STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

ANNUAL MEETING

AGENDA

February 6, 2020

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. ELECTION OF OFFICERS

A. Election of Vice Chairperson

B. Announce Committee Chairpersons and Vice Chairpersons

- Committee on Codes, Regulations and Legislation
- Committee on Establishment and Project Review
- Committee on Health Planning
- Committee on Public Health
- Ad Hoc Committee to Lead the State Health Improvement Plan

III. 2019 ANNUAL REPORT

2019 Public Health and Health Planning Council Annual Report

IV. APPROVAL OF MINUTES

December 12, 2019 Meeting Minutes

V. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

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

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

Keith Servis, Interim 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

VI. REGULATION

Report of the Committee on Codes, Regulations and Legislation

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

For Emergency Adoption

18-17 Addition of Subpart 9-3 to Title 10 NYCRR (Prohibition on the Sale of Electronic Liquids with Characterizing Flavors)

For Adoption

19-17 Amendment of Section 405.4 of Title 10 NYCRR (Hospital Medical Staff - Limited Permit Holders)

19-31 Amendment of Subpart 765-1 of Title 10 NYCRR (Licensed Home Care Services Agencies)

For Information

19-39 Amendment of Sections 404.12, 405.3, 415.26, 751.6, 763.13, 766.11, 794.3 and 1001.11 of Title 10 NYCRR (Reducing Annual Tuberculosis Testing of Health Care Workers)

VII. PUBLIC HEALTH SERVICES

Report on the Activities of the Public Health Committee

Jo Ivey Boufford, M.D., Chair of the Public Health Committee

VIII. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Peter Robinson, Chair of Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services - Construction

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	182006 C	Coney Island Hospital (Kings County)	Contingent Approval
2.	192063 C	Jacobi Medical Center (Bronx County)	Approval

3.	191306 C	St. Joseph Hospital (Nassau County)	Contingent Approval
4.	191308 C	Mercy Medical Center (Nassau County)	Contingent Approval
5.	192161 C	UPSTATE University Hospital at Community General (Onondaga County)	Contingent Approval
6.	192244 C	United Health Services Hospitals, Inc. – Wilson Medical Center (Broome 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.	151185 C	Wyckoff Heights Medical Center (Kings County) Mr. Kraut – Recusal Dr. Strange - Recusal	Contingent Approval
2.	192093 C	Lenox Health Greenwich Village (New York County) Mr. Kraut – Recusal Dr. Strange – Recusal	Contingent Approval
3.	172332 C	Plainview Hospital (Nassau County) Mr. Kraut – Recusal Dr. Strange – Recusal	Contingent Approval

Hospice Services - Construction

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	192159 C	Chautauqua Hospice and Palliative Care (Chautauqua County) Mr. Holt – Interest/Abstaining	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

CON Applications

Acute Care Services - Construction

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	182119 C	John T. Mather Memorial Hospital of Port Jefferson New York, Inc. (Suffolk County) Mr. Kraut – Recusal Dr. Strange – Recusal Dr. Martin – 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

CON Applications

Acute Care Services - Construction

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	192047 C	Mount Sinai Beth Israel (New York County) Dr. Martin - Recusal Dr. Berliner – Opposed at EPRC	Contingent Approval
2.	192049 C	Mount Sinai Beth Israel (New York County) Dr. Martin – Recusal	Contingent Approval

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Residential Health Care Facilities – Establish/Construct

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	192158 E	Congregational SNF LLC d/b/a New York Congregational Nursing Center (Kings 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 – Establish/Construct

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	192236 E	Glens Falls Hospital (Warren County) Dr. Bennett – Interest/Abstaining	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 an Project Review Committee Dissent, or
- ❖ Contrary Recommendation by HSA

NO APPLICATIONS

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

CON Applications

Residential Health Care Facilities – Establish/Construct

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	181164 E	St. Johnsville Rehabilitation and Nursing Center (Montgomery County)	Disapproval

CATEGORY 6: Applications for Individual Consideration/Discussion

HOME HEALTH AGENCY LICENSURES

Affiliated with Assisted Living Programs (ALPs)

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	191302 E	Olean Manor, Inc. d/b/a Field of Dreams Senior Living (Cattaraugus County) Mr. Holt- Interest	Contingent Approval

Changes in Ownership with Consolidation

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	192179 E	True Blue Care at Home, Inc. (Bronx County)	Contingent Approval

IX. NEXT MEETING

Wednesday - March 18, 2020 – Albany
April 2, 2020 – NYC

X. PROFESSIONAL

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

XI. ADJOURNMENT

Public Health and Health Planning Council
2019 Annual Report

I. General Council Activities in 2019

The Public Health and Health Planning Council (PHHPC) held a total of 18 meetings.

Meeting Dates	Meeting	PHHPC Meeting Location
1/24/2019	Committee Day: Establishment and Project Review Committee	NYC
2/14/2019	Committee on Codes, Regulations and Legislation Health Planning Committee Full Council	NYC Buffalo Rochester
3/28/2019	Establishment and Project Review Committee Health Planning Committee	Albany
4/11/2019	Committee on Codes, Regulations and Legislation Full Council Annual Meeting	Albany
5/15/2019	Joint Meeting of the Health Planning and Establishment and Project Review Committee	NYC Buffalo Rochester
5/16/2019	Committee Day: Establishment and Project Review Committee	NYC
6/5/2019	Public Health Committee	NYC
6/6/2019	Committee on Codes, Regulations and Legislation Special Establishment and Project Review Committee Full Council	NYC

7/18/2019	Committee Day: Health Planning Committee Establishment and Project Review Committee	Albany
8/8/2019	Committee on Codes, Regulations and Legislation Full Council	NYC Buffalo Rochester
9/12/2019	Special Committee on Codes, Regulations and Legislation Special Full Council	NYC Albany Buffalo Rochester
9/17/2019	Special Committee on Codes, Regulations and Legislation Special Full Council	NYC Albany Buffalo Rochester
9/26/2019	Committee Day: Establishment and Project Review Committee	NYC
10/10/2019	Committee on Codes, Regulations and Legislation Full Council	NYC
10/18/2019	Public Health Committee	NYC
11/20/2019	Health Planning Committee	NYC
11/21/2018	Committee Day: Establishment and Project Review Committee	NYC
12/12/2019	Committee on Codes, Regulations and Legislation Full Council	NYC

II. Membership

Jeffrey Kraut, Chair
Jo Ivey Boufford, M.D., Vice Chair
Judy Baumgartner
John Bennett, Jr., M.D., F.A.C.C., F.A.C.P.
Howard Berliner, SC.D.
Lawrence Brown, Jr., M.D., M.P.H., F.A.S.A.M.
Kathleen Carver Cheney, Esq.
Angel Alfonso Gutiérrez, M.D.
Thomas Holt
Gary Kalkut, M.D.
Scott La Rue
Harvey Lawrence
Glenn Martin, M.D., D.F.A.P.A., CIP
Ann Monroe
Mario Ortiz, R.N., Ph.D., F.A.A.N.
Ellen Rautenberg, M.H.S.
Peter Robinson
John Rugge, M.D., MPP
Nilda Soto, MS Ed
Theodore Strange, M.D.
Hugh Thomas, Esq.
Anderson Torres, Ph.D., LCSW-R
Kevin Watkins, M.D., M.P.H.
Patsy Yang, Dr.P.H.
Dr. Howard Zucker, Commissioner of Health, Ex-Officio

The PHHPC consists of the following Standing Committees and Ad Hoc Committee

- Committee on Codes, Regulations and Legislation
- Committee on Establishment and Project Review
- Committee on Health Planning
- Committee on Public Health
- Ad Hoc Committee to Lead the Prevention Agenda

III. Major Accomplishments of Committees in 2019

A. Committee on Codes, Regulations and Legislation

Members

Angel Alfonso Gutiérrez, M.D., Chair
Thomas Holt, Vice Chair
Judy Baumgartner
Kathleen Carver Cheney
John Rugge, M.D., MPP
Kevin Watkins, M.D., M.P.H.
Patsy Yang, Dr.P.H.

Work Conducted in 2019

EMERGENCY ADOPTION

In 2019, the Codes Committee recommended, and the Council subsequently approved, the following regulatory proposals for emergency adoption. These regulatory changes addressed critical public health concerns.

Section 16.70 and Part 89 – Body Scanners in Local Correctional Facilities: This proposed amendment to Part 16 pertaining to ionizing radiation updates requirements regarding the use of body imaging scanning equipment. This proposal was later adopted as a permanent regulation.

Subpart 9-3 – Prohibition on the Sale of Electronic Liquids with Characterizing Flavors: This proposal adds Subpart 9-3 to Title 10 and prohibits any individual or entity to possess, manufacture, distribute, sell or offer for sale any flavored e-liquid or product containing the same.

Subpart 9-2 – Required Signage Warning Against the Dangers of Illegal Products: This proposal adds Subpart 9-2 to Title 10 and requires entities in New York State that sell vaping products to post signage on the dangers of vaping illegal e-cigarette and e-liquid products. This proposal was later adopted as a permanent regulation.

ADOPTION

In 2019, the Codes Committee recommended, and the Council subsequently approved, 13 regulatory proposals. These regulatory changes were designed to promote health and safety, expand access to services, and align state policies with transformative changes in health care. The following provisions of Title 10 of the New York Codes Rules and Regulations (NYCRR) were amended:

Section 405.34 – Stroke Center Designation: This new section of Title 10 establishes a voluntary stroke center designation program and stroke system of care for hospitals in New York State.

Part 14 – Food Service Establishments: This amendment restricts the use of liquid nitrogen and dry ice in food preparation.

Section 415.32 – Nursing Home Weekly Bed Census: This new section of Title 10 requires nursing homes to electronically submit a weekly bed census data survey to the Department to ensure accurate bed availability.

Part 766 – Annual Registration of Licensed Home Care Services Agencies: These amendments update requirements for licensed home care services agencies with respect to annual registration and reporting.

Part 405 and Section 751.5 – Hospital Policies for Victims of Human Trafficking: These amendments require hospitals and diagnostic and treatment centers to establish policies and procedures pertaining to the identification and referral of victims of human trafficking.

Part 19 – Clinical Laboratory Directors: These amendments update the list of recognized board certifications that qualify clinical laboratory directors, among other changes.

Section 16.70 and Part 89 – Body Scanners in Local Correctional Facilities: This amendment to Part 16 pertaining to ionizing radiation updates requirements regarding the use of body imaging scanning equipment.

Section 709.14 and 405.29 – Cardiac Catheterization Laboratory Centers: These amendments update the Certificate of Need regulations for cardiac percutaneous coronary intervention (PCI) consistent with the recommendations of the Department's Regulatory Modernization Initiative (RMI).

Part 415 – Residents' Rights: These amendments to Part 415, Nursing Home Minimum Standards, require the provision of information regarding discharge rights, including information on home and community-based services and community transition programs, upon admission to the nursing home.

Sections 405.7 and 751.9 – Patients' Bill of Rights: These amendments reflect the correct name of the educational materials and clarify the rights afforded to patients by the surprise bill law.

Part 405 – Registered Nurses in the Emergency Department: These amendments strike language from 405.19(d)(2) requiring emergency department nurses to have one year of clinical experience and adds language that the nurses must meet competency requirements found in a new subsection 7 of 405.5. This new subsection of Title 10 requires nurses in specialty areas, including but not limited to the emergency department, to complete training and education to establish competencies specific to the specialty area.

Parts 69, 400, 405 and 795 – Midwifery Birth Centers: These amendments establish regulations for Midwifery Birth Centers.

Subpart 9-2 – Required Signage Warning Against the Dangers of Illegal Products: This new subpart requires entities in New York State that sell vaping products to post signage on the dangers of vaping illegal e-cigarette and e-liquid products. This proposal had previously been approved for Emergency Adoption.

REGULATORY PROPOSALS FOR INFORMATION

In 2019, the following proposals to amend provisions of Title 10 NYCRR were presented to the Codes Committee and the Council for information after they were filed in the State Register for a Notice of Proposed Rulemaking.

Subpart 5-1 – Maximum Contaminant Levels: This proposal would amend Subpart 5-1 to incorporate maximum contaminant levels for three emerging contaminants: perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS) and 1,4-dioxane in drinking water.

Section 405.4 – Physician Limited Permit Holder Requirements: This proposal would repeal section 405.4(g)(2)i-iii in order to eliminate the extra years of training, beyond what is required for licensure/limited permit, for domestic and international limited permit holders to work in New York State hospitals.

Section 765-1– Licensed Home Care Services Agencies: This proposal would amend Subpart 765-1 regarding Licensed Home Care Services Agencies (referred to as "LHCSAs") and would establish the criteria for a public need review for initial licensure applications and change of ownership applications received on or after April 1, 2020.

Subpart 9-3 – Prohibition on the Sale of Electronic Liquids with Characterizing Flavors: This proposal adds Subpart 9-3 to Title 10 and prohibits any individual or entity to possess, manufacture, distribute, sell or offer for sale any flavored e-liquid or product containing the same.

REGULATORY PROPOSALS FOR DISCUSSION

In 2019, the following proposal to amend provisions of Title 10 NYCRR was presented to the Codes Committee and the Council for discussion and was not yet filed in the State Register for a Notice of Proposed Rulemaking at the time of presentation.

Section 709.14 – Cardiac Services: This proposal would amend 709.14, Cardiac Services, to adjust the annual expected volume for cardiac surgery cases for a new cardiac catheterization laboratory center and cardiac surgery center services.

B. Committee on Establishment and Project Review

Members

Peter Robinson, Chair
Gary Kalkut, M.D., Vice Chair
Judy Baumgartner
John Bennett, Jr., M.D.
Howard Berliner
Lawrence S. Brown, Jr., M.D., M.P.H.
Angel Gutierrez, M.D.
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Glenn Martin, M.D.
Ann Monroe
Hugh Thomas, Esq.
Anderson Torres, Ph.D.

<u>Work Conducted in 2019</u>

Department of Health

Public Health and Health Planning Council

Certificate of Need Annual Report

2019

TABLE I

Median Processing Times

(Acknowledgement to Director Action in Days)

	Admin	Full	LHCSA	Ltd
2015	56	142		24
2016	55	129		20
2017	77	131		32
2018	65	150	586	21
2019	87	148	186	28

TABLE I (A)

Historical Project Volume and Values

	Number of Actions						Value of Actions *(in thousands)*					Average Value *(in thousands)*			
Year	Admin	Full	LHCSA	Ltd	Notice	Total	Admin	Full	Ltd	Notice	Total	Admin	Full	Ltd	Notice
2015	134	109		254	404	901	489,769	1,557,482	290,910	461,219	2,799,380	3,655	14,289	1,145	1,142
2016	182	122		279	458	1041	804,468	1,421,246	383,646	719,674	3,329,034	4,420	11,650	1,375	1,571
2017 [1]	208	120		339	449	1116	1,313,820	2,250,447	536,739	1,939,118	6,040,124	6,316	18,754	1,583	4,319
2018 [2]	148	97	35	283	332	895	759,184	2,393,107	527,475	608,464	4,288,229	5,130	24,671	1,864	1,833
2019	97	101	18	305	399	920	492,504	657,505	528,747	1,080,223	2,758,980	5,077	6,510	1,734	2,707

[1] September 2017 regulatory changes:
- Review thresholds for general hospitals increased for limited and administrative reviews
- Notices for repair, maintenance, and infrastructure no longer required for projects < $6M
- All HIT projects require a Notice instead of LRA/CON regardless of cost

[2] LHCSA projects not included prior to 2018

TABLE I (B)

Projects Reviewed and Related Capital Expenditures by Region
Last Two Calendar Years

2019

Region	Number of Projects				Value of Projects *(in thousands)*			
	Admin	Full	Ltd	Total	Admin	Full	Ltd	Total
Western	10	10	32	52	12,848	13,208	29,937	55,993
Finger Lakes	9	8	33	50	13,318	113,076	74,741	201,136
Central	15	8	40	63	52,435	11,682	26,739	90,856
NY Penn	4	2	7	13	19,848	3,886	7,143	30,877
Northeast	11	11	32	54	6,691	15,296	52,098	74,085
Hudson Valley	8	14	50	72	29,667	40,382	68,835	138,884
New York City	29	37	83	149	280,870	274,006	220,207	775,083
Long Island	11	11	28	50	76,827	185,970	49,046	311,843
Total	97	101	305	**503**	$492,504	$657,505	$528,747	**$1,678,757**

2018

Region	Number of Projects				Value of Projects *(in thousands)*			
	Admin	Full	Ltd	Total	Admin	Full	Ltd	Total
Western	14	8	28	50	30,524	3,557	50,960	85,042
Finger Lakes	20	5	31	56	52,607	2,741	67,916	123,264
Central	7	15	44	66	28,728	484,286	43,225	556,239
NY Penn	2	2	4	8	4,544	129	4,350	9,023
Northeast	22	11	24	57	45,541	32,513	24,172	102,226
Hudson Valley	14	14	29	57	151,462	290,666	75,928	518,057
New York City	55	30	87	172	331,777	1,094,673	174,506	1,600,956
Long Island	14	12	36	62	121,122	495,956	83,082	700,160
Total	148	97	283	**528**	$766,304	$2,404,523	$524,140	**$3,694,967**

TABLE II (A)
Disapprovals
2019

None

TABLE II (B)
Withdrawals
2019

Withdrawals by Applicant		88
Withdrawals by Department		66
	Total	154

TABLE III

Bed Changes by Facility Type by Region
2019

HOSPITALS	Western	Finger Lakes	Central	NY-Penn	North East	Hudson Valley	NYC	Long Island	TOTAL
Bed Category									
AIDS	0	0	0	0	0	0	0	0	0
Bone Marrow Transplant	0	0	0	0	0	0	0	0	0
Chemical Dependency, Detox	0	0	-4	0	0	0	-14	0	-18
Chemical Dependency, Rehab	0	0	0	0	0	-20	0	0	-20
Coma Recovery	0	0	0	0	0	0	0	0	0
Coronary Care	-4	0	0	0	0	0	0	-3	-7
Intensive Care	4	29	0	0	0	0	7	12	52
Maternity Beds	-12	0	0	0	0	0	0	6	-6
Medical/Surgical	-15	-38	-25	0	0	-3	4	-27	-104
Neonatal Intensive Care	0	0	0	0	0	0	0	34	34
Neonatal Intermediate Care	0	0	0	0	0	0	0	0	0
Neonatal Continuing Care	0	0	0	0	0	0	0	-12	-12
Pediatric	-6	0	10	0	0	0	-13	0	-9
Pediatric ICU	0	0	0	0	0	0	0	0	0
Physical Medicine & Rehabilitation	-10	-15	-10	0	-15	0	-9	0	-59
Prisoner	0	0	0	0	0	0	0	0	0
Psychiatric	0	0	4	0	0	3	-15	0	-8
Traumatic Brian Injury	0	0	0	0	0	8	0	0	8
New York State Total	-43	-24	-25	0	-15	-12	-40	10	**-149**

RESIDENTIAL HEALTH CARE FACILITIES	Western	Finger Lakes	Central	NY-Penn	North East	Hudson Valley	NYC	Long Island	TOTAL
Bed Category									
RHCF Beds	2	-96	0	0	0	0	0	0	-94
Behavioral Intervention	0	0	0	0	0	0	0	0	0
Neurodegenerative	0	0	0	0	0	0	0	0	0
Pediatric	0	0	0	0	0	0	0	0	0
Tramatic Brain Injury	0	0	0	0	0	0	0	0	0
Ventilator, Adult	0	0	0	0	0	0	0	0	0
Ventilator, Pediatric	0	0	0	0	0	0	0	0	0
New York State Total	2	-96	0	0	0	0	0	0	**-94**

TABLE IV

Projects Receiving Commissioner Action by Facility Type
2019

TABLE IV (A)

Administrative Review Projects

Region	CHHA	DTC	HOSPICE	HOSPITAL	RHCF	TOTAL
Western	0	2	0	7	1	10
Finger Lakes	0	1	0	7	1	9
Central	0	5	0	10	0	15
NY-Penn	0	0	1	3	0	4
Northeastern	0	3	0	8	0	11
Hudson Valley	0	1	0	7	0	8
New York City	0	17	0	10	2	29
Long Island	0	5	0	6	0	11
New York State Total	0	34	1	58	4	**97**

TABLE IV (B)

Full Review Projects

Region	CHHA	DTC	HOSPICE	HOSPITAL	LHCSA	RHCF	TOTAL
Western	1	4	0	0	2	5	12
Finger Lakes	1	0	1	2	1	4	9
Central	1	4	0	3	1	0	9
NY-Penn	0	1	0	0	1	1	3
Northeastern	1	6	0	2	3	2	14
Hudson Valley	3	3	0	8	2	0	16
New York City	5	21	0	4	3	7	40
Long Island	0	6	0	5	5	0	16
New York State Total	12	45	1	24	18	19	**119**

TABLE IV (C)

Limited Review Projects

Region	DTC	HOSPITAL	RHCF	TOTAL
Western	5	25	2	32
Finger Lakes	1	30	2	33
Central	8	31	1	40
NY-Penn	1	6	0	7
Northeastern	3	25	4	32
Hudson Valley	14	28	8	50
New York City	16	59	8	83
Nassau-Suffolk	1	24	3	28
New York State Total	49	228	28	**305**

TABLE V

Public Health and Health Planning Council
Establishment Projects Reviewed by Facility Type
2019

	Current Year				2018	2017	2016
	Approval	Disapproval	Deferral	Total	Total	Total	Total
Facility Type							
Hospitals	3	0	0	3	8	11	11
Residential Health Care Facilities	15	0	0	15	33	39	46
Diagnostic and Treatment Centers	40	0	0	40	30	37	31
Certified Home Health Agencies	11	0	0	11	11	6	6
Hospices	1	0	0	1	2	1	0
[1] Licensed Home Care Services Agency	18	0	0	18	35		
New York State Total	88	0	0	88	119	94	94

[1] LHCSA projects not included prior to 2018

Project Review 2019

The following projects were reviewed by the Establishment and Project Review Committee and forwarded to the Public Health and Health Planning Council in 2019.

HOSPITALS

Hospital Establishments

182124	E	John T. Mather Memorial Hospital of Port Jefferson New York, Inc. Establish Northwell Healthcare, Inc. as the active parent and co-operator of John T. Mather Memorial Hospital of Port Jefferson, New York, Inc.	
192157	E	SLHS Massena, Inc. d/b/a Massena Hospital Establish SLHS Massena, Inc. as the new operator of Massena Memorial Hospital and establish St. Lawrence Health System, Inc. as the co-operator/active-parent	
192030	E	Unity Hospital of Rochester Establish Regional Health Reach, Inc. as co-operator for Unity Hospital of Rochester's two HRSA-funded Section 330(h) FQHC clinics only	

Hospital Mergers

191344	C	North Central Bronx Hospital Certify North Central Bronx Hospital (NCB) as a division of Jacobi Medical Center	
182128	C	NYU Langone Hospitals Certify NYU Winthrop Hospital, located at 259 First Street, Mineola, as a division of NYU Langone Hospitals (companion to 182158)	
192045	C	Samaritan Hospital Certify Albany Memorial Hospital as a division of Samaritan Hospital of Troy	

Hospital Modernizations or Expansions

192002	C	Highland Hospital Construct a five-story addition on top of the three-story southeast wing, to add additional private medical/surgical beds with no change to total certified beds	$ 65,507,965
182232	C	NYU Winthrop Hospital Perform renovations and construct an addition to the New Life Center building and convert a variety of beds into 27 neonatal intensive care beds, with no change in total beds	$ 138,024,190
192019	C	Southside Hospital Perform renovations to the first floor of the obstetrics unit and convert five (5) Neonatal Continuing Care beds into five (5) Neonatal Intermediate Care beds	$ 43,689,101
191083	C	Staten Island University Hospital Construct a cancer center with co-located adult and pediatric ambulatory cancer services by adding a third floor to an existing two-story building and renovating the first and second floors	$ 35,387,054

Cardiac Catheterization

191260	C	HealthAlliance Hospital Mary's Avenue Campus Certify Cardiac Catheterization-Percutaneous Coronary Intervention (PCI) and Cardiac Catheterization-Electrophysiology (EP) services, with requisite renovations (To be processed as Full Review)	$ 6,908,803

162211 C	New York-Presbyterian/Hudson Valley Hospital Certify Cardiac Catheterization-Percutaneous Coronary Intervention (PCI) and Cardiac Catheterization-Electrophysiology (EP) services, and construct one cardiac catheterization laboratory	$ 13,073,500
171415 C	Northern Dutchess Hospital Certify Cardiac Catheterization - Percutaneous Coronary Intervention (PCI) services with requisite construction	$ 481,360
152243 C	Northern Westchester Hospital Certify Cardiac Catheterization - Percutaneous Coronary Intervention (PCI) and Cardiac Catheterization - Electrophysiology (EP) services and perform requisite renovations	$ 3,623,197
162148 C	Nyack Hospital Certify Cardiac Catheterization - Percutaneous Coronary Intervention (PCI), and Cardiac Catheterization - Electrophysiology (EP) services, and perform requisite renovations.	$ 6,408,657
172251 C	Putnam Hospital Center Certify Cardiac Catheterization - Percutaneous Coronary Intervention (PCI), with requisite construction	$ 3,192,063

Hospital Beds and Services

192123 C	Blythedale Childrens Hospital Certify eight additional Traumatic Brain Injury (TBI) beds and perform requisite renovations	$ 2,011,227
182246 C	Cortland Regional Medical Center Inc Certify an extension clinic to be located at 126 Homer Avenue, Cortland providing radiation therapy services	$ 10,587,653
192020 C	Southside Hospital Expand and modernize the maternity nursing unit on the current second floor East Building into the adjacent Center and North Buildings and certify 10 additional Maternity beds	$ 22,935,640
182147 C	University Hospital SUNY Health Science Center Certify 10 additional pediatric beds resulting in a net increase of 10 beds for a new total of 430 total beds	

Hospital Observation Demonstration Project

191174 C	Memorial Hospital for Cancer and Allied Diseases Establish observation services at the existing cancer care hospital extension clinic located at 500 Westchester Avenue, Harrison - OBS Demo	

Hospital Off-Campus Emergency Department

191280 C	Maimonides Medical Center Certify a new division to be an off-campus emergency department located at 9036 7th Avenue, Brooklyn at the former Victory Memorial Hospital site, and perform associated renovations	$ 18,609,873

RESIDENTIAL HEALTH CARE FACILITIES

RHCF Establishments

181059 E	2700 North Forest Road Operating Company, LLC d/b/a Elderwood at Getzville Establish 2700 North Forest Road Operating Company, LLC as the new operator of a 180-bed residential health care facility located at 2700 North Forest Road, Getzville, currently operated by Rosa Coplon Jewish Home and Infirmary
182060 E	Buena Vida SNF LLC d/b/a Buena Vida Rehabilitation and Nursing Center Establish Buena Vida SNF LLC as the new operator of Buena Vida Continuing Care & Rehab Center, a 240-bed residential health care facility located at 48 Cedar Street, Brooklyn
182272 E	EN Operations Acquisitions, LLC d/b/a The Grand Rehabilitation and Nursing at Delaware Park Establish EN Operations Acquisitions, LLC as the operator of Buffalo Community Healthcare Center, formerly known as Emerald North Nursing and Rehabilitation Center, a 95-bed residential health care facility located at 1205 Delaware Avenue, Buffalo
192013 E	Fairview Nursing Care Center, Inc. Transfer 99% ownership interest to one new shareholder from one withdrawing shareholder and one remaining shareholder
181110 E	ISLRNC, LLC d/b/a Ideal Commons Rehabilitation and Nursing Center Establish ISLRNC, LLC as the new operator of the 150-bed residential health care facility located at 601 High Avenue, Endicott, currently operated as Ideal Senior Living Center
182221 E	Leroy Operating LLC d/b/a Leroy Village Green Nursing and Rehabilitation Center Establish Leroy Operating LLC as the new operator of Leroy Village Green Residential Health Care Facility, an existing 140-bed residential health care facility located at 10 Munson Street, Leroy
182209 E	Morris Park Nursing and Rehab Center, LLC Establish Morris Park Nursing and Rehab., LLC as the new operator of Morris Park Nursing Home, a 191-bed residential health care facility located at 1235 Pelham Parkway North, Bronx
191263 E	Schoellkopf Health Center Establish Niagara Falls Memorial Medical Center as the co-operator of Schoellkopf Health Center, a 120-bed residential health care facility
192001 E	St. Joseph's Hospital - Skilled Nursing Facility Certify Arnot Ogden Medical Center as the new operator of the 85-bed residential health care facility located at 555 St. Joseph's Boulevard, Elmira
182117 E	TCPRNC LLC d/b/a New Riverdale Nursing Home Establish TCPRNC LLC as the new operator of Riverdale Nursing Home, an existing 146-bed residential health care facility currently operated by Riverdale Nursing Home, Inc. and located at 641 West 230th Street, Bronx (Companion CON #182120)

172415 E	The Pearl Nursing Center of Rochester, LLC Establish The Pearl Nursing Center of Rochester, LLC as the new operator of the 120-bed residential health care facility located at 1335 Portland Avenue, Rochester, currently operated as New Roc Nursing and Rehabilitation Center	
191270 E	Troy Diamond Operations, LLC d/b/a The Diamond Hill Nursing and Rehabilitation Center Establish Troy Diamond Operations, LLC as the new operator of the 120-bed residential health care facility located at 100 New Turnpike Road, Troy, currently operated as Diamond Hill Nursing and Rehabilitation Center	
182271 E	Union Plaza Care Center Transfer a total of 50 percent interest from three withdrawing members to two new members and one existing member	
181390 E	Warren Center for Rehabilitation and Nursing Transfer 51 percent interest in Warren Operations Associates LLC from one existing member to one new member	
182218 E	Westgate Operations Associates, LLC d/b/a Rochester Center for Rehabilitation and Nursing Establish Westgate Operations Associates, LLC, d/b/a Rochester Center for Rehabilitation and Nursing as the new operator of Creekview Nursing and Rehab Center, an existing 124-bed residential health care facility	

RHCF Modernizations or Expansions

172351 C	Bronx Center for Rehabilitation & Health Care Certify a total of 123 residential health care facility beds from two existing nursing homes, which will then close, and perform renovations to expand the facility to accommodate new beds, for a new certified capacity of 323 beds	$ 57,241,789
191203 C	St. Ann's Community Renovate space to reconfigure floors 3-8 and decertify 96 residential health care facility beds resulting in a new total bed capacity of 374 beds	$ 48,100,492
182120 C	The Plaza Rehab and Nursing Center Construct a six-story addition and transfer 146 RHCF beds from New Riverdale Rehab and Nursing for a total of 890 beds (Companion CON #182117)	$ 39,215,155

RHCF Beds

191132 C	Canterbury Woods Certify two (2) additional residential health care facility beds to an existing continuing care retirement community and construct an addition on the first floor of the Northwest Wing	$ 566,453

DIAGNOSTIC AND TREATMENT CENTERS

Diagnostic and Treatment Center Establishments

191170 B	AIDS Healthcare Foundation Establish and construct a diagnostic and treatment center to be located at 655 Morris Avenue, Bronx	$ 1,072,561

191019 E	Bronx SC, LLC d/b/a Empire State Ambulatory Surgery Center Transfer 70% membership interest to Surgicore 5th Avenue LLC, a new incoming member with four individual members	
182214 E	Buffalo Surgery Center, LLC Transfer 4.34 percent ownership from existing owners to each of three new members	
192007 B	Cayuga Community Services Establish and construct a Diagnostic and Treatment Center (D&TC) to be located at 201 Dates Drive, Ithaca for provision of primary and specialty medical services	$ 778,246
191107 E	City Wide Health Facility Inc. Transfer of 70% ownership interest to three (3) new members from the current sole member	
192012 B	Hollis AK, LLC d/b/a Hollis Diagnostic & Treatment Center Establish and construct a new diagnostic and treatment center to be located at 190-02 Jamaica Avenue, Hollis	$ 1,130,097
191009 B	KAHR Health, LLC Establish and construct a new primary medical care diagnostic and treatment center to be located at 421 Route 59, Monsey through the conversion of a private practice	$ 391,573
191060 E	Long Island Ambulatory Surgery Center Transfer of 100% ownership interest to one (1) new member PLLC comprised of three individual members	
191027 E	North Queens Surgical Center Transfer of 75% ownership interest to a new member LLC with four individual members and the withdrawal of 13 members	
192118 B	NY Med of Brooklyn Establishment and construction of a new diagnostic and treatment center to be located in leased space at 765 Nostrand Avenue, Brooklyn	$ 1,089,504
191286 B	Perfect Health Medical, LLC Establish and construct a new diagnostic and treatment center to be located at 4424-4426 18th Avenue, Brooklyn to provide primary medical care, behavioral health, specialty medical services and podiatric services	$ 249,064
191196 B	Shakespeare Operating, LLC d/b/a Bronx Treatment Center Establish and construct a diagnostic and treatment center to be located at 1250 Shakespeare Avenue, Bronx	$ 788,470
191326 B	Sunrise Med Plus, LLC Establish and construct a new diagnostic and treatment center to be located at 456 Suffolk Avenue, Brentwood	$ 1,119,215

Project Review 2019

Diagnostic and Treatment Center Mergers

191245 E	Planned Parenthood of New York City Inc. t/b/k/a Planned Parenthood of Greater New York, Inc. 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 - Safety Net	

Freestanding Ambulatory Surgery Centers

191212 B	Atlantic SC, LLC d/b/a Atlantic Surgery Center Establish and construct a single specialty ambulatory surgery center for gastroenterology to be located at 1145 Montauk Highway, West Islip	$ 3,582,708
191137 B	Binghamton ASC, LLC d/b/a Greater Binghamton Eye Surgery Center Establish and construct a single-specialty ambulatory surgery center for ophthalmology to be located at 1016 Vestal Parkway East, Vestal	$ 3,969,286
192069 B	Crotona Parkway SC, LLC d/b/a Crotona Parkway Ambulatory Surgery Center Establish and construct a new multi-specialty ambulatory surgery center to be located at 1976 Crotona Parkway, Bronx	$ 5,044,633
182125 B	Everett Road Surgery Center Establish and construct a multi-specialty free-standing ambulatory surgery center to be located at 123 Everett Road, Albany	$ 11,523,767
191164 B	Harlem Road Ventures, LLC t/b/k/a Harlem Ambulatory Surgery Center, LLC Establish and construct a new single-specialty ambulatory surgical center specializing in urology procedures to be located at 3085 Harlem Road, Cheektowaga	$ 4,938,503
191095 B	Hauppauge SC, LLC d/b/a The Center for Advanced Spine and Joint Surgery Establish and construct a new multi-specialty ambulatory surgery center to be located at 526 Route 111, Hauppauge	$ 9,370,908
192021 B	Northeast Endoscopy Establish and construct a single-specialty ambulatory surgery center specializing in gastroenterology to be located at 235 North Belle Mead Road, East Setauket	$ 5,272,625
182236 B	Precision SC, LLC d/b/a PrecisionCare Surgery Center Establish and construct a freestanding single-specialty ambulatory surgery center specializing in orthopedics to be located at 28 Research Way, East Setauket	$ 10,376,199
182302 B	Regency SC, LLC d/b/a Regency Surgery Center Establish and construct a multi-specialty ambulatory surgery center to be located at 3250 Westchester Avenue, Bronx	$ 2,613,885
191117 B	Saratoga Partners North Establish and construct a new multi-specialty ambulatory surgery center to be located at 4 Medical Park Drive, Malta	$ 18,888,473

192051 C	Specialists' One-Day Surgery Center, LLC Certify a second specialty, Pain Management, at the existing extension clinic located at 5801 East Taft Road, Syracuse to become a dual single-specialty freestanding ambulatory surgery center	$ 14,503
191314 B	Staten Island ASC, LLC d/b/a Specialty Surgery Center of Staten Island Establish and construct a multi-specialty ambulatory surgery center located at 3869 Victory Boulevard, Staten Island	$ 5,277,093
191215 C	Syracuse Surgery Center Renovate space to change from a single specialty ambulatory surgery center to a multi-specialty ambulatory surgery center	$ 276,676
191120 C	The Northway Surgery and Pain Center Certify an existing single specialty pain management ambulatory surgery center located at 1596 Route 9, Clifton Park as a multi-specialty ambulatory surgery center	$ 133,294
182326 B	Triborough ASC, LLC d/b/a Triborough Ambulatory Surgery Center Establish and construct a new multi-specialty ambulatory surgery center to be located at 550 East 180th Street, Bronx	$ 3,985,100
191189 B	UWS ASC, L.L.C. Establish and construct a single specialty ambulatory surgery center to be located at 2101-2115 Broadway, New York providing gastroenterology services	$ 10,197,495
182205 B	Wehrle Drive ASC Establish and construct a multi-specialty ambulatory surgery center to be located at 50 George Karl Boulevard, Amherst	$ 16,815,726

Requests for Permanent Life

182183 E	Endoscopy Center of Niagara, LLC Request indefinite life for CON #121140	
181259 E	Mohawk Valley Eye Surgery Center Request Indefinite Life for CON #112179	
191237 E	PBGS, LLC Request for Indefinite Life CON #112032	

Dialysis Establishments with New Dialysis Stations

191077 B	Cobble Hill Dialysis Establish and construct a new 12-station renal dialysis center to be located at 380 Henry Street, Brooklyn within the Cobble Hill Nursing Home	$ 2,227,885
182068 B	Freedom Dialysis of Riverdale, LLC Establish and construct a 12-station chronic renal dialysis diagnostic and treatment center in the Schervier Nursing Care Center located at 2975 Independence Avenue, Bronx	$ 2,280,408
182296 B	Novo Dialysis Flatlands, LLC Establish and construct a new 27-station chronic renal dialysis center and home training program to be located at 2306 Nostrand Avenue, Brooklyn	$ 2,891,147

Dialysis Establishments (Change of Ownership)

191284 E Citadel Renal Center LLC
Establish Citadel Renal Center LLC as the new operator of the 15-station renal dialysis center located at 100 West Kingsbridge Road, Bronx currently operated by Bronx River Nephro-Care, Inc.

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

182140 E DSI Newburgh, LLC
Establish a sixteen (16)-station chronic renal dialysis diagnostic and treatment center which is currently operated by DSI Dutchess Dialysis, Inc. as an extension clinic located at 39-47 North Plank Road, Newburgh

191288 E Freedom Center of Rockland County, LLC d/b/a Fresenius Kidney Care Valley Cottage
Establish Freedom Center of Rockland County, LLC as the new operator of Renal Care of Rockland an 18-station dialysis center located at 131 Route 303, Valley Cottage and its 31-station extension clinic located at 30 Route 59, Suffern

191264 E Freedom Center of Troy, LLC d/b/a Fresenius Kidney Care - Troy
Certify Freedom Center of Troy, LLC as the new operator of the 12-station chronic renal dialysis center located at 106 North Greenbush Road, Troy currently operated as an extension clinic of FMS-Southern Manhattan Dialysis Center

181420 E Rogosin Auburndale, LLC
Establish Rogosin Auburndale, LLC as the new operator of the 29-station chronic renal dialysis center located at 39-20 Utopia Boulevard, Flushing, currently operated by The Rogosin Institute, Inc

Diagnostic and Treatment Center Modernizations and Expansions

191147 C New York Hotel Trades Council and Hotel Association of New York City Health/Midtown Clinic — $ 110,016,142
Relocate existing extension clinic from 68-80 Schermerhorn Street, Brooklyn to 265 Ashland Place, Brooklyn

HOSPICES

Hospices

182160 E Lifetime Care/Hospice of Rochester/Hospice of Wayne & Seneca Counties
Establish Rochester Regional Health as the new sole member of Genesee Region Home Care Association, Inc., the operator of Lifetime Care Hospice

HOME HEALTH AGENCIES

Certified Home Health Agencies

192014 E Always There Family Home Health Services
The merger and consolidation of Always There Family Home Health Services into The Dominican Sisters Family Health Services, Inc. d/b/a ArchCare at Home

181331 E Elderwood Certified Home Health Agency, LLC
Establish Elderwood Certified Home Health Agency, LLC as the new operator of Rosa Coplon Jewish Home and Infirmary Certified Home Health Agency, an existing certified home health agency (CHHA), located at 2700 North Forest Road, Getzville

191075 E Excellent Home Care Services, LLC
Transfer of 100% ownership interest of Excellent Home Care Services, LLC

121223 C Excellent Home Care Services, LLC
Convert an existing special-needs Certified Home Health Agency to a general purpose Certified Home Health Agency

182175 E FSNR CHHA, LLC d/b/a Four Seasons Nursing and Rehabilitation Certified Home Health Agency
Establish FSNR CHHA, LLC d/b/a Four Seasons Nursing and Rehabilitation Certified Home Health Agency as the new operator of the Four Seasons Nursing and Rehabilitation Certified Home Health Agency

182220 E Good Samaritan Hospital Home Care Department
Establish WMC Health Network-Rockland, Inc. and Westchester County Health Care Corporation as new controlling entities of the Good Samaritan Hospital Home Care Department, a Certified Home Health Agency

182159 E Lifetime Care
Establish Rochester Regional Health as the new sole member of Genesee Region Home Care Association, Inc. d/b/a Lifetime Care an existing Certified Home Health Agency

191341 E Marquis Certified Home Care, LLC
Establish Marquis Certified Home Care, LLC as the new operator of the certified home health agency located at 300 Washington Avenue Extension, Albany currently operated by Living Resources Certified Home Health Agency, Inc.

182158 E NYU Langone Hospitals
Change of ownership of the certified home health agency currently operated by NYU Winthrop Hospital (companion to 182128)

191123 E Preferred Certified, LLC
Establish Preferred Certified, LLC as the new operator of the Certified Home Health Agency located at 6677-B Broadway, Bronx currently operated as Park Gardens CHHA

182216 C St. Joseph's Hospital Health Center CHHA
Expand services to include Oswego, Cayuga, Madison, Oneida and Lewis Counties (PHL 2805-x waiver)

181319 E Tri-Borough Certified Health Systems of the Hudson Valley LLC
Establish Tri-Borough Certified Health Systems of the Hudson Valley, LLC as the new operator of Datahr Home Health Care, Inc., an existing special needs Certified Home Health Agency

192009 E VNA of Staten Island
Establish Richmond University Medical Center as the new sole corporate member/parent and Bridge Regional Health System, Inc. as the new the corporate grandparent

Licensed Home Care Services Agencies

181303 E 2680 North Forest Road Operating Company, LLC d/b/a Elderwood Home Care at Getzville
Estab. 2680 N Forest Rd Operating Co., LLC as the new operator of an existing licensed home care services agency, located at 2700 N Forest Road, Getzville, which serves the residents of a certified adult home and assisted living program (Exception A)

182247 E Aides at Home, Inc.
Establish Aides at Home by Prime, Inc. as the new 100% stockholder of an existing licensed home care services agency serving patients in the Nursing Home Transition and Diversion (NHTD) and Traumatic Brain Injury (TBI) Waiver Program (Exception C)

191080 E Always Compassionate Home Care, Inc.
Establish a new licensed home care services agency by consolidating two existing licensed home care services agencies (Exception B)

182282 E BAYADA Home Health Care, Inc.
Convert BAYADA Home Health Care, Inc., the operator of a licensed home care services agency, from a for-profit corporation to a not-for-profit subsidiary of BAYADA, a not-for-profit corporation (Exception C)

182301 E Brookhaven Home Care, LLC
Establish a licensed home care services agency to exclusively serve the residents of an assisted living program located at 111 Beaver Dam Road, Brookhaven (Exception A)

182163 E Genesee Region Home Care of Ontario County, Inc. d/b/a Home Care Plus
Establish Rochester Regional Health as the grandparent of Genesee Region Home Care of Ontario County, Inc. (GRHCOC) and consolidate three (3) licensed home care services agency licenses into a single license held by GRHCOC (Exception B)

191104 E Intrathecal Care Solutions, LLC d/b/a Advanced Nursing Solutions
Establish a new licensed home care services agency serving patients with implanted intrathecal pain pumps to be located at 230 Rock Hill Road, Rock Hill (Exception C)

181115 E ISLACF, LLC d/b/a The Pavilion at Ideal Commons
Establish ISLACF, LLC as the new operator of Ideal Senior Living Center Housing Corporation, a current licensed home care services agency located at 508 High Avenue, Endicott (Exception A)

182015 E Lincare of New York, Inc.
Establish Lincare of New York, Inc. as the operator of an existing licensed home care services agency located at 57 Karner Road, Albany (Exception B)

192006 E Marchand Home Care at Sharon Springs
Establish Marchand Home Care at Sharon Springs LLC as the new operator of the LHCSA serving the residents of the ALP currently known as Marchand Manor in Sharon Springs (Exception A)

191340 E Marquis Home Care, LLC
Consolidate two (2) Licensed Home Care Services Agencies currently operated by Living Resources Home Care, Inc. and Marquis Home Care, LLC into a single Licensed Home Care Services Agency operated by Marquis Home Care, LLC (Exception B)

191097 E Oyster Bay Manor Home Care, Inc.
Establish a licensed home care services agency to exclusively serve an assisted living program to be located at 150 South Street, Oyster Bay (Exception A)

182100 E Pine Haven Assisted Living, LLC d/b/a Pine Haven Home Care
Establish a licensed home care services agency to exclusively serve the residents of Pine Haven Assisted Living located at 201 Main Street, Philmont (Exception A)

182289 E Rosewood of Auburn, LLC d/b/a Ridgewood Senior Living
Establish Rosewood of Auburn, LLC as the new operator of an existing licensed home care services agency which will exclusively serve the residents of an assisted living program located at 170 Murray Street, Auburn (Exception A)

182249 E South Shore Home Health Service, Inc.
Consolidate two existing licensed home care services agencies with no change in services or service areas (Exception B)

191210 E Supportive Home Care, LLC d/b/a Care365 Homecare
Establish Supportive Home Care, LLC d/b/a Care365 Homecare as the new operator of two licensed home care services agencies, Barksdale Home Care Services Corp. and Tov-Care Home Health Services, LLC under one license number (Exception B)

182244 E The Sentinel of Rockland, LLC
Establish a licensed home care services agency to exclusively serve the residents of an assisted living program to be located at 200 Rella Boulevard, Montebello (Exception A)

191101 E Underwood Gardens Homecare, LLC d/b/a Underwood Manor LHCSA
Convert the operator of a licensed home care services agency exclusively serving the residents of an assisted living program located at 4460 Union Hill Road, Hinsdale from a sole proprietorship to a limited liability company (Exception A)

Ambulatory Surgery Centers - Limited Life Report

February 2020

Original Limited Life Projects

Reports required - Annually

CON #	Fac ID	Facility Name	Opcert#	County	Opcert Start Date	Opcert Exp Date	Specialty Type	Approved Target %		Year Two			Year Three			Year Four		
								Charity Care	Medicaid	Actual Visits	Actual Charity Care	Actual Medicaid	Actual Visits	Actual Charity Care	Actual Medicaid	Actual Visits	Actual Charity care	Actual Medicaid
111439	9804	Empire State Ambulatory	7000284R	Bronx	2/19/2015	2/18/2020	Multi	**2.0%**	**10.2%**	3,676	0.1%	18.4%	3,956	0.0%	22.3%	3,830	0.1%	24.4%
111552	9784	North Queens Surgical Center	7003280R	Queens	3/5/2015	3/4/2020	Multi	**2.0%**	**5.0%**	4,602	0.0%	22.9%	4,836	0.0%	21.4%	4,449	0.0%	18.5%
111277	9783	Avicenna ASC, Inc.	7000282R	Bronx	3/18/2015	3/17/2020	Multi	**4.0%**	**65.0%**	2,777	0.0%	55.9%	5,394	0.9%	51.0%	5,437	3.5%	27.3%
122164	9792	Mason Eye Surgery Center	7003281R	Queens	3/25/2015	3/24/2020	Ophthalmology	**2.0%**	**49.9%**	1,233	2.2%	50.6%	2,184	0.9%	63.0%	1,983	2.3%	62.2%
102452	9793	Fromer LLC Eye Center of New York [1,2]	7000283R	Bronx	4/7/2015	4/6/2020	Ophthalmology	**0.0%**	**40.0%**	2,323	0.0%	14.4%	2,407	N/A	30.5%	3,325	N/A	23.0%
122265	9800	Island Ambulatory Surgery	7001140R	Kings	4/21/2015	4/20/2020	Multi	**2.0%**	**16.0%**	11,507	6.9%	17.6%	11,788	1.2%	20.4%	12,881	2.0%	18.2%
131296	9816	Apex Surgical Center	3274200R	Oneida	7/10/2015	7/9/2020	Multi	**2.0%**	**5.8%**	3,502	0.3%	8.1%	3,153	0.1%	13.2%	4,194	0.7%	15.2%
122104	9820	GoldStep Ambulatory Surgery	7001800R	Kings	7/17/2015	7/16/2020	Multi	**2.0%**	**60.0%**	772	4.0%	57.9%	1,406	2.1%	59.2%	1,610	2.0%	55.2%
132346	9849	The Northway Surgery & Pain Center	4552201R	Saratoga	10/19/2015	10/18/2020	Pain Management	**3.0%**	**3.3%**	6,372	0.0%	5.3%	10,993	4.0%	6.7%	12,149	4.3%	7.5%
132281	9848	Northern GI endoscopy	5601202R	Warren	10/23/2015	10/22/2020	Gastroenterology	**2.0%**	**7.0%**	3,235	0.0%	5.1%	4,697	0.0%	10.3%	4,814	0.0%	10.4%
131026	9863	OMNI Surgery Center	3202209R	Oneida	12/8/2015	12/7/2020	Pain Management	**2.0%**	**5.2%**	2,530	0.0%	0.0%	3,724	0.2%	5.7%	3,535	3.9%	11.2%
132108	9892	Ambulatory Surgery Center of Niagara	3102208R	Niagara	3/10/2016	3/9/2021	Ophthalmogy	**2.0%**	**4.0%**	1,858	0.6%	5.0%	2,162	0.5%	3.5%			
131056	9897	Endoscopy Center of Queens	7003283R	Queens	3/21/2016	3/20/2021	Gastroenterology	**2.0%**	**5.0%**	2,819	0.0%	22.2%	6,112	1.0%	34.5%			
121017	9909	Surgery of Tomorrow	7001143R	Kings	4/25/2016	4/24/2021	Gynecology	**2.5%**	**29.2%**	304	4.9%	0.0%	414	4.8%	1.7%			
131347	9947	Southtowns Surgery Center	1460200R	Erie	7/26/2016	7/25/2021	Multi	**2.0%**	**1.2%**	1,918	0.1%	5.4%	2,428	0.0%	4.8%			
132340	9958	Richmond Pain Management ASC	7004213R	Richmond	8/5/2016	8/4/2021	Pain Management	**2.0%**	**5.0%**	4,125	0.0%	0.0%	4,144	2.3%	0.0%			
121104	9996	Downtown Bronx ASC	7000289R	Bronx	12/5/2016	12/4/2021	Multi	**2.2%**	**50.8%**	387	7.0%	54.8%	2,115	1.5%	2.0%			
151019	10009	Liberty Endoscopy Center	7002808R	New York	1/13/2017	1/12/2022	Gastroenterology	**2.0%**	**3.0%**	5,239	1.2%	1.1%						
161138	10050	Gastroenterology of Westchester, LLC	5907210R	Westchester	6/9/2017	6/8/2022	Gastroenterology	**2.0%**	**25.0%**	3,751	3.9%	39.3%						
151246	10075	Mid-Bronx Endoscopy Center	7000291R	Bronx	8/11/2017	8/10/2022	Gastroenterology	**2.0%**	**50.0%**	4,513	1.4%	61.2%						
151277	10078	HSS ASC of Manhattan [3]	7002809R	New York	9/13/2017	9/12/2022	Orthopedics	**1.2%**	**1.7%**	2,554	0.0%	0.9%						
152219	10088	Greenwich Village Ambulatory Surgery Center, LLC	7002811R	New York	10/13/2017	10/12/2022	Multi	**2.0%**	**2.9%**	594	0.0%	15.2%						
092042	10096	CHC Surgical Center, LLC	7001150R	Kings	10/13/2017	10/12/2022	Pain Management	**2.0%**	**2.7%**	68	0.0%	1.5%						
142216	10110	New Hyde Park Endoscopy	2963202R	Nassau	12/12/2017	12/11/2022	Gastroenterology	**2.0%**	**13.0%**	2,321	3.2%	0.6%						
151288	10117	Specialty Eye Surgery & Laser Center of the Capital District	0153205R	Albany	1/25/2018	1/25/2023	Ophthalmology	**2.0%**	**5.0%**	Year Two data not yet due								
151186	10175	Premier Ambulatory Surgery Center	1465200R	Erie	7/31/2018	7/30/2023	Gastroenterology/ Ophthalmology	**2.0%**	**6.2%**	Year Two data not yet due								
131030	10225	Bay Ridge Surgi-Center	7001152R	Kings	11/23/2018	11/22/2023	Multi	**2.0%**	**12.0%**	Year Two data not yet due								
152377	10241	Yorktown Center for Specialty Surgery	5968200R	Westchester	12/17/2018	12/16/2023	Multi	**2.0%**	**2.9%**	Year Two data not yet due								
142197	10239	Surgical Pain Center of the Adirondacks	0901206R	Clinton	12/20/2018	12/20/2023	Pain Management	**2.1%**	**12.8%**	Year Two data not yet due								
171477	10250	OrthoNY Surgical Suites	4552202R	Saratoga	2/1/2019	2/1/2024	Multi	**2.0%**	**10.7%**	Year Two data not yet due								
162026	10266	Manhattan Reproductive Surgery Center	7002299R	New York	3/27/2019	3/26/2024	Gynecology	**2.0%**	**2.0%**	Year Two data not yet due								
122051	10301	Rockaways ASC Development LLC	7003290R	Queens	5/23/2019	5/22/2024	Multi	**3.4%**	**14.6%**	Year Two data not yet due								
181103	10344	WNY Medical Management	1401236R	Erie	10/16/2019	10/15/2022	Multi	**2.1%**	**7.4%**	Year Two data not yet due								
131050	10373	New York Center for Ambulatory Surgery	7002818R	New York	12/13/2019	12/12/2024	Multi	**2.2%**	**6.0%**	Year Two data not yet due								

[1] Data source for 2017 is SPARCS, cost report not on file

[2] Data source for 2018 is SPARCS, cost report not on file

[3] New data from AHCF report for 2018

Data Sources (based on OpCert Start Year in table below, except for footnoted facilities):

OpCert start year 2015- Yr 2 ,Yr 3, & Yr 4 data from Cost or Annual report, unles otherwise noted

OpCert start year after 2015- Data is from Cost or Annual reports, unless otherwise noted

DOH staff has confirmed that facilities are unable to accurately reflect charity care through SPARCS

Submitted AHCF cost reports may inconsistently display Medicaid Managed Care

OpCert Start Year	Year 2	Year 3	Year 4
2015	2016	2017	2018
2016	2017	2018	2019
2017	2018	2019	2020
2018	2019	2020	2021
2019	2020	2021	2022

Ambulatory Surgery Centers - Limited Life Report

February 2020

Limited Life Extension Projects

Reports required - Quarterly

								Approved Target %		2017			2018		
CON #	PFI Number	Facility Name	Opcert #	County	Opcert Start Date	Opcert Exp Date	Specialty Type	Charity Care	Medicaid	Actual visits	Actual charity care	Actual Medicaid	Actual visits	Actual charity care	Actual Medicaid
172004	9448	The Endoscopy Center of New York	7001300R	New York	11/21/2017	11/20/2020	Gastroenterology	**1.5%**	**4.8%**	16,382	0.3%	2.9%	18,457	2.6%	4.4%

Data Source is from Annual Report or Cost Report

Submitted AHCF cost reports may inconsistently display Medicaid Managed Care

Ambulatory Surgery Centers - Permanent Life Report

February 2020

Permanent Life Projects

Annual Reports no longer required after approval

CON #	PFI Number	Facility Name	Opcert #	County	Date Permanent Life Granted	Specialty Type	Approved Target % Charity Care	Approved Target % Medicaid	2017 Actual visits	2017 Charity care	2017 Medicaid	2018 Actual visits	2018 Charity care	2018 Medicaid
122223	7768	Hudson Valley Endoscopy Center	1320200R	Dutchess	12/20/2013	Gastroenterology	**0.0%**	**8.1%**	7,047	0.0%	14.8%	6,906	0.0%	14.5%
141069	9034	Greater NY Endoscopy Surgical Center	7001124R	Kings	9/5/2014	Gastroenterology	**8.5%**	**25.7%**	9,828	0.7%	1.8%	9,277	0.8%	1.4%
151201	9119	Crystal Run ASC of Middletown	3501205R	Orange	12/4/2015	Multi	**2.0%**	**15.4%**	11,576	0.0%	17.3%	10,337	0.0%	17.2%
152036	9181	Endoscopy Center of Central NY	3328200R	Onondaga	12/4/2015	Gastroenterology	**0.9%**	**4.5%**	4,624	0.0%	5.2%	4,859	0.1%	6.0%
152002	9089	Upstate Orthopedics ASC	3321200R	Onondaga	9/28/2015	Multi	**2.0%**	**13.0%**	5,503	0.4%	17.5%	5,618	0.4%	18.9%
152327	9115	East Side Endoscopy	7002192R	New York	1/7/2016	Management	**2.8%**	**10.7%**	11,616	1.3%	8.8%	10,590	1.4%	8.2%
161116	9120	New York Endoscopy Center	5902211R	Westchester	3/30/2016	Gastroenterology	**5.4%**	**12.2%**	2,244	0.0%	9.8%	2,350	0.0%	10.2%
161083	9223	Gastroenterology Care, LLP	7001128R	Kings	6/14/2016	Gastroenterology	**1.6%**	**35.5%**	3,635	0.0%	39.0%	3,399	0.0%	40.6%
161307	8614	Meadowbrook Endoscopy	2914200R	Nassau	6/27/2016	Gastroenterology	**2.0%**	**20.0%**	9,081	0.4%	16.5%	9,414	0.4%	15.6%
161220	9231	Surgical Specialty Care of Westchester	5945200R	Westchester	8/5/2016	Multi	**4.1%**	**7.4%**	3,586	3.4%	6.0%	3,809	3.2%	4.6%
161175	9244	Mohawk Valley Endoscopy Center [1]	3202208R	Oneida	8/24/2016	Gastroenterology	**1.2%**	**9.5%**	8,308	N/A	0.2%	10,470	0.0%	7.2%
161456	9274	Manhattan Endo, LLC	7002800R	New York	12/13/2016	Gastroenterology	**1.9%**	**3.5%**	18,672	1.8%	3.5%	15,937	1.0%	3.0%
161415	9313	Carnegie Hill Endo, LLC	7002801R	New York	10/14/2016	Gastroenterology	**2.3%**	**3.1%**	14,327	1.6%	1.8%	14,592	1.3%	1.4%
162428	9290	Heritage One Day Surgery, LLC	3335202R	Onondaga	4/7/2017	Pain Management	**0.4%**	**14.7%**	17,104	0.0%	12.4%	18,099	1.1%	13.9%
162445	9322	Putnam Endoscopy ASC, LLC	3950202R	Putnam	4/7/2017	Gastroenterology	**3.6%**	**4.8%**	2,791	1.5%	7.9%	2,806	1.6%	5.5%
171020	9379	West Side GI, LLC	7002802R	New York	5/10/2017	Gastroenterology	**1.3%**	**20.7%**	18,032	0.6%	25.7%	17,055	0.8%	18.3%
171110	9358	Upstate Gastroenterology, LLC	3301224R	Onondaga	6/16/2017	Gastroenterology	**0.0%**	**23.0%**	2,196	0.0%	22.0%	1,692	0.0%	22.9%
171407	9118	South Brooklyn Endoscopy	7001125R	Kings	7/11/2017	Gastroenterology	**1.3%**	**35.1%**	14,725	1.0%	32.9%	13,959	0.5%	15.4%
172082	9185	South Shore Surgery Center	5154210R	Suffolk	9/11/2017	Multi	**1.8%**	**13.4%**	4,312	0.2%	11.1%	4,617	1.0%	21.0%
172169	9150	The Rye ASC, LLC	5908200R	Westchester	12/4/2017	Multi	**1.3%**	**3.8%**	4,963	0.0%	0.0%	4,992	0.0%	0.0%
171297	9340	Syracuse Surgery Center	3301223R	Onondaga	2/2/2018	Ophthalmology	**0.0%**	**1.6%**	1,551	0.0%	0.1%	4,955	0.0%	0.1%
172304	9463	Queens Boulevard GI, LLC	7003276R	Queens	2/12/2018	Gastroenterology	**0.5%**	**46.5%**	12,448	1.8%	28.5%	10,662	0.0%	12.5%
172363	9493	Flushing Endoscopy Center, LLC	7003278R	Queens	4/13/2018	Gastroenterology	**1.6%**	**46.0%**	13,604	0.8%	48.2%	14,156	0.6%	52.6%
181131	9149	Advanced Surgery Center	4352202R	Rockland	6/28/2018	Plastic &	**7.0%**	**4.7%**	512	7.2%	4.7%	501	3.8%	5.6%
181103	9467	WNY Medical Management, LLC [2]	1401236R	Erie	6/11/2018	Multi	**2.2%**	**7.4%**	1,415	0.8%	7.0%	2,093	N/A	5.1%
181152	9490	Manhattan Surgery Center	7002199R	New York	8/3/2018	Multi	**0.2%**	**5.8%**	6,377	0.2%	5.7%	6,080	0.0%	7.0%
172395	9473	Queens Endoscopy ASC, LLC	7003277R	Queens	11/30/2018	Gastroenterology	**2.8%**	**23.8%**	12,448	2.1%	35.3%	12,055	0.0%	17.5%
181448	9589	Brooklyn SC, LLC [2]	7001136R	Kings	10/15/2018	Multi	**2.0%**	**19.4%**	9,664	0.4%	19.4%	9,915	N/A	23.8%
181438	9518	New York Eye Surgical	4569200R	Saratoga	10/15/2018	Ophthalmology	**0.1%**	**4.0%**	3,705	0.1%	4.0%	3,721	0.0%	3.8%
181277	9526	Surgery Ctr at Orthopedic Associates, LLC	1363200R	Dutchess	12/18/2018	Multi	**0.1%**	**12.2%**	5,149	1.3%	12.2%	5,514	0.0%	10.9%
181248	9148	SurgiCare of Manhattan, LLC [2]	7002194R	New York	10/16/2018	Multi	**0.7%**	**2.9%**	4,893	0.0%	2.1%	4,377	N/A	0.9%
182183	9635	Endoscopy Center of Niagara	3102207R	Niagara	2/20/2019	Gastroenterology	**0.5%**	**7.8%**	4,315	0.6%	7.8%	4,943	0.0%	9.9%
182298	9680	Island Digestive Health Center	5154211R	Suffolk	2/22/2019	Gastroenterology	**0.8%**	**18.4%**	5,746	0.7%	19.2%	6,821	1.1%	16.7%
182240	9263	Griffiss Eye Center, LLC	3201201R	Oneida	2/21/2019	Multi	**0.9%**	**6.7%**	5,206	0.0%	5.9%	5,046	1.1%	6.4%
191032	9693	Advanced Surgery Center of Long island	5151208R	Suffolk	4/23/2019	Gastro/Pain Mgmt	**2.0%**	**6.5%**	7,349	1.0%	5.8%	7,874	2.0%	6.5%
191096	9710	Great South Bay Endoscopy	5151209R	Suffolk	4/23/2019	Gastroenterology	**0.3%**	**15.7%**	8,426	0.0%	11.0%	8,373	0.1%	16.0%
181259	9498	Mohawk Valley Eye Surgery	2850200R	Montgomery	6/10/2019	Ophthalmology	**0.0%**	**16.1%**	1,357	0.0%	21.2%	1,168	0.0%	16.1%
191172	9733	Cortland Surgical Center	1101202R	Cortland	7/3/2019	Otolaryngology(ENT)	**2.1%**	**36.8%**	2,395	2.3%	30.9%	2,003	2.1%	36.8%
191237	9744	PBGS, LLC	7002805R	Kings	9/11/2019	Gynecology	**0.8%**	**57.8%**	6,676	0.8%	57.8%	6,856	1.8%	44.2%

[1] 2017 data is from SPARCS, cost report not on file

[2] 2018 data is from SPARCS, cost report not on file

Data Source is from Annual reports or cost reports, unless otherwise noted

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DOH staff has confirmed that facilities are unable to accurately reflect charity care through SPARCS

Ambulatory Surgery Centers - Hospital-owned Report

February 2020

Hospital-Owned ASCs

Establishment of ASCs not covered by limited life process

							Approved Target %		2017			2018		
CON #	**PFI Number**	**Facility Name**	**Opcert #**	**County**	**Date ASC Opened**	**Specialty Type**	**Charity Care**	**Medicaid**	**Actual visits**	**Charity care**	**Medicaid**	**Actual visits**	**Charity care**	**Medicaid**
860440	4009	Millard Fillmore Surgery Center [3]	1451202R	Erie	12/28/1988	Multi			3,958	0.0%	5.1%	3,730	0.0%	4.4%
021354	6184	Suffolk Surgery Center [3]	5151207R	Suffolk	12/3/2003	Multi	1.0%	5.0%	6,107	0.0%	0.3%	6,018	0.0%	0.3%
992612	6405	St. Peter's Surgery & Endoscopy Center	0101221R	Albany	5/15/2002	Multi	0.0%	3.9%	17,855	0.2%	9.1%	18,128	0.2%	9.2%
991288	6480	Digestive Health Center of Huntington [1, 3]	5153212R	Suffolk	12/23/2002	Gastroenterology	0.0%	5.9%	3,020	N/A	0.0%	3,793	0.0%	0.1%
021342	6678	Linden Surgery Center [3]	2701242R	Monroe	7/2/2004	Multi	0.0%	6.0%	9,918	0.0%	5.0%	11,074	0.0%	8.8%
051145	6920	New York GI Center	7000274R	Bronx	2/27/2007	Gastroenterology	3.0%	10.0%	10,471	0.0%	16.0%	10,528	0.0%	15.8%
031047	6949	Hudson Valley Ambulatory Surgery, LLC [3]	3501204R	Orange	4/2/2007	Multi	0.0%	5.5%	2,573	0.0%	8.0%	2,527	0.0%	9.0%
041132	6953	Advanced Endoscopy Center	7000275R	Bronx	5/15/2007	Gastroenterology	3.0%	7.0%	13,746	0.0%	31.5%	13,403	0.0%	33.6%
122071	9705	Bridgeview Endoscopy [1, 2]	1302213R	Dutchess	7/15/2014	Gastroenterology	2.0%	4.8%	3,576	N/A	3.9%	5,452	N/A	6.7%
152294	10102	East Hills Surgery Center	2977200R	Nassau	12/4/2017	Multi	2.0%	2.8%	N/A	N/A	N/A	1,503	N/A	0.1%
161170	10134	Port Jefferson Ambulatory Surgery Center [4]	5151210R	Suffolk	2/13/2018	Multi	2.0%	4.0%	N/A	N/A	N/A	852	0.2%	0.0%
162552	10302	HSS West Side ASC	7002815R	New York	7/16/2019	Orthopedic	2.0%	2.0%	N/A	N/A	N/A	N/A	N/A	N/A
182125	10366	Everett Road Surgery Center	0153206R	Albany	12/11/2019	Multi	1.9%	10.3%	N/A	N/A	N/A	N/A	N/A	N/A

[1] 2017 Data is from SPARCS, cost report not on file

[2] 2018 Data is from SPARCS, cost report not on file

[3] Ownership has changed since the center started operations

[4] 2018 data is from annual report

Data Source is AHCF cost reports, unless otherwise noted

Submitted AHCF cost reports may inconsistently display Medicaid Managed Care

DOH staff has confirmed that facilities are unable to accurately reflect charity care through SPARCS

C. Committee on Health Planning

Members

John Rugge, M.D. MPP - Chair
Judy Baumgartner
John Bennett, Jr., M.D.
Howard Berliner
Jo Ivey Boufford, M.D.
Kathleen Carver Cheney
Jeffrey Kraut
Scott LaRue
Harvey Lawrence
Glenn Martin, M.D.
Ann Monroe
Mario Ortiz, R.N., Ph.D., F.A.A.N.
Ellen Rautenberg
Peter Robinson

Work Conducted in 2019

In 2019, under the leadership of John Rugge, M.D., the Committee on Health Planning met several times to discuss various health policy initiatives and issues. All supplementary materials related to these discussions can be found on the Department of Health's PHHPC webpage located at:
https://www.health.ny.gov/facilities/public_health_and_health_planning_council/

On March 28, 2019 the Committee met to discuss a new public need methodology and financial feasibility proposal for Licensed Home Care Agency (LHCSA) Certificate of Need (CON) reviews.

