN Health Plan alleging violations of the FCA and the California FCA. In October 2017 the relator filed a notice of dismissal of the action as to the HCP and the government consented to dismissal of the suit without prejudiced.

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.

Between 2015 and 2016, the Company received 10 administrative subpoenas (each for one set of patient medical records) at 10 different dialysis centers in Southern California. In 2017, a qui tam complaint was served on the Company in the U.S. District for the Central District of California related to an investigation concerning the medical necessity of patient transportation. The DOJ declined to intervene, and the court ultimately granted the Company's motion to dismiss both the original complaint and the plaintiff's amended complaint. In July 2017, the plaintiff filed a notice of dismissal.

In 2015, Lifeline, a wholly-owned subsidiary of the Company, received a CID from the DOJ related to two Florida vascular access centers that the Company acquired in 2012. The DOJ investigation was initiated pursuant to qui tam complaint that alleged violations of the FCA as a result of claims submitted to the government for allegedly medically unnecessary angiograms and angiography procedures performed at the two vascular access centers as well as employment related claims. The DOJ declined to intervene. In January 2017, the Company finalized and executed a settlement agreement with the relator and the government for an immaterial amount. In April 2017, the court dismissed the case with prejudiced.

In the spring of 2015, the Company initiated an internal compliance review of its wholly owned subsidiary, DaVita Rx, LLC, during which it identified potential billing and operational issues. In September 2015, the Company notified the government that it was conducting this review and providing regular updates. In February 2016, upon completing the review, the Company filed a self-disclosure with the OIG for the U.S Department of Health and Human Services. Around the same time, the Company received a CID from the U.S Attorney's Office, Northern District of Texas, investigating concerns of allegations that DaVita Rx presented or caused to be presented false claims for payments for prescription medications, as well as an investigation into the Company's relationships with pharmaceutical manufacturers. The Company learned that a qui tam complaint had been filed covering some of the same issues in the CID. In December 2017, the Company finalized and executed an agreement with the government and the qui tam relators that included total monetary consideration of $63.7 million. The government's investigation into the Company's relationships with pharmaceutical manufacturers is ongoing. In July 2018, the OIG served the Company with a subpoena seeking additional documents and information relating to these relationships. The Company continues to cooperate in the investigation.

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 related 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 and agreement with the realtor and the government for an "immaterial amount". In April 2017, the case was dismissed.

In 2016, HCP Nevada disclosed to the OIG that proper procedures for clinical and eligibility determinations may not have been followed by Las Vegas Solari Hospital, which HCP Nevada acquired in March 2013 and sold in September 2016. In June 1016, the Company was notified by the OIG that the disclosure submission had been accepted into the OIG's self-disclosure Protocol. In October 2017, the Company finalized and executed a settlement agreement with the OIG including payment of an immaterial amount.

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 complaint further alleges that the process by which patients obtained commercial insurance was improper and created a false impression of DaVita's business and operational status and future growth prospects. In June 2018, the plaintiffs filed an opposition to the motion. In July 2018, the Company filed a reply in support of the motion. The Company disputes the allegations.

In August 2017, the U.S. District Court for the District of Delaware consolidated three (3) previously disclosed shareholder derivate lawsuits, the Blackburn Shareholder action, the Gabilondo Shareholder action, and the city of Warren Police and Fire Retirement System Shareholder action. The complaint generally 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 whish 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 November 2017, the U.S Attorney's Office, District of Colorado informed the Company of an investigation it was conducting into possible federal health care offenses involving DaVita's Kidney Care, as well as several of the Company's wholly owned subsidiaries, including: DMG, DaVita RX, DaVita Laboratory Services, Inc., and RMD Lifeline, In. In August 2018, the Company received a CID from the U.S. Attorney's Office, which was issued pursuant to the FCA. IN connection with the resolution of the 2015 U.S. OIG Medicare Advantage Civil Investigation referred to below, the Company resolved to possible claims relating to DMG, and is continuing to cooperate with the government in this investigation.

In March 2018, DaVita Labs received two (2) CIDs from the U.S. Attorney's office, Middle District of Florida, that suggest it is investigating whether the DaVita Labs submitted false claims blood, urine, and fecal testing when there was insufficient test validation or stability studies to ensure accurate results, in violation of the FCA. In October 2018, DaVita Labs received a subpoena from the OIG requesting certain patient records linked to clinical laboratory results. The investigation is ongoing.

In three consolidated actions, the plaintiffs alleged wrongful death based on allegations related to Granuflo, a product used as a component of the dialysis product. The Menchaca and Saldana actions arose out of the treatment of patients in California, while the Hardin action arose out of the treatment of a patient in Illinois. In June 2018, the jury returned a verdict in favor of the plaintiffs, collectively awarding $85 million in compensatory damages and $375 million in punitive damages. In November 2018, the parties settled all three actions collectively for $25.5 million, and all three cases were dismissed with

prejudiced. One of the Company's insurance carries paid $9.2 million of the settlement. The Company feels that it can recover the remainder of the settlement amount from other insurers, indemnitors, and others; however, makes no assurances that it will ever recover the full amount.

Conclusion

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

Financial Analysis

Financial Analysis

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

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

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

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

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

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

Lease Agreement

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

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

Assignment and Assumption of Lease Agreement

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

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

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

Consulting and Administrative Services Agreement

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

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

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

Operating Budget

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

	Year One		Year Three	
Revenues	Per Visit	Total	Per Visit	Total
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	39,136	$261.70	187,641
Total		$977,363		$4,823,059
Less: Bad Debt		(41,538)		(204,980)
Total Revenue		$935,825		$4,618,079
Expenses				
Operating	$400.70	$1,046,639	$258.16	$3,285,858
Capital	$343.66	897,637	$71.39	908,670
Total	$744.36	$1,944,276	$329.55	$4,194,528
Net Income (Loss)		($1,008,451)		$423,551
Visits (Treatments)		2,612		12,728

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

Payor	Year One	Year Three
Commercial - FFS	11.4%	12.6%
Medicare - MC	82.9%	81.7%
Medicaid - MC	5.7%	5.6%
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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of August 2019, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to certify Cowley Dialysis, LLC as the new operator of the 19-station chronic renal dialysis center located at 2331 Eastchester Road, Bronx currently operated as an extension clinic of Bronx Dialysis Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:	FACILITY/APPLICANT:
191136 E	Cowley Dialysis, LLC d/b/a Hutchinson River Dialysis

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/facilites/hospitals/docs/hcs_access_forms_new_clinics.pdf.
   Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 182301-E
Brookhaven Home Care, LLC

Program: **LHCSA** ***County:*** **Suffolk**
Purpose: **Establishment** ***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:

Rachel Lifshutz	20%	Elias Marcovici	20%
Ethan A. Marcovici, Esq.	20%	Esther Zeidman	20%
Tammy Kahane	10%	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.

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

Conclusion

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 8th day of August 2019, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:	FACILITY:
182301 E	Brookhaven Home Care, LLC

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.

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 191097-E
Oyster Bay Manor Home Care, Inc.

Program:	**LHCSA**	***County:***	**Nassau**
Purpose:	**Establishment**	***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.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 8th day of August 2019, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:	FACILITY:
191097 E	Oyster Bay Manor Home Care, Inc.

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]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 191210-E
Supportive Home Care, LLC d/b/a Care365 Homecare

Program: **LHCSA** ***County:*** **Kings**
Purpose: **Establishment** ***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.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 8th day of August 2019, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:	FACILITY:
191210 E	Supportive Home Care, LLC d/b/a Care365 Homecare

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON

N/A

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in th*e Contingencies Tab in NYSE-CON.*