

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

March 18, 2021
10:00 a.m.
Via Live Webcasting

I. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Peter Robinson, Chair

A. Applications for Construction of Health Care Facilities/Agencies

Acute Care Services – Construction

Exhibit # 1

Number

Applicant/Facility

1. 202244 C University Hospital SUNY Health Science Center
(Oneida County)

Ambulatory Surgery Centers - Construction

Exhibit # 2

Number

Applicant/Facility

1. 202093 C Richmond Pain Management ASC
(Richmond County)

Diagnostic and Treatment Centers - Construction

Exhibit # 3

Number

Applicant/Facility

1. 211005 C Syracuse Community Health Center, Inc.
(Onondaga County)

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

Ambulatory Surgery Centers - Establish/Construct

Exhibit # 4

Number

Applicant/Facility

1. 201113 B Syosset SASC, LLC t/b/k/a Syosset Ambulatory Surgery Center, LLC
(Nassau County)

- 2. 202090 B Intrepid Lane ASC, LLC d/b/a Intrepid Lane Endoscopy and Surgery Center (Onondaga County)
- 3. 202257 E Heritage One Day Surgery (Onondaga County)

Diagnostic and Treatment Centers - Establish/Construct

Exhibit # 5

<u>Number</u>	<u>Applicant/Facility</u>
1. 201172 B	H & D East 180 Street, LLC d/b/a Community Health Center at East 180th Street (Bronx County)
2. 202191 E	New York Preventive Health Center (Queens County)

Dialysis Services - Establish/Construct

Exhibit # 6

<u>Number</u>	<u>Applicant/Facility</u>
1. 202102 B	Novo Dialysis Jamaica (Queens County)

Certified Home Health Agencies - Establish/Construct

Exhibit # 7

<u>Number</u>	<u>Applicant/Facility</u>
1. 201038 E	St. Joseph's Health at Home (Onondaga County)

C. Certificates

Exhibit # 8

Restated Certificate of Incorporation

Applicant

Canton-Potsdam Hospital Foundation, Inc.

Certificate of Amendment of the Certificate of Incorporation

Applicant

Albany Medical Center

Certificate of Dissolution

Applicant

Morningside House Nursing Home Company, Inc.

Fragile X Association of New York, Inc.

Adirondack Tri-County Nursing and Rehabilitation Center, Inc.



Project # 202244-C
University Hospital SUNY Health Science Center

Program: Hospital
Purpose: Construction

County: Oneida
Acknowledged: December 21, 2020

Executive Summary

Description

University Hospital SUNY Health Science Center (Upstate), a 438-bed not-for-profit hospital, requests approval to certify an extension clinic to be called UPSTATE Cancer Center of Verona at 5548 State Route 31, Town of Verona, within the boundaries of the Oneida Nation Territory. This new cancer center will relocate the existing Upstate Physician private practice of hematology-oncology and radiation oncology located in Oneida and convert it to a hospital-based Article 28 facility under Upstate, offering a full spectrum of cancer treatments and prevention services including: chemotherapy infusion, therapeutic radiation (including a linear accelerator), phlebotomy, Urology clinic services, and pre- and post-operative clinic services.. Cameron Development Group is constructing a new building whereby they will lease approximately 22,500 square feet to house the hospital.

This application requires a Full Review due the inclusion of a new Article 28 licensed linear accelerator as per NYCRR 10 710.1(c)(2)(i)(b)(1)

OPCHSM Recommendation
Contingent Approval

Need Summary

The extension clinic is in the Central NY region which currently has 17 existing or approved Article 28 LINACs with a calculated need for 20. The clinic projects 906 visits in Year One and 919 in Year Three.

Program Summary

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

Financial Summary

Total project cost of \$19,558,975 will be met via equity from the hospital's accumulated funds. The projected budget is as follows:

	<u>Year 1</u>	<u>Year 3</u>
Revenues	\$15,509,557	\$15,928,851
Expenses	<u>\$14,968,071</u>	<u>15,289,503</u>
Excess of	\$541,486	\$636,348
Revenues		

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease, acceptable to the Department. [BFA]
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. 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 September 1, 2021 and construction must be completed by September 1, 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 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

April 8, 2021

Need and Program Analysis

Program Description

University Hospital SUNY Health Science Center (Upstate), a 438-bed tertiary teaching hospital, located at 750 East Adams Street in Syracuse (Onondaga County) seeks approval to certify an extension clinic which will be known as UPSTATE Cancer Center at Verona and will be located at 5548 State Route 31 in Verona (Oneida County). The new extension clinic will offer a full spectrum of cancer treatments and prevention services including: chemotherapy infusion, therapeutic radiation, phlebotomy, Urology clinic services, and pre- and post-operative clinic services and will be certified for Other Medical Specialties, Therapeutic Radiology, and the addition of a Linear Accelerator.

The hospital reports that their oncology program, known as UPSTATE Cancer Center, is accredited by the Commissioner on Cancer. The Center offers the only pediatric cancer care specialty services in Central New York. UPSTATE Radiology Oncology services are currently accredited by the American College of Radiology. Upstate is the only hospital in the region performing bone marrow transplants. The private physician practice currently has a LINAC which will be replaced and upgraded with a new LINAC at the new UPSTATE Cancer Center in Verona.

The Applicant reports patients will have the opportunity to be treated for all types of cancers and utilize the full spectrum of services offered through the UPSTATE Cancer Center, as part of the overall Upstate University Health System, rather than being limited to only infusion and radiation services. Additionally, specialty cancer services, not currently readily available to patients in Verona, will be available under the UPSTATE umbrella, giving the Verona community access to the full breadth of cancer services available as viable treatment options within Central New York.

The extension clinic will be open from 8:00 am to 5:00 pm Monday through Friday. The Center will provide later appointments as needed. Radiation Oncologists are on-call to cover off hours.

Staffing is expected to increase as a result of this construction/expansion project by 46.0 FTEs in Year One of the completed project.

Analysis

The primary service area is Oneida County, part of the Central NY region. The need methodology set forth in 10 NYCRR Section 709.16 calculates the need for Article 28 therapeutic radiology devices by health planning region. Department regulations require that at least ninety-five percent of the total population of the Central NY region live within one hour's driving time of a LINAC. Furthermore, need for LINAC machines is determined by assuming that 60% of the cancer cases in a planning region will be candidates for radiological therapy. Of these, half will require 15 treatments a year and half will require 35. Each LINAC machine can provide 6,500 treatments per year.

The Central NY health planning region has a total of eleven facilities – seven hospitals and four hospital extension clinics - providing linear accelerator services as follows:

	# Facilities with LINAC Services			# LINAC Machines		
	Hospitals	Hospital Clinics	Total	in Hospitals	in Hospital Clinics	Total
Central NY Region						
Cayuga	0	0	0	0	0	0
Cortland	1	0	1	1	0	1
Herkimer	0	0	0	0	0	0
Jefferson	1	0	1	2	0	2
Madison	0	1	1	0	1	1
Oneida	1	1	2	2	1	3
Onondaga	1	1	2	4	1	5
Oswego	0	1	1	0	1	1
St. Lawrence	2	0	2	3	0	3
Tompkins	1	0	1	1	0	1
Total Central NY Region	7	4	11	13	4	17

	Article 28 LINAC Need in Central NY Region	Total
1	# of Cancer Cases/Year	8,790
2	60% will be Candidates for Radiation Therapy	5,274
3	50% of (2) will be Curative Patients	2,637
4	50% of (2) will be Palliative Patients	2,637
5	Course of Treatment for Curative Patients is 35 Treatments	92,295
6	Course of Treatment for Palliative patients is 15 Treatments	39,555
7	The Total Number of Treatments [(5) +(6)]	131,850
8	Need for LINAC Machines ¹ [(7)/6,500]	20
9	Existing/Approved Resources (Upon Approval of CON 202244)	18
10	Remaining Need for LINAC Machines [(8) -(9)]	2

¹Each LINAC Machine has capacity for 6,500 Treatments

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.

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

University Hospital SUNY Health Science Center states that the proposed project will advance local public health priorities by serving the indigent and medically underserved. Infusion and radiation therapy services will be offered, as well as outreach programs for cancer prevention, education, smoking cessation.

University Hospital SUNY Health Science Center is implementing interventions to support local public health priorities, including:

- Cancer prevention outreach and education
- Smoking cessation seminars

- Mobile mammography breast screening
- Local/regional health fairs

The application states that Upstate engaged local partners in their public health efforts by being “an active member in the regional health group that works with the local health departments to develop strategies and priorities for the region.” University Hospital SUNY Health Science Center cites data indicators that it tracks to measure progress toward achieving local public health goals, including:

- Age-adjusted incidence rates and mortality rates
- Number of cancer deaths
- Number of individuals attending outreach events

As a public hospital, University Hospital SUNY Health Science 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. Approval of this project will provide for the continuity of care for cancer patients in the region. And approval of this project will help meet the remaining need for Article 28 LINACs in the Central NY region

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for new construction and the acquisition of moveable equipment, is estimated at \$19,558,975, broken down as follows:

New Construction	\$5,850,000
Moveable Equipment	12,650,000
Telecommunications	950,000
CON Fee	2,000
Additional Processing Fee	<u>106,975</u>
Total Project Cost	\$19,558,975

Project costs are based on a twelve-month construction period.

Lease Rental Agreement

The applicant submitted a draft Lease Agreement for the proposed site, the terms of which are summarized below:

Premises:	22,523 sq. ft. in the building located at 5548 State Route 31, in the Town of Verona, New York
Landlord:	Cameron Verona, LLC
Lessee:	The State University of New York Health Science Center
Term:	TBD
Rental:	\$923,443 annually based on 22,523 square feet of rentable space at a rate of \$41.00 per square foot and shall be payable in monthly installments of \$76,953.58. The lease may be renewed twice upon mutual written agreement and is subject to approvals of the NYS AG and NYS Office of the State Comptroller. Each renewal period shall be for five (5) years.
Provisions:	Triple Net

Operating Budget

The applicant has submitted an incremental operating budget, in 2021 dollars, during the first and third year after project completion, summarized below:

	Year 1		Year 3	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
Commercial FFS	\$1,406	\$4,189,162	\$1,423	\$4,301,669
Commercial MC	\$1,152	2,220,443	\$1,166	2,280,076
Medicare FFS	\$1,073	4,829,343	\$1,086	4,959,043
Medicare FFS	\$1,074	2,852,482	\$1,086	2,929,090
Medicaid FFS	\$626	1,69,067	\$634	173,607
Medicaid MC	\$1,073	1,197,935	\$1,087	1,230,107
Private Pay	\$5,112	<u>51,124</u>	\$51,124	<u>52,259</u>
Total Revenues		\$15,509,557		\$15,925,851
<u>Expenses</u>				
Operating	\$989	\$13,403,128	\$14,934	\$13,724,560
Capital	\$115	<u>1,564,943</u>	\$1,703	<u>1,564,943</u>
Total Expenses		\$14,968,071		\$15,289,503
Excess Revenues over Expenses		<u>\$541,486</u>		<u>\$636,348</u>
Utilization (Visits)		13,558		13,755

Utilization broken down by payor source for the first and third years are as follows:

<u>Payor</u>	<u>Year 1</u>	<u>Year 3</u>
Commercial FFS	21.97%	21.97%
Commercial MC	14.21%	14.21%
Medicare FFS	33.18%	33.19%
Medicare FFS	19.60%	19.61%
Medicaid FFS	1.99%	1.99%
Medicaid MC	8.23%	8.23%
Private Pay	0.07%	0.07%
Charity Care	<u>0.75%</u>	<u>0.73%</u>
Total	100.00%	100.00%

The following is noted with respect to the submitted budget:

- Reimbursement rates are projected based on existing rates.
- Effective April 2, 2020, Medicaid payments have been reduced by 1.5% in accordance with the FY2021 Enacted State Budget, therefore reducing the Medicaid revenues in year one and year three. This reduction has been reduced within the budgets.

Capability and Feasibility

Project cost of \$19,558,975 will be met via accumulated funds. BFA Attachment A is the 2018 and 2019 certified financial statements of University Hospital of the State University of New York Upstate Medical University, which indicates the availability of sufficient funds to meet the total project cost.

The submitted budget indicates an incremental excess of revenues over expenses of \$541,486 and \$636,348 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for radiology and linear accelerator services. The submitted budget appears reasonable.

As shown on Attachment A, the hospital had an average positive working capital position and an average net asset position from 2018 through 2019. Also, the hospital achieved an average excess of revenues over expenses of \$27,932,500 from 2018 through 2019.

Conclusion

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

Attachments

BFA Attachment A 2018 and 2019 certified financial statements of Upstate Medical



**Project # 202093-C
Richmond Pain Management ASC**

Program: Diagnostic and Treatment Center **County:** Richmond
Purpose: Construction **Acknowledged:** November 4, 2020

Executive Summary

Description

Richmond ASC, LLC d/b/a Richmond Pain Management ASC (the Center), a single specialty Article 28 freestanding ambulatory surgery center (FASC) located at 1360 Hylan Boulevard, Staten Island (Richmond County), requests approval to be established as a multi-specialty FASC. The Center was approved by the Public Health and Health Planning Council (PHHPC) under CON 132340 as a single-specialty FASC specializing in pain management services, beginning operations August 15, 2016. The FASC remains within its five-year limited life certification.

The applicant is currently seeking to become multispecialty to provide orthopedics, spine and podiatric surgical services. Accordingly, plans to relocate space and add a decontamination/sterilization suite are also included in the application.

Kenneth Chapman, MD (80%) and SIUH Ventures, LLC (20%) are the members of the operator LLC. There will be no change in membership and the Center will continue to operate under its original 15-year lease, which provides for two additional five-year renewal options.

OPCHSM Recommendation

Contingent approval is recommended, maintaining an operating certificate expiration date of August 14, 2021.

Need Summary

Based upon current experience, the applicant projects 5,025 visits in the first year after approval, 0.25% Medicaid and 1.2% Charity 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

The total project costs for the moveable equipment and CON fees are \$1,133,289 to be funded via cash from accumulated funds. The budget is as follows:

(in 000s)	<u>Current</u> <u>Year</u>	<u>Year</u> <u>One</u>	<u>Year</u> <u>Three</u>
Revenues	\$7,027	\$7,730	\$8,081
Expenses	\$4,535	\$4,615	\$4,707
Gain/(Loss)	\$2,493	\$3,115	\$3,374

The submitted budget projects a net income of \$3,114,872 and \$3,374,441 during the first and third year of operation, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval, maintaining an operating certificate expiration date of August 14, 2021, 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 acknowledgement that the annual reports mandated under CON 132340 must continue to be submitted to DOH for the duration of the limited life. These reports should include: Data showing actual utilization including procedures; Data showing breakdown of visits by payer source; Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery; Data showing number of emergency transfers to a hospital; Data showing percentage of charity care provided; and Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
4. Submission of Engineering (MEP) 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 one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before September 30, 2021 and construction must be completed by October 31, 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 annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The 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

April 8, 2021

Need and Program Analysis

Background

Richmond Pain Management ASC, an existing Article 28 single-specialty pain management ambulatory surgery center (ASC), requests multi-specialty certification to add orthopedic, spine, and podiatry surgery services. The center will perform renovations to add a decontamination/sterilization suite. The center is located at 1360 Hylan Boulevard, Staten Island, 10305, in Richmond County. Under CON 132340, the center opened on August 15, 2016 with the operating certificate expiring on August 14, 2021.

The Center saw the need to make the sterilization suite larger with larger sterilizers and specialty equipment to satisfy best practices in infection control in accommodating the new specialties. By having a full in-house instrument sterilization suite, the Center can see patients that require orthopedic, spine, and podiatric procedures. The current decontamination and sterile supply areas are small and would not accommodate large orthopedic trays and the size of the new proposed sterilizer.

Staffing is expected to increase as a result of this construction/expansion by 39.0 FTEs within one year after completion of the project and remain at those staffing levels.

Analysis

The service area is Richmond County. Richmond Pain Management ASC is the only ASC currently operating in Richmond County.

Another ASC, Specialty Surgery Center of Staten Island, was approved in October 2019 as a multi-specialty ASC to provide ophthalmology and gynecology services. The new ASC will be 7.2 miles and 16 minutes away from Richmond Pain Management ASC.

Charity Care for Richmond Pain Management ASC has been near the preferred 2% level: 2.3% in 2018, and 1.4% for 2019. The center has a Charity Care policy with a sliding fee scale for those patients needing assistance.

The center began operation in August 2016 but did not receive its Medicaid Provider number until December 2020. Thus, any Medicaid reimbursement shown in this exhibit is as a secondary payor. Given that experience, as well as Richmond County having the smallest proportional Medicaid population of the five boroughs and the center currently providing only pain management, the applicant was very conservative in their Medicaid care projections. However, the center is in contract negotiations with several Medicaid managed care plans to increase their services to that population. It is hoped that these efforts, as well as the expansion of services will show results before the center is evaluated again at the end of their five-year limited life in August of 2021.

The applicant has expressed the intent to serve all persons in need without regard to the ability to pay or source of payment.

Compliance with Applicable Codes, Rules, and Regulations

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

Approval of this project will enhance access to multi-specialty surgery services for the residents of Richmond County. Based on the results of the review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Analysis

Total Project Cost and Financing

Total project costs are estimated at \$1,133,289 and broken down as follows:

Renovation & Demolition	\$214,215
Design Contingency	10,700
Construction Contingency	21,441
Architect/Engineering Fees	24,000
Moveable Equipment	854,545
Application Fee	2,000
Processing Fee	<u>6,188</u>
Total Project Cost	\$1,133,289

Project costs are based on a three-week construction period. Project costs will be met with accumulated funds.

Operating Budget

The applicant has submitted their current year (2019), and their first year and third-year operating budget after the change to multispecialty, in 2021 dollars, summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
<u>Revenues</u>						
Medicaid MC	\$47.00	\$141	\$52.00	\$156	\$54.33	\$163
Medicare FFS	\$1,080.65	\$1,851,153	\$1,080.82	\$2,036,268	\$1,081.72	\$2,128,826
Commercial FFS	\$1,783.35	\$2,963,934	\$1,783.55	\$3,260,328	\$1,783.63	\$3,408,524
Private Pay	\$7,086.67	\$63,780	\$7,015.80	\$70,158	\$6,112.25	73,347
Other	\$1,906.14	<u>\$2,148,221</u>	\$1,905.68	<u>\$2,363,043</u>	\$1,906.22	<u>\$2,470,455</u>
Total Revenues		<u>\$7,027,229</u>		<u>\$7,729,953</u>		<u>\$8,081,315</u>
<u>Expenses</u>						
Operating	\$787.86	\$3,599,733	\$730.69	\$3,671,726	\$716.00	\$3,763,519
Capital	<u>\$204.63</u>	<u>\$934,937</u>	<u>\$187.73</u>	<u>\$943,353</u>	<u>\$179.58</u>	<u>\$943,353</u>
Total Expenses	\$992.49	\$4,534,670	\$918.42	\$4,615,079	\$896.00	\$4,706,872
Net Income		<u>\$2,492,559</u>		<u>\$3,114,872</u>		<u>\$3,374,443</u>
Procedures	4,569		5,025		5,253	

**The Medicaid ID number for this facility was only received in December 2020, and the reimbursement is calculated as a secondary payor. The applicant indicates they anticipate Medicare will typically be the first payor, which is reflected in the budget.*

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

<u>Payor</u>	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid MC	1.15%	.25%	.31%
Medicare FFS	36.6%	37.49%	37.46%
Commercial FFS	36.38%	36.38%	36.38%
Charity Care	1.4%	1.2%	1.2%
Other	<u>24.69%</u>	<u>24.68%</u>	<u>24.67%</u>
Totals	100.00%	100.00%	100.00%

Revenue, expense, and utilization assumptions are based on the expectation that Dr. Glenn and Dr. Keith will perform 72 procedures each per year and Dr. Chapman performing 120 procedures per year.

Conclusion

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

Attachments

BFA Attachment A	Richmond ASC, LLC - 2019 Financial Statements
BFA Attachment B	Richmond ASC, LLC - Internal Financial Balance Sheet and Profit & Loss Statement as of November 30, 2020



Project # 211005-C
Syracuse Community Health Center, Inc.

Program: Diagnostic and Treatment Center **County:** Onondaga
Purpose: Construction **Acknowledged:** January 14, 2021

Executive Summary

Description

Syracuse Community Health Center Inc. (SCHC), an existing FQHC diagnostic and treatment center located at 818-829 South Salina Street, Syracuse (Onondaga County) requests approval to construct a new two-story, replacement facility at 930 South Salina Boulevard, Syracuse to accommodate the volume of visits and to create a more efficient layout. The vacant lot of the proposed site is owned by SCHC. SCHC provides primary care, dental, and behavioral health services. There will be no changes to the services provided.

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no change in services or population served and the new location is across the street from their current building. SHCH is the only FQHC provider in Onondaga County, which is both a Health Professional Shortage Area and a Medically Underserved Area. The applicant projects 83,776 visits is 83,776 in the first year at the new site.

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 costs are \$22,485,316. Proceeds from two Statewide Healthcare Facility Transformation (SHCFTP) grants will fund \$17,825,561 of the total project costs; one SHCFTP I grant for \$12,826,250 awarded in 2016 and one SHCFTP II grant for \$6,241,250 awarded in 2018. The balance of those awards not used for this project will be used to fund a future project. The remainder of project costs will be funded by a bank loan of \$2,411,223 at a 4% based on current rates which could change at closing and a ten-year term and accumulated funds of \$2,248,532.

The submitted budget projects a net income of \$2,615,104 and \$2,821,387 during the first and third years of operation, respectively. Revenues are based on current reimbursement methodologies experienced for FQHC D&TC services. The proposed budget (in 000s) is as follows:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$25,011	\$26,294	\$26,973
Expenses	\$22,989	\$23,678	\$24,152
Gain/ (Loss)	\$2,022	\$2,615	\$2,821

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 Addiction Services and Supports, acceptable to the Department. [PMU]
3. Submission of an executed loan commitment acceptable to the Department of Health. [BFA]
4. Submission of a land appraisal by a member of the Members Appraisal Institute acceptable to the Department of Health. [BFA]
5. Submission of documentation confirming the approval of the (2) two Statewide Health Care Facility Transformation Program executed grants contract, acceptable to the Department of Health. [BFA]
6. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
7. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

Approval conditional upon:

1. The project must be completed within two years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before October 1, 2021 and construction must be completed by November 1, 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]

Council Action Date

April 8, 2021

Need and Program Analysis

Background

Syracuse Community Health Center, the only FQHC in Onondaga County, is requesting approval to relocate its main site across the street from its current location to 930 South Salina Boulevard, Syracuse, 13202 in Onondaga County. Concurrently, certified mental health services will be removed from the operating certificate to correct a long-standing error since they are not dually licensed by the Office of Mental Health. The intent is to construct more efficient space to accommodate increased volume and enhance access to primary care, dental, and behavioral health services.

The primary service area includes the city of Syracuse within Onondaga County. Syracuse Community Health Center currently operates eleven extension clinics in Onondaga County providing a variety of services. The center's hours of operation will be Monday through Friday from 8 am until 5:15 pm.

The organization has tailored operations to low income populations; providing a range of enabling and supportive services and offering a sliding fee scale based on income. SCHC is experienced at conducting extensive outreach, insurance eligibility screening, and insurance enrollment efforts, to help ensure comprehensive primary health care access for the target population.

Syracuse and other areas of Onondaga County are designated as a Health Professional Shortage Area or as a Medically Underserved Area/Population as follows (Source-HRSA):

- Syracuse - Health Professional Shortage Area for Primary Care services
- Syracuse - Health Professional Shortage Area for Mental Health services
- Syracuse - Health Professional Shortage Area for Dental services
- Onondaga County - Medically Underserved Area

The number of projected visits is 83,776 in Year One and 84,840 in Year Three for just the main site. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment. Staffing is expected to increase as a result of this project by 11.2 FTEs in Year One of the completed project and 21.6 FTEs by 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.

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

Conclusion

Approval for this project will provide for the continued access to a variety of medical services for underserved individuals residing in Syracuse and the surrounding communities in Onondaga County. Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Analysis

Total Project Cost and Financing

Total project costs are estimated at \$22,485,316 and broken down as follows:

New Construction	\$17,330,000
Design Contingency	866,500
Construction Contingency	866,500
Architect/Engineering Fees	1,375,500
Fixed Equipment	116,000
Movable Equipment	839,623
Construction Manager Fees	693,200
Other Fees	171,138
Telecommunications Fees	124,880
Application Fee	1,250
Processing Fee	<u>100,725</u>
Total Project Cost	\$22,485,316

Project costs are based on a 13-month construction period. Project costs will be met with a grant funding of \$17,825,561, a bank loan for \$2,411,223 for which a letter of interest was received, and accumulated funds of \$2,248,532.

Operating Budget

The applicant has submitted their current year (2019), and their first year and third-year operating budget in 2021 dollars, summarized below:

	Current Year		Year One		Year Three	
	Per Visit	Total	Per Visit	Total	Per Visit	Total
Revenues						
Commercial FFS	\$55.39	\$1,411,442	\$57.61	\$1,526,780	\$58.77	\$1,588,671
Medicare FFS	\$67.60	\$898,073	\$70.31	\$971,402	\$71.72	\$1,010,678
Medicaid FFS	\$82.89	\$395,788	\$89.55	\$444,710	\$87.94	\$445,416
Medicaid MC	\$128.13	\$7,020,343	\$133.26	\$7,593,689	\$135.63	\$7,883,358
Private Pay	\$4.63	\$53,515	\$4.83	\$58,042	\$4.93	\$60,427
Other Operating*		\$13,137,206		\$13,478,339		13,675,441
Non-Operating**		<u>\$2,094,853</u>		<u>\$2,220,544</u>		<u>\$2,309,366</u>
Total Revenues		\$25,011,220		\$26,293,506		\$26,973,357
Expenses						
Operating	\$198.79	\$21,844,956	\$196.88	\$22,500,305	\$197.00	\$22,950,311
Capital	<u>\$10.41</u>	<u>\$1,143,784</u>	<u>\$10.31</u>	<u>\$1,178,097</u>	<u>\$10.00</u>	<u>\$1,201,659</u>
Total Expenses	\$209.20	\$22,988,740	\$207.17	\$23,678,402	\$207.00	\$24,151,970
Net Income		<u>\$2,022,480</u>		<u>\$2,615,104</u>		<u>\$2,821,387</u>
Visits	109,890		114,285		116,570	

*Other operating revenue consists of grants that occur year over year for FQHC status, 340 B income, indigent care and DSRIP, Patient Care Medical Home (PCMH), quality incentives, Care Management, HRSA and FQHC section 330 provided grants for underserved populations.

**Non-operating revenue is classified as parking lot income, interest income, rental come fundraising activities.

The following is noted with respect to the budget:

- Low private pay is because the facility serves a poor or homeless population that does not have money to pay for the service provided.
- Medicaid Managed Care is paying an increased rate because SHCH is an FQHC provider and is meeting certain metrics.

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

<u>Payor</u>	<u>Current Year</u>	<u>Year One & Three</u>
Commercial FFS	23.2%	23.2%
Medicare FFS	12.1%	12.1%
Medicaid FFS	4.3%	4.4%
Medicaid MC	49.9%	49.8%
Private pay	10.5%	10.5%
Total	100%	100%

Capability and Feasibility

The total project costs are \$22,485,316. Proceeds from two Statewide Healthcare Facility Transformation (SHCFTP) grants will fund \$17,825,561 of the total project costs; one SHCFTP I grant for \$12,826,250 awarded in 2016 and one SHCFTP II grant for \$6,241,250 awarded in 2018, which will leave an outstanding positive balance which the applicant does plan on using for another CON in the future. The combined grant proceeds of \$19,067,500 leaving an excess of \$1,241,939 in grant funds. The remainder of project costs will be funded by a bank loan of \$2,411,223 at a 4% based on current rates which could change at closing and a ten-year term plus accumulated funds of \$2,248,532.

The working capital requirement is estimated at \$4,025,328 based on two months of third year expenses. Working capital will be funded through operations of the facility. BFA Attachment A indicates sufficient fund estimated working capital.

The submitted budget indicates an excess of revenues over expenses of \$2,615,104 and \$2,821,327 during the first and third years of operation, respectively. Revenues reflect current reimbursement methodologies for current services. The budget appears reasonable.

BFA Attachment A is the 2018 and 2019 certified financial statements, which indicate the facility maintained positive working capital and a positive net asset positions and generated an excess of operating income over expenses before depreciation and amortization of \$4,673,825 during 2018 and 2019 respectively. BFA Attachment B is the internal financial statements from Jan1, 2020 thru December 31, 2020. The internal financial statements show a positive working capital position, positive net asset position and net operation income of \$31,105.

Conclusion

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

Attachments

- BFA Attachment A Syracuse Community Health Center- 2018-2019 Financial Statements
- BFA Attachment B Syracuse Community Health Center- Internal Financial Balance Sheet and Income Statement of December 31, 2020



Project # 201113-B
Syosset SASC, LLC
t/b/k/a Syosset Ambulatory Surgery Center, LLC

Program: Diagnostic and Treatment Center County: Nassau
Purpose: Establishment and Construction Acknowledged: June 8, 2020

Executive Summary

Description

Syosset SASC, LLC (Center) d/b/a Syosset Ambulatory Surgery Center, a New York limited liability company, requests approval to establish and construct a multi-specialty, Article 28 freestanding ambulatory surgery center (FASC) to be located at 115 Eileen Way, Syosset (Nassau County). The LLC will change its name to Syosset Ambulatory Surgery Center, LLC upon approval by PHHPC.

The FASC will be housed in an existing structure that is to be renovated for the construction of a new state-of-the-art multi-specialty ambulatory and surgery center. The scope of services will initially include Orthopedics, Pain Management, and Neurosurgery. Syosset SASC, LLC, as sublessee, will be entering into a sub-lease agreement with Orthopedics, Spine and Sports Medicine, LLC. Orthopedics, Spine and Sports Medicine, LLC has entered into a master lease agreement with the landlord, Syosset CAP, LLC. The proposed FASC will be 9,500 square feet with three operating rooms at the onset, and space for two additional operating rooms to accommodate for future expansion. Upon approval, the applicant will operate the facility under the name Syosset Ambulatory Surgery Center.

Dr. Charles Ruotolo, a board-certified Orthopedic surgeon and attending physician at Nassau University Medical Center will be the Medical Director of the Center. Upon notification of contingent approval of the project, the Center will have a transfer agreement with Nassau University Medical Center.

The members of the Syosset SASC, LLC (to be renamed Syosset Ambulatory Surgery Center, LLC) are all physician members who will bring their medical services to the proposed FASC.

Ownership of the operations will be as follows:

Table with 2 columns: Members and Interest. Lists names of members and their respective interest percentages, including a total of 100.00%.

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

Need Summary

Most of the projected cases at the proposed FASC are currently being performed at hospitals and office-based surgery settings. The number of projected procedures is 2,600 in Year One and 4,056 in Year Three, with Medicaid at 10.0% and Charity Care at 2.0% each year.

Program Summary

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

Financial Summary

Total project cost is estimated at \$6,154,386 to be funded by a \$3,336,419, 10- year loan at 5.75% interest with a 10-year amortization period, a \$2,447,254 10-year loan for the equipment at 6.00% interest and a 10-year amortization period, and equity of \$370,713. Peapack-Gladstone Bank has provided a letter of interest for the construction loan and the equipment loan. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$4,018,524	\$5,907,894
Expenses	<u>\$4,365,578</u>	<u>\$5,351,593</u>
Gain/(Loss)	(\$347,054)	\$556,301

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations, and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
 - a. Data displaying actual utilization including procedures
 - b. Data displaying the breakdown of visits by payor source
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery
 - d. Data displaying the number of emergency transfers to a hospital
 - e. Data displaying the percentage of charity care provided
 - f. The number of nosocomial infections recorded during the year reported
 - g. A list of all efforts made to secure charity cases
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of an executed loan commitment for both the construction and movable equipment loan, acceptable to the Department of Health. [BFA]
6. Submission of an executed building sublease agreement, acceptable to the Department of Health. [BFA]
7. Submission of an executed working capital loan, acceptable to the Department of Health. [BFA]
8. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
9. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
10. Submission of a photocopy of an amended and executed Articles of Organization for Syosset Ambulatory Surgery Center, LLC, acceptable to the Department. (CSL)
11. Submission of a photocopy of an amended and executed Operating Agreement Syosset Ambulatory Surgery Center, LLC, acceptable to the Department. (CSL)
12. Submission of a photocopy of amended and executed Sublease Agreement, acceptable to the Department. (CSL)
13. Submission of a photocopy of an executed Consent of Landlord, Syosset CAP, LLC, acceptable to the Department. (CSL)

14. Submission of a photocopy of amended and executed Certificate of Assumed Name, acceptable to the Department. (CSL)

Approval conditional upon:

1. The project must be completed within two years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before September 1, 2021 and construction must be completed by April 28, 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 submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
4. The 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. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

April 8, 2021

Need and Program Analysis

Background

Proposed Operator	Syosset Ambulatory Surgery Center, LLC
Doing Business As	Syosset Ambulatory Surgery Center
Site Address	115 Eileen Way Syosset, New York 11791 (Nassau County)
Surgical Specialties	Multi-Specialty, initially including: Orthopedics, Neurosurgery, Pain Management
Operating Rooms	3
Procedure Rooms	0
Hours of Operation	Monday through Friday 8 am to 6 pm
Staffing (1 st Year / 3 rd Year)	15.3 FTEs / 18.8 FTEs
Medical Director(s)	Charles Ruotolo, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Is expected to be provided by: Nassau University Medical Center 7.8 Miles / 15 minutes
On-call service	Patients who require assistance during off-hours will have been provided, as part of their discharge instructions, their surgeon's contact information, the Center's contact information, and the backup hospital's contact information. Furthermore, the Center will have an after-hours contact number so that contact can be made with a clinical staff person of the Center.

The service area consists of Nassau County. The population of Nassau County in 2010 was 1,339,532 with 594,998 individuals (44.4%) who are 45 and over, which are the primary population group utilizing ambulatory surgery services. Per PAD projection data, this population group (45 and over) is estimated to grow to 668,920 by 2025 and represent 47.4% of the projected population of 1,410,875.

The table below shows the number of patient visits for ambulatory surgery centers in Nassau County for 2017 through 2019.

Spec Type	Facility Name	Patient Visits		
		2017	2018	2019
Multi	Day OP of North Nassau, Inc	936	874	860
Multi	East Hills Surgery Center (opened 12/4/17)	N/A	1,503	3,001
Gastroenterology	Endoscopy Center of Long Island, Inc	7,250	8,536	7,790
Multi	Garden City Surgi Center	7,466	7,524	7,108
Ophthalmology	Island Eye Surgicenter	12,718	15,330	16,538
Gastroenterology	Long Island Center for digestive Health, LLC	5,663	6,058	6,508
Gastroenterology	Meadowbrook Endoscopy Center	9,059	10,058	10,088
Gastroenterology	New Hype Park Endoscopy (opened 12/12/17)	N/A	2,323	4,900
Multi	Pro Health Ambulatory Surgery Center ^{1,2}	6,437	5,844	0
Multi	ProHealth Day OP ASC ^{1,2}	1,861	2,172	0
Multi	South Shore Ambulatory Surgery Center	7,419	7,226	7,325
Multi	Syosset SurgiCenter (opened 1/15/19) ²	N/A	N/A	0
Total Visits		58,809	67,448	64,118

¹ 2018 figure is an estimation, based upon partial year data

² No data located for 2019

The number of projected procedures is 2,600 in Year One and 4,056 in Year Three. These projections are based on the current practices of participating surgeons. The applicant indicates that 61% of the projected procedures are currently performed in an office-based setting, 27% are performed at a hospital and 12% are performed at another ASC.

The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Medicaid FFS	130	5.00%	203	5.00%
Medicaid MC	130	5.00%	203	5.00%
Medicare MC	676	26.00%	1,055	26.00%
Commercial FFS	598	23.00%	933	23.00%
Commercial MC	910	35.00%	1,420	35.00%
Private Pay	104	4.00%	161	4.00%
Charity Care	52	2.00%	81	2.00%
Total	2,600	100%	4,056	100%

Integration with Community Resources

For those patients who do not identify a primary care provider (PCP), the Applicant is working with Nassau University Medical Center on a Transfer and Affiliation agreement and will expand that to include primary care services. The Applicant will seek to undertake the following steps to initiate a community outreach and marketing plan to the following identified providers in order to reach the underserved population: serve all persons regardless of age, color, race, creed, national origin, religion, sex, sexual orientation, marital status, and disability or payer source. They will also participate in community health events and local religious institutions to make sure that all players are aware of their services and their relationship with the local hospital. In order to accomplish this mission of service, the Center will:

- Concentrate on serving residents of the local communities in the immediate vicinity of its location, so as to satisfy the unmet needs of these communities, which originally led the Center to locate there. The Center will attempt to make physicians and patients in its local communities aware of its service and encourage the use of those services;
- Develop, maintain and update, as necessary, a policy and procedure for serving uninsured persons and persons without the ability to pay the entire charge, and develop, maintain and update, as needed, a sliding fee scale considerate of the means of such persons;
- Promote the accessibility of its service for all persons in need of these services, with particular emphasis on improving access for traditionally under-served populations including ethnic minorities and persons of low-income status. The Center will operate at times that promote accessibility, attempt to provide culturally-sensitive services, including services that assist individuals to overcome physical and language barriers, and encourage patients to freely offer opinions regarding how accessibility and service can be improved.

The Center initially plans to obtain contracts with the following Medicaid Managed care plans: Fidelis and Health First. The Center will work collaboratively with several hospitals within the service area to provide service to the under-insured in their service area. The Center has developed a financial assistance policy with a sliding fee scale to be utilized when the Center is operational.