The Committee also met that day to discuss and consider new physical plant standards for primary care clinics.

On May 15, 2019 the Committee met to discuss the Department of Health's overview of the current CON process and a discussion on ambulatory surgery trends.

On July 18, 2019 the Committee met to discuss proposed review criteria for the approval of Ambulatory Surgery Centers (ASCs) which would take into consideration the impact of new ASCs on local hospitals.

On November 20, 2019 the Committee met to discuss proposed Certified Home Health Agency (CHAA) CON need methodology.

The Committee also met that day to review a proposed oversight model for Article 28 Diagnostic and Treatment Centers in which certain outpatient procedures are performed.

Stroke Center Designation

On February 14, 2019 the Committee recommended the Olean General Hospital for Stroke Center designation.

D. Committee on Public Health

Members

Jo Ivey Boufford, M.D., Chair	
Anderson Torres, Ph.D., Vice Chair	Ellen Rautenberg
John Bennett, Jr., M.D.	Nilda Soto
Lawrence S. Brown, Jr., M.D., M.P.H.	Theodore Strange, M.D.
Angel Gutiérrez, M.D.	Kevin Watkins, M.D., M.P.H.
Ann Monroe	Patsy Yang, Dr.P.H.
Mario Ortiz, R.N., Ph.D., F.A.A.N.	

Work Conducted in 2019

In 2019, the Public Health Committee, under the leadership of Jo Ivey Boufford, M.D., Chairperson, worked extensively with staff from the New York State Department of Health (DOH) and in collaboration with key stakeholders across the state to advance the New York State (NYS) Prevention Agenda, the State's health improvement plan (previously presented to and accepted by the Council in December 2018).

The Prevention Agenda was honored with a 2019 Vision Award from the Association of State and Territorial Health Officials, recognizing the collaborative effort of the Public Health Committee's Ad Hoc Committee to Lead the Prevention Agenda and more than 140 statewide organizations in the development and implementation of the Prevention Agenda, which identifies New York's most urgent health concerns and recommends ways statewide organizations and local health departments, hospitals and partners from the health, business, education and nonprofit sectors can work together to address them.

The vision for the updated Prevention Agenda is that New York is the Healthiest State in the Nation for People of All Ages. The plan incorporates a strong focus on addressing the social determinants of health (SDoH) and a Health Across All Policies approach to incorporate health considerations into policy making and programming across sectors and policy areas to improve the health of the community, address health disparities, and include interventions that support healthy aging.

Health Across All Policies/Age-Friendly NY

The Committee focused attention on the Health Across All Policies/Age-Friendly NY initiative by supporting efforts led by the Governor's office and an Executive level steering committee from DOH, the State Office for the Aging, and Department of State. The broader working group, co-chaired by the Commissioner of Health, has expanded significantly and now includes active participation from agencies such as the Office of Mental Health, Office of Addiction Services and Supports (formally known as the Office of Alcoholism & Substance Abuse Services), Department of Agriculture and Markets, Office of Parks, Recreation and Historic Preservation, NYS Energy Research and Development Authority, among others, and continues to grow.

- An interagency collaboration meeting was held on January 8 to discuss implementation of Governor Cuomo’s Executive Order No. 190 directing State agencies to incorporate the NYS Prevention Agenda priorities and the WHO/AARP eight domains of livability for age-friendly communities as appropriate. DOH executive staff presented the updated Prevention Agenda and provided examples of successful interagency partnerships to spur continued and expanded collaboration.
- An Age-Friendly Health Systems in NYS convening was held on May 20 sponsored by the Health Foundation for Western and Central NY and The John A. Hartford Foundation to discuss how to improve care across the continuum for older adults in NYS.
- The initiative received the Public Health Innovation Award from the National Network of Public Health Institutes recognizing its work on behalf of the public-private partnership between the key state agencies and the Health Foundation of Western and Central New York, New York Academy of Medicine and AARP.
- A second cross agency meeting was held on July 30 to share work being done across the state with the HAAP/AFNY lens. There was also a discussion of efforts to consolidate information and resources related to SDoH using the Prevention Agenda framework. Follow up meetings were held to continue the SDoH focus, especially considering the continued Medicaid redesign efforts.
- A poster session titled: “Health Across All Policies/Age-Friendly NY: Integrating Health and Aging into State and Local Policy” was presented at the American Public Health Association annual meeting in November 2019, increasing visibility of the successful New York initiative at the National level.

Committee members convened at the February 2019 Population Health Summit where nearly 800 participants from local public health, State agencies and health care partners shared their experiences with implementing the NYS Prevention Agenda at the community level and discussed how NYS can best integrate its Health Across All Policies and Age Friendly NYS initiatives to advance population health. To sustain the momentum of the Summit, the Committee expanded its communication efforts through sharing of relevant public health materials using the newly established Prevention Partners list serv. The List Serv was initially seeded by the Population Health Summit participants and quickly grew to more than 1,300 subscribers, indicating a thirst for continued information sharing.

The Committee recognized National Public Health Week during the first week in April and shared the theme and call to action with the Council: “Creating the Healthiest Nation: For Science. For Action. For Health.” Two newly appointed Council members joined the Public Health Committee and were provided an orientation in October 2019 to share the Committee’s past, present and future work efforts.

The Committee continues to partner with the Health Planning Committee and DOH staff to implement the recommendation of the Council that attention to the Prevention Agenda and community benefit spending be incorporated into Certificate of Need (CON) reviews. Information regarding applicant activities which advance Prevention Agenda goals and address community public health needs continue to be reviewed by the PHHPC as part of CON applications for hospital establishment and construction projects. The goal is to expand this to non-hospital projects including ambulatory care and long-term care facilities. In addition, the committee has begun to examine the process to expand the reporting efforts of hospitals to align community benefit investments with the Prevention Agenda in the communities they serve by requiring reporting of Community Benefit spending to DOH.

Special Topics

The Committee provided support and public health expertise in addressing several high-profile public health issues.

- Measles. DOH and local health departments responded to a historic measles outbreak ending in October 2019, a mere six days before the United States would have lost its measles elimination status. Emergency response efforts included education, epidemiological investigation, rapid testing, isolation and quarantine, and vaccination campaigns. The Committee was instrumental in the implementation of immunization requirements requiring emergency regulation and legislation including those related to summer camps, and the repeal of non-medical exemptions.

- Vaping. The Committee was actively involved in efforts to respond to the surge of cases of E-cigarette or Vaping Associated Lung Injury (EVALI) in New York State (NYS) including reviewing several emergency regulations and legislative efforts addressing different aspects of the vaping issue (signage, flavoring, minimum sales age and tax increases, retailer registration, etc.)

- Maternal Mortality. The Public Health Committee selected Maternal Mortality as a health issue for special focus (in addition to its work on the Prevention Agenda) in 2013. An extensive body of work was completed through 2018 informing the Governor’s Taskforce on Maternal Mortality and Disparate Racial Outcomes. The Public Health Committee met in June 2019 to review the top 10 Taskforce recommendations including establishment of a Maternal Mortality Review Board. The Committee continues to oversee activities including new investments announced in the 2019-20 Executive budget (community health workers, implicit bias training, perinatal data warehouse, etc.)

- Violence. Finally, the Public Health Committee selected violence prevention within the framework of the Prevention Agenda as its next focus area. The Committee initiated its work on this topic with a kickoff meeting in June 2019 that featured a review of where violence prevention sits within the NYS Prevention Agenda including the objectives, interventions, and measures; a data rich presentation on the general epidemiology and public health burden of violence; and a discussion of how to narrow the Committee's focus in order to maximize their influence with a topic as vast as violence prevention. The Committee identified a need to hear from organizations to highlight successful initiatives and identify obstacles to progress. With that objective, two additional meetings were convened in October and December.
    - The October meeting included a review of the public health approach, the epidemiology of violence and firearms specifically, the social-ecological model as a tool for identifying risk, and presentations from select State agency partners who are engaged in violence prevention activities (Office of Mental Health, Office of Alcoholism and Substance Abuse Services, Department of State, State Office for the Aging, Office of Children and Family Services, Office for the Prevention of Domestic Violence and Office of Victim Services).
    - The December meeting continued the panel presentations with participants from the New York State Police, Department of Labor, and Department of Criminal Justice Services.
    - A third panel is being planned for February 2020, after which the Committee will develop recommendations to the Council for priority areas in which the Committee can promote action on this critical issue.

The Committee looks forward to continuing to support the public health efforts in NYS in 2020 as we strive to make NYS the healthiest state in the nation for people of all ag

E. Committee on Health Personnel and Interprofessional Relations

Members

Glenn Martin, M.D., Chair
Angel Gutiérrez, M.D.
Kathleen Carver-Cheney,
Thomas Holt
Mario Ortiz, R.N., Ph.D., F.A.A.N.

The Committee reviewed and decided on three health personnel cases in Executive Session.

Adopted February 6, 2020

State of New York
Public Health and Health Planning Council

Minutes
December 12, 2019

The meeting of the Public Health and Health Planning Council was held on Thursday, October 10, 2019 at the New York State Department of Health Offices, 90 Church Street, 4th Floor CR 4 A/B, NYC. Chairman Jeffrey Kraut presided.

COUNCIL MEMBERS PRESENT

Dr. Howard Berliner	Dr. Mario Ortiz
Dr. Jo Ivey Boufford	Ms. Ellen Rautenberg
Dr. Lawrence Brown	Mr. Peter Robinson
Ms. Carver-Cheney	Dr. John Rugge
Dr. Angel Gutiérrez	Ms. Nilda Soto
Mr. Thomas Holt	Dt. Theodore Strange
Dr. Gary Kalkut	Mr. Hugh Thomas
Mr. Jeffrey Kraut	Dr. Anderson Torres
Mr. Scott La Rue	Dr. Kevin Watkins
Mr. Harvey Lawrence	Dr. Patsy Yang
Dr. Glenn Martin	Dr. Howard Zucker – Ex-officio (Albany)
Dr. Ms. Ann Monroe	

DEPARTMENT OF HEALTH STAFF PRESENT

Ms. Deirdre Astin
Ms. Barbara DelCogliano – via video Albany
Ms. Alejandra Diaz
Ms. Valerie Deetz
Dr. Marcus Friedrich – via video Albany
Mr. Mark Furnish – via video Albany
Ms. Shelly Glock
Mr. Brian Gallagher – via video Albany
Mr. Brad Hutton – via video Albany
Mr. Mark Kissinger – via video Albany
Ms. Colleen Leonard
Mr. George Macko – via video Albany
Mr. Nicholas Mestoik – via video Albany
Ms. Marthe Ngwashi
Mr. Mark Noe – via video Albany
Ms. Tracy Raleigh
Ms. Laura Santilli
Ms. Kelly Scholl – via video Albany
Ms. Lauren Tobias – via video Albany
Ms. Jennifer Treacy – via video Albany
Mr. John Walters – via video Albany
Mr. Richard Zahnleuter

INTRODUCTION

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

APPROVAL OF THE MINUTES OF AUGUST 8, 2019 AND OCTOBER 10, 2019

Mr. Kraut asked for a motion to approve the August 8, 2019 Minutes of the Public Health and Health Planning Council meeting. Dr. Gutiérrez motioned for approval, Dr. Torres seconded the motion. The minutes were unanimously adopted. Please refer to page 3 of the attached transcript.

Mr. Kraut asked for a motion to approve the October 10, 2019 Minutes of the Public Health and Health Planning Council meeting. Dr. Torres motioned for approval, Dr. Gutiérrez seconded the motion. The minutes were unanimously adopted. Please refer to page 3 of the attached transcript.

RESOLUTION OF APPRECIATION FOR MR. SHEPPARD

Mr. Kraut announced that Mr. Sheppard has retired from State service and thanked him for exhibiting the true meaning of a public servant. On behalf of the Council, Mr. Kraut and Dr. Boufford signed a Resolution of Appreciation for Mr. Sheppard. Please see pages 3 and 4 of the transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Department of Health Activities

Mr. Kraut introduced Dr. Zucker to give a report on the Department of Health report.

Flu

Dr. Zucker began his report by stating the Department the week of December 2, 2019 initiated the requirement of healthcare workers to wear masks in areas where they treat patients. For the week that ended December 7, 2019 New York had a total of 4,989 lab confirmed cases this flu season and so far 1,040 hospitalization and unfortunately one pediatric death. The number of new cases increased 60 percent from the previous week, and the Department continues to encourage people anyone older than six months to get vaccinated. The elderly, and children younger than two years are particularly vulnerable and they definitely need to be protected.

Vaping Illness

Dr. Zucker next spoke on the issue of vaping illness. He reported that since the last PHHPC meeting in October, there was a second death in New York state and attributed it to what the CDC is now calling the acronym ECVALI, E-cigarette vaping associated lung injuries. Both the New York State and the nation continue to fight the severe pulmonary illness. New York now has 205 reported cases and nationally, there are 291 cases that have been reported by the CDC. In New York we are proud to be a leading voice in regard to clinical guidance on response for the emerging illness and research to determine its cause. The CDC recently confirmed the findings that our Wadsworth Center laboratory came up with about the role of vitamin E acetate may play.

Dr. Zucker noted that on November 26, 2019 the CDC reported examine indications in the patients in Minnesota and provided further evidence linking the synthetic vitamin E oil added to illegal THC products to this illness. The CDC is recommending that while potential toxicants continue to be evaluated, vitamin E acetate should be, should not be added to e-cigarette or vaping products and we continue to look for that and other causes as well. Additionally the Department's Center for Environmental Health worked with the University of Rochester Medical Center, the Upstate Poison Control Center, and the New York City Poison Control Center to develop a clinical practice algorithm to identify the type of lung damage being observed in this national outbreak and to guide the providers

World AIDS Day

Dr. Zucker announced that New York State commemorated World AIDS day in Albany and in New York City. With a reaffirmation of our pledge to end the epidemic by the end of 2020. Around 2019 we consistently hit the mark in our ongoing efforts to achieve this historic goal. 2018 had the largest increase in new HIV diagnoses in New York State since the launch of the ending the epidemic initiative which was in 2014. The 2,400 new diagnoses which constituted an 11 percent drop in 2017 and a 28 percent drop since 2014. That 20 percent decrease is the largest single year decrease since the manage HIV reporting began, and that began in 2000. HIV instances declined each year since the start of the end the epidemic with a 40 percent decrease over that time frame. In 2018 HIV incidents fell to an all-time low of 2019 cases. Additionally 2018 data shows that 82 percent of newly diagnosed New Yorkers were connected with care within 30 days of being diagnosed. The Department has seen increased access to linkage and retention of care. An increase in viral suppression, a significant uptick in use of the medication known as PREP, for those of who do not have HIV but who are at substantial risk of getting HIV. New York leads the nation with the largest percentage of individuals on PREP medication. In 2018 over 32,000 New Yorkers took PREP which is an increase of 32 percent from 2017. Governor Cuomo called on Facebook to remove the deceptive ads questioning the safety and effectiveness of Truvada. Dr. Zucker commended the Governor for taking a stand on this issue. This type of misinformation jeopardizes the public health, it diminishes the significant work done here in New York State to end the epidemic by 2020.

Opioid

Dr. Zucker stated that the opioid death decreased. The State recently shared some great news in the fight to prevent opioid overdose deaths in the New York. Opioid overdose deaths in New York State outside New York City declined 15.9 percent in 2018 compared to 2017. This is the first decrease in a decade. The preliminary data in New York City's 2018 also shows a decrease. The statewide data is one of the most recent New York State opioid quarterly report which additionally found that hospitalizations for opioid related overdoes decreased 7.1 percent in 2018 compared to 2017. This is a result of New York State heroine and opioid taskforce which reconvened this year.

Dr. Zucker sadly stated that close to 2,000 people have tragically died of opioid overdoses in 2018, many communities across the state are disproportionately affected by the opioid epidemic, the decrease does remain a significant milestone. New York continues working to prevent opioid misuse and overdoses while enhancing services for people with opioid use disorder and increasing access to those services in areas with the greatest need.

Drinking Water Safety

Dr. Zucker stated that on December 9, 2019 Governor Cuomo signed legislation to help prevent 1-4 Dioxane from contaminating New York's drinking water systems. Dr. Zucker noted that in July 2019 he accepted New York State's Drinking Water Quality Council's recommendation for maximum contaminant levels in drinking water with reemerging contaminants PFOA, PFOS, and 1-4 dioxane. The standard of one part per billion for 1-4 dioxane is the nation's first ever recommended level set for this. This new law prohibits the sale of household cleaning products containing 1-4 dioxane and limits the sale of cosmetic and personal gift products with certain levels of 1-4 dioxane. The new law takes effect on January 1, 2022.

New York State of Health

Dr. Zucker advised that the New York State of Health annual open enrollment period for qualified healthcare plan coverage began on November 1, 2019. It runs through January 31, 2020. The first 41 days of open enrollment, 240,140 New Yorkers have signed on for coverage, and in 2020 qualified health plan. We are outpacing enrollment for the same period last year by more than 7,000 people. He encouraged New Yorkers that they need to enroll by December 15, 2020 for their coverage by January 1, 2020. Enrollment in the essential plan, Medicaid and Child Health Plus is open all year. In 2019 nearly 800,000 New Yorkers enrolled in the essential plan for eligible lower income New Yorkers with only 40 percent of these enrollees under the age of 35. A higher share than any other marketplace programs. In total approximately 4.8 million people nearly one in four New Yorkers have enrolled in quality affordable health insurance coverage through the New York State of Health

Dr. Zucker thanked the Council for their over and above commitment of time and expert counsel to help the Department meet many challenges, especially regarding vaping related illnesses and so many other things we call the Council to come in for. He stated that their amenability has been a difference in the effectiveness of our response and the Department sincerely appreciates it.

Dr. Zucker concluded her report. To read the complete report and questions from the Members, please see pages 21 through 35 of the attached transcript.

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

Office of Public Health Activities

Mr. Hutton began his report by advising that on November 13, 2019, the age increased from 18 to 21 years of age to purchase vaping products. On December 1,2019, new legislation took effect that requires vaping products to be registered with the New York State Department of Taxation and Finance. This will allow the state local health departments to know which are the retail establishments that are selling products. The Department has been working with colleagues who has been a long time contractor for the purposes of operating New York State smokers quit line to expand the current cessation services through the quit line with respect to individuals who are attempting to quit vaping. It turns out that there are some complexities that we need to work through as far as the dosage of nicotine replacement therapy and the procedures that the Department will use for adolescents who are attempting to quit vaping. The Department is working Roswell Park as well as colleagues at quit lines around the nation to assist individuals attempting to quit vaping.

Mr. Hutton spoke on the topic of the contaminant level rulemaking. The rulemaking recently completed a 60-day public comment period. There were over 5,000 comments. The Department's review of those comments is expected to be presented as the next steps to the members of the Drinking Water Quality Council.

Mr. Hutton stated that the Department submitted their application to be reaccredited by the Public Health Accreditation Board. A little over five years ago the Department was accredited which was one of the first state health department's to be accredited by the Public Health Accreditation Board.

Mr. Hutton lastly gave an update on the activities in the area of school immunizations. He noted that some of the Council members have been receiving emails from members of the public who are concerned about some of the rulemaking that has occurred on the part of medical exemptions and school immunizations. He clarified that the rulemaking that relates to school immunizations are not under the purview of PHHPC, and so therefore do not require PHHPC review. The summer of 2019 after the legislation was enacted that repealed non-medical exemptions, the Department moved quickly to introduce emergency regulations that created enhanced standards for medical exemptions as well as making some other important changes to the regulations. The Department filed a second emergency regulation on November 14, 2019. Those second emergency regulations go through January 12, 2019. At the same time, there was a public comment period to get outside input on our proposed rulemaking. That comment period ended on November 4, 2019 and the Department is just completing the review of public comment. There has been strong support from associations representing medical professionals in New York State regarding the proposed rules related to medical exemptions. Organizations like MYSNY, American Academy of Pediatrics and Academy of Family Physicians in New York State as well as New York State Association of Health Care Providers and others expressed their strong support for the enhanced standards for medical exemptions. The Department will be moving soon to finalize the next steps with respect to those regulations.

Mr. Hutton concluded his report, to view the members discussion please see pages 51 through 58 of the attached transcript.

REGULATION

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

Report of the Committee on Codes, Regulation and Legislation

For Information

19-17 Amendment of Section 405.4 of Title 10 NYCRR (Hospital Medical Staff - Limited Permit Holders)

19-31 Amendment of Subpart 765-1 of Title 10 NYCRR (Licensed Home Care Services Agencies)

Dr. Gutierrez began his report by stating the Codes Committee heard For Information Amendment of Section 405.4 of Title 10 NYCRR (Hospital Medical Staff - Limited Permit Holders) and Amendment of Subpart 765-1 of Title 10 NYCRR (Licensed Home Care Services Agencies) and briefly described the regulations. Please see pages 17 and 18 of the attached transcript.

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

HEALTH POLICY

Report of the Health Planning Committee

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

Dr. Rugge stated that the Health Planning Committee met in November and considered two important topics. One was to update the need methodology for Certified Home Health Agencies (CHHA's). There are currently 118 operational CHHA's in New York State. In 2012 there was an RFA and as a result there was an increase by some 56 agencies. The Committee received a series of options in terms of how or even whether to proceed with issuing new RFA's, how and whether to certify new agencies.

Dr. Rugge advised that the second topic considered at the Health Planning Committee meeting was short-term care by way of the location of surgical and other procedures. Currently we have hospitals at one end of the spectrum, D&T Centers doing primary and certain specialty services on the other with their limited capabilities for anesthesia and procedures, and what was brought to the Committee by staff is consideration of developing a new category of Health Centers with outpatient procedures. In appropriate settings with careful patient selection and appropriate architecture and design of rooms for both imaging and procedures, more advanced anesthesia up to moderate sedation, peripheral regional procedures, and inclusive of epidural injections and treatment to be given to this newly designated category of D&Ts with outpatient procedures. The Committee had the opportunity to look at the staff considerations.

Ms. Astin stated that the Department's next step will be to reach out to stakeholders, ambulatory surgery center associations, and other interested parties to get their feedback on this model. Basically it would create something between a D&TC that's only doing Primary Care and an ASC doing full on surgical procedures to create a level of diagnostic treatment that can do some minimally invasive procedures under minimal anesthesia with low-risk, with patient selection being the key. The Department is seeing this mostly in interventional radiology space, and in some minor procedures in reproductive medicine.

Dr. Rugge concluded his report. To view the complete report and questions from Council members, please see pages 18 through 27 of the attached transcript.

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

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Peter Robinson, Chair, Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services - Construction

Number	Applicant/Facility	Council Action
162148 C	Nyack Hospital (Rockland County) Ms. Soto - Recusal	Contingent Approval

Mr. Robinson called application 1962148 and noted for the record that Ms. Soto has a conflict and has left the meeting room. Mr. Robinson motions for approval which is seconded by Dr. Gutiérrez. The motion to approve passed with Ms. Soto's noted recusal. Ms. Soto returned to the meeting room. Please see page 28 of the transcript.

Number	Applicant/Facility	Council Action
172251 C	Putnam Hospital Center (Putnam County)	Contingent Approval

171415 C	Northern Dutchess Hospital (Dutchess County)	Contingent Approval
191260 C	HealthAlliance Hospital Mary's Avenue Campus (Ulster County) Dr. Bennett – Conflict (not present at meeting)	Contingent Approval

Mr. Robinson called applications 172251, 171415, and 192160 and noted for the record that Dr. Bennett had a conflict on application 192160 but was not present at the meeting. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see pages 28 through 32 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
152243 C	Northern Westchester Hospital (Westchester County) Mr. Kraut – Recusal Dr. Strange – Recusal	Contingent Approval

Mr. Robinson called application 152243 and noted for the record that Mr. Kraut and Dr. Strange have declared conflicts and have exited the meeting room. Mr. Robinson motions for approval, Dr. Gutiérrez seconds the motion. The motion carries. Mr. Kraut and Dr. Strange return to the meeting room. Please see page 32 of the attached transcript.

162211 C	New York-Presbyterian/Hudson Valley Hospital (Westchester County) Dr. Brown – Recusal	Contingent Approval

Mr. Robinson introduces application 162211 and notes for the record that Dr. Brown has declared a conflict and has exited the meeting room. Mr. Robinson motions for approval, Dr. Gutiérrez seconds the motion. The motion carries. Dr. Brown return to the meeting room. Please see pages 32 and 33 of the attached transcript.

192045 C	Samaritan Hospital (Rensselaer County) Dr. Bennett – Conflict (not present at meeting)	Contingent Approval
192123 C	Blythedale Childrens Hospital (Westchester County)	Contingent Approval

Ambulatory Surgery Center - Construction

Number	Applicant/Facility	Council Action
192051 C	Specialists' One-Day Surgery Center, LLC (Onondaga County)	Contingent Approval

Mr. Robinson next calls applications 192045, 192123 and 192051 and notes for the record that Dr. Bennett had declared a conflict on application 192045 but is not present at the meeting. Mr. Robinson motions for approval. Dr. Gutiérrez seconds the motion. The motion carries. Please see pages 33 and 34 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

Certified Home Health Agencies – Construct

Number	Applicant/Facility	Council Action
121223 C	Excellent Home Care Services, LLC (Kings County) One Members Opposing	Approval

Mr. Robinson calls application 121223 and motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carries with Dr. Torres opposing the motion. Please see pages 34 through 40 of the 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

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 3: Applications Recommended for Approval with the Following:

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

CON Applications

Certified Home Health Agency – Establish/Construct

Number	Applicant/Facility	Council Action
191075 E	Excellent Home Care Services, LLC (Kings County) One Member Opposed	Contingent Approval
192009 E	VNA of Staten Island (Richmond County)	Contingent Approval

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

CON Applications

Certified Home Health Agencies – Establish/Construct

Number	Applicant/Facility	Council Action
191123 E	Preferred Certified, LLC (Bronx County)	Contingent Approval

Mr. Robinson called applications 191075, 192009 and 191123. Mr. Robinson motioned to approve applications 192009 and 191123. Dr. Gutiérrez seconded the motion. The motion to approve carries. Next Mr. Robinson calls application 191075 and motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carries with one Dr. Torres opposing the motion. Please see pages 40 through 43 of the attached transcript.

Ambulatory Surgery Centers – Establish/Construct

Number	Applicant/Facility	Council Action
191212 B	Atlantic SC, LLC d/b/a Atlantic Surgery Center (Suffolk County)	Contingent Approval
192021 B	Northeast Endoscopy (Suffolk County)	Contingent Approval
192069 B	Crotona Parkway SC, LLC d/b/a Crotona Parkway Ambulatory Surgery Center (Bronx County)	Contingent Approval

Mr. Robinson called applications 191212, 192021, and 192069 and motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carries. Please see pages 43 and 44 of the attached transcript.

Diagnostic and Treatment Centers – Establish/Construct

Number	Applicant/Facility	Council Action
191286 B	Perfect Health Medical, LLC (Kings County)	Contingent Approval

Mr. Robinson called application 191286 and motioned for approval. Dr. Gutiérrez seconded the motion. Dr. Martin asked for a revised motion. Mr. Robinson and Dr. Gutiérrez recalled their original motion for approval. Dr. Martin requested a new contingency be added to require submission of an assumed name, acceptable to the Department. Mr. Robison motioned for approval with the added contingency. Dr. Gutiérrez seconded the motion. The motion to approve carried. See pages 44 through 56 of the transcript.

192118 B	NY Med of Brooklyn (Kings County)	Contingent Approval

Residential Health Care Facilities – Establish/Construct

Number	Applicant/Facility	Council Action
192013 E	Fairview Nursing Care Center, Inc. (Queens County)	Contingent Approval

Mr. Robinson called application 192218 and 192013 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see page 57 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

Certified Home Health Agency – Establish/Construct

Number	Applicant/Facility	Council Action
192014 E	Always There Family Home Health Services (Ulster County) Mr. LaRue - Recusal	Contingent Approval

Mr. Robinson introduced application 192014 and noted for the record that Mr. LaRue has a conflict and has exited the meeting room. Mr. Robinson motions for approval, Dr. Gutiérrez seconds the motion. The motion carries with Mr. LaRue's noted recusal. Mr. LaRue returns to the meeting room. Please see pages 57 and 58 of the transcript.

Acute Care Services – Establish/Construct

Number	Applicant/Facility	Council Action
192157 E	SLHS Massena, Inc. d/b/a Massena Hospital (St. Lawrence County) Mr. Thomas – Interest/Abstaining	Contingent Approval

Mr. Robinson calls application 192157 and notes for the record that Mr. Thomas has in interest. Mr. Robinson motions for approval, Dr. Gutiérrez seconds the motion. The motion to approve carried with Mr. Thomas' abstention. Please see page 58 of the transcript.

CATEGORY 4: Applications Recommended for Approval with the following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

HOME HEALTH AGENCY LICENSURES

Affiliated with Assisted Living Programs (ALPs)

191101 E	Underwood Gardens Homecare, LLC d/b/a Underwood Manor LHCSA (Cattaraugus County) Dr. Watkins - Recusal	Contingent Approval
192006 E	Marchand Home Care at Sharon Springs (Schoharie County)	

Mr. Robinson calls application 191101 and notes for the record that Dr. Watkins has declared a conflict and has exited the meeting room. Mr. Robinson motions for approval, Dr. Gutiérrez seconds the motion. The motion to approve carries with Dr. Watkins recusal. Dr. Watkins returns to the meeting room. Please see page 59 of the attached transcript.

Lastly, Mr. Robinson introduced application 192006 and motioned for approval. Dr Gutiérrez seconds the motion. The motion to approve carries. See pages 59 and 60 of the attached transcript.

Mr. Robinson concluded his report.

Mr. Kraut suspended the Full Council meeting and moved to the Committee on Codes, Regulations and Legislation.

REGULATION

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

Report of the Committee on Codes, Regulation and Legislation

For Emergency Adoption

18-17 Addition of Subpart 9-3 to Title 10 NYCRR (Prohibition on the Sale of Electronic Liquids with Characterizing Flavors)

Dr. Gutiérrez described the Addition of Subpart 9-3 to Title 10 NYCRR (Prohibition on the Sale of Electronic Liquids with Characterizing Flavors) and motioned for emergency adoption. Dr. Kalkut seconded the motion. The motion carried with Dr. Berliner and Dr. Martin's opposition. Please see pages 61 and 62 of the transcript.

For Adoption

19-34 Addition of Subpart 9-2 to Title 10 NYCRR
(Required Signage Warning Against the Dangers of Illegal Products)

Dr. Gutiérrez next described the Addition of Subpart 9-2 to Title 10 NYCRR (Required Signage Warning Against the Dangers of Illegal Products) and motioned for approval. Dr. Watkins seconds the motion. The motion to adopt carries. Please see pages 62 through 64 of the attached transcript.

For Information

18-17 Addition of Subpart 9-3 to Title 10 NYCRR (Prohibition on the Sale of Electronic Liquids with Characterizing Flavors)

Lastly Dr. Gutiérrez describes For Information the Addition of Subpart 9-3 to Title 10 NYCRR (Prohibition on the Sale of Electronic Liquids with Characterizing Flavors). Please see pages 64 through 72 of the transcript.

ADJOURNMENT:

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

1 **NEW YORK STATE DEPARTMENT OF HEALTH**

2 **PUBLIC HEALTH AND HEALTH PLANNING COUNCIL**

3 **DECEMBER 12, 2019**

4 **TRANSCRIPT**

5

6 JEFF KRAUT: We have suspended deliberations of the codes
7 committee. We will return to them at the conclusion of the
8 business of the Council and then as I said earlier, then we'll
9 come back after the codes committee completes its business to
10 reconvene the council to act on any matter that the code
11 committee wants to put before us.
12 Good morning I'm Jeff Kraut and I have the privilege to
13 call to order the December 12, 2019 meeting of the Public Health
14 and Health Planning Council. Welcome members. Commissioner
15 Zucker. Members. Observers. I want to remind council members,
16 staff and the audience, the meeting is subject to the open
17 meeting law and is broadcast over the Internet. These webcasts
18 can be accessed at the Department of Health Website
19 NYhealth.gov. These on-demand webcasts will be available no
20 later than seven days after the meeting for a minimum of 30
21 days, and a copy will be retained in the department. In order to
22 make the meeting successful, please remember we have
23 synchronized captioning. Don't speak over one another. It's very
24 difficult to do the captioning when two people speak at the same

1 time. The first time you speak please state your name briefly
2 identify yourself as a council member or DOH staff. This will be
3 helpful to recording the meeting. The microphones obviously are
4 hot. They pick up every sound. Avoid the rustling of paper is
5 next to the microphone. Be very concerned and aware about
6 personal side conversations. The man it will take that up as
7 well. And just to remind our audience there's a record of
8 appearance form that needs to be filled out before you enter the
9 meeting. It's required by The Joint Commission on Public Ethics
10 in accordance with the executive law section 166. This form is
11 also posted on the department's website under NY health.gov.
12 Under certificate of need. So in the future you can fill out the
13 form prior to attending the council meetings. We appreciate your
14 support in fulfilling our responsibilities.
15
16 We're going to hear from dr. Zucker who will give the
17 Commissioner’s report. It'll be followed by Mr. Hutton who will
18 give us an update on the Office of Public Health. Dr. Gutierrez,
19 I'll ask to give a report of codes committee followed by Dr.
20 Rugge on health policy, and Mr. Robinson under establishment in
21 project review. Just want to remind the members of the council
22 oh, we've organized the agenda by topics categories that capture
23 our roles and responsibilities. This includes the batching of
24 certificate of need applications on the agenda. Members, I'll

1 ask you once again take the time, take a look at the batched
2 applications. If there's anything you'd like to be removed from
3 a batch, please notify Colleen in advance and we will do so. Our
4 next agenda item is the adoption of minutes, and may I have a
5 motion for the adoption of the August 8th 2019 PHHPC minutes. I
6 have a motion Dr. Torres. Second, Dr. Gutierrez. All those in
7 favor, aye.
8
9 [Aye]
10 Opposed? Motion carries. Now may I have a motion to adopt
11 the October 10, 2019 PHHPC meeting minutes? Motion Dr.
12 Gutierrez. Second Dr. Torres. All those in favor, aye.
13
14 [aye]
15 Opposed? Motion carries.
16 As many of you are aware, Mr. Sheppard who is not here
17 recently retired from State service. I think anyone who has
18 worked with Dan understands that he exhibited the true meaning
19 of a public servant. He oversaw the office of primary care and
20 Health Systems management, and the work of his counsel. He held
21 many positions in government and we've signed a resolution, Dr.
22 Boufford and I on his behalf. And I just want to read you a few
23 items from it. That during Mister Shepherds tenure as Deputy
24 Commissioner and Director of The Office of Primary Care and

1 Health Systems management he oversaw nearly 900 staff
2 responsible for the licensure, certification, surveillance,
3 compliance of over 13,000 health providers. He led the efforts
4 of regulatory planning under the department and successfully
5 changed and created a more integrated, innovated patient-
6 centered delivery system and optimize quality, access, financial
7 sustainability. Mr. Sheppard created and launched the regulatory
8 modernization act in the sheet of to better align New York state
9 law and to work with the healthcare delivery on stakeholders
10 groups. He's clearly demonstrated over his professional life a
11 strong commitment to the development of innovative programs and
12 services that's made a big difference in the lives of all New
13 Yorkers. He's always focused his professional career on
14 improving the health and the citizens of New York. And anybody
15 who knows Dan about his work ethic, his professional demeanor,
16 the content of his character, it's unparalleled. And he has
17 earned the respect of all of those who we've worked with him,
18 and on behalf of the council I just want to acknowledge his
19 contribution to our work, to that of the department, and to
20 protecting the health of the citizens of New York State. And
21 then if you're watching, congratulations and thank you.
22 I am not going to ask for alternative points of view, but I
23 would encourage each of you to reach out to Dan and congratulate
24 him individually.

1 Mr. Keith Service who is not sitting to my right will be
2 serving as the interim Deputy Commissioner of the Office of
3 Primary Care – wait a minute, Keith, oh there you are. I knew
4 you were there. Is going to be serving as the interim Deputy
5 Commissioner of the Office of Primary Care and Health Systems
6 Management. He'll offer guidance to members and what could we
7 say (Mr. Connor.) Welcome back. And we look forward to working
8 with you once again. Mr. Service. It's now my pleasure to turn
9 the mic over to Albany where Dr. Zucker is and he's going to
10 update us on the council about the Department's activities since
11 our last meeting. Dr. Zucker
12
13
14 HOWARD ZUCKER: (inaudible)
15 Last week the Department
16 Thereby initiating the state regulation requirement of
17 healthcare workers to wear masks in areas where patients are
18 For the week that ended December 7, New York had a total of
19 4989 lab confirmed cases this flu season and so far 1040
20 hospitalization and unfortunately one pediatric death.
21 The number of new cases increased 60 percent from the previous
22 week, and the message as we've always said is to get your flu
23 shot now. Anyone older than six months should be vaccinated. The
24 elderly, and children younger than two years are particularly

1 vulnerable and they definitely need to be protected. So we will
2 keep you updated on flu a we
3 The next issue is the vaping illness. I touched on this the last
4 time, but since our last meeting we established a second (death)
5 in New York state and attributed it to what the CDC is now
6 calling the acronym ECVALI, E-cigarette vaping associated lung
7 injuries. Both the state and the nation continue to fight the
8 severe pulmonary illness. New York now has 205 reported cases
9 and nationally there are 291 cases that have been reported by
10 the CDC. But New York we are proud to be a leading voice in
11 regard to clinical guidance on response for the emerging illness
12 and research to determine it’s cause. The CDC recently confirmed
13 the findings that our Wadsworth Center laboratory came up with
14 about the role of vitamin E acetate may play
15 November 26, CDC reported examine indications in the patients in
16 Minnesota and provided further evidence linking the synthetic
17 vitamin E oil added to illegal THC products to this illness. The
18 CDC is recommending that while potential toxicants continue to
19 be evaluated, vitamin E acetate should be, should not be added
20 to e-cigarette or vaping products and we continue to look for
21 that and other causes as well. Additionally the Department’s
22 Center for Environmental Health worked with the University of
23 Rochester Medical Center, the Upstate Poison Control Center, and
24 the New York City Poison Control Center to develop a clinical

1 practice algorithm to identify the type of lung damage being
2 observed in this national outbreak and to guide the providers
3 through the (inaudible)
4 … From other illnesses such as respiratory infections, in
5 particularly during flu season. So this is a very helpful
6 algorithm.
7 (inaudible)
8 … featured in the November 8 of the
9 respiratory medicine in a study that’s co-authored by the
10 Department as well as Upstate’s PCC and URMC researchers.
11 And just this morning Governor Cuomo directed the Department of
12 Financial Services to issue guidance to New York insurers that
13 they must cover the cost associated with most vaping cessation
14 without co-pays, without co-insurance, or including deductibles.
15 So we’re moving forward on this issue and again, I’ll keep you
16 updated on this evolving process.
17 Ending the epidemic. So, last week, New York State
18 commemorated World AIDS day in Albany as well as in New York
19 City. With a reaffirmation of our pledge to end the epidemic by
20 the end of 2020.
21 Around 2019 we consistently hit the mark in our ongoing
22 efforts to achieve this historic goal. 2018 had the largest
23 increase in new HIV diagnoses in New York State since the launch
24 of the ending the epidemic initiative which was in 2014. The

1 2400 new diagnoses which constituted an 11 percent drop in 2017
2 and a 28 percent drop since 2014. That 20 percent decrease is
3 the largest single year decrease since the manage HIV reporting
4 began, and that began in 2000. HIV instances declined each year
5 since the start of the end the epidemic with a 40 percent
6 decrease over that time frame. In 2018 HIV incidents fell to an
7 all-time low of 2019 cases. Additionally 2018 data shows that 82
8 percent of newly diagnosed New Yorkers were connected with care
9 within 30 days of being diagnosed. So we've seen increased
10 access to linkage and retention of care. An increase in viral
11 suppression, a significant uptick in use of the medication known
12 as PREP, for those of who do not have HIV but who are at
13 substantial risk of getting HIV (inaudible)
14 Little noise in the background down there.
15 New York leads the nation with the largest percentage of
16 individuals on PREP medication. In 2018 over 32,000 New Yorkers
17 took PREP which is an increase of 32 percent from 2017. And just
18 this week Governor Cuomo called on Facebook to remove the
19 deceptive ads questioning the safety and effectiveness of
20 Truvada. I commend the Governor for taking a stand on this
21 issue. This type of misinformation jeopardizes the public
22 health, it diminishes the significant work we've done here in
23 New York State to end the epidemic by 2020.

1 On the opioid death decrease, let me give you a little bit about
2 that. The State this week shared some great news in the fight to
3 prevent opioid overdose deaths in the state. Opioid overdose
4 deaths in New York State outside New York City
5 declined 15.9 percent in 2018 compared to 2017. This is the
6 first decrease in a decade.
7
8
9 The preliminary data in New York City's 2018 also shows a
10 decrease. The statewide data is one of the most recent New York
11 State opioid quarterly report which additionally found that
12 hospitalizations for opioid related overdoes decreased 7.1
13 percent in 2018 compared to 2017.
14 (inaudible)
15 …result of New York State heroine and opioid taskforce which
16 And reconvened this year. While close to 2000 people tragically
17 die of opioid overdoses in 2018 and many communities across the
18 state are disproportionately affected by the opioid epidemic,
19 the decrease does remain a significant milestone. New York State
20 continues working to prevent opioid misuse and overdoses while
21 enhancing services for people with opioid use disorder and
22 increasing access to those services in areas with the greatest
23 need.

1 On the drinking water safety, on Monday, Governor Cuomo signed
2 legislation to help prevent 1-4 Dioxane from contaminating New
3 York's drinking water systems. As you will recall, in July I
4 accepted New York State's drinking water quality council's
5 recommendation for maximum contaminant levels in drinking water
6 with reemerging contaminants PFOA, PFOS, and 1-4 dioxane. The
7 standard of one part per billion for 1-4 dioxane is the nation's
8 first ever recommended level set for this
9 This new law prohibits the sale of household cleaning products
10 containing 1-4 dioxane and limits the sale of cosmetic and
11 personal gift products with certain levels of 1-4 dioxane. It
12 takes effect on January 1, 2022. You should also know that the
13 drinking water quality council meet again next week.
14 With regards to the New York State of Health open enrollment,
15 our annual open enrollment period for qualified healthcare plan
16 coverage began on the first of November. It runs through January
17 31, 2020. And the first 41 days of open enrollment, 240,140 New
18 Yorkers have signed on for coverage, and in 2020 qualified
19 health plan. We are outpacing enrollment for the same period
20 last year by more than 7000 people. And we had been impressive
21 in reminding new Yorkers that they need to enroll by December 15
22 for their coverage by January 1, 2020. Enrollment in the
23 essential plan, Medicaid and Child Health Plus is open all year.
24 In 2019 nearly 800,000 New Yorkers enrolled in the essential

1 plan for eligible lower income New Yorkers with only 40 percent
2 of these enrollees under the age of 35. A higher share than any
3 other marketplace programs. In total approximately 4.8 million
4 people nearly one in four New Yorkers have enrolled in quality
5 affordable health insurance coverage through the New York State
6 of Health, and we're very proud of the program that we have.
7 As we close out the year as present the Department with new and
8 complex challenges, I want to thank the committee for your over
9 and above commitment of time and expert council to help us meet
10 these challenges, especially in regard to the vaping related
11 illnesses and so many other things we call the council to come
12 in for. Your amenability has been a difference in the
13 effectiveness of our response and we sincerely appreciate it,
14 and I thank you all. I'm happy to answer any questions. I wish
15 everyone a happy holiday and we will continue to keep working on
16 all these issues that I've mentioned and the many others that he
17 Department tackles. Thank you.
18
19 JEFF KRAUT: Thank you Commissioner. Are there any
20 questions for the Commissioner as to what he said? Any
21 comments? Commissioner, thank you very much. And wish you also a
22 happy holiday. I'm going to turn to Mr. Hutton to give an update
23 on the activities of the Office of Public Health.
24

1 BRAD HUTTON: Good morning Jeff and members of the
2 council. I have a couple of dates that I'm going to start with
3 briefly expanding on some items that Dr. Zucker shared and then
4 two others that he did not. In the area of vaping I wanted to
5 alert you to some additional activities that have occurred since
6 your last meeting. First on November 13th, a new law for New
7 York State (inaudible)
8 … Vaping products increase from 18 to 21 years of age that took
9 effect November 13th. Cross New York State local Health
10 departments have been working collaboratively with the state to
11 conduct effective
12 On the part of minors to make sure they were enforcing those
13 minimum age purchase laws and in the last few months more than
14 2350 inspections as they're called, have been
15 made across New York State. On December 1, new legislation took
16 effect that requires (inaudible)
17 Vaping products to be registered with the New York State
18 Department of Taxation and Finance. This will allow the state
19 local health departments to know which are the retail
20 establishments that are selling products(inaudible)
21 It also allows the implementation of sales tax that took effect
22 on
23 (inaudible)

1 Purchase for e-liquids and other e-vaping products. Finally, in
2 the area of vaping and then we'll get back to that with a
3 discussion of the later on, we've been working
4 hard with our colleagues at which has
5 been a long time contractor for the purposes of operating New
6 York State smokers quit line, and we've been working with them
7 to expand our current cessation services through the quit line
8 to
9 With respect to individuals who are attempting to quit vaping.
10 It turns out that there is some complexities that we need to
11 work through as far as the dosage of nicotine replacement
12 therapy and the procedures that we'll use for adolescents who
13 are attempting to quit vaping, and so we're working with
14 colleagues at Roswell Park as well as colleagues at quit lines
15 around the nation to
16 Individuals attempting to quit vaping, we have our optimal
17 support available to them.
18 I wanted to also just expand on the contaminant level rulemaking
19 that Dr. Zucker mentioned, and yes, at the meeting of Tuesday of
20 next week we did recently complete a 60-day public comment
21 period. We had over 5000 comments
22 Our review of those comments and are expecting that we'll be
23 presenting the next steps to the members of the drinking water
24 quality council next Tuesday, and then we'll most certainly be

1 back to PHHPC at either, most likely the February and the April
2 meeting to continue to update you on this
3 Two other items I wanted to share. First the Department in this
4 since we last met submitted our application to be reaccredited
5 by the Public Health Accreditation Board
6 A little over five years ago the department was—
7
8 ANN MONROE: Could you speak more into the mic please,
9 Brad?
10
11 [speak to the mic]
12
13 BRAD HUTTON: The Department was one of the first state
14 health department's to be accredited by PHAB, the public health
15 accreditation board. Five years has passed and now it's time for
16 us to be reaccredited. So, we believe that we're a high
17 functioning public health department, and possessing that
18 accreditation is something that provides that evidence by an
19 outside independent entity. And so we're - there was an
20 incredible department-wide effort to submit all the
21 documentation we needed for reaccreditation. More than 100 staff
22 members, and we'll keep you posted. We'll be having a site
23 visit, a virtual site visit that might be answering any

1 additional questions from the board in the coming weeks and
2 months.
3 Finally I wanted to give you an update on our activities in
4 the area of school immunizations. Some of you as members may
5 have been receiving emails from members of the public who are
6 concerned about some of the rulemaking that's occurred on the
7 part of medical exemptions and school immunizations. So wanted
8 to just first give you an update. And maybe clarify for everyone
9 that the rulemaking that relates to school immunizations are not
10 under the purview of PHHPC, and so therefore don't require PHHPC
11 review. I know it can often be confusing but this is a section
12 of the rules and regulations that are now subject to PHHPC
13 review.
14 So, this summer after the legislation was enacted that
15 repealed non-medical exemptions, the Department moved quickly to
16 introduce or to (defile) emergency regulations that created
17 enhanced standards for medical exemptions and also made some
18 other important changes to the regulations. We actually filed a
19 second emergency regulation on November 14. As you might recall
20 our discussion about vaping regs, emergency regulations expire
21 after 90 days. Those second emergency regs go through January
22 12. At the same time we did go through a public comment period
23 to get outside input on our proposed rulemaking. That comment
24 period ended on November 4. We're just completing our review of

1 public comment. I will say we received really strong support
2 from associations representing medical professionals in New York
3 State about our proposed rules related to medical exemptions.
4 Organizations like MYSNY, like American Academy of Pediatrics
5 and Academy of Family Physicians in New York State as well as
6 NYSECHO and others expressed their strong support for the
7 enhanced standards for medical exemptions. And so we'll be
8 moving soon to finalize our next steps with respect to those
9 regulations. I'll stop at that point. Any questions.
10
11 JEFF KRAUT: Any questions for Mr. Hutton? I think, do
12 you want to make as statement?
13
14 JO BOUFFORD: Just a quick comment. The Public Health
15 Committee continues to work on developing an action plan on
16 addressing violence, violence prevention in the context of the
17 prevention agenda, and there will be a meeting of the Public
18 Health Committee next Thursday, December 19 from 1-4pm, here in
19 New York, and we'll be connected by video with our usual, at
20 least with Albany, maybe I don't know, I'm looking at Laura.
21 Just Albany. And this will be the second meeting of the
22 committee on violence prevention and we'll be hearing from four
23 to six other agencies. We've had really good cooperation
24 including the state police I think, are coming in next week. So

1 we're really trying to take advantage of the Governor's
2 executive order on health across all policies and bringing other
3 agencies in to develop the plan, and we hope to have something
4 to come to the council at its February meeting. Thank you.
5
6 JEFF KRAUT: Thank you. Thank you Mr. Hutton. Dr.
7 Gutierrez, I'm going to ask you to give the report of the Codes
8 Committee on the work that you did this morning about
9 introducing the three regs for information only. This way the
10 staff can, who were attending to those codes can leave. They
11 don't have the wait the whole day. But go ahead.
12
13 ANGEL GUTIERREZ: Thank you Mr. Kraut. These are great
14 microphones, but you have to put them close to your mouth
15 otherwise it doesn't work. If you talk like that you're gone. So
16 you have to have it in front of you.
17 So, this morning we approved pass for information, one,
18 two, three different proposals. The first one is physician
19 limited permit holder requirements. This proposal will repeal
20 section 405.4 subsection G, paragraph two, subparagraph 1-3.
21 They need Greek letters here. In order to eliminate the extra
22 years of training beyond what is required for licensure limited
23 permits for domestic and international limited permit holders to
24 work in New York State hospitals. Since this proposal was

1 presented for information only, there was no vote. Ms. Astin
2 from the Department is available to answer any questions from
3 council members. Any questions for Ms. Astin.
4 OK, we'll move on to the next one. Also for information is
5 licensed home care services agencies. This proposal would amend
6 subpart 765.1 regarding license home care services agencies,
7 referred to as LHCSAs and will establish a criteria for public
8 need review for initial licensure applications and change of
9 ownership applications received on or after April 1, 2020. Since
10 the proposal was presented for information only, there was no
11 vote. Mark Kissinger and Kelly Scholl from the Department are
12 available for questions from the council.
13 No questions. For information also, cardiac services. This
14 proposal would amend 709.14, cardiac services to adjust the
15 annual expected volume for cardiac surgery cases for anew
16 cardiac catheterization laboratory center and cardiac surgery
17 center services. Since this proposal was presented for
18 information, there was no vote, and Tracy Raleigh and Edward
19 Hannon from the Department are available to answer any further
20 questions from council members. There appear to be none. This
21 completes the agenda for the Codes Committee.
22
23 JEFF KRAUT: And I'll return to the balance of the agenda
24 later in the meeting.

1 Now I'm going to turn to Dr. Rugge to give a report on the
2 Health Planning Committee.
3
4 JOHN RUGGE: I promise to do the best I can with this
5 microphone. By way of context, a year ago November, Dan Sheppard
6 laid out a forced march for the planning committee. Basically
7 they take the next and final lap of the RMI regulatory
8 modernization initiative so we have some 13 major regulatory
9 changes to consider in advance. Among these was consideration of
10 new standards for the integration of primary care and Behavioral
11 Health Services. This was originally scheduled for April and
12 June of the year in light of the fact that with the expiration
13 of DSRIP first quarter of 2020 waivers for existing integrated
14 services would disappear as well. Well, we missed the June
15 deadline because of interagency tensions regarding how to best
16 integrate these services. Was scheduled for early fall. We
17 missed the early fall deadline, and then we came to mid-fall and
18 once again have no consensus among the agencies in terms of how
19 to proceed or how our planning committee and PHHPC should
20 consider this integration. So not to put anybody on the spot,
21 but Mark Furnish, is there any update question do we have a time
22 frame for this topic to be considered?
23
24 MARK FURNISH: (inaudible)

1

2 JOHN RUGGE: Good. You're speaking so softly. By way of
3 catch-up, the planning committee last month did consider two
4 important topics. Which will review and hope staff can help with
5 this. One was to update the need methodology for certified Home
6 Health agencies or CHHAs. Again by way of background there are
7 currently 118 operational CHHA is in New York State. This having
8 done a number increased in 2012 when as a result of the MRT, the
9 Medicaid redesign task force-- oh, there was an RFA for the
10 increase the number by some 56 agencies and a further
11 expectation that on a three-year basis using counties as the
12 basis for service areas and using 12 age- sex cohorts there
13 would be reconsiderations of how to, whether to proceed with the
14 certification of additional CHHAs. I should mention that New
15 York state is a quite diverse State and using counties as our
16 standard leads to some diversity. New York County, the county we
17 are now sitting in, has a population of 71,000, actually more
18 than 71,000 people per square mile. Hamilton County where I
19 spend part of my time has 2.4 people per square mile. So,
20 there's a little variation here in terms of needs and help us
21 develop a standard set of expectations.

22

23 With that in mind, the committee received a series of options in
24 terms of how or even whether to proceed with issuing new RFA's,

1 how and whether to certify new agencies. I think as always, or
2 as usual we are confronted with the Spectrum again of policy
3 Alternatives and that is to what degree is our healthcare system
4 based on a competitive model where were looking for improved
5 efficiency is an improved Services by competing agencies working
6 hard to do better than the other agency. And to what extent are
7 we pursuing a utility model. At which there's an expectation.
8 Every citizen in New York, every resident will have the
9 opportunity for services. But perhaps with less choice or less--
10 fewer alternatives. Again given the diversity of this state
11 there may be need for diversity of alternative approaches, and
12 this is something that is with our purview and
13 this planning committee.
14
15 Having said all this, the very -- the timing of preparing for
16 these topics was clearly made a little abrupt by the fact we had
17 another agenda which had to be deferred And actually the
18 purpetory [sic] material became available only early in the
19 afternoon prior to our planning meeting. This in turn really
20 limited the opportunity for public participation, and I think
21 one of the key uses of this committee and this council is to
22 engage the public in the interested parties so we really
23 understand the diversity of opinion and have the benefit of
24 that. We've not had that in this case. But, there is assurance

1 that the department will seek that kind of input and we will be
2 clear to come back to this. Again, Mr. Furnish and Deirdre Astin
3 are integral in preparing this material and they choose or
4 hopefully will choose to explain a bit more what the options are
5 and progress made since our last planning committee. So Mark or
6 Deirdre.
7
8
9 Not to put anybody on the spot.
10
11 (Inaudible)
12
13 Just looking for any update in terms of consideration of
14 the options. Strategic options we have discussed in the
15 preliminary phase, and also what opportunity there may have been
16 for additional input by stakeholders or the general public.
17
18 MARK FURNISH: (inaudible)
19
20 JOHN RUGGE: And Mark, do we have a timeframe for
21 reconsideration by PHHPC of the CHHA need methodologies?
22
23 MARK FURNISH: We would like to do that very soon, and
24 early in 2020 we would like to get that process started.

1

2 JOHN RUGGE: This topic, any comments from members of the

3 council?

4

5 JEFF KRAUT: Any questions? Yes.

6

7 JO BOUFFORD: I had a question, and again I think, John,

8 made an important point, we’re in transition of staff support,

9 etc., on a lot of these issues. But I thought this was an

10 opportunity since when I saw the CHHA needs methodology being

11 raised to raise the question again that we had, it had been, the

12 desire the council, I think the commitment of staff to present a

13 sort of comprehensive long term care services plan to us as a

14 consequence of one of the discussions we had at out retreat a

15 couple of years ago that Mr. Kissinger had indicated, is a very

16 complex process. I completely understand that. But I’m a little

17 worried it’s kind of starting to knock off one piece after

18 another in this really complicated process without having the

19 big picture again. So I had forwarded some request to that,

20 because I wasn’t able to physically be at the meeting. But I

21 wanted to raise it again here and just hoping that we can at

22 least have a report on how that’s going, because it also

23 included some of the revision of CON requirements for nursing

1 homes as well as integrated methodology for multisite long-term
2 care services across the state.
3
4 JOHN RUGGE: I think your observations really address the
5 heart of what we do as a council. That our predecessor council
6 was charged with how do we reduce costs among hospitals through
7 the CON process? And now over time we've really have a larger
8 responsibility for saying how do we construct and design and if
9 you will, regulate, a comprehensive healthcare system, at really
10 all stages of life and all stages of service? And as everything
11 that we do has to be considered in that broader context.
12
13 JEFF KRAUT: Any other questions?
14
15 JO BOUFFORD: Can you say something about that?
16
17 JEFF KRAUT: About what?
18
19 JO BOUFFORD: Just requesting some sense of when that
20 might be available
21
22 JEFF KRAUT: Well, so Tracy, Keith, we've asked for a
23 presentation on kind of the global, the policy issues on long-
24 term care. Going back to the retreat and then a couple of times

1 within the council room. So that's just something we'd really
2 like to have an answer, so there's a presentation made to us
3 about that. Because you have so many issues out there, and we
4 just don't understand the big picture framework. If you can get
5 back to us on the next agenda, that could be placed on.
6
7 TRACY RALEIGH: Yeah, this is Tracy. We appreciate that
8 feedback. We understand the concern, and we'll go back and come
9 back with a thoughtful answer, and realistic – and I know Mark
10 Kissinger had to leave the room but he's certainly aware of that
11 as well. So we will certainly get back to you on that.
12
13 JOHN RUGGE: Not quite finished. In addition to
14 considering the long-term care, just to show our diversity, we
15 considered short-term care. Short Term Care by way of the
16 location of surgical and other procedures. Currently we have
17 hospitals obviously at one end of the spectrum, D&T centers
18 doing primary and certain specialty services on the other with
19 their limited capabilities for anesthesia and procedures, and
20 what was brought to the committee by staff is consideration of
21 developing a new inimmediate category of Health Centers with
22 outpatient procedures. And so in appropriate settings with
23 careful patient selection and appropriate architecture and
24 design of rooms for both Imaging and procedures, more advanced

1 anesthesia up to moderate sedation, peripheral regional
2 procedures, and inclusive of epidural injections and treatment
3 to be given to this newly-designated category of D&Ts with
4 outpatient procedures. Once again, the committee had the
5 opportunity to look at the staff considerations. We did not have
6 the opportunity to have input from the stakeholders and the
7 societies and subsocieties that would be most directly impacted
8 or benefit from this. And await for their feedback so this
9 Council can take the next step in terms of redesigning our
10 Continuum of Care for short-term procedures. If you will.
11 Deirdre, …
12
13 DEIRDRE ASTIN: Thank you Dr. Rugge. Yes, so our next step
14 we'll need to reach out to stakeholders, ambulatory surgery
15 center associations, and other interested parties to get their
16 feedback on this model. Basically would take, as you say, would
17 create something between a D&TC that's only doing Primary Care
18 and an ASC doing full on surgical procedures to create a level
19 of diagnostic treatment that can do some minimally invasive
20 procedures under minimal anesthesia with low-risk, and as you
21 say patient selection being the key. We are seeing this mostly
22 in interventional radiology space, and in some minor procedures
23 in reproductive medicine and so forth. So it's something that we
24 are going to have, we wanted to just bring it to your committee

1 and then the council just to give you a heads up that we are
2 going to be talking to our stakeholders on this.
3
4
5 JOHN RUGGE: That's another prime example of our work in
6 terms of keeping up with changes in technology and changes in
7 practice in an effective way. And again, on this as I see it
8 we're facing not the same kind of deadline as the end of DSRIP
9 or the end of a waiver, but nonetheless a need to keep
10 proceeding smoothly to a better set of regulations.
11 Questions or comments?
12
13 JEFF KRAUT: Any questions for Dr. Rugge?
14
15 JOHN RUGGE: Thank you very much.
16
17 JEFF KRAUT: Thank you very much, John. And I'm now going
18 to turn it over to Mr. Robinson for the report of the
19 Establishment and Project Review committee.
20
21 PETER ROBINSON: Thank you. Good morning everybody. I am
22 going to as Mr. Kraut mentioned in his introduction, batch these
23 applications, so, we're going to handle these in groups to the
24 extent that members want to have a fuller discussion about any

1 one of the applications, just signal that and we'll pull it out
2 of the batch. Ms. Raleigh is available for questions, but she
3 will not be commenting on individual applications unless there
4 are those questions coming from the members of the council. And
5 just as I say batch I have to take the first one alone because I
6 have to ask Ms. Soto to recuse herself for the first application
7 in category one which is applications for acute care services.
8 162148C, Nyack Hospital in Rockland County. This is going OK on
9 the mic? To certify cardiac catheterization percutaneous
10 coronary intervention or PCI and cardiac catheterization
11 electrophysiology services, and perform requisite renovations.
12 The Department and the committee recommend approval with
13 conditions and contingencies, and I so move.
14
15 JEFF KRAUT: Motion and a second, Dr. Gutierrez. Any
16 questions or comments? Hearing none, I'll call for a vote. All
17 those in favor, Aye?
18
19 [Aye]
20 Opposed? Abstentions? The motion carries.
21
22 PETER ROBINSON: Thank you. Going to continue with a
23 series of applications that relate to certifying freestanding
24 cardiac cath labs. 172251C, Putnam Hospital Center in Putnam

1 County. To certify cardiac catheterization and percutaneous
2 coronary intervention – I'm going to use PCI for that in the
3 future – with construction. 171415C, Northern Dutchess Hospital
4 in Dutchess County. Also to certify cardiac catheterization and
5 PCI services with requisite construction. Application 191260C,
6 Health Alliance Hospital, Mary's Avenue campus, Ulster County. I
7 will note the conflict and recusal this application although he
8 is not here by Dr. Bennett. This is also to certify cardiac cath
9 and PCI and cardiac electrophysiology services. With all of
10 those applications are recommended for approval by the
11 Department and the committee with both conditions and
12 contingencies. And I so move.
13
14 JEFF KRAUT: I have a motion I have a second by Dr.
15 Gutierrez. Any questions? Dr. Gutierrez.
16
17 ANGEL GUTIERREZ: On the committee level I questioned
18 some of the applicants on the time from 911 call to the time of
19 the procedure. And I don't have information about that length of
20 time. I'm particularly concerned as we get into the rural
21 communities. How well we are doing on the 911 "I have chest
22 pain," ambulance arriving, and ambulance carrying the patient to
23 the hospital where the usual timer begins. We were mentioning
24 time from emergency room call on to procedure. And I argue that

1 unless the effort is extended into the ambulance traveling
2 particularly in some communities among the Hudson River, and I
3 talk also about the southern tier and the Adirondacks, we are
4 putting a lot of emphasis on that time on the end, and we're not
5 putting enough emphasis on the time from 911 come and help me,
6 to the time they arrive in the emergency room and the training
7 of the EMTs that are providing the treatment to the patient.
8 Which is quite sophisticated. That said, I want to go ahead with
9 this, but I think somehow we need to explore that. I am not sure
10 that we know that we are delivering adequately there. We can
11 learn a lot from the military.
12
13 JEFF KRAUT: I know that some of the applicants were
14 responsive to that request. Right? So, I'll turn it to you to…
15
16 TRACY RALEIGH: Thank you Dr. Gutierrez. This is Tracy
17 Raleigh for that comment, and one of the things that we can do
18 as we work with the applicants in finalizing their adherence to
19 the program requirements is get more explicit response to that
20 question. And we can take that back and get back to you when we
21 get those responses.
22
23 JEFF KRAUT: Any other questions? Yes, go ahead Dr.
24 Kalkut.

1

2 GARY KALKUT: Tracy, I won't ask about CT surgery now, but
3 I did want to ask about – are there projections for incremental
4 PCI cases on an individual application or in total in the Hudson
5 Valley from the change?

6

7 TRACY RALEIGH: So just to clarify again, and I know we're
8 talking about PCI now, is are you talking about in aggregate?

9

10 GARY KALKUT: I was, and that's why I thought …

11

12 TRACY RALEIGH: So each of the individual applicants had as
13 part of the CON did a projection of their first and third year.
14 We certainly have the robust cardiac reporting data systems that
15 shows that, so, and I think we committed and it was an ask of
16 this body to come back. We had Dr. Hannon here, but to really
17 give this committee a presentation on that dataset, because
18 that's where we have the tracking on a regional level. It has
19 the mortality outcome indicators, and we can give you a more
20 robust presentation on that data set.

21

22 GARY KALKUT: I think that would respond to the question.
23 We should look at the numbers as we go forward, particularly in
24 light of changing practices.

1

2 JEFF KRAUT: Any other questions? Hearing none, I'll call
3 for a vote. All those in favor, Aye?
4
5 [Aye]
6 Opposed? Abstentions? The motion carries.
7 PETER ROBINSON: Thank you. The next two applications do
8 have individual recusals. The first one by Mr. Kraut and Dr.
9 Strange. This is application 152243C, Northern Westchester
10 Hospital in Westchester County. To certify a cardiac cath and
11 PCI and cardiac catheterization electrophysiology services and
12 associated requisitions. The Department is recommending approval
13 with conditions and contingencies. As does the committee, and I
14 so move. Madam Vice-Chair.
15
16 JO BOUFFORD: sorry – that was a surprise. Have a motion,
17 second. Dr. Gutierrez. Any conversation, questions from anyone?
18 Call for a vote. All in favor?
19
20 [Aye]
21 Opposed? Any abstentions? Motion passes.
22
23 PETER ROBINSON: Dr. Brown I believe you were recused
24 from the next application. 162211C, New York Presbyterian Hudson

1 Valley Hospital in Westchester County. To certify cardiac cath,
2 PCI, and cardiac catheterization electrophysiology services. And
3 construct one cardiac cath lab. The Department is recommending
4 approval with conditions as does that committee, and I so move.
5
6 JEFF KRAUT: Motion, I have a second, Dr. Gutierrez. Any
7 questions? All those in favor, Aye?
8
9 [Aye]
10 Opposed? Abstentions? The motion carries.
11
12 PETER ROBINSON: Continuing with our batching around
13 acute care services. For construction 192045C, Samaritan
14 Hospital in Rensselaer County. Noting again that Dr. Bennett is
15 not here but indicated a conflict and recusal. To merge Albany
16 Memorial Hospital into Samaritan which is a part of St. Peter's
17 Health Partners and Trinity. Also, 192123C, Blythedale
18 Children's Hospital in Westchester County. This is certifying
19 eight additional traumatic brain injury or TBI beds and perform
20 requisite renovations. And 192051C, Specialists One Day Surgery
21 Center LLC in Onondaga County. Which is certifying a second
22 specialty, pain management at the existing extension clinic
23 located at 5801 East Taft Road in Syracuse, to become a dual
24 single-specialty freestanding ambulatory surgery center. In each

1 of these the Department is recommended approval with condition
2 and contingencies. As does the committee and I so move.
3
4 JEFF KRAUT: I have a motion Mr. Robinson, I have a
5 second Dr. Gutierrez. Any questions on these applications?
6 Hearing none, I'll call for a vote. All those in favor, Aye?
7
8 [Aye]
9 Opposed? Abstentions? The motion carries.
10
11 PETER ROBINSON: Thank you. Taking this one application
12 separately. 121223C, Excellent Home Care Services LLC in Kings
13 County. This is to convert an existing special needs certified
14 home health agency to a general-purpose certified home health
15 agency. The Department recommends approval with a condition as
16 does the committee with one member abstaining, and I so move.
17
18 JEFF KRAUT: I have a motion Mr. Robinson, Second, Dr.
19 Gutierrez. Any questions or comments on this application? Do the
20 name thing? Yes, Dr. Gutierrez.
21
22 ANGEL GUTIERREZ: There was discussion at committee level
23 as to how we felt about the use of the term "Excellent" to refer

1 to an application to service. We approved it but, I don’t feel
2 good about it.
3
4 PETER ROBINSON: Thank you. Let me just expand on that
5 just a bit. I think that there’s a general concern that
6 sometimes the names of these programs or entities may be a bit
7 aspirational, which is fine, and we give them credit for wanting
8 to do that, but at the same time there may be some misleading
9 consequences of that in terms of the public, and their
10 perception of the organization. So while we did not take any
11 action on this, I think I expressing the sentiment of the
12 committee that we would like to as part of future applications,
13 consider the name as we make judgments about approving an
14 application and we would also like the Department to determine
15 whether or not there’s any retrospective work we need to do with
16 regard to applications that we have previously approved, but
17 with the same reservations about the potential misleading nature
18 of the names. And so we’d like that to be – we’d like the advice
19 from the Department about how that can best be handled. But
20 with that I make a motion for approval of that application.
21
22 JEFF KRAUT: So, I have a motion and I have a second. And
23 before we vote on it, because we actually do have some powers
24 that we’ve not exercised, let me turn it over to our counsel to

1 give us an explanation of what actions we could take going
2 forward and even in reference to this applicant.
3
4 MARTHE NGWASHI: Thank you. Good morning. I'm Marthe
5 Ngwashi. Department of Health Council. As it relates to the
6 names PHHPC you do have authority statutory and regulatory
7 authority to opine on them and also to either approve or
8 disapprove of the names. If you do feel as though a name that is
9 presented to you on an initial application for establishment
10 appears to be misleading, then you do have the ability to vote
11 no for that.
12
13 JEFF KRAUT: With respect to – you have limited
14 discretion on superlatives. So, lets, and in all seriousness you
15 gotta – cause you're going to have people here that are going to
16 come and go with name infringement. You have to be narrow and I
17 think you have to be consistent. OK. So, with respect to this
18 because everybody did, it did irritate a few of you, the word
19 "Excellent" was problematic. And you could approve this
20 application with a requirement that they do a name change. Which
21 doesn't require us necessarily to come back here, but it's a
22 DBA, I'll leave it up to the applicant. So if you feel strongly
23 about that, that is something you could do. Or we could do this

1 on a going forward basis as well. Yes. And then I'll get Ms.

2 Monroe.

3

4 KATHLEEN CARVER CHENEY: I just wanted to mention that –

5 yes, Ms. Carver Cheney, member. This particular homecare agency

6 has been in existence a long time. 10 years or more I think,

7 Tracy. And they have name recognition, so I wouldn't think it is

8 fair at this point.

9

10 JEFF KRAUT: That's why I'm not… Yeah.

11 Ms. Monroe. And I'm sorry, then Dr. Martin.

12

13 ANN MONROE: Might the same be true for another project?

14 Perfect Health Medical?

15

16 JEFF KRAUT: I think that was the other one we were, we

17 had an issue with.

18

19 ANN MONROE: That was has been established for a long

20 time because, I want to understand, Marthe, is it only on

21 initial approval that we would have that authority?

22

23 MARTHE NGWASHI: It would be on initial approval.

24

1 JEFF KRAUT: You can't go retroactive.

2 And I would just say, you know, where do you draw the line?
3 This is not Preferred, Best, Better, Less Bad… Dr. Martin.

4

5 GLENN MARTIN: As much as I'm deeply opposed to the use of
6 Excellent and Superb and Perfect and the like, I do recognize
7 that it's a little bit – it's a little unfair to it right now is
8 the issue. There is now way that we can – well, we can certainly
9 study the issue and see what's out there and see if we can try
10 to make cuts that make sense. But I just want to reconfirm,
11 there's absolutely no authority to go back and ask people to
12 change their names other than just politely?

13

14 MARTHE NGWASHI: You're welcome to ask them to do that.

15

16 GLENN MARTIN: Right. But there's no authority that we have
17 to enforce it.

18

19 MARTHE NGWASHI: Correct. You do not.

20

21 GLENN MARTIN: Other than look really peeved.

22

23 MARTHE NGWASHI: Right. So if it's an initial
24 application upon establishment or if it's a name change.

1

2 GLENN MARTIN: I still think it would be unfair just to
3 nail these two right now in the middle of it, bit I do think
4 that it's a little annoying that we couldn't go back and make
5 people do it, but I also believe in the power of the bully
6 pulpit and the fact that people come back to us on a somewhat
7 regular basis, they may be willing to listen.

8

9 JEFF KRAUT: And you're right. Organizations here – I
10 would say you reserve that for when there's clear and compelling
11 issue where there's confusion in the marketplace about two names
12 that -- and I would assume that it would've been dealt with
13 before it got into this room. Somebody who have not copyrighted
14 the name or do some. If you remember there was a problem with
15 Nassau Hospital and then Nassau University Hospital came forward
16 to, that was the old Nassau County Medical Center, NCMC changed
17 to Nassau University Medical Center, then Nassau Hospital, they
18 didn't come and complain, they went and changed their name to
19 Winthrop University Hospital to differentiate because they were
20 having ambulances, bills were going to the wrong place, and
21 deliveries were being misdelivered. So they settled it
22 themselves in that respect. So yes, Dr. Brown.

23

1 LAWRENCE BROWN: Lawrence Brown, member of the council.
2 I too embrace the fact that we probably should not in fact
3 exercise this with these applications in front of us. However, I
4 do think that this topic will require some greater attention and
5 we probably will need some time on the council's agenda or the
6 respective committee to come back to us for future assessments.
7
8 JEFF KRAUT: Just the mere fact that you discussed it is
9 helpful. I think that if anybody comes into this room and
10 proposes a name with a superlative given the discussion we've
11 just had, we might in project review do a time out, and it might
12 delay the processing and approval. So I think just having the
13 discussion is probably helpful. With that being said, if it's
14 OK, I'll call the question. All those in favor, Aye?
15
16 [Aye]
17 Opposed? One opposition. Abstentions? The motion carries.
18
19 PETER ROBINSON: Thank you. And I'm going to bring this
20 right back up again. 191075E, Excellent Home Care Services LLC
21 in Kings County. Transferring 100 percent ownership interest of
22 Excellent Home Care LLC. 192009E, VNA of State Island in
23 Richmond County. This is to establish Richmond University
24 Medical Center as the parent of the certified home health agency

1 currently operated by visiting nurse association healthcare
2 services inc., and establish Bridge Regional Health System as
3 the grandparent. And continuing on, application 191123E,
4 Preferred Certified LLC in Bronx County. Establishing Preferred
5 Certified LLC as the new operator of the certified home health
6 agency located at 6677B Broadway in the Bronx, currently
7 operated as Park Gardens CHHA. The Department is recommending
8 approval with a condition and contingencies, as does the
9 committee, and I so move.
10
11 JEFF KRAUT: I have a motion and second by Dr. Gutierrez.
12 Any questions? Hearing none, All those in favor, Aye?
13
14 [Aye]
15 Opposed? Abstentions? The motion carries.
16 I'm sorry, there was –
17
18 (so we're batching these?)
19 Do you not want them batched?
20
21 (there's one I oppose)
22
23 PETER ROBINSON: You oppose Excellent.
24

1 JEFF KRAUT: All right. Let's take that out. So let's do
2 the batch and let's remove 191075E from the vote. OK.
3
4 PETER ROBINSON: So we're voting on that batch with the
5 exception of the Excellent application.
6
7 JEFF KRAUT: Yes. Just do the numbers of the applications
8 we're voting on so we're clear what we're voting on.
9
10 PETER ROBINSON: Yes. 192009E, VNA of Staten Island. And
11 191123E, Preferred Certified LLC in the Bronx are the two
12 applications we're voting on now.
13
14 JEFF KRAUT: I have a motion. I have a second, Dr.
15 Gutierrez. Is there any questions on those applications? All
16 those in favor, Aye?
17
18 [Aye]
19 Opposed? Abstentions? The motion carries.
20
21 PETER ROBINSON: Thank you and now 191075E, Excellent
22 Home Care Services LLC. This is transferring 100 percent
23 ownership interest of Excellent Home Care Services LLC. The
24 Department is recommending approval with a condition and

1 contingencies as did the committee. I'll note here that two
2 members abstained during the vote on the committee level, and I
3 so move.
4
5 JEFF KRAUT: I have a motion. I have a second by Dr.
6 Gutierrez. Is there any comments from the Department or the
7 council members? Hearing none, I'll call for a vote. All those
8 in favor, Aye?
9
10 [Aye]
11 Opposed? All those opposed? One opposed, Dr. Torres.
12 Abstentions? The motion carries. Thank you, Dr. Torres.
13
14 PETER ROBINSON: Thank you. Now turning to ambulatory
15 surgery center applications. 191212B, Atlantic SC LLC, d/b/a
16 Atlantic Surgery Center in Suffolk County. This is to establish
17 and construct a single specialty ambulatory surgery center for
18 gastroenterology to be located at 1145 Montauk Highway in West
19 Islip. The Department is recommending here approval with
20 conditions and contingencies with an expiration of the operating
21 certificate five years from the date of issuance, as did the
22 committee.
23 192021B, North East Endoscopy, Suffolk county. To establish
24 and construct a single specialty ambulatory surgery center

1 specializing in gastroenterology. To be located at 235 North
2 Belle Meade Road in East Setauket. The Department is
3 recommending approval with conditions and contingencies with an
4 expiration of the operating certificate five years from the date
5 of issuance as does the committee.
6 192069B, Katona Parkway SC LLC d/b/a Katona Parkway
7 Ambulatory Surgery Center in the Bronx. To establish and
8 construct a new multi-specialty ambulatory surgery center,
9 initially providing plastic, orthopedic, urology and pain
10 management services to be located at 1976 Katona Parkway in the
11 Bronx. The Department recommends approval with conditions and
12 contingencies with an expiration of the operating certificate
13 five years from the date of issuance as did the committee. I
14 make a motion for those applications.
15
16 JEFF KRAUT: I have a motion. I have a second by Dr.
17 Gutierrez. Any questions from the council members on any of
18 those applicants? Hearing none, All those in favor, Aye?
19
20 [Aye]
21 Opposed? Abstentions? The motion carries.
22
23 PETER ROBINSON: Thank you. Continuing with batching,
24 191286B, Perfect Health Medical LLC in Kings County. To

1 establish and construct a new diagnostic and treatment center to
2 be located at 4424 and 4426 18th Ave., in Brooklyn. To provide
3 primary medical care, behavioral health, specialty medical
4 services, and other medical specialties to include
5 cardiovascular, gastrointestinal and podiatry services.
6 192118B, NY Med of Brooklyn in Kings County. Establish and
7 construct a new diagnostic and treatment center to be located in
8 leased space at 756 Nostrand Avenue in Brooklyn. And 192013E,
9 Fairview Nursing Care Center Inc., in Queens County.
10 Transferring 99 percent ownership interest to one new
11 shareholder from one withdrawing shareholder and one remaining
12 shareholder. These, the Department and the committee recommend
13 approval with conditions and contingencies, and I so move.
14
15 JEFF KRAUT: I have a motion and I have a second. Any
16 questions? Dr. Martin.
17
18 GLENN MARTIN: I don’t want to renege on my previous
19 statement. But from a trade point of view and false advertising
20 and the like, the moment they prove that they’re not perfect
21 which I assume will be the first week of operations, are they
22 then liable to any further look see by anyone in the State
23 because that would be potentially fraudulent advertising or
24 trade violation or anything else? I’m just curious.

1

2 MARTHE NGWASHI: Quite possibly, but not us. I mean, --
3 moving forward.

4

5 KATHLEEN CARVER CHENEY: Since this is a new application,
6 we could ask them to change their name. And I would recommend
7 that.

8

9 JEFF KRAUT: How does –

10

11 ANGEL GUTIERREZ: I like that. We can test…

12

13 JEFF KRAUT: We have to give it – we need a little rule.
14 We need to make some rules and we'd have to – in order to do
15 that my suggestion would be to defer voting on the application
16 until the Department can come back with guidance to do it, and
17 the mere fact of deferring it may get the applicant to maybe
18 consider changing the name in order for us to approve, for them
19 to go forward. Is that an acceptable pathway? Because I don't
20 want to do this on the fly. Yes, Ms. Monroe.

21

22 ANN MONROE: I agree not doing it on the fly, but I'm
23 reluctant to delay the establishment of a new D&T center for

1 this issue. I mean, I think there's – so I don't know how long
2 we would be delaying it?
3
4 JEFF KRAUT: I would only delay it one cycle.
5
6 ANN MONROE: So that's another, what, two months?
7
8 JEFF KRAUT: January, February cycle.
9
10 ANN MONROE: If they decide to change it – could we
11 approve it pending that decision? So that if they come right
12 back and say, we'll change our name –
13
14 JEFF KRAUT: I think as a practical matter we'd have to
15 attach a condition to the approval to change the name. and I
16 just don't know if that's the right process to do this, because
17 we have to have a rationale.
18
19 ANN MONROE: I understand. I'm just reluctant to put –
20
21 HARVEY LAWRENCE: I think I would tend to agree with Ms.
22 Monroe. I think one of the challenges here is not to appear
23 arbitrary and capricious in the decision here. Because we've
24 already approved an applicant (Excellent.) and we don't have a

1 standard or a set of guidelines that we are basing this decision
2 on around names. And names are, you know, I guess the buyer
3 beware is one of the things consumers are always taught. And
4 simply changing a name, we have some institutions with great
5 names that don't provide high quality care and there's no way of
6 policing that other than through surveillance. So I would
7 suggest that we – I too don't think we should be naming. We
8 should have Perfect Health and Perfect other things, but in this
9 particular instance to make a decision that is arbitrary that
10 would adversely impact this applicant. I don't think it would be
11 fair.
12
13 JEFF KRAUT: Dr. Berliner. I'm sorry, Marthe, do you want
14 to respond? Let the comments come and then try to go once.
15
16 HOWARD BERLINER: I just want to disagree with one point
17 Mr. Lawrence made which I think is healthcare is somewhat
18 different from other commodities in terms of let the buyer
19 beware. We go to great lengths to make sure that urgent care
20 centers don't call themselves emergency centers and things like
21 that because we don't want to mislead the public. So I think
22 just with –
23

1 HARVEY LAWRENCE: I agree with that. But I guess what I'm
2 saying is that until we set, we establish some boundaries or
3 standard then we're being arbitrary.
4
5 JEFF KRAUT: I'm sorry, Dr. Brown.
6 LAWRENCE BROWN: I think there is a potential for it
7 being alleged to be arbitrary no matter which direction we go in
8 this because quite frankly even if we were to allow this to go
9 forward because of the fact that we hadn't set up standards,
10 then in some ways those who come after them might very well say
11 that well, the people who came before them had a break. So it
12 seems to me that we do have to pause and quite frankly we do
13 have to then say a short period of time of course, even one
14 cycle, to be able to come up with some standards for which
15 Department can come to us based on some data that then the
16 council can embrace. But I do appreciate, I don't particularly
17 like delays. But I think here in the best interest of the
18 public's health for the fact that we are making a decision
19 saying based on the merits and drawbacks we believe that this is
20 the best path. It seems to me the best path would be to make
21 sure we have an informed path.
22
23 MARTHE NGWASHI: Correct. Dr. Brown, to your point, we
24 are happy to offer some guidance, however, I do want to

1 emphasize that the Department doesn't act on its own singularly
2 particularly in this kind of issue. So, we would need guidance.
3 Program areas already do undertake similar to what the chairman
4 was talking about. When we see names that might be similar, we
5 do undertake that level of analysis to help to ensure that there
6 won't be that confusion out there with the consumer. However, we
7 will need the guidance from you all as well while we are putting
8 together this guidance for you moving forward when you consider
9 these applications. Not just on initial use, but also for name
10 changes.
11
12 JEFF KRAUT: Just hold – Mr. Zahnleuter, do you have any
13 thoughts on the discussion here?
14
15 RICK ZAHNLEUTER: This is Rick Zahnleuter, general
16 counsel, I am in Albany today. And I was listening to the
17 conversation and it seems that there's a case of approvals
18 remorse? I think the application has already been approved, so
19 procedurally if you want to do something here, what you need to
20 do is recall that vote and then have another motion and decide
21 whether or not –
22
23 JEFF KRAUT: We didn't vote.
24 PETER ROBINSON: That's not the question.

1

2 RICK ZAHNLEUTER: … something with the name and then

3 discuss it.

4

5 PETER ROBINSON: We have not yet voted on that

6 application.

7

8 RICK ZAHNLEUTER: (inaudible)

9 If the name is misleading, then you have regulatory ground

10 to deny the application. But condition it to –

11

12 JEFF KRAUT: Right, we haven’t voted on this application

13 it’s only been recommended by the committee. So that’s what

14 we’re debating before we vote. Mr. Lawrence.

15

16 HARVEY LAWRENCE: I think what would be an equitable way

17 forward on this would be to condition, if we can, the approval

18 on the applicant looking at a name amendment or revision.

19

20 JEFF KRAUT: Ms. Raleigh.

21

22 DEIRDRE ASTIN: This is Deirdre Astin. I’d just like to

23 point out that it is an LLC so they’re incorporated under that

1 name. But we could condition it on the, because they'd have to
2 roll that back as well.
3
4 JEFF KRAUT: Do d/b/a
5 DEIRDRE ASTIN: We could condition it upon them adopting a
6 d/b/a that is more.
7
8 TRACY RALEIGH: And this is Tracy. That I was going to echo
9 that option.
10
11 JEFF KRAUT: So could we amend the approval to add a
12 condition? Is that what we have to do? Or a contingency.
13
14 PETER ROBINSON: If I could, we're in the midst of a
15 couple of these. We've approved two. We've approved the first
16 "Perfect." Isn't there – no we've approved two "Excellents".
17 We've approved two Excellents and we're stalled on Perfect. And
18 so the question – we can certainly do it on this application,
19 but I think we sort of are like splitting the baby here and
20 there seems to be –
21
22 JEFF KRAUT: No, Excellent has been using the name for a
23 decade. Excellent has been out there already. That's why. So we

1 can do it on Perfect. And I have my concerns that we're doing it
2 at all. Could you – it's a contingency. Add a contingency.
3
4 PETER ROBINSON: So I actually need to withdraw my
5 prior motion and who seconded? Would you accept the withdrawal
6 of that? So let me go back to where we are on Perfect. Actually,
7 Mr. Kraut, if you would –
8
9 JEFF KRAUT: Take Perfect separately from the others.
10
11 PETER ROBINSON: So I think what I did was batch the –
12
13 JEFF KRAUT: You batched these three.
14
15 PETER ROBINSON: So let's take Perfect now. Application
16 191286B, Perfect Health Medical and I won't read the details
17 which are already in the record. And the Department is
18 recommending approval with conditions and contingencies as does
19 the committee. In addition, we would add an additional
20 contingency to record a new d/b/a for the organization as a
21 contingency for moving forward. And I so move.
22
23 JEFF KRAUT: I have a motion and I have a second. Mr.
24 Thomas.

1

2 HUGH THOMAS: Just a question. We’re going to add a

3 contingency to add a d/b/a subject to whose approval?

4

5 PETER ROBINSON: The Department’s.

6

7 HUGH THOMAS: The Department’s. OK.

8

9 JEFF KRAUT: Any other questions or comments? Dr. Martin,

10 then …

11

12 GLENN MARTIN: well, I just feel compelled to point out the

13 obvious. The Department already approved this name when they

14 sent it to us and didn’t object. So, I’m not sure what criteria

15 they will use going forward to make this determination.

16

17 JEFF KRAUT: I don’t think they heard our concerns

18 before. So they’re now responding to the concerns you voiced.

19

20 GLENN MARTIN: I understand. But I just don’t know what

21 criteria they’re going to use. It just seems a little bit like,

22 you know, …

23

1 JEFF KRAUT: But I think that's up to the Department to
2 create the process so they're consistent.
3 I think they've heard the discussion about guidance about
4 superlatives that are held forward in attaining certain levels
5 of health. And what the Department is going to do is take those
6 under consideration when they review an applicants name.
7
8 GLENN MARTIN: And it would be appropriate for them to let
9 us know what criteria they came up with and how that's going to
10 go on going forward.
11
12 JEFF KRAUT: Yes. It's probably the review of superlative
13 adjectives, nouns, or I was absent for most of grammar on fourth
14 grade, so I know it's not participles. Dr. Kalkut.
15
16 GARY KALKUT: Criteria that was mentioned was misleading.
17 Could be construed as misleading.
18
19 GLENN MARTIN: Definitely is.
20
21 GARY KALKUT: And that's what they'll make their decision
22 on.
23

1 GLENN MARTIN: But just operationally if we could hear from
2 the state when they get it a little bit more granular would be
3 helpful.
4
5 JEFF KRAUT: It's – yes. OK. Is there any other comments?
6 Dr. Ortiz?
7
8 DR. ORTIZ: Just sort of a comment. I think if we're
9 going to create a taxonomy of these words, I think it should be
10 beyond just the Excellent side. Because I'm not going to vote
11 for something that also has OK, Alright, Poor, there should be a
12 taxonomy across a spectrum of words that we're not comfortable
13 with.
14
15 JEFF KRAUT: I think again, you're going to have to – I'm
16 not going to use the supreme court definition of pornography
17 here, but you know it when you see it kind of thing, and we'll
18 have to figure out. I mean, I don't know how hard and fast we're
19 going to have that. But I just think the mere fact we had the
20 conversation, it'll self-regulate itself. That's usually what
21 occurs. If that's ok, All those in favor, Aye?
22
23 [Aye]
24 Opposed? Abstentions? The motion carries.

1

2 PETER ROBINSON: Ok, I will now bring the two
3 applications that we had previously discussed. 192118B New York
4 Med of Brooklyn. And 192013E, Fairview Nursing Care Center with
5 recommendations from the Department and the committee, and I so
6 move.

7

8 JEFF KRAUT: I have a motion, I have a second. Any
9 comments or questions on these applications? Hearing none, I'll
10 call for a vote. All those in favor, Aye?

11

12 [Aye]

13 Opposed? Abstentions? The motion carries.

14

15 PETER ROBINSON: Thank you. The next application
16 includes a conflict, declaration of conflict and recusal by Mr.
17 Larue who is leaving the room. This is application 192014E,
18 Always There Family Home Health Services in Ulster County.

19

20 JEFF KRAUT: Don't start. Nobody Start! Warning you all.

21

22 PETER ROBINSON: Merger and consolidate of Always There
23 Family Home Care Services into – so it's going away – the
24 Dominican Sisters Family Health Services Inc., d/b/a Archcare at

1 Home. The Department is recommending approval with condition and
2 contingencies, as does the committee, and I so move.
3
4 JEFF KRAUT: Just that one? I have a motion. Any comment?
5 Going to be mostly there? All those in favor, Aye?
6
7 [Aye]
8 Opposed? Abstentions? The motion carries.
9
10 PETER ROBINSON: Thank you. Application 192157E, SLHS
11 Messina Inc. d/b/a Messina Hospital in St. Lawrence County
12 noting an interest by Mr. Thomas. Establish SLHS Messina Inc.,
13 as the new operator of Messina Memorial Hospital and establish
14 St. Lawrence Health System Inc., as the co-operator and active
15 parent. The Department is recommending approval with a condition
16 and contingencies, the committee also recommended approval with
17 condition and contingencies with one member abstaining. I so
18 move.
19
20 JEFF KRAUT: I have a motion, I have a second. Any
21 questions? All those in favor, Aye?
22
23 [Aye]
24 Opposed? Abstentions? The motion carries.

1 Sorry. Abstention by Mr. Thomas.

2

3 PETER ROBINSON: Next application includes a conflict

4 and recusal by Dr. Watkins. He is leaving the room. This is

5 application 191101E, Underwood Gardens Home Care LLC d/b/a

6 Underwood Manor LHCSA in Cattaraugus County. Convert the

7 operator of a licensed home care services agency exclusively

8 serving the residents of an assisted living program located at

9 4460 Union Hill Road in Hinsdale from a sole proprietorship to a

10 limited liability company. The Department recommends approval

11 with a condition and contingencies as does the committee and I

12 so move.

13

14 JEFF KRAUT: I have a motion, I have a second, Dr.

15 Gutierrez. Any questions on this applicant? All those in favor,

16 Aye?

17

18 [Aye]

19 Opposed? Abstentions? The motion carries.

20

21 PETER ROBINSON: And 192006E, Marchand Home Care at

22 Sharon Springs in Schoharie County. Establish Marchand Home Care

23 at Sharon Springs LLC as the new operator of the LHCSA serving

24 the residents of the ALP currently known as Marchand Manor in

1 Sharon Springs. The Department recommends approval with a
2 condition and contingencies as does the committee and I so move.
3
4 JEFF KRAUT: I have a motion, I have a second, Dr.
5 Gutierrez. Any questions? All those in favor, Aye?
6
7 [Aye]
8 Opposed? Abstentions? The motion carries.
9
10 PETER ROBINSON: Thank you. That concludes the report of
11 the Establishment and Project Review Committee.
12
13 JEFF KRAUT: Thank you. What I'd like to do is have a
14 motion to suspend the council meeting so we can return to the
15 codes committee meeting and take up the next items. And then
16 after the conclusion of the Codes Committee, I'll reconvene the
17 council meeting to vote on the actions and recommendations of
18 the codes committee.
19
20 (so moved)
21 Thank you. OK. We are now suspended the council meeting.
22 Colleen is there people in the overflow rooms? Do you want to
23 reset the rooms? Because we have empty seats here to let people
24 who are – have they already reset the rooms? So then, Albany,

1 are you guys ready for the second part of the meeting with the
2 codes committee?
3 Thanks Mark.
4
5
6
7 JEFF KRAUT: That concludes the committee meeting. I'm
8 now going to reconvene the meeting of the Public Health and
9 Health Planning Council. May I have a motion to reconvene the
10 meeting? Moved, second Dr. Torres. All in favor.
11 [Aye]
12 We're going to reconvene and I'm now going to turn it over
13 to Dr. Rugge – I'm sorry I'm looking at Dr. Rugge's name on the
14 piece of paper – Dr. Gutierrez to provide us with a report of
15 the Codes Committee for two items for action, one item for
16 information. And then, Ms. Monroe, I'll clarify the question you
17 asked.
18
19 ANGEL GUTIERREZ: So, thank you Mr. Kraut. For emergency
20 adoption and information. Prohibition on the sale of electronic
21 liquids with characterizing flavors. This proposal adds subpart
22 9-3 to Title 10 and prohibits any individual or entity to
23 possess, manufacture, distribute, sell, or offer for sale any
24 flavor e-liquid or product containing the same. The committee

1 voted to recommend emergency adoption to the full council, and I
2 so move.
3
4 JEFF KRAUT: I have a motion. I have a second, Dr.
5 Kalkut. Now we're have this for discussion. So, Ms. Monroe, all
6 we're voting on right now is the identical reg that we voted on
7 90 days ago to continuation of that emergency action. That's all
8 that this one has. Correct? Is there any questions for the
9 Department or any discussion of the council. Hearing none, I'll
10 call for a vote. All those in favor, aye.
11
12 [Aye]
13 Opposed? Two abstentions, Dr. Martin, Dr. Berlin – two
14 opposed. Dr. Martin, Dr. Berliner. Any Abstentions. The motion
15 carries.
16 ANGEL GUTIERREZ: For adoption, require signage warning
17 against the dangers of illegal products. This proposal adds
18 subpart 9-2 to Title 10 and requires entities in New York State
19 that sell vaping products to post signage on the dangers of
20 vaping illegal e-cigarettes and e-liquids. The committee voted
21 to recommend emergency adoption to the full council, and I so
22 move.

1 JEFF KRAUT: I have a motion I have a second, Dr.
2 Watkins. Any questions from the council on the signage reg?
3 hearing none, I'll call for a vote. All those in favor, aye?
4
5 [Aye]
6 Opposed? Abstentions? The motion carries.
7 ANGEL GUTIERREZ: Excuse me, there is an error. I said
8 emergency adoption. This is not for emergency. This is for
9 regular adoption. So, I want to –
10
11 JEFF KRAUT: I will have a motion to rescind the vote.
12 Have a motion, Dr. Gutierrez, second Dr. Watkins. We rescinded
13 the previous vote. So, it's clear, this is for adoption. For the
14 signage. Any other questions?
15
16 [Will the signage be in languages…]
17 JEFF KRAUT: Mr. Hutton, the question has been asked is
18 the signage going to be in multiple language consistent with the
19 diversity of communities in New York.
20
21 BRAD HUTTON: Yes, in compliance with an executive order
22 that we have to make all publications available in multiple
23 languages, I think we worked to do that. I think currently it's

1 available in English and possibly Spanish. But we'll work at
2 additional languages too.
3
4 JEFF KRAUT: Any other questions? All those in favor,
5 aye?
6
7 [Aye]
8 Opposed? Abstention? The motion carries.
9 The last item?
10
11 ANGEL GUTIERREZ: for information, physician limited
12 permit holder requirements. We dealt with that.
13
14 JEFF KRAUT: We did the limited permit. This is the one
15 for information with –
16
17 ANGEL GUTIERREZ: For information was the one about
18 prohibition of the sale of electronic liquids with
19 characterizing flavors. It will come back to ask once the health
20 department finishes the minutia of putting the whole thing
21 together. So, we voted to inform you of that. And that is where
22 it stands.
23

1 JEFF KRAUT: So, we're not voting on this. This was for
2 information so the Department can post a rule that substantively
3 similar to the one we passed on an emergency way but will also
4 include I believe, include menthol in it.
5
6 ANGEL GUTIERREZ: That should be part of the discussion.
7
8 JEFF KRAUT: So, this is going to now go – this is
9 addressing the point Dr. Martin made. It is going to go out for
10 public comment, there's going to be a period then it'll come
11 back to us for adoption. So, we're just promoting this, making
12 the public aware that this rule is going out for discussion and
13 comment. Correct. So, there's no action that's needed to take on
14 this one. Dr. Gutierrez, does that conclude your report for
15 today?
16
17 ANGEL GUTIERREZ: I hope so.
18
19 JEFF KRAUT: Excuse me?
20
21 ANN MONROE: Is there comment on the one for information?
22
23 JEFF KRAUT: Yes, you can comment on it. If you'd like
24 to, sure.

1

2 ANN MONROE: I voted for continuation of the emergency
3 regulation, but I'm really, I'm just torn. I'm not at all sure
4 that total ban is the only way that we can achieve what we're
5 fighting for which is to keep this stuff away from kids and to
6 keep illegal materials out of the hands of adults and kids. And
7 when I think about what we do with liquor, we use high tax, we
8 use restricted sites, and we use enforcement to make sure that
9 the intent is met. So, while I'm not opposed to the ban as the
10 only – if it is the only strategy that will accommodate the
11 goals, I would just like to hear from the Department why some of
12 those other strategies are not going to do the job. I understand
13 people have died. And I'm a strong supporter of public health.
14 But people have died, as we've heard ourselves and today, from
15 cigarettes and alcohol and we treat them in a certain way to
16 protect the public, but not take away adults decisions about
17 what to do. So, just for me, I am just, would like to hear from
18 the Department – not necessarily today, but why those strategies
19 the way we've dealt with other things, don't fit here,
20 especially if we're now looking at long-term regulations which
21 take away the emergency piece, from the urgency that we've had.
22
23 JEFF KRAUT: Sure. So, I suspect others will make a
24 similar comment during the comment period, but Mr. Hutton, just

1 to be responsive today, would you just – that'll be taken up or
2 do you want to make a comment to Ms. Monroe.
3
4 BRAD HUTTON: I appreciate the opportunity to make a
5 comment. Ann, absolutely we feel that a comprehensive slate of
6 initiatives is what's needed for e-cigs just as it was needed
7 for tobacco. However, I think that the single initiative that's
8 needed to curb the incredibly high rate of increase of
9 adolescent e-cig use is to get flavors out of the market in New
10 York State. It's really clear from the evidence that flavors are
11 the initiating factor for youth use and that's a great concern.
12 But it's certainly not the only initiative. We'll need to
13 provide cessation support for a lot of those other robust policy
14 measures that you mentioned that have been very successful for
15 other combustible tobacco products are going to be needed for e-
16 cig products as well.
17
18 JO BOUFFORD: I had one question as well, the issue of
19 flavored tobacco products. I know in many places nicotine and
20 other is actually putting cigarettes in candy. This has been
21 true in Indian Reservations for a really long time, and I wanted
22 to ask about the non-combustible tobacco product conversation
23 question that was raised earlier. I'm not quite sure that's a
24 problem in New York. I know it has been a problem nationally.

1 And then the other issue, I happen to be in a University where
2 people study these issues and have been studying them for
3 decades. There is a lot of concern among academics about the
4 impact on harm reduction in adults of this rule. And it may end
5 up being the right thing to do, but I think that it would be
6 really important for the Department in sort of putting together
7 the kinds of approaches that Ann's talking about to really look
8 deeply at the harm reduction data that's coming out increasingly
9 on the issue of vaping and tobacco use smoking in adults before
10 sort of coming to closure and perhaps that would lead to a more
11 comprehensive set of steps being taken in implementing the
12 regulation. Thank you.
13
14 PETER ROBINSON: So, I just want to add to this sort of
15 line about research that Dr. Boufford raised, which is I noticed
16 that the proposed regulations, the ones for information are
17 making provisions for research to continue on these products,
18 including the flavored products which I think is extremely
19 important that we do. So, I'm underscoring the fact that I think
20 it's important that as the permanent regulations come out, that
21 provisions for research and the ability to access the substances
22 that allow for that research to take place are properly
23 available. So, just making the point, underscoring, thanking the
24 Department for putting that in the proposed regs.

1

2 JEFF KRAUT: Dr. Ortiz, Ms. Carver-Cheney, then Dr.
3 Berliner.

4

5 DR. ORTIZ: I just want to comment on Dr. Boufford, you
6 had said about the comprehensive plan, and so if the Department
7 could in the plan include across all levels of prevention,
8 because I don't want for us just to look at preventing and
9 stopping there are other levels that we need to address. So, I
10 want to make sure that we're across all levels of prevention.

11

12 KATHLEEN CARVER-CHENEY: Yes, for Mr. Hutton. What were the
13 studies that several of the speakers referred to saying that it
14 wasn't flavors so much, only 22 percent of young people reported
15 that it was the flavors that attracted them. Could you tell us
16 more about that.

17

18 BRAD HUTTON: There are different data sources out there
19 that we have that give us information about adult use of
20 flavors. I will say and we can resend it if it didn't go to
21 members, but we put together an affidavit as part of our papers
22 for the court, and (inaudible)
23 And demonstrates very clearly that flavors are the single
24 reason why youths initiate and also we looked at our

1 investigation of lung injuries, it's an incredibly high
2 percentage of individuals who had deep e-cig
3 associated lung injuries who state that they started with
4 flavored products, flavored nicotine products, and that's the
5 main concern.
6
7 JEFF KRAUT: Dr. Berliner, Brad, could you respond to the
8 comment about non-combustible use? Was that, is that an issue as
9 widespread? That Dr. Boufford mentioned?
10
11 BRAD HUTTON: There's certainly a more lowered usage on
12 some of the other tobacco products. Generally look at smokeless
13 and some of the other products, and they
14 certainly come nowhere close to the really alarming increase
15 that one of the commenters mentioned, 27 percent of high
16 schoolers, 37 percent of high school seniors. Use of smokeless
17 and other non-combustibles are much much lower percentages.
18
19 JEFF KRAUT: OK. Dr. Berliner.
20
21 HOWARD BERLINER: Brad, do you have any knowledge of
22 what's going on in other states? And then also what's happening
23 at the federal level with the e-cigarette restrictions and bans?
24

1 BRAD HUTTON: Yes, there's a fair amount of activity going
2 on in other states. Massachusetts had a temporary full ban of
3 all products in which now as I understand it legislation was
4 enacted making that permanent. States that include Rhode Island,
5 several others out west, some have had flavor bans and some have
6 had full bans and in each case there's quite an active slate of
7 litigation challenging those actions.
8
9 JEFF KRAUT: Dr. Brown and then Dr. Gutierrez.
10
11 LAWRENCE BROWN: I was a bit hesitant about prolonging
12 the say, but I felt that given the fact that many of our
13 colleagues are talking about areas that are quite frankly, are
14 more in the bandwidth of those of us in behavioral health and I
15 would like to suggest that when we have this conversation that
16 we include OASAS and include representatives from professional
17 organizations such as the American College of Physicians and
18 Surgeons. The American – actually College of
19 Neuropsychopharmacology, the College of drug
20 dependence, I think they have done some studies with respect to
21 the neurological aspects of these exposures and what that may
22 mean, that may be of value to this council.
23

1 ANGEL GUTIERREZ: And Dr. Brown beat me to it. I think
2 that what that would guarantee is a quality of the papers that
3 are presented favoring the position we present as a health
4 department and will also have an opportunity to investigate or
5 look at the papers that are being presented by those that think
6 things should be as they are or modified only slightly.
7
8 JEFF KRAUT: OK, what I'd like to do now is wish
9 everybody a joyous holiday and a happy new year and thank you
10 for the diligence of your work. You know, you look back; we had
11 a fair number of meetings this year. Many scheduled; some
12 unscheduled. And I think it was quite a daunting agenda that we
13 had to do, and we dealt with some real meaty and thorny issues.
14 And I think we'll reflect upon that when we have the annual
15 meeting in February. So, I just want to thank everybody for
16 their work. Thank the Department and the staff for all the
17 support we've received throughout the year, and Colleen and Lisa
18 and the rest of the staff here for the wonderful little treats
19 that were at our table, and obviously they've been on Pintrest
20 with the arts and crafts projects, and we want to thank those,
21 the Department of Health Staff in Albany for the work you do in
22 supporting us as well, and really appreciate it. I'd like to
23 have a motion to adjourn the meeting.
24 So, moved.

1 Our next meeting is going to be on Thursday, --- The next
2 meeting of the agenda was going to be held, committee day is
3 going to be on January 23 in New York City. The Full Council
4 will be on February 6, and the Public Health Committee is going
5 to be convening on Thursday, December 19 in New York City. There
6 could be a little Christmas treat if you come. 1-4pm. End the
7 year doing good. Yes, Mr. Thomas.
8
9 HUGH THOMAS: (inaudible)
10
11 JEFF KRAUT: Yeah, do we have access to the room? March
12 and April. I'm sorry. We've been thrown out of there for the
13 State Police exam and a few other things. So, OK. Again,
14 everybody thank you. Safe travels and thanks for all the work.
15
16 [end of audio]
17 0
18
19

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, Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to add a new Subpart 9-3, to be effective upon filing with the Department of State.

A new Subpart 9-3, titled "Prohibition on the Sale of Electronic Liquids with Characterizing Flavors", is added to read as follows:

Section 9-3.1 Definitions.

As used in this Subpart, the following terms shall have the following meanings:

(a) The terms "electronic cigarette," "e-cigarette", "electronic liquid," and "e-liquid" shall have the same meanings as established in Subpart 9-2.

(b) The term "flavored e-liquid" means any e-liquid with a distinguishable taste or aroma, other than the taste or aroma of tobacco or menthol, imparted either prior to or during consumption of an e-cigarette or a component part thereof, including but not limited to tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, mint, wintergreen, herb or spice, or any "concept flavor" that imparts a taste or aroma that is distinguishable from tobacco flavor but may not relate to any particular known flavor. An e-liquid shall be presumed to be a flavored e-liquid if a tobacco retailer, manufacturer, or a manufacturer's agent or employee has made a statement or claim directed to consumers or the public, whether expressed or implied, that the product or device has a distinguishable taste or aroma other than the taste or aroma of tobacco or menthol.

(c) The term "possession" means having physical possession or otherwise exercising dominion or control over flavored e-liquids or a product containing the same. For purposes of this definition, among other circumstances not limited to these examples, the following individuals and/or entities shall be deemed to possess flavored e-liquids, or a product containing the same: (1) any individual or entity that has an ownership interest in a retail, distribution or manufacturing establishment that possesses, distributes, sells or offers for sale flavored e-liquids, or a product containing the same; and (2) any clerk, cashier or other employee or staff of a retail establishment, where the establishment possesses, distributes, sells or offers for sale a flavored e-liquids or a product containing the same, and who interacts with customers or other members of the public.

Section 9-3.2 Possession, Manufacture, Distribution, Sale or Offer of Sale of Flavored E-Liquid Prohibited.

It shall be unlawful for any individual or entity to possess, manufacture, distribute, sell or offer for sale any flavored e-liquid or product containing the same.

Section 9-3.3 Penalties.

A violation of any provision of this Subpart is subject to all civil and criminal penalties as provided for by law. For purposes of civil penalties, each individual container or other separate unit of flavored e-liquid, product containing the same, or any component part that imparts flavor to an e-cigarette, that is possessed, manufactured, distributed, sold, or offered for sale, shall constitute a separate violation under this Subpart.

Section 9-3.4 Severability.

If any provisions of this Subpart or the application thereof to any person or entity or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Subpart or the application thereof to other persons, entities, and circumstances.

Regulatory Impact Statement

Statutory Authority:

The Public Health and Health Planning Council (PHHPC) is authorized by Section 225 of the Public Health Law (PHL) 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. PHL Section 225(5)(a) provides that the SSC may deal with any matter affecting the security of life and health of the people of the State of New York.

Legislative Objectives:

PHL Section 225(4) authorizes PHHPC, in conjunction with the Commissioner of Health, to protect public health and safety by amending the SSC to address issues that jeopardize health and safety. This proposed regulation furthers this legislative objective by prohibiting the possession, manufacture, distribution, sale or offer for sale of flavored electronic liquids (e-liquids) to discourage youth electronic cigarette (e-cigarette) use.

Needs and Benefits:

Emergency regulations are necessary to address the alarming increase of e-cigarette use among New York's youth. New York State-specific surveillance data shows that youth e-cigarette use has risen at a dramatic rate over just the last four years, driven primarily by the abundance of e-liquid flavors. Swift interventions are needed to protect our youth from a lifetime addiction to nicotine. Therefore, restricting the availability of flavored e-liquids will deter youth from initiating e-cigarette use and reduce ongoing e-cigarette use.

According to the U.S. Food and Drug Administration (FDA), the use of e-cigarettes by youth has reached epidemic proportions nationally. Since the New York State Department of Health (Department) began tracking e-cigarette use in New York State (NYS) in 2014, use by youth in high school has increased 160 percent, from 10.5 percent in 2014, to 20.6 percent in 2016, to an astounding 27.4 percent in 2018. A review of youth risk behavior data since 1997 revealed that there has never before been such a dramatic increase, in such a short amount of time, of any substance use among youth. The rate for 2018 is equivalent to youth use of combustible cigarettes in 2000 prior to the dramatic decline in the use of combustible cigarettes among NYS youth. Currently, just 4.8 percent of NYS youth smoke a combustible cigarette, one of the lowest rates in the nation. However, the rate of smoking by youth is increasing, as the rate in 2016 was 4.3 percent. Schools across New York State are finding it especially challenging to address the alarming increase in e-cigarette use by adolescents. Enforcement of minimum age statute and prohibitions on school grounds are especially difficult given that most products are sleek and easy to conceal by youth users.

The recently published National Academy of Science, Engineering, and Medicine (NASEM) report on the *Public Health Consequences of E-Cigarettes* concluded that there is:

1) "…**substantial evidence** that e-cigarette use increases risk of ever using combustible tobacco cigarettes among youth and young adults," and
2) "…**moderate evidence** that e-cigarette use increases the frequency and intensity of subsequent combustible tobacco cigarette smoking" among youth and young adults.

Given the recent rise in combustible cigarette use by youth and the fact that e-cigarettes are now the most commonly used tobacco product by youth in NYS, evidence exists that use of

e-cigarettes could reverse the long-standing decline in combustible cigarette use and reverse the public health benefits that NYS has achieved. A biennial survey of high school youth has shown that since 2014, openness to vaping has increased from 24% to 31%. After years of decline in openness to smoking, students in NY showed an uptick in openness to combustible smoking (decreased from 22% in 2010 to 17% in 2016, increased to 19% in 2018). Openness to smoking is a predictor of smoking experimentation among youth.

The flavorant chemicals used in e-cigarettes have been approved by the FDA for ingestion only; however, these chemicals have not been approved for inhalation. Because inhalation and ingestion are very different processes, nothing about the approval for ingestion should be interpreted to suggest that these products are safe for inhalation. Food products, chemicals and flavorings that are ingested are detoxified through the liver before entering the circulatory system. Aerosols that are inhaled have a direct impact on lung tissue and directly enter the circulatory system, and are not detoxified through the liver.

Some of the over 15,000 flavors now available include fruit flavors (apple, cherry, peach, melon, strawberry), dessert flavors (vanilla custard, peanut butter cup, cream cookie, milk 'n honey), candy flavors (cinnablaze, bubblerazz, mango burst, caramel), and menthol flavor, including mint and wintergreen. More recently, manufacturers have developed "concept flavors" that may be difficult to perceive as a single distinctive flavor and the product names reflect that (e.g., Jazz, First Flight, and Unicorn Milk) and simple color names (such as Blue and Yellow) that substitute for the names of flavors (Vanilla and Banana respectively). The list of flavors continues to grow. The commonality of all these flavors is that they are distinct from plain tobacco flavor or unflavored tobacco.

The dramatic increase in use of e-cigarettes by youth is driven in large part by flavored

e-liquids, and flavors are a principal reason that youth initiate and maintain e-cigarette use. In a 2019 survey of adolescent e-cigarette users in NYS, 51.8 percent preferred fruit flavors, followed by mint/menthol (34.1%) and chocolate, candy or other sweets (8.8%). In that same survey, 19.8 percent of adolescent e-cigarette users say that flavors are the reason they currently use e-cigarettes, and for 11.5 percent of adolescent e-cigarette users, flavors were the primary reason for first use. Some flavors also confer misperceptions about the relative safety of e-cigarettes. The survey also found that adolescents are more likely to believe that sweet flavors like fruit, chocolate and candy and menthol/mint flavors are less harmful than traditional flavors like tobacco.

There is also concern regarding human exposure to nicotine. Users are often unaware of how much nicotine they are consuming. The newest and most popular e-cigarettes deliver high levels of nicotine, the addictive component in all tobacco products.

Nicotine is not a benign chemical. Nicotine has deleterious effects on the developing human brain – a process that continues through the mid-twenties. According to the US Surgeon General, these deleterious effects from nicotine can lead to lower impulse control and mood disorders; disrupt attention and learning among youth and young adults; and prime the developing brain for addiction to alcohol and other drugs.

Adult use of e-cigarettes differs by age category. Adults over age 24 use e-cigarettes at very low rates; just 4.2 percent in 2018. The rate of e-cigarette use among young adults 18 to 24 years of age is about 14 percent. A lower proportion of young adults (9%) use combustible cigarettes. Almost 40 percent of the young adult smokers are concurrently using e-cigarettes, known as dual use. The same health concerns described above apply to the use of e-cigarettes by adults aged 18 to 24.

The Department will continue to monitor the impact of new legislation that takes effect on November 13, 2019 that raises the legal age for purchase of e-cigarettes and related products to 21 years to determine the impact that has on youth use rates. In addition, the Department routinely conducts surveys that ask youth, among other things, their preference and current use of flavored products and will monitor the trends with respect to use of menthol, mint and other broad flavoring categories.

In addition, although it is too soon to understand the long-term health effects of a lifetime of e-cigarette use, research is beginning to accumulate about certain health effects related to cardiovascular conditions and respiratory conditions. Some e-cigarette flavors contain diacetyl, the buttery-flavored chemical that is used in foods like popcorn and caramel. When inhaled, diacetyl can cause bronchiolitis obliterans, a scarring of the tiny air sacs in the lungs, which is a serious concern that has symptoms that are similar to chronic obstructive pulmonary disease.

In a study performed at the Stanford University School of Medicine, scientists found that menthol and cinnamon flavored e-liquids, specifically, caused the most damage to endothelial cells (the cells that line the interior of blood vessels). Some of the effects of the e-liquid flavors were independent of the nicotine concentration. Researchers concluded that flavoring liquid used in e-cigarettes may increase the risk of heart disease. In a study at the Duke University School of Medicine, high levels of a carcinogenic oil banned in the U.S. as a food additive were found in samples of menthol-flavored e-cigarette liquids and smokeless tobacco products. Concentrations of the additive pulegone were 100 to more than 1,000 times higher than the concentrations considered safe for ingested food products by the FDA.

The Department will continue to closely monitor the research literature for health impact related to e-cigarettes. Adult smokers who want to continue to use e-cigarettes will have the option of unflavored or tobacco flavored e-cigarettes.

Costs:

Costs to Private Regulated Parties:

The regulation will impose costs, in terms of lost sales, for private regulated parties whose primary product line focuses on the sale of e-cigarettes, flavored e-liquids, and related products.

Costs to State Government and Local Government:

State and local governments will incur costs for enforcement. Exact costs cannot be predicted at this time because the extent of the need for enforcement cannot be fully determined. Some of the cost however may be offset by fines and penalties imposed pursuant to the Public Health Law as well as through utilizing State Aid funding.

Local Government Mandates:

The SSC establishes a minimum standard for regulation of health and sanitation. Local governments can, and often do, establish more restrictive requirements that are consistent with the SSC through a local sanitary code. Local governments have the power and duty to enforce the provisions of the State Sanitary Code, including 10 NYCRR Part 9, utilizing both civil and criminal options available.

Paperwork:

The regulation imposes an increase of administrative paperwork for program implementation in regard to developing adequate enforcement mechanisms, record-keeping of enforcement activities and compliance history, and complaint-driven enforcement actions.

Duplication:

There are currently no State or federal regulations regarding the possession, manufacture, distribution, sale or offer for sale of e-cigarettes with characterizing flavors.

Alternatives:

The alternative to the proposed regulation is to wait for the FDA to regulate in this area; however, due to the health concerns associated with increase e-cigarette use among youths, this alternative was rejected.

Federal Standards:

The FDA has not proposed any standards for e-cigarette devices or for the constituents used in the devices to create the aerosol, including characterizing flavors. FDA only requires that those purchasing e-cigarette products be at least 18 years old, that e-liquids carry a warning statement about the addictiveness of nicotine, and that e-liquids be in child-proof containers.

Compliance Schedule:

The regulation will be effective upon filing with the Department of State.

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Regulatory Flexibility Analysis for Small Business and Local Governments

Effect of Rule:

The amendment will affect the small businesses that are engaged in selling flavored e- liquids or e-cigarettes. The NYS Vapor Association (http://nysva.org/) claims there are at least 700 "vape shops" employing 2700 persons across the state, although the Department cannot confirm this information as no official registration mechanism for "vape shops" currently exists.

Compliance Requirements:

Small businesses must comply with the proposed regulation by not engaging in any possession, manufacturing, distribution, sale, or offer of sale of flavored e-liquids. Local governments must comply by enforcing the proposed regulations as they are part of the State Sanitary Code.

Professional Services:

Small businesses will need no additional professional services to comply.

Compliance Costs:

Costs to Private Regulated Parties:

The regulation will impose costs, in terms of lost sales, for private regulated parties whose primary product line focuses on the sale of e-cigarettes, flavored e-liquids, and related products.

Costs to State Government and Local Government:

State and local governments will incur costs for enforcement. Exact costs cannot be predicted at this time because the extent of the need for enforcement cannot be fully determined. Some of the cost however may be offset by fines and penalties imposed pursuant to the Public Health Law as well as through utilizing State Aid funding.

Economic and Technological Feasibility:

The rule does not impose any economic or technological compliance burdens.

Minimizing Adverse Impact:

The New York State Department of Health will assist local governments by providing consultation, coordination and information and updates on its website.

Small Business and Local Government Participation:

Small business and local governments were not consulted during the creation of this proposed rule; however, small businesses and local governments will be able to submit public comments during the public comment period.

Cure Period:

Violations of this regulation can result in civil and criminal penalties. In light of the magnitude of the public health threat posed by flavored e-liquids, the risk that some small businesses will not comply with the regulations and continue to possess, manufacture, distribute,

sell or offer for sale any flavored e-liquid or product containing the same justifies the absence of a cure period.

Rural Area Flexibility Analysis

Pursuant to Section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas. The proposed rule will not impose an adverse economic impact on rural areas, nor will it impose any additional reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

Nature of the Impact:

E-cigarettes and e-liquids are sold in many types of retail outlets. The impact on businesses where e-cigarette sales is not the focus of the business (e.g., convenience store) will have no job impact from this regulation as e-cigarettes make up only a small percentage of their sales. Some e-cigarette retailers focus the bulk of their business on e-cigarettes and e-liquids and these outlets will be affected by this regulation. Although they will still be able to sell e-cigarette devices and unflavored, menthol or tobacco flavored e-liquid, the prohibition on flavored e-liquids is likely to affect these businesses. The Department does not have an accurate estimate of the number of stores affected since the registration requirement for e-cigarette retailers will not be effective until December 1, 2019.

Categories and Numbers Affected:

The main category affected by this regulation is the store that focuses its primary business on the sale of e-cigarette devices and e-liquids. The NYS Vapor Association (http://nysva.org/) claims there are at least 700 of such "vape shops" employing 2700 persons across the state, although the Department cannot confirm this information as no official registration mechanism for "vape shops" currently exists. Because of the lack of data about the number of these stores, it is not possible to accurately estimate the number of jobs affected.

Regions of Adverse Impact:

The Department anticipates any jobs or employment impacts will occur equally throughout the regions of the state.

Minimizing Adverse Impact:

The Department will consider different types/levels of enforcement while retailers adapt to the new regulation.

Emergency Justification

Emergency regulations are necessary to address the alarming increase of e-cigarette use among New York's youth. New York State-specific surveillance data shows that youth e-cigarette use has risen at a dramatic rate over just the last four years, driven primarily by the abundance of e-liquid flavors. Swift interventions are needed to protect our youth from a lifetime addiction to nicotine. Therefore, restricting the availability of flavored e-liquids will deter youth from initiating e-cigarette use and reduce ongoing e-cigarette use.

According to the U.S. Food and Drug Administration (FDA), the use of e-cigarettes by youth has reached epidemic proportions nationally. Since the New York State Department of Health (Department) began tracking e-cigarette use in New York State (NYS) in 2014, use by youth in high school has increased 160 percent, from 10.5 percent in 2014, to 20.6 percent in 2016, to an astounding 27.4 percent in 2018. A review of youth risk behavior data since 1997 revealed that there has never before been such a dramatic increase, in such a short amount of time, of any substance use among youth. The rate for 2018 is equivalent to youth use of combustible cigarettes in 2000 prior to the dramatic decline in the use of combustible cigarettes among NYS youth. Currently, just 4.8 percent of NYS youth smoke a combustible cigarette, one of the lowest rates in the nation. However, the rate of smoking by youth is increasing, as the rate in 2016 was 4.3 percent. Schools across New York State are finding it especially challenging to address the alarming increase in e-cigarette use by adolescents. Enforcement of minimum age statute and prohibitions on school grounds are especially difficult given that most products are sleek and easy to conceal by youth users.