The Center intends on using an Electronic Medical Record (EMR) program and will consider participating in an Accountable Care Organization (ACO). The Applicant will participate in Nassau County-based Regional Health Information Organization (RHIO) and/or, Health Information Exchange (HIE), Healthix. Healthix is the largest public Health Information Exchange (HIE) in the nation, serving New York City and Long Island, as they collect data from more than 8,000 Healthcare Facilities for over 20 million patients in their service area.

Character and Competence

The ownership of Syosset SASC, LLC d/b/a Syosset Ambulatory Surgery Center is:

Member Name	Interest
Charles Ruotolo, MD	8.81%
Karen Avanesov ,MD	8.81%
Nitin Mariwalla, MD	2.50%
Maxim Tyorkin, MD	2.00%
Richard McCormack, MD	8.81%
Elizabeth Morrison, MD	8.81%
Aristide Burdcea, MD	8.81%
R. Champ Denegis MD	8.81%
Dante Leven, MD	8.81%
Jonathon Owens, MD	5.00%
Michael Trapeta, DO	5.00%
Syosset Doctor Holdings Charles Ruotolo, MD (33.34%) Karen Avanesov, MD (33.33%) Vadim Lerman, MD (33.33%)	15.20%
TOTAL	100%

Dr. Karen Avanesov has been employed as an Orthopedic Spinal Surgeon at both hospitals and private practices for almost 10 years. She received her medical degree from New York College of Osteopathic Medicine. She completed her Osteopathic Rotating Internship and her Orthopedic Residency at North Shore Peninsula Hospital Consortium. She completed her Orthopedic Fellowship at The Leatherman Spine Institute in Kentucky. She is board-certified in Orthopedic Medicine.

Dr. Aristide Burdcea is a practicing Anesthesiologist who has spent over eight years as the Director of a Pain Management at a private practice. He previously has been an attending Anesthesiologist at both office-based surgery practices and hospitals. He received his medical degree from New York College of Osteopathic Medicine. He completed his residency at State University of New York Downstate Medical Center. He completed his Pain Management Fellowship at State University of New York Stony Brook. He has recently joined the Army to locally train doctors during times of crisis or war.

Dr. R. Champ Denegis is a practicing Orthopedic Surgeon and an adjunct faculty member at Nassau University Medical Center for Orthopedic Surgical Residency. He received his medical degree from Pacific Northwest University of Health Sciences-College of Osteopathy in Washington. He completed his residency at Plainview Hospital in Plainview. He is board eligible.

Dr. Vadim Lerman is a practicing Orthopedic Surgeon. He has been a partner in private practice for approximately eight years. He graduated from the New York College of Osteopathic Medicine, Institute of Technology in Westbury. He completed his rotating internship and Orthopedic residency at Peninsula Hospital Medical Center. He completed a Pediatric Orthopedic residency at Cincinnati Children's Hospital. He completed his fellowship in Spinal Surgery at Beth Israel Spine Institute. He is board-certified in orthopedic surgery.

Dr. Dante Leven is a practicing Orthopedic Spinal Surgeon who has been in private practice for approximately four years. He completed his medical degree at The University of New England College of Osteopathic Medicine in Maine. He completed his Orthopedic Surgical residency at State University of New York Downstate. He completed his Spine Surgery Fellowship at Mount Sinai Hospital in Manhattan. He has multiple staff appointments at hospitals in New York.

Dr. Nitin Mariwalla is a practicing Neurosurgeon who has been the owner of a private neurosurgical practice and a nutrition practice for almost three years. He has also been contingently approved as an owner of an ambulatory surgery center. He received his medical degree from Tulane University. He completed his residency and two fellowships in cerebrovascular and endovascular neurosurgery at Emory University. He was appointed a member of the faculty, instructing neurosurgical residents.

Dr. Richard McCormack is a practicing Orthopedic Surgeon covering trauma, sports, and joint replacement. He is the Associate Director of Sports Medicine and Shoulder Service Department of Orthopedic Surgery at Nassau University Medical Center. He participates in weekly chairman's meetings with the other department chairs and the Medical Director of the hospital. He received his medical degree from the University of Chicago. He completed his Orthopedic residency at New York University for Joint Diseases. He completed his Sports Medicine Fellowship at Lenox Hill Hospital. He is board-certified in Orthopedic Surgery.

Dr. Elizabeth Morrison has been a practicing Orthopedic Surgeon and Director of Hand Surgery for approximately nine years. She previously owned and operated healthcare facilities in central New Jersey for 12 years. She received her medical degree from Thomas Jefferson University in Pennsylvania. She completed her Orthopedic residency at Thomas Jefferson University. She completed her Orthopedic Hand Surgery residency at Mount Sinai School of Medicine. She is board certified in Orthopedic Surgery.

Dr. Jonathon Owens has been a practicing Orthopedic Surgeon for over 25 years. He is also a participant in the Nassau University Medical Center Residency Program. He received his medical degree from State University of New York Downstate in Brooklyn. He completed his General Surgical residency at State University of New York University Hospital Sciences Center in Brooklyn. He completed his Orthopedic Surgery residency at State University of New York Stony Brook.

Dr. Michael Trepeta is a practicing Pediatric Orthopedic Surgeon who has been in private practice for over 13 years. He received his medical degree from the New York College of Osteopathic Medicine, Institute of Technology. He completed his rotating internship at the Peninsula Hospital Center. He completed his Pediatric Orthopedic Surgery fellowship at the Hospital for Special Surgery. He is board-certified in Orthopedic Surgery.

Dr. Maxim Tyorkin is a practicing Orthopedic Surgery and has been the Owner/President of an orthopedic private practice for over 12 years. He received his medical degree from the Icahn School of Medicine at Mount Sinai. He completed his Orthopedic Surgery residency at State University of New York Stony Brook. He completed his Sports Medicine Orthopedic Surgery residency at Southern California Orthopedic Institute. He is board-certified in Orthopedic Surgery.

Dr. Charles Ruotolo is the proposed Medical Director. He is a practicing orthopedic surgeon and has been the president of a private practice for over 16 years. He also has an ownership interest in an ambulatory surgery center in New York. He is the current Program Director of the Orthopedic Residency Program at Nassau University Medical Center. He received his medical degree from New York Medical College. He completed his residency in Orthopedics at State University of New York Stony Brook. He completed his fellowship in Sports Medicine and Shoulder Surgery at The Sports Clinic in California. He is board-certified in Orthopedic Surgery.

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

Dr. Richard McCormack disclosed that he was named in a malpractice suit involving a patient that had a femur fracture during hip replacement. In 2016, during a hip replacement surgery, a patient had a femur fracture that healed on its own without requiring surgery. The patient subsequently fell and suffered a second fracture that required surgery to heal. The case is in the discovery phase with no noted issue or date for trial set.

Dr. Jonathan Owens disclosed that he was named in multiple malpractice suits. Dr. Owens disclosed being named in a suit that occurred on June 26, 2014. The patient alleged the surgery was performed in a negligent and careless manner and not keeping with good and proper orthopedic practices. The case is in the discovery phase.

Dr. Owens disclosed being named in a suit that occurred on July 01, 2014. The patient alleged a Salter 2 fracture of the femur was present but not diagnosed. The case is in the discovery phase.

Dr. Owens disclosed being named in a suit that occurred on October 15, 2015. The patient alleged they had a loss of fixation after repair of a proximal humeral fracture. The case is in the discovery phase.

Dr. Owens disclosed that in October 2010, he plead guilty and was convicted of Driving While Intoxicated (alcohol). This subsequently resulted in an agreement with OPMC for censure and a fine on May 11, 2012. All aspects of the case have been satisfied.

Dr. Ruotolo disclosed being named in multiple malpractice suits. Dr. Ruotolo disclosed he was named in a suit that occurred between May 29, 2012 through October 17, 2012 where the patient alleges, he was burned and had a skin blister due to failure to properly perform surgery. The case was dismissed.

Dr. Ruotolo disclosed being named in a suit that occurred on September 16, 2013. The patient alleged pain and suffering. The case is in the discovery phase.

Dr. Ruotolo disclosed being named in a suit that occurred on May 28, 2015. The patient alleged great pain, agony, injury, suffering disability, and hospitalization, and permanent injury and disability. The case is in the discovery phase.

Dr. Ruotolo discloses being named in a suit that occurred on December 27, 2017 to January 3, 2018. The patient alleges he sustained injuries to his limbs and body, suffering a severe shock to his central nervous and certain internal injuries, and left leg amputation. The case is in the discovery phase.

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

Approval of this project will provide increased access to orthopedics, pain management, and neurological surgery services in an outpatient setting for the residents of Nassau County. Based on the information reviewed, staff found nothing that would reflect adversely upon the applicants' character and competence or standing in the community.

Financial Analysis

Lease Building Agreement

The applicant has submitted an executed lease rental agreement and a draft sublease rental agreement for the proposed site, the terms of which are summarized below:

Date original lease;	August 9, 2017
Premise original lease:	Approximately 20,000 sq. ft. located at 115 Eileen Way, Syosset, NY
Landlord:	Syosset Cap, LLC
Lessee/Sublessor:	Orthopedics, Spine and Sports Medicine, LLC
Term:	15 year 6 months from Commencement Date with (2) 5-year extensions
Lease Rental	\$650,000 for the first year with an annual 2.5% increase
Provisions:	Lessee/sublessee pays all insurance, taxes, maintenance and utility fees.

Sublease Building Agreement

Date Sublease	TBD
Sublease Premise	Approximately 9,467 Sqft located at 115 Eileen Way, Syosset, NY
Lessee/Sublessor:	Orthopedics, Spine and Sports Medicine, LLC
Sublessee:	Syosset SASC, LLC (to be renamed Syosset Ambulatory Surgery Center, LLC)
Term:	15 year 6 months from Commencement Date with (2) 5-year extensions
Sublease Rental:	\$359,746 for the first year with an annual 2.5% increase
Provisions:	Lessee/sublessee pays all insurance, taxes, maintenance and utility fees.

The applicant has provided an affidavit stating the landlord and tenant are not affiliated entities therefore the lease is an arm's length agreement, however, the sublessor and sublessee are related.

Total Project Cost and Financing

Total project costs for Renovation and the acquisition of moveable equipment is estimated at \$6,154,386 broken down as follows:

Renovation	\$2,920,050
Design Contingency	\$116,802
Construction Contingency	\$116,802
Architect /Engineering Fees	\$116,802
Other Fees (Consultant, etc.)	\$231,750
Moveable Equipment	\$2,447,254
Financing Costs	\$52,533
Interim Interest Expense	\$116,740
CON Application Fee	\$2,000
Additional Fees	<u>\$33,653</u>
Total Project Cost	<u>\$6,154,386</u>

Project costs are based on an eight-month construction period.

financing plan appears as follows:

Cash Equity	\$370,713
Bank Loan (5.75% interest 10-year term)	\$3,336,419
Loan for Movable Equipment (10-year term, 6% interest)	<u>\$2,447,254</u>
Total	<u>\$6,154,386</u>

Peapack-Gladstone Bank has provided a letter of interest for both the construction loan and the movable equipment loan.

Operating Budget

The applicant has submitted the first and third year projected operating budgets, in 2020 dollars, summarized below:

<u>Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Procedure</u>	<u>Total</u>	<u>Procedure</u>	<u>Total</u>
Medicaid FFS	\$1,620.32	\$210,642	\$1,387.47	\$281,657
Medicaid MC	\$1,620.32	\$210,641	\$1,387.47	\$281,656
Medicare MC	\$1,265.37	\$855,395	\$1,219.68	\$1,286,759
Commercial FFS	\$1,915.75	\$1,145,618	\$1,813.34	\$1,691,849
Commercial MC	\$1,552.67	\$1,412,929	\$1,501.89	\$2,132,683
Private Pay	\$1,762.49	<u>\$183,299</u>	\$1,449.01	<u>\$233,290</u>
Total Revenues		\$4,018,524		\$5,907,894
 <u>Expenses</u>				
Operating	\$1,093.61	\$2,843,391	\$946.41	\$3,838,658
Capital	<u>\$585.46</u>	<u>\$1,522,187</u>	<u>\$373.01</u>	<u>\$1,512,935</u>
Total Expenses	\$1,697.07	\$4,365,578	\$1,319.43	\$5,351,593
Net Income (Loss)		<u>(\$347,054)</u>		<u>\$556,301</u>
Utilization		2,600		4,056

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

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Medicaid MC	130	5.00%	203	5.00%
Medicaid FFS	130	5.00%	203	5.00%
Medicare MC	676	26.00%	1,055	26.00%
Commercial FFS	598	23.00%	933	23.00%
Commercial MC	910	35.00%	1,420	35.00%
Private Pay	104	4.00%	161	4.00%
Charity Care	<u>52</u>	<u>2.00%</u>	<u>81</u>	<u>2.00%</u>
Total Revenues	2,600	100%	4,056	100%

- Projected utilization at the FASC is based on cases currently performed at hospitals and office-based surgery settings
- The applicant submitted physician referral letters in support of utilization projections.
- Expense assumptions are based on historical ambulatory surgery center costs of similar sized ambulatory surgery centers in New York State.
- Utilization by payor and reimbursement rates are based on outpatient ambulatory surgery experience.

Capability and Feasibility

Total project costs of \$6,154,386 will be met by via equity of \$370,713, bank financing of \$3,336,419 at 5.75% interest with a 10-year term and 10-year payout, and a 10-year movable equipment loan with a 6% interest rate for \$2,447,254. Peapack-Gladstone Bank has provided a letter of interest for both the construction loan and the movable equipment loan.

The working capital requirement is estimated at \$891,932 based on two months of third year expenses and will be met by a cash contribution from the members of \$445,932 and a loan of \$446,000 at 5.5% for 5 years. Peapack- Gladstone Bank has provided a Letter of interest for this funding. BFA Attachment A is the net worth statement of the proposed owners which indicates two of the members Dr. R Champ Dengenis and Dr. Michael Trepeta do not have enough liquid resources to meet their portion of the total project cost and working capital requirements. Three members, Dr. Karen Avanesov, Dr. Vadim Lerman and Dr. Charles Ruotolo have submitted disproportionate share affidavits to cover the shortfall of any other member. BFA Attachment B is the pro forma balance sheet of Syosset SASC, LLC d/b/a Syosset

Ambulatory Surgery Center, which indicates a positive net asset position of \$777,712 as of the first day of operation.

The submitted budget projects a net loss of \$347,054 and a net income of \$556,301 in the first and third years of operation, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services. The submitted budget appears reasonable. The year one loss will be covered from the available funds shown on the pro forma balance sheet.

Conclusion

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

Supplemental

DOH Comment

The Department reached out to proximate hospitals asking for information on the impact of the proposed ambulatory surgery center (ASC) but none of the hospitals responded. Therefore, in the absence of comments from hospitals near the ASC, the Department finds no basis for reversal or modification of the recommendation for approval of this application based on public need, financial feasibility and owner/operator character and competence.

Attachments

BFA Attachment A	Net Worth Statement of the proposed owners
BFA Attachment B	Pro Forma Balance Sheet of Syosset SASC, LLC
BHFP Attachment	Map



Project # 202090-B
Intrepid Lane ASC, LLC d/b/a Intrepid Lane Endoscopy and Surgery Center

Program: Diagnostic and Treatment Center County: Onondaga
Purpose: Establishment and Construction Acknowledged: September 16, 2020

Executive Summary

Description

Intrepid Lane ASC, LLC d/b/a Intrepid Lane Endoscopy and Surgery Center, (Intrepid Lane) an existing New York limited liability company, requests approval to establish and construct a multi-specialty, Article 28 freestanding ambulatory surgery center (FASC) to be located at 190 Intrepid Lane, Syracuse (Onondaga County). The FASC will initially perform urology, colo-rectal and endoscopic surgery.

The applicant will lease approximately 15,597 square feet at grade level and will have four fully-fit-out operating rooms and two shelled operating rooms for future use. The patient preparation, hold, and recovery spaces plus support areas will be sized to accommodate six operating room. Currently, the space is occupied by Specialists' One-Day Surgery, LLC (SODS) who has been approved relocate under CON 192289.

Benjamin McHone, M.D., Board-Certified Urologist, will be the Center's Medical Director. Following contingent approval, the applicant will approach both Crouse Hospital and St Joseph's Hospital Health Center to negotiate a transfer agreement. Travel distance and time for Crouse Hospital is 3.7 miles (7 minutes travel time) and St. Joseph's Hospital is 4.6 mile (12 minutes travel time).

The proposed ownership is as follows:

Table with 2 columns: Members and Interest. Includes Proposed Operator Intrepid Lane ASC, LLC and lists members of AMP ASC Holdings, LLC (72% interest) and CRA ASC Holdings, LLC (28% interest), totaling 100%.

The members of AMP ASC Holdings, LLC are urologists affiliated with Associated Medical Professionals of NY, PLLC. And the members of CRA ASC Holdings, LLC are colon rectal surgeons affiliated with Colon Rectal Associates of Central New York, LLP.

OPCHSM Recommendation

Contingent approval with an expiration of the operating certificate five years from the date of its issuance.

Need Summary

The Center will collaborate with local FQHCs to serve Onondaga County, an area anticipating growth in the over 45 demographics, the primary consumer of ASC services.

The number of projected procedures is 5,625 in Year One and 5,963 in Year Three, with Medicaid at 5.11% and Charity Care at 2.00% in the third year.

Program Summary

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

Financial Summary

Total project costs of \$5,431,427 will be met via members' equity of \$990,427 with the remaining \$4,441,000 financed through two loans. The first-one is a 5-year equipment loan for \$2,156,000, fix interest rate between 3% to 3.25% and 15-year loan for \$2,285,000 (interest only based on a variable Libor rate during construction period estimated between 3% and 3.5%). Upon completion of construction the interest rate will convert to a 15-year fixed rate, estimated between 2.75% to 3.5% as of October 16, 2020. M&T Bank has provided a letter of interest at the stated terms. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$6,227,544	\$6,602,010
Expenses	<u>4,871,492</u>	<u>4,698,837</u>
Gain/(Loss)	\$1,356,052	\$1,903,173

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management -

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the centers commitment to meet the health care needs of the community, including the provision of services to those in need, regardless of ability to pay. The statement shall also include a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
 - a. Data displaying actual utilization including procedures;
 - b. Data displaying the breakdown of visits by payor source;
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data displaying the number of emergency transfers to a hospital;
 - e. Data displaying the percentage of charity care provided;
 - f. The number of nosocomial infections recorded during the year reported;
 - g. A list of all efforts made to secure charity cases
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. RNR]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of an executed project loan commitment, acceptable to the Department of Health. [BFA]
6. Submission of an executed equipment loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
8. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
9. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
10. Submission of an amended and executed Operating Agreement Intrepid Lane, LLC, acceptable to the Department. (CSL)
11. Submission of an amended and executed Billing Services Agreement, acceptable to the Department. (CSL)
12. Submission of an amended and executed Articles of Organization for AMP ASC Holdings, LLC, acceptable to the Department. (CSL)
13. Submission of an amended and executed Operating Agreement for AMP ASC Holdings, LLC, acceptable to the Department. (CSL)

14. Submission of an amended and executed Articles of Organization for CRA ASC Holdings, LLC, acceptable to the Department. (CSL)
15. Submission of an amended and executed Operating Agreement for CRA ASC Holdings, LLC, acceptable to the Department. (CSL)

Approval conditional upon:

1. The project must be completed within two years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before October 15, 2021 and construction must be completed by August 15, 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 submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]

Council Action Date
April 8, 2021

Need and Program Analysis

Program Description

Proposed Operator	Intrepid Lane ASC, LLC
Doing Business As	Intrepid Lane Endoscopy and Surgery Center
Site Address	190 Intrepid Lane Syracuse, New York 13205 (Onondaga County)
Surgical Specialties	Multi-Specialty, initially including Urology, Colo-Rectal, and Endoscopy
Operating Rooms	4 (with shell space for two additional ORs)
Procedure Rooms	0
Hours of Operation	Monday through Friday 7 am to 3 pm Weekend or evening hours will be available, if needed, to accommodate patient scheduling issues.
Staffing (1 st Year / 3 rd Year)	20.0 FTEs / 20.0 FTEs
Medical Director(s)	Benjamin McHone, M.D
Emergency, In-Patient and Backup Support Services Agreement and Distance	Is expected to be provided by: Crouse Hospital 3.7 Miles / 7 minutes <i>and</i> St. Joseph Hospital 4.6 Miles/ 12 Minutes
On-call service	Patients who require assistance during hours when the Center is closed will be provided the number for their surgeon's service or a covering surgeon on-call. If the patient calls the Center when it is closed, there will be a message directing them to call their surgeon.

The service area consists of Onondaga County. The table below shows the number of patient visits for ambulatory surgery centers in Onondaga County for 2017 through 2019.

Spec Type	Facility Name	Patient Visits		
		2017	2018	2019
Multi	Camillus Surgery Center	2,386	1,697	1,480
Gastroenterology	Digestive Disease Center of Central NY	9,863	10,750	10,883
Gastroenterology	Endoscopic Procedure Center	5,980	5,986	5,912
Gastroenterology	Endoscopy Center of Central NY	3,680	4,338	4,395
Gastroenterology	Heritage One Day Surgery	16,851	17,971	19,042
Pain Management	Specialists' One-Day Surgery Center, LLC	14,518	14,469	15,121
Orthopedics	Specialists' One-Day Surgery Center, LLC <i>(opened 3/27/19)</i>	N/A	N/A	N/A
Multi	Specialty Surgery Center of Central NY	12,684	12,506	14,412
Gastroenterology	Syracuse Endoscopy Associates, LLC	6,762	6,590	6,417
Ophthalmology	Syracuse Surgery Center ¹	1,491	1,765	1,906
Gastroenterology	University Gastroenterology at the Philip G Holtzapple Endoscopy Center	2,160	1,694	1,437
Orthopedics	Upstate Orthopedics Ambulatory Surgery Center	5,500	5,609	5,630
Total Visits		81,875	83,375	86,635

¹ 2019 is an estimation, based upon partial year data

The population of Onondaga County in 2010 was 467,026 with 194,241 individuals (41.6%) who are 45 and over, which are the primary population group utilizing ambulatory surgery services. Per PAD projection data, this population group (45 and over) is estimated to grow to 206,868 by 2025 and represent 44.4% of the projected population of 466,070.

The number of projected procedures is 5,625 in Year One and 5,963 in Year Three. These projections are based on the current practices of participating surgeons. The applicant states that approximately 76% of the procedures are currently being performed in another ambulatory surgery center, 18% are performed in an office-based setting and 6% are being performed in a hospital. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Medicaid FFS	9	0.16%	9	0.15%
Medicaid MC	279	4.96%	296	4.96%
Medicare FFS	1,240	22.04%	1,316	22.07%
Medicare MC	1,040	18.49%	1,103	18.50%
Commercial FFS	2,369	42.12%	2,510	42.09%
Commercial MC	251	4.46%	266	4.46%
Private Pay	267	4.75%	283	4.75%
Charity Care	113	2.01%	119	2.00%
Other	57	1.01%	61	1.02%
Total	5,625	100.0%	5,963	100.0%

The Center initially plans to obtain contracts with the following Medicaid Managed care plans: Fidelis, United Healthcare Community, Molina, Excellus Blue Options, and MVP Medicaid. The Center will work collaboratively with local Federally Qualified Health Centers (FQHC) such as: Syracuse Community Health Center and Onondaga County Outreach Program to provide service to the under-insured in their service area. The Center has developed a financial assistance policy with a sliding fee scale to be utilized when the Center is operational.

Character and Competence

The ownership of Intrepid Lane ASC, LLC is:

Member Name	Interest
AMP ASC Holdings, LLC David M. Alba, M.D. Angelo R. Derosalia, M.D. Po N. Lam, M.D. Andres M. Madisoo, M.D. Benjamin McHone, M.D. Sasha Pavlov-Shapiro, M.D. Christopher M. Pieczonka, M.D. Nedim Rubotina, M.D. Elan W. Salzhauer, M.D. Arnold P. Teo, M.D. Hadley Narins, M.D. Harvey Sauer, M.D. Wael F. Maukkassa, M.D. Bashur Omarbasha, M.D. Brent E. Carlyle, M.D. Ilija Aleksic, M.D. Neil Mariados, M.D. Elizabeth Bozeman, M.D. Daniel Welchons, M.D. Gary Bozeman, M.D. Jeffrey Sekula, M.D. Kenneth Beasley, M.D.	72%
CRA ASC Holdings, LLC John Nicholson, M.D. David Halleran, M.D. J. Alan Ziegler, M.D.	28.0%

Member Name	Interest
Michael Moffa, M.D. David Nesbit, M.D	
TOTAL	100%

Dr. David Albala is a practicing Urologist. He received his medical degree from Michigan State University and completed his residency in Urology and General Surgery at Dartmouth Hitchcock Medical Center. He is board certified in Urology.

Dr. Ilija Aleksic is a practicing Urologist. He completed his medical degree at State University of New York Upstate Medical Center. He completed his General Surgery and Urology residencies at Albany Medical Center.

Dr. Kenneth Beasley is a practicing Urologist. He received his medical degree from Queens University in Ontario. He completed his residency in General Surgery at Kingston General Hospital in Canada and Urology at University Western Ontario Hospital.

Dr. Elizabeth Bozeman is a practicing Urologist. She received her medical degree from the Medical University of South Carolina. She completed her General Surgery and Urology residencies at the Medical University of South Carolina. She is board certified in Urology.

Dr. Gary Bozeman is employed as a Urologist. He received his medical degree from University of Arkansas for Medical Sciences. He completed his General Surgery residency at the University of Tennessee Knoxville and Urology Residency at Medical University of South Carolina. He is board certified in Urology.

Dr. Brent Carlyle is a practicing Urologist. He received his medical degree from State University of New York at Buffalo School of Medicine and Biomedical Sciences. He completed his residency in General Surgery and Urology residencies at Ohio State University Hospital. He is board certified in Urology.

Dr. Angelo DeRosalia is a practicing Urologist. He received his medical degree from Stony Brook University Health Sciences Center. He completed his General Surgery and Urology residencies at State University of New York Health Sciences Center in Brooklyn. He is board certified in Urology.

Dr. David Halleran is a practicing Colorectal Surgeon. He received his medical degree from Columbia University. He completed his residency in General Surgery at St. Luke's-Roosevelt University and his Colon Rectal Surgery residency at The Ferguson Hospital. He is board certified in Surgery and Colon Rectal Surgery. He discloses ownership interest in:

Endoscopy Procedure Center

2003-present

Dr. Po Lam is a practicing Urologist. He received his medical degree from the University of Texas Southwestern Medical Center at Dallas. He completed his General Surgery residency at University of Louisville Health Sciences Center and his Urology residency at University of Buffalo School of Medicine and Biomedical Sciences. He is board certified in Urology.

Dr. Hadley Narins is a practicing Urologist. She received her medical degree at Thomas Jefferson University. She completed her General Surgery and Urology residency at State University of New York at Buffalo. She is board certified in Urology.

Dr. John Nicholson is a practicing Colorectal surgeon. He received his medical degree from Syracuse University. He completed his residency in General Surgery at State University of New York Upstate Medical Center and his Colon and Rectal Surgery residency at University of Minnesota. He is board certified in Surgery and Colon and Rectal Surgery. He discloses ownership interest in:

Endoscopy Procedure Center

2003-present

Dr. Andres Madisoo is a practicing Urologist. He received his medical degree from State University of New York at Buffalo School of Medicine and Biomedical Sciences. He completed his Urology and General Surgery residencies at the University of Buffalo. He is board certified in Urology.

Dr. Neil Mariados is the Founder and Partner of Associated Medical Professionals of NY, PLLC. He is the Medical Director of Radiation Oncology and the Co-Director of Research. He received his medical degree from St. George's School of Medicine. He completed his residency in Internal Medicine at Cooper hospital University Medical Center and in Radiation Oncology at State University Upstate Hospital. He is board certified in Radiation Oncology.

Dr. Benjamin McHone is a practicing Urologist. He received his medical degree from the University of Illinois College of Medicine. He completed his General Surgery and Urology residencies at George Washington University School of Medicine. He is board certified in Urology.

Dr. Michael Moffa is practicing Colorectal surgeon. He received his medical from The Medical College of Pennsylvania. He completed his General Surgery residency at North Shore University Hospital and Colon and Rectal Surgery residency at Cleveland Clinic. He is board certified in Surgery and Colon and Rectal Surgery. Dr. Moffa discloses ownership interest in the following healthcare facilities:
Endoscopy Procedure Center

Dr. Wael Muakkassa is a practicing Urologist. He received his medical degree from the American University of Beirut in Lebanon. He completed his Urology residency at the Medical College of Ohio Hospital and University of Maryland Medical System. He completed his General Surgery residency at Medical College of Ohio and St. Luke's Hospital. He is board certified in Urology.

Dr. David Nesbitt is a practicing surgeon. He received his medical degree from the State University of New York Upstate Medical Center. He completed his General Surgery residency at State University of New York Upstate Medical Center and Colon Rectal Surgery residency at Washington Hospital Center. He is board certified in Surgery and Colon and Rectal Surgery. Dr. Nesbitt discloses ownership interest in the following healthcare facilities:
Endoscopy Procedure Center

Dr. Bashar Omarbasha is a Urologist. He received his medical degree from Damascus University in Syria. He completed his residency in General Surgery and Urology at Boston University Medical Center Hospital.

Dr. Sasha Pavlov-Shapiro is a practicing Urologist. She received her medical degree from State University of New York at Buffalo School of Medicine and Biomedical Sciences. She completed her General Surgery and Urology residencies at the University at Buffalo. She is board certified in Urology.

Dr. Christopher Pieczonka is a practicing Urologist. He received his medical degree from State University of New York University at Buffalo School of Medicine and Biomedical Science. He completed his urology and General Surgery residencies at the State University of New York at Buffalo School of Medicine and Biomedical Science. He is board certified in Urology.

Dr. Nedim Ruhotina is a practicing Urologist. She received her medical degree from Vanderbilt University School of Medicine. She completed her General Surgery and Urology residency at Brigham and Women's Hospital.

Dr. Elan Salzhauer is a practicing Urologist. He received his medical degree from State University of New York Upstate Medical Center. He completed his residency in General surgery and Urology at State University of New York Health Science Center in Brooklyn. He is board certified in Urology.

Dr. Harvey Sauer is a practicing Urologist. He received his medical degree from the University of Illinois College of Medicine. He completed his General Surgery and Anesthesiology residency at Advocate Illinois Masonic Medical Center. He completed his Urology residency at Barnes Jewish Hospital South Campus. He is board certified in Urology.

Dr. Jeffrey Sekula is a practicing Urologist. He received his medical degree from UMDNJ-New Jersey Medical School. He completed his Urology Residency at Duke University, his Anesthesia residency at University of North Carolina at Chapel Hill, and his General Surgery residency at UMDNJ- University Hospital. He is board certified in Urology.

Dr. Arnold Teo is a practicing Urologist. He received his medical degree a CEBU Institute of Medicine in Philippines. He completed his General Surgery and Urology residencies at the State University of New York Health Science Center in Brooklyn. He is board certified in Urology.

Dr. Daniel Welchons is a practicing Urologist. He received his medical degree at University of Pittsburgh School of Medicine. He completed his residency at Brigham and Women's Hospital and Harvard Program in Urology. He is board certified in Urology.

Dr. Jack Alan Ziegler is a Colorectal surgeon. He received his medical degree from Ohio State College of Medicine. He completed his residency General Surgery at State University of New York Upstate Medical Center and his fellowship in Colon and Rectal Surgeries at St Vincent's Medical Center. He is board certified in Colon and Rectal Surgeries. He discloses ownership interest in the following healthcare facilities:

Endoscopy Procedure Center

2003-present

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

Dr. David Albala disclosed that he was named in multiple malpractice suits. The first case was filed on July 10, 2013 by the patient. The patient alleged that he developed erectile dysfunction of a bladder stone. The case went to trial on March 26, 2018 and a verdict was rendered in favor of the defendants.

The second case was filed on April 9, 2018 by the patient. On November 4, 2015, during a robotic radical prostatectomy, a patient suffered a bowel injury and was taken back to the OR for a small bowel repair. The patient alleges negligence during the procedure. The case is ongoing.

The third case was filed on November 14, 2018 by the patient. The patient had both prostate and kidney cancer and was treated with radiation for the prostate cancer. He elected to have ablation for the kidney cancer. He was seen four months after the ablation and had no areas of enhancement. The patient had a CT scan done one year later and was noted to have a chest mass which was biopsied and found to be metastatic kidney cancer. He is undergoing chemotherapy for the metastatic disease. The case is in the discovery phase.

The final case was filed on January 21, 2019. On January 17, 2017, the patient underwent a laparoscopic nephrectomy for a suspicion of a cancerous kidney tumor. She had received pre-operative cardiac clearance for a mechanical heart valve. The patient appeared to be recovering from surgery and her anticoagulation was started on the second post-op day, as instructed in her clearance note. On the third day post-op, the patient has a bleeding episode and was admitted into the ICU. The patient died on January 24, 2017. The plaintiff alleges that the patient should have been taken back to the OR to control her bleeding. Dr. Albala was not in town on the day three post-op and the patient's care had been assumed by covering physicians and the ICU physicians. The case is in the discovery phase.

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

Integration with Community Resources

For those patients who do not identify a primary care provider (PCP), the Applicant will encourage the establishment of one by providing a list of the area primary care physicians who are accepting new patients. The Applicant will participate with traditional fee for service Medicaid and with all area Medicaid Managed Care plans. The Applicant will adopt a financial assistance policy with a sliding scale fee once the Center opens. The Applicant will promote its financial assistance policy by informing patients of the existence of the financial assistance policy through the website, in the information packet, and through affiliated practices; encouraging patients who express concern over payments and financial hardship to apply for financial assistance; assisting patients in applying for financial assistance; and advising clinics and other referral sources for underserved patients of the availability of the Applicant's financial assistance policy. The Applicant's currently receive referrals from Syracuse Community Health Center (an FQHC) and Onondaga County Outreach program to provide colonoscopy screenings and Onondaga Nation Health Center. The Applicant will serve all persons regardless of age, color, race, creed, national origin, religion, sex, sexual orientation, marital status, and disability or payer source.

The Center intends on using an Electronic Medical Record (EMR) program and will consider participating in an Accountable Care Organization (ACO) and Regional Health Information Organization (RHIO).

Conclusion

Approval of this project will provide increased access to urology, colo-rectal, and endoscopic surgery services in an outpatient setting for the residents of Onondaga County. Based on the information reviewed, staff found nothing that would reflect adversely upon the applicants' character and competence or standing in the community.

Financial Analysis

Total Project Cost and Financing

Total project costs for renovation and acquisition of moveable equipment is estimated at \$5,431,427, and is based on a ten-month construction period:

Renovation & Demolition	\$2,353,550
Design Contingency	235,355
Construction Contingency	235,355
Architect/Engineering Fees	275,000
Other Fees	40,000
Movable Equipment	2,156,913
Financing Costs	35,000
Interim Interest	68,555
Application Fees	2,000
Additional Processing Fees	<u>29,699</u>
Total Project Cost	\$5,431,427

The applicant's financing plan appears as follows:

Applicant - Cash Equity (members)	\$990,427
Applicant - Equipment loan (3% to 3.25% interest, 5-year term)	2,156,000
Applicant -Bank Loan (2.75% to 3.50% int. 15-year term, self-amortizing) *	<u>2,285,000</u>
Total	\$5,431,427

**Interest only during construction at variable Libor rate estimated to be between 3% to 3.50%. Upon completion of construction, the 15-year loan will be converted to a fix interest rate estimated to be between 2.75% to 3.50% as of October 16, 2020. M&T Bank has provided a letter of interest for all loans.*

BFA Attachment A is the members' net worth summaries, which shows sufficient resources overall to meet the equity requirement.

Lease Agreement

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

Date:	August 15, 2020
Premises:	Approximately 15,597 sq. ft. located at 190 Intrepid Lane, Syracuse, NY
Landlord/Owner:	SOS Real Estate Holding Company, LLC
Lessee:	Intrepid Lane ASC, LLC
Term:	15 years following rent commencement date, renewal (2) 5-year terms
Rental:	\$312,096 annually (\$20.01 per sq. ft.)
Provisions:	Triple Net Lease
Option to Purchase	During the first seven-years

The applicant stated this is an arm's length lease arrangement and has submitted two letters from New York State licensed real estate brokers attesting to the reasonableness of the per square foot rental.

Billing Service Agreement

The applicant has submitted an executed billing service billing agreement (BSA), the terms of which are summarized below:

Date:	September 1, 2020
Facility:	Intrepid Lane ASC, LLC d/b/a Intrepid Lane Endoscopy and Surgery Center
Contractor:	Specialists' Operations Consulting Services, LLC (SOCS)
Services Provided:	Billing and collection services, submit claims, posts payments, monitor unpaid claims, insurance claim follow up, follow Operators credit and charity care policy, facility credentialing information with third party payors, and ensure data integrity.
Term:	2 years – automatic renewal for two (2) years
Fee:	Months 1-6 at \$9,150 per month and Months 7-24 at \$18,300 per month or agreed by the parties starting in month 19

The applicant has provided an Attestation for Services Agreements acknowledging their understanding of the reserve powers of the operator that cannot be delegated per statutory and regulatory requirements.