The recently published National Academy of Science, Engineering, and Medicine (NASEM) report on the *Public Health Consequences of E-Cigarettes* concluded that there is:

3) "…**substantial evidence** that e-cigarette use increases risk of ever using combustible tobacco cigarettes among youth and young adults," and
4) "…**moderate evidence** that e-cigarette use increases the frequency and intensity of subsequent combustible tobacco cigarette smoking" among youth and young adults.

Given the recent rise in combustible cigarette use by youth and the fact that e-cigarettes are now the most commonly used tobacco product by youth in NYS, evidence exists that use of e-cigarettes could reverse the long-standing decline in combustible cigarette use and reverse the public health benefits that NYS has achieved. A biennial survey of high school youth has shown that since 2014, openness to vaping has increased from 24% to 31%. After years of decline in openness to smoking, students in NY showed an uptick in openness to combustible smoking (decreased from 22% in 2010 to 17% in 2016, increased to 19% in 2018). Openness to smoking is a predictor of smoking experimentation among youth.

The flavorant chemicals used in e-cigarettes have been approved by the FDA for ingestion only; however, these chemicals have not been approved for inhalation. Because inhalation and ingestion are very different processes, nothing about the approval for ingestion should be interpreted to suggest that these products are safe for inhalation. Food products, chemicals and flavorings that are ingested are detoxified through the liver before entering the circulatory system. Aerosols that are inhaled have a direct impact on lung tissue and directly enter the circulatory system, and are not detoxified through the liver.

Some of the over 15,000 flavors now available include fruit flavors (apple, cherry, peach, melon, strawberry), dessert flavors (vanilla custard, peanut butter cup, cream cookie, milk 'n

honey), candy flavors (cinnablaze, bubblerazz, mango burst, caramel), and menthol flavor, including mint and wintergreen. More recently, manufacturers have developed "concept flavors" that may be difficult to perceive as a single distinctive flavor and the product names reflect that (e.g., Jazz, First Flight, and Unicorn Milk) and simple color names (such as Blue and Yellow) that substitute for the names of flavors (Vanilla and Banana respectively). The list of flavors continues to grow. The commonality of all these flavors is that they are distinct from plain tobacco flavor or unflavored tobacco.

The dramatic increase in use of e-cigarettes by youth is driven in large part by flavored e-liquids, and flavors are a principal reason that youth initiate and maintain e-cigarette use. In a 2019 survey of adolescent e-cigarette users in NYS, 51.8 percent preferred fruit flavors, followed by mint/menthol (34.1%) and chocolate, candy or other sweets (8.8%). In that same survey, 19.8 percent of adolescent e-cigarette users say that flavors are the reason they currently use e-cigarettes, and for 11.5 percent of adolescent e-cigarette users, flavors were the primary reason for first use. Some flavors also confer misperceptions about the relative safety of e-cigarettes. The survey also found that adolescents are more likely to believe that sweet flavors like fruit, chocolate and candy and menthol/mint flavors are less harmful than traditional flavors like tobacco.

There is also concern regarding human exposure to nicotine. Users are often unaware of how much nicotine they are consuming. The newest and most popular e-cigarettes deliver high levels of nicotine, the addictive component in all tobacco products.

Nicotine is not a benign chemical. Nicotine has deleterious effects on the developing human brain – a process that continues through the mid-twenties. According to the US Surgeon General, these deleterious effects from nicotine can lead to lower impulse control and mood

disorders; disrupt attention and learning among youth and young adults; and prime the developing brain for addiction to alcohol and other drugs.

Adult use of e-cigarettes differs by age category. Adults over age 24 use e-cigarettes at very low rates; just 4.2 percent in 2018. The rate of e-cigarette use among young adults 18 to 24 years of age is about 14 percent. A lower proportion of young adults (9%) use combustible cigarettes. Almost 40 percent of the young adult smokers are concurrently using e-cigarettes, known as dual use. The same health concerns described above apply to the use of e-cigarettes by adults aged 18 to 24.

The Department will continue to monitor the impact of new legislation that took effect on November 13, 2019 that raises the legal age for purchase of e-cigarettes and related products to 21 years to determine the impact that has on youth use rates. In addition, the Department routinely conducts surveys that ask youth, among other things, their preference and current use of flavored products and will monitor the trends with respect to use of menthol, mint and other broad flavoring categories.

In addition, although it is too soon to understand the long-term health effects of a lifetime of e-cigarette use, research is beginning to accumulate about certain health effects related to cardiovascular conditions and respiratory conditions. Some e-cigarette flavors contain diacetyl, the buttery-flavored chemical that is used in foods like popcorn and caramel. When inhaled, diacetyl can cause bronchiolitis obliterans, a scarring of the tiny air sacs in the lungs, which is a serious concern that has symptoms that are similar to chronic obstructive pulmonary disease.

The Department will continue to closely monitor the research literature for health impact related to e-cigarettes. Adult smokers who want to continue to use e-cigarettes will have the option of unflavored, menthol or tobacco flavored e-cigarettes.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 2803 of the Public Health Law, section 405.4 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) is hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register:

Paragraph (2) of subdivision (g) of Section 405.4 is amended to read as follows:

(2) physicians who possess limited permits to practice medicine issued by the New York State Education Department pursuant to section 6525 of the State Education Law if such physicians are under the supervision of a physician licensed and currently registered to practice medicine in the State of New York. [and if the physicians possessing limited permits are:

(i) graduates of medical school offering a medical program accredited by the Liaison Committee on Medical Education or the American Osteopathic Association, or registered with the State Education Department or accredited by an accrediting organization acceptable to the State Education Department, and have satisfactorily completed one year of graduate medical education in a postgraduate training program accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, their predecessors or successors or an equivalent accrediting agency acceptable to the State Education Department;

(ii) graduates of a foreign medical school and have satisfactorily completed three years of graduate medical education in a postgraduate training program accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, their predecessors or successors or an equivalent accrediting agency acceptable to the State Education Department; or

(iii) graduates of a foreign medical school who have satisfactorily completed three years in a postgraduate training program and who are receiving advanced training as part of an official exchange visitor program approved by the United States Information Agency and the Educational Commission for Foreign Medical Graduates (ECFMG);]

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.

Needs and Benefits:

10 NYCRR §405.4(g)(2) allows an unlicensed physician to provide medical services in a "general hospital" (hereinafter, "hospital") under a limited permit to practice medicine under Education Law §6525 when the State Education Department (SED) determines that the applicant meets SED criteria for issuance of a limited permit and appropriate levels of supervision and oversight are in place. Public Health Law §2801(10) defines "general hospital" as a facility that provides medical and surgical services primarily to in-patients under 24 hour supervision of a physician. The term "general hospital" does not include a "residential health care facility, public health center, diagnostic center, treatment center, out-patient lodge, dispensary and laboratory or central service facility serving more than one institution."

Section 405.4(g)(2) requires additional years of training, beyond what is required for a limited permit under Education Law §6525. This proposed regulation would eliminate the extra years of training required for limited permittees to work in hospitals.

New York State is experiencing a shortage of licensed physicians in all areas of the state. Limited permit holders are fully trained physicians, often graduates of international medical schools, that are working in various health care settings until full licensure requirements can be met. It is typically the U.S. citizenship requirement that prevents many limited permit holders from initially obtaining full licensure.

Currently, §405.4(g)(2) imposes additional years of training for limited permit holders, specifically one year for domestic medical graduates and three years for international (foreign) medical graduates, as a condition of working in a New York State hospital. This requirement was originally intended to ensure that international students' educations were equivalent to those of physicians educated in the United States. SED has confirmed the understanding of the New York State Department of Health that any educational disparities are minimal today due to medical school accreditation standards. Nevertheless, under the current regulations, hospitals must require the limited permit holders to have the additional years of training. As a result, hospitals hiring doctors to meet patient needs often must turn away otherwise qualified applicants to maintain compliance with the regulation. These candidates, if unable to work in New York State hospitals, may seek employment in other states or in other types of health care settings where the extra years of experience are not required.

SED already considers training and experience before approving and issuing limited permits; however, SED does not screen candidates for their eligibility to work in hospitals. In addition, limited permit holders working in other settings in New York State, such as nursing

homes and psychiatric hospitals, are not required to have these additional years of training. As such, there is inconsistency in the standards required of limited permit holders with equivalent background and training, making limited permit holders less likely to be to be utilized in hospitals. Given the shortage of licensed physicians to cover vital hospital services, this proposed amendment will eliminate a barrier to limited permit holders practicing in hospitals.

Finally, since all limited permit holders are subject to supervision and oversight by a licensed physician, their practice within the hospital will be monitored and safe.

COSTS:

Costs to Private Regulated Parties:

This proposal will not result in increased costs to regulated parties.

Costs to Local Government:

This regulation amendment will not impact local governments unless they operate a general hospital. In any event, this proposal will not increase costs for local governments.

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 regulatory changes will not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

The proposed regulatory changes will not create any additional paperwork.

Duplication:

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

Alternatives:

The alternative would be to take no action and have hospitals continue to screen limited permit holders for additional years of training as a condition of employment.

Federal Standards:

The proposed regulatory changes 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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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 the proposed 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

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

Summary of Express Terms

The proposal would amend various provisions of Part 765 of Title 10 NYCRR to implement recently enacted legislation.

Section 765-1.2. Applications for licensure. This section will be amended to require applications for licensure as a Licensed Home Care Service Agency (LHCSA) to include information on the public need for additional LHCSAs and the financial resources of the proposed agency as required by law, in addition to the existing requirement of a character and competence review. Amendments would specify that applications for licensure based on change of ownership for LHCSAs actively serving at least 25 patients shall only be evaluated based on financial feasibility and the character and competence of the proposed operator.

Section 765-1.3. Requirements for approval. This section will be amended to require applicants for licensure as a LHCSA to satisfactorily demonstrate to the Public Health and Health Planning Council (PHHPC) the public need for the agency and the financial resources of the agency in order to be approved for licensure, in addition to the existing requirement of a character and competence review.

Section 765-1.4. Amendments to applications. This section will be amended to add to the list of actions that constitute an amendment to a pending application for licensure for a home care services agency, requiring review and approval by PHHPC. The proposal will require that any significant change to the proposed patient capacity, any change in the agency's proposed service area, and any significant change to the agency's proposed annual operating budget will constitute an amendment and require approval by PHHPC, in addition to the existing language stating that changes to services and changes in the principles of the applicant as considered by PHHPC are

amendments. A new section will be added specifying that failure to disclose this information prior to the issuance of a license shall be grounds for revocation, limitation, or annulment of the approval for licensure. This is consistent with the approval processes for other types of home care agencies including certified home health agencies and hospices.

This proposal would also add a new section 765-1.16, Determinations of public need, to detail the public need methodology to be used to implement recent statutory changes. Subdivisions of this new section will include planning area designations, determination of public need, public need exemption criteria and additional requirements for applications seeking PHHPC approval, and priority considerations for the Department.

The regulations will affect all agencies applying for licensure as a home care services agency or for changes of ownership on or after April 1, 2020.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 3612 of the Public Health Law, Subpart 765-1 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective on April 1, 2020.

Section 765-1.2 is amended to read as follows:

765-1.2 Applications for licensure. (a) An application to the Public Health and Health Planning Council for its approval, as required by law, shall be in writing on application forms provided by the department and subscribed by the chief executive officer duly authorized by the board of a corporate applicant, a general partner or proprietor of the proposed licensed home care service agency, or, where an application is to be submitted by a governmental subdivision as the applicant, the president or chairman of the board of the proposed agency or the chief executive officer if there is no board; and accompanied by a certified copy of a resolution of the board of a corporate applicant authorizing the undertaking which is the subject of the application, and the subscribing and submission thereof by an appropriate designated individual. In the event that an application is to be submitted by an entity which necessarily remains to be legally incorporated, it shall be subscribed and submitted by one of the proposed principal stockholders or directors. If a local government applicant submitting an application has not designated a president, chairman or chief executive officer for the proposed agency, the application shall be subscribed by the chairman or president of the local legislature or board of supervisors having jurisdiction, or another appropriate executive officer. If available, the application must be electronically submitted to the Department of Health in a form designated by the commissioner. In the absence of an electronic system, an original application and five copies thereof shall be prepared and filed

with the Public Health and Health Planning Council through the project management unit in the department's central office in Albany [, which shall transmit one copy to the health systems agency having jurisdiction].

(b) Applications to the council shall contain information and data as applicable with reference to:

(1) the public need for the existence of the licensed home care service agency or proposed agency at the time and place and under the circumstances proposed as outlined in Section 765-1.16 of this Title;

(2) the character, experience, competence and standing in the community of the proposed persons, incorporators, directors, controlling persons, officers, principal stockholders, sponsors, governmental subdivisions, individual operators or partners of the applicant or of any parent or health-related subsidiary corporation as applicable. The application shall include copies of personal qualifying and disclosure information, as appropriate, as may be required by the council with regard to any such individual or organization[.];

[(1)] (i) Disclosure information shall include, but not be limited to, a list of health care, adult care or mental health facilities, programs or agencies controlled or operated in the United States by an individual or organization specified in this subdivision; the name and address of each such facility, program or agency; and the dates of control or operation of each such facility, program or agency.

[(2)] (ii) In the event that any such health care, adult care or mental health facility, program or agency, while under the control or operation of an individual or organization specified in this subdivision, has been subjected to financial penalties, or suspension or revocation of its operating certificate, license or certification because of a failure to comply with provisions governing the conduct and operation of the facility, program or agency, then information must be

provided which describes the nature of the violation, the agency or body enforcing the violation (including its name and mailing address), the steps taken by the facility, program or agency to remedy the violation or violations, and an indication of whether the suspension, revocation or accreditation has since been restored.

(3) the financial resources of the proposed licensed home care service agency and its projections of revenues and expenses. The standards of this review will require, at a minimum:

(i) an examination of the sources of available working capital that the proposed licensed home care services agency operators have, with a minimum requirement equal to at least two months of estimated operating expenses of the agency;

(ii) that the application passes a reasonableness test with respect to the financial capability of the agency or sources for start-up funding; and

(iii) an examination of the financial feasibility of the agency or projections indicating that the agency's revenues, including but not limited to operating revenue, will be equal to or greater than projected expenditures over time.

(4) any other information that the commissioner shall deem pertinent for inclusion in the application.

(c) The following documents shall be filed as attachments to the application: (1) where the applicant will be operating the licensed home care service agency under an assumed name, a photocopy of the applicant's existing or executed proposed certificate of doing business;

(2) where the applicant is a partnership, full and true copies of all partnership agreements, which shall include the following language:

"By signing this agreement, each member of the partnership created by the terms of this agreement acknowledges that the partnership and each member thereof has a duty to report to the

New York State Department of Health any proposed changes in the membership of the partnership. The partners also acknowledge that the prior written approval of the Public Health and Health Planning Council is necessary for such change before such change is made, except that a change resulting from an emergency caused by the severe illness, incompetency or death of a member of the partnership shall require immediate notification to the New York State Department of Health of such fact, and application shall be made for the approval by the Public Health and Health Planning Council of such change within 30 days of the commencement of such emergency. The partners also acknowledge that they shall be individually and severally liable for failure to make the aforementioned reports and/or applications."

(3) where the applicant or licensed operator has or proposes to have a controlling person or a parent corporation, or is affiliated with a health-related subsidiary corporation, full and true copies of any such corporation's bylaws, certificate of incorporation and any existing or proposed amendments thereto, all agreements between the applicant and any such controlling person or parent corporation relating to the manner and mechanisms by which any such controlling person or parent corporation controls or will control the applicant and/or all agreements by which the applicant is affiliated with any health-related subsidiary corporation, and a detailed description of such control or affiliation relationship;

(4) where an applicant corporation is formed pursuant to the requirements of section 3611 of the Public Health Law, documentation demonstrating the designation of an agent for service of process pursuant to section 305 of the Business Corporation Law or section 305 of the Not-for-Profit Corporation Law, as applicable; and

(5) such additional pertinent information or documents necessary for the council's consideration, as requested.

Section 765-1.3 is amended to read as follows:

765-1.3 Requirements for approval. (a) The application must be complete and in proper form. It shall provide all the information essential for the Public Health and Health Planning Council's consideration.

(b) The applicant must satisfactorily demonstrate to the council:

(1) that there is a public need for the licensed home health care service agency pursuant to the methodology outlined in Section 765-1.16 of this Title;

(2) that there are adequate finances and sources of future revenue to properly establish and operate the licensed home care service agency pursuant to the minimum requirements outlined in Section 765-1.2 of this Title;

[(1)] (3)(i) if a not-for-profit corporation, that the controlling persons and sponsors, if any, the members of the board of directors and the officers of the corporation are of such character, experience, competence and standing in the community as to give reasonable assurance of their ability to conduct the affairs of the corporation in the best interests of the agency and in the public interest, and to provide proper care for those to be served by the licensed home care service agency;

[(2)] (ii) if a proprietary business, that the owner, or all the partners of a partnership, are persons of such character, experience, competence and standing in the community as to give reasonable assurance of their ability to conduct the affairs of the business in the best interests of the agency and in the public interest, and to provide proper care for those to be served by the licensed home care service agency;

[(3)] (iii) if a business corporation, that the controlling persons and sponsors, if any, the members of the board of directors, the officers and the principal stockholders of the corporation or, in the

case of an application solely for a change in the principal stockholder(s), that the proposed new principal stockholder(s) of the corporation, are of such character, experience, competence and standing in the community as to give reasonable assurance of their ability to conduct the affairs of the corporation in the best interests of the agency and in the public interest, and to provide proper care for those to be served by the licensed home care service agency;

[(4)] (iv) with respect to any parent corporation or health-related subsidiary corporation, that the directors, sponsors, controlling persons and principal stockholders of any such corporation, insofar as applicable, are of such character, competence and standing in the community as to give reasonable assurance that, to the extent they have or will have the ability, through control or influence, to direct or cause the direction of the actions, management or policies of the applicant, such control or influence will be exercised in the best interests of the applicant and in the public interest, in order to ensure the provision of proper care for those to be served by the licensed home care service agency;

[(5)] (v) with respect to any application solely for the acquisition of control of an operator of a licensed home care service agency by a controlling person or a change of a controlling person, that such new controlling person, insofar as applicable, is of such character, competence and standing in the community as to give reasonable assurance that, to the extent it has or will have the ability to direct or cause the direction of the actions, management or policies of the applicant, such control or influence will be exercised in the best interests of the applicant and in the public interest, in order to ensure the provision of proper care for those to be served by the licensed home care service agency; or

[(6)] (vi) if a public or government agency, that the governing authority of the governmental subdivision applying to operate the agency has provided reasonable assurance of its ability to

conduct the affairs of the agency in the best interests of the agency and in the public interest, and to provide proper care for those to be served by the licensed home care service agency.

[(c)] <u>(4) that the proposed operator has demonstrated satisfactory character and competence</u>. In conducting a character and competence review, the Public Health <u>and Health Planning</u> Council shall, as applicable, evaluate any parent or health-related subsidiary corporation, the controlling persons, sponsors, members of the board of directors, the officers and principal stockholders, if any, of a corporate applicant, any sole proprietor, all partners in a partnership or, in the case of a governmental subdivision as the applicant, the governmental subdivision and the governing body thereof as a whole rather than the individual elected or appointed members thereof, by:

[(1)] <u>(i)</u> reviewing the findings of inspection reports, patient care reviews, complaint investigations and any other pertinent information relating to the operation of any health care, adult care or mental health facility, program or agency located in New York approved to operate by the Department of Health, [Department of Social Services] or the Department of Mental Hygiene or, if located outside New York, would require the approval to operate by any one of such agencies if located in New York, with which an individual, corporation, other organization or governmental subdivision has been affiliated as a director, sponsor, controlling person, principal stockholder, sole proprietor, partner or governmental operator;

[(2)] <u>(ii)</u> reviewing whether such individual, corporation, other organization or governmental subdivision exercised supervisory responsibility of the facility/agency operation to assure a consistent pattern of compliance with applicable standards and to prevent conditions which could result in harm to the health, safety or welfare of patients/residents; <u>and</u>

[(3)] <u>(iii)</u> determining that, if a violation of applicable standards did occur, the applicant investigated the circumstances surrounding the violation and took steps appropriate to the gravity

of the violation which a reasonably prudent operator would take to promptly correct and to prevent the reoccurrence of the violation. [; and]

[(4) considering such other pertinent matters relating to the character, competence and standing in the community of the applicant(s).]

(5) any other pertinent matters that the commissioner shall deem appropriate for inclusion in the application.

(c) The applicant must supply:

(1) any additional information requested by the department within 30 days of such request, or must obtain from the department an extension of the time in which to provide such information. Any request for such extension of time shall set forth the reasons why such information could not be obtained within the prescribed time. The granting of such extension of time shall be at the discretion of the commissioner, provided such extensions are not for more than 30 days and the commissioner is satisfied as to the reasons why such information could not be obtained within the prescribed time. The commissioner is authorized to deny a request for an extension of time. Failure to provide such information within the time prescribed shall constitute an abandonment and withdrawal of the application by the applicant.

(2) any authorization the department requests in order to verify any information contained in the application or to obtain additional information which the department finds is pertinent to the application. Failure to provide such authorization shall constitute an abandonment and withdrawal of the application.

Section 765-1.4 is amended to read as follows:

765-1.4 Amendments to applications. (a) An application made to the Public Health and Health Planning Council pursuant to this Subpart may be amended while the matter is pending before the council. Such amendments shall be made on appropriate forms supplied by the department.

(b) Any amendment to an application which constitutes a substantial change in the information contained in the original application, or any prior amendments thereto, must be accompanied by a satisfactory written explanation as to the reason such information was not contained in the original application.

(c) Prior to the issuance of a license, any change as set forth in this subdivision shall constitute an amendment to the application and the applicant shall submit appropriate documentation as may be required in support of such amendment. The amended application shall be referred to the [health systems agency having geographic jurisdiction and the State Hospital Review and] Public Health and Health Planning Council for [their] its comments. The approval of the Public Health and Health Planning Council must be obtained for any amended application. Each of the following shall constitute an amendment:

(1) any change in the types of licensed services to be provided; [and/or]

(2) any significant change in the principals of the applicant as considered by the council[.];

(3) any significant change in the proposed patient capacity;

(4) any change in the agency's proposed service area; and/or

(5) any significant change to the agency's proposed annual operating budget.

(d) Failure to disclose an amendment prior to the issuance of a license shall constitute sufficient grounds for the revocation, limitation or annulment of the approval.

A new Section 765-1.16 is added to Subpart 765-1 of Part 765 of 10 NYCRR to read as follows:

765-1.16. Determinations of public need. (a) The process of determining need in this section will be used in the evaluation of certificate of need applications requiring a review of the public need by the Public Health and Health Planning Council.

(b) Planning areas. The commissioner shall designate each county as a separate planning area.

(c) Determination of need.

(1) There shall be a rebuttable presumption of no need for additional licensed home care service agencies in a planning area if there are 5 or more Licensed Home Care Service Agencies (LHCSA) actively serving patients within the planning area as of April 1, 2020. Beginning in 2021, the commissioner shall have the authority to adjust the target date for determining need for additional LHCSAs in a planning area, in subsequent years.

(2) Applications for licensure based on change of ownership for Licensed Home Care Service Agencies actively serving at least 25 patients will not be subject to public need review and shall be evaluated only on financial feasibility and the character and competence of the proposed operator unless the proposed operator seeks to serve patients outside of the approved planning area.

(3) The determination of need for licensed home care service agencies in accordance with this subdivision does not include licensed home care services agencies affiliated with an Assisted Living Program (ALP), Program of All-Inclusive Care for the Elderly (PACE), Nurse Family Partnership (NFP), or Continuing Care Retirement Community (CCRC) . ALP, PACE, NFP, or CCRC -affiliated agencies are not subject to the public need review unless the agency seeks to serve patients outside the ALP, NFP, or CCRC programs or who are not PACE members. For the purpose of this paragraph, affiliated shall mean common ownership. Any limitation on the

population an agency is allowed to serve resulting from an exemption made under this paragraph shall be noted on the LHCSA's license.

(4) The department shall review the adequacy of the need methodology set forth under paragraph (1) of this subdivision and issue a report to the commissioner, the Public Health and Planning Council, and other interested parties at the discretion of the Department of Health no later than three years from adoption.

(d) Notwithstanding any other provision of this section, factors to be considered when determining need for licensed home care service agencies shall include, but are not limited to:

(1) the demographics and/or health status of the residents in the planning area or the state, as applicable;

(2) documented evidence of the unduplicated number of patients on waiting lists who are appropriate for and desire admission to a licensed home care service agency but who experience a long waiting time for placement;

(3) the number and capacity of currently operating licensed home care services agencies;

(4) the quality of services provided by existing agencies;

(5) the availability and accessibility of the workforce;

(6) personnel and resources dedicated to adding and training additional members of the workforce including committed resources in an organized training program;

(7) cultural competency of existing agencies; and

(8) subpopulations requiring specialty services.

When making recommendations to the Public Health and Health Planning Council concerning the impact of the factors set forth above, the department shall, to the extent practicable, indicate the relative priority of such factors.

(e) In addition to meeting the other applicable provisions of this section, an applicant for initial certification shall be approved as meeting public need only if the applicant agrees to serve population groups in the planning area that have difficulty gaining access to appropriate licensed home care service agency care due to minority status, age, medical history, case complexity, payment source, or geographic location.

(f) Any application wherein a determination of public need is made pursuant to this section shall be subject to the following: (1) The Public Health and Health Planning Council and/or the commissioner, as appropriate, may, during the processing of an application, propose to disapprove the application solely on the basis of a determination of public need in advance of the consideration of the other review criteria required by article 36 of the Public Health Law without, however, waiving the right to consider such other criteria at a later date.

(2) In the event the Public Health and Health Planning Council and/or the commissioner proposes to disapprove an application on the basis of a lack of public need and the applicant requests a hearing according to the provisions provided in Section 765-1.9 of this Title, the Public Health and Health Planning Council and/or the commissioner, as appropriate, may direct the completion of the other reviews required by Article 36 of the Public Health Law. The application shall then be returned to the Public Health and Health Planning Council and/or the commissioner as appropriate, to consider such reviews, the results of which may then be included as grounds for the proposed disapproval to be considered at the hearing. If the Public Health and Health Planning Council and/or the commissioner, as appropriate, directs the completion of such reviews, a copy of the report containing the results of the reviews shall be mailed to the applicant at least 60 days prior to the date set for hearing.

(3) In the processing of an establishment application, the commissioner may recommend disapproval based on a review limited to a determination of public need. In the event the Public Health and Health Planning Council does not concur with the commissioner's recommendation of disapproval, it shall return the application to the department at which time all other required reviews shall be completed. When all other reviews are completed, the application shall be returned to the Public Health and Health Planning Council for action.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (PHL) § 3612 authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations to effectuate the provisions and purposes of PHL Article 36 with respect to licensed home care service agencies (LHCSAs). Additionally, Section 9-b, Part B of Chapter 57 of the Laws of 2018 (codified at Public Health Law § 3605[4]) requires PHHPC to consider the public need for new LHCSAs as well as the financial resources and revenues of the proposed LHCSA when PHHPC reviews initial licensure and change of ownership applications.

Legislative Objectives:

PHL Article 36 was intended to promote the quality of home care services provided to residents of New York State and to assure adequate availability as a viable alternative to institutional care.

Needs and Benefits:

The proposed regulation is necessary to implement statutory changes required under Section 9-b, Part B of Chapter 57 of the Laws of 2018. The proposal will revise Part 765 of Title 10 NYCRR to include the relevant statutory requirements related to the new public need determination for licensed home care services agencies, the review of the proposed agency's financial feasibility, and the process for reviewing applications for licensure.

Part 765 of Title 10 of the NYCRR regulates the approval and licensure of home care services agencies. Sections 765-1.2 and 765-1.3 outline what is required to be included in applications for licensure as a home care services agency and the information that an applicant for licensure must supply to PHHPC for approval. Section 765-1.4 includes what types of changes to a pending application for licensure constitute an amendment and what an applicant must submit to PHHPC for the amendment to be considered.

These current regulations were developed to govern the approval of licensure applications for home care services agencies when PHHPC was only required to conduct a character and competence review of applicants and was prohibited from considering the public need for these agencies under Public Health Law. To comply with changes made to the Public Health Law under Section 9-b, Part B of Chapter 57 of the Laws of 2018, the regulations must be updated to include the new requirement of public need review and financial feasibility review.

With the existing regulatory prohibition on public need consideration for new agencies, the Department of Health (Department) and PHHPC have been unable to limit the growth of unnecessary agencies. Currently, there are approximately 1,100 approved licensed home care operators with over 1,300 licensed, registered sites statewide. An average of 40 new LHCSA sites have been approved on an annual basis over the past ten years. There is no consideration of the need for additional services based on the public demand. Applications for licensure are submitted to the Department and are subject to approval by PHHPC. As part of the application process, applications are reviewed to ensure the character, competence, and standing in the community of the applicant’s incorporators, directors, sponsors, stockholders, or operators.

Applications must be submitted for initial licensure, purchase or mergers, change of stock ownership, or other acquisition or control change.

Given the new statutory mandate, new regulations are required to define the public need methodology and the process that will be used to apply the methodology to new licensure applications. The public need methodology will also assist the Department in planning for the appropriate number of licensed agencies and may also inform policy and practice around the types of services needed, underserved populations that require additional focus, and other factors that contribute to the long term care landscape, such as workforce issues or transportation infrastructure.

Costs:

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

The rule does not impose any new implementation or compliance costs on regulated parties.

Costs to the State and Local Governments:

The proposed changes are not expected to impose any costs upon New York State or local governments.

Costs to the Department of Health:

Additional work by Department staff to determine public need and to process applications with the new requirements will be managed with existing resources.

Local Government Mandates:

The proposed regulations do not impose any new mandates on local governments.

Paperwork:

Consistent with the statutory provisions, the proposed regulations will require a new application form to be completed by home care services agencies seeking initial licensure or change of ownership on or after April 1, 2020. New documentation will be required as part of the application process that was not included in the application for licensure prior to April 1, 2020.

Duplication:

There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

Alternatives:

There are no viable alternatives to this proposal. The regulatory changes are necessary to implement a statutory mandate, which directs PHHPC to include public need and financial feasibility in the review process for initial applications for licensure of home care services agencies.

One alternative considered including the development of a county normative use rate using the number of cases and visits/hours for LHCSA services for each agency in a planning area as reported on the LHCSA Statistical Report. This alternative may account for variation in the amount of services used per patient, however, and it is a more complex methodology that may

lead to greater error in ongoing need methodology calculations. As such, this option was rejected as unviable.

A second alternative considered establishing estimates of need based on demographics. Under this proposal, the Department would undertake a review of the total number of residents in each planning area with a reported disability resulting in a limitation in completing activities of daily living. The information could be broken down by age group and projected to accommodate the expected growth in the older adult population. This method to determine use rates may better reflect the number of residents in need of care, rather than using the patient count. However, reporting on disease and disability status and limitations in functional abilities has proven difficult, as various definitions of disability exist with multiple reporting methods. Therefore, this alternative was also rejected.

Federal Standards:

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

Compliance Schedule:

The amendments will take effect on April 1, 2020.

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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 the Commissioner of Health by sections 2803, 3612, 4010, and 4662 of the Public Health Law, Sections 404.12, 405.3, 415.26, 751.6, 763.13, 766.11, 794.3, and 1001.11 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, are hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Subparagraph (iv) of paragraph (2) of subdivision (b) of section 404.12 is amended to read as follows:

Section 404.12 Staffing

(iv) for all personnel prior to employment or affiliation, except for personnel with no clinical or patient contact responsibilities who are located in a building or site with no patient care services, an initial individual tuberculosis (TB) risk assessment, symptom evaluation, and TB test (either tuberculin skin test or Food and Drug Administration (FDA) approved blood assay for the detection of latent tuberculosis infection), [prior to employment or affiliation and no less than every year thereafter for negative findings] and annual assessments thereafter. Positive findings shall require appropriate clinical follow-up [but no repeat tuberculin skin test or blood assay]. The medical staff shall develop and implement policies regarding positive [outcomes] findings, including procedures for facilitating and documenting treatment for latent TB infection where indicated. Annual TB assessment shall include education, individual risk assessment, and follow-up tests as indicated;

Subparagraph (iv) of paragraph (10) of subdivision (b) of section 405.3 is amended to read as follows:

(iv) for all personnel prior to employment or affiliation, except for personnel with no clinical or patient contact responsibilities who are located in a building or site with no patient care services, an initial individual tuberculosis (TB) risk assessment, symptom evaluation, and TB test (either tuberculin skin test or Food and Drug Administration (FDA) approved blood assay for the detection of latent tuberculosis infection), [prior to employment or affiliation and no less than every year thereafter for negative findings] and annual assessments thereafter. Positive findings shall require appropriate clinical follow-up [but no repeat tuberculin skin test or blood assay]. The medical staff shall develop and implement policies regarding positive [outcomes] findings, including procedures for facilitating and documenting treatment for latent TB infection where indicated. Annual TB assessment shall include education, individual risk assessment, and follow-up tests as indicated.

Subclause (*1*) of clause (*a*) of subparagraph (v) of paragraph (1) of subdivision (c) of section 415.26 is amended to read as follows:

(*1*) for all personnel prior to employment or affiliation, except for personnel with no clinical or patient contact responsibilities who are located in a building or site with no patient care services, an initial individual tuberculosis (TB) risk assessment, symptom evaluation, and TB test (either tuberculin skin test or Food and Drug Administration (FDA) approved blood assay for the detection of latent tuberculosis infection), [prior to employment or affiliation and no less than every year thereafter for negative findings] and annual assessments thereafter. Positive findings shall require appropriate clinical follow-up [but no repeat tuberculin skin test or blood assay].

The medical staff shall develop and implement policies regarding positive [outcomes] findings, including procedures for facilitating and documenting treatment for latent TB infection where indicated. Annual TB assessment shall include education, individual risk assessment, and follow-up tests as indicated; and

Paragraph (4) of subdivision (d) of section 751.6 is amended to read as follows:

(4) for all personnel prior to employment or affiliation, except for personnel with no clinical or patient contact responsibilities who are located in a building or site with no patient care services, an initial individual tuberculosis (TB) risk assessment, symptom evaluation, and TB test (either tuberculin skin test or Food and Drug Administration (FDA) approved blood assay for the detection of latent tuberculosis infection), [prior to employment or affiliation and no less than every year thereafter for negative findings] and annual assessments thereafter. Positive findings shall require appropriate clinical follow-up [but no repeat tuberculin skin test or blood assay]. The medical staff shall develop and implement policies regarding positive [outcomes] findings, including procedures for facilitating and documenting treatment for latent TB infection where indicated. Annual TB assessment shall include education, individual risk assessment, and follow-up tests as indicated; and

Paragraph (4) of subdivision (c) of section 763.13 is amended to read as follows:

(4) for all personnel prior to employment or affiliation, except for personnel with no clinical or patient contact responsibilities who are located in a building or site with no patient care services, an initial individual tuberculosis (TB) risk assessment, symptom evaluation, and TB test (either tuberculin skin test or Food and Drug Administration (FDA) approved blood assay for the

detection of latent tuberculosis infection), [prior to assuming patient care duties and no less than every year thereafter for negative findings] and annual assessments thereafter. Positive findings shall require appropriate clinical follow-up [but no repeat tuberculin skin test or blood assay]. The agency shall develop and implement policies regarding follow-up of positive test results, including procedures for facilitating and documenting treatment for latent TB infection where indicated. Annual TB assessment shall include education, individual risk assessment and follow-up tests as indicated;

Paragraph (4) of subdivision (d) of section 766.11 is amended to read as follows:

(4) for all personnel prior to employment or affiliation, except for personnel with no clinical or patient contact responsibilities who are located in a building or site with no patient care services, an initial individual tuberculosis (TB) risk assessment, symptom evaluation, and TB test (either tuberculin skin test or Food and Drug Administration (FDA) approved blood assay for the detection of latent tuberculosis infection), [prior to assuming patient care duties and no less than every year thereafter for negative findings] and annual assessments thereafter. Positive findings shall require appropriate clinical [follow up but no repeat tuberculin skin test or blood assay] follow-up. The agency shall develop and implement policies regarding follow-up of positive test results, including procedures for facilitating and documenting treatment for latent TB infection where indicated. Annual TB assessment shall include education, individual risk assessment, and follow-up tests as indicated; and

Paragraph (4) of subdivision (d) of section 794.3 is amended to read as follows:

(4) for all personnel prior to employment or affiliation, except for personnel with no clinical or patient contact responsibilities who are located in a building or site with no patient care services, an initial individual tuberculosis (TB) risk assessment, symptom evaluation, and TB test (either tuberculin skin test or Food and Drug Administration (FDA) approved blood assay for the detection of latent tuberculosis infection), [prior to employment or voluntary service, and no less than every year thereafter for negative findings] and annual assessments thereafter. Positive findings shall require appropriate clinical follow-up [but no repeat tuberculin skin test or blood assay]. The hospice shall develop and implement policies regarding follow-up of positive test results, including procedures for facilitating and documenting treatment for latent TB infection where indicated. Annual TB assessment shall include education, individual risk assessment, and follow-up tests as indicated;

Paragraph (4) of subdivision (q) of section 1001.11 is amended to read as follows:

(4) for all personnel prior to employment or affiliation, except for personnel with no clinical or patient contact responsibilities who are located in a building or site with no patient care services, an initial individual tuberculosis (TB) risk assessment, symptom evaluation, and TB test (either tuberculin skin test or [whole] Food and Drug Administration (FDA) approved blood assay for [tuberculosis screening] the detection of latent tuberculosis infection), [prior to assuming patient care duties and no less than every year thereafter for negative findings] and annual assessments thereafter. Positive findings shall require appropriate clinical [follow up but no repeat skin test] follow-up. The residence shall develop and implement policies regarding [follow up] follow-up of positive test results, including procedures for facilitating and documenting treatment for latent

TB infection where indicated. Annual TB assessment shall include education, individual risk assessment, and follow-up tests as indicated.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (PHL) §§ 2803, 3612(5), and 4010 authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Articles 28, 36 and 40, respectively, including the establishment of uniform standards governing the operation of health care facilities, certified home health agencies (CHHAs) and hospices.

PHL §§ 3612(7) and 4662 authorize the Commissioner to adopt and amend regulations to implement the purposes and provisions of PHL Articles 36 and 46-B, respectively, including the establishment of uniform standards governing the operation of licensed home care services agencies (LHSCAs) and assisted living residences (ALRs).

Legislative Objectives:

The legislative objectives of PHL Articles 28, 36, 40, and 46-B includes the protection of the health of the residents of the State by assuring the efficient provision of health services of the highest quality by a range of providers, including hospitals, hospices, CHHAs, LHCSAs and ALRs.

Needs and Benefits:

Current requirements for annual tuberculosis screening in health care settings were established in the 1990s at the time of large outbreaks and sustained transmission of tuberculosis in New York State (NYS). The requirements were subsequently updated to allow use of U.S. Food and Drug Administration-approved blood tests as an alternative option to tuberculin skin

tests, and to exempt certain personnel in non-clinical settings, but the serial testing requirement was not changed. Over the past two decades, with improved infection control, diagnostic testing and treatment of persons with tuberculosis (TB) disease, incidence has decreased. Evaluation of persons at risk for TB to detect and treat latent infection, including contacts with infectious TB, is also ongoing in all settings including health care facilities.

Recent systematic reviews have documented that U.S. health care personnel have a low rate of TB infection on baseline testing and very low rate of tuberculin skin test conversions. Persons retested after apparent conversion in the absence of documented close contact to infectious tuberculosis were often negative on subsequent tests. The Centers for Disease Control and Prevention (CDC), with the National Tuberculosis Controllers Association and in coordination with occupational health and infection control associations, updated recommendations in 2019 which discourage routine serial testing, and instead focused on evaluating individual risk and encouraging treatment for persons with untreated latent tuberculosis infection.

In NYS, providing universal annual tuberculosis education and individual risk assessment, followed up as needed with appropriate testing, clinical evaluation, and encouragement of optimal treatment, is expected to benefit health care personnel, minimize risk of transmission from health care personnel to others, and refocus occupational health and infection control efforts. Thus, the requirement to be tested “no less than every year” for negative findings is no longer necessary and is being eliminated from these regulations.

Furthermore, in June 2019, CDC issued a Health Advisory providing notification of a nationwide shortage of one of the two purified protein derivative solution products for tuberculin skin testing. The CDC advisory also stated that annual TB testing of health care personnel was

not recommended unless there is a known exposure or ongoing transmission. To align regulations with current best medical practices and CDC guidelines, and to prevent unnecessary disruption of health care providers, it is necessary to adopt these proposed regulations.

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

The proposed amendments will reduce requirements for testing of employees, and as such will result in a reduction in costs for regulated entities.

Cost to State and Local Government:

State agencies and local government units that operate health care facilities will see a reduction in costs associated with serial testing of employees.

Cost to the Department of Health:

The Department of Health will see a reduction in costs associated with serial testing of employees at health care facilities operated by the Department.

Local Government Mandates:

This amendment does not impose any new programs, services, duties or responsibilities on local government.

Paperwork:

These amendments will decrease the record keeping currently required of covered entities since annual testing will no longer be required, only assessments.

Duplication:

These amendments will not conflict with any state or federal rules.

Alternative Approaches:

An alternative would be to maintain current requirements for regular serial testing for TB. This is not advisable or practicable given the current shortage of tuberculin skin testing solutions.

Federal Requirements:

These amendments reflect current guidelines issued by the Centers for Disease Control and Prevention.

Compliance Schedule:

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

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REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESS AND LOCAL GOVERNMENTS

Effect of Rule:

These regulations would require small businesses and local governments that operate hospitals, hospices, CHHAs, LHCSAs or ALRs, to revise policies for tuberculosis testing that ensure adequate baseline assessments, and that replace serial testing with annual individual risk assessment and education, with further testing as indicated. Impacted health care providers can consider using serial TB screening of certain groups who might be at increased occupational risk for TB exposure (e.g. pulmonologists or respiratory therapists) or in certain settings if transmission has occurred in the past (e.g. emergency departments). Policies would also require clear procedures for offering and documenting treatment of TB infection. As this proposed rule will reduce the need for TB testing, the overall effect of the rule will be to reduce costs for regulated entities.

Compliance Requirements:

All hospitals, hospices, CHHAs, LHCSAs and ALRs must revise policies for tuberculosis testing to ensure adequate baseline assessments, and replace serial testing with annual individual risk assessment and education, with further testing as indicated and provide documentation to demonstrate compliance as part of ongoing occupational health records.

Professional Services:

There are no additional professional services required as a result of this regulation.

Compliance Costs:

The State will develop overall guidance. Health care providers may have initial implementation costs related to changes in diagnostic test products, assessment procedures, risk assessment forms, and education and databases, but this rule change will result in a permanent reduction of costs once implemented.

Economic and Technological Feasibility:

This proposal is economically and technically feasible, as it does not require any special technology and does not impose an unreasonable financial burden on health care institutions or local health departments.

Minimizing Adverse Impact:

This amendment does not create any adverse effect on regulated parties.

Small Business and Local Government Participation:

Health care provider organizations, individual institutions, local health departments and the public are invited to comment during the Codes and Regulations Committee meeting of the Public Health and Health Planning Council.

Cure Period:

This regulation allows a cure period of 90 days, to allow health care entities and local health departments to modify procedures in order to comply. Full implementation is expected to

occur over a one year period as successive groups of persons are screened according to the revised protocols.

RURAL AREA FLEXIBILITY ANALYSIS

Effect of Rule:

These regulations would require hospitals, hospices, CHHAs, LHCSAs and ALRs in rural areas, to revise policies for tuberculosis testing that ensure adequate baseline assessments, and that replace serial testing with annual individual risk assessment and education, with further testing as indicated. Impacted health care providers in rural areas can consider using serial TB screening of certain groups who might be at increased occupational risk for TB exposure (e.g. pulmonologists or respiratory therapists) or in certain settings if transmission has occurred in the past (e.g. emergency departments). Policies would also require clear procedures for offering and documenting treatment of TB infection. As this proposed rule will reduce the need for TB testing, the overall effect of the rule will be to reduce costs for regulated entities in rural areas.

Compliance Requirements:

All hospitals, hospices, CHHAs, LHCSAs and ALRs must revise policies for tuberculosis testing to ensure adequate baseline assessments, and replace serial testing with annual individual risk assessment and education, with further testing as indicated and provide documentation to demonstrate compliance as part of ongoing occupational health records.

Professional Services:

There are no additional professional services required as a result of this regulation.

Compliance Costs:

The State will develop overall guidance. Health care providers may have initial implementation costs related to changes in diagnostic test products, assessment procedures, risk assessment forms, and education and databases, but this rule change will result in a permanent reduction of costs once implemented.

Economic and Technological Feasibility:

This proposal is economically and technically feasible, as it does not require any special technology and does not impose an unreasonable financial burden.

Minimizing Adverse Impact:

The Department will work with institutions, occupational health groups and local health departments to provide guidance, respond to questions and share best practices.

Public and Local Government Participation:

Health care organizations and facilities, health care personnel, local health departments and the public are invited to comment during the Codes and Regulations Committee meeting of the Public Health and Health Planning Council.

JOB IMPACT STATEMENT

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act (SAPA). It is apparent, from the nature of the proposed amendment, that it will have no impact on jobs and employment opportunities.

Public Health and Health Planning Council

Project # 182006-C
Coney Island Hospital

Program:	Hospital	*County:*	Kings
Purpose:	Construction	*Acknowledged:*	July 26, 2018

Executive Summary

Description
Coney Island Hospital (Coney Island, the Hospital), a 371-bed, public municipal, Article 28 acute care hospital located at 2601 Ocean Parkway, Brooklyn (Kings County), requests approval to certify Cardiac Catheterization – Percutaneous Coronary Intervention (PCI) services and install requisite equipment. The Hospital is a major health care provider for residents of South Brooklyn serving a population of approximately 900,000 people that includes the highest percentage of patients 65 years of age or older in New York City. The Hospital is certified for Cardiac Catheterization – Adult Diagnostic service and has operated a large cardiac program for many years. No renovations are needed to convert the diagnostic lab to a PCI-capable lab. Currently, there are no PCI centers in South Brooklyn and patients with acute myocardial infarction must be transported to centers north of the service area. The addition of PCI services to Coney Island's Cardiac Program will allow patients in the Hospital's service area to be cared for closer to home without the need to transfer to other facilities, thereby improving patient outcomes and quality of care.

Coney Island is operated by The New York City Health and Hospitals Corporation (NYC H+H), a public benefit corporation created by the NY State Legislature in 1969 that operates the largest municipal healthcare system in the United States. The Hospital has been a health care provider for South Brooklyn since 1875 and is one of 11 acute care hospitals operated by NYC H+H, which provides a total of 4,752 beds across New York City. Bellevue Hospital Center, also part of the NYC H+H System, will serve as the full-service cardiac surgery backup facility to Coney Island. The two hospitals have a telemedicine link in place that enables off-site review of digital studies, and both facilities utilize the Epic Health IT system allowing the hospital to view each other's patient medical records in real time. The purpose of this transaction is to create a coordinated and integrated system aimed at improving quality, increasing access to cardiac care and lowering health care costs in the communities serviced by Coney Island.

OPCHSM Recommendation
Contingent Approval

Need Summary
New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in year one of operation. Emergency PCI (E-PCI) includes any procedure not scheduled and not elective. Twenty-four facilities in the New York Region currently provide PCI services. In 2018, 1,694 NY Region residents were treated outside of the HSA for currently defined emergency PCI procedures. The four NY Region applicants on the Public Health and Health Planning Council-PHHPC February Agenda that seek certification of Cardiac Catheterization-Percutaneous Coronary Intervention services all project, at minimum, 36 emergency PCI procedures in Year One.

Program Summary

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

Financial Summary

Total project cost is estimated at $443,172 for equipment to be funded by equity of the NYC H+H.

Budget	Year One	Year Three
Revenues	$8,115,493	$9,241,215
Expenses	$5,978,296	$6,188,423
Gain/(Loss)	$2,136,680	$3,052,792

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, 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. A copy of the check must also be uploaded into NYSECON. [PMU]
2. Submission of a Pre-procedure Risk Stratification tool that ensures high risk patients are treated at the Cardiac Surgery Center. [HSP]
3. Submission of a fully executed Cardiac Surgery backup agreement. [HSP]
4. Submission of the name and curriculum vitae of the Medical Director of the PCI capable Cardiac Catheterization Laboratory, acceptable to the Department. [HSP]
5. Submission of a plan to assemble a team within 30 minutes of the STEMI activation. [HSP]

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

February 6, 2020

Need Analysis

Background

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in year one of operation. Emergency PCI (E-PCI) includes any procedure not scheduled and not elective. Twenty-four facilities in the New York Region currently provide PCI services. In 2018, 1,694 NY Region residents were treated outside of the HSA for currently defined emergency PCI procedures. The four NY Region applicants on the Public Health and Health Planning Council- PHHPC February Agenda that seek certification of Cardiac Catheterization-Adult Diagnostic, Cardiac Catheterization-Electrophysiology and Cardiac Catheterization-Percutaneous Coronary Intervention services all project, at minimum, 36 emergency PCI procedures in Year One.

The shore front community was re-designated a Federal Health Professional Shortage area in 2012. Coney Island's service area also includes the highest percentage of patients 65 years of age or older in New York City.

Analysis

Please refer to **RNR Attachment A** for:

- The distribution of NY Region applicants with projected Year One and Year Three E-PCIs.
- The display of 2018 E-PCIs performed at existing NY Region facilities.
- The display of county-specific outmigration: Region residents receiving E-PCI treatment outside vs. inside their home region.

Table 1: 2018 Emergency PCI's Migration of NY Region Residents: County-Specific Location of Treatment.						
Resident Out-Migration	**Bronx**	**New York**	**Queens**	**Kings**	**Richmond**	**Total**
County Residents Treated All Locations	2,240	2,461	4,806	4,550	990	15,047
County Residents Receiving Emergency PCI Treatment in NYC	2,162	2,409	3,356	4,454	972	13,353
County Residents Leaving NYC for Emergency PCI Treatment	78	52	1,450	96	18	1,694

New York Region residents received 15,047 emergency PCI treatments in 2018. Of these, 13,353 procedures were performed within NYC and 1,694 were performed out of the region.

Table 2: 2018 Emergency PCI's Performed on NY Region Residents: By County, By Operational NY Region Facilities						
Operational NY Region Facility	**Bronx**	**New York**	**Queens**	**Kings**	**Richmond**	**Total**
Bronx Care Health System	164	6	2	2	0	174
Montefiore Med Center - Jack D Weiler	533	13	2	4	0	552
Montefiore Medical Center - Henry & Lucy Moses Div.	559	15	7	2	0	583
SBH Health System	109	2	2	1	0	114
Brookdale Hospital Medical Center	1	1	9	153	0	164
Brooklyn Hospital Center - Downtown Campus	1	2	5	82	0	90
Maimonides Medical Center	1	10	24	1,113	42	1,190
New York-Presbyterian Brooklyn Methodist Hospital	11	3	64	577	11	666
NYU Langone Hospital-Brooklyn	34	225	247	251	35	792

Table 2: 2018 Emergency PCI's Performed on NY Region Residents: By County, By Operational NY Region Facilities						
Operational NY Region Facility	**Bronx**	**New York**	**Queens**	**Kings**	**Richmond**	**Total**
University Hospital of Brooklyn	0	1	6	336	1	344
Bellevue Hospital Center	98	72	60	65	1	296
Lenox Hill Hospital	110	341	384	333	13	1,181
Mount Sinai Beth Israel	43	392	184	473	25	1,117
Mount Sinai Hospital	152	371	484	395	60	1,462
Mount Sinai St. Luke's	98	448	90	138	6	780
New York-Presbyterian Hospital - Columbia Presbyterian	193	275	44	74	16	602
New York-Presbyterian Hospital - New York Weill Cornell	39	210	85	110	16	460
NYU Langone Hospitals	4	0	8	246	11	269
Elmhurst Hospital Center	2	6	302	7	1	318
Jamaica Hospital Medical Center	2	2	252	27	0	283
Long Island Jewish Medical Center	3	1	465	17	1	487
New York-Presbyterian/Queens	5	11	630	26	2	674
Richmond University Medical Center	0	0	0	7	153	160
Staten Island University Hosp-North	0	2	0	15	578	595
Total	2,162	2,409	3,356	4,454	972	13,353

Table 3: Applicant Facilities: Projected Emergency PCI's*				
			Projected Emergency PCIs	
Project	**Facility**	**County**	**Year One**	**Year Three**
151185	Wyckoff Heights Medical Center	Kings	50	75
182006	Coney Island Hospital	Kings	148	170
192063	Jacobi Medical Center	Bronx	70	80
192093	Lenox Health Greenwich Village	New York	59	63

**Based on the transfer of Acute Myocardial Infarction with and without complications*

Coney Island Hospital has projected 148 emergency and 407 total PCI procedures by Year One and 170 emergency and 491 total PCI procedures by Year Three of operation. By providing PCI-capable Cardiac Catheterization services, Coney Island Hospital proposes to achieve the following goals:

- Decrease ambulance time to an Emergency PCI center for STEMI.
- Decrease time to arterial puncture for patients with STEMI in its catchment area.
- Improve mortality by reducing by decreasing door-to-balloon time.
- Decrease complications of acute thrombolysis for Acute MI.
- Asses patients hospitalized for NSTEMI or Unstable Angina without need for transfer.
- Provide this service to outpatients in the institution (Coney Island Hospital) in which they receive care.
- Decrease the number of patients who require a second cardiac catheterization for PCI after undergoing an initial diagnostic catheterization.
- Enhance access for cardiac services in the service area.

Program Analysis

Program Description

The proposed program will operate with clinical oversight and collaboration under the established, co-operated model whereby Bellevue Hospital Center would serve as the cardiac surgery back up facility. Both hospitals are operated by New York City Health and Hospitals by Bellevue Hospital Center is a 912-bed hospital located at 462 First Avenue in New York (New York County) and is a full-service cardiac provider.

Upon completion of the project, Coney Island will be approved to provide the following service:

- Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)

The Applicant has submitted a written plan that demonstrates their ability to comply with all of the standards for PCI Capable Cardiac Catheterization Laboratories and they have assured the Department that their program will meet all of the requirements of 405.29 and 709.14.

Compliance with Applicable Codes, Rules and Regulations

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

Prevention Agenda

The applicant describes NYC Health + Hospitals / Coney Island DSRIP projects that the OneCity Health PPS is implementing that advance local *Prevention Agenda 2019-2014* goals:

- Diabetes Registry
- Diabetes Support group
- DSRIP – Improve cardiovascular disease management
- DSRIP- Care transitions
- Cardiovascular registry
- DSRIP - integration of palliative care into the PCMH model
- Cancer screenings (lung, breast and colon)
- Smoking cessation outreach program
- Smoking cessation program

Coney Island Hospital states that implementing these projects involves engaging community-based organizations, programs, and resources such as hospice and a local community college; however, it does not specify which ones.

The applicant cites indicators they are tracking to measure progress toward addressing local public health priorities, including:

Rates of diabetes patients with controlled blood sugar, blood pressure, and appropriate screening
Percentage of total population with hypertension whose blood pressure is well controlled
The number of participating patients receiving palliative care procedures

- Screening rates among indicated patients
- Program enrollment
- Service area smoking prevalence
- Population screening and follow-up rates

As a public hospital, Coney Island Hospital is not obligated to report community benefit spending.

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

Financial Analysis

Total Project Cost and Financing
Total project costs are $443,172 for the acquisition of moveable equipment, detailed below:

Moveable Equipment	$438,759
CON Application Fee	$2,000
Additional Processing Fee	$2,413
Total Project Cost	$443,172

The applicant will provide equity to meet the total project cost.

Operating Budget
The applicant has submitted the incremental first and third year projected operating budget in 2019 dollars as summarized below:

	Year One		Year Three	
Inpatient Revenues	Per Disch.	Total	Per Disch.	Total
Commercial FFS	$24,452	$806,917	$24,496	$906,370
Medicare FFS	$24,238	$2,229,869	$24,317	$2,504,699
Medicare MC	$21,217	$806,235	$21,562	$905,603
Medicaid FFS	$25,444	$1,501,171	$25,167	$1,686,190
Medicaid MC	$20,551	$2,548,323	$20,593	$2,862,402
Private Pay	$137	$1,374	$140	$1,543
Other	$36,173	$36,173	$20,316	$40,631
Total Inpt Revenues		$7,930,062		$8,907,438
Inpatient Expenses	Per Disch.	Total	Per Disch.	Total
Operating	$15,840	$5,654,923	$13,969	$5,601,523
Capital	106	37,942	95	37,942
Total Inpt Expenses	$15,946	$5,692,865	$14,064	$5,639,465
Inpatient Excess Rev		$2,237,197		$3,267,973
Discharges		357		401
Cost Per Discharge		$15,946		$14,064
Outpatient Revenues	Per Visit	Total	Per Visit	Total
Commercial FFS	$6,153	$43,072	$6,461	$77,530
Medicare FFS	$5,944	$17,832	$6,420	$32,098
Medicare MC	$7,087	$21,262	$6,379	$38,271
Medicaid FFS	$3,642	$58,277	$3,617	$104,899
Medicaid MC	$3,662	$43,947	$3,596	$79,104
Private Pay	$80	$643	$77	$1,158
Other	$398	$398	$717	$717
Total Outpt Revenues		$185,431		$333,777

	Year One		Year Three	
Outpatient Expenses	Per Visit	Total	Per Visit	Total
Operating	$5,719	$285,948	$6,100	$548,958
Capital	0	0	0	0
Total Outpt Expenses	$5,719	$285,948	$6,100	$548,958
Outpt Excess Rev		($100,517)		($215,181)
Total Excess Revenues		$2,136,680		$3,052,792
Visits		50		90
Cost Per Visit		$5,719		$3,709

Inpatient and Outpatient utilization by payor source for Years One and Three are summarized below:

	Year One		Year Three	
Inpatient	Disch.	%	Disch.	%
Commercial FFS	33	9.24%	37	9.23%
Medicare FFS	92	25.77%	103	25.69%
Medicare MC	38	10.64%	42	10.47%
Medicaid FFS	59	16.53%	67	16.71%
Medicaid MC	124	34.73%	139	34.66%
Private Pay	10	2.80%	11	2.74%
Other	1	.29%	2	.50%
Total	357	100%	401	100%

	Year One		Year Three	
Outpatient	Visits	%	Visits.	%
Commercial FFS	7	14.00%	12	13.33%
Medicare FFS	3	6.00%	5	5.55%
Medicare MC	3	6.00%	5	5.55%
Medicaid FFS	16	30.00%	29	32.22%
Medicaid MC	12	24.00%	22	24.44%
Private Pay	8	16.00%	15	16.66%
Other	1	4.00%	1	2.25%
Total	50	100.00%	90	100.00%

Reimbursement rate assumptions are based on expected reimbursement of service costs from Medicare, Medicaid and commercial payors according to DRG Codes for PCI services and using the historical payor mix of the facility. The revenue and volume forecasts are conservatively estimated based on the number of cases in the facility's catchment area and the transferred cases that were sent to other institutions for possible PCI services. Expense projections are based on the hiring of required employees: three full time intervention cardiologists, two staff nurses, one cardiovascular technician, one clerical associate, one data manger, and one on-call MD, RN, and technician. The expense budget also includes the additional supplies, training, depreciation, and equipment costs.

Capability and Feasibility

The total project cost of $443,172 will be met via equity of The New York City Health and Hospital Corporation. BFA Attachment A is the June 30, 2018 and 2017 Certified Financial Statements of New York City Health and Hospital Corporation, which indicates the availability of sufficient funds for the equity contribution.

The submitted budget projects net income of $2,136,680 in Year One and $3,052,792 on Year Three. Revenue and expense assumptions are based on NYC H+H's historical experience and the incremental revenue and cost of the PCI service. The budget appears reasonable.

As shown on BFA Attachment A, The New York City Health and Hospital Corporation had an average negative working capital position and an average negative net asset position for the period shown. The reason for the average negative net asset position and average negative working capital position are the historical losses the entity incurred. For the period shown, the entity incurred average operating losses of $165,119,000 as it continued to adapt to increasing financial challenges placed on healthcare institutions in the NYC area including: Medicaid and Medicare reimbursement constraints impacting the needed to meet the rising costs of caring for low income New Yorkers, the ability of the City of New York to increase capital reimbursement, and shifting from a fee-for-service payment system to a managed care system inclusive of value-based payment structure. NYC H+H has responded to these challenges by continuing transformation initiatives begun in 2017 to redesign the public health system to build a sustainable organization with a balanced financial plan through fiscal year 2022. Overall, NYC H+H is supported by the City of New York, the State of New York, and the federal government through various funding vehicles, and losses are expected to be covered.

The applicant has taken steps to improve operations to reduce losses and continue its transformation effort into a more consolidated entity. NYC H+H realigned the delivery of care to three defined areas: acute care (hospitals), post-acute care (long term care facilities) and ambulatory care services. The realignment of service delivery was intended to enhance and improve efficiencies. This realignment in addition to new initiatives being enacted to create a balanced financial plan through fiscal year 2022 will further stabilize the health system, increase access, and lower the costs of health care in the communities served.

BFA Attachment B is the March 31, 2019 internal financial statements of New York City Health and Hospital Corporation. As shown, NYCHHC had a negative working capital position and a negative net asset position through March 31, 2019. Also, the NYCHHC had a net operating loss of $493,572,000 through March 31, 2019.

Conclusion

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

Attachments

RNR Attachment A	Map
BFA Attachment A	Financial Summary – June 2018 and 2017 Certified Financial Statements of New York City Health and Hospital Corporation
BFA Attachment B	Financial Summary – March 31, 2019 Internal Financial Statements of New York City Health and Hospital Corporation

Public Health and Health Planning Council

Project # 192063-C
Jacobi Medical Center

Program:	**Hospital**	*County:*	**Bronx**
Purpose:	**Construction**	*Acknowledged:*	**August 1, 2019**

Executive Summary

Description

Jacobi Medical Center (Jacobi, the Hospital), a 457-bed, public municipal, Article 28 acute care hospital located at 1400 Pelham Parkway, Bronx (Bronx County), requests approval to certify Cardiac Catheterization – Percutaneous Coronary Intervention (PCI) service. The Hospital is currently certified for Cardiac Catheterization – Adult Diagnostic and Cardiac Catheterization – Electrophysiology services and provides a broad spectrum of cardiology-related care. This project will help to round out the interventional cardiology services available at Jacobi and will ensure better access to all levels of cardiac services, including preventive, diagnostic, interventional and continuing care services. The proposed PCI lab will be operated under the established, co-operated parent model with Bellevue Hospital Center (Bellevue), located at 462 1st Avenue, New York (New York County), providing oversight of the program. Both hospitals will collaborate regarding cardiovascular services for residents of Jacobi's service area, which includes Bronx County as well as southeastern Westchester County. Seth Sokol, M.D., an interventional cardiologist, will be Medical Director for the PCI service at Jacobi.

Jacobin will convert its existing diagnostic lab to a PCI-capable lab with no construction necessary. Additionally, the Hospital will use its endovascular suite as a second lab.

Jacobi is operated by The New York City Health and Hospitals Corporation (NYC H+H), a public benefit corporation created by the NY State Legislature in 1969 that operates the largest municipal healthcare system in the United States. Jacobi is one of 11 acute care hospitals operated by NYC H+H, which provides a total of 4,752 beds across New York City. Bellevue, also part of the NYC H+H System, will serve as the full-service cardiac surgery backup facility to Jacobi. Implementation of this project represents a regional solution for the distribution of PCI programs in Bronx County with a focus on creating a coordinated and integrated system aimed at improving quality, increasing access to cardiac care, improving health outcomes and lowering health care costs in the communities serviced by Jacobi.