Operating Budget

The applicant submitted the projected first- and third-year operating budgets in 2021 dollars, as summarized below:

	Year One		Year Three	
Revenues	Per Proc.	Total	Per Proc.	Total
Medicaid-FFS	\$912.67	\$8,214	\$921.00	\$8,289
Medicaid-MC	\$1,011.74	282,276	\$1,011.47	299,395
Medicare-FFS	\$1,055.14	1,308,369	\$1,055.58	1,389,138
Medicare-MC	\$1,055.55	1,097,767	\$1,055.24	1,163,927
Commercial-FFS	\$1,179.72	2,794,767	\$1,179.72	2,960,251
Commercial-MC	\$1,180.52	296,310	\$1,182.73	314,606
Private Pay	\$1,425.25	380,541	\$1,425.23	403,341
All Other	\$1,040.35	59,300	\$1,033.82	63,063
Total		\$6,227,544		\$6,602,010
Expenses				
Operating	\$657.19	\$3,696,686	\$602.61	\$3,593,369
Capital	\$208.85	1,174,806	\$185.39	1,105,468
	\$866.04	\$4,871,492	\$788.00	\$4,698,837
Net Income:		<u>\$1,356,052</u>		<u>\$1,903,173</u>

	<u>Year One</u>	<u>Year Three</u>
Procedures	5,625	5,963

Utilization by payor source for the current year, and years one and three is summarized below:

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Proc.</u>	<u>%</u>	<u>Proc.</u>	<u>%</u>
Medicaid – FFS	9	0.16%	9	0.15%
Medicaid-MC	279	4.96%	296	4.96%
Medicare-FFS	1,240	22.04%	1,316	22.07%
Medicare-MC	1,040	18.49%	1,103	18.50%
Commercial-FFS	2,369	42.12%	2,510	42.09%
Commercial-MC	251	4.46%	266	4.46%
Private Pay	267	4.75%	283	4.75%
Charity	113	2.01%	119	2.00%
All Other	<u>57</u>	<u>1.01%</u>	<u>61</u>	<u>1.02%</u>
Total	5,625	100%	5,963	100%

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

- Managed care rates are based upon estimates and conversations with managed care organizations. The Ambulatory Patient Group reimbursement rates reflect current and projected Federal and State government rates, with commercial and private payors reflecting adjustments based on experience in the region.
- Expense assumptions are based upon locally competitive wage rates, staffing models, volume, medical supplies, and supporting costs.
- Utilization assumptions are supported by letters from the members physicians. The proposed operator is committed to providing 2% to charity care patients and 5.11% to Medicaid patients. Utilization by payor is based on the existing payor mix experienced by the participating surgeons.
- Breakeven is approximately 78.24% for year one.

Capability and Feasibility

The working capital requirement is estimated at \$783,140, based on two months of third year expenses. Funding will be as follows: \$403,140 from the members' equity with the remaining \$380,000 satisfied through a five-year loan at 3% to 3.25% interest. M & T Bank has provided a letter of interest. Review of BFA Attachments A reveals sufficient resources to meet all the equity requirements. BFA Attachment B is Intrepid Lane ASC, LLC pro forma balance sheet that shows operations will start with \$1,396,753 equity.

Intrepid Lane ASC, LLC projects a net operating income of \$1,356,052 and \$1,903,173 in the first and third years of operation, respectively. The budget appears reasonable.

Conclusion

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

Supplemental

DOH Comment

The Department reached out to proximate hospitals asking for information on the impact of the proposed ambulatory surgery center (ASC). None of the hospitals responded. Therefore, in the absence of comments from hospitals near the ASC, the Department finds no basis for reversal or modification of the recommendation for approval of this application based on public need, financial feasibility and owner/operator character and competence.

Attachments

BFA Attachment A	Intrepid Lane ASC, LLC members net worth summary
BFA Attachment B	Pro Forma Balance Sheet of Intrepid Lane ASC, LLC
BHFP Attachment	Map



**Project # 202257-E
Heritage One Day Surgery**

Program: Diagnostic and Treatment Center **County:** Onondaga
Purpose: Establishment **Acknowledged:** January 12, 2021

Executive Summary

Description

Heritage One Day Surgery, LLC (Heritage), an existing New York limited liability company, requests approval to transfer 15.66% membership interest in an Article 28 single-specialty (pain management) freestanding ambulatory surgery center (FASC) to one new member (Ryan McConn, M.D.). The Center is located in leased space at 5496 East Taft Road, North Syracuse (Onondaga County).

There will be no change in services or operations as a result of this membership transfer

The facility is accredited by Accreditation Association for Ambulatory Health Care (AAAHC).

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no Need recommendation for this project.

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 application. Ryan D. McConn, M.D. will purchase 15.66% interest in Heritage One Day Surgery, LLC with a loan for \$984,238. The terms range from four to six years. The interest rate for the 4- to 5-year loan is based on a 5-year Federal Home Loan Bank (FHLB) rate plus 245 basis points (bps), and the 6-year loan is based on 7-year FHLB rate plus 255 bps. All of the term options have a 3.25% floor rate, which would be the rate today for all options. The applicant has provided a letter of interest from Tompkins Trust Company.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]

Approval conditional upon:

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

Council Action Date

April 8, 2021

Program Analysis

Character and Competence

The table below details the proposed change in ownership:

Member	Current	Proposed
Robert Tiso, M.D.	18.80%	15.68%
Joesph Catania, M.D.	18.80%	15.68%
Eric Tallerico, M.D.	18.80%	15.66%
Mary Trusilo, M.D.	18.80%	15.66%
Jason Lok, M.D.	18.80%	15.66%
Rina Davis, M.D.	3.000%	3.000%
Raymond Alcuri, M.D.	3.000%	3.000%
Ryan McConn, M.D.*	-----	15.66%
TOTAL	100%	100%

**Member subject to Character and Competence*

Dr. Ryan McConn is board certified in anesthesiology and has been a practicing member of a pain management practice for over two years. He has direct clinical experience in an office and clinical setting and in the surgery center setting. He is involved in corporate meetings involving decisions regarding quality of patient care, outcomes, and improvement initiatives. He received his degree from St. George's University School of Medicine in Grenada. He completed his residency in Pain Management at State University of New York Upstate Medical University and his Anesthesia residency at String Memorial Hospital of the University of Rochester.

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

Conclusion

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

Financial Analysis

Membership Purchase Agreement

The applicant has submitted an executed Membership Purchase Agreement which will be effectuated upon Public Health and Health Planning Council (PHHCP) approval of this CON. The terms of the agreement are summarized below:

Date:	November 30, 2020
Seller:	Robert Tiso, M.D. (3.12%); Joseph Catania, M.D. (3.12%); Eric Tallarico, M.D. (3.14%); Mary Trusilo, M.D. (3.14%); and Jason Lok, M.D. (3.14%)
Buyer:	Heritage One Day Surgery, LLC
Holding Interest Until Acquired:	Heritage will hold the 15.66% membership interest in Heritage until acquired by Ryan McConn, M.D. for \$984,238
Further Action:	Heritage upon receipt of \$984,238 from Ryan McConn, M.D. for the 15.66% interest in Heritage will then distribute \$196,847.60 to each of the above sellers (for an aggregate purchase price of \$984,238)

Subscription Agreement

The applicant has submitted an executed Subscription Agreement which will be effectuated upon Public Health and Health Planning Council approval of this CON. The terms of the agreement are summarized below:

Date:	November 30, 2020
Seller:	Heritage One Day Surgery, LLC
Buyer:	Ryan McConn, M.D.
Acquired:	15.66% membership interest in Heritage for \$984,238

Capability and Feasibility

There are no project costs associated with this application. Ryan McConn, M.D. will acquire 15.66% in Heritage One Day Surgery, LLC for \$984,238 which will be funded via loan at stated terms. A letter of interest has been provided by Tompkins Trust Company.

BFA Attachment B, Heritage One Day Surgery LLC's certified financial statements for 2018 and 2019, shows positive working capital, positive equity position, and net income of \$4,532,375 and \$6,085,297, respectively. BFA Attachment C, Heritage One Day Surgery LLC's December 31, 2020 internal financial statements shows they maintained positive working capital, positive net assets and operating income of \$3,820,289.

Conclusion

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

Attachments

BFA Attachment A	Ryan McConn, M.D. Net Worth
BFA Attachment B	Heritage One Day Surgery, LLC – 2018 and 2019 certified financial statements
BFA Attachment C	Heritage One Day Surgery, LLC -December 31, 2020 internal financial statement



Project # 201172-B
H & D East 180 Street, LLC d/b/a
Community Health Center at East 180th Street

Program: Diagnostic and Treatment Center **County:** Bronx
Purpose: Establishment and Construction **Acknowledged:** July 3, 2020

Executive Summary

Description

H & D East 180th Street, LLC, an existing New York State limited liability company, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) to be located at 870 East 180th Street, Bronx (Bronx County). The D&TC intends to provide primary care, other medical specialties, dental, and psychology services in approximately 11,979 square feet of programmatic space. The Center will occupy three (3) floors that will house twenty-three (23) exam rooms, two (2) dental rooms, a pharmacy, three (3) behavioral health treatment rooms with consultation rooms and designated support areas. Upon approval by the Public Health and Health Planning Council (PHHPC) the Center will do business as the Community Health Center at East 180th Street.

The members of H & D East 180th Street, LLC are Hector D. Reyes and Divina Abreu-Espinal.

Dr. Cecilia Griselda Calderon, who is board-certified in Internal Medicine, will serve as Medical Director. The Center will have a Hospital Transfer and Affiliation Agreement for backup and emergency services with BronxCare Hospital Center (f/k/a Bronx-Lebanon Hospital Center).

OPCHSM Recommendation
Contingent Approval

Need Summary

The primary service area is the neighborhoods of Crotona, Bathgate, Belmont and East Tremont in Bronx County, an area of above average PQIs and designations as a Health Professional Shortage Area and a Medically Underserved Area. The number of projected visits is 28,390 in Year One and 47,317 in Year Three.

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

Total project costs of \$10,197,763 will be met with \$1,019,773 member's equity/operational cash and a bank loan of \$9,177,986 for a 25-year term. The interest rate will be fixed for the first 10 years at 250 Basis points over the prevailing Federal Home Loan Bank of New York 10-year advance rate. The rate will then reset 10 years thereafter, at the prevailing Federal Home Loan Bank of New York 10-year advance rate plus 2.5% basis points with a floor rate of 4.18%. Tompkins Mahopac Bank has provided a letter of interest for the financing. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$4,185,527	\$6,975,875
Expenses	<u>3,513,164</u>	<u>4,496,398</u>
Net Income	\$672,363	\$2,479,477

Recommendations

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

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed bank loan commitment for project costs, acceptable to the Department of Health. [BFA]
3. Submission of an executed bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of an amended and executed Articles of Organization of H&D E. 180th St, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Operating Agreement of H&D E. 180th St, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed lease agreement between tenant HD at E. 180th Street and landlord Sonid Holdings, LLC, acceptable to the Department. [CSL]
7. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
8. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

Approval conditional upon:

1. The project must be completed within two years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval.
2. Construction must start on or before September 15, 2021 and construction must be completed by January 31, 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 staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
5. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

April 8, 2021

Need and Program Analysis

Program Description

Proposed Operator	H & D East 180 th Street, LLC
To Be Known As	Community Health Center at East 180 th Street
Site Address	870 East 180 th Street Bronx, New York 10460 (Bronx County)
Services	Medical Services – Primary Care Medical Services - Other Medical Specialties (including diagnostic radiology) Dental
Hours of Operation	Monday-Friday 8 AM to 4 PM Saturday 8 AM to 12 PM
Staffing (1st Year / 3rd Year)	25.5 FTEs / 35.2 FTEs
Medical Director(s)	Cecilia G. Calderon, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by BronxCare Hospital Center 2.2 miles / 15 minutes away

Analysis

The primary service area are the neighborhoods of Crotona, Bathgate, Belmont and East Tremont in Bronx County, including the following zip codes: 10459, 10460, 10462, and 10472. The population of Bronx County was 1,385,108 in 2010 and is projected to grow to 1,567,988 by 2025, an increase of 13.2%.

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

Hospital Admissions per 100,000 Adults for Overall PQIs

PQI Rates: 2016	Primary Service Area	New York State
All PQI's	1,997	1,363

Areas of Bronx County are designated as a Health Professional Shortage Area or as a Medically Underserved Area/Population as follows (Source-HRSA):

- Health Professional Shortage Area for Dental services: Medicaid Eligible-Crotona
- Health Professional Shortage Area for Mental Health services: Medicaid Eligible-Crotona
- Health Professional shortage Area for Primary Care services: Medicaid Eligible-Crotona
- Medically Underserved Area: Bathgate Service Area

The number of projected visits is 28,390 in Year One and 47,317 in Year Three. This center is projecting Medicaid utilization of 67%. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

Character and Competence

The members of H and D East 180th Street, LLC are:

Name	Membership
Hector D. Reyes	50%
Divina Abreu-Espinal	50%
	100%

Mr. Hector Reyes is the President/Owner of HDR Management Corp., a management company which provides management services to healthcare facilities. His responsibilities include business development, operations, and management of medical practices. He is also the Executive Vice President for non-Article 28 health practices.

Ms. Divina Abreu-Espinal has been a high school special education teacher in the Yonkers Public Schools for 10 years. According to Ms. Abreu-Espinal, she teaches students with special needs and also works to improve their mental health. She consults with students to discuss their emotions and experiences to ensure they create and maintain a working plan of action specific to their needs, academically or socially. She has gained significant operations and managerial experience as a member of several real estate businesses owned and operated by family members. Additionally, several of her associates are either health care providers or hold high level managerial positions at health care related entities.

Dr. Cecilia Calderon is the proposed Medical Director. She is the current Chief Medical Officer/Medical Director of multiple private medical practices. She received her medical degree from the Universidad Autonoma de Santo Domingo in the Dominican Republic. She completed her Internal medicine residency at Bronx Lebanon Hospital. She is board certified in Internal Medicine.

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

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

Conclusion

Approval for this project will provide for the improved access to a variety of medical and dental services for the residents of Crotona, Bathgate, Belmont, East Tremont as well as the surrounding communities within Bronx County. The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Total Project Cost and Financing

Total project cost of \$10,172,623 for site development, new construction and moveable equipment are broken down as follows:

New Construction	\$6,963,408
Renovation & Demolition	253,750
Site Development	517,650
Temporary Utilities	20,300
Design Contingency	696,341
Construction Contingency	348,170
Fixed Equipment (NIC)	101,500
Planning Consultant Fees	20,000
Architect /Engineering Fees	350,000
Construction Manager Fees	125,000
Other Fees	35,000
Moveable Equipment	329,875
Telecommunications	126,875
Financing Costs	42,000
Interim Interest Expense	210,124
CON Fee	2,000
Additional Processing Fee	<u>55,770</u>
Total Project Cost	<u>\$10,197,763</u>

Project costs are based on a seventeen-month construction period.

The applicant's financing plan is as follows: \$1,019,777 member's equity/operational cash and a bank loan of \$9,177,986 for a 25-year term. The interest rate will be fixed for the first 10 years at 250 Basis points over the prevailing Federal Home Loan Bank of New York 10-year advance rate. The rate will then reset 10 years thereafter at the prevailing Federal Home Loan Bank of New York 10-year advance rate plus 2.5% basis points. Floor rate of 4.18%. Tompkins Mahopac Bank has provided a letter of interest for the financing. BFA attachment A is the net worth statements of Hector D. Reyes and Divina Abreu-Espinal, which indicate sufficient resources to meet the equity requirements of this application.

Lease Agreement

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

Date:	March 25, 2020
Premises:	11,979 square feet of space at 870 East 180th Street, Bronx, NY 10460
Owner:	Sonid Holdings, LLC
Tenant:	H & D East 180th Street, LLC
Security:	\$56,250 deposit paid
Rental:	Base rent \$225,000 per annum for years one through five, with a 10% increase for each five-year period thereafter. From the Commencement date until the existing building is vacant. there shall be no rent due. From the date the existing building is vacant until the date construction commences, Additional rent of \$5,000.00 to pay the taxes and water/sewer due. The Rent and Additional Rent due under this paragraph shall accrue and be payable by Tenant upon the commencement of construction. From the date construction commences until a date that is six months after the issuance of a permanent or temporary certificate of occupancy and the issuance of an operating certificate.
Term:	49 years (Ground Lease)
Provisions:	Tenant is also responsible for taxes, assessments, water and sewer rates or charges, and other governmental charges.

There is a relationship between the landlord and one of the lessees. The applicant has submitted two letters of rent reasonableness indicating that the rental was reasonable from New York State realtors.

Operating Budget

The applicant submitted their year one and year three operating budget, in 2021 dollars, as shown below:

<u>Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial FFS	\$77.66	\$66,169	\$77.66	\$110,282
Commercial MC	\$62.60	55,334	\$62.60	88,890
Medicare FFS	\$134.00	152,228	\$134.03	253,714
Medicare MC	\$110.39	470,142	\$110.39	783,570
Medicaid FFS	\$219.20	124,503	\$219.35	207,504
Medicaid MC	\$176.77	3,262,053	\$176.76	5,436,752
Private Pay	\$79.79	22,712	\$80.03	37,853
All Other	\$60.54	<u>34,386</u>	\$60.58	<u>57,310</u>
Total Revenue		\$4,185,527		\$6,975,875
 <u>Expenses</u>				
Operating	\$102.30	\$2,904,634	\$82.38	\$3,897,956
Capital	<u>21.43</u>	<u>608,530</u>	<u>12.65</u>	<u>598,442</u>
Total Expenses	\$123.73	\$3,513,164	\$95.03	\$4,496,398
Net Income		<u>\$672,363</u>		<u>\$2,479,477</u>
Visits		28,393		47,318
Cost/Visit		\$123.73		\$95.03

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

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial FFS	852	3%	1,420	3%
Commercial MC	852	3%	1,420	3%
Medicare FFS	1,136	4%	1,893	4%
Medicare MC	4,259	15%	7,098	15%
Medicaid FFS	568	2%	946	2%
Medicaid MC	18,454	65%	30,756	65%
Private Pay	284	1%	473	1%
Charity Care	1,420	5%	2,366	5%
All Other	<u>568</u>	<u>2%</u>	<u>946</u>	<u>2%</u>
Total	28,393	100%	47,318	100%

The following is noted with respect to the submitted budget:

- Year One is based upon a 60% of the 100% volume of visits, with an anticipated 20% growth rate each year reaching full capacity in Year Three.
- Salary expenses were trended higher than the region generally demands as the Applicant indicates they believe in hiring highly qualified individuals.
- The revenue assumptions are based on several actual Article 28 Diagnostic and Treatment centers operating in the same geographical location with similar square footage, specialties and anticipated patient flow. Actual AHCF-1 's were analyzed of aforementioned operating facilities.
- Based on their operating experience, the projected revenue, payor mix, utilization, patient visits, staffing, and operating expenses for the first and third year were developed and/or projected.
- Actual expenses unique to this facility were substituted where it was known or easily estimated.

Capability and Feasibility

The total project cost is \$10,197,763 and will be funded via \$1,019,777 member's equity and a \$9,177,986 loan for a 25-year term. The interest rate will be fixed for the first 10 years at 250 Basis points over the prevailing Federal Home Loan Bank of New York 10-year advance rate. The Rate will then reset 10 years thereafter at the prevailing Federal Home Loan Bank of New York 10-year advance rate plus 2.5% basis points. Floor rate of 4.18%. Tompkins Mahopac Bank has provided a letter of interest for the financing.

Working capital requirements are estimated at \$749,400 based on two months of third year expenses and will be satisfied via members' equity and a working capital loan of \$374,700 at 3.95% interest over a term of five years. Hector Reyes and Divina Abreu-Espinal have each submitted affidavits of disproportionate share, indicating that Hector Reyes and Divina Abreu-Espinal will each contribute 60% and 40% to working capital, respectively. BFA Attachment A provides the net worth statements of Hector D. Reyes and Diniva Abreu-Espinal, which indicate the availability of sufficient funds for stated levels of equity. BFA Attachment B, the pro forma balance sheet for the applicant, indicates that the facility will initiate operations with members equity of \$1,394,476.

The submitted budget indicates the facility will generate net income of \$672,363 and \$2,479,477 in the first and third years, respectively. The revenue assumptions are based on several actual Article 28 Diagnostic and Treatment centers operating in the same geographical location with similar square footage, specialty's and anticipated patient flow.

Conclusion

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

Attachments

BFA Attachment A	Net Worth Statements - Hector D. Reyes and Divina Abreu-Espinal
BFA Attachment B	Pro Forma Balance Sheet – Community Health Center at East 180 th Street
BHFP Attachment	Map



**Project # 202191-E
New York Preventive Health Center**

Program: Diagnostic and Treatment Center **County:** Queens
Purpose: Establishment **Acknowledged:** November 16, 2020

Executive Summary

Description

Ajay 28, LLC d/b/a New York Preventative Health Center, an existing Article 28 diagnostic and treatment center (D&TC) located at 68-60 Austin Street, Forest Hills (Queens County), requests approval to transfer 100% ownership interest to three individual members as follows: Ahmad Masoud (51.0%); Nauman Jamil (24.5%); and Haroon Khawaja (24.5%). Ajay 28, LLC is currently owned 100% by the Estate of Ajay K. Lodha, M.D. The center currently provides the following certified services: Medical Services-Primary Care; Medical Services-Other Medical Specialties; and Dental O/P, and there will be no change in services upon the change in membership interest. As of December 18, 2020, the Center has no outstanding liabilities.

Stella Ilyayeva, M.D., who is Board-certified in Endocrinology, Diabetes and Metabolism, will continue to serve as Medical Director. Ajay 28, LLC has a Transfer Agreement for emergency and backup services with Flushing Hospital Medical Center located 5.5 miles (15 minutes travel time) from the center.

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no Need recommendation for this project.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The total purchase price for the 100% ownership interest is \$675,000. The purchase price will be funded via the proposed new members' personal equity.

The submitted budget projects a loss of \$67,001 in the first year and an excess of revenues over expense of \$451,486. The applicant has indicated that they will cover any revenue shortfalls via operations. The submitted budget appears reasonable. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,184,185	\$1,774,581
Expenses	<u>1,251,186</u>	<u>1,323,095</u>
Excess Revenues	(\$67,001)	\$451,486

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of the applicant's fully executed amended and restated operating agreement, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

April 8, 2021

Program Analysis

Program Description

There are no programmatic changes as a result of this request; however, staffing is expected to increase by 3.5 FTEs by the end of the first year of operation and by 7.0 FTEs by the third year of operation.

The table below details the proposed change in ownership:

Member Name	Current	Proposed
Estate of Ajay K. Lodha, M.D.	100%	-----
Ahmad Masoud	-----	51.0%
Nauman Jamil	-----	24.5%
Harron Khawaja	-----	24.5%
Total	100%	100%

Character and Competence

Mr. Jamil Nauman is a Certified Public Accountant. He has been employed as the President and CEO at Healthcare Management Services, USA LLC, a healthcare management consulting firm, for over four years. His responsibilities include developing a Patient Centered Medical Home Recognition Program for primary practices that supports DOH initiative to improve patient care; assists primary care practices to implement the medical home model and promote the Triple Aim; promote team based care in practice by defining the organizational structure and assigning responsibilities; analyzing patient demographics and information about the community to deliver evidence based care; and supporting the populations needs and provisions of culturally and linguistically appropriate services. He was previously employed as the senior associate of BDO USA, LLP, an Audit and Assurance company, for over nine years. He conducted on-site audits of financial and compliance control processes to ensure client risk are properly managed. Mr. Nauman has over five years in the healthcare industry assisting primary care practices transform into medical homes. He has also assisted various primary care practices, Article 28 clinics, and Urgent Care centers with management consulting services to streamline their operations and stabilize their financials by diversifying into more stable revenue streams like telemedicine and chronic care management.

Mr. Haroon Khawaja has been the current Practice Manager of Niaz Medical Services PC for over ten years. He helped start the practice and expand into three locations. He transformed the practice into a Patient Centered Medical Home. He serves as the point person for office manager duties including staffing, administration, and compliance. He partners with Human Resources to update and maintain office policies. He has also been Econorise Corporation for over seven years and is currently the President and CEO. His duties include providing practice management services to various primary care providers, improving practice performance by transforming a practice into a Patient Centered Medical Home, preparing and implementing policies to provide coordinated care to patients, and assisting clients in implementing complete revenue cycle management. He has also employed as an Engineer at NYC DCAS for over 12 years. He is responsible for operating, maintaining, and adjusting boilers, furnaces, engines, pumps, heat exchangers, generators, motors, heating equipment, ventilation, air conditioning, lighting, and associated equipment in public buildings, municipal pumping stations, and incinerators; takes responsible charge of a watch and directs subordinate personnel; operates console in control rooms; makes periodic inspections of equipment and minor repairs to such equipment; and performs preventative maintenance. He has assisted in starting pediatric practices from their inception and successfully managed opening multiple locations in areas of high need. He has assisted in the transformation of practices into medical homes. He has managed several primary care practices for over 15 years, helping several practices improve their management and revenues.

Mr. Ahmad Masoud is the Founder and CEO of iRCM, a healthcare consulting firm in operation for six years. He works with medical practices to optimize business operations, improve profitability, strengthen compliance, eliminate administrative burdens, and adapt better to industry change. He is the President and Co-Founder of Strategic Level Consulting Group, LLC, a software, training, and support firm, for the

past three years. He designed cloud-based software that helped primary care physicians and their clinical coordinators to proactively monitor their high-risk, chronically ill patients document and track the services and receive claims reimbursement. Mr. Masoud was employed as a Senior Consultant at PCIP/NYC Reach for over three years. He was involved with working with primary care medical practices, community health centers, and facilities to improve coding, documentation, and the reimbursement process, clinical quality improvement, via implementation of alternative payment models, workflow redesign and training, HER customization and training. He has ten years of healthcare industry experience, four years of which is providing technical consultation services on behalf of the NYC Department of Health, PCIP/NYC REACH Program to primary care clinics, DTCs, and FQHCs throughout NYC. Mr. Masoud provides healthcare management consulting services to clinics and health centers to improve quality of care, optimize revenue, and maximize efficiency.

Dr. Stella Ilyayeva is the proposed medical director. She received her medical degree from the Alma-Atinskij Medical Institute in Kazakhstan. She completed her Internal Medicine residency at New York University Medical Center and her Endocrinology Fellowship at Bellevue Hospital Center. She is board certified in Internal Medicine with a subspecialty in Endocrinology, Diabetes, and Metabolism.

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

Conclusion

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

Financial Analysis

Lease Agreement

The applicant has submitted an executed amendment to lease agreement for the existing site, the terms of which are summarized below:

Date:	May 7, 2018
Premises:	Stores number 9 & 10 at 68-60 Austin Street, Forest Hills, New York.
Landlord:	68-60 Austin Realty Corp.
Assignor:	E&A Medical Solutions, LLC
Assignee:	AJAY 28 LLC
Term:	Five years with a 5-year extension option
Rent:	\$168,549.36 Annually with a 5% annual increase
Provisions:	Tenant is responsible for Insurance, maintenance, repairs, utilities and property taxes.

The applicant has submitted an affidavit that the lease is an arm's length agreement, as there is no relationship between any of the principals of the landlord and the members of the applicant.

Membership Interest Purchase Agreement

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

Date:	September 1, 2020
Buyer:	Ahmad Masoud, Naumil Jamil, & Haroon Khawaja
Seller/Company:	Ajay K. Lodha M.D.
Purchase:	Purchase 100% Membership Interest
Buyer Deliverables at Closing:	1) Purchase Price; 2) Other documents, instruments and writings reasonably requested.
Purchase Price:	\$675,000
Payment of Purchase Price	\$100,000 has already been paid to seller on behalf of buyer \$50,000 to be paid on the date of execution of this agreement \$525,000 to be paid at closing.

Operating Budget

The applicant has provided the latest current year operations and an operating budget, in 2021 dollars, for the first and third year subsequent to the change of ownership. The budget is summarized below:

Revenues	Current Year (2019)		Year One		Year Three	
	Per Visit.	Total	Per Visit.	Total	Per Visit.	Total
Commercial FFS	\$150.63	\$59,498	\$150.37	\$84,358	\$156.24	\$119,992
Commercial MC	\$00.00	0	\$145.61	225,549	\$147.50	359,900
Medicare FFS	\$135.16	28,789	\$128.62	131,446	\$131.83	201,568
Medicare MC	\$108.03	90,206	\$114.07	258,945	\$116.74	395,282
Medicaid FFS	\$137.95	10,898	\$158.45	48,664	\$160.05	32,970
Medicaid MC	\$122.70	48,342	\$124.30	389,804	\$126.30	595,252
Private Pay	\$150.62	23,196	\$152.48	45,439	\$154.02	69,617
Total Revenue		\$260,929		\$1,184,185		\$1,774,581
<u>Expenses</u>						
Operating	\$231.32	\$504,037	\$91.43	\$880,385	\$70.76	\$990,238
Capital	\$165.04	359,617	\$38.51	370,801	\$23.79	332,857
Total	\$396.35	\$863,654	\$129.94	\$1,251,186	\$94.55	\$1,323,095
Excess Revenues		<u>(\$602,725)</u>		<u>(\$67,001)</u>		<u>\$451,486</u>
Visits		2,179		9,629		13,994

Utilization by payor source is as follows:

Payor	Current Year	Year One	Year Three
Commercial-FFS	18.13%	5.83%	5.49%
Commercial MC	0.00%	16.09%	17.44%
Medicare-FFS	9.78%	10.61%	10.93%
Medicare MC	38.32%	23.57%	24.20%
Medicaid-FFS	3.63%	3.19%	1.47%
Medicaid-MC	18.08%	32.57%	33.68%
Private Pay	7.07%	3.09%	3.23%
All Other	5.00%	5.05%	3.57%
Total	100.0%	100.0%	100.0%

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

- Effective April 2, 2020, Medicaid payments have been reduced by 1.5% in accordance with the FY 2020 Enacted State Budget, therefore reducing the Medicaid Revenues in years one and three. This reduction has been reflected within the budgets.
- Utilization assumptions are based on projections which include the full engagement of primary care and medical specialties which the facility is currently approved to provide.
- Reimbursement rate assumptions are based on the historical reimbursement rate experience of

- the facility, and the contractual rates which have been negotiated with commercial carriers.
- Expenses are based on local market-driven salary and benefits compensation with annual cost of living adjustment (COLA) increases
 - Other than personal service (OTPS) expenses as well as the cost of bulk purchasing for supplies are based on current costs with annualized escalations based on supply and demand in the marketplace.
 - The reason for the increase in volume in the first year is that the facility received approval to add medical specialties in the Fall of 2019, but the current operator becomes seriously ill in early 2020 and passed away in November 2020; he was not able to fully operationalize the new modalities. However, the facility was able to bring the specialists on board by the first quarter of 2021. The estimated volume/visits/revenues from their physicians were included in the projections submitted with the CON application.
 - The first-year loss will be offset from the working capital funds.
 - The applicant has indicated that Calendar year 2020 was atypical for the facility due to the serious illness of its sole owner coupled with the COVID pandemic outbreak. Therefore, the current year growth is not indicative of future financial forecasting. The physicians who were recently brought on board will drive new referrals and the incoming owners will confirm to grow their commercial/managed care contracts.

Capability and Feasibility

There are no project costs associated with this application. The total purchase price for the 100% ownership interest is \$675,000. The purchase price will be funded via the proposed new members' personal equity. BFA Attachment A is the proposed members' net worth summary, which indicates sufficient equity overall to fund the total purchase price. BFA Attachment F is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$719,886.

The working capital requirement is estimated at \$208,531 based on two months of first year expenses and will be funded via the proposed new members' personal equity.

BFA Attachments D is a summary of the 2020 Internal Financial Statements for Ajay 28, LLC which shows negative working capital position, a negative net asset position, and a negative net income of \$224,785.

BFA Attachments E is a summary of the 2019 Certified Financial Statements for Ajay 28 LLC which shows negative working capital position, a negative net asset position, and a negative net income of \$602,725. The applicant has indicated that the current operator of Ajay 28, LLC took ownership of the facility effective October 18, 2019 therefore losses incurred by the current operator in 2019 and January through August 2020 relate to start-up expenses under this new ownership.

Conclusion

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

<h2>Attachments</h2>

- BFA Attachment A Net Worth Statement of Proposed New Members
- BFA Attachment B 2020 Internal Financial Statements – Ajay 28, LLC
- BFA Attachment C 2019 Certified Financial Statements – Ajay 28, LLC
- BFA Attachment D Pro Forma Balance



Project # 202102-B
Novo Dialysis Jamaica, LLC

Program: Diagnostic and Treatment Center **County:** Queens
Purpose: Establishment and Construction **Acknowledged:** October 7, 2020

Executive Summary

Description

Novo Dialysis Jamaica, LLC, a newly formed limited liability company, requests approval for the establishment and construction of a new diagnostic and treatment center (D&TC) for the provision of in-center chronic renal dialysis services and home hemodialysis training and support at 214- 70 Jamaica Avenue, Queens, (Queens County). The center will have 36 stations, four of which will be used for home hemodialysis training. The proposed Medical Director is Narayan Agrawal, MD. The applicant has indicated that they will have a transfer and affiliation agreement with Jamaica Hospital Medical Center (5.9miles, 20 minutes away).

Need Summary

Currently, there is a need for 47 dialysis stations in Queens County. This project will add 36 ESRD stations (four of which can be used for home hemodialysis training, reducing the county need to eleven).

Four stations are identified by the applicant as a “transitional dialysis care unit” designed to ease newly diagnosed patients into ESRD care while allowing a gradual consideration of long-term treatment options.

Program Summary

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

Financial Summary

Project costs of \$4,350,459 will be met with \$1,167,062 equity and a five-year bank loan of \$3,183,397 at 4.25% interest. A letter of interest for the bank loan has been provided by City National Bank. The proposed budget is as follows:

<u>Proposed Operator</u>	
Novo Dialysis Jamaica, LLC	
Members	Interest
Novo Dialysis LLC	15%
Aditya Mattoo, MD (100%)	
Novo Dialysis Partners LLC	36%
Aditya Mattoo, MD (66.00%)	
Devandra Shrivastava, MD (10.00%)	
Vinod Assomull, MD (12.00%)	
Lawrence Jones (12.00%)	
Narayan Holding Company LLC	49%
Narayan Agrawal, MD (100%)	
Total	100%

	<u>Year 1</u>	<u>Year 3</u>
Revenues	\$2,919,991	\$5,839,983
Expenses	<u>2,737,707</u>	<u>4,873,383</u>
Net Income	\$182,284	\$966,600

OPCHSM Recommendation
Contingent Approval

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP].
3. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]
4. Submission of an executed lease rental agreement that is acceptable to the Department of Health. [BFA]
5. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of an amended and executed Articles of Organization, acceptable to the Department. [CSL]
7. Submission of a photocopy an executed Lease Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of an amended and executed Consent of Members, acceptable to the Department. [CSL]
10. Submission of a photocopy of an amended and executed Certificate of Authority for Novo Dialysis Partners LLC (NDP), acceptable to the Department. [CSL]
11. Submission of a photocopy of an amended and executed Operating Agreement for NDP, acceptable to the Department. [CSL]
12. Submission of a photocopy of an amended and executed Operating Agreement for NOVO DIALYSIS LLC, acceptable to the Department. [CSL]
13. Submission of a photocopy of an amended and executed Articles of Organization for Narayan Holding Company, LLC (NHC), acceptable to the Department. [CSL]
14. Submission of a photocopy of an amended and executed Operating Agreement for NHC, acceptable to the Department. [CSL]
15. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
16. 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 one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before August 30, 2021 and construction must be completed by February 28, 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 applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
5. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

April 8, 2021

Need and Program Analysis

Program Description

Proposed Operator	Novo Dialysis Jamaica, LLC
Doing Business As	Novo Dialysis
Site Address	214-70 Jamaica Avenue Queens, New York (Queens County)
Approved Services	Chronic Renal Dialysis (36 Stations) Home Hemodialysis Training and Support
Hours of Operation	Initially: Monday-Wednesday-Friday 8:00 am to 4:00 pm Will add Tuesday-Thursday-Saturday 8:00 am to 4:00 pm as the patient base grows. And will expand the hours to Monday-Saturday 7:00 am-10:00 pm when fully operational
Staffing (1 st Year / 3 rd Year)	20.00 FTEs / 29.00 FTEs
Medical Director(s)	Narayan Agrawal, M.D
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by Jamaica Hospital Medical Center 6.9 mi. / 17 min.

Analysis

The primary service area for the new facility will be Queens County which had an estimated population of 2,278,906 for 2018. 15.7% of the population was aged 65 or over and 52.1% identified as nonwhite. These two population groups are statistically more likely to require end stage renal dialysis. Comparisons between Queens County and New York State are shown below.

	Queens County	New York State
Ages 65 and Over	15.7%	16.4%
Nonwhite	52.1%	30.3%

Source: U.S. Census 2019

Need Projection

Chronic End Stage Renal Disease (Dialysis) Stations / Need Projected Through 2021							
County	Operational Stations	Pending Stations	Total Current Stations	Total Need 2021	Unmet Need 2021	County-wide Stations Under Review	Unmet Need After Approval
	a	b	c	d	e	f	g
			(a + b)		(d - c)		(e - f)
Queens	773	239	1,012	1,059	47	36	11
Column (b): Pending Stations includes projects with approval or contingent approval and projects, excluding this application, with recommendations of approval by the Bureau of Public Need Review, but not yet approved or contingently approved by the Department.							
Column (f): Stations Under Review: Includes this project and all other active CONs submitted but pending any level of Department approval or Bureau of Public Need Review recommendation.							
Counts of Operational, Pending, and Total Current Stations may display a blend of freestanding stations and hospital-based stations counts. Hospital based stations have a 0.71 factor applied.							

Four of the Center's 36 stations are described by the applicant as "transitional dialysis care" (TDC) stations which can be used for home hemodialysis training. In the TDC model, patients receive more frequent treatments of shorter duration than in standard home hemodialysis training environments. Treatments last 2-3 hours and are administered five days per week over a 90-120-day course. This compares to a 2-3-week course of treatment, with four-hour sessions administered three times per week, in traditional treatment and home training. Industry analysis suggests improved outcomes for new ESRD patients with this training due to extended time to recover medically, adjust emotionally, and consider

their long-term preferences of in-center vs. home treatment. Two-day gaps in treatment are avoided in the TDC model.

CMS encourages home modality training through favorable reimbursement. Furthermore, once a patient is independently performing dialysis at home, CMS reimburses home modalities at a similar rate to in-center dialysis while the provider realizes reduced labor costs.

The stations in the TDC Unit will be built to the standards of chronic (traditional) dialysis stations and may be used thusly. For assessment of need these stations are reviewed, approved, certified, and counted as standard in-center ESRD resources.

Character and Competence

The members of NOVO Dialysis Jamaica, LLC are:

Members	Membership Interest
Novo Dialysis, LLC Aditya Mattoo, M.D. (100.00%)	15.00%
Novo Dialysis Partners, LLC Aditya Mattoo, M.D (66.00%) Lawrence Jones (12.00%) Devendra Shrivastava, M.D. (10.00%) Vinod Assomull, M.D. (12.00 %)	36.00%
Narayan Holding Company, LLC Narayan Agrawal, M.D. (100.00%)	49.00%

Narayan Agrawal, M.D. is the proposed Medical Director. He has been employed at Queens Medical Center as an Attending Physician who treats nephrology patients for approximately 16 years. He has also been the President of a Queens nephrology practice for over eight years. He received his medical degree from Patina Medical College in India. He completed his residency in Internal Medicine at Icahn School of Medicine at Mount Sinai and in Nephrology at New York Medical College. He is board certified in Internal Medicine with a sub-specialty in Nephrology.

Vinod Assomull, M.D. has been with Renal Consultants Medical Group, in California, for over 37 years, and is currently the Medical Director and Managing Partner. He received his medical degree from the University of Bombay, Grant Medical College in India. He completed his residency at Union Memorial Hospital in Maryland. He is board certified in Internal Medicine with a sub-specialty in Nephrology. Dr. Assomull discloses ownership interest in the following healthcare facilities:

<i>Canyon Country Dialysis Center, LLC</i>	<i>09/2005-present</i>
<i>Kidney Care Center of North Valley</i>	<i>07/1996-present</i>
<i>Northridge Dialysis Center</i>	<i>04/2011-present</i>
<i>Northridge Kidney Care Center</i>	<i>12/2018-present</i>
<i>Santa Clarita Kidney Care Center</i>	<i>02/1996-present</i>
<i>Woodland Hills Dialysis Center</i>	<i>07/2020-present</i>
<i>Kidney Dialysis Center of Northridge, LLC</i>	<i>06/2019-present</i>

Mr. Lawrence Jones has been the President of National Renal Care, in California, for approximately three years. He was the previous President IDS Business Unit of US Renal Care for approximately four years. He was previously employed as the Vice President then President of Innovative Dialysis Systems/Ambulatory Services of America. Mr. Jones discloses ownership interest in the following healthcare facilities:

<i>Canyon County Dialysis Center, LLC</i>	<i>09/2005-present</i>
<i>Kidney Care Center of North Valley</i>	<i>07/1996-present</i>
<i>Northridge Dialysis Center</i>	<i>12/2015-present</i>
<i>Northridge Kidney Care Center</i>	<i>12/2018-present</i>
<i>Santa Clarita Kidney Care Center</i>	<i>02/1996-present</i>
<i>Sylmar Dialysis Center</i>	<i>12/2015-present</i>
<i>Woodland Hills Dialysis Center</i>	<i>07/2020-present</i>

Aditaya Mattoo, M.D. is the Founder and CEO of Novo Dialysis, LLC, a dialysis development and services company operating for over two years. He was previously employed as the Director of Outreach of the NYU Transplant Institute and Faculty in the Division of Nephrology at New York University School of Medicine for over 11 years. He was responsible for teaching, research, clinical care, and administrative duties. He received his medical degree from Jefferson Medical College at Thomas Jefferson University in Pennsylvania. He completed his Internal Medicine and Nephrology residency at the New York University School of Medicine.

Devendra Shrivastava, M.D. has practiced at Prospect Medical Group for approximately 28 years. His responsibilities are specializing in the care of patients with chronic kidney disease and dialysis. He has also been employed at Interfaith Medical School as a Nephrologist and Director for approximately 22 years. He received his medical degree from the Gandhi Medical College in India. He completed his residencies in Internal Medicine at Interfaith Medical Center and Nephrology at University Hospital at State University of New York Health Science Center at Brooklyn. He is board certified in Internal Medicine with a sub-specialty in Nephrology.

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

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

In February 2017, an alleged incident took place at Northridge Dialysis Center. The incident involved an admitting physician/minority owner and a female staff member. The allegation was for sexual harassment. The employee sued the physician for sexual harassment and NRC for failure to provide a safe work environment. The insurance company opted to settle at a mediation hearing. The physician was not Dr. Assomull and not associated with his medical practice.

Conclusion

The addition of 36 stations will address an unmet need in the Queens County service area. Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Analysis

Lease Rental Agreement

The applicant has submitted a draft lease agreement for the site that they will occupy, which is summarized below:

Premises	13,060 square feet located at 214-70 Jamaica Avenue, Queens, New York 11428.
Lessor	Marino Marble & Tile Corporation c/o John Marino 1014 Grand Street, Brooklyn, New York 11211.
Lessee	Novo Dialysis Jamaica, LLC
Term	16-year term with two renewal terms of five years each.
Rental	\$240,000 annually (\$18.38 per sq. ft.) through the end of year 5 of the lease initial term. The rental charge shall increase by 2% for each of the years seven through ten, and 2.5% for each year thereafter
Provisions	The lessee shall be responsible for real estate taxes, maintenance, insurance and utilities.

The applicant has indicated that the lease agreement will be an arms-length lease arrangement. The applicant has submitted letters from real estate brokers 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 \$4,354,459, further broken down as follows:

Renovation and Demolition	\$2,797,452
Design Contingency	69,936
Construction Contingency	139,873
Fixed Equipment	265,200
Architect/Engineering Fees	175,000
Other Fees (Consultant)	100,000
Moveable Equipment	717,978
Financing Costs	10,000
Interim Interest Expense	49,234
CON Fees	2,000
Additional Processing Fee	<u>23,786</u>
Total Project Cost	<u>\$4,350,459</u>

Project costs are based on a six-month construction period.

The applicant's financing plan appears as follows:

Equity (Members)	\$1,167,062
Bank Loan (4.25% interest rate for a five-year term)	3,183,397

Operating Budget

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

	Year One		Year Three	
	<u>Per Treatment</u>	<u>Total</u>	<u>Per Treatment</u>	<u>Total</u>
<u>Revenues</u>				
Commercial FFS	\$375.26	\$173,745	\$374.85	\$347,490
Medicare FFS	318.01	1,826,963	318.01	3,653,927
Medicare MC	317.46	764,756	317.39	1,529,512
Medicaid FFS	240.13	22,332	241.43	44,664
Medicaid MC	241.99	134,548	241.99	269,096
Other		<u>(2,353)</u>		<u>(4,706)</u>
Total Revenues		\$2,919,991		\$5,839,983
<u>Expenses</u>				
Operating	\$242.61	\$2,248,042	\$195.22	\$3,618,034
Capital	<u>52.85</u>	<u>489,665</u>	<u>67.74</u>	<u>1,255,349</u>
Total Expenses	\$295.46	\$2,737,707	\$262.96	\$4,873,383
Net Income		<u>\$182,284</u>		<u>\$966,600</u>
Utilization (Treatments)		9,266		18,533

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

- Expense and utilization assumptions were derived from the review of cost reports and financial statements of other providers located in the five boroughs of New York City. In addition, as some of the members have an interest in existing dialysis centers, all aspects of the operating projections were reviewed with them, including proposed revenue from payers, staffing ratios and assumptions as well as salary structures.
- Reimbursement rate assumptions are based upon current reimbursement methodologies by payor for chronic renal dialysis services.
- Effective April 2, 2020, Medicaid payments have been reduced by 1.5% in accordance with the FY2020 Enacted State Budget, therefore reducing the Medicaid Revenues in years one and three. This reduction has been reflected within the budgets.
- Utilization is based on the experience of members as practicing Nephrologists in New York City and the current need for increased capacity for these services.

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

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	5.00%	5.00%
Medicare FFS	62.00%	62.00%
Medicare Managed Care	26.00%	26.00%
Medicaid FFS	1.00%	1.00%
Medicaid Managed Care	<u>6.00%</u>	<u>6.00%</u>
Total	100.00%	100.00%

Capability and Feasibility

Project costs of \$4,350,459 will be met as follows via a bank loan of \$3,183,397 at an interest rate of 4.25% for a five-year term. The applicant provided a letter of interest from City National Bank relative to the financing. The remaining \$1,167,062 will be provided in the form of equity from the proposed members' personal resources. Working capital requirements are estimated at \$812,231, which is equivalent to two months of third year expenses. The applicant will finance \$406,115 at an interest rate of 4.25% for a five-year term. The applicant provided a letter of interest from City National Bank regarding the working capital financing. The remainder, \$406,115, will be provided in the form of equity via the proposed members' personal resources. BFA Attachment A, Personal Net Worth Statements of the Proposed Members of Novo Dialysis Jamaica, LLC, indicates the availability of sufficient funds to meet the equity contribution. BFA Attachment B is the Pro Forma Balance Sheet of NOVO Dialysis Jamaica, LLC as of the first day of operation, which indicates a positive net asset position of \$1,573,178.

The submitted budget indicates a net income of \$182,284 and \$966,600 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for chronic renal dialysis services. The submitted budget appears reasonable.

Conclusion

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

Attachments

BFA Attachment A
BFA Attachment B

Personal Net Worth Statement for Proposed Members.
Pro Forma Balance Sheet



**Project # 201038-E
St. Joseph's Health at Home**

Program: Certified Home Health Agency
Purpose: Establishment

County: Onondaga
Acknowledged: February 5, 2020

Executive Summary

Description

St. Joseph's Health at Home (St. Joseph's) requests to become the operator and Trinity Home Health Services and Trinity Health request approval to become the co-operators and active parents of St. Joseph's Hospital Health Center CHHA (the CHHA), an existing Article 36 Certified Home Health Agency located at 7246 Janus Park Drive, Liverpool (Onondaga County), which is currently operated by St. Joseph's Hospital Health Center (SJHHC).

The CHHA is licensed to provide nursing, home health aide, medical social services, medical supplies equipment and appliances, nutritional, occupational therapy, speech language pathology, respiratory therapy, and physical therapy services in Cayuga, Cortland, Lewis, Madison, Oneida, Onondaga, and Oswego counties.

SJHHC is part of the Trinity Health (Trinity) is an Indiana not-for-profit corporation that runs a national health care system with health care operations in 22 states. Trinity is in the process of consolidating all its home care entities under the umbrella of Trinity Home Health Services (THHS), a wholly-owned Michigan not-for-profit corporation, to achieve administrative and financial efficiencies.

Accordingly, SJHHC seeks to transfer its ownership of the CHHA to St. Joseph's. St. Joseph's is a to-be-formed New York not-for-profit corporation whose sole purpose will be to establish and operate a certified home health agency pursuant to Article 36 of the PHL. St. Joseph's sole member will be THHS, and St. Joseph and THHS will have mirror boards. As

set forth in its certificate of incorporation and bylaws, St. Joseph's grants certain powers and authorities to THHS (as its member) and Trinity Health (as its grandparent). These powers and authorities are presented in BFA Attachment F.

**OPCHSM Recommendation
Contingent Approval**

Need Summary

This request represents a change in control without impact to the daily operations of the CHHA.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The projected budget (in '000s) is as follows:

	Current	Year One	Year Three
Revenues	\$14,443	\$13,019	\$15,947
Expenses	20,491	21,152	22,535
Gain	(\$6,048)	(\$8,133)	(\$6,588)

THHS indicated that it will cover any operating losses incurred by St. Joseph's to the extent the entity is unable to cover such losses through its CHHA operations.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of the applicant's executed Certificate of Incorporation, acceptable to the Department. [CSL]
2. Submission of a photocopy of an executed Restated Certificate of Incorporation of St. Joseph's Hospital Health Center, 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

April 8, 2021

Need and Program Analysis

Proposal

St. Joseph's Health at Home, a proposed not-for-profit corporation, requests approval to become the new operator of St. Joseph's Hospital Health Center CHHA, a Certified Home Health Agency, under Article 36 of the Public Health Law.

Currently, St. Joseph's Hospital Health Center CHHA is operated by St. Joseph's Hospital Health Center, an Article 28 hospital which is part of the Trinity Health Care System ("Trinity"), which operates healthcare facilities in 22 states. Please see Programmatic Attachment A – New York State Facilities and Programmatic Attachment B – Out-of-State Facilities for further details regarding Trinity's ownership affiliations.

In order to achieve administrative and financial efficiencies, Trinity is currently in the process of consolidating all of their home care entities under the umbrella of Trinity Home Health Services, a not-for-profit corporation formed in Michigan with the authority to do business in New York State. The sole member of Trinity Home Health Services is Trinity Health, a not-for-profit corporation formed in Indiana with authority to do business in New York State.

In accordance with Trinity's consolidation efforts, St. Joseph's Hospital Health Center seeks to transfer their ownership of St. Joseph's Hospital Health Center CHHA to St. Joseph's Health at Home. The sole member of St. Joseph's Health at Home is Trinity Home Health Services, with Trinity Health as a grandparent.

There will be no changes to the services provided or counties served as a result of this project. In addition, St. Joseph's Health at Home will employ all of the St. Joseph's Hospital Health Center employees who currently staff the CHHA program.

Character and Competence Review

St. Joseph's Health at Home and Trinity Home Health Services have identical boards.

Boards: St. Joseph's Home at Health / Trinity Home Health Services

John A. Capasso, NHA – Board Member

Executive Vice President, Continuing Care, Trinity Health

Affiliations

- Catholic Health System of Buffalo

Thomas A. Cornwell, MD

Medical Director, Physician, Northwestern Medicine HomeCare Physicians (IL)

CEO, Home Centered Care Institute (IL)

Affiliation

- Trinity Home Health Services

Erin M. Denholm, RN

President & CEO, Trinity Health at Home

Joanne Handy, RN

Self- Employed, Health Care Consultant

Affiliations

- Trinity Health at Home
- Trinity Senior Communities
- Trinity PACE
- Covia Group (CCRC, CA)

Arthur J. Henkel – Board Member

Retired

Affiliations

- Trinity Continuing Care Services
- Trinity Health PACE
- Trinity Home Health Services

William L. Minnix

Retired

LeJon Poole

Program Director, Campbell University

Affiliation

- Trinity Health

Anna Marie Tag, NHA (MA) – Board Member

Affiliations

- McAuley Hall Health Care Center (SNF, NJ) (2013- 2019)
- De La Salle Hall (SNF, NJ) (2015 – 2019)
- Trinity Health Continuing Care (2018 – 2019)

Marjorie E. Tapia, RN (NJ)– Board Member

Director of Health and Aging Services, The Religious Teachers Filippini

Affiliations

- Mercy Center Nursing Unit (SNF, PA)
- Trinity Health Continuing Care

Antonia M. Villarruel, Ph.D, RN – Board Member

Director, WHO Collaborating Center for Nursing and Midwifery Leadership

Margaret Bond Simon Dean of Nursing, School of Nursing, University of Pennsylvania

Waybon D. Wells – Board Member

Economic Justice Alliance of MI

Affiliations

- Trinity Continuing Care
- St. Joseph's Mercy Oakland (Hospital)

Mark K. McPherson – Board Member

Chief Financial Officer, National Health Ministries

Affiliations

- Trinity Health at Home (Treasurer/Secretary)
- Trinity Health Senior Communities (Treasurer/Secretary)
- Trinity Health PACE (Treasurer/Secretary)

Beverly Jones- Board Member

Retired

Board: Trinity Health

Kevin P. Barnett – Board Member

Senior Investigator, Public Health Institute

Affiliation

- Trinity Health Corporation

James D. Bentley, PhD – Chair

Retired

Affiliations

- Trinity Health Corporation
- CHE Trinity, Inc. (May 2013 – November 2014)
- Catholic Health East (May 2013 – June 2014)
-

Joseph R. Betancourt, MD – Board Member

Physician, Vice President, Chief Equity Inclusion Officer, Massachusetts General Hospital
President, Co-Founder, Quality Interactions

Rita D. Brogley – Board Member

Independent Director, Chair of Compensation Committee, Strategic Education, Inc.

Affiliation

- Trinity Health Corporation

Linda M. Falquette, RSM – Board Member

Parish Accountant, St. Aloysius

Affiliation

- Trinity Health

Mary M. Fanning, RSM – Board Member

Retired

Affiliation

- Trinity Health Corporation (March 2017 – Present)
- Mercy Health Services (Hospital, MD) (2015 – 2019)

Barret Hatches, PhD – Board Member

CEO, Chicago Family Health Center

Affiliation

- Trinity Health Corporation

Mary Catherine Karl – Board Member

Retired

Affiliations

- Catholic Health East (2007 – 2014)
- Surgical Safety Institute (2004 – Present)
- Trinity Health Corporation (2013 – Present)

George M. Philip – Board Member

Retired

Michael A. Slubowski – President, CEO

President, CEO, Trinity Health Corporation

Affiliations

- Trinity Health Corporation
- SCL Health (January 2011 – May 2017)

David N. Southwell – Board Member

Retired

Joan Marie Steadman, CSC – Board Member

Affiliation

- Trinity Health Corporation

Roberta L. Waite, RN – Board Member

Professor; Associate Dean for Community-Centered Health & Wellness and Academic Integration, Drexel University

Affiliation

- Trinity Health Corporation

Larry Warren – Board Member

Retired

Cynthia A. Clemence – Interim CFO, Treasurer

Interim CFO and Treasurer, Trinity Health Corporation

Linda S. Ross, Esq. - Executive Vice President, Chief Legal Officer

Executive Vice President, Chief Legal Officer, Trinity Health

Individual Disclosures/Actions

- *Linda S. Ross was named as a defendant in a lawsuit along with her former law firm and former colleague. The lawsuit was brought by a physician client whose prescribing privileges were suspended. The claim was denied at the circuit court level and the client appealed to the Michigan Court of Appeals where it was also dismissed on March 16, 2017.*

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

The Office of the Professions of the State Education Department, the New York State Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licensure of the health professionals associated with this application. The California Board of Nursing, the Illinois Department of Financial and Professional Regulation, the Pennsylvania Department of State, Bureau of Professional and Occupational Affairs and the Massachusetts Board of Registration in Medicine and the Massachusetts Office of Health and Human Services and the Colorado Department of Regulatory Agencies, indicate no issues with the licensure of the health professionals associated with this application.

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

Facility Compliance/Enforcement

The NYS Department of Health Division of Hospitals and Diagnostic and Treatment Centers has reviewed the compliance histories of the affiliated Hospitals and Ambulatory Surgery Centers for the time-period 2011 through 2018, and reports as follows:

- *An enforcement action was taken against St. Joseph's Hospital Health Center in September 2012, based on a survey completed in August 2010, for an incident relating to a patient's fall. A civil penalty in the amount of \$22,000 was imposed and paid.*
- *An enforcement action was taken against St. Peter's Hospital in August 2016, based on a survey completed in January 2016, for an Immediate Jeopardy situation in Food and Dietetic Services. A civil penalty in the amount of \$2000 was imposed and paid.*

The NYS Department of Health Division of Nursing Homes and Intermediate Care Facilities/IID has reviewed the compliance histories of the affiliated Nursing Homes for the time-period 2011 to 2018, and reports as follows:

- *An enforcement action was taken against Capital Region Geriatric Center, Inc., d/b/a Eddy Village Green (RHCF) in March 2017, based on a survey completed on August 17, 2016, citing a violation in 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential. A state civil penalty in the amount of \$2000 was imposed and paid. In addition, a federal Civil Monetary Penalty of \$3963 was imposed and paid.*
- *An enforcement action was taken against Iroquois Nursing Home, Inc. (RHCF) in January 2017, based on a survey completed on April 13, 2016, citing Immediate Jeopardy and violations in 10 NYCRR 415.4(b) Staff Treatment of Residents: Free from Mistreatment, Neglect, and Misappropriation of Property; 415.4(b) Staff Treatment of Residents: Policy and Procedure Manual Development Regarding Staff Treatment of Residents; 415.4(b)(1)(i) Abuse: Verbal, Sexual, Physical, Mental, Corporal Punishment, and Involuntary Seclusion; and 415.26 Administration. A state civil penalty in the amount of \$16,000 was imposed and paid. No federal Civil Monetary Penalty was imposed.*
- *Iroquois Nursing Home, Inc. has an open Civil Monetary Penalty collection in the amount of \$1000 for findings during a CMS Survey (CDC Report) conducted on September 28, 2020.*
- *Beverwyck, Inc. d/b/a Eddy Village Green at Beverwyck was fined \$2000 pursuant to a Stipulation and Order dated November 23, 2019 for inspection findings on August 21, 2018 for violations of Article 28 of the Public Health Law and 10 NYCRR Part 415. The provider was also fined a Civil Monetary Penalty in the amount of \$6893.*
- *St. Peter's Nursing and Rehab is currently not in substantial compliance based on a Recertification Survey conducted on October 7, 2020. The Division of Nursing Homes is awaiting a Plan of Corrections.*

The NYS Department of Health Division of Home and Community Based Services reviewed the compliance histories of the affiliated Certified Home Health Agencies, Licensed Home Care Services Agencies, and Hospice, and reports as follows:

- *An enforcement action was taken against McAuley – Seton Home Care Corporation (CHHA) in June 2013, based on a survey completed on September 15, 2011, citing violations in 10 NYCRR 763.11(b) Governing Authority; 763.5(a) Patient Referral, Admission, and Discharge; 763.6(b) Patient Assessment and Plan of Care; 763.6(c) Patient Assessment and Plan of Care; and 763.7(a) Clinical Records. A civil penalty in the amount of \$5500 was imposed and paid.*

The NYS Department of Health Division of Adult Care Facilities and Assisted Living Programs reviewed the compliance histories of the affiliated Adult Care Facilities/Assisted Living Programs and Enriched Housing Programs and reports as follows:

- *An enforcement action was taken against Hawthorne Ridge, Inc. (ACF) in March 2012, based on an inspection completed on September 14, 2010, citing a violation in 18 NYCRR 486.5(a)(4)(iii) Systemic Endangerment. A civil penalty in the amount of \$1000 was imposed and paid.*
- *Hawthorne Ridge was fined nine hundred twenty-four dollars pursuant to a stipulation and order dated August 15, 2018 for inspection findings on November 23, 2016 and March 8, 2018. Upon inspection, violations of Article 7 of the Social Services Law, Article 46-B of the Public Health Law and 10 NYCRR 1001.7(k)(5).*

The out-of-state compliance information used for this review was taken from Project 181268, which received final approval from the Public Health and Health Planning Council on January 11, 2019.

- *The State of Maryland reports that, during the time-period 2011 – 2018, an enforcement action was taken against Holy Cross Rehabilitation and Nursing (Sanctuary at Holy Cross), a nursing home located in Maryland, in September 2016, based on a February 2016 standard survey, citing violations in Quality of Care: Accidents/Hazards/Environment/Supervision. A federal Civil Monetary Penalty of \$74,700 was imposed and paid. The remaining Maryland providers / facilities have no histories of enforcement for the time-period 2011 – 2018, and all providers / facilities are in current compliance.*

- *The State of Indiana reports that, during the time-period 2011 – 2018, an enforcement action was taken against Sanctuary at Holy Cross, a nursing home located in Indiana, in January 2017, based on a September 2016 standard recertification survey, citing violations in Quality of Care: Necessary Care and Services/Highest Practicable Well-Being. A state civil penalty of \$3000 was imposed and paid. The remaining Indiana providers / facilities have no histories of enforcement for the time-period 2011 – 2018, and all providers / facilities are in current compliance.*
- *The State of Iowa reports the following for the time-period 2011 - 2018:*
 - *An Immediate Jeopardy situation was identified at Mercy Medical Center (Hospital) in January 2017, citing violations in the federal Conditions of Participation for 42 CFR 482.12 Governing Body; 42 CFR 482.21 Quality Assessment and Performance Improvement Program; 42 CFR 482.23 Nursing Services; and 42 CFR 482.27 Laboratory Services. However, the Immediate Jeopardy and citations were ultimately not enforced.*
 - *Condition level non-compliance was identified at Mercy Home Care (CHHA), a deemed Home Health Agency surveyed by an accreditation agency, in June 2016. Per federal requirements, the agency was ultimately prohibited from providing home health aide training and testing for the two-year period from 6/29/2016 through 06/29/2018. No state enforcement was imposed.*
 - *Ellen Kennedy Assisted Living Center (ALP) had violations cited in September 2016, in Sufficient Staffing and Nursing Reviews. The matter was resolved in November 2016, with no civil penalty enforcement action taken.*
- *The State of California reports that, during the time-period 2011 – 2018, three separate enforcement actions were taken against Saint Agnes Medical Center, a hospital located in Fresno, California, as follows:*
 - *Violations based on a survey conducted on January 13, 2012, resulted in a civil penalty of \$50,000 imposed on September 26, 2012. Violations based on a survey conducted on November 17, 2015, resulted in a civil penalty of \$4750 imposed on March 24, 2016. Violations based on a survey conducted on January 11, 2017, resulted in a civil penalty of \$11,250 imposed on February 2, 2017. The State of California reports that none of these enforcement actions involved repetitive violations, and all were resolved as noted above.*
- *The State of Florida reports that, during the time-period 2011 – 2018, the following enforcement actions were taken:*
 - *Winter Haven Hospital was assessed an administrative penalty of \$1000 in January 2011 for violations in the areas of Nursing Assessment, Goals, Evaluation, Intervention, and Documentation; an administrative penalty of \$1000 in January 2011 for violations in the area of Emergency Department Services; an administrative penalty of \$1000 in March 2011 for violations in the area of Emergency Department Services; an administrative penalty of \$1000 in August 2012 for violations in the area of Emergency Department Services; and an administrative penalty of \$1000 in October 2013 for violations in the area of Inappropriate Restraints.*
 - *Mease Dunedin Hospital was assessed an administrative penalty of \$6000 in June 2012 for violations in the areas of Patient Assessment and Emergency Department Services; and an administrative penalty of \$320 in August 2013 for nonpayment of Life Safety Code survey fee.*
 - *Morton Plant Hospital was assessed an administrative penalty of \$800 in March 2011 for violations in the areas of Nursing Assessment, Goals, Evaluation, Intervention, and Documentation; an administrative penalty of \$1000 in December 2011 for violations in the area of Nursing Department Policies and Procedures; an administrative penalty of \$1000 in July 2012 for violations in the area of Nursing Assessment, Goals, Evaluation, Intervention, and Documentation; an administrative penalty of \$1000 in April 2013 for violations in the area of Nursing Assessment, Goals, Evaluation, Intervention, and Documentation; and an administrative penalty of \$1000 in July 2013 for violations in the area of Nursing Assessment, Goals, Evaluation, Intervention, and Documentation.*
 - *Morton Plant North Bay Hospital was assessed an administrative penalty of \$2000 in October 2011 for violations in the areas of Nursing Assessment, Goals, Evaluation, Intervention, and Documentation.*

- *St. Anthony's Hospital was assessed an administrative penalty of \$5000 in July 2011 for violations in the areas of MRI Alterations, Renovations, and Installation; an administrative penalty of \$600 in January 2014 for nonpayment of Life Safety Code survey fee; an administrative penalty of \$1000 in March 2015 for violations in the area of Nursing Management Functions; an administrative penalty of \$5500 in April 2016 for a violation in the area of Failure to Notify Florida State Agency for Health Care Administration of Ownership Change in 2014; and an administrative fee of \$471.36, and a reimbursement to the State of \$5553.31, for a total payment of \$6024.67, in September 2017 for recoupment of Medicaid overpayments.*
- *St. Joseph's Hospital was assessed an administrative penalty of \$1000 in October 2012 for violations in the area of Discharge Planning; and an administrative penalty of \$21,500 in April 2016 for a violation in the area of Failure to Notify Florida State Agency for Health Care Administration of Ownership Changes in 2014 at St. Joseph's Hospital, St. Joseph's Hospital North, St. Joseph's Hospital South, and St. Joseph's Hospital Behavioral Health Center.*
- *Bartow Regional Medical Center was assessed an administrative penalty of \$480 in May 2014 for nonpayment of Life Safety Code survey fee.*
- *Holy Cross Hospital was assessed an administrative fee of \$572.59, and a reimbursement to the State of \$11,364.51, for a total payment of \$11,937.10, in April 2013 for recoupment of Medicaid overpayments; was assessed an administrative fee of \$73.84, and a reimbursement to the State of \$86,982.65, for a total payment of \$87,056.49, in October 2015 for recoupment of Medicaid overpayments; and was assessed a reimbursement payment to the State of a total payment of \$97,620.48, in September 2017 for recoupment of Medicaid overpayments.*

The applicant has submitted a signed affidavit attesting to out-of-state findings from January 2019 – Present.

- *St. Agnes Medical Center was fined \$10,000 on June 15, 2020 by the California Department of Public Health Radiologic Branch for permitting CV techs to perform fluoro duties outside of their scope. The enforcement action is now closed.*
- *The State of Connecticut Occupational Health and Safety Administration (OSHA) fined Johnson Memorial Hospital a total of \$5,600 in fines for four violations between January 1, 2019 and November 9, 2020. The action is now closed.*
- *A survey of the Outpatient Dialysis Center of Loyola University Medical Center conducted by the Illinois Department of Public Health on behalf of CMS on October 22, 2020 resulted in Immediate Jeopardy findings related to the performance of the chlorine water testing process. The facility failed to ensure that the testing was performed in accordance with their policy. An Immediate Jeopardy Removal Plan was submitted on October 23, 2020. On November 12, 2020 the facility was resurveyed, it was found that the immediate jeopardy had been removed and the facility had returned to compliance.*
- *A complaint survey conducted on August 19, 2020 at MercyOne Siouxland Medical Center by the Kansas City Regional Office on behalf of CMS resulted in Immediate Jeopardy due to failure to adequately supervise patients on suicide precautions. An Immediate Jeopardy Removal Plan was submitted as well as a plan of correction of additional citations. A revisit was conducted on October 19, 2020 and the hospital was found to be in compliance with no further deficiencies identified. On October 23, 2020, CMS notified The Joint Commission that the hospital is restored to Accredited status.*
- *Mount St. Joseph Nursing Home (ME) was fined a Civil Money Penalty of \$5,000 on June 24, 2020 for findings of non-compliance related to infection control.*
- *Mercy Health Muskegon (MI) was fined \$7,500 on October 24, 2019 by the Michigan Department of Health and Human Services for failing to meet minimum volume requirements for Mobile MRI. They were fined \$10,500 on December 20, 2019 for failing to meet minimum volume requirements and failing to serve two approved host sites.*
- *Mercy Health Muskegon (MI) was fined \$150,000 on July 27, 2015 for failing to meet the required volume of 300 cases annually in 2013 and 2014 for Open Heart Surgery Services. They entered into a settlement agreement and the organization is fulfilling the terms.*

- *Mercy Health Muskegon (MI) was fined \$4,000 on November 12, 2018 for failing to meet all terms and conditions, specifically regarding accreditation for Cardiac Catheterization Services.*
- *Mercy Health St. Mary's (MI) was fined \$7,500 on November 28, 2017 for failing to meet volume requirements for 3 MRT units.*
- *Mercy Health St. Mary's (MI) was fined \$71,260 for using a replacement CT scanner before final CON approval.*
- *The Ohio Department of Health surveyed Mount Carmel West on behalf of CMS. The survey resulted in findings of violations of the Conditions of Participation for pharmaceutical services resulting in Immediate Jeopardy. On February 11, 2019 a resurvey removed the Immediate Jeopardy. An additional survey on March 8, 2019 removed pharmaceutical services Condition Level finding but incurred Physical Environment findings which were resolved on a resurvey on July 3, 2019. The Ohio Board of Pharmacy initiated an investigation of Mount Carmel West's terminal distributor license pertaining to pharmacy policies, policy deficiencies, policy implementation failures and related patient deaths. On October 17, 2019 the Board of Pharmacy issued a Notice of Opportunity for Hearing and Mount Carmel requested a hearing. A settlement agreement was negotiated, and Mount Carmel West was required to pay a fine of \$400,000 as well as \$77,492.73 for investigative costs. Mount Carmel West's operational license was placed on probation for 3 years. During the probation period Mount Carmel must retain a Board of Pharmacy approved consultant to review compliance with the Board of Pharmacy rules and regulations and submit biannual reports regarding compliance.*

CMS Star Ratings

CHHA Quality of Patient Care Star Ratings as of February 4, 2021	
CHHA Name	Quality of Care Rating
St. Joseph's Hospital Health Center CHHA	2.5 out of 5 stars
Oswego Health Home Care, LLC	3 out of 5

Conclusion

This is an existing CHHA that has established relationships with hospitals and other health providers in its service area and has an existing patient base. The change in ownership will result in no changes to the services provided or the counties being served by the CHHA. Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a certified home health agency.

Financial Analysis

Financial Analysis

The applicant has provided an executed Medicaid affidavit in which the applicant agrees to be liable and responsible for any Medicaid overpayments made to the agency with respect to the period of time prior to acquiring its interest. As of July 9, 2020, the CHHA had \$30,239.50 in outstanding Medicaid overpayment liabilities.

Operating Budget

The applicant has provided an operating budget, in 2020 dollars, for the first and third year subsequent to the change of operator of the CHHA. The budget is summarized below:

Revenues	Current Year		Year One		Year Three	
	Per Visit	Total	Per Visit	Total	Per Visit	Total
Commercial FFS	\$96.56	\$844,000	\$91.33	\$959,000	\$111.12	\$1,231,000
Medicare FFS	\$166.96	5,975,000	\$140.58	6,280,000	\$157.75	7,435,000
Medicare MC	\$118.18	4,615,000	\$80.81	3,090,000	\$113.10	4,564,000
Medicaid FFS	\$235.33	838,000	\$182.05	872,000	\$167.13	846,000
Medicaid MC	\$123.07	1,286,000	\$117.22	1,232,000	\$167.15	1,855,000
Private Pay	\$118.93	71,000	\$93.33	14,000	\$110.34	16,000
All Other		814,000		572,000		0
Total Revenues		\$14,443,000		\$13,019,000		\$15,947,000
Expenses						
Operating	\$208.70	\$20,490,977	\$194.06	\$21,151,700	\$195.95	\$22,534,776
Total Expenses		\$20,490,977		\$21,151,700		\$22,534,776
Net Income		<u>(\$6,047,977)</u>		<u>(\$8,132,700)</u>		<u>(\$6,587,776)</u>
Visits		98,184		108,998		115,002

The following is noted with respect to the submitted budget:

- As a hospital based CHHA, the financials of the agency are included in the financial statements of Trinity Health, which includes St Joseph's Health and Hospital Center. The Hospital funds losses experienced by individual programs.
- Notwithstanding any agreement, arrangement or understanding between THHS and St. Joseph's Health At Home to the contrary, and subject to the consummation of the proposed ownership transfer, THHS agrees that it will cover any operating losses incurred by St. Joseph's Health at Home to the extent St. Joseph's Health at Home is unable to cover such losses through its CHHA operations.
- Revenues, expenses, and utilization assumptions are based on the historical experience of St. Joseph's Health at Home.
- All Other revenues include intercompany supplies and fees (\$224K) and nonpatient program revenue (\$590K).

- Utilization by payor source is as follows:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	8.9%	9.6%	9.6%
Medicare FFS	36.5%	41.0%	41.0%
Medicare MC	39.8%	35.1%	35.1%
Medicaid FFS	3.6%	4.4%	4.4%
Medicaid MC	10.6%	9.7%	9.7%
Private Pay	0.6%	0.1%	0.1%
Charity Care	0.0%	0.1%	0.1%
Total	100.0%	100.0%	100.0%

- The applicant's charity care policy is to assess the individual based on income to determine eligibility fee, reduced fees, and/or charity care. Their commitment includes providing uncompensated services to uninsured patients lacking the financial resources to pay.

Capability and Feasibility

There are no project costs associated with this application.

The working capital requirement of \$3,525,283, based on two months of the first year's expenses, will be satisfied by an intercompany (Due to/Due From) DTDF amount from THHS/Trinity for the remainder of the estimated 2 months of expenses for year one of operations. This amount does not reflect a loan but rather a current payable amount due to the parent company. BFA Attachment E is the pro-forma balance sheet as of the first day of operation, which indicates positive net assets of \$502,000 for the operation.

BFA Attachment A is the fiscal year (FY) 2019 certified financial statements of Trinity Health and shows the entity maintained a positive working capital position, net asset position, and had an operating income of \$160,840,000. BFA Attachment B is the FY 2019 Supplemental Condensed Consolidating financial statements of Trinity Home Health Services as of June 30, 2019, which shows it maintained a positive working capital position, a net asset position, and had an operating loss of \$889,000.

Conclusion

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

Attachments

BFA Attachment A	Trinity Health – FY 2019 and 2018 Certified Financial Statements
BFA Attachment B	Trinity Home Health Services – FY 2019 Supplemental Condensed Consolidating financial statements
BFA Attachment C	St. Joseph's Hospital Health Center – Internal Financial Income Statement as of June 30, 2020
BFA Attachment D	Trinity Health - Organizational Chart
BFA Attachment E	St. Joseph's Health at Home - Pro Forma Balance Sheet
BFA Attachment F	Reserved Powers
Programmatic Attachment A	New York State Facilities
Programmatic Attachment B	Out-of-State Facilities



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Michael Bass *MGB*
Deputy General Counsel

Date: January 28, 2021

Subject: Proposed Restated Certificate of Incorporation of Canton-Hospital Foundation, Inc. to Amend its Corporate Purposes and to Effectuate a Corporate Name Change

Canton-Hospital Foundation, Inc. (the "Foundation") requests Public Health and Health Planning Council (PHHPC) approval of the proposed amendment and restatement of its certificate of incorporation.