OPCHSM Recommendation

Approval

Need Summary

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in year one of operation. Emergency PCI (E-PCI) includes any procedure not scheduled and not elective. Twenty-four facilities in the New York Region currently provide PCI services. In 2018, 1,694 NY Region residents were treated outside of the HSA for currently defined emergency PCI procedures. The four NY Region applicants on the Public Health and Health Planning Council February Agenda that seek certification of Cardiac Catheterization-Percutaneous Coronary Intervention services all project, at minimum, 36 emergency PCI procedures in Year One.

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.

Incremental Budget	First Year	Third Year
Revenues	$5,166,310	$6,724,688
Expenses	3,601,840	3,721,674
Gain/(Loss)	$1,564,170	$3,002,564

Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

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

Council Action Date
February 6, 2020

Need Analysis

Project Description

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in year one of operation. Emergency PCI (E-PCI) includes any procedure not scheduled and not elective. Twenty-four facilities in the New York Region currently provide PCI services. In 2018, 1,694 NY Region residents were treated outside of the HSA for currently defined emergency PCI procedures. The four NY Region applicants on the Public Health and Health Planning Council February Agenda that seek certification of Cardiac Catheterization-Percutaneous Coronary Intervention services all project, at minimum, 36 emergency PCI procedures in Year One.

Analysis

Please refer to **RNR Attachment A** for:

- The distribution of NY Region applicants with projected Year One and Year Three emergency PCIs (E-PCIs).
- The display of 2018 E-PCIs performed at existing NY Region facilities.
- The display of county-specific outmigration: Region residents receiving E-PCI treatment outside vs. inside their home region.

Table 1: 2018 Emergency PCI's Migration of NY Region Residents: County-Specific Location of Treatment.						
Resident Out-Migration	**Bronx**	**New York**	**Queens**	**Kings**	**Richmond**	**Total**
County Residents Treated All Locations	2,240	2,461	4,806	4,550	990	15,047
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Operational NY Region Facility	**Bronx**	**New York**	**Queens**	**Kings**	**Richmond**	**Total**
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Elmhurst Hospital Center	2	6	302	7	1	318
Jamaica Hospital Medical Center	2	2	252	27	0	283
Long Island Jewish Medical Center	3	1	465	17	1	487
New York-Presbyterian/Queens	5	11	630	26	2	674
Richmond University Medical Center	0	0	0	7	153	160
Staten Island University Hosp-North	0	2	0	15	578	595
Total	2,162	2,409	3,356	4,454	972	13,353

Table 3: Applicant Facilities: Projected Emergency PCI's*				
			Projected Emergency PCIs	
Project	**Facility**	**County**	**Year One**	**Year Three**
151185	Wyckoff Heights Medical Center	Kings	50	75
182006	Coney Island Hospital	Kings	148	170
192063	Jacobi Medical Center	Bronx	70	80
192093	Lenox Health Greenwich Village	New York	59	63

**Based on the transfer of Acute Myocardial Infarction with and without complications*

Jacobi Medical Center has projected 70 emergency and 230 total PCI procedures in Year One and 80 emergency and 300 total PCI procedures in Year Three of operation

By providing PCI-capable Cardiac Catheterization services, Jacobi Medical Center proposes to achieve the following goals:

- Enhance access to elective PCI for the underserved population in the service area.
- Prevent delays in care for STEMI patients by decreasing door – to balloon time.
- Improve cardiac outcomes for the service area.
- Provide improved access for the service area for cardiac services.

Program Analysis

Project Proposal

proposed program will operate with the established co-operated parent model with Bellevue Hospital Center which is part of the same network, New York City Health + Hospital. Bellevue Hospital Center is a 912-bed facility located at 462 First Avenue In New York (New York County) that is a full-service cardiac surgery provider.

Staffing is expected to increase by 10.50 FTEs in the first year after completion and remain at 10.50 FTEs for the third year of operation.

Upon completion of the project, Jacobi Medical Center will be certified for the following certified service:

- Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)

The Applicant has submitted a written plan that demonstrates their ability to comply with all of the standards for PCI Capable Cardiac Catheterization Laboratories and they have assured the Department that their program will meet all of the requirements of 405.29(e)(1-3) and 405.29(e)(5).

Compliance with Applicable Codes, Rules and Regulations

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

Prevention Agenda

The Jacobi Medical Center applicant states that this project advances the local Prevention Agenda priorities by ensuring enhanced access to PCI services. Jacobi Medical Center has multiple programs for addressing obesity promoting the Prevention Agenda Priority to Prevent Chronic Disease. Additional programs focused on tobacco cessation and treatment align with the prevention of chronic disease. Jacobi Medical Center has multiple evidenced-based strategies to address the Prevent Chronic Disease Prevention Agenda priority, most often deployed through integration with the general medical programs and primary care visits. As New York City Health & Hospitals facilities, the applicants collaborate closely with the New York City Department of Health and Mental Health to promote the Prevention Agenda Priorities.

The applicant provides examples of internal tracking to measure the performance and progress of their interventions, such as:

- Tracking smoking and tobacco use rates among its patient population;
- For hypertension prevention and treatment, percentage of patients with controlled hypertension;
- For diabetes prevention and treatment, percentage of patients being screened, beginning treatment and A1C improvement.

As a public hospital, Jacobi Medical Center is not obligated to report community benefit spending.

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

Incremental Operating Budget

The applicant has submitted an incremental operating budget, in 2020 dollars, for the first and third years of operation, summarized below:

	Year One		Year Three	
Inpatient Revenues	Per Disch.	Total	Per Disch.	Total
Commercial FFS & MC	$36,030	$432,360	$36,030	$576,480
Medicare FFS	$36,453	1,202,949	$36,453	1,531,026
Medicare MC	$37,546	1,389,202	$37,546	1,764,662
Medicaid FFS	$32,200	740,600	$32,200	998,200
Medicaid MC	$24,683	765,173	$24,683	987,320
All Other	$42,872	42,872	$42,872	85,744
Total Inpt Revenue		$4,573,156		$5,943,432
Outpatient Revenues	Per Visit	Total	Per Visit	Total
Commercial FFS & MC	$4,730	$42,570	$4,730	$52,030
Medicare FFS	$10,426	218,946	$10,426	291,928
Medicare MC	$10,047	241,128	$10,047	321,504
Medicaid FFS	$2,990	47,840	$2,990	59,800
Medicaid MC	$1,882	37,640	$1,882	50,814
All Other	$4,730	4,730	$4,730	4,730
Total Outpt Revenue		$592,854		$780,806
Total Revenues		$5,166,010		$6,724,238
Inpatient Expenses	Per Disch.	Total	Per Disch.	Total
Operating	$23,489	$3,241,566	$18,608	$3,349,417
Capital	1	90	1	90
Total Inpt Expense	$23,490	$3,241,656	$18,609	$3,349,507
Outpatient Expenses	Per Visit	Total	Per Visit	Total
Operating	$3,915	$360,174	$3,101	$372,157
Capital	0	10	0	10
Total Outpt Expense	$3,915	$360,184	$3,101	$372,167
Total Expenses		$3,601,840		$3,721,674
Net Income		$1,564,170		$3,002,564
Utilization				
Total Inpatient		138		180
Total Outpatient		92		120
Total Procedures		230		300
Average Cost per Procedure		$15,660.17		$12,405.58

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

- Estimated reimbursement for PCI is based on inpatient DRG's 246-251 and outpatient procedure codes used for billing cardiac catheterization patients. A rate differential was applied to calculate the rates for all payers for all procedures, given the experience of Jacobi in providing diagnostic cardiac catheterization procedures.
- The incremental operating expenses and revenues for this project are based on the utilization projections for the proposed PCI-capable cardiac catheterization laboratory program and are based upon the experience of Bellevue in providing PCI services on its campus and the expected volumes from the three interventional cardiologists.

- The number and mix of staff were determined based on the experience of Bellevue in staffing for its existing PCI-capable cardiac catheterization laboratory program on campus.
- All Other revenues represent payors that are covered under Workers Compensation/No Fault, union arrangements and/or any special payment arrangements.
- Utilization by payor for inpatient and outpatient services is as follows:

	Year One		Year Three	
Inpatient	Disch	%	Disch	%
Commercial FFS & MC	12	8.7%	16	8.9%
Medicare FFS	33	23.9%	42	23.3%
Medicare MC	37	26.8%	47	26.1%
Medicaid FFS	23	16.7%	31	17.2%
Medicaid MC	31	22.5%	40	22.2%
Charity Care	1	0.7%	2	0.8%
All Other	1	0.7%	2	0.8%
Total	138	100.0%	180	100.0%

	Year One		Year Three	
Outpatient	Visits	%	Visits	%
Commercial FFS & MC	9	9.8%	11	9.2%
Medicare FFS	21	22.8%	28	23.3%
Medicare MC	24	26.1%	32	26.7%
Medicaid FFS	16	17.4%	20	16.7%
Medicaid MC	20	21.7%	27	22.5%
Charity Care	1	1.1%	1	0.8%
All Other	1	1.1%	1	0.8%
Total	92	100.0%	120	100.0%

Capability and Feasibility

There are no project costs associated with this application. The submitted budget indicates excess revenues over expenses of $1,564,170 and $3,002,564 in Years One and Three, respectively. The average cost per procedure for Years One and Three is $15,660.17 and $12,405.58, respectively. The budget appears reasonable.

BFA Attachment A, the 2017, 2018 and 2019 audited financial statements of the New York City Health and Hospitals Corporation, indicates that as of June 30, 2019, the entity maintained positive working capital, experienced a net deficit position of $5,361,434 and an annual net operating loss of $89,999,000. Beginning in FY 2017, H + H implemented a transformation program to eliminate its financial gaps. The plan has met its target each year since inception. The plan includes the following:

- revenue enhancements such as improved revenue cycle management;
- managed care contracting and coverage for eligible uninsured;
- reducing expenditures through right-sizing of staffing levels; and
- implementing significant improvements to its supply chain management.

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

Attachments

RNR Attachment	Map
BFA Attachment A	New York City Health and Hospitals Corporation – 2017, 2018 and 2019 certified financial statements
BFA Attachment B	Listing of New York City Health + Hospitals

Public Health and Health Planning Council

Project # 191306-C
St. Joseph Hospital

Program:	**Hospital**	***County:***	**Nassau**
Purpose:	**Construction**	***Acknowledged:***	**June 17, 2019**

Executive Summary

Description

St. Joseph Hospital (SJH), a 203-bed, voluntary not-for-profit, Article 28 acute care hospital located at 4295 Hempstead Turnpike, Bethpage (Nassau County), requests approval to certify Cardiac Catheterization - Percutaneous Coronary Intervention (PCI) services with requisite renovations and equipment acquisition to accommodate one catherization laboratory. The total square footage of this project is 1,800 sq. ft.

The quality oversight of procedures performed in the new laboratory will be through collaboration with St. Francis Hospital. St. Francis Hospital will serve as the full-service back-up hospital for cardiac surgery. Upon Public Health and Health Planning Council approval, the program will be known as St. Francis Cardiovascular at St. Joseph Hospital. The cardiovascular services will be developed with the commitment of St. Francis and its clinical leadership team. Both hospitals will collaborate to expand St. Joseph's quality and performance improvement program.

Catholic Health Services of Long Island (CHSLI) is the active parent and co-operator of St. Joseph Hospital. CHSLI is an integrated health care delivery system that includes six acute care hospitals, three skilled nursing facilities, a regional home health agency, a hospice program, as well as a community-based agency for persons with special needs. There are currently no PCI providers located within the primary service area of SJH. As a result, patients are sent to more distant hospitals causing delays in care. Implementation of this project will result in enhanced access to cardiac catherization/PCI procedures and improved cardiac health outcomes for residents of SJH's service area

The system-wide approach to cardiac care will offer the following benefits to patients in the region:

- Accessibility - The applicant will ensure that the services provided through the PCI-capable cardiac catherization program are sensitive to the needs of the population.
- Accountability and Program Comprehensiveness - The goal is to ensure consistency in program leadership, standards and protocols, and to develop the Quality Assurance program. The cardiovascular service will be integrated into CHSLI's comprehensive system-wide strategy that will include increased support for non-invasive cardiology expertise, cardiac specific training, patient education, and community outreach.
- Coordination and Continuity of Cardiac Care - SJH patient medical records are made available to other CHS hospitals and employed physician offices though the EPIC system. For providers without access to the EPIC system, SJH will ensure that medical records are properly coordinated for follow up care to the referring physicians.
- Utilization Monitoring – the hospital will develop a comprehensive utilization review program to ensure adequate treatment space and staffing is provided for safe and effective services, as well as assessment of patients served by the program, particularly those whose needs changed during treatment.

OPCHSM Recommendation
Contingent Approval

Need Summary
New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention (PCI) services to project a minimum of 36 emergency PCI procedures in year one of operation. Emergency PCI (E-PCI) includes any procedure not scheduled and not elective. Twelve facilities in the Long Island Region currently provide PCI services. In 2018, 503 Long Island Region residents were treated outside of the HSA for currently defined emergency PCI procedures. The four Long Island Region applicants on the Public Health and Health Planning Council February 2020 Agenda that seek certification of Cardiac Catheterization-Percutaneous Coronary Intervention services all project, at minimum, 36 emergency PCI procedures in Year One.

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
Project costs of $3,699,224 will be paid with accumulated funds from CHSLI. The introduction of the new PCI service will help to reduce SJH's deficit.

	Incremental (in 000's)	
Budget	Year One	Year Three
Revenues	$9,799	$10,289
Expenses	$4,785	$4,979
Gain/(Loss)	$5,014	$5,310

	Enterprise (in 000's)		
Budget	Current Year	Year One	Year Three
Revenues	$118,139	$127,938	$128,428
Expenses	$129,715	$134,500	$134,694
Gain/(Loss)	($11,576)	($6,562)	($6,266)

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-1.0. [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 May 1, 2020 and construction must be completed by November 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
February 6, 2020

Need Analysis

Background

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention (PCI) services to project a minimum of 36 emergency PCI procedures in year one of operation. Emergency PCI (E-PCI) includes any procedure not scheduled and not elective. Twelve facilities in the Long Island (LI) Region currently provide PCI services. In 2018, 503 Long Island Region residents were treated outside of the HSA for currently defined emergency PCI procedures. The four Long Island Region applicants on the Public Health and Health Planning Council February 2020 Agenda that seek certification of Cardiac Catheterization-Percutaneous Coronary Intervention services all project, at minimum, 36 emergency PCI procedures in Year One.

Analysis

Please refer to **RNR Attachment B** for:

- The distribution of LI Region applicants with projected Year-One and Year-Three emergency PCIs (E-PCIs).
- The display of 2018 E-PCIs performed at existing LI Region facilities (per the 9/25/19 definition).
- The display of county-specific migration: LI Region residents receiving E-PCI treatment outside vs. inside their home region.

Table 1: 2018 Emergency PCI's Migration of Long Island Region Residents: County-Specific Location of Treatment			
Resident Migration	**Nassau**	**Suffolk**	**Total**
County Residents Treated All Locations	3,718	4,731	8,449
County Residents Receiving Emergency PCI Treatment on LI	3,372	4,574	7,946
County Residents Leaving LI for Emergency PCI Treatment	346	157	503

Long Island Region residents received 8,449 emergency PCI treatments in 2018. Of these, 7,946 procedures were performed within Long Island and 503 were performed out of the region.

Table 2: 2018 Emergency PCI's Performed on Long Island Region Residents: By County, By Operational Long Island Region Facilities			
Operational Long Island Region Facility	**Nassau**	**Suffolk**	**Total**
Mount Sinai South Nassau	424	9	433
North Shore University Hospital	985	177	1,162
NYU Winthrop Hospital	673	245	918
St Francis Hospital	1,162	418	1,580
Good Samaritan Hospital Medical Center	57	735	792
Huntington Hospital	26	435	461
Long Island Community Hospital	1	359	360
Peconic Bay Medical Center	1	128	129
Southside Hospital	21	688	709
St Catherine of Siena Hospital	5	200	205
University Hospital	16	1,121	1,137
University Hospital - Stony Brook Southampton Hospital	1	59	60
Total	3,372	4,574	7,946

Table 3: Applicant Facilities: Projected Emergency PCI's				
			Projected Emergency PCIs	
Project	Facility	County	Year One	Year Three
172332	Plainview Hospital	Nassau	113	127
191306	St. Joseph Hospital	Nassau	36	36
191308	Mercy Medical Center	Nassau	36	36
182119	John T Mather Memorial Hospital	Suffolk	60	73

St. Joseph's Hospital has projected 36 emergency and 171 total PCI procedures by Year One and 36 emergency and 185 total PCI procedures by Year Three of operation. By providing PCI-capable Cardiac Catheterization services, St. Joseph's Hospital anticipates achieving the following goals:

- Direct and Enhanced 24/7 patient access to cardiac diagnostic catheterization without the need to transfer patients.
- Management of Clinical Sponsor St. Francis' existing patients closer to home.
- Opportunity to improve cardiac outcomes with a new enhanced platform.
- Expansion of the St. Francis Hospital cardiovascular services.

Program Analysis

Project Proposal

St. Joseph's will enter into a Clinical Sponsorship with St. Francis Hospital, a 364-bed acute care hospital in Roslyn (Nassau County) that offers a full-service cardiac surgery program and is also a member of CHSLI. The new catheterization laboratory will be staffed and overseen by physicians and staff employed by St. Joseph. The facilities are on the same electronic medical record (EMR) platform, allowing access to clinical information all CHS facilities. Furthermore, upon discharge, patient care will continue to be coordinated with care outside the hospital along with specific patient instructions for follow up care which patients are referred. St. Joseph will ensure that additional social and health education needs of the patient will be coordinated by the hospital and promoted in coordination with provided programs. The applicant believes that the proposal represents a regional solution for the provision of adult catheterization and PCI services that will ensure increased accessibility to all levels of cardiac services within the local community.

Upon completion of the project, St. Joseph's Hospital will be approved to provide the following service:

- Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)

The Applicant has submitted a written plan that demonstrates their ability to comply with all the standards for PCI Capable Cardiac Catheterization Laboratories and they have assured the Department that their program will meet all of the requirements of 405.29.

Compliance with Applicable Codes, Rules and Regulations

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

Prevention Agenda

St. Joseph Hospital states that the proposed project will advance the Prevent Chronic Diseases priority area of the Prevention Agenda 2019-2024 by increasing access to high-quality chronic disease treatment, prevention, and management in both clinical and community settings with the use of evidence-based best practices. The applicant states that the proposed project will focus on reducing and preventing chronic disease in order to support the Prevention Agenda Goal 4.2 (*Increase early detection of cardiovascular disease, diabetes, prediabetes and obesity*).

The applicant does not state any interventions that they are implementing to support local Prevention Agenda goals, although, it does mention that it is seeking to implement programs. St. Joseph Hospital states that they have engaged local community partners in their Prevention Agenda efforts. They cite indicators from the Prevention Agenda Dashboard that they are tracking to measure progress toward achieving local Prevention Agenda goals:

- Age-adjusted preventable hospitalizations
- Preventable hospitalizations: Ratio of Black non-Hispanic to White non-Hispanic
- Percentage of adults with health insurance
- Age-adjusted percentage of adults who have a regular health care provider

In 2017 the applicant spent $185,853 on community health improvement services, representing 0.147% of total operating expenses.

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 moveable equipment is estimated at $3,699,224 broken down as follows:

Renovation & Demolition	$1,425,000
Design Contingency	72,000
Construction Contingency	144,000
Planning and Consulting Fees	15,000
Architect/Engineering Fees	146,000
Construction Manager Fees	50,000
Movable Equipment	1,775,000
Telecommunications	50,000
CON Application Fees	2,000
Additional Processing Fee	20,224
Total Project Cost	$3,699,224

Project costs are based on a construction start date of May 1, 2020, and a seven-month construction period. Total project cost of $3,699,224 will be financed using accumulated funds.

BFA Attachment A shows sufficient accumulated funds for this project. SJH's 2019 budget is supported by equity transfers of $16 million from CHSLI to support the operating and capital needs of the hospital. CHSLI will cover working capital needs for the project from system operations. Additionally, CHSLI will absorb any operational losses associated with the program. BFA Attachment B shows sufficient equity regarding CHSLI support.

Operating Budget

The applicant has submitted an incremental operating budget, in 2020 dollars, for the first and third years, summarized below:

	Year One		Year Three	
Inpatient Revenues	Per Disch.	Total	Per Disch.	Total
Commercial MC	$19,803	$316,842	$19,802	$316,842
Medicare FFS	$19,615	1,765,368	$19,615	1,883,059
Medicare MC	$19,690	787,606	$19,615	823,838
Medicaid FFS	$20,365	81,460	$20,365	81,460
Medicaid MC	$20,044	140,305	$20,044	140,305
Bad Debt		(89,656)		(94,120)
Total Inpatient Revenue		$3,001,925		$3,151,384
Outpatient Revenues	Per Visit	Total	Per Visit	Total
Commercial MC	$12,481	$2,558,535	$12,489	$2,660,189
Medicare FFS	$12,415	1,986,390	$12,436	2,101,662
Medicare MC	$12,400	942,368	$12,415	993,195
Medicaid FFS	$12,189	134,081	$11,9578	143,485
Medicaid MC	$12,492	974,386	$12,503	1,025,213
Private Pay	$12,340	111,058	$12,189	134,081
All Other	$12,507	300,179	$12,507	$300,179
Bad Debt		($210,210)		($220,740)
Total Outpatient Revenue		$6,796,787		$7,137,264
Total Revenues		$9,798,712		$10,288,648
Expenses				
Operating	$6,140.84	$4,421,406	$6,104.86	$4,615,274
Capital	505.56	364,000	481.48	364,000
Total Expenses	$6,646.40	$4,785,406	$6,586.34	$4,979,274
Excess of Rev over Exp		$5,013,306		$5,309,374
Utilization				
Inpatient		157		165
Outpatient		563		591
Total		720		756
Average Cost per Procedure		$6,646.40		$6,586.34

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

- All Other includes Workers Compensation and No Fault.
- SJH's 2019 Budget is supported by equity transfers of $16 million from CHSLI to support the operating and capital needs of the hospital.
- The number and mix of staff were determined based on the experience of St. Francis Hospital's existing cardiac catherization services and the historical performance and transfers between St. Joseph and St. Francis.
- The rates are based on the blended DRG rate and case mix for all payors from Mercy Medical Center. The blended DRG rate is calculated by taking the sum of the collections for 2018 for each service and dividing it by the number of cases. The reimbursement rates at Mercy Medical Center are typically in-line with the rates St. Joseph Hospital receives and St. Joseph Hospital has taken a cautious approach to their reimbursement level for forecasting purposes.

- Projected utilization for this project is based on the historical utilization of St. Francis Hospital, and business planning conducted by CHSLI. Utilization by payor source for inpatient and outpatient services for Years One and Three is as follows:

Inpatient	Year One	Year Three
Commercial MC	10.19%	9.70%
Medicare FFS	57.32%	58.18%
Medicare MC	25.48%	25.45%
Medicaid FFS	2.55%	2.42%
Medicaid MC	4.46%	4.24%
Total	100.00%	100.00%

Outpatient		
Commercial MC	36.41%	36.04%
Medicare FFS	28.42%	28.60%
Medicare MC	13.50%	13.54%
Medicaid FFS	1.95%	2.03%
Medicaid MC	13.85%	13.87%
Private-Pay	1.60%	1.86%
All Other	4.26%	4.06%
Total	100.00%	100.00%

Capability and Feasibility

Project costs of $3,699,224 will be met with accumulated funds from CHSLI. The applicant will utilize existing cash equity and will fund working capital requirements through ongoing operations of CHSLI. BFA Attachment A is a financial summary for Catholic Health Services of Long Island, which indicates the availability of sufficient funds.

The submitted incremental budget indicates an excess of revenues over expenses of $5,013,306 and $5,309,374 during the first and third years of operation, respectively. Revenues reflect a blended rate for all payors based on 2018 revenue reimbursement from Mercy Medical Center, a member of CHSLI. The budget appears reasonable.

As shown on BFA Attachment A, as of December 31, 2018, CHSLI, has maintained positive working capital and net asset positions, operating income of $81,737,000. As shown on BFA Attachment B, as of October 31, 2019, CHSLI maintained positive working capital, positive net asset positions, and shows operating income of $7,197,000.

BFA Attachment C, for period ended December 31, 2018, shows St. Joseph Hospital reported negative working capital, positive net assets, and an operating loss of $11,576,000. The loss is covered by Catholic Health Services via below-the-line transfer of funds so as not to inflate income of SJH and make it look profitable as a standalone entity. In 2018 CHSLI transferred $15,623,000 to SJH to offset the operating loss.

As shown on BFA Attachment D, as of October 31, 2019, SJH reported negative working capital, negative net assets and a net operating loss of $9,772,000 offset by $5,775,000 transfer of funds from CHSLI. SJH projects losses in 2019 and 2020 to decrease to $8,463,000 and $7,447,000, respectively, from 2018. The following management actions intend to improve the Hospital's net operating income:

- SJH projects 400 additional discharges in 2020 due to an addition of five new hospitalist physicians joining the medical staff of the hospital.
- SJH experienced a better payor mix in the Infusion Center throughout 2019 as well as an increase in Chemotherapy treatments. Both trends are expected to continue in 2020.
- The conversion to EPIC Revenue Cycle in June of 2019 led to improvements in cash collections.

CHSLI will fund any loss through the ongoing operations of the system.

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

Attachments

RNR Attachment B	Map
BFA Attachment A	Catholic Health Services of Long Island - 2018 Certified Financial Statements
BFA Attachment B	Catholic Health Services of Long Island - October 31, 2019 Internal Financial Statements
BFA Attachment C	St. Joseph Hospital – 2018 Certified Financial Statements
BFA Attachment D	St. Joseph Hospital – October 31, 2019 Internal Financial Statements
BFA Attachment E	List of CHSLI Hospitals

Public Health and Health Planning Council

Project # 191308-C
Mercy Medical Center

Program:	**Hospital**	***County:***	**Nassau**
Purpose:	**Construction**	***Acknowledged:***	**June 17, 2019**

Executive Summary

Description
Mercy Medical Center (MMC), a 375-bed, voluntary not-for-profit, Article 28 acute care hospital located at 1000 North Village Avenue, Rockville Centre (Nassau County), requests approval to certify Cardiac Catheterization – Percutaneous Coronary Intervention (PCI) services in addition to its existing Adult Diagnostic Cardiac Catheterization and Electrophysiology laboratory. MMC will use their existing labs with no need for renovations.

MMC is one of six acute care hospitals co-operated by Catholic Health Services of Long Island (CHSLI). CHSLI is an integrated health care delivery system which includes six hospitals, three skilled nursing facilities, a regional home health agency, a hospice program and a multiservice, community-based agency for persons with special needs.

St. Francis Hospital, located at 100 Port Washington Boulevard, Roslyn (Nassau County), will serve as the full-service back-up hospital for cardiac surgery. St. Francis Hospital is also co-operated by CHSLI. MMC will collaborate with St. Francis Hospital to expand their quality and performance improvement program to include PCI services.

OPCHSM Recommendation
Contingent Approval

Need Summary
New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in Year One of operation. Emergency PCI (E-PCI) includes any procedure not scheduled and not elective. Twelve facilities in the Long Island Region currently provide PCI services. In 2018, 503 Long Island Region residents were treated outside of the HSA for currently defined emergency PCI procedures. The four Long Island Region applicants on the Public Health and Health Planning Council February 2020 Agenda that seek certification of Cardiac Catheterization-Percutaneous Coronary Intervention services all project, at minimum, 36 emergency PCI procedures in Year One.

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.

Incremental Budget	Years One & Three
Revenues	$5,841,024
Expenses	$2,331,200
Gain/(Loss)	$3,509,824

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 pre-procedure risk stratification policy to ensure that high risk and/or complex patients are treated at a Cardiac Surgery Center, acceptable to the Department. [HSP]
2. Submission of a fully executed clinical sponsorship agreement, acceptablbe to the Department. [HSP]

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
February 6, 2020

Need Analysis

Background

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in year one of operation. Emergency PCI (E-PCI) includes any procedure not scheduled and not elective. Twelve facilities in the Long Island (LI) Region currently provide PCI services. In 2018, 503 Long Island Region residents were treated outside of the HSA for currently defined emergency PCI procedures. The four Long Island Region applicants on the Public Health and Health Planning Council February 2020 Agenda that seek certification of Cardiac Catheterization-Percutaneous Coronary Intervention services all project, at minimum, 36 emergency PCI procedures in Year One.

Analysis

Please refer to **RNR Attachment B** for:

- The distribution of LI Region applicants with projected Year-One and Year-Three emergency PCIs (E-PCIs).
- The display of 2018 E-PCIs performed at existing LI Region facilities.
- The display of county-specific migration: LI Region residents receiving E-PCI treatment outside vs. inside their home region.

Table 1: 2018 Emergency PCI's Migration of Long Island Region Residents: County-Specific Location of Treatment			
Resident Migration	**Nassau**	**Suffolk**	**Total**
County Residents Treated All Locations	3,718	4,731	8,449
County Residents Receiving Emergency PCI Treatment on LI	3,372	4,574	7,946
County Residents Leaving LI for Emergency PCI Treatment	346	157	503

Long Island Region residents received 8,449 emergency PCI treatments in 2018. Of these, 7,946 procedures were performed within Long Island and 503 were performed out of the region.

Table 2: 2018 Emergency PCI's Performed on Long Island Region Residents: By County, By Operational Long Island Region Facilities			
Operational Long Island Region Facility	**Nassau**	**Suffolk**	**Total**
Mount Sinai South Nassau	424	9	433
North Shore University Hospital	985	177	1,162
NYU Winthrop Hospital	673	245	918
St Francis Hospital	1,162	418	1,580
Good Samaritan Hospital Medical Center	57	735	792
Huntington Hospital	26	435	461
Long Island Community Hospital	1	359	360
Peconic Bay Medical Center	1	128	129
Southside Hospital	21	688	709
St Catherine of Siena Hospital	5	200	205
University Hospital	16	1,121	1,137
University Hospital - Stony Brook Southampton Hospital	1	59	60
Total	3,372	4,574	7,946

Table 3: Applicant Facilities: Projected Emergency PCI's				
			Projected Emergency PCIs	
Project	Facility	County	Year One	Year Three
172332	Plainview Hospital	Nassau	113	127
191306	St. Joseph Hospital	Nassau	36	36
191308	Mercy Medical Center	Nassau	36	36
182119	John T Mather Memorial Hospital	Suffolk	60	73

Mercy Medical Center has projected 36 Emergency and 185 total PCI procedures for both Year One and Year Three of operation. By providing PCI-capable Cardiac Catheterization services Mercy Medical Center anticipates achieving the following goals:

- Direct and Enhanced 24/7 access to cardiac diagnostic catheterization without the need to transfer patients.
- Manage St. Francis existing patients closer to home.
- Opportunity to improve cardiac outcomes with a new enhanced platform.
- Expansion of the St. Francis Hospital cardiovascular services

Program Analysis

Program Description

The proposed program will operate with clinical oversight and collaboration under the established, co-operated model whereby St. Francis Hospital will provide strict oversight of the program. Catholic Health Services of Long Island is the active parent over both facilities. St. Francis Hospital is a 364-bed hospital located at 100 Port Washington Boulevard in Roslyn (Nassau County) and is a full-service cardiac provider.

Upon completion of the project, Mercy Medical Center will be approved to provide the following service:

- Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)

The Applicant has submitted a written plan that demonstrates their ability to comply with all of the standards for PCI Capable Cardiac Catheterization Laboratories and they have assured the Department that their program will meet all of the requirements of 405.29 and 709.14.

Compliance with Applicable Codes, Rules and Regulations

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

Prevention Agenda

The applicant states that the intent of the project promotes and advances the local Prevention Agenda, with a priority focus on Goal 4.2 reducing/prevention of chronic diseases by increasing early detection of cardiovascular disease, diabetes, prediabetes and obesity.

In alignment with the Prevention Agenda coalition in the catchment area, Mercy Medical Center is focused on *Preventing Chronic Disease* and *Promoting Well-being and Preventing Mental and Substance Use Disorder*. The applicant provides strategies and intervention to: reduce obesity in adults through community-based awareness initiatives such as Healthy Sunday events that provide free blood pressure and cholesterol screenings, and educational materials on obesity and diabetes; and increase awareness of mental health/substance use disorder resources and referrals to community-based programs and resources. The applicant is encouraged to use evidence-based or best-practice approaches to improve community health to support the Prevention Agenda priorities

Mercy Medical Center is a member of the Long Island Health Collaborative which involves extensive community partners including both health departments on Long Island. The applicant was engaged in the community-wide community needs assessment and development of the Community Health Improvement Plan.

The applicant tracks multiple process measures developed for each priority, such as:

- Obesity – Track the number of attendees at weight loss information sessions and measure knowledge pre-and post-event;
- Preventive Care and Management – Track and increase the number of Health Sunday's community outreach events held in underserved community churches.

In 2017 the applicant spent $1,071,101 on community health improvement services, representing 0.459% of total operating expenses.

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

Incremental Operating Budget

The projected budgets, in 2020 dollars, are as follows:

Summary

Incremental	
	Years One & Three
Revenues	$5,841,024
Expenses	$2,331,200
Gain/(Loss)	$3,509,824

Enterprise		
	Current Year	Years One & Three
Revenues	$233,896,000	$239,737,024
Expenses	$243,487,000	$245,818,200
Gain/(Loss)	($9,591,000)	($6,081,176)

Detailed Incremental

	Years One & Three	
Inpatient Revenues	Per Disch.	Total
Commercial MC	$20,815	$312,221
Medicare FFS	$20,635	1,031,740
Medicare MC	$20,815	416,294
Medicaid FFS	$20,815	104,074
Medicaid MC	$20,815	208,147
All Other		(33,306)
Total Inpt Revenue		$2,039,170
Outpatient Revenues	Per Visit	Total
Commercial MC	$13,648	$1,241,949
Medicare FFS	$13,648	832,505
Medicare MC	$13,793	358,617
Medicaid FFS	$13,789	275,771
Medicaid MC	$13,726	905,946
Private Pay	$13,793	179,309
All Other	$1,108	7,757
Total Outpt Revenue		$3,801,854
Total Revenues		$5,841,024

	Years One & Three	
Expenses		
Operating	$5,729	$2,199,900
Capital	342	131,300
Total Expenses	$6,071	$2,331,200
Net Income		$3,509,824
Utilization		
Inpatient		100
Outpatient		284
Total		384
Avg Cost per Procedure		$6,070.83

The following was noted with respect to the first and third year incremental budgets:

- A blended DRG rate methodology was used, which is consistent with how CHSLI approaches their forecasting methodology on projects of this magnitude across its operating spectrum. In computing the blended DRG rate, CHSLI incorporates the case count, coupled with the reimbursement for those cases, and computes an average (blended) rate of reimbursement.
- Expenses are based upon actual expenses incurred for similar procedures at related sites of service. From a clinical perspective the services will mimic those being offered by St. Francis, while the reimbursement rates at MMC are typically slightly lower and have been adjusted to meet the proposed expected level of reimbursement for cautious forecasting purposes.
- Utilization projections are based on the experience and expected market share of related sites of service providing cardiac catheterization services within the CHSLI service area. Utilization by payor source for Years One and Three (identical), is as follows:

Inpatient	%
Commercial MC	15%
Medicare FFS	50%
Medicare MC	20%
Medicaid FFS	5%
Medicaid MC	10%
Total	100%

Outpatient	%
Commercial-MC	32.0%
Medicare FFS	21.5%
Medicare MC	9.2%
Medicaid FFS	7.0%
Medicaid MC	23.2%
Private Pay	4.6%
All Other	2.5%
Total	100%

Capability and Feasibility

There are no project costs associated with this application. The applicant will utilize existing cash equity to fund working capital needs through ongoing operations. BFA Attachment A is the 2018 consolidated financial summary for Catholic Health Services of Long Island, which indicates the availability of sufficient funds.

The submitted budget indicates an excess of revenues over expenses of $3,509,824 during the first and third years of operation. Revenues reflect a blended rate for all payors based on CHSLI's experience in 2018, with reimbursement rates projected slightly lower for MMC than those of St. Francis Hospital, a member of CHSLI. The budget appears reasonable.

As shown in BFA Attachment A, CHSLI has maintained positive working capital, a positive net asset position, and generated operating income of $81,737,000 as of December 31, 2018. BFA Attachment B is CHSLI's consolidated internal financial statements as of October 31, 2019, which indicates CHSLI maintained positive working capital, positive net assets, and had operating income of $7,197,000.

BFA Attachment C is a by facility schedule from the 2018 certified consolidating financial statements, which indicates MMC experienced negative working capital, a net assets position and had a net operating loss of $9,591,000. The loss is partially covered by Catholic Health Services via below-the-line transfer of funds so as not to inflate the income of MMC and make it look profitable as a standalone entity. In 2018 CHSLI transferred $8,226,000 to MMC to partially offset the operating loss.

BFA Attachment D is the consolidated internal financial statements of CHSLI as of October 31, 2019, which indicates MMC experienced negative working capital, a positive net assets position and had a net operating loss of $11,667,000. This loss was partially offset by a $6,066,000 transfer of funds from CHSLI. MMC projects losses in 2019 and 2020 to increase to $12,087,000 and $13,758,000, respectively, from 2018. The following is noted:

- The losses include those of the physician practices owned by the MMC. The losses were $12,277,000 in 2018, are projected to be $12,276,000 for 2019, and are budgeted at $12,087,000 for 2020.
- Implementation of the proposed CON will help decrease those losses by approximately 50%. The effect of this application has not been included in the hospital's 2020 budget.
- MMC continues to be challenged with rising expenses that outpace reimbursement rate increases. Larger losses would be expected on a year to year basis; however, by aggressive operating measures, the losses have been maintained at a consistent level. Within the CHSLI system, the community hospitals operate at a loss with the understanding that St. Francis offsets those losses based upon their operating surplus. For 2017 and 2018, the system has an operating income of approximately $71,963,000 and $81,737,000, respectively.

CHSLI will fund any loss through the ongoing operations of the system.

Conclusion

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

Attachments

RNR Attachment B	Map
BFA Attachment A	Catholic Health Services of Long Island – 2018 Certified Financial Statements
BFA Attachment B	Catholic Health Services of Long Island – Consolidated internal financial statements as on October 31, 2019
BFA Attachment C	Catholic Health Services of Long Island (Mercy Medical Center) - 2018 Certified consolidating financial statements
BFA Attachment D	Catholic Health Services of Long Island (Mercy Medical Center) - Consolidating internal financial statements as of October 31, 2019
BFA Attachment E	List of CHSLI Hospitals

Public Health and Health Planning Council

Project # 192161-C
UPSTATE University Hospital at Community General

Program:	**Hospital**	*County:*	**Onondaga**
Purpose:	**Construction**	*Acknowledged:*	**November 14, 2019**

Executive Summary

Description
UPSTATE University Hospital at Community General (Community General), a 314-bed, public state, Article 28 acute-care hospital located at 4900 Broad Road, Syracuse (Onondaga County) requests approval to certify therapeutic radiology services and perform requisite renovations to create an outpatient Cancer Center. The hospital is one of two Syracuse campuses operated by the State University of New York (SUNY), whose main 420-bed campus at 750 East Adams Street in downtown Syracuse operates the UPSTATE Cancer Center. This project provides a satellite site of the UPSTATE Cancer Center where demand for services is at capacity and impacting patient access to care. The proposal includes the renovation of 4,903 gross square feet on the first floor of the Community General campus to create the new Center. The Center will be located at grade level, immediately adjacent to the main lobby entrance and patient drop off loop, with easy access to parking.

OPCHSM Recommendation
Contingent Approval

Need Summary
The applicant will add outpatient infusion and breast therapeutic radiation services to the Community General Campus. The NYS Cancer Registry reports 2,935 average annual cancer cases per year for Onondaga County, a rate of 518 per 100,000 population. This project will improve access for people in need of cancer treatment.

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
The total project cost of $2,817,400 will be met via equity.

Incremental Budget	Year One	Year Three
Revenues	$3,425,000	$6,650,000
Expenses	2,319,600	4,395,600
Excess of Revenues	$1,105,400	$2,254,400

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

Council Action Date
February 6, 2020

Need and Program Analysis

Proposal
UPSTATE University Hospital at Community General, located at 4900 Broad Road, Syracuse, NY 13215 Onondaga County, requests approval to certify Radiology – Therapeutic O/P services in order to provide outpatient breast radiation therapy services. As part of the project, University Hospital SUNY Health Sciences Center (the main campus) will operate a satellite site of their UPSTATE Cancer Center at Community General and offer outpatient infusion services in addition to the therapeutic radiology services.

Staffing is expected to increase as a result of this project by 6.8 FTEs in Year One and 12.6 FTEs in Year Three of the completed project.

Analysis
Onondaga County has a population estimate of 461,809 for 2018. The female population is 51.8% which is slightly above the state average of 51.4%. According to the 2009 Journal of Clinical Oncology Report, from 2010 – 2030 there will be an expected increase of 45% in cancer incidence.

The applicant has stated that they are currently operating at capacity at the main site and the additional site will address the current demands and overcrowding and improve the quality of care for Onondaga residents.

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

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

Conclusion
The additional location for outpatient cancer care will address the capacity issues at the main site.

Financial Analysis

Total Project Cost and Financing

The total project cost of $2,817,400, which is for renovations and acquisition of moveable equipment, is detailed as follows:

Category	Total
Renovation & Demolition	$2,150,000
Architect/Engineering Fees	275,000
Moveable Equipment	375,000
CON Fee	2,000
Additional Processing Fee	15,400
Total Project Cost	$2,817,400

Project costs are based on a construction start date of June 1, 2020, and a 12-month construction period. The applicant will provide $2,817,400 via equity.

Incremental Operating Budget

The applicant has submitted an incremental operating budget, in 2020 dollars, for the first and third years, summarized below:

	Year One		Year Three	
Outpatient Revenues	Per Visit	Total	Per Visit	Total
Commercial FFS	$15,983	$959,000	$14,896	$1,862,000
Commercial MC	$27,400	411,000	$19,950	798,000
Medicare FFS	$16,335	1,061,750	$14,725	2,061,500
Medicare MC	$18,267	274,000	$15,200	532,000
Medicaid FFS	$11,417	171,250	$9,500	332,500
Medicaid MC	$10,275	513,750	$9,068	997,500
Private Pay	$6,850	34,250	$4,433	66,500
Total Outpt Revenues		$3,425,000		$6,650,000
Outpatient Expenses				
Operating	$10,309	$2,319,600	$8,791	$4,395,600
Capital	0	0	0	0
Total Outpt Expenses	$10,309	$2,319,600	$8,791	$4,395,600
Excess Rev over Exp		$1,105,400		$2,254,400
Visits		225		500
Cost per Visit		$10,309		$8,791

The following is noted with respect to the incremental budgets:

- Expense and utilization assumptions are based on SUNY's experience operating the existing UPSTATE Cancer Center.
- Although total revenue increases overall in Year Three, revenue on an average per visit basis decreases across all payor. This decrease from Year One to Year Three is due to the addition of breast radiation therapy in the third year, which has a lower charge on the average, compared to outpatient chemotherapy infusion services.

- Utilization by payor source for the outpatient visits a0re as follows:

Payor	Year One	Year Three
Commercial FFS	26.67%	25.00%
Commercial MC	6.67%	8.00%
Medicare FFS	28.89%	28.00%
Medicare MC	6.67%	7.00%
Medicaid FFS	6.67%	7.00%
Medicaid MC	22.22%	22.00%
Private Pay	2.21%	3.00%
Total	100.00%	100.00%

Capability and Feasibility

The total project cost of $2,817,400 will be met via equity. BFA Attachment A is the 2018 certified financial statements, which indicate the availability of sufficient funds.

Working capital requirements are estimated at $732,600 based on two months of third year expenses and will be provided through operations. As shown in BFA Attachment A, sufficient funds exist for the working capital requirements.

The submitted budget indicates a net income of $1,105,400 and $2,254,400 during the first and third years, respectively. Revenues are based on the hospital's current reimbursement rates. The submitted budget appears reasonable.

As shown on BFA Attachment A, University Hospital had a positive working capital position, a positive net asset position and maintained and operating gain of $19,495,000 for 2018 and experienced an operating loss of $64,863,000 in 2017. The loss in 2017 is due to delayed Disproportionate Share Payments (DSH). Beginning in 2016, the timing of a portion of DSH payments were significantly delayed from the historical timing of those payments and the Department of Health (DOH) communicated its intent to cap the State's DSH contribution for the three SUNY Hospitals. The language in the final budget bills for State Fiscal Year (SFY) 2018 (April 2017 – March 2018) did not incorporate a cap on the State's DSH payment but rather provided language in the DOH "Global Cap" appropriations that made an allocation available for payment of DSH reimbursement to SUNY hospitals dependent on those institutions providing sufficient financial information to evaluate the need to support current and future reimbursements.

In November 2017, the NYS Medicaid program reduced its SFY 2018 appropriation for the non-Federal share of DSH losses incurred by University Hospital by approximately $47.5 million. This reduction of $47.5 million in State funding was restored as SUNY transferred $47.5 million from its general operating fund to fund the balance of the non-Federal DSH payments in SFY 2018. The Hospital has estimated DSH based on payments received throughout 2017 and to date, as well as payments anticipated through each year's final audited cost report.

As shown on BFA Attachment B, University Hospital had a positive working capital position, a positive net asset position and maintained net income of $5,594,000 as of October 31, 2019.

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

Attachments

BFA Attachment A	University Hospital - Certified financial statements of as of December 31, 2017 and 2018
BFA Attachment B	University Hospital - Internal financial statements of as of October 31, 2019

Public Health and Health Planning Council

Project # 192244-C
United Health Services Hospitals, Inc. - Wilson Medical Center

Program:	Hospital	*County:*	Broome
Purpose:	Construction	*Acknowledged:*	November 12, 2019

Executive Summary

Description

United Health Services Hospitals, Inc. - Wilson Medical Center ("UHSH-Wilson" or the "Hospital"), a 280-bed, voluntary not-for-profit, Article 28 acute care hospital located at 33-57 Harrison Street, Johnson City (Broome County), requests approval to construct a new six-story building to expand the Emergency Department (ED), add an MRI unit and services, create a new 30-bed all-private room medical/surgical (M/S) unit, and add shell space for the future development of additional private rooms. There will be no change in the total number of certified beds at the Hospital. The 30 beds for the new M/S unit will come from current double-bedded rooms that will become private after the completion of the project.

This proposed major modernization project represents a significant commitment to transform the delivery of health care services at UHSH-Wilson. The project is part of UHSH-Wilson's Facility Master Plan to modernize healthcare delivery to more efficiently and effectively meet the needs of the population it serves. The UHSH-Wilson campus was originally constructed in 1949, with the last major renovation/addition in 1989. In its current state, the facility is unable to accommodate the rapidly changing demands of new healthcare technology. The ED is overcrowded, which has created operational inefficiencies and throughput challenges that have led to patients leaving the ED without being seen and poor patient experience. This project seeks to address these concerns by constructing an improved and expanded Emergency Department.

UHSH-Wilson is a vital component to the overall healthcare delivery system in the Southern Tier of New York State (NYS). The Hospital is the region's only critical care hospital, and the facility has been designated by the NYS Department of Health (DOH) as a Level II Adult Trauma Center, Primary Stroke Center and Level III Perinatal Center. In addition, the facility is a Regional Heart Center with cardiac surgery, a Regional Neurosurgical Center and a Regional Neonatal Center.

OPCHSM Recommendation

Contingent Approval

Need Summary

This project will modernize and expand the ED to address overcrowding and will create additional private rooms, as has become the industry standard.

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

The total project cost of $131,242,217 includes the cost of shell space construction. Therefore, the total reimbursable cost is limited to $113,869,393. The project cost is broken down

as follows: assigned Article 28 space for $113,869,393 and shell space of $17,372,824. The project cost will be met via $13,124,222 equity with the $118,117,995 balance expected to be financed via a bond issuance, preferably Dormitory Authority of the State of New York (DASNY) tax-exempt bonds at 4% interest over 30 years.

Budget	Year One	Year Three
Revenues	$686,561,220	$687,362,555
Expenses	688,325,987	690,862,242
Gain/(Loss)	($1,764,767)	($3,499,687)

UHSH has submitted a statement that they are willing to absorb the net operational losses of Wilson Medical Center due to the new construction through funded depreciation on the Hospital's balance sheet.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest that is determined to be acceptable by the Department of Health. This is to be provided within 120 days of approval of state hospital code drawings and before the start of construction. Included with the submitted permanent mortgage commitment must be a sources and uses statement and a debt amortization schedule, for both new and refinanced debt. (BFA)
3. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 2.18 LSC Chapter 18 Healthcare Facilities Public Use, for review and approval.
4. Submission of State Environmental Quality Review (SEQR) Summary of Findings pursuant to 6 NYCRR Part 617.4(b) (6), and 10NYCRR 97.12

Approval conditional upon:

1. The project must be completed within four years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before September 1, 2020 and construction must be completed by March 1, 2023, 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

February 6, 2020

Need and Program Analysis

Background
United Health Services Hospitals – Wilson Medical Center ("UHSH-Wilson" or the "Hospital") is seeking approval for the modernization of the Hospital to meet the needs of healthcare delivery in the 21st century. UHSH-Wilson is located at 33-57 Harrison Street, Johnson City (Broome County), New York 13790. There will be no change to the Operating Certificate of the Hospital as a result of this major modernization project, which includes the following components:
- A new, right-sized Emergency Department "ED" with the addition of 14 bays;
- The addition of MRI services and an MRI unit;
- A new all-private room medical/surgical (M/S) unit with 30 beds but no change to the total number of certified beds at the Hospital.
- Shell space for the future development of additional private rooms.

The project is part of UHSH-Wilson's Facility Master Plan to modernize healthcare delivery to more efficiently and effectively meet the needs of the population it serves. In addition, the planning and programming activities for this project focused on the following goals:
- Assist in the long-term strategy to consolidate ED visits at UHSH-Wilson, leaving the ED at UHSH-Binghamton to focus on behavioral health issues from the emergency medicine perspective;
- Provide for future flexibility for medical/surgical bed utilization at UHSH-Wilson;
- Identify strategic and functional placement of a new MRI suite;
- Create an all-private room inpatient unit;
- Provide a new front entrance to UHSH-Wilson;
- Reduce the cost of providing health care services through operating efficiencies resulting from increased productivity and throughput and reduced supply cost through standardization.

Analysis
	2016	2017	2018	Projected Year One	Projected Year Three
ED Visits	41,870	51,818	51,954	53,179	54,404

Source: ICR Cost reports 2016-2018 and Applicant

Due to its age, the facility is unable to accommodate the new healthcare technology within the existing footprint. In addition, the ED is overcrowded, which has created operational inefficiencies. This project will address these concerns.

Staffing is expected to decrease as a result of this construction/expansion project by 20.58 FTEs in Year One and 42.24 FTEs in Year Three of the completed project.

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

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

Prevention Agenda

The applicant states that the proposed project will highlight several Prevention Agenda priorities from a clinical perspective, especially the *Preventing Chronic Disease*s and *Promote Mental Health & Prevent Substance Abuse* Focus Areas. The Applicant states that the Healthcare system clinical providers have been trained to identify, screen and refer patients in accordance with clinical guidelines specific to these focus areas.

The applicant lists four Prevention Agenda goals they are addressing:

- Decrease falls and fall-related hospital admissions among older adults
- Reduce the percentage of children who are obese
- Increase breastfeeding
- Increase screening rates and treatment for cardiovascular disease and diabetes, especially among disparate populations

UHSH has engaged with multiple community partners including the local county health department and the other large hospital system in the community. UHSH provides a listing of the metrics used to monitor progress in advancing local Prevention Agenda Goals. They involve tracking the numbers and percentages of individuals impacted by the UHSH interventions. In 2017 the applicant spent $2,489,277 on community health improvement services, representing 0.384% of total operating expenses.

Conclusion

The proposed major modernization project will help the hospital transform the delivery of health care services at UHSH-Wilson to more efficiently and effectively meet the needs of the population it serves. 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

The total project cost of $131,242,217, which is for new construction, renovation & demolition and acquisition of moveable equipment, is detailed as follows:

Category	Article 28	Shell Space	Total
New Construction	$54,034,193	$11,708,004	$65,742,197
Renovation & Demolition	10,720,385	354,969	11,075,354
Site Development	3,765,061		3,765,061
Asbestos Abatement/Removal	235,290		235,290
Design Contingency	6,475,458	1,206,297	7,681,755
Construction Contingency	3,773,748	620,897	6,065,907
Architect/Engineering Fees	6,121,535	1,140,366	7,261,901
Construction Manager Fees	5,838,227	227,680	6,065,907
Other Fees	710,366	124,634	835,000
Moveable Equipment	7,105,344		7,105,344
Telecommunications	1,493,305		1,493,305
Financing Costs	2,048,153	314,207	2,362,360
Interim Interest Expense	10,923,483	1,675,770	12,599,253
CON Fee	2,000	0	2,000
Additional Processing Fee	622,845	0	622,845
Total Project Cost	$113,869,393	$17,372,824	$131,242,217

Project costs are based on a construction start date of September 1, 2020, and a 30-month construction period. Since there is shell space involved with this application, total reimbursable project costs shall be limited to $113,869,393. The applicant will provide $13,124,222 equity and finance $118,117,995 via DASNY tax-exempt bonds at 4% interest over 30 years. Ponder & Co., a financial advisor to UHSH, has provided a letter of interest. Ponder has extensive experience with health systems located in New York State and with bonds issued through the DASNY. Since the shell space is intended to be utilized for future Article 28 Medical/Surgical Inpatient areas, financing is allowed for the shell space within DOH guidelines. BFA Attachment A shows sufficient funds for the equity contribution.

Operating Budget

The applicant has submitted an operating budget, in 2020 dollars, during the first and third years:

	Current Year Total (2018)	Year One Total	Year Three Total
Revenues			
Commercial FFS	$66,176,428	$66,266,068	$66,355,708
Commercial MC	266,651,990	267,024,334	267,396,678
Medicare FFS	126,155,135	126,246,391	126,338,135
Medicare MC	70,914,582	70,976,244	71,037,428
Medicaid FFS	12,763,613	12,780,968	12,798,323
Medicaid MC	86,188,377	86,326,404	86,464,100
Private Pay	50,458	52,558	54,630
All Other	9,940,402	9,968,530	9,997,830
Net Patient Revenues	$638,840,985	$639,641,497	$640,442,832
Other Oper. Revenue	46,919,723	49,919,723	46,919,723
Total Revenue	$685,760,708	$686,561,220	$687,362,555

Expenses			
Operating	$646,819,788	$649,033,690	$651,741,799
Capital	29,749,765	39,292,297	39,120,443
Total Expenses	$676,569,553	$688,325,987	$690,862,242
Excess Revenues	$9,191,155	($1,764,767)	($3,499,687)
Discharges	19,320	Stable	Stable
Outpt Visits	911,626	912,815	914,076

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

- Expense and utilization assumptions are based on the hospital's historical experience.
- The first- and third-year losses are due to the $4,817,812 increase in depreciation and a three-year average of approximately $4,638,793 in interest expense from construction.
- The first- and third-year budgets are an accumulation of the Hospital's current year (2018) plus the incremental outpatient services to be added. There is no change in inpatient services and no increase in med/surg utilization.
- Utilization by payor source for the outpatient visits are as follows:

Payor	Current Year	Year One	Year Three
Commercial FFS	9.41%	9.40%	9.40%
Commercial MC	32.26%	32.24%	32.22%
Medicare FFS	18.18%	18.18%	18.18%
Medicare MC	20.03%	20.02%	20.00%
Medicaid FFS	2.62%	2.62%	2.63%
Medicaid MC	13.81%	13.84%	13.87%
Private Pay	0.02%	0.03%	0.03%
All Other	3.67%	3.67%	3.67%
Total	100.00%	100.00%	100.00%

Capability and Feasibility

The total project cost of $131,242,217 includes the cost of the shell space construction. The project cost is broken down as follows: assigned Article 28 space for $113,869,393 and shell space of $17,372,824. The project cost will be met via $13,124,222 equity and $118,117,995 in anticipated tax-exempt bonds (DASNY) at 4% over 30 years. A letter of interest to underwrite the bonds has been submitted by Ponder & Co, an independent registered financial advisor focused on the not-for-profit healthcare sector.

Working capital requirements are estimated at $2,382,115 based on two months of third year incremental expenses, which will be provided through operations. BFA Attachment A is UHSH's 2018 certified financial statements, which indicates the availability of sufficient funds for the equity contribution to meet the total project cost and the working capital requirements.

The submitted budget projects a net loss of revenues over expenses of $1,764,767 and $3,499,687 during the first and third years, respectively. Revenues are based on the hospital's current reimbursement rates. UHSH has submitted a statement that they are willing to absorb the net operational losses of Wilson Medical Center due to the new construction through funded depreciation on the Hospital's balance sheet. BFA Attachment A shows sufficient funds. The submitted budget appears reasonable.

BFA Attachment A shows the entity had an average positive working capital position, an average positive net asset position and achieved an income from operations of $17,322,065 and $9,191,160 for 2017 and 2018, respectively. BFA Attachment B shows UHSH maintained a positive working capital position, a positive net asset position and achieved an income from operations of $12,251,406 as of October 31, 2019.

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

Attachments

BFA Attachment A	Certified financial statements of UHSH Inc. for 2017-2018
BFA Attachment B	UHSH Hospital's Internal Statements as of October 31, 2019

Public Health and Health Planning Council

Project # 151185-C
Wyckoff Heights Medical Center

Program:	**Hospital**	*County:*	**Kings**
Purpose:	**Construction**	*Acknowledged:*	**April 24, 2015**

Executive Summary

Description

Wyckoff Heights Medical Center (Wyckoff), a 324-bed, voluntary not-for-profit, Article 28 acute care hospital located at 374 Stockholm Street, Brooklyn (Kings County), requests approval to certify Cardiac Catheterization – Percutaneous Intervention (PCI) service and convert its existing diagnostic laboratory into a PCI-capable laboratory. The PCI program will be operated under the Clinical Sponsorship model with oversight provided by Lenox Hill Hospital (LHH), whereby LHH will serve as the cardiac surgery backup facility to Wyckoff. LHH is a full-service cardiac surgery provider located at 100 East 77th Street, New York (New York County), and is a Northwell Health affiliate. Through this project, Wyckoff will work collaboratively with LHH to expand Wyckoff's established quality and performance improvement program to include PCI services.

In a separate application (CON 191071-L), Wyckoff is relocating an existing Interventional Radiology (IR) laboratory to space directly adjacent to the existing diagnostic cardiac catheterization laboratory on the third floor of the hospital. The project is under construction and is expected to be completed by August 2020. The relocated IR laboratory is being constructed so that cardiac procedures could also be performed within the space. Consequently, it could serve as a second cardiac catheterization laboratory at Wycoff, with approval.

The primary service area of Wyckoff includes the northern section of Kings County and the southern section of Queens, where cardiac health disparities exist and access to PCI services is poor. Furthermore, there is a disparity in access to PCI procedures for residents of their service area who are part of a racial and/or ethnic minority group. This is important considering that racial/ethnic minority residents comprise approximately 80% of the service area (per 2017 U.S. Census Bureau population demographics). The applicant indicated that there were 108 patients in 2017 and 105 patients in 2018 that were seen in its emergency department with acute myocardial infarction (AMI) that were transferred to another area hospital for emergency PCI services. An additional 49 patients in 2017 and 21 patients in 2018 were seen in Wyckoff's cardiology clinic who subsequently received an elective PCI at other area hospitals. Through August 2019 there were 100 such cases (75 AMI, 25 Clinic). Approval of this project will enhance access to PCI procedures for local underserved residents and improve cardiac health outcomes for the residents of Wyckoff service area.

OPCHSM Recommendation

Contingent Approval

Need Summary

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in Year One of service. Emergency PCI (E-PCI) includes any procedure not scheduled and not elective. Twenty-four facilities in the New York Region currently provide PCI services. In 2018, 1,694 NY Region residents were treated outside of the

HSA for currently defined emergency PCI procedures. The four NY Region applicants on the Public Health and Health Planning Council February Agenda that seek certification of Cardiac Catheterization-Percutaneous Coronary Intervention services all project, at minimum, 36 emergency PCI procedures in Year One.

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.

Incremental Budget	First Year	Third Year
Revenues	$6,236,630	$7,344,333
Expenses	$2,084,432	$2,835,295
Gain/(Loss)	$4,152,198	$4,509,038

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 State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
2. The submission of Engineering (MEP) Drawings, per SHC guidelines, for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [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. 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

February 6, 2020

Need Analysis

Background

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in Year One of service. Emergency PCI (E-PCI) includes any procedure not scheduled and not elective. Twenty-four facilities in the New York Region currently provide PCI services. In 2018, 1,694 NY Region residents were treated outside of the HSA for currently defined emergency PCI procedures. The four NY Region applicants on the Public Health and Health Planning Council February Agenda that seek certification of Cardiac Catheterization-Percutaneous Coronary Intervention services all project, at minimum, 36 emergency PCI procedures in Year One.

Analysis

Please refer to **RNR Attachment A** for:

- The distribution of NY Region applicants with projected Year One and Year Three emergency PCIs (E-PCIs).
- The display of 2018 E-PCIs performed at existing NY Region facilities (as revised 9/25/19).
- The display of county-specific outmigration: Region residents receiving E-PCI treatment outside vs. inside their home region.

Table 1: 2018 Emergency PCI's Migration of NY Region Residents: County-Specific Location of Treatment.						
Resident Out-Migration	**Bronx**	**New York**	**Queens**	**Kings**	**Richmond**	**Total**
County Residents Treated All Locations	2,240	2,461	4,806	4,550	990	15,047
County Residents Receiving Emergency PCI Treatment in NYC	2,162	2,409	3,356	4,454	972	13,353
County Residents Leaving NYC for Emergency PCI Treatment	78	52	1,450	96	18	1,694

New York Region residents received 15,047 emergency PCI treatments in 2018. Of these, 13,353 procedures were performed within NYC and 1,694 were performed out of the region.

Table 2: 2018 Emergency PCI's Performed on NY Region Residents: By County, By Operational NY Region Facilities						
Operational NY Region Facility	**Bronx**	**New York**	**Queens**	**Kings**	**Richmond**	**Total**
Bronx Care Health System	164	6	2	2	0	174
Montefiore Med Center - Jack D Weiler	533	13	2	4	0	552
Montefiore Medical Center - Henry & Lucy Moses Div.	559	15	7	2	0	583
SBH Health System	109	2	2	1	0	114
Brookdale Hospital Medical Center	1	1	9	153	0	164
Brooklyn Hospital Center - Downtown Campus	1	2	5	82	0	90
Maimonides Medical Center	1	10	24	1,113	42	1,190
New York-Presbyterian Brooklyn Methodist Hospital	11	3	64	577	11	666
NYU Langone Hospital-Brooklyn	34	225	247	251	35	792
University Hospital of Brooklyn	0	1	6	336	1	344
Bellevue Hospital Center	98	72	60	65	1	296
Lenox Hill Hospital	110	341	384	333	13	1,181

Table 2: 2018 Emergency PCI's Performed on NY Region Residents: By County, By Operational NY Region Facilities						
Operational NY Region Facility	**Bronx**	**New York**	**Queens**	**Kings**	**Richmond**	**Total**
Mount Sinai Beth Israel	43	392	184	473	25	1,117
Mount Sinai Hospital	152	371	484	395	60	1,462
Mount Sinai St. Luke's	98	448	90	138	6	780
New York-Presbyterian Hospital - Columbia Presbyterian	193	275	44	74	16	602
New York-Presbyterian Hospital - New York Weill Cornell	39	210	85	110	16	460
NYU Langone Hospitals	4	0	8	246	11	269
Elmhurst Hospital Center	2	6	302	7	1	318
Jamaica Hospital Medical Center	2	2	252	27	0	283
Long Island Jewish Medical Center	3	1	465	17	1	487
New York-Presbyterian/Queens	5	11	630	26	2	674
Richmond University Medical Center	0	0	0	7	153	160
Staten Island University Hosp-North	0	2	0	15	578	595
Total	2,162	2,409	3,356	4,454	972	13,353

Table 3: Applicant Facilities: Projected Emergency PCI's*				
			Projected Emergency PCIs	
Project	**Facility**	**County**	**Year One**	**Year Three**
151185	Wyckoff Heights Medical Center	Kings	50	75
182006	Coney Island Hospital	Kings	148	170
192063	Jacobi Medical Center	Bronx	70	80
192093	Lenox Health Greenwich Village	New York	59	63

**Based on the transfer of Acute Myocardial Infarction with and without complications*

Wyckoff Heights Medical Center has projected 50 emergency and 350 total PCI procedures by Year One and 75 emergency and 413 total PCI procedures by Year Three of operation. By providing PCI-capable Cardiac Cath services, Wyckoff Heights Medical Center proposes to achieve the following goals:

- Reduce the “door-to-balloon” time for residents of the service area requiring PCI.
- Improve Mortality rates for PCI services.
- Reduce travel time and inconvenience.
- Reduce the number of patients requiring a second cardiac catheterization for PCI after undergoing the initial diagnostic cardiac catheterization.
- Enhance access to PCI services in the service area.