The Foundation wishes to amend its purpose language to include solicitation of funds for the benefit of two additional Article 28 facilities, the Gouverneur Hospital and the Massena Hospital, and to change its corporate name to St. Lawrence Health Foundation, Inc. Currently, the Foundation's exclusive purpose is to provide financial support to and for the benefit of Canton-Potsdam Hospital, a not-for-profit corporation that operates the Canton-Potsdam Hospital and whose sole member and active parent is St. Lawrence Health System, Inc. As part of project number 202061, PHHPC contingently approved Rochester Regional Health to become the sole member of St. Lawrence Health System, Inc. and the second parent and co-operator of Canton-Potsdam Hospital as well as of Gouverneur Hospital and Massena Hospital. Pending approval from the New York State Attorney General, Canton-Potsdam Hospital will become the sole member of the Foundation, thereby making the Foundation an indirect subsidiary of St. Lawrence Health System, Inc. The Foundation is now seeking to amend and restate its corporate purpose and to change its corporate name in order to reflect its broader affiliation with St. Lawrence Health System, Inc. and Rochester Regional Health and to enable it to provide financial support to all three hospitals within the St. Lawrence Health System.

In order to file the Restated Certificate with the New York State Department of State, the Foundation must receive PHHPC approval and consent pursuant to PHL §2801-a(1), (6) and (8), N-PCL §§ 404(o) and (t) and 804(a), and 10 NYCRR § 600.11(a)(2). Therefore, PHHPC is being asked to grant consent to the filing.

There is no legal objection to the proposed Restated Certificate of Incorporation of Canton-Hospital Foundation, Inc. and it is in legally acceptable form.

Attachments

Cicero Consulting Associates

VCC, Inc.

White Plains Unit
Frank M. Cicero
Charles F. Murphy, Jr.
James Psarianos
Michael D. Ungerer
Noelia Chung
Brian Baldwin
Michael F. Cicero
Karen Dietz
Evelyn Branford
Michael C. Maiale
Linda Cammsa, R.N.
Patrick Clemente

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Joseph F. Poffit
Albert L. D'Amato
Mark Van Guysling
Rosemarie Porco
Daniel Rinaldi, Jr.
Mary Ann Anglin

Emeritus Consultants
Nicholas J. Mongiardo
Joan Greenberg
Martha H. Poffit
Frank T. Cicero, M.D.
Rose Murphy

December 3, 2020

Michael P. Parker, Sr.
(1941-2011)
Anthony J. Maddaloni
(1952-2014)

Ms. Colleen M. Leonard, Executive Secretary
Public Health and Health Planning Council
NEW YORK STATE DEPARTMENT OF HEALTH
Coming Tower, Room 1805
Empire State Plaza
Albany, New York 12237

**RE: CANTON-POTSDAM HOSPITAL FOUNDATION, INC.
(St. Lawrence County)
Restated Certificate of Incorporation**

Dear Ms. Leonard:

We represent Canton-Potsdam Hospital Foundation, Inc. (the "Foundation"), which is seeking Public Health and Health Planning Council (PHHPC) approval of a Restated Certificate of Incorporation. The attached letter from the Foundation, appearing as the **Exhibit Cover**, describes the request and lists the various Exhibits supporting the proposal.

Background

Under CON Project No. 202061-E, which received contingent approval at PHHPC's October 8, 2020 meeting, Rochester Regional Health will become the sole member and active parent of St. Lawrence Health System, Inc. (SLHS) and the co-active parent and co-operator of Canton-Potsdam Hospital (CPH), Gouverneur Hospital (GH) and Massena Hospital (MH). The Foundation is currently an independent foundation and supports the activities of CPH, a subsidiary of SLHS.

Current Request

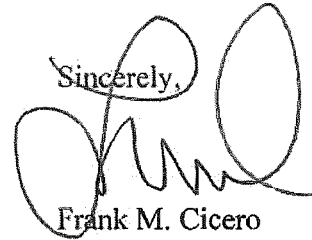
As more fully described in the Exhibit Cover Letter, the Foundation requests approval to:

- Name CPH as its sole member;
- Revise the Foundation's purpose to include providing funds to or for the benefit of GH and MH; and
- Change the Foundation's name to "St. Lawrence Health Foundation, Inc."

This request was noted in the Project Narrative accompanying CON Project No. 202061-E under Footnote No. 11, where it was indicated that this request would not be included within the CON, but rather require separate PHHPC action.

Ms. Colleen M. Leonard
December 3, 2020
Page 2

Please feel free to contact me if you have any questions. Thank you.

Sincerely,

Frank M. Cicero

cc: Mr. David Acker, Canton-Potsdam Hospital Foundation, Inc.

St. Lawrence Health System

Canton-Potsdam Hospital Foundation

VIA ELECTRONIC MAIL

Public Health and Health Planning Council
NYS Department of Health
Corning Tower
Albany, NY 12237
Attn: Colleen Leonard, Executive Secretary
colleen.leonard@health.ny.gov

Ms. Leonard:

Canton-Potsdam Hospital Foundation, Inc. (the "Foundation") is currently an independent foundation supporting the activities of Canton-Potsdam Hospital, a subsidiary of St. Lawrence Health System, Inc. The Foundation is hereby requesting Public Health and Health Planning Council consent pursuant to 10 NYCRR 600.11(a)(2) to change its name in connection with the affiliation described below.

On July 10, 2020, St. Lawrence Health System, Inc. entered into an Affiliation Agreement with Rochester Regional Health (the "Affiliation Agreement"), whereby Rochester Regional Health will become the sole member of St. Lawrence Health System, Inc. and the co-active parent of Canton-Potsdam Hospital, Gouverneur Hospital, and Massena Hospital. This affiliation is the subject of Certificate of Need application 202061-E, which the Public Health and Health Planning Council contingently approved at its October 8, 2020 meeting. In accordance with the Affiliation Agreement, Rochester Regional Health and St. Lawrence Health System, Inc. desire for the Foundation to amend its Certificate of Incorporation to establish Canton-Potsdam Hospital as its sole member.

By vote of the Board of Directors of the Foundation on September 22, 2020, the Foundation approved the amendment to the Foundation's Certificate of Incorporation to (1) name Canton-Potsdam Hospital as its sole member, (2) revise the Foundation's purpose to include providing funds to or for the benefit of Gouverneur Hospital and Massena Hospital, and (3) change the Foundation's name to "St. Lawrence Health Foundation, Inc." to reflect the addition of Gouverneur Hospital and Massena Hospital as beneficiaries of the Foundation.

In connection with this application for consent, please find enclosed the following:

- **Exhibit A**: A copy of the September 22, 2020 Resolutions from the Foundation's Board of Directors approving amendments to the Foundation's Certificate of Incorporation;
- **Exhibit B**: A copy of the proposed Restated Certificate of Incorporation for the Foundation;
- **Exhibit C**: A copy of the Foundation's current Certificate of Incorporation; and

- **Exhibit D:** Letters from a duly-authorized representative of each of Gouverneur Hospital and Massena Hospital, Inc., acknowledging that the organization will accept funds for it raised by the Foundation.

If you have any questions, please do not hesitate to contact me at 315-261-6003, or dacker@cphospital.org.

Very truly yours,
Canton-Potsdam Hospital Foundation, Inc.

By: 

David Acker, Authorized Officer

Attachment 4

**RESOLUTIONS OF THE BOARD OF DIRECTORS OF
CANTON-POTSDAM HOSPITAL FOUNDATION, INC.**

September 22, 2020

The Board of Directors of the Canton-Potsdam Hospital Foundation, Inc. (the "Foundation") does hereby consent to, approve and adopt the following recitals and resolutions:

WHEREAS, the Foundation is an independent foundation supporting the activities of Canton-Potsdam Hospital ("CPH");

WHEREAS, on July 10, 2020, St. Lawrence Health System, Inc., a New York not-for-profit corporation ("SLHS") and Rochester Regional Health, a New York not-for-profit corporation ("RRH") executed an Affiliation Agreement (the "Affiliation Agreement") whereby RRH will become the sole member of SLHS and the co-active parent of CPH, Gouverneur Hospital and Massena Hospital following receipt of required regulatory approvals (the "Transaction");

WHEREAS, as contemplated by the Affiliation Agreement, SLHS and RRH desire for the Foundation to amend its governing documents effective as of the closing of the Transaction to establish CPH as its sole corporate member, which will exercise certain reserved powers with respect to the Foundation;

WHEREAS, in accordance with the Affiliation Agreement, the Foundation bylaws will be amended to add to the Foundation board a member of the Rochester Regional Health Foundation's executive team;

WHEREAS, it is the desire of the Foundation to amend its certificate of incorporation and bylaws to change the Foundation's name to the St. Lawrence Health Foundation;

WHEREAS, in accordance with the Affiliation Agreement, following the consummation of the Transaction, the Board of Directors of the Foundation will have the duty and responsibility to support CPH and the other organizations within the SLHS system and to develop and implement philanthropy initiatives and campaigns within the community in support of the Foundation's purposes;

WHEREAS, in accordance with the Affiliation Agreement, following the consummation of the Transaction, SLHS will fund the Foundation's staff and overhead expenses and will provide office space to the Foundation without charge or allocation to the Foundation; and

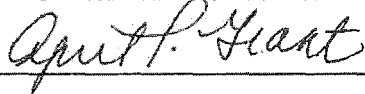
WHEREAS, the Board of Directors of the Foundation now desires to approve the Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws of the Foundation attached hereto as Exhibit A, to be effective upon consummation of the Transaction.

NOW, THEREFORE, BE IT RESOLVED, that the Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws of the Foundation attached hereto are adopted, ratified and approved by the Foundation;

BE IT FURTHER RESOLVED, that President of the Foundation, the Vice President of the Foundation, and David Acker, the President and Chief Executive Officer of SLHS, and such other persons as they may each designate, including outside counsel and consultants (the "**Authorized Officers**"), hereby are authorized, empowered and directed, in the name and on behalf of the Foundation, to take all actions and enter into any documents as may be necessary or appropriate to carry out the intent and purpose of the foregoing recitals and resolutions, and all prior actions taken by such Authorized Officers with respect thereto hereby are authorized, ratified and approved.

IN WITNESS WHEREOF, the Assistant Secretary has signed this instrument evidencing approval of the Resolutions at a duly called meeting of the Board of Directors of the Foundation, and shall direct that the Resolutions be filed with the minutes of the proceedings of the Board of Directors of the Foundation.

By:



Print: April L. Grant

Attachment 5

RESTATED CERTIFICATE OF INCORPORATION

OF

CANTON-POTSDAM HOSPITAL FOUNDATION, INC.

Under Section 805 of the Not-for-Profit Corporation Law

The undersigned, being the President of Canton-Potsdam Hospital Foundation, Inc. hereby certifies that:

1. The name of the corporation is Canton-Potsdam Hospital Foundation, Inc. (the "Corporation").

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on June 5, 1986.

3. The Corporation is a corporation as defined in paragraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law ("NPCL") and is a charitable corporation as defined in Section 201 of the NPCL.

4. The Corporation's Certificate of Incorporation is hereby amended to effect the following amendments pursuant to the NPCL:

a. to amend paragraph 1 of the Certificate of Incorporation relating to the name of the Corporation and restate such paragraph 1 in its entirety as paragraph 1.

b. to amend paragraph 3 of the Certificate of Incorporation relating to the Corporation's powers and purposes and restate such paragraph 3 in its entirety as paragraph 3.

c. to amend paragraph 8 of the Certificate of Incorporation setting forth the charitable type of the Corporation and restate such paragraph 8 in its entirety as paragraph 8.

d. to amend paragraph 9 of the Certificate of Incorporation setting forth whether the Corporation has members and restate such paragraph 9 in its entirety as paragraph 9.

e. to amend paragraphs 10 through 13 of the Certificate of Incorporation, which refer to the inurement and distribution of the Corporation's assets, income, profits or net earnings, influencing legislation and campaigning and certain tax matters and restate such paragraphs 10 through 13 in their entirety as a new paragraph 10.

f. to amend paragraph 14 of the Certificate of Incorporation, which refers to the dissolution of the Corporation and restate such paragraph 14 in its entirety as a new paragraph 11.

g. to amend paragraph 15 of the Certificate of Incorporation, which refers to the limitation on corporate purposes and restate such paragraph 15 in its entirety as a new paragraph 12.

h. to amend paragraph 16 of the Certificate of Incorporation, which refers to the location of the Corporation's office and restate such paragraph 16 in its entirety as a new paragraph 13.

i. to amend paragraph 17 of the Certificate of Incorporation, which refers to the number of directors of the Corporation and restate such paragraph 17 in its entirety as a new paragraph 14.

j. to delete paragraph 18 of the Certificate of Incorporation, which refers to the names and addresses of the initial directors of the Corporation, in its entirety.

k. to amend paragraph 19 of the Certificate of Incorporation relating to the address to which the Secretary of State, as designated agent, shall mail copies of any process served thereon and restate such paragraph 19 in its entirety as a new paragraph 15.

l. to delete paragraphs 20 and 21 of the Certificate of Incorporation in their entirety, which relate to prohibited practices by the New York General Business Law, and the required age of the incorporators for the Corporation.

5. The text of the Certificate of Incorporation is hereby restated, as amended or changed, to read in its entirety as follows:

1. The name of the corporation shall be St. Lawrence Health Foundation, Inc. (the "Corporation").

2. The Corporation is not being formed for pecuniary profit or financial gain, and no part of the assets, income, or profit of the Corporation shall be distributable to or inure to the benefit of its members, directors, or officers. The Corporation is a corporation as defined in Subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law of the State of New York.

3. The sole and exclusive purposes for which the Corporation is formed are to provide funds to or for the benefit of Canton-Potsdam Hospital, Gouverneur Hospital, and Massena Hospital (the "Supported Entities") by:

A. Soliciting, accepting, holding, investing, reinvesting and administering any gifts, grants, bequests, contributions, devises, benefits of trusts, endowments and property of any kind without limitation as to amount or value;

B. Using, disbursing and/or paying the income and/or principal thereof exclusively for the foregoing purposes; and

C. Performing any other act or thing incidental or connected with the foregoing purposes or in advancement thereof.

4. In furtherance of its Corporate purposes, the Corporation shall have all of the general powers set forth in Section 202 of the Not-for-Profit Corporation Law of the State of New York, together with the power to solicit and receive grants, bequests and contributions for the corporate purposes.

5. All income and earnings of the Corporation shall be used exclusively for its Corporate purposes.

6. Nothing herein contained shall authorize the Corporation to establish or operate a hospital or to provide hospital services or health-related services or to operate a drug maintenance program, a certified home health agency, a hospice, or a health maintenance organization or to provide a comprehensive health services plan, as defined and covered by Articles 28, 33, 36, 40 and 44, respectively, of the Public Health Law of the state of New York.

7. Nothing herein contained shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Section 404(b) through (n) and 404(p) through (v) of the Not-for-Profit Corporation Law of the State of New York.

8. The Corporation shall be a charitable Corporation as defined by Section 201 of the Not-for-Profit Corporation Law of the State of New York.

9. The sole member of the Corporation is Canton-Potsdam Hospital (the "Member"). In addition to all other rights and powers of membership prescribed by the Not-for-Profit Corporation Law of the State of New York, this Certificate of Incorporation and/or the Bylaws of the Corporation, the following governance and management powers shall be reserved to the Member:

A. To fix the number of directors of the Corporation;

B. To appoint and remove, with or without cause, and as provided in the bylaws of the Corporation, the directors of the Corporation;

C. To approve any amendment of the Certificate of Incorporation and Bylaws of the Corporation;

D. To approve any debt of the Corporation, other than in the ordinary course of business, in excess of an amount to be fixed from time to time by the Member, alone and in the aggregate for the preceding twelve-month period;

E. To approve the sale, lease, exchange or disposition of all, or substantially all, the assets of the Corporation, and to approve any sale, acquisition, lease, transfer, mortgage, pledge or other alienation of an interest in any real or personal property of the Corporation in excess of an amount to be fixed from time to time by the Member, alone or in the aggregate for the preceding twelve-month period, or otherwise outside of the ordinary course of business; and

F. To approve any plan of merger, consolidation, reorganization, dissolution or liquidation of the Corporation, including the addition of any entities as new members of the Corporation and the Corporation's participation in, or development or dissolution of, any subsidiary organizations, including corporations, partnerships or joint ventures of the Corporation and other entities.

For purposes of this paragraph, the word "approve" shall mean the power to: (i) initiate action without a prior recommendation from the board of directors of the Corporation; (ii) accept, reject or modify a recommendation of the board of directors of the Corporation and direct action by the Corporation upon such determination; or (iii) return a recommended action to the Corporation's board of directors, setting forth the reasons for rejection and/or suggested changes.

10. A. No part of the assets, income or net earnings of the Corporation shall inure to the benefit of any director, trustee, or officer of the Corporation, or to any private individual, except that reasonable compensation may be paid for services rendered to or for the Corporation. No director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any or the Corporate assets on dissolution of the Corporation.

B. No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, except as otherwise provided by Section 501(h) of the Internal Revenue Code of 1986, as amended (the "Code"). The Corporation shall not participate or intervene (including the publication or distribution of statements) in any political campaign on behalf of, or in opposition to, any candidate for public office.

C. Notwithstanding any other provision of this Certificate, the Corporation is organized exclusively for charitable purposes as specified in Section

501(c)(3) of the Code. The Corporation shall not carry on any activities not permitted to be carried on (i) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Code; or (ii) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code. In the event that the Corporation shall at any time be a private foundation within the meaning of Section 509 of the Code, or the corresponding provision of any future United States internal revenue law, the Corporation, as long as it shall be such a private foundation, shall distribute its income for each taxable year at such time and in such manner as not to be subject to the tax on undistributed income imposed by Section 4942 of the Code and shall not engage in any of the following acts:

1. Any act of self-dealing as defined in Section 4941(d) of the Code;
2. Retaining any excess business holdings as defined in Section 4943(c) of the Code;
3. Making any investments in such manner as to subject the corporation to tax under Section 4944 of the Code; or
4. Making any taxable expenditures as defined in Section 4945(d) of the Code.

11. In the event of the liquidation, dissolution, or winding up of the Corporation, whether voluntary, involuntary or by operation of law, all of the remaining assets and property of the Corporation, after necessary expenses thereof are paid, shall be distributed to the Member, provided that the Member shall then be organized and operated exclusively for exempt, charitable purposes within the meaning of Section 501(c)(3) of the Code, shall then be exempt from federal income tax under Section 501(a), and shall then qualify under Section 509(a)(1), (2) or (3) of the Code, pursuant to a plan of distribution approved by the Member as required by this Certificate of Incorporation, and subject to any approvals, consents or proceedings required under applicable governing law regarding the liquidation, dissolution or winding up of not-for-profit corporations. If Member does not qualify at the time of liquidation, dissolution or winding up of the Corporation, then distribution shall be made to such other not-for-profit organization or not-for-profit organizations that shall then be organized and operated exclusively for exempt, charitable purposes within the meaning of Section 501(c)(3) of the Code, provided that such distributee(s) shall then be exempt from federal income tax under Section 501(a) and shall then qualify under Section 509(a)(1), (2) or (3) of the Code, pursuant to a plan of distribution approved by the Member, and subject to any approvals, consents or proceedings required under applicable governing law regarding the liquidation, dissolution or winding up of not-for-profit corporations.

12. Nothing herein contained shall authorize this Corporation, directly, or indirectly, to engage in or include among its purposes any activity in contravention of any law, statute or regulation of the State of New York, which would cause this Corporation to be disqualified from incorporation under the Not-for-Profit Corporation Law of the State of New York.

13. The office of the Corporation shall be located in the County of St. Lawrence, State of New York.

14. The number of Directors of the Corporation shall not be less than three. Subject to such limitation, the number shall be fixed by the Member as required by this Certificate of Incorporation.

15. The Secretary of State of the State of New York is hereby designated as agent of the Corporation upon whom process in any action or proceeding against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any such process so served upon the Secretary of State is: c/o the President, Canton-Potsdam Hospital, Inc., 50 Leroy Street, Potsdam, New York, 13676.

6. The amendment and restatement of the Certificate of Incorporation was authorized by the majority vote of the entire Board of Directors of the Corporation, at a duly called meeting, quorum present.

IN WITNESS WHEREOF, I have made and signed this certificate this 24th day of November, 2020.



Name:
Title:

RESTATED CERTIFICATE OF INCORPORATION
OF
CANTON-POTSDAM HOSPITAL FOUNDATION, INC.
Under Section 805 of the Not-for-Profit Corporation Law

[Filer's Name & Address]
Cust. Ref. #: _____

Attachment 6

CERTIFICATE OF INCORPORATION

OF

CANTON-POTSDAM HOSPITAL FOUNDATION, INC.

Under Section 402 of the
Not-for-Profit Corporation Law
of the State of New York

The undersigned, for the purpose of forming a not-for-profit corporation pursuant to the provisions of the Not-for-Profit Corporation Law of the State of New York, do hereby certify that:

1. The name of the corporation shall be CANTON-POTSDAM HOSPITAL FOUNDATION, INC.

2. The corporation is not being formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the corporation shall be distributable to or inure to the benefit of its members, directors, or officers. The corporation is a corporation as defined in Subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law of the State of New York.

3. The sole and exclusive purposes for which the corporation is formed are to provide funds to or for the benefit of Canton-Potsdam Hospital by:

A. Soliciting, accepting, holding, investing, reinvesting and administering any gifts, grants, bequests, contributions, devises, benefits of trusts, endowments and property of any kind, without limitation as to amount or value;

B. Using, disbursing and/or paying the income and principal thereof exclusively for the foregoing purposes; and

C. Performing any other act or thing incidental or connected with the foregoing purposes or in advancement thereof.

4. In furtherance of its corporate purposes, the corporation shall have all of the general powers set forth in Section 202 of the Not-for-Profit Corporation Law of the State of New York, together with the power to solicit and receive grants, bequests and contributions for the corporate purposes.

M. INGRAM,
106 UNDEN,
P.C.
56 COUNSELLORS
47 ET STREET
NEW YORK 15876
TEL 315-265-6600

5. All income and earnings of the corporation shall be used exclusively for its corporate purposes.

6. Nothing herein contained shall authorize the corporation to establish or operate a hospital or to provide hospital services or health-related services or to operate a drug maintenance program, a certified home health agency, a hospice, or a health maintenance organization or to provide a comprehensive health services plan, as defined and covered by Articles 28, 33, 36, 40 and 44, respectively, of the Public Health Law of the State of New York.

7. Nothing herein contained shall authorize the corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Section 404(b) through (n) and 404(p) through (q) of the Not-for-Profit Corporation Law of the State of New York.

8. The corporation shall be a Type B corporation as defined by Section 201 of the Not-for-Profit Corporation Law of the State of New York.

9. Pursuant to the provisions of Section 601 of the Not-for-Profit Corporation Law of the State of New York, the corporation shall have no members.

10. No part of the net income or net earnings of the corporation shall inure to the benefit or profit of any private individual, firm or corporation.

11. The corporation is organized exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law).

12. No part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

13. Notwithstanding any other provisions of this Certificate of Incorporation, the corporation shall not carry on any other activities not permitted to be carried on by a

corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law) or by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law).

14. Upon the dissolution of the corporation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the corporation, dispose of all of the assets of the corporation exclusively for the purposes of the corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, religious or scientific purposes as shall, at the time, qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law) as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed of by a Court of appropriate jurisdiction exclusively for such purposes or to such organization or organizations as said Court shall determine, which are organized and operated exclusively for such purposes.

15. Nothing herein contained shall authorize this corporation, directly or indirectly, to engage in or include among its purposes any activity in contravention of any law, statute or regulation of the State of New York, which would cause this corporation to be disqualified from incorporation under the Not-for-Profit Corporation Law of the State of New York.

16. The office of the corporation shall be located in the County of St. Lawrence, State of New York.

17. The number of Directors of the corporation shall not be less than three. Subject to such limitation, the number shall be fixed by the by-laws of the corporation pursuant to Section 702 of the Not-for-Profit Corporation Law of the State of New York.

18. The names and resident addresses of the initial Directors until the first annual meeting shall be:

William Sloan
16 Drumlin Drive
Potsdam, NY 13676

James Dalton
Back Hannawa Road
Potsdam, NY 13676

Eileen Elmer
Pierrepont Road
Canton, NY 13617

Charles Goolden
10 Church Street
Madrid, NY 13660

E. Stanley Howlett, III
33 Waverly Street
Potsdam, NY 13676

Carole Moreau
Ames Road
Canton, NY 13617

Morris Pinto
13 Garden Street
Potsdam, NY 13676

H. Sargent Whittier
Old DeKalb Road
Canton, NY 13617

Stuart A. Winning, M.D.
12 East Main Street
Canton, NY 13617

19. The Secretary of State of the State of New York is hereby designated as agent of the corporation upon whom process against it may be served and the post office address within this State to which the Secretary of State shall mail a copy of any process against the corporation served upon the Secretary of State is as follows:

A.M. INGRAM,
LLC & LINCEN,
P.C.
YS & COUNSELLORS
MARKET STREET
NEW YORK 13676
TEL. 315-755-6500

In Care of The Corporation
Cottage and Grove Streets
Potsdam, NY 13676

XX
XX
XX

20. Nothing contained in this Certificate shall authorize or empower the corporation to perform or engage in any act or practice prohibited by the General Business Law, Section 340 or any other anti-monopoly statute of the State of New York.

21. Each of the incorporators is eighteen years of age or over.

IN WITNESS WHEREOF, this Certificate has been signed by each of the incorporators this 23rd day of September, 1985.



C. Edward Stevens
Incorporator
Address: 13 Grove Street
Potsdam, NY 13676



Bruce C. Potter
Incorporator
Address: 3 Prospect Street
Norwood, NY 13668

STATE OF NEW YORK)
) SS:
COUNTY OF ST. LAWRENCE)

On this 23rd day of September, 1985, before me personally appeared C. Edward Stevens, to me

SAM. INGRAM,
ELLO & LUNDEN,
PC
EYS & COUNSELLORS
ARKET STREET
NEW YORK 13676
CNE 315-265-6680

personally known and known to me to be the same person described in and who executed the within Instrument and duly acknowledged to me that he executed the same.

Jennifer Gail Rogers
Notary Public, State of New York
Commission expires 3/30/87.

JENNIFER GAIL ROGERS
Notary Public, State of New York
No. 4598213
Qualified in St. Lawrence Co.
My Commission Expires March 29, 1987

STATE OF NEW YORK)
) SS:
COUNTY OF ST. LAWRENCE)

On this 23rd day of January, 1985, before me personally appeared Bruce C. Potter, to me personally known and known to me to be the same person described in and who executed the within Instrument and duly acknowledged to me that he executed the same.

Jennifer Gail Rogers
Notary Public, State of New York
Commission expires 3/30/87.

JENNIFER GAIL ROGERS
Notary Public, State of New York
No. 4598213
Qualified in St. Lawrence Co.
My Commission Expires March 29, 1987

STATE OF NEW YORK COUNTY OF ST. LAWRENCE

SUPREME COURT

In the Matter of an Application for
the Approval of the Certificate of
Incorporation of

CANTON-POTSDAM HOSPITAL FOUNDATION, INC.,

a Not-for-Profit Corporation.

I, James J. [Signature], a Justice of the Supreme
Court of the State of New York, Fourth Judicial District, do
hereby approve the foregoing Certificate of Incorporation of
Canton-Potsdam Hospital Foundation, Inc., and consent that the
same be filed.

DATED: April 3, 1985.
Supreme Court, St. Lawrence County
Special Term
Canton, New York

[Signature]
Justice of the Supreme Court
Fourth Judicial District

INGRAM, INGRAM,
APPELLO & UINDEN,
P.C.
ATTORNEYS & COUNSELLORS
19 MARKET STREET
POTSDAM, NEW YORK 13678
TELEPHONE 315-265-0140

Attachment 7

St. Lawrence
Health System

Gouverneur Hospital

VIA ELECTRONIC MAIL

Public Health and Health Planning Council
NYS Department of Health
Corning Tower
Albany, NY 12237
Attn: Colleen Leonard, Executive Secretary
colleen.leonard@health.ny.gov

Ms. Leonard:

Gouverneur Hospital (the "Hospital") is a subsidiary of St. Lawrence Health System, Inc. The Canton-Potsdam Hospital Foundation, Inc. (the "Foundation") is currently an independent foundation supporting the activities of Canton-Potsdam Hospital, also a subsidiary of St. Lawrence Health System, Inc. Pending NYS Department of Health and NYS Attorney General approval, the Foundation will become an indirect subsidiary of St. Lawrence Health System, Inc. and expand its purpose to include providing funds to or for the benefit of the Hospital.

The Hospital acknowledges that Foundation may solicit contributions in the Hospital's name and on the Hospital's behalf, and the Hospital agrees to accept any such contributions from the Foundation.

If you have any questions, please do not hesitate to contact me at 315-261-6003, or dacker@cphospital.org.

Very truly yours,
Gouverneur Hospital

By:


David Acker, Authorized Officer

Attachment 8

St. Lawrence Health System

Massena Hospital

VIA ELECTRONIC MAIL

Public Health and Health Planning Council
NYS Department of Health
Corning Tower
Albany, NY 12237
Attn: Colleen Leonard, Executive Secretary
colleen.leonard@health.ny.gov

Ms. Leonard:

Massena Hospital (the "Hospital") is a subsidiary of St. Lawrence Health System, Inc. The Canton-Potsdam Hospital Foundation, Inc. (the "Foundation") is currently an independent foundation supporting the activities of Canton-Potsdam Hospital, also a subsidiary of St. Lawrence Health System, Inc. Pending NYS Department of Health and NYS Attorney General approval, the Foundation will become an indirect subsidiary of St. Lawrence Health System, Inc. and expand its purpose to include providing funds to or for the benefit of the Hospital.

The Hospital acknowledges that Foundation may solicit contributions in the Hospital's name and on the Hospital's behalf, and the Hospital agrees to accept any such contributions from the Foundation.

If you have any questions, please do not hesitate to contact me at 315-261-6003, or dacker@cphospital.org.

Very truly yours,
Massena Hospital

By:



David Acker, Authorized Officer



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Michael Bass *MB*
Deputy General Counsel

Date: March 1, 2021

Subject: Albany Medical Center; Name Change Pursuant to NY N-PCL §804(a)(i) and 10 NYCRR § 600.11(a)(1)

Albany Medical Center ("Albany Med"), a New York not-for-profit corporation and established co-operator of the four Article 28 entities identified below is requesting approval to change its corporate name to "Albany Med Health System." The hospitals and associated hospital extension clinics for which Albany Med is the established co-operator are:

1. Albany Medical Center Hospital
2. Columbia Memorial Hospital
3. Glens Falls Hospital
4. Saratoga Hospital

Albany Med is requesting the name change to reflect that it is now co-operator of a number of Article 28 entities in addition to Albany Medical Center Hospital.

Approval of the Public Health and Health Planning Council (PHHPC) is required under the Not-for-Profit Corporation Law § 804(a)(i) and 10 NYCRR § 600.11(a)(1).

There is no legal objection to the corporate name change and the Certificate of Amendment of the Certificate of Incorporation of Albany Medical Center is legally acceptable.

Attachments.

MATTHEW C. JONES
Senior Vice President and General Counsel

VIA FEDERAL EXPRESS AND E-MAIL

February 10, 2021

Colleen Leonard, Executive Secretary
Public Health and Planning Council
New York State Department of Health
Empire State Plaza, Corning Tower – Room 1805
Albany, NY 12237
phhpc@health.ny.gov

Re: Albany Medical Center Hospital
Operating Certificate # 0101000H, PFI # 0001

The Columbia Memorial Hospital
Operating Certificate # 1001000H, PFI #s 146, 4896, 6673, 7044, 7045

Glens Falls Hospital
Operating Certificate # 5601000H, PFI # 1005

The Saratoga Hospital
Operating Certificate # 4501000H, PFI # 818

Dear Ms. Leonard:

At the direction of the Bureau of Project Management via email of January 6, 2021, Albany Medical Center Hospital (“AMCH”), The Columbia Memorial Hospital (“CMH”), Glens Falls Hospital (“GFH”) and The Saratoga Hospital (“SH”) are submitting this correspondence to request the Department’s approval of the corporate name change of Albany Medical Center, their co-operator, to “Albany Med Health System.”

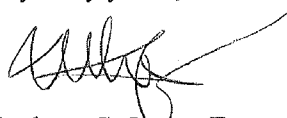
Each of AMCH, CMH, GFH and SH is a licensed Article 28 entity. The hospitals intend to change the name of their co-operator to Albany Med Health System in order to strategically align the four hospitals within the System’s affiliate network. It is our understanding that Public Health and Health Planning Council (PHHPC) approval of the corporate name change is required pursuant to 10 NYCRR §600.11 and Not-for-Profit Corporation Law §804(a). The hospitals hereby seek PHHPC approval of the proposed name change and subsequent modification of all associated operating certificates.

Ms. Colleen Leonard
February 10, 2021
Page 2

Copies of the current operating certificates for AMCH, CMH, GFH and SH are attached for reference, together with the Resolution of the Albany Medical Center Board of Directors authorizing the proposed name change and a copy of the signed Certificate of Amendment to the Certificate of Incorporation of Albany Medical Center.

Thank you for your assistance, and please advise of any additional information required in advance of inclusion on the PHHPC agenda.

Very truly yours,



Matthew C. Jones, Esq.
Senior Vice President and General Counsel

Enclosures

cc: Barbara DelCogliano, Deputy Director, Division of Planning and Licensure
(w/encs., via e-mail: barbara.delcogliano@health.ny.gov)
Karalyn Ritschdorff, Director of Hospital Regulatory Affairs (w/encs.)

**RESOLUTIONS OF THE BOARD OF DIRECTORS
OF ALBANY MEDICAL CENTER WITH REGARD TO THE AMENDMENT
OF THE CERTIFICATE OF INCORPORATION AND THE BYLAWS**

January 6, 2021

WHEREAS, Albany Medical Center ("Albany Med") desires to change its corporate name to "Albany Med Health System" in order to more accurately reflect its evolving governance and oversight roles as sole member of its affiliated entities; and

WHEREAS, the Certificate of Amendment of the Albany Med Certificate of Incorporation in the form attached hereto as Exhibit A (the "Certificate of Amendment") will effect such name change; and

WHEREAS, the Albany Med Bylaws must be amended to reflect such name change and more accurately delineate the role of Albany Med as sole member of its affiliated entities;

NOW, THEREFORE, BE IT:

RESOLVED, that the Certificate of Amendment is hereby approved, and the management and proper officers of Albany Med are authorized and directed to execute the Certificate of Amendment and file the Certificate of Amendment with the Secretary of State of the State of New York as soon as practicable, following receipt of all required governmental and lender approvals;

RESOLVED, that the proposed amendments to the Albany Med Bylaws as described to the Board are hereby approved, effective immediately (with the understanding that the change to Albany Med's corporate name reflected therein will not technically be effective until the filing of the Certificate of Amendment with the Secretary of State of the State of New York) ; and

FURTHER RESOLVED, that the proper officers of Albany Med are hereby authorized and directed to take any and all such actions as they may deem necessary, convenient or advisable in order to carry out the purposes and intent of the foregoing resolutions.

Exhibit A
Form of Certificate of Amendment

See attached.



Division of Corporations,
State Records and
Uniform Commercial Code

New York State
Department of State
DIVISION OF CORPORATIONS,
STATE RECORDS AND
UNIFORM COMMERCIAL CODE
One Commerce Plaza
99 Washington Ave.
Albany, NY 12231-0001
www.dos.ny.gov

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

Albany Medical Center

*(Name of Domestic Corporation)
(Name change only)*

Under Section 803 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is:

Albany Medical Center

If the name of the corporation has been changed, the name under which it was formed is:

SECOND: The certificate of incorporation was filed by the Department of State on:

October 8, 1982

THIRD: The law the corporation was formed under is:

Section 402 of the Not-for-Profit Corporation Law

FOURTH: The corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.

FIFTH: The certificate of incorporation is amended as follows:

Paragraph FIRST of the Certificate of Incorporation relating to the name of the corporation is hereby amended to read in its entirety as follows:

FIRST: The name of the corporation is:

Albany Med Health System

SIXTH: The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is:

Albany Med Health System
Attn: President
43 New Scotland Avenue
Albany, New York 12208

SEVENTH: The certificate of amendment was authorized by: *(Check the appropriate box)*

- a vote of a majority of the members at a meeting.
 the unanimous written consent of the members entitled to vote thereon.
 a vote of a majority of the entire board of directors. The corporation has no members.

X

(Signature)

President & Chief Executive Officer

(Capacity of Signer)

Dennis P. McKenna, M.D.

(Print or Type Signer's Name)

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

Albany Medical Center

(Name of Domestic Corporation)

Under Section 803 of the Not-for-Profit Corporation Law

Filer's Name Matthew C. Jones

Address 43 New Scotland Avenue, Mail Code 104

City, State and Zip Code Albany, New York 12208

NOTES:

1. This form was prepared by the New York State Department of State to amend paragraph FIRST of a certificate of incorporation to change the name of a domestic corporation. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores.
2. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at www.dos.ny.gov.
3. The certificate must be submitted with a \$30 filing fee.
4. The Department of State recommends that all documents be prepared under the guidance of an attorney.
5. Please be sure to review Section 804 and Section 404 of the Not-for-Profit Corporation Law to determine if any consents or approvals are required to be attached to this certificate of amendment.

For Office Use Only

STATE OF NEW YORK)

) SS.:

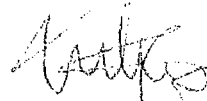
COUNTY OF ALBANY)

I, the undersigned, Matthew C. Jones, Secretary of Albany Medical Center, (the "Center") do hereby certify:

1. That I have compared the annexed resolution of the Board of Directors of the Center dated January 6, 2021, with the original thereof on file in my office and the same is a true and complete copy of the proceedings of the Board of Directors of the Center and of such resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

2. I further certify that the attached resolution enacted by the Board of Directors of the Center has not been amended or repealed and is in full force and effect on and as of the date of this Certificate.

IN WITNESS WHEREOF, I have hereunder set my hand on January 6, 2021.



Matthew C. Jones, Secretary

Attachment 4



Division of Corporations,
State Records and
Uniform Commercial Code

New York State
Department of State
DIVISION OF CORPORATIONS,
STATE RECORDS AND
UNIFORM COMMERCIAL CODE
One Commerce Plaza
99 Washington Ave.
Albany, NY 12231-0001
www.dos.ny.gov

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

Albany Medical Center

(Name of Domestic Corporation)
(Name change only)

Under Section 803 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is:

Albany Medical Center

If the name of the corporation has been changed, the name under which it was formed is:

SECOND: The certificate of incorporation was filed by the Department of State on:

October 8, 1982

THIRD: The law the corporation was formed under is:

Section 402 of the Not-for-Profit Corporation Law

FOURTH: The corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.

FIFTH: The certificate of incorporation is amended as follows:

Paragraph FIRST of the Certificate of Incorporation relating to the name of the corporation is hereby amended to read in its entirety as follows:

FIRST: The name of the corporation is:

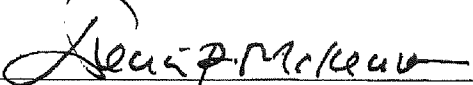
Albany Med Health System

SIXTH: The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is:

Albany Med Health System
Attn: President
43 New Scotland Avenue
Albany, New York 12208

SEVENTH: The certificate of amendment was authorized by: *(Check the appropriate box)*

- a vote of a majority of the members at a meeting.
 the unanimous written consent of the members entitled to vote thereon.
 a vote of a majority of the entire board of directors. The corporation has no members.

x 
(Signature)

President & Chief Executive Officer
(Capacity of Signer)

Dennis P. McKenna, M.D.
(Print or Type Signer's Name)



MEMORANDUM

To: Public Health and Health Planning Council

From: Michael G. Bass, Deputy General Counsel *1163*

Date: March 1, 2021

Subject: Proposed Dissolution of Morningside House Nursing Home Company

Morningside House Nursing Home Company, Inc. (Morningside or the "Corporation") requests Public Health and Health Planning Council ("PHHPC") approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law (NPCL) §§ 1002 and 1003, and 10 NYCRR Part 650.

Morningside was incorporated under the New York Not-for-Profit Corporation Law on April 18, 1972, with its principal office in the County of Westchester, at 2975 Westchester Avenue, Purchase, New York 10577. The Corporation's purpose as set forth in its Certificate of Incorporation was "[t]o plan, construct, erect, build, acquire, ... own, maintain and operate a nursing home project pursuant to the terms and provisions of the Public Health Law". After years of operation, Morningside was experiencing substantial operating losses and determined that the best course of action, to ensure the continued provision of skilled nursing services in the community, would be to sell to a new operator. On July 18, 2014, the Corporation sold its operations and assets and ceased providing healthcare services. This sale was conducted pursuant to NPCL § 511, with proceeds going to Aging In America, Inc., the sole member of the Corporation.

Resolutions were adopted by the Board of Directors of the Corporation at a duly called meeting on proper notice on October 27, 2020, at which a quorum of directors present unanimously approved resolutions to adopt the Plan of Dissolution and to authorize the filing of a Certificate of Dissolution in accordance with NPCL § 1003.

The required documents: Verified Petition to the Attorney General, Plan of Dissolution and Distribution of Assets, and a proposed Certificate of Dissolution, with supporting organizational documents of the corporation and resolutions of the Board of Directors of the corporation and its lone member the Corporation authorizing the dissolution, are included for PHHPC's review. Letters from the attorney Ms. Marsena M. Farris of Crowell & Moring, to the Department of Health explaining the need and desire for the dissolution, have been received and are enclosed.

Lastly, please note that the Verified Petition and Certificate of Dissolution indicate that, on the date of this application, the corporation has no assets or outstanding liabilities and holds no assets legally required to be used for a particular purpose. As such, the corporation respectfully requests permission from PHHPC to dissolve. There is no legal objection to the proposed dissolution, Verified Petition, Plan of Dissolution, and Certificate of Dissolution.

Attachments

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

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

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

December 3, 2020

Marsena M. Farris
Crowell & Moring LLP
590 Madison Avenue, 20th Floor
New York, NY 10022-2524

Re: Certificate of Dissolution of Morningside House Nursing Home Company, Inc.

Dear Ms. Farris:

I have received your December 3, 2020 email requesting approval of the Certificate of Dissolution of Morningside House Nursing Home Company, Inc. under Section 1003 of the Not-For-Profit Corporation Law of the State of New York. Your letter has been forwarded to the Division of Legal Affairs, Bureau of Health Facility Planning and Development for review and approval.

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

Sincerely,

Colleen M. Leonard
Colleen M. Leonard
Executive Secretary

cc: DLA

/cl

----- x:
In the Matter of the Application of :
MORNINGSIDE HOUSE NURSING HOME :
COMPANY, INC. :
For Approval of a Certificate of Dissolution pursuant :
to Section 1002 of the Not-for-Profit Corporation Law ----- x

**VERIFIED PETITION FOR
APPROVAL OF CERTIFICATE
OF DISSOLUTION**

TO:

THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
CHARITIES BUREAU
44 SOUTH BROADWAY
WHITE PLAINS, NEW YORK 10601

Petitioner, Morningside House Nursing Home Company, Inc. (the "Corporation")
by Katharine M. Weiss, the Chair of the Corporation, for its Verified Petition, respectfully alleges:

1. Petitioner is a corporation incorporated under the New York Not-for-Profit Corporation Law on April 18, 1972, with its principal office in the County of Westchester, at 2975 Westchester Avenue, Purchase, New York 10577. A copy of the Certificate of Incorporation and all amendments thereto and the complete and current By-laws of the Corporation are attached hereto as Exhibit A.

2. The names, addresses and titles of the Corporation's officers and directors are as follows:

<u>NAME</u>	<u>TITLE</u>	<u>ADDRESS</u>
Richard H. Altieri, Ph.D	Director	62 Forest Lane Jay, New York, 12941
Neal Baumann	Director	925 Westchester Avenue Suite LL01 White Plains, New York 10604
Douglas H. Hoffman	Vice-Chair, Treasurer and Director	210 E. 68 th Street Apt. 3M New York, NY 10065

<u>NAME</u>	<u>TITLE</u>	<u>ADDRESS</u>
Carlton L. Mitchell	Director	10 Ramapo Road Ossining, New York 10562
Dr. Lynn M. Tepper	Secretary and Director	50 Burnside Drive Hastings-on-Hudson, New York 10706
Katharine M. Weiss	Chair and Director	320 East 42nd St Apt. 3106 New York, New York 10017

3. The purposes for which the Corporation was organized are set forth in its Certificate of Incorporation, as amended, in Article III thereof, and are as follows:

“To plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of the Public Health Law”.

4. The Corporation is a charitable corporation as defined under the Not-for-Profit Corporation Law.

5. The Corporation plans to dissolve in accordance with the Plan of Dissolution attached hereto as Exhibit B (the “Plan”).

6. On July 18, 2014, the Corporation sold its operations and assets and ceased providing healthcare services. The Corporation is dissolving because it has wound up its business and affairs and is no longer operational.

7. Resolutions were adopted by the Board of Directors of the Corporation at a duly called meeting on proper notice on October 27, 2020, at which a quorum of 5 directors out of 5 total directors was present, and such directors unanimously approved resolutions to adopt the Plan and to authorize the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. The resolutions of the Board of Directors, certified by the Secretary or other duly authorized officer of the Corporation, are attached hereto as Exhibit C.

8. After the Board of Directors adopted the Plan of the Corporation, the Sole Member of the Corporation received and reviewed the Plan and resolutions were adopted by the Sole Member at a duly called meeting on proper notice on October 27, 2020, at which a quorum of 6 directors of the Sole Member out of 6 total directors was present, and such directors unanimously approved the Plan. The resolutions of the Sole Member, certified by the Secretary or other duly authorized officer of the Corporation, are attached hereto as Exhibit C.

9. The Corporation has no assets or liabilities as of the date hereof.

10. Any required governmental approvals of the Plan are set forth in the Plan and are attached to the Certificate of Dissolution.

11. The Corporation is submitting herewith as Exhibit D a final financial report on Form CHAR500 with all required attachments, showing no assets or liabilities and attaching the appropriate registration fee, if required.

12. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003.

WHEREFORE, Petitioner requests that the Attorney General approve the Certificate of Dissolution of Morningside House Nursing Home Company, Inc., a New York not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREOF, the Corporation has caused this Petition to be executed this ____ day of _____, 202_ by Katharine M. Weiss, its Chair.

Katharine M. Weiss
Chair

Verification and Certification

STATE OF NEW YORK)

: ss.:

COUNTY OF _____)

I, the undersigned, Katharine M. Weiss, being duly sworn, depose and say:

I am the Chair of Morningside House Nursing Home Company, Inc., the corporation named in the above Petition. I make this verification and certification at the direction of its Board of Directors. I have read the foregoing Petition and (i) I know the contents thereof to be true of my own knowledge, except those matters stated on information and belief, and as to those matters, I believe them to be true, and (ii) I hereby certify under penalties of perjury that the Plan of Dissolution was duly authorized and adopted by the Board of Directors and by the Sole Member of Morningside House Nursing Home Company, Inc.

Katharine M. Weiss

Sworn to before me this
____ day of _____, 202__

Notary Public

PLAN OF DISSOLUTION
OF
MORNINGSIDE HOUSE NURSING HOME COMPANY, INC.

The Board of Directors of Morningside House Nursing Home Company, Inc. (the “Corporation”) has considered the advisability of voluntarily dissolving the Corporation and has determined that the dissolution is in the best interest of the Corporation.

- The Corporation has no assets or liabilities.
- In addition to Attorney General approval, the following governmental approval of the Plan of Dissolution is required and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General:
 - Commissioner of Health
 - Public Health and Health Planning Council
- A Certificate of Dissolution shall be executed by an authorized Director or Officer of the Corporation and all required governmental approvals shall be attached thereto before filing it with the Department of State.

CERTIFICATE OF ASSISTANT SECRETARY
OF
MORNINGSIDE HOUSE NURSING HOME COMPANY, INC.
AND
AGING IN AMERICA, INC.

The undersigned hereby certifies under penalties of perjury that I am the duly appointed and acting Assistant Secretary of Morningside House Nursing Home Company, Inc., a New York not-for-profit corporation (the "Corporation"), and Aging in America, Inc., a New York not-for-profit corporation (the "Sole Member"), and I further certify as follows:

Attached hereto as Exhibit A is a true, correct and complete copy of preambles and resolutions adopted by the Board of Directors of the Corporation approving the Plan of Dissolution and dated as of October 27, 2020 which preambles and resolutions have not been modified, amended, annulled or revoked from the time of their adoption to the date hereof, and which resolutions are in full force and effect on the date hereof.

Attached hereto as Exhibit B is a true, correct and complete copy of preambles and resolutions adopted by the Sole Member of the Corporation approving the Plan of Dissolution and dated as of October 27, 2020, which preambles and resolutions have not been modified, amended, annulled or revoked from the time of their adoption to the date hereof, and which resolutions are in full force and effect on the date hereof.

Attached hereto as Exhibit C is a true, and complete correct copy of the Plan of Dissolution that was attached to the preambles and resolutions of the Board of Directors of the Corporation dated as of October 27, 2020 and attached to the preambles and resolutions of the Sole Member of the Corporation dated as of October 27, 2020.

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate on the ____ day of _____, 202_.

Kathleen Bufano
Assistant Secretary

EXHIBIT A

**PREAMBLES AND RESOLUTIONS
OF
A SPECIAL MEETING OF THE BOARD OF DIRECTORS
OF
MORNINGSIDE HOUSE NURSING HOME COMPANY, INC.**

WHEREAS, the Board of Directors of Morningside House Nursing Home Company, Inc. (the "Corporation") sold the operations of its skilled nursing facility in July, 2014, and since that time the Corporation has been collecting revenue, paying liabilities and winding-up the business; and

WHEREAS, in connection with the winding-up of the business of the Corporation, the Board of Directors has determined to ratify and approve the previous transfer of the following assets to Aging in America, Inc., a New York not-for-profit corporation and the sole corporate member of the Corporation (the "Sole Member"), noting that the proceeds of the sale of the skilled nursing facility of the Corporation and certain restricted assets were previously paid over to the Sole Member pursuant to an Order of the Supreme Court of the State of New York: (i) funds held in the Corporation's depository bank account at Sterling National Bank in an approximate amount of \$8,400; and (ii) all of the Corporation's rights to a refund of all or a portion of a \$20,000 advance to Bernfeld, DeMatteo & Bernfeld, L.L.P. for out-of-pocket expenses related to the universal settlement litigation brought by the Corporation against the New York State Department of Health (together, the "Remaining Assets"); and

WHEREAS, the Corporation has determined to write off certain liabilities on the books of the Corporation of approximately \$117,600 which represent miscellaneous accounts payable to vendors which were paid after the sale of the Corporation's skilled nursing facility in 2014 and thereafter by the buyer of the operations of the Corporation (the "Remaining Liabilities"); and

WHEREAS, the Corporation has no assets to distribute and no liabilities at the time of the adoption of the plan of dissolution attached hereto as Exhibit A (the "Plan of Dissolution"); and

WHEREAS, the Board of Directors has determined that, having now taken all action necessary to wind-up its business, it is in the best interests of the Corporation to dissolve, to approve the Plan of Dissolution and to authorize the filing of a Certificate of Dissolution.

NOW, THEREFORE, BE IT

RESOLVED, that the transfer of the Remaining Assets of the Corporation to the Sole Member be, and it hereby is, ratified and approved; and

RESOLVED, the write-off of the Remaining Liabilities on the books of the Corporation be, and it hereby is, ratified and approved; and

RESOLVED, that the dissolution of the Corporation pursuant to the Plan of Dissolution be, and it hereby is, approved and that a recommendation of approval of such plan be made to the Sole Member; and be it further

RESOLVED, that counsel to the Corporation be authorized and directed to prepare a Certificate of Dissolution and such other documents for execution by the officers of the Corporation as may be necessary to effect the dissolution of the Corporation; and be it further

RESOLVED, that the appropriate officers of the Corporation be, and they hereby are authorized and directed, by and on behalf of the Corporation, to execute and deliver or cause to be executed and delivered, any and all documents and to take any and all action necessary or desirable to effectuate the purpose and intent of these resolutions.

Dated: October 27, 2020

EXHIBIT B

**PREAMBLES AND RESOLUTIONS
OF
A SPECIAL MEETING OF THE BOARD OF DIRECTORS
OF
AGING IN AMERICA, INC. AS SOLE MEMBER
OF
MORNINGSIDE HOUSE NURSING HOME COMPANY, INC.**

WHEREAS, Aging in America, Inc. is the sole corporate member (the “Sole Member”) of Morningside House Nursing Home Company, Inc. (the “Corporation”); and

WHEREAS, the Sole Member has previously adopted resolutions to approve the sale of the operations of the Corporation’s skilled nursing facility; and

WHEREAS, the Board of Directors of the Sole Member has determined it is in the best interests of the Corporation for the Sole Member to receive any assets of the Corporation remaining prior to dissolution and to assume any liabilities of the Corporation remaining after the winding-up of the Corporation’s business; and

WHEREAS, the Board of Directors of the Corporation and of the Sole Member have each determined that, the sale of the operations of the Corporation’s skilled nursing facility having been consummated, and after taking all action necessary to wind-up the business of the Corporation, it is in the best interests of the Corporation to dissolve and to approve the Plan of Dissolution attached hereto as Exhibit A.

NOW, THEREFORE, BE IT

RESOLVED, that the appropriate officers of the Sole Member, be, and they hereby are, authorized and directed to receive the assets of the Corporation and to assume any remaining liabilities of the Corporation in order to effect the dissolution of the Corporation: and

RESOLVED, that the Board of Directors of the Sole Member hereby approves the dissolution of the Corporation on the terms set forth in the Plan of Dissolution which was adopted and recommended by the Board of Directors of the Corporation; and be it further

RESOLVED, that the appropriate officers of the Sole Member be, and they hereby are authorized and directed, by and on behalf of the Sole Member, to execute and deliver or cause to be executed and delivered, any and all documents and to take any and all action necessary or desirable to effectuate the purpose and intent of these resolutions.

Dated: October 27, 2020

EXHIBIT C

PLAN OF DISSOLUTION

OF

MORNINGSIDE HOUSE NURSING HOME COMPANY, INC.

The Board of Directors of Morningside House Nursing Home Company, Inc. (the "Corporation") has considered the advisability of voluntarily dissolving the Corporation and has determined that the dissolution is in the best interest of the Corporation.

- The Corporation has no assets or liabilities.
- In addition to Attorney General approval, the following governmental approval of the Plan of Dissolution is required and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General:
 - Commissioner of Health
 - Public Health and Health Planning Council
- A Certificate of Dissolution shall be executed by an authorized Director or Officer of the Corporation and all required governmental approvals shall be attached thereto before filing it with the Department of State.

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
November 27, 2020.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

982129

CERTIFICATE OF INCORPORATION

OF

MORNINGSIDE HOUSE NURSING HOME COMPANY, INC.

Under Section 402 of the Not-For-Profit Corporation Law, and the Public Health Law

We, the undersigned for the purpose of forming a Nursing Home Corporation pursuant to the Not-For-Profit Corporation Law and the Public Health Law of the State of New York hereby certify:

I

The name of the proposed Corporation is MORNINGSIDE HOUSE NURSING HOME COMPANY, INC., (hereinafter referred to as the "Corporation").

II

The Corporation is not formed for pecuniary profit or financial gain.

All income and earnings of the Corporation shall be used exclusively for its corporate purposes.

The Corporation is a corporation as defined in subparagraph (A) (5) of Section 102 (definitions) of the Not-For-Profit Corporation Law.

III

The purpose for which the Corporation is formed, is to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of the Public Health Law.

This Corporation, pursuant to Section 201 of the Not-For-Profit Corporation Law, shall be "Type D".

IV

The territory in which the operations of the Corporation will be principally conducted is the State of New York.

V

The principal office of the Corporation is to be located in the City of New York, County of Bronx, and State of New York.

VI

The number of directors of the Corporation shall be not less than three nor more than fifteen. Directors shall be elected by the members of the Corporation. One additional director may be designated by the Commissioner of Health of the State of New York (hereinafter referred to as the "Commissioner"). In the absence of fraud or bad faith, said additional director appointed by the Commissioner shall not be personally liable for the debts, obligations or liabilities of the Corporation.

VII

The names and residences of the initial directors are:

<u>Name</u>	<u>Address</u>
John J. Barrett	325 East 79 Street New York, New York
Donald J. Bruckmann	1136 Fifth Avenue New York, New York
Tracy H. Griswold	1149 Fifth Avenue New York, New York
Allen S. Hubbard, Jr.	1120 Park Avenue New York, New York
Martha M. King	55 North Gumbo Road Westport, Connecticut
Malcolm P. Ripley	Millbrook, New York
Leonard T. Scully	45 Fifth Avenue New York, New York

VIII

The duration of the Corporation shall be two years.

from the date of the filing of this Certificate by the Secretary of State.

IX

The real property of the Corporation shall not be sold, transferred, encumbered or assigned except as permitted by the provisions of the Public Health Law and the Not-For-Profit Corporation Law.

The Corporation has been organized exclusively to serve a public purpose and it shall be and remain subject to the supervision and control of the Commissioner pursuant to the provisions of the Public Health Law.

XI

The Corporation is organized and shall be operated as a non-profit organization, and shall not have power to issue certificates of stock or to declare or pay dividends, and shall be operated exclusively for the purposes enumerated in Articles II and III hereof, thereby to lessen the burdens of government and promote social welfare. No part of the net income or net earnings of the Corporation shall inure to the benefit or profit of any private individual, firm or corporation. No officer or employee of the Corporation shall receive or be lawfully entitled to receive any pecuniary benefits from the operation thereof except as reasonable compensation for services. No member or director of the Corporation shall

receive any salary, other compensation or pecuniary profit of any kind for services as such member or director other than reimbursement of actual and necessary expenses incurred in the performance of his duties.

Upon the dissolution of the Corporation the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the Corporation, distribute all of the remaining assets of the Corporation exclusively for the purposes of the Corporation or for a similar public use or purpose, to such organization or organizations organized and operated exclusively for charitable purposes as shall at the time qualify as an exempt organization or organizations under Section 501 (c) (3) of the Internal Revenue Code of 1954 as the same shall then be in force, or the corresponding provisions of any future United States Internal Revenue Law, or to the United States of America, the State of New York, or a local government within the State of New York, as the Board of Directors shall determine, or in the absence of such determination by the Board of Directors such assets shall be distributed by the Supreme Court of the State of New York to such other qualified exempt organization or organizations as in the judgment of the Court will best accomplish the general purposes or a similar public use or

purpose of the Corporation. In no event shall the assets of this Corporation upon dissolution be distributed to a director, officer, employee or member of the Corporation.

The dissolution of this Corporation and any distribution of the assets of this Corporation incident thereto shall be subject to such laws, if any, then in force as may require the approval thereof or consent thereto by any court or judge thereof having jurisdiction or by any governmental department or agency or official thereof.

XII

All of the incorporators of this Corporation are natural persons over the age of 19 years.

XIII

The following consents and approvals are annexed hereto:

1. The consent of the Commissioner of Health to the filing of this Certificate of Incorporation with the Secretary of State.
2. The approval of a Justice of the Supreme Court, who serves in the district wherein the Corporation is to have an office, to the formation of this Corporation.
3. The approval of the Public Health Council.

The post office address to which the Secretary of State shall mail a copy of any notice required by law is: c/o Jackson, Nash, Brophy, Barringer & Brooks, 330 Madison Avenue, New York, New York.

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this Certificate of Incorporation, in quadruplicate, this 15th day of July, 1971.

John J. Barrett
John J. Barrett

Donald J. Bruckmann
Donald J. Bruckmann

Leonard T. Scully
Leonard T. Scully

STATE OF NEW YORK)
COUNTY OF NEW YORK)

On this 15th day of JULY, 1971, before me personally came JOHN J. BARRETT, DONALD J. BRUCKMANN, and LEONARD T. SCULLY, to me known and known to me to be the persons described in and who executed the foregoing Certificate of Incorporation of Morningside House Nursing Home Company, Inc., and they duly acknowledged to me that they executed the same.

Clara P. Hill

CLARA P. HILL
Notary Public
in and for the State of New York

CONSENT TO INCORPORATION

BY COMMISSIONER OF HEALTH

I, Hollis S. Ingraham, M.D., Commissioner of Health of the State of New York, do this 25th day of October, 1971, pursuant to Article 28-A of the Public Health Law hereby certify that I consent to the filing of the foregoing Certificate of Incorporation of Morningside House Nursing Home Company, Inc., with the Secretary of State of the State of New York.

HOLLIS S. INGRAHAM, M.D.
COMMISSIONER OF HEALTH

By: *[Signature]*
DEPUTY COMMISSIONER

The undersigned, a Justice of the Supreme Court of the State of New York, County of Bronx, wherein is located the principal office of Morningside House Nursing Home Company, Inc., hereby approves the within Certificate of Incorporation of Morningside House Nursing Home Company, Inc., and the filing hereof.

DATED: *Brooklyn*
10-24-71

[Signature]
JUSTICE OF THE SUPREME COURT
SAMUEL H. ROSENBERG

WALVER OF NOTICE OF APPLICATION

BY ATTORNEY GENERAL

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

Dated: April 6, 1972

LOUIS J. LETKOWITZ
Attorney General

By: 
Assistant Attorney General



STATE OF NEW YORK
DEPARTMENT OF HEALTH

PUBLIC HEALTH COUNCIL

November 1, 1971

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken, after due inquiry and investigation, at a meeting of the Public Health Council held on the 22nd day of January, 1971, I hereby certify that the Certificate of Incorporation of Morningside House Nursing Home Company, Inc. is APPROVED.

This approval is for the operation of a facility containing nursing home beds and health related facility beds.

Richard H. Mattox
RICHARD H. MATTOX
Executive Secretary

CERTIFICATE OF RESERVATION

2243

STATE OF NEW YORK

DEPARTMENT OF STATE

DO HEREBY CERTIFY TO THE

RESERVATION OF NAME
(Corporation Name)

OF
**MORNINGSIDE HOUSE NURSING HOME
COMPANY, INC.**

ON

(Date Made)

April 11, 1972

TO BE FILMED AS MICROFILM FRAME NUMBER

980621-1

THE ABOVE CORPORATE NAME HAS BEEN RESERVED FOR A PERIOD OF
SIXTY DAYS FROM THE ABOVE DATE FOR THE USE OF

Jackson Nash Brophy Barringer & Brooks

FOR

creation of a domestic corporation.

John P. Lorenzo
Secretary of State

NAME **Jackson, Nash, Brophy, Barringer & Brooks**
AND ADDRESS **330 Madison Ave.**
OF **New York, NY**
FILED

CASH M.O. CASH

\$ 10.00

\$10.00 CERTIFICATE'S

TOTAL \$10.00

REFUND OF \$

TO FOLLOW

CERTIFICATE OF RESERVATION MUST ACCOMPANY CERTIFICATE OF INCORPORATION
OR APPLICATION OF AUTHORITY WHEN PRESENTED FOR FILING.

11

982129 - 12

JUL 16 1971
DEPT. OF STATE
NEW YORK

CERTIFICATE OF INCORPORATION
OF
MORNINGSIDE HOUSE NURSING HOME COMPANY, INC.

Under Section 402 of the Not-
For-Profit Corporation Law and
the Public Health Law

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STATE OF NEW YORK
DEPARTMENT OF STATE
FILED APR 18 1972
TAXES None
FILING FEE \$ 50

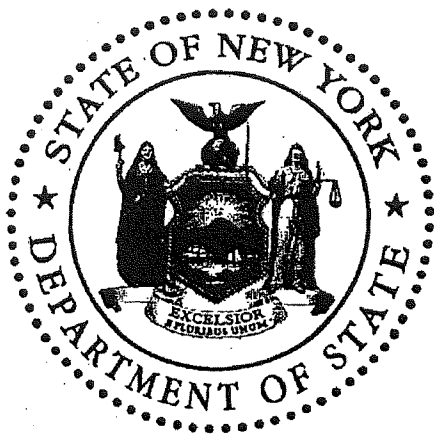
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JACKSON NASH, HENRY BARRINGER & BROOKS
230 MADISON AVENUE
NEW YORK, N.Y. 10017

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
November 27, 2020.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

A 26423

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF

MORNINGSIDE HOUSE NURSING HOME COMPANY, INC.

Under Section 803 of the
Not-For-Profit Corporation Law

We, the undersigned, hereby certify that:

1. The name of the Corporation is MORNINGSIDE HOUSE NURSING HOME COMPANY, INC. It was formed under that name and the name has not been changed.

2. The Certificate of Incorporation of said Corporation was filed by the Department of State on April 18, 1972. The Corporation was formed under the Not-For-Profit Corporation Law and the Public Health Law.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-For-Profit Corporation Law, and is a Type D corporation under Section 201 (Purposes).

4. The post office address to which the Secretary of State shall mail a copy of any notice required by law is: c/o Jackson, Nash, Brophy, Barringer & Brooks, 330 Madison Avenue, New York, New York.

5. The amendment of the Certificate of Incorporation of the Corporation effected by this Certificate of Amendment is to extend the duration of the Corporation to be perpetual. To accomplish the foregoing Amendment, Article VIII of the Certificate of Incorporation, relating to the duration of the Corporation, is hereby amended to read as follows:

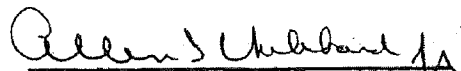
The duration of the Corporation shall be perpetual.

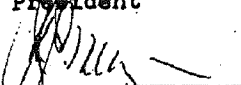
6. The manner in which the Amendment of the Certificate of Incorporation was authorized was by consent of a majority of all members of the Corporation, voting in person, at a special meeting of the members duly called for that purpose upon due notice to all members of the Corporation given in the manner required for a special meeting of the members of the Corporation; said meeting was held at the offices of Jackson, Nash, Brophy, Barringer & Brooks, 330 Madison Avenue, New York, New York, at 5:00 p.m. on June 22, 1972; a majority of all members was present; the Certificate of Incorporation of the Corporation does not require the consent of more than a majority of all the members to extend the corporate existence.

7. The following approvals and consents were endorsed on and annexed to the Certificate of Incorporation of the Corporation: New York State Commissioner of Health, New York State Public Health Council, New York State Attorney General and a Justice of the New York Supreme Court.

Prior to the delivery of this Certificate of Amendment to the Department of State for filing, all approvals or consents of the bodies or officers hereinabove set forth will be endorsed upon or annexed hereto.

IN WITNESS WHEREOF, we have executed this Certificate this 22nd day of June, 1972.


Allen S. Hubbard, Jr.,
President


John J. Barrett,
Secretary

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Allen S. Hubbard, Jr. and John J. Barrett, being severally, duly sworn, depose and say that they are the President and Secretary, respectively of MORNINGSIDE HOUSE NURSING HOME COMPANY, INC., and that they have read the foregoing Certificate of Amendment of Certificate of Incorporation of MORNINGSIDE HOUSE NURSING HOME COMPANY, INC., and know the contents thereof; that the same is true to their own knowledge, except as to those matters stated therein to be alleged on information and belief, and that as to those matters deponents believe them to be true.

Allen S. Hubbard, Jr.
Allen S. Hubbard, Jr.

John J. Barrett
John J. Barrett

Subscribed and sworn to before
me this 20 day of June, 1972.

Elaine R. Greenberg
Notary Public
ELAINE R. GREENBERG
Notary Public, State of New York
No. 24-8673285
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 1974

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Allen S. Hubbard, Jr. and John J. Barrett, being severally, duly sworn, depose and say:

1. That Allen S. Hubbard, Jr. is the President of MORNINGSIDE HOUSE NURSING HOME COMPANY, INC., mentioned in the foregoing Certificate and was such President at the time of the consent mentioned therein to extend the existence of the Corporation.

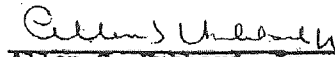
2. That John J. Barrett is the Secretary of MORNINGSIDE HOUSE NURSING HOME COMPANY, INC., mentioned in the foregoing Certificate and was such Secretary at the time of the consent mentioned therein to extend the existence of the Corporation.

3. That they were duly authorized to execute and file the foregoing Certificate of Amendment by action of a majority of the members of the Corporation at a special meeting.

4. Such consent was given by affirmative votes cast in person by a majority of all members of the Corporation at a special meeting of the members duly called for that purpose after due notice to all members of the Corporation given in the manner required for a special meeting of the members of the Corporation; said meeting was held at the offices of

Jackson, Nash, Brophy, Barringer & Brooks, 330 Madison Avenue,
New York, New York on June 22, 1972, at 5:00 p.m.; a majority
of all members was present.

5. That the Certificate of Incorporation of this
Corporation does not require a consent of more than a majority
of all the members to extend the corporate existence.


Allen S. Hubbard, Jr.


John J. Barrett

Subscribed and sworn to before
me this 22 day of June, 1972.


Notary Public

ELAINE R. GREENBERG
Notary Public, State of New York
No. 24-8673285
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 1974

CONSENT TO EXTEND THE EXISTENCE
OF
MORNINGSIDE HOUSE NURSING HOME COMPANY, INC.
BY COMMISSIONER OF HEALTH

I, HOLLIS S. INGRAHAM, M.D., Commissioner of Health of the State of New York, do this *29th* day of *September*, 1972, pursuant to Article 28-A of the Public Health Law and Section 804 of the Not-For-Profit Corporation Law hereby certify that I consent to the filing of the foregoing Certificate to extend the existence of MORNINGSIDE HOUSE NURSING HOME COMPANY, INC. with the Secretary of State of the State of New York.

HOLLIS S. INGRAHAM, M.D.
COMMISSIONER OF HEALTH

By: *Donald S. Dickson*
Deputy Commissioner

WAIVER OF NOTICE OF APPLICATION
BY ATTORNEY-GENERAL

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

Dated: *October 19*, 1972

LOUIS J. LEFKOWITZ
Attorney-General

By: *Robert J. Sack*
Assistant Attorney-General

CONSENT TO EXTEND THE EXISTENCE

OF

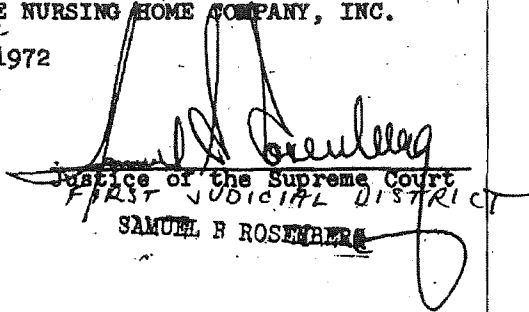
MORNINGSIDE HOUSE NURSING HOME COMPANY, INC.

BY A RESIDENT SUPREME COURT JUSTICE

I, SAMUEL R ROSENBERG, Justice of the

Supreme Court of the State of New York for the First Judicial District hereby approve the within Certificate to extend the existence of MORNINGSIDE HOUSE NURSING HOME COMPANY, INC.

Dated: *Bronx, N.Y. Nov 1st*, 1972


Justice of the Supreme Court
FIRST JUDICIAL DISTRICT
SAMUEL R ROSENBERG



STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY

PUBLIC HEALTH COUNCIL

September 21, 1972

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after due inquiry and investigation at a meeting of the Public Health Council held on the 28th day of July, 1972, I hereby certify that the Certificate of Amendment to the Certificate of Incorporation of MORNINGSIDE HOUSE NURSING HOME COMPANY, INC. extending its existence to perpetuity is APPROVED.

EUGENE CAHALAN
Executive Secretary

COUNCIL

NORMAN S. MOORE, M.D.
CHAIRMAN
GEORGE BAEHR, M.D.
BLONEVA P. BOND
DETLEV BRONK, Ph. D.
GORDON E. BROWN

MORTON P. HYMAN
CHARLES T. LANIGAN
GERALD B. MAHLEY, M.D.
GEORGE R. METCALF
W. KENNETH RYLAND, D.O.
JOHN F. ROACH, M.D.

HOWARD A. RUSK, M.D.
JOHN M. WALSH
WILLIAM H. WISELY, D. ENG.

HOLLIS S. INGRAHAM, M.D.
EX OFFICIO

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CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF

MORNINGSIDE HOUSE NURSING HOME COMPANY, INC.

Under Section 803 of the
Not-For-Profit Corporation Law

John P. ...

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STATE OF NEW YORK
DEPARTMENT OF STATE
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FILING FEE \$ 30
FILED NOV - 6 1972

John P. ...
Secretary of State

By *John P. ...*
03 Bront
Type D

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on November 27, 2020.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

4737240

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF

MORNINGSIDE HOUSE NURSING HOME COMPANY, INC.

Under Section 803 of the
Not-For-Profit Corporation Law

We, the undersigned, hereby certify that:

1. The name of the Corporation is MORNINGSIDE HOUSE NURSING HOME COMPANY, INC. It was formed under that name and the name has not been changed.
2. The Certificate of Incorporation of said Corporation was filed by the Department of State on April 18, 1972. The Corporation was formed under the Not-For-Profit Corporation Law and the Public Health Law.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-For-Profit Corporation Law, and is a Type D corporation under Section 201 (Purposes).
4. The post office address to which the Secretary of State shall mail a copy of any notice required by law is: c/o Jackson & Nash, 330 Madison Avenue, New York, New York 10017.
5. The amendments of the Certificate of Incorporation of the Corporation effected by this Certificate of Amendment are to change the number of Directors constituting the Board from "not less than three nor more than fifteen" to not less than three nor

more than twenty-five", and to modify the address to which the Secretary of State shall mail any notice required by law to reflect the correct name of Jackson & Nash. To accomplish the foregoing Amendments, Articles VI and XIV, respectively, of the Certificate of Incorporation are hereby amended to read as follows:

ARTICLE VI:

"The number of directors of the Corporation shall be not less than three nor more than twenty-five. Directors shall be elected by the members of the Corporation. One additional director may be designated by the Commissioner of Health of the State of New York (hereinafter referred to as the "Commissioner"). In the absence of fraud or bad faith said additional director appointed by the Commissioner shall not be personally liable for the debts, obligations or liabilities of the Corporation."

ARTICLE XIV:

"The post office address to which the Secretary of State shall mail a copy of any notice required by law is; c/o Jackson & Nash, 330 Madison Avenue, New York, New York 10017."

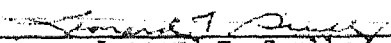
6. The manner in which the Amendment of the Certificate of Incorporation was authorized was by consent of a majority of all members of the Corporation, voting in person, at a special meeting of the members duly called for that purpose upon due notice to all members of the Corporation given in the manner required for a special meeting of the members of the Corporation; said meeting was held at the offices of the Corporation, 1000 Pelham Parkway, Bronx, New York, at 3 P.M. on March 19, 1980; a majority of all members was present; the Certificate of Incorporation of the Corp-

oration does not require the consent of more than a majority of all members to increase the number of directors or to change the address to whom the Secretary of State shall mail any notice required by law.

7. The following approvals and consents were endorsed on and annexed to the Certificate of Incorporation of the Corporation: New York State Commissioner of Health, New York State Public Health Council, New York State Attorney General and a Justice of the New York Supreme Court.