Program Analysis

Program Description
The proposed program will operate with clinical oversight from Lenox Hill Hospital (Lenox Hill) in accordance with the terms of an executed clinical sponsorship agreement. Lenox Hill is a member of Northwell Health Lenox Hill Hospital is a 632-bed hospital located at 100 East 77th Street in Manhattan (New York County) which is a full-service cardiac surgery provider.

Upon completion of the project, Wyckoff Heights Medical Center will have the following serviced added to their (operating certificate)

- Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)

The Applicant has submitted a written plan that demonstrates their ability to comply with all of the standards for PCI Capable Cardiac Catheterization Laboratories and they have assured the Department that their program will meet all of the requirements of 405.29 and 709.14.

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

Prevention Agenda
Applicant is implementing numerous initiatives to support two local Prevention Agenda priorities (Promoting Healthy Women, Infants and Children, and Preventing Chronic Diseases). The proposed PCI certification advances the local 'Preventing Chronic Diseases' priority, especially the 'Chronic Disease Preventive Care and Management' focus area. The Medical Center participates in the Million Hearts Initiative and is testing a new payment model for Medicare FFS beneficiaries to improve CVD outcomes through more effective risk assessment and management. The applicant has also identified eight objectives for the other priority. Applicant documented all of the partnerships they have to address the non-medical determinants of health. Finally, 14 metrics from the Dashboard corresponding to both selected priorities were identified for ongoing tracking.

In 2017 the applicant spent $11,000,264 on community health improvement services, representing 3.234% of total operating expenses.

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

Clinical Support and Oversight Agreement

The applicant has submitted a Clinical Support and Oversight Agreement for the cardiac catheterization laboratory. The terms are summarized below:

Date:	March 2016 with First Amendment dated August 12, 2019
Facility Operator:	Wyckoff Heights Medical Center
Service Provider:	Lenox Hill Hospital (LHH)
Services:	LHH shall be deemed members of and participate in Wyckoff's quality assurance committee and other reviews of the quality of cardiac care provided by Wyckoff and in the provision of recommendations for quality improvement of cardiac services. LHH will review information and data, including: statistical reports; quality improvement program, policies and procedures; care provided by and/or qualifications of medical, nursing, and other health care practitioners associated with the Cardiac Catheterization Laboratory; appropriateness and timeliness of patient referrals and of patients retained at the Cardiac Catheterization Laboratory who met criteria for transfer to LHH; and adverse events or occurrences including death and major complications. The parties will meet to review: all cardiac laboratory related morbidity and mortality; uncomplicated routine cases and patient selection; patient outcomes and quality; rates of referrals for subsequent diagnostic procedures; cardiac catheterization laboratory system failures; and review of patient selection criteria and appropriateness of treatment. The parties will establish a telemedicine link for LHH timely review of studies. LHH will help develop privileging criteria for physicians; consult on equipment, staffing, ancillary services and policies and procedures; provide on-going cross training; develop a pre-procedure risk stratification tool to ensure high risk/ complex case are treated at LHH. The parties will collaborate to provide interventional cardiology physician coverage on a 24-hour/365 days a year basis
Independence:	Each party shall continue its independent corporate existence. Each institution shall independently bill patients and/or third-party payors.
Term:	Open ended (no delineated term) but may be terminated upon mutual written agreement of the parties upon at least sixty (60) days written notice to NYSDOH. "The termination of expiration of the Agreement shall result in the closure of the Cardiac Catheterization Laboratory."
Fee:	None

Operating Budget

The applicant has submitted an incremental operating budget, in 2020 dollars, for years one and three, as summarized below:

	First Year		Third Year	
Inpatient Revenues	Per Disch.	Total	Per Disch.	Total
Medicaid FFS	$29,000	$348,000	$29,000	$406,000
Medicaid MC	$27,550	1,046,900	$27,550	1,184,650
Medicare FFS	$29,793	566,067	$29,793	685,239
Medicare MC	$28,303	424,550	$28,303	481,157
Commercial FFS	$30,000	90,000	$30,000	120,000
Commercial MC	$28,500	256,500	$28,500	313,500
Private Pay	$15,000	30,000	$15,000	60,000
Subtotal Inpatient		$2,762,017		$3,250,546

Outpatient Revenue	Per Visit	Total	Per Visit	Total
Medicaid FFS	$14,566	$247,622	$14,566	$291,320
Medicaid MC	$13,838	1,660,524	$13,838	1,951,116
Medicare FFS	$14,288	385,776	$14,288	457,216
Medicare MC	$13,574	380,061	$13,574	447,929
Commercial FFS	$15,000	330,000	$15,000	390,000
Commercial MC	$14,250	327,750	$14,250	384,750
Private Pay	$14,288	142,880	$14,288	171,456
Subtotal Outpatient		$3,474,613		$4,093,787
Total Revenue		$6,236,630		$7,344,333
Expenses				
Operating	$5,955	$2,084,332	$6,865	$2,835,195
Capital	$0	100	$0	100
Total Expenses	$5,955	$2,084,432	$6,865	$2,835,295
Net Income		$4,152,198		$4,509,038
Discharges		100		118
Visits		250		295
Total Procedures		350		413

The following is noted with respect to the operating budget:

- Revenues are based on Wyckoff's experience in its existing diagnostic cardiac catheterization laboratory and anticipated reimbursement for PCI services. Rates are based on diagnosis-related groups reimbursement and related PCI current procedural terminology payments for outpatient services. Reimbursement for commercial insurers is based upon a percentage of Medicare, given Wyckoff's experience in providing diagnostic cardiac catheterization procedures.
- The projected operating expenses are based upon Wyckoff's experience in providing diagnostic cardiac catheterization services plus additional expenses associated with the delivery of PCI services (incremental staff, professional fees, supplies).
- Utilization by payor source is as follows:

Payor	Year One		Year Three	
Inpatient	Disch.	%	Disch.	%
Medicaid FFS	12	12.00%	14	11.86%
Medicaid MC	38	38.00%	43	36.44%
Medicare FFS	19	19.00%	23	19.50%
Medicare MC	15	15.00%	17	14.41%
Commercial FFS	3	3.00%	4	3.39%
Commercial MC	9	9.00%	11	9.32%
Private Pay	2	2.00%	4	3.39%
Charity	2	2.00%	2	1.69%
Total	100	100%	118	100%

Payor	Year One		Year Three	
Outpatient	Visits	%	Visits	%
Medicaid FFS	17	6.80%	20	6.78%
Medicaid MC	120	48.00%	141	47.80%
Medicare FFS	27	10.80%	32	10.85%
Medicare MC	28	11.20%	33	11.19%
Commercial FFS	22	8.80%	26	8.80%
Commercial MC	23	9.20%	27	9.15%
Private Pay	10	4.00%	12	4.07%
Charity	3	1.20%	4	1.36%
Total	250	100%	295	100%

Capability and Feasibility

There are no project costs associated with this application. Working capital is estimated at $472,549 based on two months of third year expenses. Funding will be managed within operating funds. Should supplement resources be required, available restricted funds will be utilized.

The submitted budget demonstrates net income of $4,152,198 and $4,509,038 in Year One and Year Three, respectively. The budget appears reasonable.

During 2017, Wyckoff executed a three-party Supervisory Agreement between New York State Department of Health (NYSDOH) and Northwell Healthcare, Inc. (Northwell) whereas Wyckoff sought assistance and guidance in identifying areas of operation and revenue cycle improvement. Wyckoff is a safety net hospital and has been receiving ongoing state support for operations under New York State's Vital Access Provider Assurance Program (VAPAP) and Value Based Payment Quality Improvement Program (VBP-QIP). During SFY 2016-17 Wyckoff received $65M in state support ($15M from VAPAP and $50M from VBP-QIP). Funding during SFY 2017-18 was increased to $70,000,000 from VBP-QIP and maintained at that level for SFYs 2018-19 and 2019-20.

BFA Attachments A and B are Wyckoff's 2017 and 2018 certified financial statements and their internal financial statements as of June 30, 2019, which show negative working capital and negative net assets. In 2017 and 2018 the excess of total revenue over expenses before other charges were $15,376,000 and $15,446,000, respectively. Through June 30, 2019 the facility had a net loss of $487,700 which included $35,000,000 grant from VBP-QIP.

Conclusion

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

Attachments

RNR Attachment A	Map
BFA Attachment A	Financial Statement Certified, Wyckoff Heights Medical Center 2017-2018 2020182018201820182015
BFA Attachment B	Financial Statement Internal, Wyckoff Heights Medical Center June 30, 2019

Public Health and Health Planning Council

Project # 192093-C
Lenox Health Greenwich Village

Program:	**Hospital**	***County:***	**New York**
Purpose:	**Construction**	***Acknowledged:***	**September 3, 2019**

Executive Summary

Description

Lenox Health Greenwich Village (LHGV), a two-bed division of Lenox Hill Hospital (LHH) located at 30 Seventh Avenue, New York, requests approval to certify Cardiac Catheterization – Percutaneous Coronary Intervention (PCI) and Electrophysiology (EP) services, transfer six medical/surgical beds from LHH, and perform requisite construction. Lenox Hill Hospital is a 632-bed, voluntary not-for-profit, Article 28 acute care hospital located at 100 East 77th Street, New York and a full-service cardiac surgery provider.

The cardiac suite and six-bed medical/surgical unit will be in approximately 13,030 square feet of vacant space on the 5th floor adjacent to the current imaging center. Existing shell space of approximately 10,070 square feet will be configured into the new cardiac suite with one catheterization lab and one hybrid OR and all required support spaces.

Northwell Healthcare, Inc. (HCI), whose sole corporate member is Northwell Health, Inc. (NHI), is the sole corporate member and co-operator of the entities within the Health System and is an integrated healthcare delivery network serving the residents of the greater New York Metropolitan Area. Northwell Healthcare, Inc. is the active parent and co-operator of LHH.

North Shore University Hospital, Long Island Jewish Medical Center (LIJ), LIJ Forest Hills, Plainview Hospital, Glen Cove Hospital, Southside Hospital, Staten Island University Hospital, Lenox Hill Hospital, Huntington Hospital and Northwell Health Stern Family Center for Rehabilitation are part of an Obligated Group for financing purposes. HCI is the sole corporate member of each of the entities in the Obligated Group and is itself a member of the Obligated Group. HCI is an established Article 28 entity and Active Parent for the Obligated Group members. The established Active Parent relationship has two components. The first component relates to HCI's authority regarding the assets and liabilities of the members of the Obligated Group in order for them to carry out their financial obligations as part of the Obligated Group. The second component is authority for delegation by the entities in the Obligated Group of additional decision-making authority to HCI.

OPCHSM Recommendation

Contingent Approval

Need Summary

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention (PCI) services to project a minimum of 36 emergency PCI procedures in year one of operation. Emergency PCI (E-PCI) includes any procedure not scheduled and not elective. Twenty-four facilities in the New York Region currently provide PCI services. In 2018, 1,694 NY Region residents were treated outside of the HSA for currently defined emergency PCI procedures. The four NY Region applicants on the Public Health and Health Planning Council February Agenda that seek certification of Cardiac Catheterization-Percutaneous Coronary Intervention services all project, at minimum, 36 emergency PCI procedures in Year One.

There will be no negative impact due to the transfer of the six Medical/Surgical beds from Lenox Hill to Lenox Hill Greenwich Village.

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

LHH will finance the total project costs of $32,164,224 through accumulated funds of $2,915,376 and $26,238,381 DASNY tax-exempt bonds at 6.5% over a 30-year term. Shell space of $3,010,467 was already financed through accumulated funds under CON 111531.

Incremental	*(in Thousands)*	
	Year One	Year Three
Revenues	$8,162	$14,737
Expenses	17,677	19,641
Net Income/(Loss)	($9,515)	($4,904)

Enterprise	*(in Thousands)*	
	Year One	Year Three
Revenues	$1,434,760	$1,441,335
Expenses	1,365,763	1,367,728
Net Income/(Loss)	$68,997	$73,607

Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

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

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 December 22, 2020 and construction must be completed by December 21, 2021, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The Policies & Procedures of the Cardiac Surgical Affiliate must be incorporated as the applicant's policies & procedures. [HSP]
4. Financing is conditioned upon the Department having the opportunity to review the final financing proposal in advance to ensure it meets approval standards. [BFA]
5. 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
February 6, 2020

Need Analysis

Project Description
Lenox Health Greenwich Village is seeking approval to certify Cardiac Catheterization-Percutaneous Coronary Intervention services and Electrophysiology services, transfer six medical/surgical beds from Lenox Hill Hospital, and perform requisite construction.

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention (PCI) services to project a minimum of 36 emergency PCI procedures in year one of operation. Emergency PCI (E-PCI) includes any procedure not scheduled and not elective. Twenty-four facilities in the New York Region currently provide PCI services. In 2018, 1,694 NY Region residents were treated outside of the HSA for currently defined emergency PCI procedures. The four NY Region applicants on the Public Health and Health Planning Council February Agenda that seek certification of Cardiac Catheterization-Percutaneous Coronary Intervention services all project, at minimum, 36 emergency PCI procedures in Year One.

Analysis
Please refer to **RNR Attachment A** for:
- The distribution of NY Region applicants with projected Year One and Year Three emergency PCIs (E-PCIs).
- The display of 2018 E-PCIs performed at existing NY Region facilities.
- The display of county-specific outmigration: Region residents receiving E-PCI treatment outside vs. inside their home region.

Table 1: 2018 Emergency PCI's Migration of NY Region Residents: County-Specific Location of Treatment.						
Resident Out-Migration	**Bronx**	**New York**	**Queens**	**Kings**	**Richmond**	**Total**
County Residents Treated All Locations	2,240	2,461	4,806	4,550	990	15,047
County Residents Receiving Emergency PCI Treatment in NYC	2,162	2,409	3,356	4,454	972	13,353
County Residents Leaving NYC for Emergency PCI Treatment	78	52	1,450	96	18	1,694

New York Region residents received 15,047 emergency PCI treatments in 2018. Of these, 13,353 procedures were performed within NYC and 1,694 were performed out of the region.

Table 2: 2018 Emergency PCI's Performed on NY Region Residents: By County, By Operational NY Region Facilities						
Operational NY Region Facility	**Bronx**	**New York**	**Queens**	**Kings**	**Richmond**	**Total**
Bronx Care Health System	164	6	2	2	0	174
Montefiore Med Center - Jack D Weiler	533	13	2	4	0	552
Montefiore Medical Center - Henry & Lucy Moses Div.	559	15	7	2	0	583
SBH Health System	109	2	2	1	0	114
Brookdale Hospital Medical Center	1	1	9	153	0	164
Brooklyn Hospital Center - Downtown Campus	1	2	5	82	0	90
Maimonides Medical Center	1	10	24	1,113	42	1,190
New York-Presbyterian Brooklyn Methodist Hospital	11	3	64	577	11	666
NYU Langone Hospital-Brooklyn	34	225	247	251	35	792

Table 2: 2018 Emergency PCI's Performed on NY Region Residents: By County, By Operational NY Region Facilities						
Operational NY Region Facility	**Bronx**	**New York**	**Queens**	**Kings**	**Richmond**	**Total**
University Hospital of Brooklyn	0	1	6	336	1	344
Bellevue Hospital Center	98	72	60	65	1	296
Lenox Hill Hospital	110	341	384	333	13	1,181
Mount Sinai Beth Israel	43	392	184	473	25	1,117
Mount Sinai Hospital	152	371	484	395	60	1,462
Mount Sinai St. Luke's	98	448	90	138	6	780
New York-Presbyterian Hospital - Columbia Presbyterian	193	275	44	74	16	602
New York-Presbyterian Hospital - New York Weill Cornell	39	210	85	110	16	460
NYU Langone Hospitals	4	0	8	246	11	269
Elmhurst Hospital Center	2	6	302	7	1	318
Jamaica Hospital Medical Center	2	2	252	27	0	283
Long Island Jewish Medical Center	3	1	465	17	1	487
New York-Presbyterian/Queens	5	11	630	26	2	674
Richmond University Medical Center	0	0	0	7	153	160
Staten Island University Hosp-North	0	2	0	15	578	595
Total	2,162	2,409	3,356	4,454	972	13,353

Table 3: Applicant Facilities: Projected Emergency PCI's*				
			Projected Emergency PCIs	
Project	**Facility**	**County**	**Year One**	**Year Three**
151185	Wyckoff Heights Medical Center	Kings	50	75
182006	Coney Island Hospital	Kings	148	170
192063	Jacobi Medical Center	Bronx	70	80
192093	Lenox Health Greenwich Village	New York	59	63

**Based on the transfer of Acute Myocardial Infarction with and without complications*

Lenox Health Greenwich Village projects 59 emergency and 165 total PCI procedures by Year One and 63 emergency and 218 total PCI procedures by Year Three of operation.

By providing PCI-capable Cardiac Catherization services, Lenox Health Greenwich Village anticipates achieving the following goals:

- Improve access to cardiac services in the service area.
- Enhance timely access to high quality emergency and elective cardiac services for residents in the service area.
- Improve continuum of care through the addition of 6 medical surgical beds.

Bed Transfer

LHGV requests approval for an inter-divisional transfer of six medical/surgical beds from Lenox Hill Hospital to support the cardiac catheterization program.

Lenox Hill Hospital			
Bed Type	**Current**	**Change**	**Proposed**
AIDS	12		12
Coronary Care	27		27
Intensive Care	15		15
Maternity	33		33
Medical/Surgical	476	-6	470
Neonatal Continuing Care	10		10
Neonatal Intensive Care	10		10
Neonatal Intermediate Care	8		8
Pediatric	14		14
Psychiatric	27		27
Total	632	-6	626

Lenox Hill Greenwich Village			
Bed Type	**Current**	**Change**	**Proposed**
Medical / Surgical	2	6	8

Source: HFIS 2019

Lenox Hill Hospital's medical/surgical utilization was 45.8% for 2017 and 47.1% for 2018. There will be no negative impact on LHH due to the transfer of the six medical/surgical beds from to Lenox Hill Greenwich Village.

Program Analysis

Program Description

The proposed program will operate with clinical oversight from Lenox Hill Hospital in accordance with the terms of an executed clinical sponsorship agreement. Lenox Hill is a 632-bed facility located at 100 East 77th Street In New York (New York County) and is a full-service cardiac surgery provider.

After completion of the project, LHGV will be approved to provide the following services:

- Cardiac Catheterization – Percutaneous Coronary Intervention (PCI)
- Cardiac Catheterization – Electrophysiology (EP)

The Applicant has submitted a written plan that demonstrates their ability to comply with all of the standards for PCI Capable Cardiac Catheterization Laboratories and Cardiac Electrophysiology (EP) and they have assured the Department that their program will meet all of the requirements of 405.29(e)(1-3) and 405.29(e)(5).

Staffing is expected to increase by 72.5 FTEs in the first year after completion and by 72.7 FTEs the third year of operation.

Compliance with Applicable Codes, Rules and Regulations

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

Prevention Agenda

Lenox Hill Hospital states that the proposed project will further advance the *Prevent Chronic Diseases* priority area of the *Prevention Agenda 2019-2024* by improving timely access to high-quality treatment and management of cardiac disease within a clinical setting. Cardiac intervention services provided to patients in LHGV would fall within the wider continuum of high-quality cardiac care that all Northwell Health patients have access to within its network for providers. The applicant states that the proposed project will focus on reducing and preventing chronic disease in order to support the Prevention Agenda Goal 4.2 (*Increase early detection of cardiovascular disease, diabetes, prediabetes and obesity*). In keeping with the wider aim of minimizing and preventing chronic disease, Northwell Health specializes in early detection, treatment and prevention of heart disease, providing a full range of state-of-the-art preventive cardiology care designed to:

- Reduce the risk of heart disease, heart attack and stroke
- Reduce the need for cardiac surgery and intervention, and
- Provide comprehensive heart disease risk assessment and treatment options including nutritional assessment, lifestyle counseling and when necessary, medication or other interventions to improve health

The applicant provides an extensive list of interventions to address the New York State Prevention Agenda goal of *Preventing Chronic Disease*, including the focus areas of *Healthy Eating, Physical Activity, Chronic Disease Preventive Care and Management, and Tobacco Use Prevention, and also Prevent Mental Health and Substance Use Disorders and Maternal & Women's Health.* These initiatives also address the New York State Prevention Agenda overarching goal of improving health status and reducing health disparities.

Lenox Hill Hospital states that they have engaged local community partners in their Prevention Agenda initiatives. But they do not describe working with the NYCDOHMH in the community needs assessment or planning efforts. They cite indicators from the Prevention Agenda Dashboard that they are tracking to measure progress toward achieving local Prevention Agenda goals:

- Age-adjusted preventable hospitalization rate per 10,000 – Aged 18+ years
- Percentage of cigarette smoking among adults
- Premature deaths: Ratio of Hispanics to White non-Hispanics
- Preventable hospitalizations: Ratio of Black non-Hispanic to White non-Hispanic
- Preventable hospitalizations: Ratio of Hispanics to White non-Hispanics
- Rate of hospitalizations for short-term complications of diabetes per 10,000 – Aged 18+ years

In 2017 the applicant spent $2,096,124 on community health improvement services, representing 0.172% of total operating expenses.

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 Costs

Total project costs for new construction and the acquisition of movable equipment is estimated at $32,164,224, broken down as follows:

New Construction	$19,094,000
Design Contingency	805,000
Construction Contingency	805,000
Planning Consultant Fees	322,000
Architect/Engineering Fees	1,288,000
Construction Manager Fees	495,000
Other Fees (Consultant)	805,000
Movable Equipment	6,005,000
Telecommunications	975,000
Financing Costs	1,392,299
Application Fee	2,000
Additional Processing Fee	175,925
Total Project Cost	$32,164,224

Project costs are based on a construction start date of December 22, 2020, and a 12-month construction period. Shell space of $3,010,467 was already financed through accumulated funds under CON 111531. The remainder will be initially funded with Northwell Health Obligated Group equity with the prospect that the project will be 90% financed as part of a future Northwell Health Obligated Group tax-exempt bond financing through the Dormitory Authority, as follows: LHH will finance $2,915,376 through accumulated funds and $26,238,381 DASNY tax-exempt bonds at 6.5% over a 30-year term. Financing is conditioned upon the Department having the opportunity to review the final financing proposal in advance to ensure it meets approval standards. A bank letter of interest from Citibank has been submitted by the applicant.

Total Operating Budget

The applicant has submitted an incremental operating budget in 2020 dollars, summarized below:

	Year One		Year Three	
	Per Disch	Total	Per Disch	Total
Inpatient Revenues				
Commercial MC	$35,571	$3,272,529	$37,990	$4,178,874
Medicare FFS	$14,759	1,047,871	$15,380	1,338,086
Medicare MC	$17,501	980,048	$18,137	1,251,479
Medicaid FFS	$12,908	232,337	$14,128	296,684
Medicaid MC	$12,131	776,361	$12,710	991,379
Private Pay	$9,216	304,114	$9,472	388,340
Total Inpt Rev		$6,613,260		$8,444,842
Outpatient Revenues	Per Visit	Total	Per Visit	Total
Commercial MC	$7,490	$838,903	$8,478	$3,408,221
Medicare FFS	$3,952	284,552	$4,429	1,156,053
Medicare MC	$4,364	266,198	$4,872	1,081,484
Medicaid FFS	$788	1,576	$915	6,404
Medicaid MC	$2,250	135,025	$2,540	548,567
Private Pay	$4,510	22,551	$4,581	91,619
Total Outpt Rev		$1,548,805		$6,292,348
Total Net Pt. Rev		$8,162,065		$14,737,190

	Year One		Year Three	
	Per Disch	Total	Per Disch	Total
Expenses				
Operating		$13,976,481		$15,987,492
Capital		3,701,014		$3,653,989
Total Expenses		$17,677,495		$19,641,481
Net Income/(Loss)		($9,515,430)		($4,904,291)
Inpatient Disch.		334		406
Outpatient Visits		312		1,128
Average Cost per Procedure		$27,365		$12,804

Utilization for Year One and Year Three is as follows:

	Inpatient		Outpatient	
Payor	First Year	Third Year	First Year	Third Year
Commercial MC	27.50%	27.10%	35.90%	35.70%
Medicare FFS	21.21%	21.40%	23.10%	23.10%
Medicare MC	16.83%	17.00%	19.60%	19.70%
Medicaid FFS	5.40%	5.20%	0.60%	0.60%
Medicaid MC	19.20%	19.20%	19.20%	19.10%
Private Pay	9.90%	10.9%	1.60%	1.80%

Northwell Healthcare, Inc. has submitted an affidavit from the CFO stating that they are willing to absorb the net operational losses for Year One and Year Three. BFA attachment D shows sufficient funds. Expense and utilization assumptions are based on the historical experience of Lenox Hill Hospital.

Capability and Feasibility

Total project cost of $32,164,224 will be funded through accumulated funds of $2,915,376 and $26,238,381 DASNY tax-exempt bonds at 6.5% over a 30-year term. Shell space of $3,010,467 was already financed through accumulated funds under CON 111531. Presented as BFA Attachment A is the 2018 certified financial statements of Lenox Hill Hospital, which indicates the availability of sufficient resources for this project.

The hospital projects a deficit of revenues over expenses of $9,515,430 and $4,904,291 in the first and third year, respectively related to this service line. The hospital, however, projects an enterprise-level excess of revenues over expenses of $68,997,212 and $73,608,351 in the first and third year, respectively. The budget appears reasonable.

As shown on BFA Attachment A, Northwell Health, Inc. has maintained positive working capital, positive net asset position, and a net operating income of $134,395,000 during 2018. As shown on BFA Attachment B, the hospital has maintained positive working capital, positive net asset position, and a net operating income of $77,182,000 during 2018. As shown on BFA Attachment C, Northwell Health, Inc. has maintained positive working capital, positive net asset position, and a net operating income of $69,872,000 as of June 30, 2019. As shown on BFA Attachment D, the hospital has maintained positive working capital, positive net asset position, and a net operating income of $28,930,000 as of June 30, 2019.

Conclusion

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

Attachments

RNR Attachment A	Map
BFA Attachment A	2018 Consolidating Certified Financial Statements of Northwell Health, Inc.
BFA Attachment B	2018 Certified Financial Statements, Northwell Health Obligated Group and Lenox Hospital
BFA Attachment C	June 30, 2019 Consolidating Internal Financial Statements, Northwell Health, Inc.
BFA Attachment D	June 30, 2019 Internal Financial Statements, Northwell Health Obligated Group and Lenox Hospital
BFA Attachment E	Northwell Organization Chart

Public Health and Health Planning Council

Project # 172332-C
Plainview Hospital

Program:	**Hospital**	***County:***	**Nassau**
Purpose:	**Construction**	***Acknowledged:***	**December 4, 2017**

Executive Summary

Description

Plainview Hospital (Plainview), a 204-bed, voluntary not-for-profit, Article 28 acute care community hospital located at 888 Old County Road, Plainview (Nassau County), requests approval to certify Cardiac Catheterization – Percutaneous Coronary Intervention (PCI) and Cardiac Catheterization – Electrophysiology (EP) services, with requisite renovations to construct a cardiac catherization suite. The proposed program will be operated with clinical oversight from North Shore University Hospital (NSUH) in accordance with the terms of an executed clinical service agreement. NSUH, a 756-bed, quaternary care hospital located at 300 Community Drive, Manhasset (Nassau County), is a full-service cardiac surgery center that provides PCI and cardiac surgery services. Both hospitals are members of Northwell Health, Inc., a not-for-profit corporation, and are co-operated by Northwell Healthcare, Inc., whose sole corporate member and passive parent is Northwell Health, Inc.

This proposed cardiac catheterization suite will include two catheterization lab procedure rooms (a PCI-capable room and a dual-purpose EP procedure room) and a seven-bay Prep/Recovery area with requisite support spaces. The project provides that an unused cardiac catherization lab at Long Island Jewish Medical Center (LIJMC) will be "transferred" to Plainview and de-commissioned at LIJMC. LIJMC, which is also part of Northwell Health, Inc., and NSUH will redirect their existing cardiac intervention patient volume originating from Plainview's service area to Plainview, alleviating the burgeoning capacity constraints at LIJMC and NSUH. Plainview will become the regional destination for patients requiring PCIs allowing residents of the community to benefit from local access to cardiac intervention treatments provided by the experienced cardiac interventionists of Northwell Health.

OPCHSM Recommendation

Contingent Approval

Need Summary

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention (PCI) services to project a minimum of 36 emergency PCI procedures in year one of operation. Emergency PCI (E-PCI) includes any procedure not scheduled and not elective. Twelve facilities in the Long Island Region currently provide PCI services. In 2018, 503 Long Island Region residents were treated outside of the HSA for currently defined emergency PCI procedures. The four Long Island Region applicants on the Public Health and Health Planning Council February 2020 Agenda that seek certification of Cardiac Catheterization-Percutaneous Coronary Intervention services all project, at minimum, 36 emergency PCI procedures in Year One.

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 $17,506,164 will be funded with $1,750,616 in equity with the balance due of the $15,755,548 to be financed via tax-exempt bonds issued through the Dormitory Authority of the State of New York (DASNY). Citigroup has provided a letter of interest to underwrite the bond financing at 6.5% interest for a 30-year term.

Incremental Budget	First Year	Third Year
Revenues	$8,410,300	$9,461,500
Expenses	$8,751,400	$9,422.200
Net Income/(Loss)	($341,100)	$39,300

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a 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 loan commitment, acceptable to the Department of Health. [BFA]
3. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 2.18 LSC Chapter 18 Healthcare Facilities Public Use, for review and approval. [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 April 15, 2020 and construction must be completed by January 15, 2021, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. [PMU]
3. The 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

February 6, 2020

Need Analysis

Background

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention (PCI) services to project a minimum of 36 emergency PCI procedures in year one of operation. Emergency PCI (E-PCI) includes any procedure not scheduled and not elective. Twelve facilities in the Long Island (LI) Region currently provide PCI services. In 2018, 503 Long Island Region residents were treated outside of the HSA for currently defined emergency PCI procedures. The four LI Region applicants on the Public Health and Health Planning Council February 2020 Agenda that seek certification of Cardiac Catheterization-Percutaneous Coronary Intervention services all project, at minimum, 36 emergency PCI procedures in Year One.

Analysis

Please refer to **RNR Attachment B** for:

- The distribution of LI Region applicants with projected Year-One and Year-Three E-PCIs.
- The display of 2018 E-PCIs performed at existing LI Region facilities.
- The display of county-specific migration: LI Region residents receiving E-PCI treatment outside vs. inside their home region.

Table 1: 2018 Emergency PCI's Migration of Long Island Region Residents: County-Specific Location of Treatment			
Resident Migration	**Nassau**	**Suffolk**	**Total**
County Residents Treated All Locations	3,718	4,731	8,449
County Residents Receiving Emergency PCI Treatment on LI	3,372	4,574	7,946
County Residents Leaving LI for Emergency PCI Treatment	346	157	503

Long Island Region residents received 8,449 emergency PCI treatments in 2018. Of these, 7,946 procedures were performed within Long Island and 503 were performed out of the region.

Table 2: 2018 Emergency PCI's Performed on Long Island Region Residents: By County, By Operational Long Island Region Facilities			
Operational Long Island Region Facility	**Nassau**	**Suffolk**	**Total**
Mount Sinai South Nassau	424	9	433
North Shore University Hospital	985	177	1,162
NYU Winthrop Hospital	673	245	918
St Francis Hospital	1,162	418	1,580
Good Samaritan Hospital Medical Center	57	735	792
Huntington Hospital	26	435	461
Long Island Community Hospital	1	359	360
Peconic Bay Medical Center	1	128	129
Southside Hospital	21	688	709
St Catherine of Siena Hospital	5	200	205
University Hospital	16	1,121	1,137
University Hospital - Stony Brook Southampton Hospital	1	59	60
Total	3,372	4,574	7,946

Table 3: Applicant Facilities: Projected Emergency PCI's				
			Projected Emergency PCIs	
Project	Facility	County	Year One	Year Three
172332	Plainview Hospital	Nassau	113	127
191306	St. Joseph Hospital	Nassau	36	36
191308	Mercy Medical Center	Nassau	36	36
182119	John T Mather Memorial Hospital	Suffolk	60	73

Plainview Hospital has projected 113 emergency and 365 total PCI procedures by Year One and 127 emergency and 411 total PCI procedures by Year Three of operation. By providing PCI-capable Cardiac Catheterization services, Plainview Hospital anticipates achieving the following goals:

- Ensure local access for an underserved service area.
- Reduce the time needed for transportation.
- Enhance timely delivery of high-quality emergency and elective cardiac services.

Program Analysis

Project Proposal

The proposed program will be coordinated (via an executed clinical sponsorship) with North Shore University Hospital (North Shore), a 738-bed acute care hospital located on 300 Community Drive, Manhasset (Nassau County), that offers a full-service cardiac surgery center and is also a member of Northwell Health. North Shore University Hospital will facilitate integration of expertise and resources for the cardiac catheterization laboratory located at Plainview Hospital and will provide clinical oversight and support, ongoing education and training, and quality oversight. Further, all existing policies and procedures currently in place at North Shore University Hospital will be incorporated into the operation of the lab at Plainview Hospital and patients who require surgery will be transferred to North Shore University Hospital.

After completion of the project, Plainview Hospital will be approved to provide the following services:

- Cardiac Catheterization – Percutaneous Coronary Intervention (PCI)
- Cardiac Catheterization – Electrophysiology (EP)

The Applicant has submitted a written plan that demonstrates their ability to comply with all of the standards for PCI Capable Cardiac Catheterization Laboratories and electrophysiology services and they have assured the Department that their program will meet all of the requirements of 405.29(e)(1), 405.29(e)(2) and 405.29(e)(5).

Compliance with Applicable Codes, Rules and Regulations

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

Prevention Agenda

Plainview Hospital states that the proposed project will advance the *Prevent Chronic Diseases* priority area of the *Prevention Agenda 2019-2024* by increasing access to high-quality chronic disease treatment, prevention, and management in both clinical and community settings with the use of evidence-based best practices. The applicant states that the proposed project will advance all four *Prevent Chronic Diseases* focus areas:

- Healthy Eating and Food Security
- Physical Activity
- Tobacco Prevention
- Preventive Care and Management

However, Plainview Hospital does not explain how healthy eating, food security, physical activity, or tobacco prevention in their community would be improved by a cardiac catheterization lab.

The applicant provides examples of interventions that Northwell Health is implementing to support Prevention Agenda goals, including:

- The Heart Healthy Living Program
- Women's Heart Health Program
- Go Red for Women
- National Diabetes Prevention Program
- Center for Tobacco Control

The applicant states that Northwell Health and Plainview Hospital engaged local community partners in their Prevention Agenda efforts, such as the Long Island Health Collaborative, the American Heart Association, and the Community Outreach and Health Education Council. Plainview Hospital cites indicators from the Prevention Agenda Dashboard that it tracks to measure progress toward achieving local Prevention Agenda goals, including:

- Percentage of adults who are obese
- Percentage of cigarette smoking among adults
- Age-adjusted heart attack hospitalization rate per 10,000
- Rate of hospitalizations for short-term complications of diabetes per 10,000 Aged 18+ years

In 2017 the applicant spent $283,726 on community health improvement services, representing 0.128% of total operating expenses.

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

Clinical Services Agreement

The applicant has submitted an executed Clinical Services Agreement for Cardiac Surgery Center services and Cardiac Catheterization Laboratory services as follows:

Execution Date	October 1, 2019
Service Provider:	North Shore University Hospital (NSUH)
Facility Operator:	Plainview Hospital
Services rendered:	NSUH will provide back-up to laboratory patients who require Cardiac Surgery Center Services; quality improvement program; inclusion in Northwell's interventional database; training for personnel on the database; participate in a joint annual study on financial impact; involvement in research studies; inclusion in registries and database; quality assurance activities and coverage in labs for 365 days per year, 24 hours per day and ongoing education and training.
Term:	Five years with unlimited 1-year renewals each year thereafter.

Plainview became a member of Northwell Health in 1994. As Plainview and NSUH are both members of Northwell Health, Inc., there are no fees associated with the clinical services agreement.

Total Project Cost and Financing

Total project cost for renovations and movable equipment, is estimated at $17,506,164 broken down as follows:

Renovation & Demolition	$6,844,754
Asbestos Abatement or Removal	$160,000
Design Contingency	$684,475
Construction Contingency	$684,475
Planning Consultant Fees	$112,670
Architect/Engineering Fees	$350,000
Construction Manager Fees	$312,250
Other Fees	$241,500
Movable Equipment	$6,777,000
Telecommunications	$405,250
Financing Costs	$836,044
Application Fee	$2,000
Processing Fee	$95,746
Total Project Cost	$17,506,164

Project costs are based on a construction start date of April 15, 2020, and an eight-month construction period. The applicant's financing plan appears as follows:

Equity	$1,750,616
DASNY Tax-Exempt Bonds (6.5% interest, 30-year term)	$15,755,548
Total	$17,506,164

Citigroup has provided a letter of interest to underwrite the DASNY tax-exempt bonds at 6.5% interest for a 30-year term in the amount not to exceed $16,575,000.

Operating Budget

The applicant has submitted incremental operating budgets, in 2020 dollars, for the first and third years, as summarized below:

	Year One		Year Three	
Inpatient Revenues	Per Discharge	Total	Per Discharge	Total
Comm - MC	$44,046	$1,541,600	$43,353	$1,734,100
Medicare - FFS	$20,529	$2,607,200	$20,512	$2,933,200
Medicare - MC	$19,043	$761,700	$19,477	$857,000
Medicaid - FFS	$24,600	$123,000	$23,067	$138,400
Medicaid - MC	$16,833	$101,000	$16,229	$113,600
Private Pay	$650	$2,600	$725	$2,900
Total Inpatient Revenue		$5,137,100		$5,779,200
Outpatient Revenues	Per Visit	Total	Per Visit	Total
Comm - MC	$16,480	$1,384,300	$16,567	$1,557,300
Medicare - FFS	$6,772	$1,435,600	$6,786	$1,615,100
Medicare - MC	$4,601	$349,700	$4,573	$393,300
Medicaid - FFS	$2,644	$23,800	$2,690	$26,900
Medicaid - MC	$3,769	$60,300	$3,767	$67,800
Private Pay	$2,167	$19,500	$2,190	$21,900
Total Outpatient Revenue		$3,273,200		$3,682,300
Total Revenue		$8,410,300		$9,461,500
Inpatient Expenses	Per Discharge	Total	Per Discharge	Total
Operating	$17,199.54	$3,732,300	$17,015.16	$4,151,700
Capital	$6,997.70	$1,518,500	$6,154.10	$1,501,600
Total Inpatient Expense	$24,197.24	$5,250,800	$23,169.26	$5,653,300
Outpatient Expenses	Per Visit	Total	Per Visit	Total
Operating	$6,128.57	$2,488,200	$6,056.46	$2,767,800
Capital	$2,493.60	$1,012,400	$2,190.59	$1,001,100
Total Outpatient Expense	$8,622.17	$3,500,600	$8,247.05	$3,768,900
Total Expense		$8,751,400		$9,422,200
Net Income/(Loss)		($341,100)		$39,300
Total Discharges		217		244
Total Visits		406		456
Total Procedures		623		700
Avg Cost Per Proc.		$14,047		$13,460

Projected inpatient and outpatient utilization by payor source, for the first and third years, is as follows:

	Year One		Year Three	
Inpatient	Disch.	%	Disch.	%
Comm MC	35	16.13%	40	16.39%
Medicare FFS	127	58.53%	143	58.61%
Medicare MC	40	18.43%	44	18.03%
Medicaid FFS	5	2.30%	6	2.46%
Medicaid MC	6	2.76%	7	2.87%
Private Pay	4	1.85%	4	1.64%
Total	217	100.0%	244	100.0%

	Year One		Year Three	
Outpatient	Visits	%	Visits	%
Comm MC	84	20.69%	95	20.79%
Medicare FFS	212	52.22%	238	52.08%
Medicare MC	76	18.72%	86	18.82%
Medicaid FFS	9	2.22%	10	2.19%
Medicaid MC	16	3.93%	18	3.93%
Private Pay	9	2.22%	10	2.19%
Total	406	100.0%	457	100.0%

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

- Revenue, expense and utilization assumptions are based on the experience of existing cardiac catheterization lab programs within the System.
- In particular, the applicant looked at the experience of developing the cardiac program at other Northwell hospitals and adjusted for the projected volume and patient utilization at Plainview.
- The expense assumptions are based upon the DRG detail carriable Direct cost. Once the variable direct costs are calculated, overhead costs are developed using the experience of the hospital staff.
- Depreciation and interest expense are based on estimated capital costs, are added to calculate the total cost.

Capability and Feasibility

Total project costs of $17,506,164 will be funded with $1,750,616 equity and DASNY tax-exempt bond funding in the amount not to exceed $16,575,000 ($15,755,548 required for this project). Citigroup has provided a letter of interest to underwrite the bond financing at 6.5% interest for a 30- year term. BFA Attachment A is the certified financial statements of Northwell Health, Inc. for 2017-2018 and their internal financial statements as of June 30, 2019, which indicates the availability of sufficient resources for this project.

The submitted budget represents the incremental budget related to the proposed PCI capable cardiac catheterization and EP suite. The budget projects a net loss for the cardiac services for the first year of $341,100 and a net income for the third year of $39,300. Revenues are based on prevailing payment methodologies and current payment rates. The loss in the first year will be covered by the operations of Northwell Health, Inc. The budget is reasonable.

The certified and internal financial statements of Northwell Health, Inc. (BFA Attachment A) indicate the availability of sufficient resources to meet equity requirements and maintain the current project. As shown, Northwell Health Inc. has maintained positive working capital and net asset positions for all periods and had an average net income of $158,569,500 for 2017-2018, and $393,014,000 for the period ending June 30, 2019.

Conclusion

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

Attachments

RNR Attachment B	Map
BFA Attachment A	Northwell Health Inc. 2017-2018 certified and 2019 internal financial statements as of June 30, 2019
BFA Attachment B	Northwell Health Inc. Organizational Chart

Public Health and Health Planning Council

Project # 192159-C
Chautauqua Hospice and Palliative Care

Program:	**Hospice**	***County:***	**Chautauqua**
Purpose:	**Construction**	***Acknowledged:***	**September 30, 2019**

Executive Summary

Description
Chautauqua Hospice and Palliative Care (CHPC), a voluntary not-for-profit, Article 40 Hospice with administrative offices located at 20 West Fairmont Avenue, Lakewood (Chautauqua County), requests approval to acquire and renovate adjoining property to certify a five-bed hospice residence. On March 30, 2019, CHPC entered into a Contract for Sale of Real Property with Bender Irrevocable Asset Carol L. to acquire the property and existing structure (a single-family house of approximately 2,516 square feet) located at 32 Fairmount Avenue for a purchase price of $140,000. Closing of the sale is contingent upon approval of this application by the Public Health and Health Planning Council (PHHPC). The property will be renovated, expanded and furnished to provide a five-bed hospice residence with supporting facilities (kitchen, dining room, living room, laundry, office and other support space).

CHPC is the only Medicare-certified hospice provider in Chautauqua County. In 2018, CHPC served 554 patients and their families providing a total of 30,501 days of care of which 30,358 days were routine home care days. CHPC must often help place patients in skilled nursing facilities when there is no active caregiver or when the patient's home is not safe or appropriate for end of life care. Patients would prefer to remain at home or in a more home-like setting; however, there is often no current alternative to placing or referring a patient to a nursing facility. The addition of the proposed hospice residence will assist with placements, allowing patients to receive their end of life care in a home-like setting.

OPCHSM Recommendation
Contingent Approval

Need Summary
The five-bed hospice residence will allow patients to receive hospice care in a home-like setting. Approval of this application, will not impact the continued unmet need for additional inpatient and dually certified hospice beds in Chautauqua County.

Program Summary
Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance.

Financial Summary
Total project cost of $925,803 will be financed via fundraising of $500,803, a $25,000 Community Special Projects Grant from the Chautauqua Region Community Foundation, and a $400,000 grant from the Lenna Foundation. Letters of intent to award the grant funds have been provided. The fundraising campaign is underway with $14,650 documented as having been raised as of November 7, 2019.

Budget	Year One	Year Three
Revenues	$501,882	$603,009
Expenses	574,211	584,248
Gain/(Loss)	($72,329)	$18,761

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 4006(9)(b) states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of thirty hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of documentation of receipt of the fundraising proceeds, acceptable to the Department of Health. [BFA]
3. Submission of documentation of receipt of grant funding from the Lenna Foundation and the Chautauqua Region Community Foundation, acceptable to the Department of Health. [BFA]

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 May 1, 2020 and construction must be completed by December 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 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. [AES]

Council Action Date

February 6, 2020

Need and Program Analysis

Proposal

Chautauqua Hospice and Palliative Care, an existing Article 40 hospice located at 20 West Fairmount Avenue, Lakewood, New York 14750, is seeking approval to certify a five-bed hospice residence, with supporting facilities. The Agency is currently certified to serve Chautauqua County.

Chautauqua Hospice and Palliative Care is committed to helping people remain in their homes, but often has to help place patients in skilled nursing facilities when there is no active caregiver or when the patient's home is not a safe or appropriate environment for end-of-life care. CHPC proposes to acquire and renovate a home located at 32 West Fairmount Avenue, Lakewood, New York 14750, which adjoins the current site of the CHPC administrative offices. By opening this unit, CHPC will be able to help patients meet their life closure goals of remaining in a home-like setting and avoid nursing home or hospital admissions.

In addition to renovating the home, the applicant also intends to add a 2,400 square foot addition. This space would be furnished and equipped to provide four residential units. The fifth residential unit will be located on the lower level of the house, which will also include laundry and other support service space. The applicant intends to construct a walkway or other means of connection in order to attach the proposed residential unit to the hospice's current office building. Once completed, the residential space will include: separate bedroom facilities to accommodate patient's family members as well as staff, an upgraded living room to provide social space, a kitchen sufficient to provide on-site dining, food preparation and storage, as well as other conveniences to residents, family, and staff.

Chautauqua Hospice and Palliative Care offers the following services:

Services	
Audiology	Nutritional
Bereavement	Pastoral Care
Clinical Laboratory Service	Personal Care
Home Health Aide	Pharmaceutical Service
Homemaker	Physician Services
Housekeeper	Psychology
Inpatient Services	Therapy - Occupational
Medical Social Services	Therapy - Physical
Medical Supplies Equipment and Appliances	Therapy - Respiratory
Nursing	Therapy - Speech Language Pathology

Analysis

Hospice bed need regulations focus on inpatient hospice beds. Existing providers can construct and operate a residence with up to 16 beds with no need evaluation. Need is only a factor for new applicants, or if an existing provider is seeking inpatient or dually certified beds or more than 16 residence beds.

Chautauqua Hospice and Palliative Care reports they served 554 patients and their families in 2018, providing a total of 30,501 days of care of which 30,358 of the days of care provided were routine home care days.

The residence will be staffed with one Registered Nurse, one aide and one housekeeper on the dayshift, and with one Licensed Practical Nurse and one aide on the afternoon and night shifts. Additional staffing, including both professional and support staff, will be provided as needed.

Conclusion

The applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of patients in the proposed hospice residential setting.

Financial Analysis

Contract for Sale of Real Property Agreement

The applicant has submitted an executed sale/purchase agreement for the real property. The sale will close upon PHHPC approval. The sale terms are summarized below:

Date:	March 30, 2019
Premises:	Premises located at 32 Fairmount Avenue, Lakewood, New York.
Seller:	Bender Irrevocable Asset Carol L.
Purchaser:	Chautauqua Hospice and Palliative Care
Purchase Price:	$140,000
Payment of Purchase Price:	$2,000 deposited in escrow; $138,000 payable at Closing.

The applicant will fund the purchase via cash at closing.

Total Project Cost and Financing

Total project cost, which is for building acquisition, new construction and the acquisition of moveable equipment, is estimated at $925,803, further broken down as follows:

Building Acquisition	$140,000
New Construction	425,000
Renovation and Demolition	100,000
Design Contingency	52,500
Construction Contingency	31,250
Planning Consultant Fees	10,000
Architect/Engineering Fees	40,000
Moveable Equipment	120,000
CON Fees	2,000
Additional Processing Fee	5,053
Total Project Cost	$925,803

Project costs are based on a construction start date of May 1, 2020, and a seven-month construction period. The applicant has submitted a MAI appraisal of the property valued at $164,000 in support of the property acquisition. The cost is included at the lower of actual vs. MAI appraised value.

The applicant will finance the project via fundraising ($500,803) and grant proceeds from the Lenna Foundation ($400,000) and the Chautauqua Region Community Foundation ($25,000). Letters of intent to award the grants were provided. Upon PHHPC approval of this application, the Lenna Foundation will provide $400,000 via a pass-through fund at the Chautauqua Region Community Foundation and the Chautauqua Region Community Foundation will provide $25,000 directly to the Hospice. As of November 7, 2019, the applicant has received $14,650 of fundraising proceeds. As contingencies of approval, the applicant must submit documentation of receipt of the grant and fundraising proceeds.

Operating Budget

The applicant has submitted an incremental operating budget for the five beds, in 2020 dollars, during the first and third years, summarized below:

	Year One		Year Three	
Revenues	Per Day	Total	Per Day	Total
Medicare Routine Home Care	$155.54	$212,312	$155.54	$255,086
Medicaid Room and Board	$209.81	257,865	$209.82	309,690
Other Revenues		31,705		38,233
Total Revenues		$501,882		$603,009
Expenses				
Operating	$193.67	$502,068	$174.08	$511,305
Capital	27.81	72,143	23.73	73,943
Total Expenses	$221.48	$574,211	$197.81	$585,248
Excess Revenues		($72,329)		$17,761
Utilization				
Routine Home Care Days		1,365		1,640
Room and Board Days		1,229		1,476
Occupancy		74.70%		89.86%

Other revenues consist of rents from individuals not qualifying for room and board payments. However, it is anticipated that such patients will be eligible for a 75% discount based on income criteria. The hospice will utilize available funding from Northern Chautauqua Community Foundation to subsidize rent income.

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

Payor	Year One	Year Three
Medicaid	90%	90%
Private Pay	10%	10%

Capability and Feasibility

The total project cost of $925,803 will be met via fundraising proceeds of $525,803 and grants of $400,000. As of November 7, 2019, the applicant has received $14,650 of fundraising proceeds. As a contingency of approval, the applicant must submit documentation of receipt of fundraising proceeds and grant proceeds.

Working capital requirements are estimated at $102,728, which is equivalent to two months of third year expenses. The applicant will provide equity from operations to meet the working capital requirement. BFA Attachment A is the 2017 and 2018 certified financial statements of Chautauqua Hospice and Palliative Care, which indicates the availability of sufficient funds for the equity contribution.

The submitted budget projects an excess of revenues over expenses of ($72,329) and $17,761 during the first and third years, respectively. First-year losses will be offset via operations. The submitted budget appears reasonable.

As shown on BFA Attachment A, the entity had an average positive working capital position and an average positive net asset position from 2017 through 2018. Also, the entity achieved an excess of revenues over expenses of $338,174 from 2017 through 2018.

BFA Attachment B is the internal financial statements of Chautauqua Hospice and Palliative Care as of August 31, 2019. As shown, the entity had a positive working capital position and a positive net asset position through August 31, 2019.

000000000000000000000000000000000000000000000000Attachments

BFA Attachment A	Financial Summary - 2017 and 2018 Chautauqua Hospice and Palliative Care
BFA Attachment B	Financial Summary - August 31, 2019 internal financial statements of Chautauqua Hospice and Palliative Care

Public Health and Health Planning Council

Project # 182119-C
John T. Mather Memorial Hospital of Port Jefferson New York, Inc.

Program:	Hospital	*County:*	Suffolk
Purpose:	Construction	*Acknowledged:*	September 21, 2018

Executive Summary

Description

John T. Mather Memorial Hospital of Port Jefferson New York, Inc. (JT Mather or Mather), a 248-bed, voluntary not-for-profit, Article 28 acute care hospital located at 75 North Country Road, Port Jefferson (Suffolk County) that is part of the Northwell Health System, requests approval to certify, Cardiac Catheterization - Percutaneous Coronary Intervention (PCI) and Cardiac Catheterization - Electrophysiology (EP) services and perform renovations to create two cardiac catheterization labs. The applicant will renovate 3,644 sq. ft. (sf) of existing space adjacent to, and contiguous with, the Surgical Service area on the 2nd Floor (consisting of 60 sf on the 1st Floor and 3,584 sf on the 2nd Floor).

SPARCS data shows that there are a significant number of patients initially treated at JT Mather who were subsequently transferred emergently to a second hospital from which they were discharged with DRGs associated with diagnostic cardiac catheterizations, PCI procedures and EP procedures. Through this project, JT Mather will be able to provide these cardiac catheterization services directly, vastly improving the continuum of care to the residents of the hospital's service area.

Southside Hospital, a 305-bed, Article 28 acute care hospital located in Bay Shore (Suffolk County) that is co-operated by Northwell Healthcare, Inc., will serve as the back-up hospital for cardiac surgery. Southside and Northwell will work collaboratively with JT Mather to expand their quality and performance improvement program to include PCI and EP services. JT Mather and Southside Hospital are located 24.7 miles (39 minutes travel time) from one another.

Northwell Healthcare Inc., a not-for-profit corporation located in Nassau County, became the active parent and co-operator of JT Mather effective September 13, 2019 (CON 182124). Northwell Healthcare, Inc., whose sole corporate member is Northwell Health, Inc., a New York not-for-profit corporation, is an integrated health care delivery system consisting of hospitals, physician practices and providers of subacute care (including home care, long term care and hospice services) serving the residents of the greater New York Metropolitan Area.

OPCHSM Recommendation

Contingent Approval

Need Summary

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in year one of operation. Emergency PCI (E-PCI) includes any procedure not scheduled and not elective. Twelve facilities in the Long Island Region currently provide PCI services. In 2018, 503 Long Island Region residents were treated outside of the HSA for currently defined emergency PCI procedures. The four Long Island Region applicants on the Public Health and Health Planning Council February 2020

Agenda that seek certification of Cardiac Catheterization-Percutaneous Coronary Intervention services all project, at minimum, 36 emergency PCI procedures in Year One.

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

Project costs of $11,778,476 will be met with $1,177,848 in accumulated funds and bond financing for $10,600,628 at 6.5% for a 30-year term. Citigroup Global Markets, Inc. has provided a letter of interest to underwrite the bonds noting that if the financing is completed on a tax-exempt basis, the bonds will be issued through the Dormitory Authority of the State of New York (DASNY).

Incremental Budget	Year One	Year Three
Revenues	$14,953,500	$17,822,700
Expenses	12,520,900	13,901,400
Gain/(Loss)	$2,432,600	$3,921,300

Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management
Approval contingent upon:
1. Submission of a 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 the Bond and Note Resolution acceptable to the Department of Health. Included with the submission must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-02. [AER]
4. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [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 May 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 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
February 6, 2020

Need Analysis

Background

New York Title 10 Cardiac Services Regulation 709.14, effective September 25, 2019, requires facilities seeking to add percutaneous coronary intervention, PCI, services to project a minimum of 36 emergency PCI procedures in year one of operation. Emergency PCI (E-PCI) includes any procedure not scheduled and not elective. Twelve facilities in the Long Island Region currently provide PCI services. In 2018, 503 Long Island Region residents were treated outside of the HSA for currently defined emergency PCI procedures. The four Long Island Region applicants on the Public Health and Health Planning Council February 2020 Agenda that seek certification of Cardiac Catheterization-Percutaneous Coronary Intervention services all project, at minimum, 36 emergency PCI procedures in Year-One.

Analysis

Please refer to **RNR Attachment B** for:

- The distribution of Long Island Region applicants with projected Year-One and Year-Three emergency PCIs (E-PCIs).
- The display of 2018 E-PCIs performed at existing Long Island Region facilities.
- The display of county-specific migration: Long Island Region residents receiving E-PCI treatment outside vs. inside their home region.

Table 1: 2018 Emergency PCI's Migration of Long Island Region Residents: County-Specific Location of Treatment			
Resident Migration	**Nassau**	**Suffolk**	**Total**
County Residents Treated All Locations	3,718	4,731	8,449
County Residents Receiving Emergency PCI Treatment on LI	3,372	4,574	7,946
County Residents Leaving LI for Emergency PCI Treatment	346	157	503

Long Island Region residents received 8,449 emergency PCI treatments in 2018. Of these, 7,946 procedures were performed within Long Island and 503 were performed out of the region.

Table 2: 2018 Emergency PCI's Performed on Long Island Region Residents: By County, By Operational Long Island Region Facilities			
Operational Long Island Region Facility	**Nassau**	**Suffolk**	**Total**
Mount Sinai South Nassau	424	9	433
North Shore University Hospital	985	177	1,162
NYU Winthrop Hospital	673	245	918
St Francis Hospital	1,162	418	1,580
Good Samaritan Hospital Medical Center	57	735	792
Huntington Hospital	26	435	461
Long Island Community Hospital	1	359	360
Peconic Bay Medical Center	1	128	129
Southside Hospital	21	688	709
St Catherine of Siena Hospital	5	200	205
University Hospital	16	1,121	1,137
University Hospital - Stony Brook Southampton Hospital	1	59	60
Total	3,372	4,574	7,946

Table 3: Applicant Facilities: Projected Emergency PCI's				
			Projected Emergency PCIs	
Project	Facility	County	Year One	Year Three
172332	Plainview Hospital	Nassau	113	127
191306	St. Joseph Hospital	Nassau	36	36
191308	Mercy Medical Center	Nassau	36	36
182119	John T Mather Memorial Hospital	Suffolk	60	73

JT Mather has projected 60 emergency and 352 total PCI procedures by Year One and 73 emergency and 430 total PCI procedures by Year Three of operation. By providing PCI-capable Cardiac Cath services, Mather anticipates achieving of the following goals:

- Reduce inconvenience and travel time to patients who would have otherwise been transferred to another facility.
- Enhance access to PCI services for the under-served population of the area.

Program Analysis

Program Description

The program will be coordinated (via an executed clinical sponsorship) with Southside Hospital, a 300-bed acute care hospital on Bay Shore, Long Island (Suffolk County) that offers a full-service cardiac surgery center and is also a member of Northwell Health. Southside Hospital will facilitate integration of expertise and resources for the cardiac catheterization laboratory located at JT Mather Hospital and will provide clinical leadership, day-to-day supervision and quality oversight. Further, all existing policies and procedures currently in place at Southside Hospital will be incorporated into the operation of the lab at JT Mather and patients who require surgery will be transferred to Northwell Health Southside Hospital.

Upon completion of the project, Mather will be approved to provide the following services:

- Cardiac Catheterization – Percutaneous Coronary Intervention (PCI)
- Cardiac Catheterization – Electrophysiology (EP)

The Applicant has submitted a written plan that demonstrates their ability to comply with all of the standards for PCI Capable Cardiac Catheterization Laboratories and electrophysiology services and they have assured the Department that their program will meet all of the requirements of 405.29(e)(1), 405.29(e)(2) and 405.29(e)(5).

Compliance with Applicable Codes, Rules and Regulations

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

Prevention Agenda

The applicant provided examples of interventions that Northwell Health is implementing to support Prevention Agenda goals:

- Bridging Communities of Faith and Health
- Heart Smart Workshop
- "Are You Ready, Feet?" (AYRF)
- Cultural Competency and Health Literacy (CCHL) – "Train-the-Trainer"
- WomenHeart: The National Coalition for Women with Heart Disease
- Community programs and services

The applicant states that JT Mather and Northwell Health have engaged local community partners in their Prevention Agenda efforts, such as the Long Island Health Collaborative, the American Heart Association, and the Community Outreach and Health Education Council. They cite indicators from the Prevention Agenda Dashboard that they track to measure progress toward achieving local Prevention Agenda goals:

- Age-adjusted heart attack hospitalization rate per 10,000 population
- Rate of hospitalizations for short-term complications of diabetes per 10,000 - Aged 6-17 years
- Preventable hospitalizations: Ratio of Hispanics to White non-Hispanics

In 2017 the applicant spent $706,869 on community health improvement services, representing 0.196% of total operating expenses.

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 moveable equipment is estimated at $11,778,476 broken down as follows:

Renovation & Demolition	$ 3,759,405
Design Contingency	375,940
Construction Contingency	375,940
Planning and Consulting Fees	44,555
Architect/Engineering Fees	280,000
Construction Manager Fees	27,500
Other Fees (Consultant)	117,500
Movable Equipment	5,582,714
Telecommunications	586,000
Financing Costs	562,506
CON Application Fees	2,000
Additional Processing Fee	62,450
Total Project Cost	$11,778,476

Project costs are based on a construction start date of May 1, 2020 and a six-month construction period.

The applicant will finance the project through $1,177,848 in accumulated funds and a bond issuance for $10,600,628 at 6.5% for a 30-year term. Citigroup Global Markets, Inc. has provided a letter of interest to underwrite the bonds. If the financing is completed on a tax-exempt basis, the bonds will be issued through the DASNY. Northwell Healthcare, Inc. will provide capital financing for the project through a combination of available accumulated funds, charitable contributions and interim financing with bank revolving credits, in advance of DASNY bond financing.

BFA Attachment A shows sufficient accumulated funds for this project. The applicant has submitted a letter regarding financial support provided by Northwell Health, Inc.

Incremental Operating Budget

The applicant has submitted an incremental operating budget, in 2020 dollars, for the first and third years, summarized below:

	Year One		Year Three	
Inpatient Revenues	Per Disch.	Total	Per Disch.	Total
Commercial MC	$31,904	$5,487,500	$31,942	$6,164,800
Medicare FFS	$16,511	2,592,200	$16,737	2,912,200
Medicare MC	$14,231	498,100	$14,349	559,600
Medicaid FFS	$15,864	174,500	$16,333	196,000
Medicaid MC	$11,662	151,600	$12,164	170,300
Private Pay	$5,473	60,200	$5,642	67,700
Total Inpt Revenue		$8,964,100		$10,070,600
Outpatient Revenues	Per Visit	Total	Per Visit	Total
Commercial MC	$12,588	$3,562,500	$12,702	$4,611,000
Medicare FFS	$6,388	1,641,800	$6,498	2,125,000
Medicare MC	$6,684	381,000	$6,849	493,100
Medicaid FFS	$7,906	142,300	$8,373	184,200
Medicaid MC	$5,390	113,200	$5,426	146,500
Private Pay	$8,256	148,600	$8,741	192,300
Total Outpt Revenue		$5,989,400		$7,752,100
Total Revenues		$14,953,500		$17,822,700
Inpatient Expenses	Per Disch.	Total	Per Disch.	Total
Operating	$14,458.65	$5,769,000	$14,326.80	$6,361,100
Capital	$2,492.23	994,400	$2,160.81	959,400
Total Inpt Expenses	$16,950.88	$6,763,400	$16,487.61	$7,320,500
Outpatient Expenses	Per Visit	Total	Per Visit	Total
Operating	$7,509.33	$4,911,100	$6,864.95	$5,718,500
Capital	$1,294.19	846,400	$1,035.29	862,400
Total Outpt Expenses	$8,803.52	$5,757,500	$7,900.24	$6,580,900
Total Expenses		$12,520,900		$13,901,400
Excess of Rev over Exp		$2,432,600		$3,921,300
Utilization (procedures)				
Inpatient		399		444
Outpatient		654		833
Total		1,053		1,277
Avg Cost Per Procedure		$11,890.69		$10,885.98

The following is noted with respect to the incremental budget projections for the first and third years:

- Utilization and expense projections are based on the experience of Southside Hospital, which is the back-up hospital for cardiac surgery.
- Revenue and rate assumptions for inpatient and outpatient services are based on the current experience of existing cardiac catheterization lab volume within the Health System.
- Medicare DRGs 246-249 (Percutaneous Cardiovascular Procedures with Coronary Artery/Stent), 281 (Acute Myocardial Infraction), 286 and 287 (Circulatory Disorders Except AMI with Cardiac Catheterization) were used to develop the inpatient rates.
- A rate differential was applied to calculate the rates for all payors for all procedures.

- Utilization by payor source for inpatient and outpatient services for Years One and Three is as follows:

Inpatient	Years One & Three	Outpatient	Years One & Three
Commercial-MC	43.4%	Commercial-MC	43.4%
Medicare FFS	39.3%	Medicare FFS	39.3%
Medicare MC	8.7%	Medicare MC	8.7%
Medicaid FFS	2.7%	Medicaid FFS	2.7%
Medicaid MC	3.2%	Medicaid MC	3.2%
Self-Pay/Other	2.7%	Self-Pay/Other	2.7%

Capability and Feasibility

Project costs of $11,778,476 will be met with $1,177,848 in accumulated funds and bond financing for $10,600,628 at 6.5% for a 30-year term. Citigroup Global Markets, Inc. has provided a letter of interest to underwrite the bonds noting that if the financing is completed on a tax-exempt basis, the bonds will be issued through the DASNY. BFA Attachment A is a financial summary for JT Mather, which indicates the availability of sufficient funds.

The submitted budget indicates an excess of revenues over expenses of $2,432,600 and $3,921,300 during the first and third years of operation, respectively. Revenues reflect current reimbursement methodologies for cardiac catheterization services. The budget appears reasonable.

BFA Attachment A is JT Mather's 2017 and 2018 certified financial statements, which indicate the hospital maintained positive working capital and net asset positions, generated a net operating income of $4,185,974 in 2018 and had a net operating loss of $1,072,233 in 2017. In 2017, JT Mather showed an excess of revenues and gains over expenses of $596,100 after non-operating income of $1,668,333 was considered. BFA Attachment B, JT Mather's internal financial statements, show a positive income of $3,033,375 as of October 31, 2019.

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

Attachments

RNR Attachment B	Map
BFA Attachment A	Financial Summary, John T Mather Hospital - 2017 and 2018 certified financials
BFA Attachment B	Financial Summary, John T Mather Hospital- internals as of October 31, 2019
BFA Attachment C	Northwell Health Inc. Organizational Chart

NEW YORK STATE OF OPPORTUNITY. | Department of Health

MEMORANDUM

To: Establishment and Project Review Committee
Public Health and Health Planning Council

From: Tracy Raleigh
Director, Center for Health Care Facility Planning, Licensure, & Finance

Date: January 17 , 2020

Subject: CON 192047 Mount Sinai Beth Israel
CON 192049 Mount Sinai Beth Israel

Mount Sinai Beth Israel (MSBI) is requesting approval through the above two CON applications to transform the healthcare services currently provided at its facilities located at First Avenue and 16th Street and will relocate the beds and services to two new locations. The acute care hospital beds and services will be relocated to the existing New York Eye and Ear Infirmary (NYEE) campus on East 14th Street, and the behavioral health beds and services will be relocated to 45 Rivington Street, the site of the former Rivington House nursing home.

The overall transformation of MBSI is designed to deliver quality, value, and state-of the-art healthcare to the Downtown community, and includes, separately from these proposed projects, an investment by the Mount Sinai Health System in expanded access to primary, ambulatory, transitional and urgent care services.

MSBI and NYEE will merge prior to the completion of the construction to operate the East 14th Street location as one, 70-bed acute care hospital upon completion of the project. The current MSBI campus will close when the new hospital campus opens in early 2023. There will be no interruption of services through implementation of these projects.

MSBI Certified Beds	Current	192047 Acute Care	192049 Behavioral	Difference
Chemical Dependence - Rehabilitation	30		25	-5
Chemical Dependence - Detoxification	31		26	-5
Coronary Care	8			-8
Intensive Care	36	18		-18
Medical/Surgical	499	52		-447
Psychiatric	92		64	-28
Total	**696**	**70**	**115**	**-511**

MSBI Certified Services	Current	192047 Acute Care	192049 Behavioral
AIDS Center	x	x	
Ambulatory Surgery – Multi-Specialty	x	x	
Cardiac Catheterization - Adult Diagnostic	x	x	
Cardiac Catheterization - Electrophysiology (EP)	x	x	
Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)	x	x	
Certified Mental Health O/P	x		x
Chemical Dependence - Rehabilitation O/P	x		x
Chemical Dependence - Withdrawal O/P	x		x
Clinic Part Time Services	x		
Comprehensive Psychiatric Emergency Program	x	x	
Dental O/P	x		
Emergency Department	x	x	
Lithotripsy	x	x	
Medical Services - Other Medical Specialties	x	x	x
Medical Services - Primary Care	x		x
Methadone Maintenance O/P	x		x
Primary Stroke Center	x	x	
Renal Dialysis - Acute	x	x	
SAFE Center	x	x	

192047 Construct replacement hospital and relocate to East 14th Street

- At the site of the current New York Eye and Ear Infirmary (NYEE)
  - Two blocks south (0.2 miles) from the current site
  - Located between 14th Street and 13th Street and between Second Avenue and First Avenue in Manhattan
- The project will involve the construction of a new hospital building and the renovation of two existing buildings at NYEE
  - Construction of a new seven-story addition adjacent to the existing ten-story "North Building" and the six-story "South Building" of NYEE.
  - The addition will be connected to the existing North Building on the Cellar, 1st, and 2nd floors. Extensive demolition and renovation will occur on the Cellar, 1st, 6th, 7th and 9th floors of the existing NYEE North Building, with minor renovation occurring on the 2nd and 3rd floors of the North Building and the Cellar and 1st floors of the South Building.
- NYEE and MSBI will merge to become one, 70-bed hospital
  - All beds and services at NYEE are expected to remain open and operational during construction
- The reduced bed complement of 70 beds is supported by the Department's absorption analysis which indicates that there is sufficient inpatient capacity in New York City and access to these services will not be compromised as result of this project. Mount Sinai Health

System's transformation plan for MSBI includes reduction of potentially avoidable admissions, readmissions and emergency room visits by growth in ambulatory and transitional care services and other alternative care models and directing complex care to higher volume centers of excellence within the Health System. This plan aligns with the State's DSRIP policy goals to achieve the triple aim of higher quality, better patient outcomes and lower costs.

- Total Project Cost = $596,476,876

192049 Certify a new behavioral health division located at 45 Rivington Street

- At the site of the former Rivington House nursing home
  - 1.3 miles (10 minutes) south from current site
  - 1.2 miles (7 minutes) from 302 East 14th Street location
- The existing building at 45 Rivington Street is a high rise building and consists of a main five-story building and an adjacent one-story structure on the south-west side of the main building. The project includes a full-gut renovation of the main building.
- Creates a comprehensive integrated health location to address behavioral health, physical health, and psychosocial needs of the community, including:
  - an expansion of the crisis platform by the creation of new Intensive Crisis and Respite beds;
  - the creation of a behavioral health "sub-acute"/intensive outpatient platform, including a Partial Hospitalization Program (PHP)/Intensive Outpatient Program (IOP);
  - the introduction of new integrated primary care services with select specialty services;
  - the operational integration of all inpatient, crisis, and outpatient services to create a singular, streamlined care experience in one location; and
  - the use of specialized peer-based Behavioral Health Care Engagement Teams focusing on critical transitions of care and master treatment plan coordination.
- Total Project Cost = $140,677,876

Public Health and Health Planning Council

Project # 192047-C
Mount Sinai Beth Israel

Program:	Hospital	*County:*	New York
Purpose:	Construction	*Acknowledged:*	August 1, 2019

Executive Summary

Description

Mount Sinai Beth Israel (MSBI), a 696-bed, voluntary not-for-profit, Article 28 hospital located at First Avenue and 16th Street, New York (New York County), requests approval to relocate its beds and services to two new locations. The acute care hospital beds and services will be relocated to the existing New York Eye and Ear Infirmary (NYEE) campus on East 14th Street and the behavioral health beds and services will be relocated to 45 Rivington Street, the site of the former Rivington House nursing home.

This application pertains to the acute care beds and services and proposes to construct a new hospital building and renovate two existing buildings at the NYEE campus on East 14th Street, New York (New York County). The new site includes a reduction in beds and services. The East 14th Street site is located two blocks south, and only 0.2 miles (five minutes walking time) from the current MSBI campus. The newly constructed seven-story building will be adjacent to, and connected with, existing NYEE buildings. MSBI and NYEE will merge into one hospital (subject to a separate, to-be-submitted filing) at such time when construction is completed and the site will be a single hospital.

Upon completion, the East 14th Street site will include 70 certified inpatient beds (52 medical/surgical and 18 intensive care) and will be certified for the following services: Ambulatory Surgery – Multi-Specialty, Cardiac Catheterization (Electrophysiology and PCI), Comprehensive Psychiatric Emergency Program, Emergency Department, Lithotripsy, Medical Services – Other Medical Specialties, and Acute Renal Dialysis. The new facility will also provide diagnostic radiology services, including MRI, CT, X-Ray and Ultrasound.

MSBI's current 153 certified inpatient beds for mental health and chemical dependence services, including psychiatric (92 beds), chemical dependence-rehabilitation (30 beds) and chemical dependence-detoxification (31 beds) are the subject of a separate CON being concurrently reviewed. CON 192049 is a proposal to certify a new, 115-bed behavioral health hospital division at 45 Rivington Street to effectuate the relocation of MSBI's inpatient and outpatient behavioral health services, including Article 31 certified mental health services and Article 32 chemical dependence services.

Operational and financial realities hinder MSBI's ability to survive in the current health care market. MSBI's aging and outmoded infrastructure, declining inpatient census, and an overall occupancy rate of less than 40% have contributed to sustained losses of over $430 million over the past four years. Rebuilding on the current campus would require a $1 + billion investment, and the resulting facility would still not meet the community's evolving need for local access to care.

Mount Sinai Hospitals Group, Inc. (MSHG), a not-for-profit corporation, is the active parent and co-operator of MSBI, Mount Sinai Hospital, Mount Sinai Hospital of Queens, Mount Sinai Brooklyn, Mount Sinai St. Luke's, Mount Sinai Roosevelt, the New York Eye and Eye Infirmary of Mount Sinai and South Nassau Communities Hospital. Together, with the Icahn School of Medicine at Mount Sinai and the Mount Sinai

Medical Center, Inc., Mount Sinai Health System, Inc. is an integrated health care system and academic medical center providing medical care services in the New York metropolitan area across eight hospital campuses. The health care system is designed to increase efficiencies and economies of scale; improve quality and outcomes; and expand access to primary, specialty, and ambulatory care services throughout a wide clinical network.

OPCHSM Recommendation
Contingent Approval

Need Summary
The Mount Sinai System's support of MSBI through its network of primary, ambulatory, and urgent care, as well as its nearby Centers of Excellence for complex care, makes the certified bed capacity of 70 inpatient beds (52 medical surgical and 18 intensive care) in the proposed new facility viable given volume and operational trends.

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 $596,476,876 will be funded as follows: Equity of $346,476,876 via MSH and MSBI and Bond Financing of $250,000,000 with a taxable interest rate within a range of 4.00% - 4.50% for a 30-year term. Goldman Sachs & Co. LLC has provided a letter of interest to underwrite the bond financing.

	(in Thousands)	
Budget	Year One	Year Three
Revenues	$621,104	$647,240
Expenses	663,258	682,275
Gain/(Loss)	($42,154)	($35,035)

	(in Thousands)	
Enterprise	Year One	Year Three
Revenues	$2,664,071	$2,690,207
Expenses	2,437,925	2,456,942
Gain/(Loss)	$226,146	$233,265

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 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 documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. Submission of documentation of approval by the Office of Addiction Services and Supports, acceptable to the Department. [PMU]
4. Submission of a letter, acceptable to the Department, acknowledging the Design and Construction Contingencies shall not be used without prior written approval. [CCC]
5. Submission of a letter, acceptable to the Department, acknowledging the requirement to submit construction bids and construction contract awards as outlined in the condition below. [CCC]
6. Submission of a bond resolution, acceptable to the Department. Included with the submitted bond resolution must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. ([BFA]
7. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0., including a satisfactory response to all open BAER RFI's, including RFI's that are open in ProjNet. [AER]
8. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
9. Submission of State Environmental Quality Review (SEQR) Summary of Findings pursuant to 6 NYCRR Part 617.4(b) (6), and 10NYCRR 97.12. [SEQ]

Approval conditional upon:
1. The project must be completed within four 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 June 15, 2020 and construction must be completed by March 1, 2023, 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. Submission for prior review and approval requests for the use of the Design and Construction Contingencies, acceptable to the Department. [CCC]
4. Submission to the Department, not less frequently than quarterly, a detailed list of the construction bids received, and a detailed list of the construction contracts awarded. If a chosen contractor is not the low bidder an explanation of why the contractor was chosen is required. [CCC]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
6. The 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]
7. Within ninety (90) days from the date of the contingent approval letter, the applicant shall submit a written communication plan, acceptable to the Department, that would help patients navigate the evolving and transforming health system in the Mount Sinai Beth Israel (MSBI) service area. [HSP]
8. Ninety (90) days prior to the relocation of services to the new site on East 14th Street, the applicant shall provide a comprehensive transition plan including a communication plan acceptable to the Department. [HSP]
9. Within eighteen (18) months from the date of the contingent approval letter, the applicant shall submit documentation, acceptable to the Department, of the applicant's exploration of the possibility of opening a birthing center, which at a minimum, shall include: a business feasibility study, review of potential site locations, review of potential quality and safety concerns, and consideration of governance models. [PMU]

Council Action Date
February 6, 2020

Need and Program Analysis

Background

The proposed project at the East 14th Street site will include 70 certified inpatient beds comprised of 52 medical/surgical and 18 intensive care beds. The current MSBI campus will close when the new hospital campus opens in early 2023. There will be no interruption of services through the implementation of this project, nor will there be any changes to any certified extension clinics.

Mount Sinai Beth Israel Transition			
Bed Type	**Current Beds**	**Change**	**Beds at Completion**
Intensive Care	36	-18	18
Coronary Care	8	-8	0
Medical / Surgical	499	-447	52
Total Acute Care	543	-473	70
Chemical Dependence – Rehabilitation*	30	-30	0
Chemical Dependence – Detoxification*	31	-31	0
Psychiatric*	92	-92	0
Total Behavioral*	153	153	0
Total	**696**	**-626**	**70**

Source: 2019 HIFIS/Applicant

* MSBI's 153 behavioral health inpatient beds are the subject of the companion CON 192049, which is to relocate and modify the behavioral health beds and services. Until 192049 is complete, these beds and services will remain at the current location in the Bernstein Pavilion located between 15th and 16th street

Analysis

On its own, the reduction of 473 acute care licensed beds in this project is significant. However, the reduction in licensed beds is a product of and supported by several factors and Mount Sinai system initiatives. Specifically:

- Declining patient census;
- The presence of other hospitals in Lower Manhattan and the Department's absorption analysis which supports that sufficient capacity exists for inpatient services in New York City, and access will not be compromised as a result of this project;
- Mount Sinai's efforts to invest in, emphasize, and expand ambulatory care, transitional care and alternate care models within their Downtown network;
- Mount Sinai's focus on operational improvements to reduce patient length of stay and improve the patient's experience; and
- Mount Sinai's multi-campus health care system with Centers of Excellence for complex inpatient care, of which this project will be fully integrated.

Facility Beds, Average Daily Census, and Occupancy						
	2016		2017		2018	
Facility/Region	**ADC**	**Occ.**	**ADC**	**Occ.**	**ADC**	**Occ.**
Mount Sinai Beth Israel						
Med/Surg*	249.6	45.5%	189.9	34.7%	155.3	28.3%
General Psychiatric	73.2	79.6%	57.7	62.7%	45.7	49.7%
Chemical Dependence	51.8	84.9%	54.5	89.3%	56.3	92.3%
New York Eye and Ear Infirmary						
Med/Surg	1.8	2.6%	1.8	2.6%	2.2	3.2%
Lower Manhattan Hospitals	1,631	53.8%	1,484	50.6%	1,436	49.0%
Manhattan Hospitals	6,071	64.4%	5,924	63.4%	5,757	61.7%
New York City Hospitals	16,181	67.4%	15,853	66.3%	15,475	64.7%

Source: SPARCS
**Med/Surg in SPARCS also includes ICU, CCU, Maternity, and Pediatrics*

The most recent three years of certified data show a decrease in utilization of MSBI's acute care beds from an already low occupancy of 45.5% to 28.3%, and consistently declining average daily patient census (ADC). The ADC at MSBI has declined consistently since 2012 and declined 37.8% between 2016 and 2018. 2019 data submitted by the applicant shows a further 7.9% decline to 143 patients.

The Department performed an absorption analysis to independently assess the bed changes proposed in this project, and this was presented to PHHPC in 2017 and has subsequently been updated with 2018 SPARCS data. The absorption analysis is used to determine whether the decertification of inpatient services will result in shortages of beds and uses actual hospital utilization patterns of people at the zip code level to model where they will seek care if such care is not available at the hospital where the inpatient service reductions are taking place. The analysis confirms the declining inpatient trend in Lower Manhattan, Manhattan and the larger five-borough New York City area; the ADC for all Lower Manhattan hospitals declined by 12.0% from 1,631 patients in 2016 to 1.436 patients in 2018, with a consistent decline each year. The average daily census for all Manhattan Hospitals likewise declined consistently and by 5.2% during this period. The analysis concludes that sufficient inpatient capacity exists in New York City to accommodate the proposed reduction in licensed acute care services and the prior reduction in obstetric, pediatric/neonatal, and cardiac surgery services provided by MSBI.

MSBI also experienced declining volume in its emergency department (ED). Registrations went from 108,003 in 2014 to 87,880 in in 2018 to approximately 80,000 in 2019. In the proposed new building, the main emergency department will occupy the first floor with 41 treatment bays consisting of 37 treatment spaces, one triage area, three resuscitation positions and imaging functions. This first floor ED will be supplemented by six Pediatric ED exam rooms on the third floor, as well as a five-bed Comprehensive Psychiatric Emergency Program (CPEP) and two-bed Extended Observation Bed (EOB) suite on the ninth floor. In concert, these ED spaces are designed to accommodate approximately 90,000 visits annually which equates to about 1,731 visits per exam room. Volume projections follow.

	Actual	Year One	Year Three
ED Registrations	**2018**	**2023**	**2025**
General ED	69,562	55,409	55,409
Pediatric ED	12,293	9,792	9,792
CPEP	6,025	4,799	4,799
Total Registrations	87,880	70,000	70,000

The Department's analysis further projects that about 70% of MSBI's emergency visits could be seen in primary or urgent care settings.

To this last point, MSBI has made significant investments in primary, ambulatory, and urgent care to create the Mount Sinai Downtown Multi-Campus Network, including more than 16 physician practice locations with over 600 physicians, Mount Sinai Downtown Union Square, a 275,000 square foot

extension clinic center located at 10 Union Square East with enhanced ambulatory procedural capacity, and Mount Sinai Downtown Chelsea Center, which contains a woman's health center with integrated breast cancer and gynecologic oncology services. This same investment will also have an impact on avoidable admissions and readmissions going forward. Further growth of Mount Sinai's Hospital at Home and other innovative, healthcare management models is expected to place further downward pressure on inpatient utilization.

For those who must be admitted, MSBI has taken several measures in a concerted effort to reduce length of stay and improve the patient's experience with throughput improvements, such as:

- All private patient rooms;
- Shifting to a 24/7/365 operating model for the vast majority of tests, consults, and treatments during an inpatient stay;
- Shifting from a geographic to a non-geographic coverage model (the same staff members follow a patient throughout their stay at the hospital) to improve continuity of care;
- Significant investment and emphasis on LEAN improvement throughout the care cycle, reducing the waiting time for tests and results
- Reassessing patients every four hours

MSBI projects that these measures together could reduce average medical/surgical length of stay by 2-3 days overall from 5.3 days on average to 2.5 days on average. While also reducing the average length of stay at MSBI, the planned shift of complex, longer-stay patients to other Mount Sinai Health System high-volume Centers of Excellence affords patients access to high quality specialized care in other nearby facilities. Patients presenting at MSBI may be transferred to:

- Mount Sinai Hospital for:
  - Heart
  - Cancer
  - Spine
  - Transplant
  - Kravis Children's Hospital
  - Obstetrics
- Mount Sinai West for:
  - Orthopedics
  - Epilepsy/Movement Disorders
  - Intercranial Hemorrhage
  - Neonatology
  - Obstetrics
- Mount Sinai St. Luke's for:
  - Trauma Center
  - Heart/Revascularization

To arrive at the proposed 70 beds for the new facility, MSBI started with their current average daily patient census and attributed a corresponding reduction due to each of the factors and initiatives listed above. MSBI projects an average daily census of 45 patients in those 70 beds in Years One (2023) and Three (2025) of the new facility.

Through this project, the new replacement hospital of MSBI will be certified for the following services:

- Ambulatory Surgery-Multi Specialty
- Cardiac Catheterization-Percutaneous Coronary Intervention (PCI)
- Cardiac Catheterization-Electrophysiology (EP)
- Comprehensive Psychiatric Emergency Program
- Emergency Department
- Lithotripsy
- Renal Dialysis-Acute
- Medical Services – Other Medical Specialties

Additionally, the hospital anticipates maintaining the following designations:

- AIDS Center
- Primary Stroke Center
- SAFE Center

The certified services of Clinic Part Time Services, Dental O/P, Medical Services-Primary Care, and Radiology-Therapeutic (artifact) will be decertified from the MSBI operating certificate.

There will be no change to the extension clinics of MSBI as a result of this project.

Staffing related to the acute care beds and services is expected to decrease as a result of this project by 1,334.0 FTEs in Year One and Year Three of the completed project. The applicant indicates there is no expected job loss because the jobs are expected to be relocated throughout the Mount Sinai Health System.

Transition Plan

MSBI will notify staff, providers, and elected officials of the transition of services prior to the effective date. Signage will also be placed in prominent locations throughout the hospital, notifying the appropriate people of the pending transition and providing them with a contact number. A patient notification letter will be given to patients who have received treatment within the previous 12 months prior to the relocation of the relevant services at the MSBI campus. The letter will be distributed to patients once the NYSDOH issues its approval of the transition plan. The letter will be given to patients who arrive at the MSBI campus prior to the relocation of its services, and it will be mailed to patients who do not come in for services prior to the relocation. The letter will identify alternative providers for treatment and will give them contact information for retrieving their medical records, with the appropriate consents. The list of area providers will be included with the letter. Content will include the facility name, address, and telephone number.

Compliance with Applicable Codes, Rules and Regulations

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

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

Prevention Agenda

Mount Sinai Beth Israel states that their Community Service Plan describes their participation with community partners, including NYCDOMH public health officials to assess community needs and determines Prevention Agenda priorities for the local community. Mount Sinai Beth Israel identified the following Prevention Agenda Priorities focused on secondary prevention:

- Prevent Chronic Diseases: Screening for high blood pressure, cholesterol and cardiovascular health
- Promote Mental Health and Prevent Substance Abuse: Preventing suicides, preventing mental emotion behavioral disorders and strengthening infrastructure. In suicides prevention, Mount Sinai is focused on crisis intervention when calls are received by Mobile Crisis Teams.

- Prevent HIV, STDs, Vaccine-Preventable Diseases, and Healthcare- Associated Infections: Promoting Influenza (flu) vaccinations

In 2017 the applicant spent $5,894,048 on community health improvement services, representing 0.542% of total operating expenses.

Conclusion
The proposed project will transform the services of MSBI and will be a fully integrated component of the Mount Sinai Health System's Downtown network of primary, ambulatory, transitional, and urgent care centers, This factor as well as the Health System's nearby Centers of Excellence for complex care in Manhattan, makes the proposed certified bed capacity of 70 inpatient beds (52 medical surgical and 18 intensive care) in the new facility viable given volume and operational trends. The proposed new hospital project will be built to modern design standards with a more efficient infrastructure and patient-centric service configuration including all private patient rooms and is designed to deliver quality and value-driven healthcare services that improve the patient's experience.

Financial Analysis

Total Project Cost and Financing
Total project cost for new construction and the acquisition of moveable equipment is estimated at $596,476,876 broken down as follows:

New Construction	$280,403,610
Renovation and Demolition	63,832,095
Site Development	2,098,261
Temporary Utilities	370,120
Asbestos Abatement or Removal	4,645,671
Design Contingency	34,423,571
Construction Contingency	20,403,390
Planning Consultant Fees	1,703,999
Architect/Engineering Fees	33,500,000
Construction Manager Fees	2,983,066
Other Fees (Consultant)	20,558,316
Moveable Equipment	61,902,927
Telecommunications	25,137,183
Financing Costs	3,750,000
Interim Interest Expense	37,500,000
CON Application Fee	2,000
Additional Processing Fee	3,262,667
Total Project Cost	$596,476,876

Project costs are based on a construction start date of April 15, 2020, and a 33-month construction.

The applicant's financing plan appears as follows:

Equity	$346,476,876
Bond Financing *(taxable interest range of 4.0% - 4.5% for 30-years)*	$250,000,000

The equity contribution will be provided by MSH and MSBI. BFA Attachments A and B are the 2017-2018 certified financial statements of MSH and MSBI, respectively, which indicate sufficient resources for the stated equity contribution. Goldman Sachs & Co. LLC has provided a letter of interest to underwrite the bond financing.

Operating Budget
The applicant has submitted an operating budget for the services that will be included in the new hospital campus, in 2020 dollars, for the Current Year and the first and third years, summarized below. The budget combines the operating results of MSBI and NYEE as the hospitals will be a merged single hospital prior to this project being fully implemented.

	Current Year (2018) - (in thousands)		
	MSBI	NYEE	Combined
Revenues			
Comm MC	$196,780	$59,772	$256,552
Medicare FFS	$151,771	$29,251	$181,022
Medicare MC	$92,292	$19,808	$112,100
Medicaid FFS	$88,759	$1,469	$90,228
Medicaid MC	$88,871	$25,823	$114,694
Other	$17,270	$9,018	$26,288
Non-Op Revenues	$9,343	$0	$9,343
Other Revenues	$57,599	$5,996	$63,595
Total Revenues	$702,685	$151,137	$853,822
Expenses			
Operating	$710,853	$131,891	$842,744
Capital	60,951	9,106	$70,057
Total Expenses	$771,804	$140,997	$912,801
Deficit of Revenues over Expenses	($69,119)	$10,140	($58,979)
Discharges	11,243	324	11,567
Visits	511,241	180,845	692,086

	Current Combined	Year One	Year Three
Revenues			
Comm MC	$256,552	$207,860	$217,374
Medicare FFS	$181,022	$106,925	$111,316
Medicare MC	$112,100	$78,644	$82,049
Medicaid FFS	$90,228	$73,605	$76,972
Medicaid MC	$114,694	$85,509	$89,323
Other	$26,288	$18,883	$19,706
Other Rev	$63,595	$40,335	$41,157
Non-Op Revenues	$9,343	$9,343	$9,343
Total Revenues	$853,822	$621,104	$647,240
Expenses			
Operating	$842,744	$597,554	$620,160
Capital	70,057	65,704	62,115
Total Expenses	$912,801	$663,258	$682,275
Deficit of Revenues over Expenses	($58,979)	($42,154)	($35,035)
Discharges	11,567	6,336	6,336
Visits	692,086	659,951	673,785

The following is noted with respect to the operating budget:

- Expense assumptions are based upon staffing budgets developed for each department by hospital management. The projected staffing levels incorporate expected volume and efficiencies gained by the combination of MSBI and NYEE.
- Inpatient utilization is based upon the expected emergent and elective medical and surgical volume and a decreased average length of inpatient stay. Centers of Excellence within the Mount Sinai Health System will result in some longer-stay, high-acuity inpatients being served at other Health

System sites. Ambulatory utilization is based upon trend data and available capacity at the new hospital facility. In general, ambulatory volume is generally projected to grow between 1% and 2% annually.
- Reimbursement rates are based on Mount Sinai Health System's existing payment rates with a projected increase of 2% between the first and third years.

Utilization, broken down by payor source as follows:

Inpatient	Current Year	Year One	Year Three
Medicaid FFS	18.09%	20.88%	20.88%
Medicaid MC	27.74%	21.02%	21.02%
Medicare FFS	25.03%	23.47%	23.47%
Medicare MC	6.54%	6,38%	6.38%
Commercial MC	21.78%	27.30%	27.30%
Other	.82%	.95%	.95%
Total	100.00%	100.00%	100.00%

Outpatient	Current Year	Year One	Year Three
Medicaid FFS	31.81%	31.91%	31.91%
Medicaid MC	15.10%	15.08%	15.08%
Medicare FFS	15.82%	15.81%	15.81%
Medicare MC	2.74%	2.73%	2.73%
Commercial MC	30.51%	30.49%	30.49%
Other	4.02%	3.98%	3.98%
Total	100.00%	100.00%	100.00%

Capability and Feasibility

Total project costs of $596,476,876 will be funded as follows: Equity of $346,476,876 via Mount Sinai Hospital and Mount Sinai Beth Israel and Bond financing of $250,000,000 at an interest rate within a range of 4.00% - 4.50% for a 30-year term. BFA Attachments A and B are the 2018 certified financial statements and internal financial statements of Mount Sinai Hospital and Mount Sinai Beth Israel as of June 30, 2019, which indicate the availability of sufficient funds for the equity contribution.

The submitted budget projects a deficit of revenues over expenses of $42,154 and $35,035 during the first and third years, respectively. The projected losses will be offset via operations. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

As shown on BFA Attachment A, Mount Sinai Hospital had an average positive working capital position and an average positive net asset position for the 2017 - 2018 period. Also, the entity achieved an average excess of revenues over expenses of $207,244,000 for the 2017 - 2018 period. The entity had a positive working capital position and a positive net asset position through June 30, 2019. Also, the entity achieved an operating excess of revenues over expenses of $110,231,000 through June 30, 2019.

As shown on BFA Attachment B, Mount Sinai Beth Israel had an average negative working capital position and an average positive net asset position in 2017 and 2018. MSBI had a negative working capital position in 2017 and 2018 due to the following: ongoing maintenance and repair costs to maintain an outdated physical plant and ongoing costs to maintain vacant square footage due to decreasing inpatient and outpatient utilization of services. Additionally, MSBI incurred an average excess of expenses over revenues of $114,385,500 for the 2017 - 2018 period. The losses from operations are mainly attributable to reduced patient volume, operational costs to maintain vacant space related to the reduced patient volume and operational costs needed to maintain an outdated physical plant on an on-going basis. MSBI had a negative working capital position and a positive net asset position through June 30, 2019. Additionally, MSBI incurred an operating deficit of expenses over revenues of $53,255,000 through June 30, 2019.

BFA Attachment C is the 2017 and 2018 certified financial statements and the internal financial statements of The New York Eye and Ear Infirmary and Affiliates as of June 30, 2019. As shown, the entity had an average positive working capital position and an average positive net asset position for the

period. Also, the entity achieved an average excess of operating revenues over expenses of $5,317,000 for the 2017 - 2018 period shown. The entity incurred a 2017 operating loss of $1,373,000. The applicant indicated that the reason for the losses were due to NYEE experiencing a substantial decline in other revenues associated with services directly related to patient services. The improvements in 2018 are largely the result of the transgender program that was moved to NYEE in mid-2018, as well as continued revenue cycle and expense management efforts in place. Additionally, as shown on the June 30, 2019 internal financial statements, the entity had a positive working capital position and a positive net asset position through June 30, 2019. Additionally, the entity achieved operating revenues over expenses of $9.760,000 through June 30, 2019.

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

Attachments

BFA Attachment A	2017 and 2018 certified financial statements and June 30, 2019 internal financial statements of Mount Sinai Hospital.
BFA Attachment B	2017 and 2018 certified financial statements and June 30, 2019 internal financial statements of Mount Sinai Beth Israel.
BFA Attachment C	2017 and 2018 certified financial statements and June 30, 2019 internal financial statements of The New York Eye and Ear Infirmary and Affiliates.

Public Health and Health Planning Council

Project # 192049-C
Mount Sinai Beth Israel

Program:	**Hospital**	*County:*	**New York**
Purpose:	**Construction**	*Acknowledged:*	**August 1, 2019**

Executive Summary

Description

Mount Sinai Beth Israel (MSBI), a 696-bed, voluntary not-for-profit, Article 28 hospital located at First Avenue and 16th Street, New York (New York County), requests approval to relocate its beds and services to two new locations. The acute care hospital beds and services will be relocated to the existing New York Eye and Ear Infirmary (NYEE) campus on East 14th Street, and the behavioral health beds and services will be relocated to 45 Rivington Street, the site of the former Rivington House Residential Health Care Facility (RHCF).

This application pertains to the behavioral health beds and services and proposes to certify a new, 115-bed behavioral health hospital division at 45 Rivington Street, New York (New York County) consisting of 64 psychiatric beds, 26 chemical dependency-detoxification (CD-detox) beds and 25 chemical dependency-rehabilitation (CD-rehab) beds. The applicant will lease the 45 Rivington Street premises from Rivington Street Investors, LLC via an arm's length lease agreement and will perform the requisite leasehold improvements.

The proposal creates a continuum of integrated care for behavioral health, physical health, and psychosocial needs and addresses significant gaps in the behavioral health services continuum of care through the expansion of existing outpatient services, on-site integrated primary care and subspecialty care services and coordination of services through specialized behavioral health care coordinators. The new division will be named Mount Sinai Comprehensive Behavioral Health Center.

The new site is 1.3 miles from of the current site and 1.2 miles from the East 14th Street location. The existing Rivington Street building is a five-story building which will undergo a gut renovation to create an inpatient and outpatient health location.

To create this new transformational model and remove excess inpatient bed capacity from the healthcare system, MSBI will decertify 28 psychiatric beds, five CD-detox beds and five CD-rehab beds. The model redesigns existing inpatient and outpatient services and includes the following: creation of a behavioral health or "sub-acute" intensive outpatient platform including a Partial Hospitalization Program (PHP) / Intensive Primary Care Program; introduction of integrated primary care services with select specialty services; operational integration of all inpatient, crisis, and outpatient services to create a singular, streamlined care experience in one location; and specialized peer based Behavioral Health Care Engagement Teams focusing on critical transitions of care and master treatment plan coordination.

Concurrently under review is CON 192047, which is the request to relocate the acute care beds and services to the site of the current New York Eye and Ear Infirmary

Mount Sinai Hospitals Group, Inc. (MSHG), a not-for-profit corporation, is the active parent and co-operator of MSBI, Mount Sinai Hospital, Mount Sinai Hospital of Queens, Mount Sinai Brooklyn, Mount Sinai St. Luke's, Mount Sinai Roosevelt, the New York Eye and Eye Infirmary of Mount Sinai and South Nassau Communities Hospital. Together, with the Icahn School of

Medicine at Mount Sinai and the Mount Sinai Medical Center, Inc., Mount Sinai Health System, Inc. is an integrated health care system and academic medical center providing medical care services in the New York metropolitan area across eight hospital campuses. The Health System is designed to increase efficiencies and economies of scale; improve quality and outcomes; and expand access to primary, specialty, and ambulatory care services throughout a wide clinical network.

OPCHSM Recommendation
Contingent Approval

Need Summary
The decertification of beds is driven by a downward trend in behavioral health discharges due to factors that include the increased availability of crisis and transitional services, enhanced outpatient services, and new care management and community based residential services being provided in New York State. MSBI anticipates reducing the number of preventable hospital admissions through their new intensive-level outpatient services integrated with primary care.

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

Financial Summary
Total Project cost is estimated at $140,677,876 and will be funded with equity via MSH and MSBI.

	(in Thousands)	
Budget	Year One	Year Three
Revenues	$67,655	$70,367
Expenses	86,829	90,294
Deficit of Revs. over Expenses	($19,174)	($19,927)

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 documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. Submission of documentation of approval by the Office of Addiction Services and Supports, acceptable to the Department. [PMU]
4. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0, including a satisfactory response to all open BAER RFI's, including RFI's that are open in ProjNet. [AER]
5. Submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0, acceptable to the Department. [AER]
6. Submission of an executed lease agreement, acceptable to the Department. [BFA]

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 June 15, 2020 and construction must be completed by September 30, 2022, 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 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]
5. MSBI shall not proceed with the following activities unless and until the Office of Mental Health has developed a path to allow and approved through the submission of either a licensing application or regulatory waiver:
    a. establishment of EOB capacity at the Center, separate from the CPEP's physical location;
    b. the ability to conduct "direct admissions" from one of the Center's outpatient programs to an EOB or inpatient bed at the same location.

Council Action Date

February 6, 2020

Need and Program Analysis

Project Description
The new site, Mount Sinai Comprehensive Behavioral Health Center, will operate as a division of MSBI. MSBI will decertify 28 inpatient psychiatric beds, five chemical dependency – detoxification beds and five chemical dependency – rehabilitation beds, resulting in 64 inpatient psychiatric beds, 26 chemical dependency – detoxification beds and 25 chemical dependency – rehabilitation beds for a total of 115 behavioral beds. Concurrently MSBI will expand and diversify the behavioral health crisis and intensive outpatient platform and integrating these new services into re-designed existing inpatient and outpatient services.

MSBI is proposing a new model of comprehensive care by creating a continuum of integrated care for behavioral health, physical health, and psychosocial needs of the community. This project proposes to renovate approximately 134,100 square feet throughout the building to include:

- 64 inpatient psychiatric beds, 26 chemical dependency-detoxification beds, and 25 chemical dependency-rehabilitation beds relocated from the Bernstein Pavilion;
- The dually certified New York State OMH and New York State DOH Assertive Community Treatment (ACT) Program and the Adult Clinic Treatment Program, relocated from the Bernstein Pavilion;
- The dually certified New York State OASAS and New York State DOH Medical Managed Detoxification Program, the Medically Supported Withdrawal Outpatient, the Chemical Dependence Outpatient Clinic, and the Chemical Dependence Outpatient Rehabilitation program, relocated from the Bernstein Pavilion.
- A 25-slot Partial Hospitalization Program (PHP) and a 35-slot Intensive Outpatient Program (IOP) on the first floor;
- Integrated outpatient behavioral health, primary care, and sub-specialty clinic space on the second floor;
- Ancillary support and administrative space for the behavioral health inpatient and outpatient to be provided at the 45 Rivington Street location; and
- Eight extended observation beds (EOB) of MSBI's comprehensive psychiatric emergency program (CPEP) at 45 Rivington Street. Currently, there is no legal or regulatory path to allow for a CPEP to operate EOBs in a building separate from the CPEP. Until such a path exists, MSBI will not be allowed to utilize EOB beds at this division because the CPEP will be located at the East 14th Street division.

By creating a unified physical platform where mental health, substance use and primary care services are operationally integrated, MSBI will be better able to treat the whole patient, reduce operational inefficiencies, and help reduce the overutilization of acute and emergency levels of care. largely due to the increased availability of crisis and transitional services, enhanced outpatient services, and new care management and community based residential services being offered.

Analysis

Current and Proposed Beds			
Bed Type	**Current Beds**	**Bed Change**	**Result**
Chemical Dependence - Rehabilitation	30	-5	25
Chemical Dependence - Detoxification	31	-5	26
Psychiatric	92	-28	64
Total	**153**	**-38**	**115**

Source: 2019 HIFIS/Applicant

Current and Projected Discharges						
Bed Type	**2014**	**2015**	**2016**	**2017**	**2018**	**Year One and Three**
Chemical Dependence - Rehabilitation	699	675	673	718	870	745
Chemical Dependence - Detoxification	4,700	3,268	2,495	2,623	2,606	2,484
Psychiatric	2,179	2,402	2,449	2,178	1,831	2,081
Total	**7,758**	**6,345**	**5,617**	**5,519**	**5,307**	**5,310**

Source: ICR Cost Report/Applicant

Table 3: Utilization / Occupancy					
Bed Type	**2014**	**2015**	**2016**	**2017**	**2018**
Chemical Dependence - Rehabilitation	89%	87%	84%	87%	93%
Chemical Dependence - Detoxification	148%	102%	81%	87%	84%
Psychiatric	84%	81%	79%	61%	50%

Source: ICR Cost Report/Applicant

As depicted above, MSBI has experienced a decline in discharges and patient days for inpatient psychiatric and chemical dependency detoxification and projects a plateau of discharges for all behavioral services in 2019 based on the increased availability of crisis and transitional services, enhanced outpatient services, and new care management and community based residential services being provided in New York State. Based upon this decreasing utilization MSBI has determined the most effective way to serve its patients is to operate 64 inpatient psychiatric beds, 26 chemical dependency-detoxification beds and 25 chemical dependency-rehabilitation beds.

Staffing is expected to increase for the behavioral health services by 74.2 FTEs in Year One and Year Three of the completed project, primarily due to increases in Technicians and Specialists and Infection Control, Environment, and Food Service employees related to operating as a physically separate division.

Compliance with Applicable Codes, Rules and Regulations

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

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

Prevention Agenda

Mount Sinai Beth Israel states that their Community Service Plan describes their participation with community partners, including NYCDOMH public health officials, to assess community needs and determines Prevention Agenda priorities for the local community. Mount Sinai Beth Israel identified the following Prevention Agenda Priorities:

- Prevent Chronic Diseases: Screening for high blood pressure, cholesterol and cardiovascular health
- Promote Mental Health and Prevent Substance Abuse: Preventing suicides, preventing mental emotion behavioral disorders and strengthening infrastructure. In suicides prevention, Mount Sinai is focused on crisis intervention when calls are received by Mobile Crisis Teams.
- Prevent HIV, STDs, Vaccine-Preventable Diseases, and Healthcare- Associated Infections: Promoting Influenza (flu) vaccinations

In 2017 the applicant spent $5,894,048 on community health improvement services, representing 0.542% of total operating expenses.

Conclusion

The reduction in the number of certified behavioral health beds will right-size the service and the relocation to a new site will provide a comprehensive inpatient and out- patient community- oriented center for behavioral health care with a one-stop location of services for mental health, substance use, physical health and social service needs for the residents of MSBI's primary service area.

Financial Analysis

Lease Agreement

The applicant submitted a draft lease agreement, the terms of which are summarized below:

Date:	December 20, 2018 (Agreement date of the draft lease)
Premises:	Entire building at 45 Rivington Street, New York, NY together with the land on which it is located (the Property)
Landlord:	Rivington Street Investors LLC
Lessee:	Beth Israel Medical Center
Term:	30 years from the time the site opens (post 2-year construction period)
Rental:	Base rent for Year 1 at $9,594,263 ($799,521.92 per month) with annual increases at approximately 2% each year throughout the term of the lease.
Provisions:	Tenant to pay all taxes including real estate, assessments and other charges levied on the property; maintenance; property insurance; all utilities including electrical, water, telephone, steam, gas, oil, and sewer collection lines.

The lease is an arm's length agreement. The applicant has submitted an affidavit attesting that there is no relationship between landlord and tenant. Letters from two New York State realtors have been provided attesting to the reasonableness of the per square foot rental.

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at $140,677,876, further broken down as follows:

Renovation and Demolition	98,580,000
Design Contingency	9,858,000
Construction Contingency	9,858,000
Fixed Equipment	614,800
Architect/Engineering Fees	6,000,000
Construction Manager Fees	3,337,533
Other Fees (Consultant)	1,440,000
Moveable Equipment	3,764,360
Telecommunications	6,453,698
CON Fee	2,000
Additional Processing Fee	769,485
Total Project Cost	140,677,876

Project costs are based on a construction state date of April 15, 2020, and a 28-month construction period. The project cost will be me met via equity by MSH and MSBI.

Operating Budget

The applicant has submitted an incremental operating budget for the Behavioral Health services, in 2019/20 dollars, for the first and third years after project completion, summarized below (in thousands):

(In Thousands)*

	Current Year (2018)		Year One		Year Three	
	Per Disch.	Total *	Per Disch.	Total *	Per Disch.	Total *
Inpt Revenue						
Medicaid FFS	$6,536	$6,013	$7,784	$6,609	$8,099	$6,876
Medicaid MC	$6,595	19,645	$7,847	21,594	$8,164	22,466
Medicare FFS	$12,645	7,094	$14,790	8,504	$15,388	8,848
Medicare MC	$9,460	3,576	$11,049	4,287	$11,495	4,460
Comm MC	$10,071	4,280	$12,536	8,800	$13,041	9,155
Other	$620	31	$773	34	$818	36
Total Inpt. Rev		$40,639		$49,828		$51,841
Outpt Revenue	Per Visit	Total *	Per Visit	Total *	Per Visit	Total *
Medicaid FFS	$171.41	$325	$219.38	$788	$223.80	$820
Medicaid MC	$171.48	$3,895	$219.34	$9,437	$223.72	$9,818
Medicare FFS	$171.38	$1,091	$219.34	$2,645	$223.74	$2,752
Medicare MC	$171.46	$847	$219.30	$2,052	$223.68	$2,135
Comm MC	$171.53	$1,058	$221.05	$2,583	$223.70	$2,666
Other	$171.61	$133	$219.50	$322	$223.78	$335
Total Outpt. Rev		$7,349		$17,827		$18,526
Total Revenue		$47,988		$67,655		$70,367

	(* In Thousands)					
	Current Year (2018)		Year One		Year Three	
	Per Disch.	Total *	Per Disch.	Total *	Per Disch.	Total *
Inpt Expenses						
Operating	$5,907.77	$31,388	$6,388.51	$33,923	$6,646.52	$35,293
Capital	176.92	940	$1,293.60	6,869	$1,345.57	7,145
Inpt. Expenses	$6,084.70	$32,328	$7,682.11	$40,792	$7,992.09	$42,438
Outpt Expenses						
Operating	$825.82	$35,394	$471.67	$38,292	$480.60	$39,798
Capital	24.73	1,060	95.40	7,745	97.31	8,058
Outpt. Expenses	$850.56	$36,454	$567.07	$46,037	$577.91	$47,856
Total Expenses		$68,782		$86,829		$90,294
Deficit Revenues over Expenses		($20,794)		($17,174)		($19,927)
Discharges		5,313		5,310		5,310
Visits		42,859		81,184		82,809

The following is noted with respect to the operating budget;

- The number of FTE's for aides/orderlies and attendants decrease as a result of the net decrease of 38 inpatient behavioral health beds. The addition of the 72 FTE's is needed to provide infection control, environment and food service support to the new site.
- Projected staffing levels incorporate expected volume and efficiencies gained by co-locating inpatient and outpatient behavioral health services in one building, the reduction of inpatient behavioral health beds from the current 153 beds to 115 beds, and the expansion of outpatient services through the creation of new outpatient programs (partial hospitalization, intensive outpatient programs, and crisis and respite services). In addition, the budget incorporated inflationary increases in annual expenses of between 2% or 3%.
- The increase in outpatient revenues on a per visit basis is the result of the change in the acuity mix of outpatients. The new outpatient programs being added (partial hospitalization program, intensive outpatient program, crisis and respite program) reimburse at a higher rate per visit than the current outpatient programs.
- Other revenues per discharge includes self-pay, resulting in a low revenue per discharge.

Utilization by payor source for inpatient and outpatient services is as follows:

Inpatient	Current Year	Year One	Year Three
Medicaid FFS	17.32%	15.99%	15.99%
Medicaid MC	56.07%	51.83%	51.83%
Medicare FFS	10.56%	10.83%	10.83%
Medicare MC	7.11%	7.31%	7.31%
Commercial MC	8.00%	13.22%	13.22%
Other	0.94%	0.82%	0.82%
Total	100.00%	100.00%	100.00%

Outpatient	Current Year	Year One	Year Three
Medicaid FFS	4.42%	4.42%	4.42%
Medicaid MC	53.00%	53.00%	53.00%
Medicare FFS	14.85%	14.85%	14.85%
Medicare MC	11.53%	11.53%	11.53%
Commercial MC	14.39%	14.39%	14.39%
Other	1.81%	1.81%	1.81%
Total	100.00%	100.00%	100.00%

Capability and Feasibility
Total project cost of $140,677,876 will be funded via equity by Mount Sinai Hospital and Mount Sinai Beth Israel Hospital. BFA Attachments A and B are the 2018 certified financial statements and internal financial statements of Mount Sinai Hospital and Mount Sinai Beth Israel as of March 31, 2019, which indicate the availability of sufficient funds for the equity contribution.

The submitted budget indicates a deficit of revenues over expenses of $19,174,000 and $19,927,000 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for inpatient and outpatient services. As shown on BFA Attachment A, the Mount Sinai Hospital enterprise can support the losses. The submitted budget appears reasonable.

As shown on BFA Attachment A, Mount Sinai Hospital had an average positive working capital position and an average positive net asset position for the 2017 and 2018 period. The entity achieved an average excess of revenues over expenses of $207,244,000 for the same period. Also, the entity had a positive working capital position, a positive net asset position, and achieved an operating excess of revenues over expenses of $110,231,000 through June 30, 2019.

As shown on BFA Attachment B, Mount Sinai Beth Israel had an average negative working capital position and an average positive net asset position in 2017 and 2018. The negative working capital position in 2017 and 2018 was due to the following: maintenance and repair costs to maintain an outdated physical plant and ongoing costs to maintain vacant square footage due to decreasing inpatient and outpatient utilization of services. Also, the entity incurred an average deficit of expenses over revenues of $114,385,500 for the period 2017 and 2018. The losses from operations are mainly attributable to reduced patient volume, operational costs to maintain vacant space as a result of the reduced patient volume and operational costs needed to maintain an outdated physical plant on an on-going basis. The entity had a positive working capital position and a positive net asset position through June 30, 2019. Also, the entity incurred a deficit of expenses over revenues of $53,255,000 through June 30, 2019.

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

Attachments

BFA Attachment A	2017 and 2018 certified financial statements and June 30, 2019 internal financial statements of Mount Sinai Hospital
BFA Attachment B	2017 and 2018 certified financial statements and June 30, 2019 internal financial statements of Mount Sinai Beth Israel.

Public Health and Health Planning Council

Project # 192158-E
Congregational SNF LLC
d/b/a New York Congregational Nursing Center

Program:	Residential Health Care Facility	*County:*	Kings
Purpose:	Establishment	*Acknowledged:*	September 27, 2019

Executive Summary

Description

Congregational SNF LLC d/b/a New York Congregational Nursing Center, a New York limited liability company, requests approval to be established as the new operator of New York Congregational Nursing Center, Inc., a 200-bed, voluntary not-for-profit, Article 28 residential health care facility (RHCF) located at 135 Linden Boulevard, Brooklyn (Kings County). New York Congregational Nursing Center, Inc. (NYCNC) is the current operator and real property owner of the facility. A separate entity, 135 Linden Blvd, LLC will acquire the real property. There will be no change in beds or services provided.

On October 23, 2018, NYCNC entered into an Asset Purchase Agreement (APA) with Congregational SNF LLC for the sale and acquisition of the RHCF operating interests. The purchase price for the RHCF operations is the assumption of certain liabilities arising after the effective date of December 1, 2018, as revised per the draft First Amendment to the executed APA. Concurrently, NYCNC entered into a Real Estate Purchase Agreement (REPA) with 135 Linden Blvd LLC, a Delaware limited liability company, for the sale and acquisition of the real property for $40,000,000. The APA and REPA will close at the same time upon Public Health and Health Planning Council (PHHPC) approval. There is no common ownership between Congregational SNF LLC and 135 Linden Blvd LLC. However, there is a familial relationship between a proposed operating entity member, Elky Hoffman, and the proposed landlord in that she is the daughter of Abraham J. Hoffman, a 50% member of JHSL 135 PROPCO LLC, a New York limited liability company that is a 50% member of 135 Linden Blvd LLC, the proposed landlord. The applicant will lease the premises.

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

Current Operator
New York Congregational Nursing Center, Inc.
Not-For-Profit Corporation (100%)

Proposed Operator	
Congregational SNF, LLC	
Members	
Eliezer Jay Zelman	50%
JHSL 135 OPCO LLC	50%
Elky Hoffman (100%)	

The APA includes the purchase of a Certified Home Health Agency (CHHA) and Long-Term Home Health Care Program (LTHHCP) that were operated by New York Congregational Nursing Center, Inc. However, the CON does not include these programs because the CHHA closed effective March 26, 2019 and the LTHHCP is in the process of being closed. There were no revenues from these programs during 2018.

NYCNC has experienced recurring operating losses for several years they state are the result of negative rate adjustments and other operating expenses associated with having a single facility. Attempts to become financially viable were not sufficient and the board determined continued operations were problematic. NYCNC

had entered into discussions with another nonprofit RHCF, but a satisfactory agreement was not reached. NYCNC then undertook an extended selection process resulting in an APA with Congregational SNF, LLC. Simultaneously, NYCNC entered into a REPA for the real property sale with 135 Linden Blvd LLC. The sale proceeds will be used to pay any outstanding obligations of NYCNC. The remainder, estimated at $35 million, is likely to be divided between a field-of-interest fund operated by the Brooklyn Community Foundation and a foundation formed by the conversion of New York Congregational Community Services, NYCNC's parent, into a private foundation, or a new foundation entity. The focus will continue to be addressing the needs of the frail elderly in Brooklyn. There are no restrictions on the property regarding its use or ownership.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no impact to beds, services, or utilization through this project. The facility and the County have maintained a steady occupancy around the department's planning optimum of 97% for 2012 to 2016 with a slight decline in 2017 and 2018 to 93% and 94%.

Program Summary

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

Financial Summary

There are no project costs associated with this proposal. The purchase price for the RHCF operations is the assumption of certain liabilities arising after December 1, 2018. Currently, there are no assumed liabilities as current obligations decreased from December 1, 2018 through September 30, 2019. The purchase price for the realty is $40,000,000 to be funded by 135 Linden Blvd, LLC via $8,000,000 members' equity and a $32,000,000 mortgage at 3.75% interest for a 30-year term self-amortized over 30 years. Housing & Healthcare Finance, LLC has provided a letter of interest at the stated terms.

Budget	Year One	Year Three
Revenues	$26,696,906	$27,003,920
Expenses	$26,662,325	$26,882,345
Net Income	$34,581	$21,575

Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management
Approval contingent upon:
1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of an executed loan commitment for the purchase of the real property, acceptable to the Department of Health. [BFA]
3. Submission on an executed first amendment to the asset purchase agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
5. Submission of a photocopy of JHSL 135 Opco LLCs amended and executed Operating Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of JHSL 135 Opco LLCs amended and executed Articles of Organization, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicants amended and executed Articles of Organization, acceptable to the Department. [CSL]
8. Submission of a photocopy of an amended and 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]

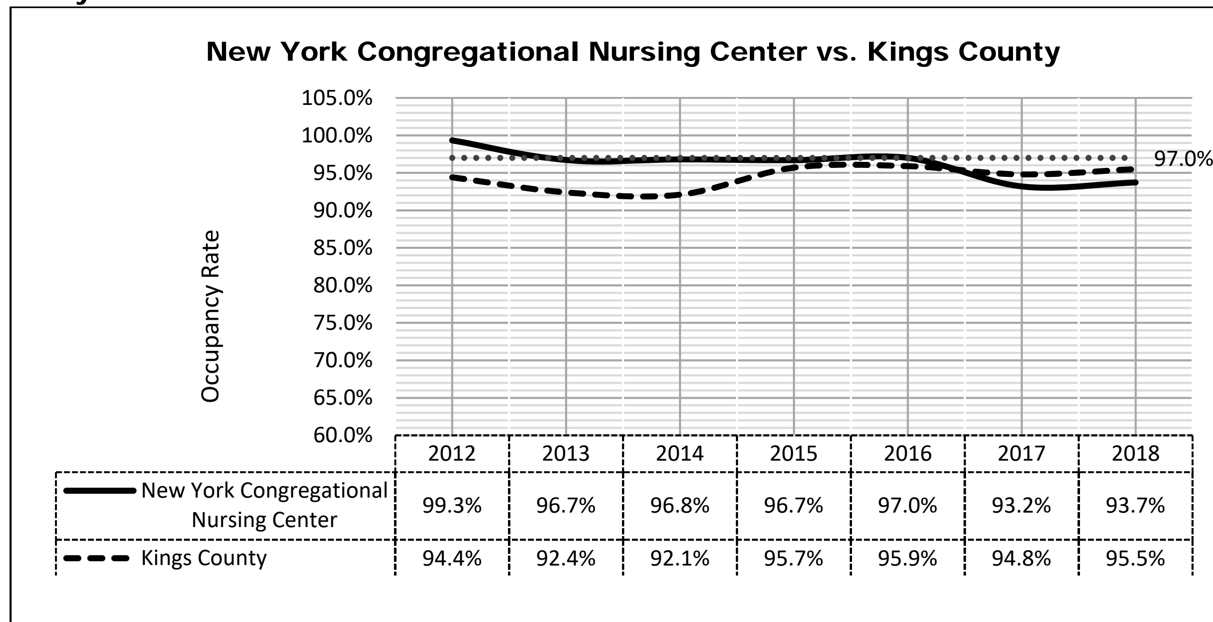
Council Action Date
February 6, 2020

Need and Program Analysis

Facility Information

	Existing	Proposed
Facility Name	NY Congregational Nursing Center, Inc	New York Congregational Nursing Center
Address	135 Linden Blvd Brooklyn, NY 11226	Same
RHCF Capacity	200	Same
ADHC Capacity	N/A	N/A
Type of Operator	Voluntary	Limited Liability Company
Class of Operator	Not-for-profit	Proprietary
Operator	New York Congregational Nursing Center, Inc.	Congregational SNF LLC <u>Membership</u> *Eliezer Jay Zelman 50% JHSL 135 OPCO LLC 50% Elky Hoffman (100%) **Managing Member*

Analysis



	2012	2013	2014	2015	2016	2017	2018
New York Congregational Nursing Center	99.3%	96.7%	96.8%	96.7%	97.0%	93.2%	93.7%
Kings County	94.4%	92.4%	92.1%	95.7%	95.9%	94.8%	95.5%

Medicaid Admissions

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long-term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department. An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

New York Congregational Nursing Center exceeded the Medicaid threshold values for both 2017 and 2018.

	2017	2018
New York Congregational Nursing Center **Admissions**	59.4%	82.5%
Kings County **75% Threshold**	27.7%	27.7%

Character and Competence

Eliezer Jay Zelman is currently employed at Riverdale SNF, LLC d/b/a Schervier Nursing Care Center as CEO since June of 2017. He is also employed as Regional Director of Operations for Global Healthcare Service Group located in NJ since March 2013. Mr. Zelman holds a Master of Science degree from Fordham University. Mr. Zelman discloses the following health facility interests:

New York State
Achieve Rehab and Nursing Center (9.99%) 01/2005 – present
Schervier Nursing Care Center (10%) 06/2017 – present

Out of State Interest
Freedom Home Dialysis, LLC d/b/a Compass Home Dialysis (7%) [PA] 03/2017 – present
This ownership interest is through 100% ownership in EJZ Health Mgt LLC

Pending
A change in ownership of Buena Vida Rehabilitation and Nursing Center (CON 182060) was approved by PHHPC on 03/28/2019 but has not yet completed. Mr. Zelman will have 10% interest upon completion.

Elky Hoffman is currently a student at Long Island University pursuing a master's degree in Social Work. Ms.Hoffman discloses no health facility interests.

Quality

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
NY Congregational Nursing Center, Inc	Subject Facility	*****	****	*****	**
Schreiver Rehabilitation and Nursing Center	Current	****	****	****	**
	06/2017	*****	****	*****	***
Achieve Rehab and Nursing Facility	Current	***	***	***	**
	2005 *Data 01/2009*	***	**	***	****

Data date: *12/2019*

The Bureau of Quality Assurance and Surveillance indicates that there were no enforcements for the New York facilities under review for the relevant time period.

The applicant has submitted an affidavit regarding the out of state facility interest of Freedom Home Dialysis, indicating that there were no enforcements for the facility for the relevant time period.

Project Review

No changes in the program or physical environment are proposed in this application. The applicant has indicated there will be no administrative services or consulting agreements.

Conclusion

All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed APA to acquire the RHCF's operating interests, to be effectuated upon PHHPC approval. The terms are summarized below:

Date:	October 23, 2018
Seller:	New York Congregational Nursing Center, Inc.
Buyer:	Congregational SNF LLC
Asset Acquired:	Rights, title and interest in the business assets forward from the effective date of APA: all cash, deposits, cash equivalents and short term investments on hand as of the Closing Date; all accounts receivable, checking, savings and operating accounts related to business; all vendor and service contracts; all tangible assets, inventory, instruments, tools, vehicles, furniture/office equipment, fixtures, leasehold improvements; all books and records; assigned & assumed contracts, agreements, warranties, intellectual property rights, domain names and addresses, Medicaid and Medicare provider numbers; assignable licenses and permits; trade name; resident funds; security deposits for future services; patient/employee records; manuals and computer software; phone/telefax numbers and goodwill.
Excluded Assets:	Any cash or cash equivalents on-hand as of the effective date, and any cash or cash equivalents received by the Company prior to the Closing date that was earned prior to the effective date. All prepaid expenses, advance payments, security deposits, other prepaid items and duties related to any excluded assets; all tax returns, tax records, financial statements of seller, the property, any money or property acquired by seller after the effective date by bequest, gift or charitable donation.
Assumption of Liabilities:	Purchaser shall assume only the following liabilities as of the effective date; the accounts payable arising after the effective date, capital expenditures, all liabilities of the company under the assigned contract and relating to any business assets after the effective date, all liabilities expressly assumed by purchaser.
Purchase Price:	Assumption of the certain liabilities arising after the effective date (Amended 12/01/2018) of APA. (As of September 30, 2019, there are no liabilities).
Payment of Purchase Price:	No liabilities arise and assumed

First Amendment to Asset Purchase Agreement

The applicant has provided a draft first amendment to asset purchase agreement. The terms are summarized below:

Purchaser:	Congregational SNF, LLC
Seller:	New York Congregational Nursing Center
Amendment:	The effective date of asset purchase agreement is amended to December 1, 2018.

The purchase price for the RHCF's operation is the assumption of certain liabilities that arise after the effective date of the APA. There are no assumed liabilities as the current obligations decreased from December 1, 2018 through September 30, 2019. BFA Attachment C shows the RHCF's total current liabilities as of December 1, 2018 and September 30, 2019.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant

and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of December 20, 2019, the facility had no known outstanding Medicaid liabilities.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed REPA for the sale of the RHCF's real property. The REPA will close concurrent with the APA upon PHHPC approval of this CON. The terms are summarized below:

Date:	October 23, 2018
Seller:	New York Congregational Nursing Center, Inc.
Buyer:	135 Linden Blvd LLC
Asset Transferred:	RHCF's Property located at 135 Linden Boulevard, Brooklyn
Purchase Price:	$40,000,000
Payment of Purchase Price:	$2,000,000 Deposit in Escrow; $38,000,000 Balance at closing

The purchase price of the real property is proposed to be satisfied as follows:

Equity – 135 Linden Blvd LLC Members	$8,000,000
Loan (interest at 3.75%, 30 years, 30-year amortization)	32,000,000
Total	$40,000,000

Housing and Healthcare Finance, LLC has provided a letter of interest.