Prior to the delivery of this Certificate of Amendment to the Department of State for filing, all approvals or consents of the bodies or officers hereinabove set forth will be endorsed upon or annexed hereto.

IN WITNESS WHEREOF, we have executed this Certificate this 19th day of March, 1980.


Leonard T. Scully


Ross B. Hildebrand

STATE OF NEW YORK)
 : ss.:
COUNTY OF BRONX)

LEONARD T. SCULLY and ROSS B. HILDEBRAND, being severally, duly sworn, depose and say that they are the President and Secretary, respectively, of MORNINGSIDE HOUSE NURSING HOME COMPANY, INC., and that they have read the foregoing Certificate of Amendment of Certificate of Incorporation of MORNINGSIDE HOUSE NURSING HOME COMPANY, INC., and know the contents thereof; that the same is true to their own knowledge, except as to those matters stated therein to be alleged on information and belief, and that as to those matters deponents believe them to be true.

Leonard T. Scully
Leonard T. Scully

Ross B. Hildebrand
Ross B. Hildebrand

Subscribed and sworn to before
me this 19th day of March, 1980.

Michael D. White
Notary Public
MICHAEL D. D. WHITE
Notary Public, State of New York
No. 51-4630530
Qualified in New York County
Commission Expires March 30, 1981

CONSENT TO AMENDMENT OF CERTIFICATE OF INCORPORATION

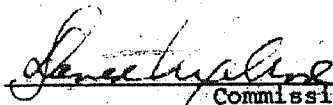
OF

MORNINGSIDE HOUSE NURSING HOME COMPANY, INC.

BY COMMISSIONER OF HEALTH

I, DAVID AXELROD, M.D., Commissioner of Health of the State of New York, do this ¹⁹⁸¹ 27th day of January 1980, pursuant to Article 28-A of the Public Health Law and Section 804 of the Not-For-Profit Corporation Law hereby certify that I consent to the filing with the Secretary of State of the State of New York of the foregoing Certificate of Amendment to the Certificate of Incorporation of MORNINGSIDE HOUSE NURSING HOME COMPANY, INC. to increase the number of directors to twenty-five and to modify the address to which the Secretary of State shall send any notice required by law.

DAVID AXELROD, M.D.
COMMISSIONER OF HEALTH



Commissioner

WAIVER OF NOTICE OF APPLICATION

BY ATTORNEY GENERAL

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

THE UNDERSIGNED HAS NO
OBJECTION TO THE GRANTING
OF JUDICIAL APPROVAL
HEREON AND WAIVES
STATUTORY NOTICE

DATED: 4/15/80, 1980.

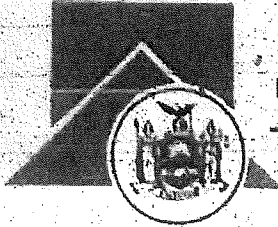
ROBERT ABRAMS
ATTORNEY GENERAL

By: Thomas Saunders
Assistant Attorney General

The undersigned, a Justice of the Supreme Court of the State of New York, County of Bronx, First Judicial District, wherein is located the principal office of Morningside House Nursing Home Company, Inc., hereby approves the within Certificate of Incorporation of Morningside House Nursing Home Company, Inc., and the filing hereof.

DATED: BRONX, NEW YORK
FEBRUARY 4, 1981

Joseph Di Feo
JUSTICE OF THE SUPREME COURT
Joseph Di Feo



STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY 12237

PUBLIC HEALTH COUNCIL

January 26, 1981

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after inquiry and investigation at a meeting of the Public Health Council held on the 23rd day of January, 1981, I hereby certify that the Certificate of Amendment of the Certificate of Incorporation of Morningside House Nursing Home Company, Inc. is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.


STEPHEN P. KRILL
Secretary

Sent to: Jackson and Nash
Attorneys at Law
330 Madison Avenue
New York, New York 10017

cc: Morningside House Nursing Home
Company, Inc.
1000 Pelham Parkway South
Bronx, New York 10461

COUNCIL

KENNETH G. JOHNSON, M.D.
CHAIRMAN
GORDON E. BROWN
ROBERT J. COLLINS, M.D.
THOMAS P. DOLLING
MSGR. CHARLES J. FANEY

JOSEPH M. FONTANETTA, M.D.
WILLIAM LEE FROST
NORTON P. NYMAN
JEANNE R. JONAS
MARY C. MC LAUGHLIN, M.D.
ROBERT M. SANDLER, M.D.

HOWARD A. RUSK, M.D.
KENNETH W. WOODWARD, M.D.

COMMISSIONER OF HEALTH
DAVID AXELROD, M.D.
EX OFFICIO

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CERTIFICATE OF AMENDMENT
 OF
 CERTIFICATE OF INCORPORATION
 OF
 MORNINGSIDE HOUSE NURSING HOME COMPANY, INC.

Under Section 803 of the
 Not-For-Profit Corporation Law

STATE OF NEW YORK
 DEPARTMENT OF STATE

FILED FEB 6 1981

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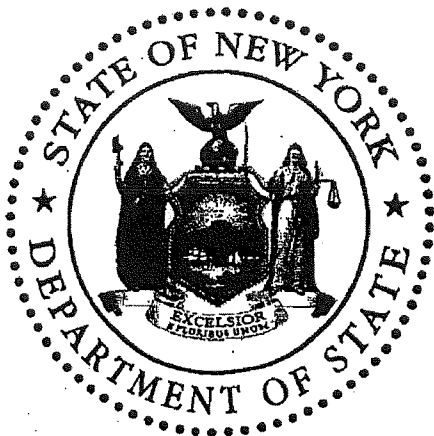
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 & Block's 330 Madison
 Ave NYC

JACKSON & NASH
 330 MADISON AVENUE
 NEW YORK, N.Y. 10017

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
November 27, 2020.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

DRAWDOWN ACCOUNT #52
Vanguard Corporate Services, Ltd.

F051102000 883

New York State
Department of State
Division of Corporations, State Records
and Uniform Commercial Code
41 State Street
Albany, NY 12231
www.das.state.ny.us

CERTIFICATE OF CHANGE
OF

Morningside House Nursing Home Company, Inc.
(Insert Name of Domestic Corporation)

Under Section 803-A of the Not-for Profit Corporation Law

FIRST: The name of the corporation is: Morningside House Nursing Home Company, Inc.

If the name of the corporation has been changed, the name under which it was formed is: N/A

SECOND: The certificate of incorporation was filed by the Department of State on: _____
April 18, 1972

THIRD: The change(s) effected hereby are: [Check appropriate box(es)]

- The county location, within this state, in which the office of the corporation is located, is changed to: _____
- The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is changed to read in its entirety as follows: c/o the President
1000 Pelham Parkway, Bronx, New York 10461

The corporation hereby: [Check one]

- Designates _____
as its registered agent upon whom process against the corporation may be served.
The street address of the registered agent is: _____

- Changes the designation of its registered agent to: _____
The street address of the registered agent is: _____

- Changes the address of its registered agent to: _____

- Revokes the authority of its registered agent.

F051102000883

FOURTH: The change was authorized by the board of directors.

X William T. Smith
(Signature)

William T. Smith, President/CEO
(Name and Title of Signer)

CERTIFICATE OF CHANGE
OF

Morningside House Nursing Home Company, Inc.
(Insert Name of Domestic Corporation)

Under Section 803-A of the Not-for-Profit Corporation Law

Filer's Name Marsena M. Farris, Esq.

Address Cadwalader, Wickersham & Taft LLP, One World Financial Center

City, State and Zip Code New York, New York 10281

NOTE: This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$20 filing fee.

For Office Use Only

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED NOV 02 2005
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Bronx

DRAWDOWN ACCOUNT #52
Vanguard Corporate Services, Ltd.
Customer Reference: 100276D

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STATE OF NEW YORK

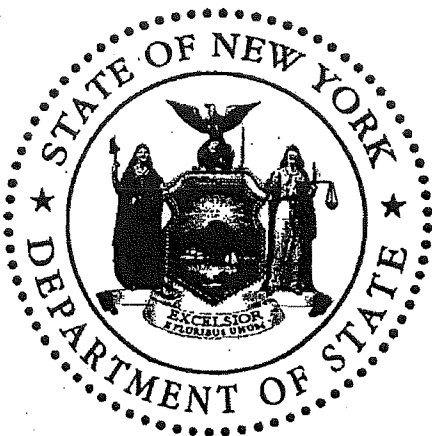
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
November 27, 2020.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State



DRAWDOWN ACCOUNT #52
Vanguard Corporate Services, Ltd.

141118000

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CERTIFICATE OF CHANGE

OF

MORNINGSIDE HOUSE NURSING HOME COMPANY, INC.

Under Section 803-A of the Not-For-Profit Corporation Law

The undersigned, being the President/Chief Executive Officer, of MORNINGSIDE HOUSE NURSING HOME COMPANY, INC., does hereby certify and set forth as follows:

FIRST: The name of the corporation is:

MORNINGSIDE HOUSE NURSING HOME COMPANY, INC.

SECOND: The Certificate of Incorporation was filed by the Department of State on April 18, 1972, under the Nor-For-Profit Corporation Law.

THIRD: The Certificate of Incorporation is hereby changed as follows:

The address to which the Secretary of State shall mail a copy of any process against the corporation served upon him/her, is hereby changed to: 1200 Waters Place, Suite 303/305, Bronx, New York 10461.

FOURTH: This change to the Certificate of Incorporation was authorized by the Board of Directors of the Corporation.

IN WITNESS WHEREOF, this Certificate of Change has been subscribed this 18th day of November, 2014, by the undersigned who affirms that the statements made herein are true under the penalties of perjury.

S/ William T. Smith, Ph.D.

William T. Smith, Ph.D.
President/Chief Executive Officer

412

FILED

2014 NOV 18 PM 12:46

CERTIFICATE OF CHANGE

OF

MORNINGSIDE HOUSE NURSING HOME COMPANY, INC.

Under Section 803-A of the Not-For-Profit Corporation Law

RECEIVED

2014 NOV 18 AM 9:04

FILER:

Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, New York 10281

lee

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED NOV 18 2014
TAXS _____
BY: pk

DRAWDOWN ACCOUNT #52

Vanguard Corporate Services, Ltd.
Customer Reference: 126245A

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Exhibit A (cont.) Amended and Restated By-laws

MORNINGSIDE HOUSE NURSING HOME COMPANY, INC.
AMENDED AND RESTATED BY-LAWS

Effective December 10, 1999
Amended and Restated June 18, 2019

MORNINGSIDE HOUSE NURSING HOME COMPANY, INC.

BY -LAWS

ARTICLE I

Members

1. Aging in America, Inc. shall be the sole Member of the Corporation. All actions of the Member shall be taken only after they have been authorized by the vote of a majority of the entire Board of Directors of the Member, but in no event less than three such Directors, taken at a duly called meeting of such Board.

2. To the full extent permitted by law, the Member shall have the right and responsibility to undertake the following activities on behalf of the Corporation, and the Board of Directors and officers of the Corporation shall not interfere with these functions: (i) the development and establishment of a common mission statement, and the amendment thereof from time to time, (ii) retainment of the Corporation's endowment funds; (iii) raising of funds through charitable contributions and events, (iv) developing strategic plans and policies, provided that the Corporation shall retain the sole power to approve its budget, (v) engagement of non-employee attorneys, accountants and other professional consultants (other than medical or nursing servicing services), (vi) decisions pertaining to the dissolution of the Corporation, (vii) decisions pertaining to the sale of the assets of the Corporation provided such power does not include the authorization to file a Certificate of Need Application and (viii) decision with respect to services or contracts pertaining to the Corporation. Notwithstanding the above, the decisions related to (a) the use of the Corporation's endowment funds, (b) the approval and implementation of budgets and (c) the filing of Certificate of Need Applications remain within the sole discretion of the Corporation.

3. The Annual Meeting of the Member ("Annual Meeting") shall be held in the month of June, on such day, at such time and in such place, within or without the State of New York, as the Board of Directors or the Chair of the Board shall select and as shall be designated in the Notice of Meeting, for the election of Directors and the transaction of such other business as may come before the meeting.

4. Special meetings of the Member may be called at any time by the Board of Directors, the Chair of the Board or upon the written request of the Member who shall file such request with the Secretary of the Corporation. All special meetings shall be held at such time and place, within or without the State of New York, as shall be designated in the Notice of such meeting.

5. A written Notice of every meeting of the Member stating the place, date, hour and the purpose or purposes of the meeting, and, in the case of a special meeting, indicating that the Notice is being issued by or at the direction of the person or persons calling the meeting, shall be given, personally or by mail, by the Secretary not less than 10 nor more than 50 days prior to the date of such meeting, to the Member.

6. At any meeting of the Member, the Member shall constitute a quorum for all purposes, including election of Directors, except as otherwise provided by law, the Certificate of Incorporation or these By-Laws.

7. The Member is entitled to the sole vote at a meeting on all matters to come before the meeting by its duly authorized representative or by proxy appointed in writing subscribed by the Member's duly authorized attorney and delivered to the Secretary of the meeting.

ARTICLE II

Directors

1. The affairs of the Corporation shall be managed and controlled by a Board of Directors which shall meet no less frequently than annually. The Corporation shall be operated in accordance with all applicable provisions of the State Hospital Code, any facilities constructed by the Corporation shall be constructed and operated in accordance with all applicable provisions of such Code. The Board shall make every effort to avoid any contract being entered into which may involve a conflict of interest between the Corporation and its Member, Directors, officers or other affiliated persons as set forth in article X hereof.

2. The board shall consist of not less than five (5) nor more than twenty-five (25) Directors, divided into three classes, Class A consisting of not less than two Directors elected for a term ended in 2000 and thereafter for a term of three years, Class B consisting of not less than two Directors elected for a term ended in 2001 and thereafter for a term of three years, and Class C consisting of not less than one Director elected for a term of three years. One additional Director may be designated by the Commissioner of Health of the State of New York; in the absence of fraud or bad faith, any Director designated by such Commissioner shall not be personally liable for the debts, obligations or liabilities of the Corporations.

3. Except as otherwise provided herein, Directors in the number required to be elected for an ensuing year shall be elected by the Member of the Corporation at the Annual Meeting to serve until the next Annual Meeting and thereafter until their respective successors shall be elected and qualify.

4. Each directorship shall continue until terminated by death, resignation, removal or the expiration of a term of directorship. Any Director may resign at any time by delivery of notice of such resignation to the Chair or Secretary of the Corporation; notice of resignation shall be effective upon such delivery. Any Director may be removed at any time, with or without cause, by the Member held at a regular or special Member meeting.

5. In case of a vacancy in the Board of Directors for any reason, the Member shall elect a new Director to fill the vacancy at a special Member meeting to be called and held as soon as practicable. The Director so elected shall serve out the term of the Director he or she replaces.

6. Regular meetings of the Board of Directors shall be held at such places, within or without the State of New York, on such day and at such times as the Board of Directors or the Chair of the Board shall select and as shall be designated in the Notice of such meeting. The Secretary shall give to each, Director written notice of each such meeting not more than forty nor less than ten days prior to the meeting. Officers and committees shall be elected and chosen at the Annual Meeting for the succeeding year and other organizational business shall be transacted.

7. Special meetings of the Board of Directors may be held within or without the State of New York and may be called at any time by the Chair of the Board or upon the written request of any two Directors who file such requests with the Secretary. The Secretary shall give to each Director at least three days' written notice of any such special meeting, which notice shall state the date, time and place of the meeting.

8. At any meeting of the Board of Directors (i) a quorum shall consist of a majority of all Directors, provided that in the absence of a quorum, a majority of those Directors present at the meeting may adjourn the meeting from time to time until a quorum is present so long as at least two days notice of the adjourned meeting is given to all Directors, and that any business may be transacted at any adjourned meeting which might have been transacted at the meeting as originally called; (ii) each Director shall be entitled to one vote on all matters that are put to a vote, and (iii) the act of a majority of those Directors present at a meeting at which a quorum is present, but in no event less than three such Directors, shall constitute the act of the Board unless otherwise provided by law, the certificate of incorporation or these by-laws.

9. The Member may from time to time elect such individuals as it shall deem appropriate Honorary Directors of the Corporation. Honorary Directors shall not be Members of the Corporation, shall have no voting rights of any kind, and no right, title and interest in and to the Corporation or its property. They may attend meetings of the Directors, but they shall not be counted for the purposes of determining a quorum thereat.

10. Any action required or permitted to be taken by the Board of Directors or any committee may be taken without a meeting, if all members of the Board or committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the Board or committee shall be filed with the minutes of the proceedings of the Board or committee.

11. Any one or more members of the Board of Directors or any committee may participate in a meeting of such Board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

12. Every Director shall attend at least 75% of all meetings of the Corporation held during a fiscal year, unless in the case of a particular meeting, he is excused therefrom by the Chair of the Board of Directors for good cause, including, but not limited to illness. If a Director fails to meet this minimum, his or her office will become vacant at the discretion of the Board of Directors. Imposition of this rule may be waived due to extenuating circumstances.

ARTICLE III

Officers

1. The Member shall elect the President of the Corporation, who shall serve at the pleasure of the Corporation and be removed by the Corporation at any time with or without cause. The Member shall also fix the compensation and other terms of the President's employment. The Directors shall not, under any circumstances, have the right to remove the President or change his compensation or any other terms of his or her employment theretofore fixed by the Member. The President shall (i) be the Chief Executive Officer of the Corporation, and shall be responsible for and have the authority to direct the day-to-day operations of the Corporation subject to direction of the Board of Directors, which shall establish all policies for operation of the Corporation, (ii) meet all licensing and other requirements imposed on those who hold his or her position, and (iii) need not be a Director but shall be given notice of and have the right and be expected to attend all meetings of the Board of Directors and of each committee of the Board.

2. The Chair of the Board shall preside at all meetings of the Board of Directors, including the Annual and any special meeting of Directors and shall perform such other duties as are necessarily incident to the office of the Chair of the Board.

3. The Vice Chair shall, in the absence or disability of the Chair of the Board, perform the duties and exercise all the powers of the Chair of the Board, and, in the absence of both the Chair of the Board and Vice Chair, the Treasurer shall perform the duties and exercise all the powers of the Chair of the Board.

4. The Treasurer shall have general care and custody of all funds and securities of the Corporation subject to the directions of the Board of Directors. He shall maintain full and complete records of all financial transactions and shall submit financial reports to each meeting of the Board of Directors and Member in such form as the Directors may prescribe. At the Annual Meeting he shall submit a detailed report of the transactions of the Corporation for the preceding fiscal year. The Board of Directors, in its discretion, may require that the Treasurer, and such other persons as may be designated to handle funds of the Corporation, be bonded. The books, accounts and investments of the Corporation shall be audited and examined by certified public accountants to be appointed annually by the Member at the Annual Meeting or whenever the Member may direct. A copy of their audit and report together with the annual report of the Treasurer shall be presented at each Annual Meeting of the Member and the Board of Directors.

5. The Assistant Treasurer shall, in the absence of the Treasurer, perform the duties of that officer.

6. The Secretary shall keep a record of all the meetings and proceedings of the Board of Directors, and shall notify the Directors of all their meetings. The Secretary shall notify the Directors of the Annual Meeting and any special Directors meeting, and shall perform all the duties incident to such individual's office. The Secretary shall be the custodian of the records and seal of the Corporation, and attest all acts of the Corporation when such attestation is required or deemed advisable.

7. The Assistant Secretary shall, in the absence of the Secretary, perform the duties of that officer.

8. The President shall appoint all operating officers of the Corporation, who shall report to him or her, serve at his or her pleasure, and be expected to carry out his or her orders, subject to any policy directions of the Board of Directors. These officers shall include, but not be limited to, a Chief Financial Officer of the Corporation, a New York licensed nursing home Administrator, and a Director of Nursing, subject to the approval of the Board of Directors where required by law or regulation. The Chief Financial Officer, as well as such officers as the President may deem necessary shall (i) meet all licensing requirements imposed on those persons who hold their respective positions, and (ii) need not be Directors but shall be given notice of and have the right and be expected to attend all meetings of the Board of Directors and of each committee of the Board. The President shall fix the compensation and other terms of employment of all operating officers, subject to the direction of the Board of Directors, and shall have the right to remove them at any time, with or without cause.

9. Except as otherwise provided in these By-Laws, no Member, Director, officer or employee of the Corporation shall receive any money from the Corporation nor any pecuniary profit from the operations thereof, except reasonable compensation for services actually rendered to it, and reimbursement for expenses incurred in the performance of such services.

10. Subject always to the specific directions of the Board of Directors, the Chair of the Board, Vice Chair, President, Chief Financial Officer, Treasurer and such other officers as the President may from time to time designate, severally, shall have power to give receipts for monies due and payable to the Corporation from any source, and to execute and deliver, and to affix the seal of the Corporation (when such affixing is deemed necessary or advisable) to, mortgages, contracts, reports, certificates, leases for property rented by or to the Corporation, certificates acknowledging satisfactions of judgment and mortgages, assignments of mortgages, extensions of mortgages, transfers of and powers of attorney to transfer, and proxies to vote upon, stocks, bonds and other securities standing in the name of or owned by, the Corporation, and any and all other written contracts, agreements or instruments to which the Corporation shall be a party.

11. Officers other than the President and those operating officers to be appointed by the President shall be elected by the Directors at the Annual Meeting and shall serve, at the pleasure of the Board, until the next Annual Meeting, or until their successors are elected and qualify. The officers elected by the Directors shall include the Chair of the Board, the Vice Chair, the Treasurer, the Assistant Treasurer, the Secretary and the Assistant Secretary. In case any such officer's position becomes vacant by reason of death, resignation or any other cause, an officer to fill such vacancy shall be elected as soon as practicable at a regular or special meeting of the Board of Directors. Every officer so elected shall, unless sooner displaced, serve until the next regular election of officers at the Annual Meeting.

12. In the case that any position of officer appointed by the President becomes vacant by reason of death, resignation or any other cause, an officer to fill such vacancy shall be appointed by the President as soon as practicable and shall serve at his or her pleasure.

ARTICLE IV

Committees

1. The Board of Directors may appoint an Executive Committee, which shall consist of not less than three Directors, including the Chair of the Board of the Corporation who shall be the Chair of the Committee. Vacancies occurring in the Executive Committee from any cause shall be filled by the Board of Directors at any meeting thereof by a vote of the majority of the entire Board. The Committee shall have the power to establish its own rules of procedure and to determine the time and place of its meetings. A majority of the members of the Committee shall constitute a quorum for the transaction of business and in every case an affirmative vote of a majority of the members present shall be necessary for the taking of any action. The Committee shall keep regular minutes of its proceedings and shall report the same to the Board. During the intervals between the meetings of the Board of Directors, the Executive Committee, except as limited by law, the Certificate of Incorporation, these By-Laws or the direction of the Board of Directors, shall possess and may exercise all the authority and powers of the Board in the management and direction of the affairs of the Corporation except that the Committee shall not have authority as to the following matters:

- (i) The submission to the Member of any action requiring the Member's approval under the Laws of New York;
- (ii) The filling of vacancies in the Board of Directors or in any Committee;
- (iii) The fixing of compensation of the Directors for serving on the Board or on any Committee;
- (iv) The amendment or repeal of the By-Laws or the adoption of new By-Laws;
or
- (v) The amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable.

2. The Board of Directors may from time to time appoint such other standing or special committees as may be necessary to carry out the functions of the Corporation. These Committees shall have such duties and powers as are granted to them by the Board, but in no case shall have powers which are not authorized for standing committees under Section 712 of the New York State Not-for-Profit Corporation Law.

3. The Board of Directors or the Chair of the Board, subject to approval by the Board, may appoint committees of the corporation. These committees shall have such duties and powers as are granted to them by the Board, but in no case shall have powers which are not authorized for standing committees under Section 712 of the New York Not-for-Profit Corporation Law.

ARTICLE V

Medical Staff

1. The Medical Staff of the Corporation shall be appointed annually by the Board of Directors at the Annual Meeting; in the interval between annual appointments, the Board may appoint additional persons to the Medical Staff. The By-Laws of the Medical Staff (which shall include provisions for and minimum licensing or other requirements of the Medical Staff and temporary appointments to the Medical Staff), and any amendments thereto, shall be submitted to the Board of Directors for its approval.

2. There shall be a Medical Staff Liaison Committee which shall meet periodically but not less than once a year to discuss and review medical services. This Committee shall be composed of the President, Administrator, the Chief Financial Officer, Vice President Medical Services, the Medical Director and not less than two nor more than four Directors; such Directors shall be appointed annually by the Chair of the Board. Such Directors shall attend meetings of the Medical Staff as the representatives of the Board of Directors and shall present periodic reports to the Board of Directors on the medical services being rendered by the Medical Staff.

ARTICLE VI

Funds and Securities

1. The monies of the Corporation shall be deposited in the name of the Corporation in such banks or trust companies as the Board of Directors may designate, and shall be drawn upon only upon authorization by, or upon checks signed by, such officer or officers, or such other person or persons as the Board may from time to time designate.

2. The securities owned by the Corporation shall be held in such custody as the Board of Directors may designate.

ARTICLE VII

Fiscal Year

The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors.

ARTICLE VIII

Seal

The seal of the Corporation shall be circular in form, and shall contain the name of the Corporation, the State and year of its incorporation and the words "Corporate Seal."

ARTICLE IX

Pluralism and Diversity

The Corporation will strive to ensure that its Member(s), Directors, officers and staff have a shared belief in its mission and essential values, and sufficient commitment to give the time and resources needed. However, also mindful of an overall mission to improve our society, the Corporation affirms its commitment to reflecting our society's diversity in its Member(s), Directors, officers, staff and programs.

ARTICLE X

Conflict of Interest

1. A conflict of interest or potential conflict of interest may exist when the interests or concerns of any Member, Director, officer or staff member of the Corporation or member of said person's immediate family, or any party, group or organization to which said person has allegiance, may be seen as competing with the interests or concerns of the Corporation.

2. Any actual or potential conflict of interest shall be disclosed in writing to the Board of Directors by the person concerned. When any such conflict of interest is relevant to a matter requiring action by the Board of Directors, the interested person shall call it to the attention of the Board of Directors [or its committee] and such person shall not vote on the matter.

3. The person having such an actual or potential conflict shall retire from the room in which the Board [or its committee] is meeting and shall not participate in the final deliberation or decision regarding the matter under consideration. However, that person shall provide the Board or committee with any and all relevant information.

4. The minutes of the meeting of the Board or committee shall reflect that the conflict of interest was disclosed and that the interested person was not present during the final discussion or vote and did not vote. When there is a doubt as to whether a conflict of interest exists, the matter shall be resolved by a vote of the Board of Directors [or its committee] excluding the person concerning whose situation the doubt has arisen.

5. In addition to the requirements of Paragraph 2 of this Article IX, a conflict of interest disclosure statement in a form approved by the Board of Directors shall be furnished annually to each Member, Director, officer and others designated by the President who is presently serving this organization, or who may hereafter become associated with it. The completed and

signed disclosure statement shall be submitted to the Secretary of the Board of Directors within thirty (30) days of receipt thereof. The policy shall be reviewed annually for the information and guidance of each Member, Director, officer, and certain other individuals; and any new Member, Director, officer or other person as may be designated by the President shall be advised of the policy and furnished a disclosure statement for completion upon undertaking the duties of such office.

ARTICLE XI

Allocation of Excess Surplus

One of the missions of the Corporation shall be to allot a certain portion of its resources (hereinafter referred to as "excess surplus") to Aging in America, Inc. or its successor ("AIA") to be used by AIA for the benefit of AIA and members of the constituent group in a fair and equitable manner. In order to accomplish this mission, the Corporation shall, by its Board of Directors at its Board Meeting next following the finalization and approval of the Corporation's annual audited financial statements, determine to distribute to AIA any part of the amount of its "excess surplus." In making such determination, the Board of Directors shall confirm that (i) AIA continues to be exempt from tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (ii) AIA's activities further the mission of the Corporation and (iii) AIA's use of the "excess surplus" contributed by the Corporation has furthered the Corporation's mission.

For purposes of this Article, the term "constituent group" shall include all tax exempt organizations of which AIA is a "Member" (as such term is defined in the New York Not-For-Profit Corporation Law), partner, beneficiary, shareholder or joint venturer.

"Excess surplus" is defined for purposes of this Article as the excess of the Corporation's (i) operating and non-operating revenues, support and gains for its fiscal year reduced by its (ii) operating and non-operating expenses during such period, as determined by the organization's independent auditors in accordance with generally accepted accounting principles, and further adjusted as follows:

- a. Increased by:
 - (i) proceeds of loans not designated for a specified purpose,
 - (ii) amounts received for reimbursement of "prior years expenses" and "working capital loans," and
 - (iii) amortization
- b. Reduced by:
 - (i) repayment of principal on mortgage bonds or other loans,
 - (ii) deposits and/or prepayments, if any, treated as revenue, and

All decisions of the Board of Directors of AIA shall be final with regard to the use of such "excess surplus" for the benefit of AIA and members of the constituent group.

ARTICLE XII

Indemnification

Each Member, Director, officer and employee of the Corporation, whether or not then in office or employ, and each person whose testator or intestate was such a Director, officer or employee, shall be indemnified by the Corporation in accordance with and to the full extent permitted by the New York Not-for-Profit Corporation Law.

ARTICLE XIII

Miscellaneous Provisions

1. Unless otherwise in these By-Laws provided, any notice required to be given to any Director or other person under these By-Laws may be given orally, in person or by telephone, by fax, by e-mail or by mail. If notice is sent by fax or e-mail, notice is given when directed to the individual's fax number or e-mail address provided by the individual to the Corporation; provided, that notice shall not be deemed delivered if: (a) the Corporation is unable to deliver two (2) consecutive notices to the individual by e-mail or fax; or (b) the Corporation otherwise becomes aware that notice cannot be delivered to the individual by e-mail or fax.

ARTICLE XIV

Amendments

These by-laws may be amended or repealed and new by-laws adopted only by vote of the Members of the Member at a meeting duly called and held, the notice for which shall specifically set forth in detail the amendments to the by-laws to be amended, the by-laws to be repealed, and the new by-laws to be adopted.

MORNINGSIDE HOUSE NURSING
HOME COMPANY, INC.

Dated: June 18, 2019

EX PARTE AND URGENT MOTION PART

7/16

At the Supreme Court of the State of New York, held in and for the County of Bronx, at the Supreme Court House, in the Borough of Bronx, City of New York, on the 10 day of July, 2014

PRESENT: **FERNANDO TAPIA**
HON. _____
JUSTICE

-----x
In the Matter of the Petition of :
Morningside House Nursing Home Company, Inc. :
For Leave to Sell All or Substantially All Assets Pursuant :
to Section 511 of the Not-for-Profit Corporation Law :
-----x

ORDER

Index No. 260567/2014

On reading and filing the Verified Petition of Morningside House Nursing Home Company, Inc., a Type D not-for-profit corporation duly organized and existing under the Not-for-Profit Corporation Law of the State of New York by the filing and recording of its Certificate of Incorporation in the Office of the Secretary of State of New York on November 6, 1972, having its principal offices at 1000 Pelham Parkway South, Bronx, New York 10461, being duly verified on the 6th day of June, 2014 by William T. Smith, Ph.D., the President and Chief Executive Officer, praying for leave of the Court to sell to Morningside Acquisition I, LLC, a New York limited liability company (the "Asset Buyer") all of the Petitioner's rights, title and interest in certain assets owned, used or held primarily in the conduct of the operation of the licensed 314 bed skilled nursing and residential health care facility under the name "Morningside House Nursing Home" at 1000 Pelham Parkway South in Bronx, New York 10461 (the "Petitioner Business"), including (i) certain fixed equipment, (ii) certain non-fixed equipment,

(iii) certain contracts, (iv) all resident records and other records of those residents who are being treated in connection with the Petitioner Business at the time of the Closing, to the extent legally transferable, (v) all policy and procedure manuals relating to the Petitioner Business, (vi) the Medicare and Medicaid provider numbers and Medicare and Medicaid provider agreements for the Petitioner Business, (vii) permits relating solely to the Petitioner Business, to the extent transferable, (viii) records relating to the Petitioner Business, including all tax and accounting records, (ix) books of account, (x) goodwill, (xi) all accounts receivable and any other amounts due from third parties to Petitioner, and (xii) all other assets owned by the Petitioner and used directly in the provision of care to the patients of the Petitioner Business (the "Petitioner Business Assets") for the sum of \$2,000,000, and to sell to Morningside Acquisition II, LLC (the "Real Estate Buyer", and together with the Asset Buyer, the "Buyers") (i) the parcel of land located at 1000 Pelham Parkway South in Bronx, New York 10461, Block 4329, Lot 1 and the parcel of land located at 1050 Pelham Parkway South in Bronx, New York 10461, Block 4330, Lot 1 (together, the "Land"); (ii) all buildings and improvements situated on the Land (collectively, the "Building"); (iii) all right, title and interest of the Petitioner, if any, in and to the land lying in the bed of any street or highway in front of or adjoining the Land to the center line thereof and to any unpaid award for any taking by condemnation or any damage to the Land by reason of a change of grade of any street or highway; (iv) all right, title and interest of the Petitioner, if any, in and to any appurtenances (including, without limitation air rights and development rights, or easements of any kind whatsoever relating to the Land and Building); and (v) all right, title and interest of the Petitioner, if any, in and to the fixtures attached or appurtenant to the Building and necessary for the proper operation of the Building, ((i) through (v) are collectively, the "Premises"), for the sum of \$34,500,000, such aggregate amount of \$36,500,000 also representing consideration for the sale by Morningside at Home Inc., an

affiliate of Petitioner, ("MAH"), to the Asset Buyer of the assets used by MAH in the operation of its licensed home care services agency and licensed assisted living program (the "MAH Assets"); and it appearing to the satisfaction of the Court that the interests of the Petitioner will be promoted by such disposition and that charitable objects generally will be conserved with such disposition within the intent of Section 511 of the Not-for-Profit Corporation Law of the State of New York, and on motion of Cadwalader, Wickersham & Taft LLP, attorneys for the Petitioner, it is

ORDERED, that Petitioner be and it is hereby granted leave and authority to sell to the Buyers the Petitioner Business Assets and Premises on the terms and conditions for the proposed conveyance described in the Verified Petition and that the consideration for such sale be (i) \$36,500,000 comprised of (a) \$2,000,000 to be received from the Asset Buyer for the Petitioner Business Assets, and (b) \$34,500,000 for the Premises to be received from the Real Estate Buyer, and (ii) the assumption by the Asset Buyer of the Petitioner's payables as of the closing date, with the understanding that such payment also represents consideration for the sale of the MAH Assets which shall take place at a future closing following New York State Department Health approval of such transfer, and it is further

ORDERED, that the net proceeds of the sale, after the payment of all remaining liabilities of Morningside House Nursing Home Company, Inc. be paid to Aging in America, Inc. ("AIA"), the sole member of Petitioner, to further its charitable purposes as set forth in its Certificate of Incorporation and amendments thereto, including, among other things, provide leadership in the field of gerontology, operate a home care services agency, a shelter for adults, and adult care facilities, and perform fundraising for other not-for-profit health care entities in the AIA health care system and unrelated organizations, and it is further

ORDERED, that the permanently restricted assets of Petitioner of \$41,000 be transferred to AIA, and it is further

ORDERED, that a copy of this signed Order shall be served on the Attorney General, and the Attorney General shall receive written notice that the transaction has been completed, abandoned or is still pending 90 days after the date of this Order.

ENTER



J.S.C.

FERNANDO TAPIA

THE ATTORNEY GENERAL HEREBY APPEARS HEREIN,
HAS NO OBJECTION TO THE GRANTING OF
JUDICIAL APPROVAL HEREON, ACKNOWLEDGES
RECEIPT OF STATUTORY NOTICE, AND DEMANDS
SERVICE OF ALL PAPERS SUBMITTED HEREIN
INCLUDING ALL ORDERS, JUDGMENTS AND
ENDORSEMENTS OF THE COURT. SAID NO OBJECTION
IS CONDITIONED ON SUBMISSION OF THE MATTER
TO THE COURT WITHIN 30 DAYS HEREAFTER.


ASSISTANT ATTORNEY GENERAL DATE

Michele L. Abeles 6/25/14

STATE OF NEW YORK, COUNTY OF BRONX,
SS: LUIS M. DIAZ, COUNTY CLERK AND
CLERK OF THE SUPREME COURT, BRONX

2014 JUL 16 P 3: 21


THAT I HAVE COMPARED THIS COPY
WITH THE ORIGINAL FILED IN MY OFFICE ON

JUL 16 2014

AMOUNT OF FEE PAID BY CREDITOR

TRANSCRIPT THE RETURNED OF THE
WHOLE OF SUCH OF WHICH BY WITNESS
WHEREOF, I HAVE COMPARED MY
HAND AND SIGNATURE TO THE ORIGINAL

018473


COUNTY CLERK OF THE
SUPREME COURT, BRONX



CERTIFICATE OF DISSOLUTION OF

Morningside House Nursing Home Company, Inc.

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is:

Morningside House Nursing Home Company, Inc.

If the name of the corporation has been changed, the name under which it was formed is:

SECOND: The certificate of incorporation was filed with the Department of State on:

April 18, 1972

THIRD: The name and address of each officer and director of the corporation is:

Richard H. Altieri, Director, 62 Forest Lane, Jay, NY 12941; Neal Baumann, Director, 925 Westchester Ave., Suite LL01, White Plains, NY 10604; Douglas H. Hoffman, Vice Chair, Treasurer and Director, 210 East 68th St., Apt. 3M, New York, NY 10065; Carlton L. Mitchell, Director, 10 Ramapo Rd., Ossining, NY 10562; Dr. Lynn M. Tepper, Secretary and Director, 50 Burnside Drive, Hastings-on-Hudson, NY 10706; Katharine M. Weiss, Chair and Director, 320 East 42nd St., Apt. 3106, New York, NY 10017

FOURTH: The corporation is a: *(check the appropriate box)*

charitable corporation non-charitable corporation.