BFA Attachment A is the net worth summary for the proposed members of Congregational SNF LLC (operator) and 135 Linden Blvd LLC (real property owner), which reveals sufficient resources to meet the equity requirement for the project. It is noted that liquid resources may not be available in proportion to the proposed ownership interest in the realty. Abraham Hoffman has provided an affidavit stating that he is willing to contribute resources disproportionate to his membership interest in the realty entity to meet the equity requirements for this project.

The applicant confirmed that the consulting service agreement the current operator has with Congregational Consulting LLC will be discontinued after CON approval.

Lease Agreement

The applicant submitted a draft lease agreement, the terms of which are summarized below:

Premises:	200-bed SNF located at 135 Linden Blvd, Brooklyn, NY 11226
Landlord:	135 Linden Blvd LLC
Lessee:	Congregational SNF LLC
Term:	10 Years
Rental:	$2,400,000 per annum ($200,000 per month)
Provisions:	Tenant will be responsible for taxes, insurance, utilities and maintenance

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity.

Operating Budget
The applicant has provided the current year (2018) results with the first and third-year operating budgets subsequent to the change in ownership, in 2020 dollars, summarized as follows:

	Current Year		Year One		Year Three	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Revenues						
Medicaid-FFS	$290.03	$10,893,116	$292.84	$9,262,157	$292.84	$9,368,672
Medicaid-MC	$289.02	$6,525,239	$278.20	$5,289,340	$278.21	$5,350,167
Medicare-FFS	$660.94	$2,838,076	$660.92	$8,309,062	$660.95	$8,404,616
Medicare-MC	$567.88	$1,641,183	$567.87	$2,447,532	$567.82	$2,475,679
Private Pay	$288.78	$317,075	$288.90	$726,015	$288.67	$734,364
Other Revenue		$453,605		$0		$0
Assessment Rev.		$0		$662,800		$670,422
Total		$22,668,294		$26,696,906		$27,003,920
Expenses						
Operating	$369.58	$25,286,110	$344.88	$24,154,490	$344.06	$24,374,510
Capital	$10.84	$741,422	$35.81	$2,507,835	$35.40	$2,507,835
Total Expenses	$380.42	$26,027,532	$380.69	$26,662,325	$379.46	$26,882,345
Net Income (Loss)		($3,359,238)		$34,581		$121,575
Patient Days		68,418		70,037		70,843
Utilization %		94%		96%		97%

**Other Revenues includes Discounts, Abstract Fees, Vending Machine, and Miscellaneous income.*

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

- The current year reflects the facility's 2018 revenues and expenses.
- Medicaid revenue is based on the facility's current 2019 Medicaid Regional Pricing rate. The Medicaid Managed Care rate is based on an assumed 95% of the Medicaid FFS rate. The Medicare and Private Pay rates are the actual daily rates experienced by the facility during 2018 and expected to remain constant in Year One and Year Three.
- The applicant's operating budget involves a reduction in Medicaid utilization (from 87.9% in 2018 to 72.3% in Years One and Three) along with a corresponding increase in Medicare utilization as the result of the planned increased focus on the provision of rehabilitation services. The applicant states that no existing Medicaid residents will be displaced from the facility as a result of this plan.
- Expense and staffing assumptions were based on the 2018 operating expenses, adjusted for inflation and to reflect the closure of the Certified Home Health Care Agency (CCHA) and the Long-term Home Health Care Program (LTHHCP).
- The facility's projected utilization for Year One is 96% and for Year Three is 97%. It is noted that utilization for the past three years has averaged 95% and 95.2% through May 31, 2019. Occupancy was 95% as of December 4, 2019. The applicant plans to improve occupancy by various measures including:
  - Development of census and enhancement of quality mix via centralized and coordinated management, modern billing and receivables collection systems, community outreach and collaboration with local hospitals to increase Medicare utilization;
  - Capitalizing on being close to Wyckoff Heights Medical Center to increase the number rehabilitation referrals going forward (met with Wyckoff's CEO, Chief Medical Officer and Director of Social Services to develop a plan to reduce readmissions to the hospital's Emergency Department);
  - Implement a 24-hour-per-day, 7-day-per-week admissions protocol to ensure the hospital's discharge planners have easy access to the facility;
  - Renovate portions of the facility to improve the cosmetics and function of the building;
  - Develop marketing initiatives including a new website; and
  - Add experienced staff to help stabilize operations.

- Utilization by payor is summarized below:

	Current Year		Year One		Year Three	
Payor	Pt Days	%	Pt Days	%	Pt Days	%
Medicaid-FFS	37,559	54.90%	31,629	45.16%	31,992	45.16%
Medicaid-MC	22,577	33.00%	19,013	27.15%	19,231	27.15%
Medicate-FFS	4,294	6.28%	12,572	17.95%	12,716	17.95%
Medicare-MC	2,890	4.22%	4,310	6.15%	4,360	6.15%
Private Pay	1,098	1.60%	2,513	3.59%	2,544	3.59%
Total	68,418	100%	70,037	100%	70,843	100%

- Breakeven utilization is projected at 95.82% for the first year.

Capability and Feasibility

The purchase price of the RHCF operation is the assumption of certain current liabilities that arise after the effective date of the APA (December 1, 2018). There are no assumed liabilities as the current obligations decreased from December 1, 2018 through September 30, 2019. BFA Attachment C shows the RHCF's total current liabilities as of December 1, 2018 and September 30, 2019. The purchase price for the realty is $40,000,000, to be funded by 135 Linden Blvd, LLC via $8,000,000 members' equity and a $32,000,000 mortgage at stated terms. Housing & Healthcare Finance, LLC has provided a letter of interest.

The working capital requirement is estimated at $4,443,721 based on two months of first-year expenses and will be funded via assumed cash of $1,846,655 (per the APA, the cash increase from December 1, 2018 through September 30, 2019 will be assumed) and the remaining $2,597,066 will be funded via member's equity. BFA Attachment A, proposed members net worth summaries, reveals sufficient resources to meet equity requirements. As previously stated, liquid resources for real property transaction may not be available in proportion to ownership interest. As the result of potential equity shortfall, Abraham Hoffman has provided an affidavit stating his willingness to contribute necessary resources disproportionate to his membership interest in the realty entity.

The submitted budget projects a first-year and third-year profit of $34,581 and $121,575, respectively. Total revenues are expected to increase by $4,028,612 in Year One. Overall, expenses are expected to increase by $634,793 based on a $1,131,620 reduction in operating expense and a $1,766,413 increase in capital expense (primarily rent). The decline in operating expenses is attributable to the following: a reduction in salary and wages of $234,907 related to a staff reduction of 3.4 FTEs; a $735,268 reduction in professional fees; a $212,227 reduction in purchased services; a $40,773 reduction in other direct expenses; and offset by a $91,555 increase in expenses spread between medical and non-medical supplies, employee benefits and utilities. BFA Attachment D is the pro forma balance sheet of Congregational SNF LLC and 135 Linden Blvd LLC, which shows the operating entity will start with $4,443,721 in member's equity which includes $1,846,655 in assumed cash, and the realty entity will start with $8,000,000 in members' equity. The budget appears reasonable.

BFA Attachment E is the Financial Summary of New York Congregational Nursing Center, Inc. for 2016 through 2018. The RHCF had an average negative net income of $3,397,936 and positive average net assets of $451,797 and an average positive working capital of $768,378 during the reporting periods. BFA Attachment F is their internal financial statements as of June 30, 2019, which show positive working capital, negative net assets, and positive earnings before interest, taxes, depreciation, amortization, rent, and management fees (EBITDARM) of $1,184,889.

BFA Attachment G is the ownership interest and financial summary of Mr. Zelman's NY affiliated RHCFs, which shows the following:

- Riverdale/Scheriver Rehab & Nursing Center shows negative working capital and negative net assets and an operating loss during 2017 and 2018 due to lower than expected occupancy and a higher than expected level of accounts payable, which the facility expects to pay down. The facility shows positive operating income during 2019 and expects its working capital to be positive within the near term.

- Achieve Rehab and Nursing facility shows negative working capital during 2016, 2017and in 2018 due to the fact the facility was required to record $2,089,578 current liability relating to an insurance overpayment received during 2016. The facility expects to remove this liability from its books in near terms as the statute of limitations relating to this overpayment will expire soon and the working capital will then be positive. The facility shows net operating loss in year 2016 and 2018 due to lower than expected occupancy. The facility shows positive operating income in year 2017. The facility's occupancy has improved during 2019 and expects positive operating income by the end of 2019.

Attachments

BFA Attachment A	Proposed Members Net Worth: Congregational SNF LLC & 135 Linden Blvd, LLC
BFA Attachment B	Pre and Post Ownership of Realty
BFA Attachment C	Details of Assumed Liabilities
BFA Attachment D	Pro Forma Balance Sheets of Operation and Realty
BFA Attachment E	Financial Summary and 2018 Certified Financial Statement of NY Congregational Nursing Center, Inc.
BFA Attachment F	Internal Financial Statement of NY Congregational Nursing Center, Inc. as of June 30, 2019.
BFA Attachment G	Proposed Members' Ownership Interest in Affiliated RHCFs and Financial Summary

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of February 2020, 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 Congregational SNF LLC as the new operator of the 200-bed residential health care facility (RHCF), located at 135 Linden Boulevard, 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:
192158 E	Congregational SNF LLC d/b/a New York Congregational Nursing Center

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of an executed loan commitment for the purchase of the real property, acceptable to the Department of Health. [BFA]
3. Submission on an executed first amendment to the asset purchase agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
5. Submission of a photocopy of JHSL 135 Opco LLCs amended and executed Operating Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of JHSL 135 Opco LLCs amended and executed Articles of Organization, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicants amended and executed Articles of Organization, acceptable to the Department. [CSL]
8. Submission of a photocopy of an amended and 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.*

Public Health and Health Planning Council

Project # 192236-E
Glens Falls Hospital

Program:	**Hospital**	*County:*	**Warren**
Purpose:	**Establishment**	*Acknowledged:*	**November 21, 2019**

Executive Summary

Description

Glens Falls Hospital (GFH), a 391-bed, voluntary not-for-profit, Article 28 acute care hospital located at 100 Park Street, Glens Falls (Warren County), is requesting approval to establish Albany Medical Center (AMC) as its active parent and co-operator. AMC is a not-for-profit corporation that is the active parent/co-operator of Albany Medical Center Hospital located at 43 New Scotland Avenue (748 beds, main campus) and 25 Hackett Boulevard (18 beds, South Clinical campus) in Albany, Columbia Memorial Hospital in Hudson (192 beds, Columbia County), and Saratoga Hospital in Saratoga (171 beds, Saratoga County). AMC also operates Albany Medical College.

Active parent status is requested as part of a proposed affiliation between AMC and GFH, as described in an Affiliation Agreement executed by both parties on October 25, 2019. The agreement creates a commitment to work together to strengthen health care service delivery to meet the clinical, financial and technological demands of the patients they serve. The affiliation will create a comprehensive, cost effective and efficient care delivery system to better serve patients in their respective communities through maintaining, expanding and enhancing the delivery of state-of-the-art health care services.

As the active parent and co-operator, AMC will have the following rights, powers and authorities with respect to GFH as described in 10 NYCRR 405.1(c):

- appointment or dismissal of hospital management level employees and medical staff, except the election or removal of corporate officers by the members of a not-for-profit corporation;
- approval of hospital operating and capital budgets;
- adoption or approval of hospital operating policies and procedures;
- approval of certificate of need applications filed by or on behalf of the hospital;
- approval of hospital debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
- approval of hospital contracts for management or for clinical services; and
- approval of settlements of administrative proceedings or litigation to which the hospital is party, except approval by the members of a not-for-profit corporation of settlements of litigation that exceed insurance coverage or any applicable self-insurance fund.

OPCHSM Recommendation

Contingent Approval

Need Summary
This affiliation will create a comprehensive and integrated, cost-effective and efficient health care delivery system that will better serve the health care needs of the communities served by GFH and AMC through maintaining, expanding and enhancing the delivery of services.

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 is no project cost associated with this application.

	(In 000's)	
Budget	Year One	Year Three
Revenue	$338,428	$349,816
Expense	350,014	366,773
Gain/(Loss)	($11,586)	($16,963)

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]

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

February 6, 2020

Need and Program Analysis

Background
Glens Falls serves the counties of Warren, Washington, Essex, Hamilton and northern Saratoga County. The Hospital currently operates eighteen extension clinics providing a variety of services to residents in Warren, Washington and Saratoga Counties. Approval of this project will allow GFH and AMC to work together to continue and strengthen the high-quality health care services that each hospital delivers, and to meet the clinical, financial and technological demands of delivering health care in their respective communities. GFH will remain a separate not-for-profit corporation that operates the general acute care hospital licensed under Article 28 of the Public Health Law, maintaining its separate operating certificate following approval of this application. There will be no changes to beds or services as a direct result of this application.

Character and Competence
The Board of Albany Medical Center is comprised of the following individuals:

Name	Title
Raimundo Archibold, Jr.	**Vice Chairman**
James J. Barba	Director
Mary Gail Beibel, Ph.D.	Affiliate Director
Robert T. Cushing	**Chairman**
Joyce M. Defazio	Director
R. Wayne Diesel	Director
Sharon Duker	Director
Anthony Durante	Affiliate Director
Peter H. Elitzer	*Director*
Margaret Gillis, Esq.	***Vice Chairman***
David Golub	Director
Doulas M. Hamlin	Director
Peter H. Heerwagen	Director
Michael H. Iacolucci	Affiliate Director
James O. Jackson, Ph.D.	Director
Ruth Mahoney	Director
Morris Massry	Director
Lillian Moy Esq.	Director
John J. Nigro	Director
John B. O' Connor	Director
Steven M. Parnes, M.D.	Director
Daniel T. Pickett III	Director
Havidan Rodriguez, Ph.D.	Director
Theresa Skaine	Affiliate Director
Janice Smith	Director
Jeffrey Sperry	Director
Carolyn Stefanco. Ph D.	Director
Jeffrey Stone	**Vice Chairman & Secretary**
Todd Tidgewell	Director
Omar Usmani	Director
Candace King Weir	Director
Janice White	Affiliate Director

Dr. Parnes *disclosed the following: being named in three medical malpractice cases. In the first case, filed on February 21, 2017, the patient alleged an error related to a procedure/test/treatment. The claim remains open. In the final case, the patient alleged right and left stapedectomy was performed negligently, causing a loss of taste and tongue sensitivity. The case remains open.*

Mr. Rodriguez *disclosed being named a defendant in a civil action concerning Civil Rights Action alleging age discrimination and violations of academic freedom while in the official capacity as President of the University at Albany.*

Ms. Weir *disclosed several law suits and proceedings. The first is a civil suit filed on March 28, 2013. Claimant asserts that Ms. Weir, in her capacity as control person, had a duty to analyze, determine and notify the claimant regarding potential risks in the account managed on a discretionary basis by the unaffiliated advisor. Ms. Weir denies the claims. In a second case, Ms. Weir disclosed being named in a civil law suit by a former employer, who claims he was discharged in violation of Dodd-Frank Act for providing information to the Securities and Exchange Commission. The employee voluntarily dismissed the complaint without prejudice on December 4, 2012. The employee then submitted a claim for arbitration with FINRA and on April 23, 2014 the parties mediated the dispute and reached a settlement. The third action was an Adversary Proceeding regarding Ordway Research Institute, Inc. As a Director, Ms. Weir was named as a defendant, with the matter resolved on October 10, 2011. The fourth action, occurring June 16, 2014, was a Securities Exchange Commission Administrative Proceeding. Paradigm Capital Management Inc. and Ms. Weir settled an administrative proceeding with the Securities Exchange Commission. Ms. Weir agreed in the future to cease and desist from violating Section 203(6) of the Investment Advisers Act, which relates to requisite disclosures and consents regarding certain related - party transactions.*

Mr. Durante disclosed interest in the facilities listed below:

Troy Center for Nursing and Rehabilitation (formerly known as The Springs Nursing and Rehabilitation Center)

- *The Department issued a Stipulation and Order (S&O) dated January 13, 2016 and fined Troy Center for Nursing and Rehabilitation $10,000 based on an investigation that was completed on April 3, 2012. Deficient practice was identified in Quality of Care-Residents are Free of Significant Medication Errors. The facility did not ensure adequate monitoring of a resident who has Multiple Sclerosis her Baclofen (used to reduce spasms) pump (a device placed under the skin used to administer a preset dosage of medication). The pump ran out of the medication and the resident required hospitalization.*
- *The Department issued a Stipulation and Order (S&O) dated January 13, 2016 and fined Troy Center for Nursing and Rehabilitation $10,000 based on an investigation that was completed on September 17, 2013. Deficient practice was identified in Quality of Care-Provide Care/Services for Highest Well Being. The facility did not provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being in accordance with the comprehensive assessment and plan of care for one resident. Specifically, the resident was complaining of severe pain throughout the night, and the physician was not notified until later the following morning at which time the resident was sent to the emergency room (ER) for evaluation with a diagnosis of sepsis.*
- *The Department issued a Stipulation and Order (S&O) dated September 17, 2012 and fined Troy Center for Nursing and Rehabilitation $4,000 based on an Investigation that was completed on April 1, 2011. Deficient practice was identified in the following area: Resident Behavior and Facility Practices- Investigate/Report Allegations/Neglect. The facility failed to ensure that all reports of potential abuse/neglect were investigated in a thorough and timely manner to ensure that the resident remained safe and that services were delivered in accordance to the resident's plan of care and prevent the possibility of further abuse/neglect which poses a serious risk to resident safety.*

Slate Valley Center for Rehabilitation and Nursing (formerly known as The Orchard Nursing and Rehabilitation)

- *The Department issued a Stipulation and Order (S&O) dated January 13, 2016 and fined Slate Valley Center for Rehabilitation and Nursing $6,000 based an investigation that was completed on September 18, 2014. The Deficient practice was identified in the following areas: 1. Resident Behavior and Facility Practices-Investigate/Report Allegations/Neglect- The facility failed to ensure that all alleged violations including mistreatment, neglect, or abuse, including injuries of unknown origin were reported immediately to the Administrator of the facility. Additionally, the facility failed to investigate a report of verbal abuse between a supervisor and a resident supervisor continued to work at the facility. 2. Administration/Resident Well Being, and Quality. The facility failed to ensure it was administered in a manner that enabled it to use its resources effectively administered in a manner that enabled it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident. Quality Assurance Agency (QAA) Committee Members/Meet Quarterly/Meet Quarterly Plans. The facility Quality Assurance (QA) Program did not have a process that readily identified issues that had the potential to cause serious harm to residents.*
- *The Department issued a Stipulation and Order (S&O) dated January 13, 2016 and fined Slate Valley Center for Rehabilitation and Nursing $6,000 based on an investigation that was completed on November 12, 2013. Deficient practice was identified in the following areas: Quality of Care- Residents are Free of Significant Med Errors- the facility failed to ensure that newly admitted resident's and re-admitted residents received significant medications and treatments. The omission of medications and Insulin Finger sticks were not recognized by the staff. Administration- Effective Administration/Resident Well Being, and Quality. The facility failed to ensure it was administered in a manner that enabled it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident. Quality Assurance Agency (QAA) Committee Members/Meet Quarterly/Meet Quarterly Plans. The facility Quality Assurance (QA) Program did not have a process that readily identified issues that had the potential to cause serious harm to residents.*

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

There will be no changes to beds or services as a result of this application. The individual background review indicates the proposed board members have met the standards for approval.

Financial Analysis

Financial Analysis

There is no purchase price and no costs associated with this project. Upon completion, GFH will remain a separate not-for-profit corporation maintaining its discrete Article 28 operating certification.

Operating Budget

The applicant has submitted their current year (2018) operating budget, and the first- and third-year budgets, in 2020 dollars, after approval of AMC as active parent, summarized below:

	(In Thousands)					
	Current Year (2018)		Year One		Year Three	
Inpt Revenue	Per Disch.	Total	Per Disch.	Total	Per Disch.	Total
Comm FFS	$13,032	$25,270	$9,763	$16,842	$9,960	$17,181
Comm MC	$13,033	$17,086	$9,764	$11,385	$9,960	11,613
Medicare FFS	$9,167	$36,264	$9,764	$34,349	$9,960	35,039
Medicare MC	$9,432	$29,135	$9,764	$26,821	$9,960	27,360
Medicaid FFS	$4,476	$2,171	$9,763	$4,208	$9,961	4,293
Medicaid MC	$5,324	$12,479	$9,768	$20,357	$9,960	20,767
Private Pay	$5,983	$718	$9,766	$1,045	$9,963	1,066
Other	$10,309	$567	$9,755	$478	$9,959	488
Total Inpt Rev.		$123,690		$115,485		$117,807
Outpt Revenue	Per Visit	Total	Per Visit	Total	Per Visit	Total
Comm FFS	$1,084	$52,101	$1,565	$60,568	$1,628	$63,015
Comm MC	$1,084	$32,681	$1,565	$37,992	$1,628	$39,527
Medicare FFS	$707	$40,412	$1,036	$46,665	$1,054	$48,550
Medicare MC	$631	$30,684	$910	$35,670	$947	$37,111
Medicaid FFS	$600	$1,515	$792	$1,610	$902	$1,832
Medicaid MC	$599	$18,378	$864	$21,364	$899	$22,228
Private Pay	$76	$2,294	$110	$2,678	$114	$2,775
Other	$794	$2,505	$1,038	$2,639	$1,192	$3,030
Total Outpt Rev		$180,570		$209,186		$218,068
Other Op Rev		$15,943		$13,032		$13,216
Non-Op Rev		$34,865		$725		$725
Total Revenue		$355,068		$338,428		$349,816
Inpt Expenses	Per Disch.	Total	Per Disch.	Total	Per Disch.	Total
Operating	$9,494	$126,265	$8,680	$102,668	$9,154	$108,273
Capital	$715	$9,508	$660	$7,809	$633	$7,493
Inpt Expenses	$10,209	$135,773	$9,340	$110,477	$9,787	$115,766
Outpt Expenses	Per Visit	Total	Per Visit	Total	Per Visit	Total
Operating	$819	$205,320	$1,103	$222,607	1,163	$234,761
Capital	$62	$15,461	$84	$16,930	80	$16,246
Outpt Expenses	$881	$220,781	$1,187	239,537	$1,243	251,007
Total Expenses		$356,554		$350,014		$366,773
Excess Rev over Exp		($1,486)		($11,586)		($16,957)
						-
Discharges		13,299		11,828		11,828
Visits		250,625		201,879		201,879

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

- Non-operating revenues are decreasing due to the current year (2018) having one-time gains related to the Gain on Sale of Dialysis Program of $24,939,300 and Gain on Settlement of $8,804,752.
- Other operating revenue is decreasing due to the elimination of DSRIP funding and the reduction of investment income.
- Outpatient private pay revenues consists of net expected reimbursement, net of bad debt and charity care and self-pay discounts.
- Payor increases are based on negotiated commercial/managed care contracts currently in place and renegotiations expected based on normal operations, typical of both inpatient and outpatient service lines. There are no reimbursement rate assumptions related to the affiliation.
- Discharges are decreasing due to the previous closure of inpatient rehabilitation beds and decreasing inpatient volume trends in general for the hospital, unrelated to the affiliation. Outpatient visits are decreasing due to the transition of behavioral health services to a different entity, unrelated to the affilation.
- Utilization by payor during the current year, first year and the third year is as follows:

Inpatient	Current Year	Year One	Year Three
Commercial FFS	14.58%	14.58%	14.58%
Commercial MC	9.86%	9.86%	9.86%
Medicare FFS	29.75%	29.74%	29.74%
Medicare MC	23.23%	23.22%	23.22%
Medicaid FFS	3.65%	3.64%	3.64%
Medicaid MC	17.63%	17.63%	17.63%
Private Pay	0.90%	0.90%	0.90%
Other	0.41%	0.41%	0.41%
Total	100.00%	100.00%	100.00%

Outpatient	Current Year	Year One	Year Three
Commercial FFS	19.17%	19.27%	19.27%
Commercial MC	12.03%	12.08%	12.08%
Medicare FFS	22.81%	22.42%	22.42%
Medicare MC	19.42%	19.51%	19.51%
Medicaid FFS	1.01%	1.01%	1.01%
Medicaid MC	12.24%	12.30%	12.31%
Private Pay	12.07%	12.13%	12.13%
Other	1.26%	1.27%	1.27%
Total	100.00%	100.00%	100.00%

Capability and Feasibility

There are no issues of capability as there are no project costs associated with this application. The submitted budget indicates a loss of $11,586,000 and $16,957,000 during the first and third years, respectively, which when compared to a normalized 2018 loss of $35,230,000, calculated by excluding the one-time revenues noted of $33,744,052, is a significant improvement and restores positive cashflow to the applicant. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

BFA Attachment A is the 2017 and 2018 certified financial statements of Albany Medical Center and Related Entities. As shown, the entity had an average positive working capital position and an average positive net asset position from 2017 through 2018. Also, the entity achieved an average excess of revenues of $21,971,000 from 2017 through 2018.

BFA Attachment B is the 2017 and 2018 certified financial statements of Glens Falls Hospital. As shown, the entity had an average positive working capital position and an average positive net asset position from 2017 through 2018. Also, the entity incurred an average net loss of $21,831,256 from 2017 through 2018. The applicant indicated that the reason for the losses are as follows: Glens Falls Hospital has experienced rapid decline in volume for key service areas (e.g., surgical volume decreased 24% between 2015 and 2018) and continues to experience a disproportionate share of government payors compared to its peers due to demographics of the hospital's primary and secondary market. The decrease in volume

and shift in payor mix has led to serious financial challenges. The hospital implemented the following steps to improve operations: engaged a third-party consultant to assist in an operational performance improvement engagement, focused on strong expense management and revenue cycle optimization. The proposed affiliation with AMC is an essential long-term strategy to further enhance financial sustainability through resident health planning and system integration.

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

Attachments

BFA Attachment A	Financial Summary - 2017 and 2018 certified financial statements of Albany Medical Center and Related Entities
BFA Attachment B	Financial Summary - 2017 and 2018 certified financial statements of Glens Falls Hospital
BFA Attachment C	Organizational Chart- Albany Medical Center post-closing

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of February 2020, 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 Albany Medical Center as the active parent/co-operator of Glens Falls Hospital, 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:
192236 E	Glens Falls Hospital

APPROVAL CONTINGENT UPON:

1. Submission of documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]

APPROVAL CONDITIONAL UPON:

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

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.*

Public Health and Health Planning Council

Project # 181164-E
St. Johnsville Rehabilitation and Nursing Center

Program:	**Residential Health Care Facility**	*County:*	**Montgomery**
Purpose:	**Establishment**	*Acknowledged:*	**March 7, 2018**

Executive Summary

Description

St. Johnsville Rehabilitation and Nursing Center, Inc. (SJRNC) is a proprietary business corporation that operates a 120-bed, Article 28 residential health care facility (RHCF) located at 7 Timmerman Avenue, St. Johnsville (Montgomery County). SJRNC requests approval to transfer 100% of its capital stock (200 shares) from the five withdrawing shareholders to a single new shareholder, Chaim Scheinbaum. Mr. Scheinbaum will also acquire 100% membership interest in St. Johnsville Realty, LLC, the current real property owner. There will be no change in beds or services provided.

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

Current Operator St. Johnsville Rehabilitation and Nursing Center, Inc.		
Shareholders	Shares	%
Charles Glessing (Estate)	100	50%
Dennis J. Christiano, Sr.	50	25%
Marie Stafford	18	9%
Lisa Canale	16	8%
Linda Scott	16	8%

Proposed Operator St. Johnsville Rehabilitation and Nursing Center, Inc.	
Shareholder	%
Chaim Scheinbaum (200 shares)	100%

Current shareholder and realty member Charles Glessing died on January 13, 2016. Ms. Theresa Britton, the Administrator of Mr. Glessing's Estate, has provided an affidavit attesting that the Estate will honor every term of his purchase agreement as modified by the assignments, including the financing arrangements set forth therein.

Pursuant to separate purchase agreements dated March 17, 2015 (Charles Glessing) and November 17, 2015 (remaining shareholders), the current shareholders agreed to sell their stock in the Corporation to Joseph Schwartz. Mr. Glessing's sale price was valued at $4,800,000 and the remaining shareholders' sale price was valued at $1,000,000 for a total purchase price of $5,800,000. On November 17, 2017, Joseph Schwartz entered into two Assignment of Contract Agreements (one for each stock purchase agreement) to assign his rights, title and interest to purchase the operations to Chaim Scheinbaum. Joseph Schwartz was the CEO of Skyline Healthcare, LLC, which in less than two years grew from a chain of about two dozen homes to 120 across ten states from New Jersey to Florida to South Dakota. He was still acquiring facilities in February of 2016 when his application for St. Johnsville was acknowledged by the Department. He subsequently withdrew his application in February of 2018 as facilities in his out-of-state portfolio began to fail. Many of these facilities ended up in receivership or closed after Mr. Schwartz was forced to surrender his license by the respective state authorities

The total purchase price for the sale of the realty is valued at $4,970,000. At the time of execution of the stock purchase agreements, the membership of St. Johnsville Realty, LLC was identical to the membership of the operating entity. However, Mr. Glessing's March 17, 2015 sale agreement included the sale of his 50% membership interest in the realty whereby a $500,000 down payment toward the $720,000 realty purchase price would authorize transfer of Mr. Glessing's membership interest in the realty to Mr. Schwartz. The down payment was paid; hence, Mr. Schwartz became a 50% realty member and guarantor on the Citizens Bank debt (mortgage) as of March 17, 2015. Mr. Schwartz subsequently paid the remaining $220,000 balance due on the realty transaction satisfying the full payment due of $720,000 for the purchase of Mr. Glessing's 50% ownership interest in the realty. On November 17, 2015, concurrent with the execution of their stock purchase agreement, the remaining realty entity members entered into a membership interest purchase agreement with Joseph Schwartz for the sale of their 50% membership interest in the realty for a purchase price of $4,250,000. Mr. Schwartz has paid a $250,000 deposit on this transaction. On June 19, 2018, Joseph Schwartz entered into two Assignment of Contract Agreements to assign his rights, title and interest in St. Johnsville Realty, LLC to Chaim Scheinbaum.

Mr. Glessing's operations and realty sale agreements also provided for a discount of $2,070,000 whereby the promissory note transactions would be deemed paid in full if the buyer paid a total of $3,450,000, inclusive of the $500,000 paid on the realty, by the end of the seventh year. Upon PHHPC approval, the applicant intends to close on the promissory notes securing the discounted sale price.

The operations and realty purchase and assignment agreements will close simultaneously upon approval of this application by the Public Health and Health Planning Council (PHHPC), at which time Mr. Scheinbaum will own 100% of the operating entity's stock and have 100% membership interest in the realty entity. At Closing, Mr. Scheinbaum will repay Joseph Schwartz's $970,000 investment in the realty. The proceeds from the realty sale will be used by the current realty members to satisfy the outstanding Citizens Bank mortgage that has a maturity date of July 22, 2023, and a $2,030,983 principal balance due as of August 19, 2019.

The applicant has minimally satisfied the statutory requirement of financial feasibility/capability by taking an advance payment on shares in the realty entity that he does not currently own. On August 1, 2018, Chaim Scheinbaum and Jack Jaffa entered into a Letter of Intent to Purchase (LOI) whereby, subsequent to PHHPC approval of this application, Mr. Scheinbaum will sell 10% membership interest in the realty entity to Mr. Jaffa for $1,000,000. The transaction provided for a refundable deposit of $250,000 upon signing of the LOI, with the $750,000 balance due at Closing defined as 20 days following the Department's approval of the license transfer (operations). Mr. Scheinbaum indicated that the $750,000 balance due was paid in full and his personal net worth statement, updated August 19, 2019, reflects the additional $1M cash resources. Bank statement confirmation documenting the availability of sufficient liquid resources as of August 31, 2019 has been provided. It is anticipated that the additional funds will be used for working capital needs. Thus, after PHHCP approval of this application and Closing of the assignments, the realty entity's membership will be 90% Mr. Scheinbaum and 10% Mr. Jaffa. The applicant will continue to lease the premises from St. Johnsville Realty, LLC. The annual rent payment will be adjusted to cover the mortgage payment on the real property.

OPCHSM Recommendation
Disapproval on character and competence and other factors.

Need Summary
There will be no Need recommendation.

Program Summary
Based upon the proposed members fragmented and short ownership history, spanning two and a half years, which lacks demonstration of a track record to improve operations of poor performing facilities and other factors including an ongoing investigation of the applicant, the individual background review indicates the proposed member has not met the standard for approval set forth in Public Health Law §2801-a(3).

Financial Summary
There are no project costs associated with this application. Chaim Scheinbaum will acquire 100% of SJRNC's corporate stock and 100% of the realty entity's membership interest for a total purchase price of $8,700,000. Mr. Scheinbaum

has deposited $100,000 in equity and will fund the $8,600,000 balance due via a self-amortizing 25-year mortgage with interest fixed at the 5-year US Treasury rate plus 4.15% (estimated at 5.75% as of September 25, 2019). HHC Capital Advisory Group, LLC has provided a letter of interest for the loan at the stated terms. Mr. Scheinbaum also agreed to pay a $40,000 note Mr. Glessing owed to SJRNC. The budget is summarized below:

Budget	Year One	Year Three
Revenues	$11,946,018	$11,991,841
Expenses	11,115,493	11,588,598
Net Income	$830,525	$403,243

Recommendations

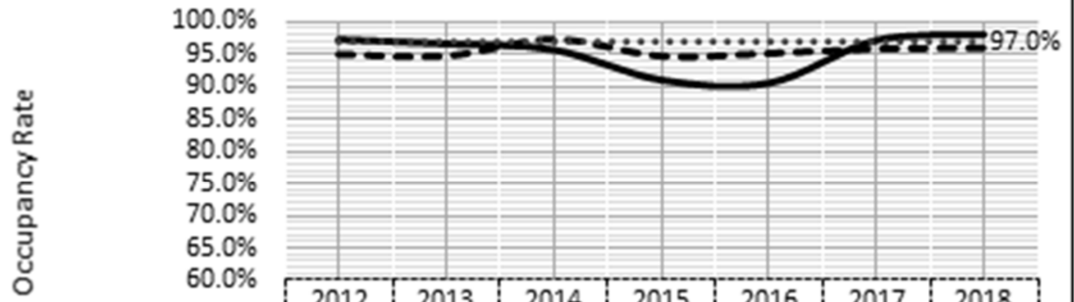
Health Systems Agency
There will be no HSA recommendation for this project.

Council Action Date
February 6, 2020

Program Analysis

Facility Information

	Existing	**Proposed**
Facility Name	St Johnsville Rehabilitation and Nursing Center	Same
Address	7 Timmerman Avenue St. Johnsville	Same
RHCF Capacity	120	Same
ADHCP Capacity	0	Same
Type of Operator	Corporation	Same
Class of Operator	Proprietary	Same
Operator	St. Johnsville Rehabilitation and Nursing Center, Inc. Shareholders Charles Glessing (Estate) 50% Dennis J. Christiano, Sr. 25% Marie Stafford 9% Lisa Canale 8% Linda Scott 8%	Same Shareholder Chaim Scheinbaum 100%



	2012	2013	2014	2015	2016	2017	2018
St Johnsville Rehabilitation and Nursing Center	97.1%	96.5%	95.6%	91.0%	90.5%	97.0%	97.9%
Montgomery County	95.0%	94.7%	97.2%	94.7%	95.1%	95.8%	95.9%

Character and Competence

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

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

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

Quality Review

Andover Subacute and Rehab II (NJ)

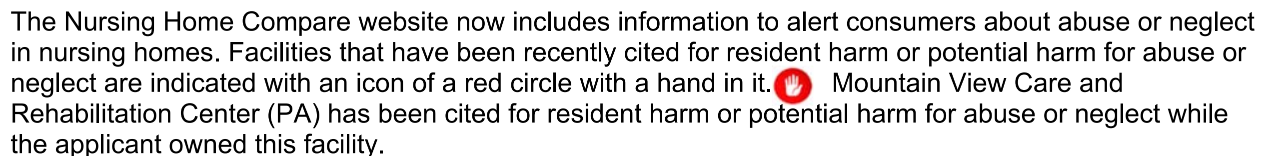
- A federal Civil Money Penalty of $7,673 was assessed and paid for a survey on November 14. 2017.
- A federal Civil Money Penalty of $21,393 was assessed for a complaint survey on January 30, 2019.

Mountain View Care and Rehabilitation Center (PA)

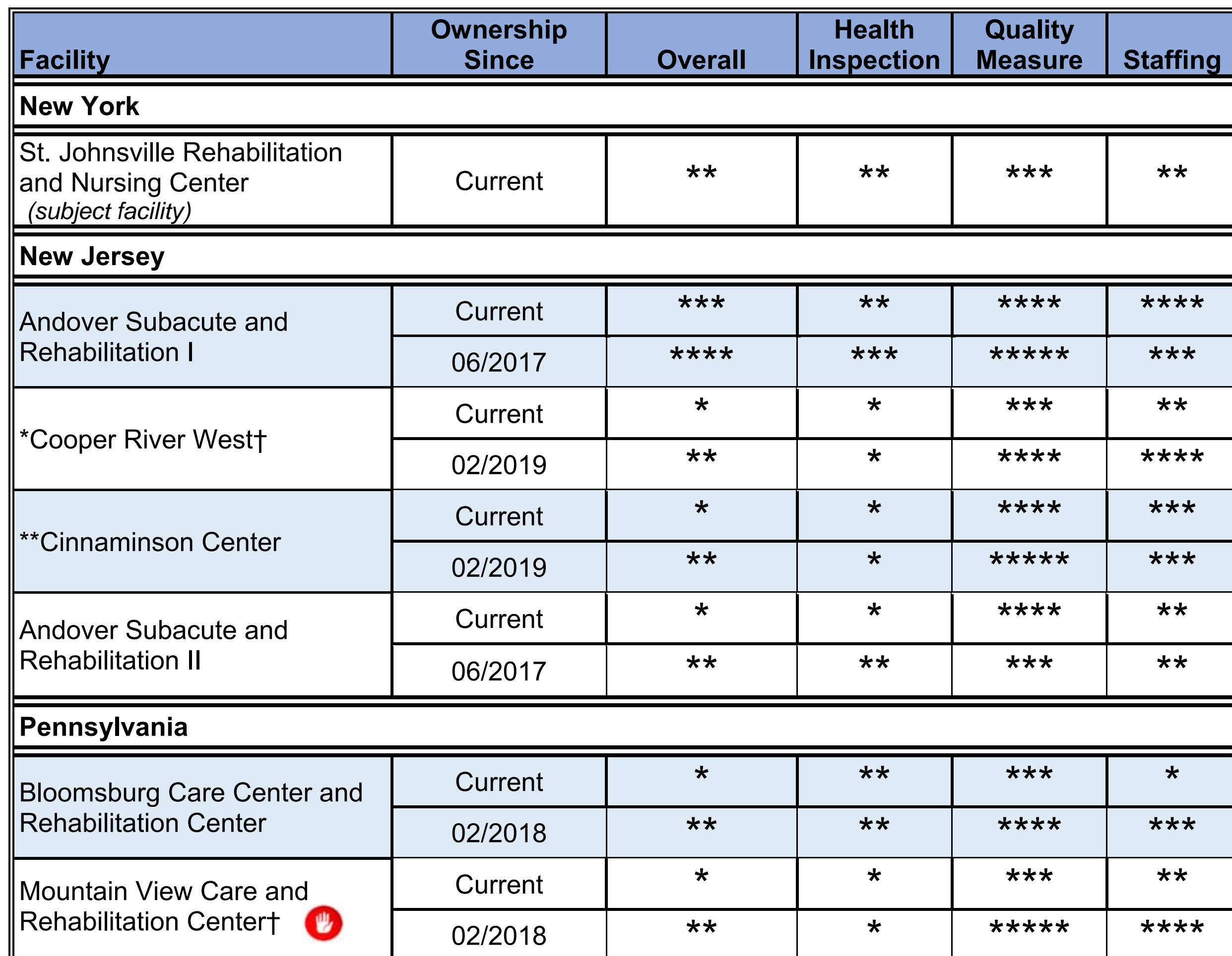
- A state Civil Penalty of $17,750 was accessed for Tag F 600 (Free from abuse and neglect) and Tag F 689 (Free of accident hazards/supervision) for a complaint survey on February 14, 2019.
- A state Civil Penalty was accessed for Tag 686G (Skin integrity) from a complaint survey on May 16, 2019 (PA did not provide the amount of the fine).

The CMS Special Focus Facility (SFF) program includes nursing homes that have a history of serious quality issues or are included in a special program to stimulate improvements in their quality of care.

The applicant owns two facilities which are on the CMS Special Focus Facility Candidate List (a list of nursing homes that qualify to be selected as an SFF): Cooper River West and Mountain View Care and Rehabilitation Center in PA. These facilities are listed in the table below with the following symbol †.

The Nursing Home Compare website now includes information to alert consumers about abuse or neglect in nursing homes. Facilities that have been recently cited for resident harm or potential harm for abuse or neglect are indicated with an icon of a red circle with a hand in it.  Mountain View Care and Rehabilitation Center (PA) has been cited for resident harm or potential harm for abuse or neglect while the applicant owned this facility.

The applicant describes the reasons for below-average CMS ratings at his facilities as, in part, that Cooper River West (NJ), Cinnaminson Center (NJ), Mountain View Care and Rehabilitation Center (PA) and Bloomsburg Care Center and Rehabilitation Center (PA) had low star ratings when they were acquired.



Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
St. Johnsville Rehabilitation and Nursing Center *(subject facility)*	Current	**	**	***	**
New Jersey					
Andover Subacute and Rehabilitation I	Current	***	**	****	****
	06/2017	****	***	*****	***
*Cooper River West†	Current	*	*	***	**
	02/2019	**	*	****	****
**Cinnaminson Center	Current	*	*	****	***
	02/2019	**	*	*****	***
Andover Subacute and Rehabilitation II	Current	*	*	****	**
	06/2017	**	**	***	**
Pennsylvania					
Bloomsburg Care Center and Rehabilitation Center	Current	*	**	***	*
	02/2018	**	**	****	***
Mountain View Care and Rehabilitation Center†	Current	*	*	***	**
	02/2018	**	*	*****	****

Data date: *11/ 19*
**Cooper River West is known as Riverfront Rehabilitation and Healthcare Center*
*** Cinnaminson Center is known as Wynwood Rehabilitation and Healthcare Care.*
† Special Focus Facility Candidate

Resident harm or potential harm for abuse or neglect

Project Review

No changes in the program or physical environment are proposed in this application.

Conclusion

The subject facility is currently rated as a CMS two-star facility. The applicant has a short two-and-a-half year current ownership history dating back to June 2017. Five of six of the current ownership facilities were acquired with low CMS two-star ratings and currently have a CMS one-star rating. Two of the currently operated facilities acquired in February of 2019 are also designated as CMS Special Focus Facility (SFF) candidates. The ownership history also includes a very brief ownership of two other facilities lasting for less than two years.

In addition, the Department is aware of an ongoing investigation of Mr. Scheinbaum.

Financial Analysis

Purchase Agreement with Mr. Glessing (Operations and Realty Combined)

The applicant submitted an executed purchase agreement to acquire Mr. Glessing's stock in the operating entity and membership interest in the realty entity. The terms are as follows:

Date:	March 17, 2015
Seller:	Charles Glessing
Buyer:	Joseph Schwartz
Assets Acquired:	50% stock interest in SJRNC (operations); and 50% of the membership interest in St. Johnsville Realty, LLC (realty entity)
Purchase Price:	$4,800,000 (operations); $720,000 (realty) Subject to Discount.
Payment of the Purchase Price:	$4,800,000 Promissory Note (operations), 20 years at 7% imputed interest ($20,000 monthly); $500,000 Deposit Paid (realty) $220,000 Promissory Note (realty), 14.6 months at 7% imputed interest ($15,000 monthly)

The purchase price for Mr. Glessing's shares and membership interest is subject to a $2,070,000 discount. The agreement provides that if the purchaser has remitted to the seller a total amount of $3,450,000 (inclusive of the initial $500,000 deposit) by the end of the seventh year from the commencement date of the agreement, the purchaser will not be required to make any more payments under the contract, and the purchaser shall be deemed to have fully paid the entire purchase price for the Mr. Glessing's 50% share in both the operations and realty. The applicant intends to satisfy the total purchase price for the operations and realty via cash at closing to secure the discount price.

Stock Purchase Agreement (Remaining Stockholders)

Date:	November 17, 2015
Sellers:	Dennis J. Christiano, Sr. (25%), Marie Stafford (9%), Lisa Canale (8%) and Linda Scott (8%)
Buyer:	Joseph Schwartz
Assets Acquired:	50% of the stock in SJRNC
Purchase Price:	$1,000,000
Payment of the Purchase Price:	$1,000,000 Cash at Closing
Additional Price:	$40,000 repayment of Glessing's note due the operating entity, payable prior to Closing

Assignment of Contract Agreements (Operations)

By assignment agreements, Mr. Schwartz assigned all of his rights to the stock in the Corporation to Chaim Scheinbaum. The executed Assignment of Contract agreements, summarized below, will become effectuated upon PHHPC approval.

Mr. Glessing's stock

Date:	November 17, 2017 (effective November 1, 2017)
Assignor:	Joseph Schwartz
Assignee:	Chaim Mutty Scheinbaum
Rights Assigned:	All rights, title, and interest in the Purchase Agreement dated March 17, 2015, for Mr. Glessing's 50% stock in SJRNC (Operations).
Payment:	None

Christiano et al.'s stock

Date	November 17, 2017 (effective November 1, 2017)
Assignor:	Joseph Schwartz
Assignee:	Chaim Mutty Scheinbaum
Rights Assigned:	All rights, title, and interest in the Stock Purchase Agreement dated November 17, 2015, for the remaining 50% stock in SJRHC (Operation).
Payment:	None

Membership Interest Purchase Agreement (Realty Entity)

The applicant has submitted an executed membership interest purchase agreement for the acquisition of the remaining interest in the realty entity. The terms are as follows:

Christiano et al. Members

Date:	November 17, 2015
Sellers:	Dennis J. Christiano, Sr. (25%), Marie Stafford (9%), Lisa Canale (8%) and Linda Scott (8%).
Buyer:	Joseph Schwartz
Assets Acquired:	50% of the membership interest in St. Johnsville Realty, LLC (realty entity)
Purchase Price:	$4,250,000
Payment of the Purchase Price:	$250,000 Deposit held in Escrow. $4,000,000 Cash at closing.

Assignment of Contract Agreements (Realty)

By assignment agreements, Mr. Schwartz assigned all of his rights to membership in the realty entity to Chaim Scheinbaum. The executed Assignment of Contract agreements, summarized below, will become effectuated upon PHHPC approval.

Mr. Schwartz

Date:	June 19, 2018 (Effective June 1,2018)
Assignor:	Joseph Schwartz
Assignee:	Chaim Mutty Scheinbaum
Rights Assigned:	All rights, title, and interests in Assignor's 50% membership interest in St. Johnsville Realty, LLC
Payment:	A repayment of investment will be effectuated at closing

Christiano et al.

Date	June 19, 2018 (Effective June 1,2018)
Assignor:	Joseph Schwartz
Assignee:	Chaim Mutty Scheinbaum
Rights Assigned:	All rights, title, and interests in the Membership Interest Purchase Agreement of St. Johnsville Realty, LLC.
Payment:	A repayment of investment will be effectuated at closing

In correspondence dated September 4, 2019, the applicant stated that he will repay Mr. Schwartz's $970,000 investment in the realty, which includes the $720,000 investment obligation under the Purchase Agreement (Mr. Glessing) and the $250,000 deposit made on execution of the Membership Interest Purchase Agreement (Christiano et al).

A summary of the purchase price for the operations and realty is as follows:

Mr. Glessing	Operations	Realty	Total	Discount	Net Price
Promissory Notes	$4,800,000	$220,000	$5,020,000		
Cash Paid (Schwartz)	$0	$500,000	$500,000		
Subtotal	$4,800,000	$720,000	$5,520,000	($2,070,000)	$3,450,000
Christiano et al.					
Cash at Closing	$1,000,000	$4,000,000	$5,000,000		
Cash Paid (Schwartz)	0	$250,000	$250,000		
Subtotal	$1,000,000	$4,250,000	$5,250,000	0	$5,250,000
Total	$5,800,000	$4,970,000	$10,770,000	($2,070,000)	$8,700,000
Additional:					
Glessing Note - Cash	$40,000		$40,000		

Mr. Glessing's Purchase Agreement provides for a discount price of $2,070,000 whereby the sale is considered paid in full if the Buyer pays the Seller $3,450,000, inclusive of the $500,000 deposit paid to date, by the end of the seventh year. The applicant intends to satisfy the total purchase price for the operations and realty via cash at closing to secure the discount price.

Mr. Scheinbaum has deposited $100,000 in equity and will fund the $8,600,000 balance due via a self-amortizing 25-year mortgage with interest fixed at the 5-year US Treasury rate plus 4.15% (estimated at 5.75% as of September 25, 2019). HHC Capital Advisory Group, LLC has provided a letter of interest for the loan at the stated terms. Mr. Scheinbaum also agreed to pay a $40,000 note Mr. Glessing owed to SJRNC. BFA Attachment A is the net worth summary for the proposed operator of SJRNC, which shows sufficient liquid resources to meet equity requirements.

The purchase agreements state that the Seller shall receive half of the difference between the cash, accounts receivables, prepaid assets minus payables and accruals. BFA Attachment F shows the detail supporting a positive 50/50 split of $727,902 between seller and buyer as June 30, 2019.

Lease Agreement

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

Date:	May 24, 2004
Premises:	120-bed RHCF located at 7 Timmerman Drive, Johnsville, NY 13452
Landlord:	St. Johnsville Realty, LLC
Lessee:	St. Johnsville Rehabilitation and Nursing Center, Inc.
Term:	15 years and 7 months (current term ends December 31, 2019)
Rental:	$676,000 per annum currently ($56,333.33 per month)
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. The real property is subject to the purchase and assignment agreements whereby Joseph Schwartz will acquire 100% membership interest in St. Johnsville Realty, LLC and will assign his rights, title and interest in the realty to Chaim Scheinbaum at Closing. Mr. Scheinbaum will subsequently sell 10% membership interest in the realty to Jack Jaffa for $1,000,000. This transaction was pre-paid by Mr. Jaffa in August 2019. After PHHCP approval of this application and Closing of the assignments, the realty entity's membership will be 90% Mr. Scheinbaum and 10% Mr. Jaffa.

SJRNC will lease the real property from St. Johnsville Realty, LLC under the terms of a Draft Amendment to the Lease Agreement, summarized below:

Premises:	120-bed RHCF located at 7 Timmerman Drive, Johnsville, NY 13452
Landlord:	St. Johnsville Realty, LLC
Lessee:	St. Johnsville Rehabilitation and Nursing Center, Inc.
Term:	Additional five (5) year term extending lease end date to December 31, 2024
Rental:	$905,850 per annum $75,487.50 per month)
Provisions:	Triple Net

The amended lease rental payment includes $811,491 base rent to satisfy the Bank's financing requirement of 1.25 x debt service coverage on the $8.6 million mortgage. The applicant is advised that the terms of the final amendment to the current lease agreement must meet Department policy guidelines for a minimum ten-year site certain term.

Operating Budget

The applicant has provided an operating budget, in 2019 dollars, for the current year 2018 and first and third years of operation subsequent to the change in ownership. The budget is summarized below:

	Current Year		Year One		Year Three	
Revenue	Per Diem	Total	Per Diem	Total	Per Diem	Total
Medicaid-FFS	$212.49	$7,339,097	$212.12	$7,154,390	$212.12	$7,225,933
Medicare-FFS	$611.02	$1,643,656	$610.99	$1,910,572	$610.99	$1,910,572
Commercial-FFS	$429.57	$1,091,526	$429.62	$917,230	$429.62	$917,230
Private Pay	$352.45	$820,155	$352.43	$1,049,170	$352.43	$1,049,170
Other-Hospice/VA	$227.39	$181,229	$223.17	$266,471	$222.99	$266,471
All other*	$0	$201,461	$0	$648,185	$0	$622,465
Total Revenue		$11,277,124		$11,946,018		$11,991,841
Expenses						
Operating	$237.47	$10,186,131	$228.90	$9,879,523	$238.09	$10,356,825
Capital	$18.39	$788,885	$28.64	$1,235,970	$28.32	$1,231,773
Total Expenses	$255.86	$10,975,016	$257.54	$11,115,493	$266.41	$11,588,598
Net Income		$302,108		$830,525		$403,243
Patient Days		42,894		43,161		43,499
Occupancy		97.9%		98.5%		99.3%

**All other revenue includes fees from resident services including lab, radiology, medical supplies, PT/OT and speech therapy, pharmacy, rental to St. Mary's gym membership, guest meals and vending.*

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

- Current Year reflects the facility's 2018 actual revenues and expenses.
- Medicaid revenue is based on the facility's current 2019 Medicaid Regional Pricing Rate. The Medicare rate is the actual daily rate experienced by the facility during 2018. Private Pay and Other Payor rates are based on the facility's 2018 rate experience.
- Expense and staffing assumptions are based on the current operator's care model. Expenses are projected to increase by 1.3% in the first year primarily due to the increase in rent. In the third-year, expenses are projected to increase by 5.6% due to increased salaries and rent. In 2018, expenses were higher than normal due to administrative services provided by the previous applicant, Joseph Schwartz (Skyline Management Company), which was prior to the assignment of the contracts to Chaim Scheinbaum. The applicant indicated that upon PHHPC approval of this application, there will be no consulting agreement with the Skyline Management Company. Also, no consulting agreement with Alliance Health Care, Mr. Scheinbaum's administrative services company, is being proposed.

- First year utilization is projected at 98.5% based on June 2019 internals. Utilization for the past three years has averaged around 95.13% and current occupancy was 99.2% as of August 21, 2019.
- Utilization by payor for the current year and after the change in ownership is summarized below:

	Current Year		Year One		Year Three	
Payor	Days	%	Days	%	Days	%
Medicaid-FFS	34,539	80.52%	33,728	78.14%	34,065	78.31%
Medicare-FFS	2,690	6.27%	3,127	7.24%	3,127	7.19%
Comm-FFS	2,541	5.92%	2,135	4.95%	2,135	4.91%
Private Pay	2,327	5.43%	2,977	6.90%	2,977	6.84%
Other-Hospice & VA	797	1.86%	1,194	2.77%	1,195	2.74%
	42,894	100%	43,161	100%	43,499	100%

- The facility's Medicaid admissions of 23.0% in 2017 were below Montgomery County's 75% threshold rate of 39.2% in 2017; however, in 2018 the facility's Medicaid admissions increased to 50.7% compared to the County's 75% threshold rate of 38.5%. The applicant indicated that they endorse and agree to meet the 10 NYCRR Part 670.3(c)(2) Medicaid access requirement. In support of this commitment, Medicaid "pending" residents will be accepted and Medicaid patients are expected to account for 78.31% of total patient days by year three after the change in ownership.
- Breakeven utilization is projected at 91.69%.

Capability and Feasibility

There are no project costs associated with this application. Chaim Scheinbaum will acquire 100% of SJRNC's corporate stock and 100% of the realty entity's membership interest for a totaling purchase price of $8,700,000. Mr. Scheinbaum has deposited $100,000 in equity and will fund the $8,600,000 balance due via a self-amortizing, 25-year mortgage with interest fixed at the 5-year US Treasury rate plus 4.15% (estimated at 5.75% as of September 25, 2019). HHC Capital Advisory Group, LLC has provided a letter of interest for the loan at the stated terms. Mr. Scheinbaum also agreed to pay a $40,000 note Mr. Glessing owed to SJRNC.

Total working capital is estimated at $1,990,013 based on the following: two months of first year expenses of $1,852,582, shareholders' SNF receivable per contract of $105,431, and repayment of the $40,000 note Mr. Glessing owes to SJRNC. Working capital will be satisfied via equity of $862,111, assumed account receivables estimated at $727,902 as of June 30, 2019 (see BFA Attachment F) and a five-year loan for $400,000 at an interest rate of prime plus 0.25% (estimated at 5.50% as of September 5, 2019). As mentioned previously, Mr. Jaffa advanced Mr. Scheinbaum $1,000,000 for a 10% share in St. Johnsville Realty, LLC. Thus, after PHHCP approval Mr. Scheinbaum will have 90% ownership and Mr. Jaffa will have 10% ownership in the realty entity. BFA Attachment A is the net worth summary for the proposed operator of St. Johnsville Rehabilitation and Nursing Center, Inc., which shows sufficient liquid resources to meet the equity requirements for working capital due to the $1,000,000 advance provided by Mr. Jaffa on the 10% share in the Reality LLC. HHC Capital Advisory Group, LLC has provided a letter of interest for the working capital loan at the stated terms.

The submitted budget projects net profit of $830,525 in Year One and $403,243 in Year Three after the change in ownership. The proposed operator expects to continue the positive occupancy trend through outreach programs, working closely with local health care and social services providers and the Montgomery County Department of Social Services. The budget appears reasonable.

BFA Attachment E is the pro forma balance sheet of the operating and realty entities, which shows they will start with a positive equity position of $5,989,551 for the operation, but a negative $1,540,549 equity position for the realty. Assets include goodwill of $2,329,451 for the realty, which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill is eliminated from the equation, the total net asset position for the reality is a negative $3,870,000. Although the Department's financial feasibility review is focused on the operating entity, the negative pro forma net asset position of the realty may have a future negative impact on the operations, should rental terms change.

BFA Attachment C is the Financial Summary of St Johnsville Rehabilitation and Nursing Center, Inc. for the 2016 - 2018 audited period and their internals as of August 31, 2019. As shown, the RHCF had an average negative working capital position of $1,093,548, average negative net assets of $1,321,039 and an average negative income of $394,937 for the period. The reasons that contributed to negative income during 2016 were the erosion of occupancy, increase payables and reduced profitability due to the managing members and major stock holder's significant health issues and ultimate passing in 2016. The facility has improved its performance and had a positive operating income of $133,210 as of August 31, 2019.

Attachments

BFA Attachment A	Net Worth of Proposed Member Chaim Scheinbaum
BFA Attachment B	Pre-and Post-Ownership of the Realty
BFA Attachment C	Financial Summary of St Johnsville Rehabilitation & Nursing Center, Inc. for 2016-2018 and internals as of August 31, 2019
BFA Attachment D	2018 Certified Financial Statement, St Johnsville Rehabilitation & Nursing Center, Inc.
BFA Attachment E	Pro Forma Balance Sheet, St Johnsville Rehabilitation & Nursing Center, Inc. and St Johnsville Realty, LLC
BFA Attachment F	Analysis of projected 50/50 split of excess assets

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of January 2020, having considered any advice offered by the Regional Health Systems Agency, the Public Health and Health Planning Council, 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 disapprove the application referenced below to transfer 100% of its capital stock (200 shares) from the five withdrawing shareholders to a single new shareholder; and be it further

RESOLVED, that the Public Health and Health Planning Council hereby directs that the Executive Secretary to the Public Health and Health Planning Council serve notice upon the applicants or their attorneys that the Council is considering disapproving the following application for establishment, as proposed, and that disapproval shall become final unless the applicants request a hearing, in writing, of the Executive Secretary concerning such proposed disapproval within 20 days of receipt of this Council's notification:

NUMBER	APPLICANT/FACILITY
181164 E	St Johnsville Rehabilitation and Nursing Center

Public Health and Health Planning Council

Project # 191302-E
Olean Manor, Inc. d/b/a Field of Dreams Senior Living

Program:	**LHCSA**	***County:***	**Cattaraugus**
Purpose:	**Establishment**	***Acknowledged:***	**June 18, 2019**

Executive Summary

Proposal

Olean Manor, Inc. d/b/a Field of Dreams Senior Living, a proprietary business corporation, requests approval for licensed home care services under Article 36 of the Public Health Law, as a requirement of approval for an associated Assisted Living Program (ALP) to be owned and operated by the same corporation. The applicant will be restricted to serving the residents of the associated ALP and will operate from an office located at 3260 N. 7th Street, Allegany, NY 14706 (Cattaraugus County).

The applicant will 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 photocopy of an executed amendment to the Certificate of Incorporation, acceptable to the Department. (CSL)
2. Submission of a photocopy of an amended and executed Certificate of Assumed Name, 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

February 6, 2020

Review

Character and Competence

The sole shareholder of Olean Manor, Inc. is Nicholas T. Ferreri. The Board of Directors of Olean Manor is comprised of the following individuals:

Nicholas T. Ferreri, Owner/Operator
Tanglewood Manor, Inc.
Affiliations
Tanglewood Manor, Inc. (ACF, 1983 – present)
Tanglewood Manor, Inc. (LHSA, 2002 – present)
Memory Garden at Tanglewood, Inc. (ACF, 2002 – present)
Frewsburg Rest Home (ACF, 2014 -present)

Terri Ingersoll, Administrator/Chief Operating Officer
Tanglewood Manor, Inc.
Affiliations
Tanglewood Manor, Inc. (ACF, 1997 – present)
Memory Garden at Tanglewood, Inc. (ACF, 7/2002 – present)
Frewsburg Rest Home (ACF, 3/2014 -present)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

Tanglewood Manor, Inc. was fined two thousand dollars ($2,000.00) pursuant to a stipulation and order dated August 7, 2019 for inspection findings on November 9, 2018; and December 12, 2018 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487 Sections 487.7(d)(1(i); 487.7(d)(1)(v) and 487.7(d)(6)(iii)(a), (b).

The information provided by the Division of Home and Community Based Services 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.

Conclusion

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 6th day of February 2020, 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 application to establish a Licensed Home Care Services Agency to serve the ALP program at Olean Manor (Exception A), 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:
191302 E	Olean Manor, Inc. d/b/a Field of Dreams Senior Living

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of an executed amendment to the Certificate of Incorporation, acceptable to the Department. (CSL)
2. Submission of a photocopy of an amended and executed Certificate of Assumed Name, 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.*

Department of Health

Public Health and Health Planning Council

Project # 192179-E
True Blue Care at Home, Inc.

Program:	**LHCSA**	***County:***	**Bronx**
Purpose:	**Establishment**	***Acknowledged:***	**November 13, 2019**

Executive Summary

Proposal
True Blue Care at Home Inc., a business corporation, requests approval to merge two licensed home care services agencies into one new agency under Article 36 of the Public Health Law. True Blue at Home Care Inc., whose sole shareholder is Morris Oiring, is seeking to transfer ownership and consolidate two currently operational licensed home care services agencies; (i) Floral Home Care LLC and (ii) Gloria's Manor LLC d/b/a New Gloria's Manor Home Care Service,s in conjunction with an allowed exception to the current moratorium.

Upon approval, the licenses of Floral Home Care LLC and Gloria's Manor LLC will be surrendered and a a new license will be issued to True Blue Care at Home Inc. with the existing offices becoming offices of the newly formed LHCSA.

True Blue at Home Care Inc. will serve the combined counties already approved for Floral Home Care LLC and Gloria's Manor LLC dba New Gloria's Manor Home Care Services, which include: Bronx, Kings, New York, Queens, Richmond, Westchester and Nassau Counties.

The applicant will 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 an executed certificate of incorporation of True Blue Care at Home, Inc.

Council Action Date
February 6, 2020

Review

Character and Competence

The sole shareholder of True Blue at Home Care Inc. is Morris Oiring. Mr. Oiring is the President of Genesis Adult Care, Inc. (2013 – present). As president of Genesis Adult Care, Mr. Oiring stated he was responsible for running the adult care facility and that experience translates well for owning and operating a licensed home care services agency.

A search of the Medicaid Disqualified Provider List and the OIG Exclusion List revealed no matches on either.

Conclusion

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 6th day of February 2020, 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 application to acquire and merge Floral Home Care and New Gloria's Manor Home Care Services (Exception B) 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:
192179 E	True Blue Care at Home, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of an executed certificate of incorporation of True Blue Care at Home, Inc.

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.*