FIFTH: At the time of authorization of the corporation's Plan of Dissolution and Distribution of Assets as provided in Not-for-Profit Corporation Law §1002, the corporation holds:

(Check the appropriate statement)

assets which are legally required to be used for a particular purpose.

no assets which are legally required to be used for a particular purpose.

SIXTH: The corporation elects to dissolve.

SEVENTH: *(Check the appropriate statement)* The dissolution was authorized by:

- a vote of a majority of the board of directors. The corporation has no members.
- the majority vote of the board of directors, followed by two-thirds vote of the members.

EIGHTH: *(Check the appropriate statement)*

- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by the Attorney General. A copy of the approval of the Attorney General is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by a Justice of the Supreme Court. A copy of the Court's Order is attached.
- The corporation is a charitable corporation with no assets. Prior to the delivery of the Certificate of Dissolution to the Department of State for filing a copy of the Plan of Dissolution which contains the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law, has been duly filed with the Attorney General.
- The corporation is a non-charitable corporation with no assets. The corporation's Plan of Dissolution is not required to contain the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law and is not required to be filed with Attorney General.

X _____
(Signature)

Katharine M. Weiss

(Print or Type Name of Signer)

Chair

(Capacity of Signer)

CERTIFICATE OF DISSOLUTION
OF

Morningside House Nursing Home Company, Inc.

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

Filer's Name: _____

Company, if applicable: _____

Address: _____

City, State and Zip Code: _____

NOTES:

1. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at www.dos.ny.gov.
2. This Certificate of Dissolution must be signed by an officer, director or duly authorized person.
3. Attach the consent of the New York State Department of Taxation and Finance.
4. Attach the consent of the New York City Department of Finance, if required.
5. Attach a copy of the approval of the Attorney General or Order of the Supreme Court, if required.
6. The Certificate of Dissolution must include the approval of the Attorney General if the corporation is a charitable corporation or if the corporation is a non-charitable corporation and holds assets at the time of dissolution legally required to be used for a particular purpose.
7. Attach any other consent or approval required by law.
8. The fee for filing this certificate is **\$30**, made payable to the Department of State.

For DOS Use Only



MEMORANDUM

To: Public Health and Health Planning Council

From: Michael G. Bass, Deputy General Counsel *MB*

Date: March 1, 2021

Subject: Proposed Dissolution of Fragile X Association of New York, Inc.

Fragile X Association of New York, Inc. ("Fragile X" or the "Corporation") requests Public Health and Health Planning Council ("PHHPC") approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law (NPCL) sections 1002 and 1003, and 10 NYCRR Part 650.

Fragile X, a charitable corporation formed in 1989, ceased operations in 2020 upon a resolution that it had achieved its mission. Fragile X was initially formed "to serve as an informational resource to the public, social agencies and health and educational professionals relating to fragile X syndrome; to foster a greater sense of community responsibility towards persons with fragile X syndrome and their caregivers; and to use any proceeds from fund raising for research relating to the cause, diagnosis and treatment of fragile X syndrome." Since its inception, many Fragile X organizations started and, together with the growing National Fragile X Association's (NFXF) local chapters, adequately fill the void.

On December 14, 2020, by the unanimous consent of the board of directors of the Corporation, it was determined that it was in the best interests of the Corporation to wind up and dissolve pursuant to Article 10 of the NPCL, following the final resolution of any outstanding assets and liabilities of the Corporation.

The required documents: Verified Petition to the Attorney General, Plan of Dissolution and Distribution of Assets, and a proposed Certificate of Dissolution, with supporting organizational documents of the corporation and resolutions of the Board of Directors of the corporation and its authorizing the dissolution, are included for PHHPC's review. Letters from Mr. Richard A. Inz, Treasurer of the corporation to the Department of Health explaining the need and desire for the dissolution, have been received and are enclosed.

Lastly, please note that the Verified Petition and Certificate of Dissolution indicate that, on the date of this application, the corporation has no assets or outstanding liabilities and holds no assets legally required to be used for a particular purpose. As such, the corporation respectfully requests permission from PHHPC to dissolve. There is no legal objection to the proposed dissolution, Verified Petition, Plan of Dissolution, and Certificate of Dissolution.

Attachments

Attachment: Letter from Richard A. Inz, Treasurer
(Applicant/Requestor) to the Public Health and Health
Planning Council dated November 7, 2020

FRAGILE X ASSOCIATION OF NEW YORK, INC.

61 Dean Street
Brooklyn NY 11201
(718) 875-4901

November 7, 2020

Public Health and Health Planning Council
New York State Department of Health
Corning Tower
Empire State Plaza
Albany NY 12237

DEAR PUBLIC HEALTH AND HEALTH PLANNING COUNCIL,

On November 17, 1989, the then-Public Health Council consented to the filing of the Certificate of Incorporation of the Fragile X Association of New York, Inc. Enclosed is a copy of the Resolution providing that Consent, and a copy of the November 20, 1989 letter from the Public Health Council forwarding that Resolution.

The Board of Directors of the Fragile X Association of New York, Inc. hereby requests consent from the Public Health and Health Planning Council to dissolve. There is no longer a need for the Fragile X Association of New York, Inc. to continue to operate; other organizations fill the need.

I will appreciate your providing written approval for the Fragile X Association of New York, Inc. to dissolve.

If you have any questions, please contact me at Richard.inz@pharma.com or 718-744-8243.

Sincerely yours,



Richard A. Inz
Treasurer, Fragile X Association of New York, Inc.

Enclosures

Attachment: A Verified Petition to the Attorney
General for Approval of Certificate of Dissolution

-----X
 In the Matter of the Application of
 Fragile X Association of New York, Inc. : VERIFIED PETITION
 For Approval of Certificate of
 Dissolution pursuant to :
 Section 1002 of the Not-for-Profit
 Corporation Law. :
 -----X

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
 OFFICE OF THE ATTORNEY GENERAL
 Charities Bureau
 Transactions Section
 28 Liberty Street
 New York, NY 10005

Petitioner, Fragile X Association of New York, Inc. by Richard A. Inz, Treasurer of the corporation, for its Verified Petition alleges:

1. Fragile X Association of New York, Inc., whose principal address is located in the county of Kings, was incorporated pursuant to New York's Not-for-Profit Corporation Law on December 11, 1989. A copy of the Certificate of Incorporation (and all amendments) and the complete and current By-laws are attached as Exhibit 1.

2. The names, addresses and titles of the corporation's directors and officers are as follows:

Name	Title	Address
Anita C. Abraham-Inz	President	61 Dean Street, Brooklyn NY 11201
Dore Hollander	Secretary	401 East 89 th Street, New York NY 10128
Richard A. Inz	Treasurer	61 Dean Street, Brooklyn NY 11201

3. The purposes for which the corporation was organized are set forth in its Certificate of Incorporation at paragraph 3 thereof and are as follows: to serve as an informational resource to the public, social agencies and health and educational professionals relating to fragile X syndrome; to foster a greater sense of community responsibility towards persons with fragile X syndrome and their caregivers; and to use any proceeds from fund raising for research relating to the cause, diagnosis and treatment of fragile X syndrome.

4. The corporation is a charitable corporation.
5. The corporation plans to dissolve in accordance with the Plan of Dissolution attached hereto as Exhibit 2 (the "Plan").
6. The corporation is dissolving because there is no longer a separate need for the services for which the corporation was created and served. There are now other organizations able to fill this need.
7. The Board of Directors by unanimous written consent dated December 14, 2020 approved resolutions adopting the Plan, and authorizing the filing of a Certificate of Dissolution. Such written consent is attached hereto as Exhibit 3.
8. The corporation has no assets or liabilities as of the date hereof.
9. The corporation acknowledges its obligation to file a final financial report on form CHAR500, with all required attachments, with the Charities Bureau showing no assets or liabilities and is submitting herewith as Exhibit 4 such draft. The corporation gives its assurance that (i) the final financial report shall be the same in all material respects to that which is attached hereto and (ii) the corporation shall duly file its final CHAR500 report with all required attachments with the Charities Bureau.
10. Copies of any governmental approvals to the Plan are set forth in the Plan and attached to the Certificate of Dissolution.
11. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003.

WHEREFORE, petitioner requests that the Attorney General approve the Certificate of Dissolution of Fragile X Association of New York, Inc., a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed this ____ day of _____, 202_, by

Signature

(Name of Signatory and Title)

Verification and Certification

STATE OF NEW YORK)

:SS.:

COUNTY OF KINGS)

(Name), being duly sworn, deposes and says:

I am the (Title) of Fragile X Association of New York, Inc., the corporation named in the above Petition, and make this verification and certification at the direction of its Board of Directors. I have read the foregoing Petition and (i) I know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief, and as to those matters I believe them to be true and (ii) I hereby certify under penalties of perjury that the Plan was duly authorized and adopted by the Board of Directors.

Signature

Sworn to before me this
____ day of _____, 202__.

Notary Public

APPENDIX A - CHECKLIST OF DOCUMENTS FOR A NO ASSET DISSOLUTION

Following is a list of the forms and documents necessary for a no asset dissolution:

- Plan of Dissolution (to be an attachment to the Petition)
- Original Certificate of Dissolution
Other than an approval by the Attorney General, all required governmental body and officer approvals attached.
- Petition to the Attorney General for Approval of Certificate of Dissolution
- Attachments to Petition for Approval of Certificate of Dissolution:
 - Copy of the Certificate of Incorporation together with all amendments, and the current by-laws.
 - Plan of Dissolution.
 - Resolutions of the Board and if appropriate, the membership.
- Final Financial Report (and any other required final reports)

Please submit this checklist, signed by the Petitioner, with the Verified Petition.

Attachment: Plan of Dissolution and
Distribution of Assets of Fragile X Association
of New York, Inc.


Plan of Dissolution

of

Fragile X Association of New York, Inc.

The Board of Directors of the Fragile X Association of New York, Inc. (Corporation), has considered the advisability of voluntarily dissolving the Corporation and has determined that dissolution is in the best interest of the Corporation.

1. The Corporation has no assets or liabilities.
2. In addition to Attorney General approval, the following governmental approvals of the Plan are required, and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General: (1) the New York State Department of Health Public Health and Health Planning Council (previously known as the Public Health Council), which gave its consent on November 17, 1989, for the filing of the Corporation's Certificate of Incorporation; (2) the New York State Department of Taxation and Finance; and (3) the New York State Department of State.
3. A Certificate of Dissolution shall be signed by an authorized Director or Officer, and all required approvals shall be attached thereto.



Anita C. Abraham-Inz
President

12/28/20
(Date)



CERTIFICATE OF DISSOLUTION
OF

Fragile X Association of New York, Inc.

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is

Fragile X Association of New York, Inc.

If the name of the corporation has been changed, the name under which it was formed is
[not applicable]

SECOND: The certificate of incorporation was filed with the Department of State on
December 11, 1989

THIRD: The name and address of each officer and director of the corporation is:

Anita C. Abraham-Inz, President, 61 Dean Street, Brooklyn, NY 11201

Dore Hollander, Secretary, 401 East 89th Street, New York, NY 10128

Richard A. Inz, Treasurer, 61 Dean Street, Brooklyn, NY 11201

FOURTH: The corporation is a *(check the appropriate box)*

charitable corporation non-charitable corporation.

FIFTH: At the time of authorization of the corporation's Plan of Dissolution and Distribution of Assets as provided in Not-for-Profit Corporation Law §1002, the corporation holds

(Check the appropriate statement)

assets which are legally required to be used for a particular purpose.

no assets which are legally required to be used for a particular purpose.

SIXTH: The corporation elects to dissolve.

SEVENTH: *(Check the appropriate statement)* The dissolution was authorized by

- a vote of a majority of the board of directors. The corporation has no members.
- the majority vote of the board of directors, followed by two-thirds vote of the members.

EIGHTH: *(Check the appropriate statement)*

- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by the Attorney General. A copy of the approval of the Attorney General is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by a Justice of the Supreme Court. A copy of the Court's Order is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing a copy of the Plan of Dissolution which contains the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law, has been duly filed with the Attorney General.
- The corporation is a non-charitable corporation. The corporation's Plan of Dissolution is not required to contain the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law and is not required to be filed with Attorney General.

X _____
(Signature)

Richard A.Inz

(Print or Type Name of Signer)

Treasurer

(Capacity of Signer)



**Division of Corporations,
State Records and
Uniform Commercial Code**

New York State
Department of State
Division of Corporations,
State Records and
Uniform Commercial Code
One Commerce Plaza
99 Washington Avenue
Albany, NY 12231
www.dos.ny.gov

**CERTIFICATE OF DISSOLUTION
OF**

Fragile X Association of New York, Inc.

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

Filer's Name: Richard A. Inz

Address: 61 Dean Street

City, State and Zip Code: Brooklyn, NY 11201

NOTES:

1. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at www.dos.ny.gov.
2. This Certificate of Dissolution must be signed by an officer, director or duly authorized person.
3. Attach the consent of the New York State Department of Taxation and Finance.
4. Attach the consent of the New York City Department of Finance, if required.
5. Attach a copy of the approval of the Attorney General or Order of the Supreme Court, if required.
6. The Certificate of Dissolution must include the approval of the Attorney General if the corporation is a charitable corporation or if the corporation is a non-charitable corporation and holds assets at the time of dissolution legally required to be used for a particular purpose.
7. Attach any other consent or approval required by law.
8. The fee for filing this certificate is \$30, made payable to the Department of State.

For DOS Use Only

CHAR500

NYS Annual Filing for Charitable Organizations
www.CharitiesNYS.com

Send with fee and attachments to:
NYS Office of the Attorney General
Charities Bureau Registration Section
28 Liberty Street
New York, NY 10005

~~2019~~
2020
Open to Public
Inspection

1. General Information

For Fiscal Year Beginning (mm/dd/yyyy) <u>01</u> / <u>01</u> ²⁰²⁰ / 2019 and Ending (mm/dd/yyyy) <u>12</u> / <u>31</u> / <u>2020</u>		
Check if Applicable: <input type="checkbox"/> Address Change <input type="checkbox"/> Name Change <input type="checkbox"/> Initial Filing <input checked="" type="checkbox"/> Final Filing <input type="checkbox"/> Amended Filing <input type="checkbox"/> Reg ID Pending	Name of Organization: Fragile X Association of New York, Inc.	Employer Identification Number (EIN): <u>110233010</u>
	Mailing Address: 61 Dean Street	NY Registration Number: <u>04</u> - <u>70</u> - <u>54</u>
	City / State / Zip: Brooklyn NY 11201	Telephone: 718-875-4901
	Website:	Email: richard.inz@pharma.com
Check your organization's registration category: <input type="checkbox"/> 7A only <input type="checkbox"/> EPTL only <input type="checkbox"/> DUAL (7A & EPTL) <input checked="" type="checkbox"/> EXEMPT*	Confirm your Registration Category in the Charities Registry at www.CharitiesNYS.com .	

2. Certification

See instructions for certification requirements. Improper certification is a violation of law that may be subject to penalties. The certification requires two signatories.

We certify under penalties of perjury that we reviewed this report, including all attachments, and to the best of our knowledge and belief, they are true, correct and complete in accordance with the laws of the State of New York applicable to this report.

Anita Abraham-Inz, President

President or Authorized Officer: Signature _____ Print Name and Title _____ Date _____

Richard Inz, Treasurer

Chief Financial Officer or Treasurer: Signature _____ Print Name and Title _____ Date _____

3. Annual Reporting Exemption

Check the exemption(s) that apply to your filing. If your organization is claiming an exemption under one category (7A or EPTL only filers) or both categories (DUAL filers) that apply to your registration, complete only parts 1, 2, and 3, and submit the certified Char500. No fee, schedules, or additional attachments are required. If you cannot claim an exemption or are a DUAL filer that claims only one exemption, you must file applicable schedules and attachments and pay applicable fees.

- 3a. 7A filing exemption:** Total contributions from NY State including residents, foundations, government agencies, etc. did not exceed \$25,000 and the organization did not engage a professional fund raiser (PFR) or fund raising counsel (FRC) to solicit contributions during the fiscal year.
- 3b. EPTL filing exemption:** Gross receipts did not exceed \$25,000 and the market value of assets did not exceed \$25,000 at any time during the fiscal year.

4. Schedules and Attachments

See the following page for a checklist of schedules and attachments to complete your filing.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	4a. Did your organization use a professional fund raiser, fund raising counsel or commercial co-venturer for fund raising activity in NY State? If yes, complete Schedule 4a.
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	4b. Did the organization receive government grants? If yes, complete Schedule 4b.

5. Fee

See the checklist on the next page to calculate your fee(s). Indicate fee(s) you are submitting here:	7A filing fee: \$ <u>0</u> <input checked="" type="checkbox"/>	EPTL filing fee: \$ <u>0</u> <input checked="" type="checkbox"/>	Total fee: \$ <u>0</u>	Make a single check or money order payable to: "Department of Law"
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Attachment: A Resolution of the Board
of Directors of the Corporation,
indicating that the dissolution was
authorized by the required vote of its
Directors

FRAGILE X ASSOCIATION OF NEW YORK, INC.

MINUTES OF
MEETING OF DIRECTORS

A meeting of the directors of the Fragile X Association of New York, Inc. was held by videoconference on December 14, 2020. Subject to any instructions or requests from any governmental body or officer, the directors intend that this be the last meeting of the directors of the Corporation.

Present were:

Anita C. Abraham-Inz
Dore Hollander
Richard A. Inz

These constituted a quorum of the directors.

No persons were present by written proxy.

The secretary submitted a waiver of notice of this meeting, which was duly signed by all those present. The chairperson directed that the waiver be annexed to these minutes.

The president reported on activities of the Corporation:

The Association continued to participate in the National Fragile X Foundation's (NFXF) Community Support Network program under the name National Fragile X Foundation Greater New York City Chapter. The Chapter was available to work with the Fragile X Clinics at the Institute for Basic Research in Developmental Disabilities in Staten Island and at the Seaver Autism Center at Mount Sinai Hospital in Manhattan. These two clinics are part of the Fragile X Consortium and Research Clinics of the National Fragile X Foundation.

Anita continued to respond by telephone, e-mail and social media to requests for information for persons in and outside New York City who are affected by Fragile X syndrome and professionals working with them. She also worked with Lisa MacKechnie, the leader of the Chapter, to continue to provide such support.

During July, the Chapter participated in Fragile X Awareness activities on Facebook.

On behalf of the Greater NYC Chapter, Anita participated in Advocacy for Fragile X with the Rare Disease Legislative Advocacy (RDLA) organization. We had telephone meetings with Congresswoman Nydia Velazquez's aide and U.S. Senator Kirsten Gillibrand's aide on August 11, and U.S. Senator Chuck Schumer's aide on

August 18, discussing issues relevant to the Rare Disease community and also issues specific to the Fragile X community.

Anita and Richard walked across the Mario Cuomo Bridge for NFXF X Strides on September 26. Anita and Richard also participated in X Strides fundraising. Anita and Richard created pages for the Greater NYC Chapter Team on the Classy fundraising platform.

On May 29-30, June 27, and July 22, Anita and Richard attended portions of the 17th NFXF International Fragile X Conference, Virtual Series 2020.

The treasurer reported on the following:

The account at Chase started 2019 with \$5,990.18. The balance as of December 14, 2020 was \$5,990.18.

By unanimous vote, the directors agreed upon and approved the following, including the following resolution:

There is no longer need for the Corporation as a not-for-profit corporation recognized by the Internal Revenue Service (IRS) and New York State (NYS); other organizations fill this need, including the NFXF, 1861 International Drive, Suite 200, McLean, Virginia 22102, EIN No. 84-0960471, an Internal Revenue Code Section 501(c)(3) organization. Dissolution is in the best interest of the Corporation. On that basis, the directors approved the donation of \$5,940.18 to the NFXF, the NFXF having agreed to use such money for activities of the greater New York City community. The Corporation will transfer \$5,940.18 to the NFXF. The Corporation is holding back \$50.00 to cover any wire transfer fee that Chase may charge for the transfer. Once the amount of that charge is determined, the Corporation will transfer any remaining amount to the NFXF, to use such money for activities of the greater New York City community.

WHEREAS, the Corporation has sought approval from (1) the NYS Department of Health Public Health and Health Planning Council (previously known as the Public Health Council, which gave its consent on November 17, 1989, for the filing of the Corporation's Certificate of Incorporation); and (2) the NYS Department of Taxation and Finance;

WHEREAS, the Corporation will seek approval from (1) the NYS Department of State; (2) the NYS Attorney General, which did not object to the granting of judicial approval on October 23, 1989; and (3) any other governmental body or officer whose approval was required for the formation of the Corporation;

THEREFORE, as set forth in the attached Plan of Dissolution, the Corporation will seek approval for its dissolution from the appropriate governmental bodies and officers in New York State and the IRS.

The directors intend that this be the final meeting of the Board of the Corporation. If any further business needs to occur or be approved as part of the dissolution of the Corporation, the directors will meet to accomplish such business.

There being no other business before the meeting, the meeting adjourned at 5:15 PM.

Respectfully submitted,

Dore Hollander
Secretary

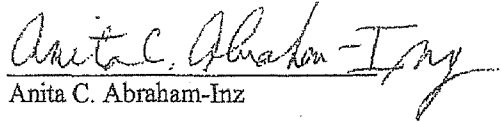
Corrected and approved
on December 14, 2020

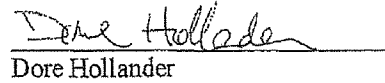
Antonia C. Phelan *TPM*
Chairperson of the Board
President

WAIVER OF NOTICE OF
DIRECTORS' MEETING

We, the undersigned, being all the directors of the Fragile X Association of New York, Inc., do hereby severally waive all notice of the time, place, and purpose of the meeting of the directors of the Corporation, and consent that this meeting be held via videoconference on December 14, 2020, and we do further consent to the transaction of any and all business that may properly come before the meeting.

Dated: December 14, 2020


Anita C. Abraham-Inz


Dore Hollander


Richard A. Inz

Plan of Dissolution

of

Fragile X Association of New York, Inc.

The Board of Directors of the Fragile X Association of New York, Inc. (Corporation), has considered the advisability of voluntarily dissolving the Corporation and has determined that dissolution is in the best interest of the Corporation.

1. The Corporation has no assets or liabilities.
2. In addition to Attorney General approval, the following governmental approvals of the Plan are required, and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General: (1) the New York State Department of Health Public Health and Health Planning Council (previously known as the Public Health Council), which gave its consent on November 17, 1989, for the filing of the Corporation's Certificate of Incorporation; (2) the New York State Department of Taxation and Finance; and (3) the New York State Department of State.
3. A Certificate of Dissolution shall be signed by an authorized Director or Officer, and all required approvals shall be attached thereto.

Anita C. Abraham-Inz
President

(Date)

FRAGILE X ASSOCIATION OF NEW YORK, INC.

MINUTES OF
MEETING OF DIRECTORS

A meeting of the directors of the Fragile X Association of New York, Inc. was held by videoconference on December 28, 2020. Subject to any instructions or requests from any governmental body or officer, the directors intend that this be the last meeting of the directors of the Corporation.

Present were:

Anita C. Abraham-Inz
Dore Hollander
Richard A. Inz

These constituted a quorum of the directors.

No persons were present by written proxy.

The secretary submitted a waiver of notice of this meeting, which was duly signed by all those present. The chairperson directed that the waiver be annexed to these minutes.

The president reported on activities of the Corporation:

The treasurer reported on the following:

The account at Chase as of December 15, 2020 was \$50.00. The Corporation kept \$50.00 to cover any wire transfer fee that Chase might charge. The fee was \$25.00, which Chase agreed to waive at Anita's request. FXANY sent a \$50.00 check to the NFXF, to use such money for activities of the greater New York City community. Chase closed the FXANY bank account.

By unanimous vote, the directors agreed upon and approved the following, including the following resolution:

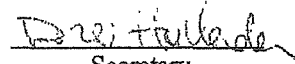
There is no longer need for the Corporation as a not-for-profit corporation, either recognized by the Internal Revenue Service (IRS) or New York State (NYS); other organizations fill this need, including the NFXF, 1861 International Drive, Suite 200, McLean, Virginia 22102, EIN No. 84-0960471, an Internal Revenue Code Section 501(c)(3) organization, and the NFXF Greater New York City Chapter. Dissolution is in the best interest of the Corporation and the community the FXANY currently serves.

THEREFORE, the Corporation will seek approval for its dissolution from the appropriate governmental bodies and officers in New York State and the IRS.

The directors intend that this be the final meeting of the Board of the Corporation. If any further business needs to occur or be approved as part of the dissolution of the Corporation, the directors will meet to accomplish such business.

There being no other business before the meeting, the meeting adjourned at 5:10 PM.

Respectfully submitted,


Secretary

Corrected and approved
on December 28, 2020

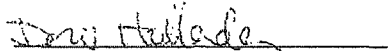

Chairperson of the Board
President


**WAIVER OF NOTICE OF
DIRECTORS' MEETING**

We, the undersigned, being all the directors of the Fragile X Association of New York, Inc., do hereby severally waive all notice of the time, place, and purpose of the meeting of the directors of the Corporation, and consent that this meeting be held via videoconference on December 28, 2020, and we do further consent to the transaction of any and all business that may properly come before the meeting.

Dated: December 28, 2020


Anita C. Abraham-Inz


Dore Hollander


Richard A. Inz

BY-LAWS
OF
FRAGILE X ASSOCIATION OF NEW YORK, INC.

ARTICLE I
MEMBERS

The Corporation shall have no members.

ARTICLE II
BOARD OF DIRECTORS

Section 1. Powers and Number. The Board of Directors shall have general power to control and manage the affairs and property of the Corporation in accordance with the purposes and limitations set forth in the Certificate of Incorporation. The number of directors constituting the entire Board shall be no less than three. The number may be increased or decreased by amendment of the By-Laws, but no decrease shall shorten the term of any incumbent director.

Section 2. Election and Term of Office. The initial directors shall be persons named in the Certificate of Incorporation. The directors shall be elected for a term of one year at the annual meeting of the Board of Directors by a majority of the directors then in office, and each shall continue in office until his or her successor shall have been elected and qualified, or until his or her death, resignation or removal.

Section 3. Removal. Any director may be removed, for cause, by a vote of a majority of the directors then in office, at any special meeting of the Board called for that purpose. A director who misses three consecutive meetings shall be automatically removed, but may be reinstated by a vote of a majority of the directors then in office for good cause shown.

Section 4. Resignation. Any director may resign from office at any time by delivering a resignation in writing to the President, and the acceptance of the resignation, unless required by its terms, shall not be necessary to make the resignation effective.

Section 5. Vacancies and Newly Created Directorships. Any newly created directorships and any vacancies on the Board of Directors arising at any time and from any cause may be filled at any meeting of the Board of Directors by a majority of the directors then in office, and the directors so elected shall serve until the next annual meeting.

Section 6. Place and Time of Meetings. The annual meeting of the Board shall be held in March or April of each year at a time and place fixed by the Board. The time and place for

holding regular meetings shall be fixed by the Board. A special meeting may be called at any time by the President or other officer or by written demand of any two directors at any time and place specified by them.

Section 7. Notice of Meetings. Notice of the time and place of each regular, special or annual meeting of the Board, and, to the extent possible, a written agenda stating all matters upon which action is proposed to be taken, shall be mailed to each director, postage prepaid, addressed to him or her at his or her residence or usual place of business (or at such other address as he or she may have designated in a written request filed with the Secretary), at least eight days before the day on which the meeting is to be held; provided, however, that notice of special meetings to discuss matters requiring prompt action may be sent to him or her at such address by telephone, no less than forty-eight hours before the time at which such meeting is to be held. Notice of a meeting need not be given to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her.

Section 8. Quorum and Voting. At all meetings of the Board of Directors, a majority of the entire Board shall constitute a quorum for the transaction of business. Except as otherwise provided by law or these By-Laws, any meeting of the Board of Directors at which a quorum is present, the vote of a majority of the directors present at the time of the vote shall be the act of the Board.

Section 9. Action by the Board. Any action required or permitted to be taken by the Board or by any committee thereof may be taken without a meeting if all members of the Board or of the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents shall be filed with the minutes of the proceedings of the Board or committee. Participation of one or more directors by conference telephone allowing all persons participating in the meeting to hear each other at the same time shall constitute presence at a meeting.

Section 10. Compensation of Directors. Directors, as such, shall not receive any salary for their services as directors, but by resolution of the Board of Directors, expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the Board and of any committee of the Board of Directors; provided that nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Such compensation shall be reasonable and commensurate with services performed.

Section 11. Committees of the Board. The Board, by resolution adopted by a majority of the entire Board, may establish and appoint an executive and other standing committees. The President shall appoint the Chairperson of each committee. Each committee so appointed shall consist of three or more directors and, to the extent provided in the resolution establishing it, shall have all the authority of the Board except as to the following matters:

1. the filling of vacancies on the Board or on any committee;
2. the amendment or repeal of the By-Laws or the adoption of new By-Laws;
3. the amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable;
4. the fixing of compensation of the directors for serving on the Board or any committee.

Special committees may be appointed by the President with the consent of the Board and shall have only the powers specifically delegated to them by the Board.

ARTICLE III
OFFICERS, EMPLOYEES and AGENTS

Section 1. Officers. The officers of the Corporation shall be a President, a Secretary, a Treasurer, and such other officers, including one or more Vice Presidents, as the Board of Directors may from time to time elect. The President shall be a member of the Board of Directors. The other officers may, but need not, be members of the Board of Directors. One person may hold more than one office in the Corporation except the offices of President and Secretary. No instrument required to be signed by more than one officer may be signed by one person in more than one capacity.

Section 2. Election, Term of Office and Removal. The officers of the Corporation shall be elected for a one year term at the annual meeting of the Board of Directors immediately following the election of directors, and each shall continue in office until his or her successor shall have been elected and qualified, or until his or her death, resignation or removal. Any officer of the Corporation may be removed, with or without cause, by a vote of a majority of the entire Board.

Section 3. Other Agents and Employees. The Board of Directors may from time to time appoint such agents and employees as it shall deem necessary, each of whom shall hold office during the pleasure of the Board of Directors, and shall have such authority, perform such duties and receive such reasonable compensation, if any, as the Board of Directors may from time to time determine.

Section 4. Vacancies. Any vacancy in any office may be filled by the Board of Directors. Any officer so elected shall hold office until the next annual meeting of the Board of Directors and the election and qualification of his or her successor.

Section 5. President: Powers and Duties. The President shall preside at all meetings of the Board of Directors and shall generally supervise the affairs of the Corporation. He or she shall keep the Board of Directors fully informed. He or she shall have the power to sign alone, unless the Board of Directors shall specifically require an additional signature, in the name of the Corporation all contracts authorized either generally or specifically by the Board of Directors. The President shall also have such other powers and perform such other duties as the Board of Directors may from time to time prescribe. In the absence or inability of the President to act, a Vice President selected by the Board shall perform all the duties and may exercise any of the powers of the President.

Section 6. Vice President: Powers and Duties. A Vice President shall have such powers and perform such duties as the Board of Directors may from time to time prescribe.

Section 7. Secretary: Powers and Duties. The secretary shall:

- a. keep the minutes of all meetings of the Board in books to be kept for that purpose;
- b. serve or cause to be served all notices of the Corporation, and;
- c. perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Board.

Section 8. Treasurer: Powers and Duties. The Treasurer shall keep or cause to be kept complete and accurate accounts of receipts and disbursements of the Corporation, and shall deposit all moneys and other valuable effects of the Corporation in the name and to the credit of the Corporation in such banks or depositories as the Board of Directors may designate. Whenever required by the Board of Directors, he or

she shall at all reasonable times exhibit the books and accounts to any officer or director of the Corporation, and shall perform all duties incident to the office of Treasurer, and such other duties as shall from time to time be assigned to him or her by the Board of Directors. Annually, at a meeting of the Board of Directors, the Treasurer shall present a report showing in appropriate detail: (1) the assets and liabilities of the Corporation as of a twelve month fiscal period terminating not more than six months prior to the meeting; (2) the principal changes in assets and liabilities during that fiscal period; (3) the revenues or receipts of the Corporation, both unrestricted and restricted to particular purposes, for that fiscal period; and (4) the expenses or disbursements of the Corporation, for both general and restricted purposes, during said fiscal period. The report shall be filed with the minutes of a meeting of the Board. The report to the Board may consist of a verified or certified copy of any report by the Corporation to the Internal Revenue Service or the Attorney General of the State of New York which includes the information hereinabove specified. The Treasurer shall, if required by the Board of Directors, give such security for the faithful performance of his or her duties as the Board of Directors may require.

ARTICLE IV
INDEMNIFICATION OF DIRECTOR OR OFFICER

If a director or officer of the Corporation is made a party to any civil or criminal action or proceeding in any matter arising from the performance by such director or officer of his or her duties for or on behalf of the Corporation, then, to the full extent permitted by law, the Corporation, upon affirmative vote of the Board of Directors, a quorum of directors being present at the time of the vote who are not parties to the action or proceeding, shall:

(1) Advance to such director or officer all sums found by the Board, so voting, to be necessary and appropriate to enable the director or officer to conduct his or her defense, or appeal, in the action or proceeding; and

(2) Indemnify such director or officer for all sums paid by him or her in the way of judgments, fines, amounts paid in settlement, and reasonable expenses, including attorneys' fees actually and necessarily incurred, in connection with the action or proceeding, or appeal therein, subject to the proper application of credit for any sums advanced to the director or officer pursuant to clause (1) of this Article.

ARTICLE V
BOARD OF ADVISORS

Section 1. Powers. The Board of Directors may appoint from time to time any number of persons as advisors of the Corporation to act either singly or as a committee or committees. Each advisor shall hold office during the pleasure of the Board of Directors, and shall have only the authority or obligations as the Board of Directors may from time to time determine.

Section 2. No compensation. No advisor of the Corporation shall receive, directly or indirectly, any salary or compensation for any service rendered to the Corporation except that the Board of Directors may authorize reimbursement of expenditures reasonably incurred on behalf of activities for the benefit of the Corporation.

ARTICLE VI
CONTRACTS, CHECKS, BANK ACCOUNTS AND INVESTMENTS

Section 1. Checks, Notes and Contracts. The Board of Directors is authorized to select the banks or depositories it deems proper for the funds of the Corporation. The Board of Directors shall determine who shall be authorized from time to time on the Corporation's behalf to sign checks, drafts or other orders for the payment of money, acceptance, notes or other evidences or indebtedness, to enter into contracts or to execute and deliver other documents and instruments.

Section 2. Investments. The funds of the Corporation may be retained in whole or in part in cash or be invested and reinvested from time to time in such property, real, personal or otherwise, including stocks, bonds or other securities, as the Board of Directors may deem desirable.

ARTICLE VII
OFFICE AND BOOKS

Section 1. Office. The office of the Corporation shall be located at such place as the Board of Directors may from time to time determine.

Section 2. Books. There shall be kept at the office of the Corporation correct books of account of the activities and transactions of the Corporation, including a minute book, which shall contain a copy of the Certificate of Incorporation, a copy of these By-Laws, and all minutes of meetings of the Board of Directors.

ARTICLE VIII
FISCAL YEAR


The fiscal year of the Corporation shall be determined by the Board of Directors.

ARTICLE IX
AMENDMENTS

These By-Laws may be amended at any meeting of the Board of Directors by a vote of the majority of the entire Board of Directors except that any amendment which increases the quorum requirement or the proportion of votes necessary for the transaction of business or of any specified time of business must be authorized by a vote of two-thirds of the entire Board.


Anita C. Abraham-Inz

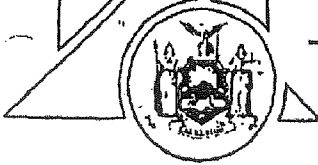

Dore Hollander


Richard A. Inz

Attachment: Public Health Council
resolution of approval to the filing of
the Certificate of Incorporation of
Fragile X Association of New York,
Inc., November 17, 1989

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL



November 20, 1989

Mr. Richard A. Inz
29th Floor
875 Third Avenue
New York, NY 10022

Re: Certificate of Incorporation of Fragile X Association of New York,
Inc.

Dear Mr. Inz:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 17th day of November, 1989, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Fragile X Association of New York, Inc., dated September 7, 1989.

Sincerely,

A handwritten signature in cursive script that reads "Karen S. Westervelt".

Karen S. Westervelt
Executive Secretary

RESOLUTION

RESOLVED, that the Public Health Council, on this 17th day of November, 1989, approves the filing of the Certificate of Incorporation of Fragile X Association of New York, Inc., dated September 7, 1989.

//



MEMORANDUM

To: Public Health and Health Planning Council
From: Michael Bass, Deputy General Counsel
Date: March 4, 2021 *MGB*
Subject: Proposed Dissolution of Adirondack Tri-County Nursing and Rehabilitation Center, Inc.

Adirondack Tri-County Nursing and Rehabilitation Center, Inc. requests Public Health and Health Planning Council (PHHPC) approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law (NPCL) section 1002, as well as 10 NYCRR Part 650.

Adirondack Tri-County Nursing and Rehabilitation Center, Inc. ("Corporation") is a not-for-profit corporation that formerly operated a Skilled Nursing Facility under Article 28 of the Public Health Law, located in North Creek (Warren County). The Corporation ceased operations as of January 22, 2018, pursuant to an asset purchase agreement with Post Acute Partners Acquisition, LLC, for the transfer of the facility operations and real property. The Corporation has no liabilities and no assets which are legally required to be distributed, except for a "Wind Down Fund", which was approved by the Supreme Court of the State of New York on December 26, 2017 and is designated to cover costs and expenses of winding up the Corporation's affairs. Any remaining money in the Wind Down Fund shall be returned to Post Acute Partners Acquisition, LLC on or prior to the date of the Corporation's dissolution.

The Public Health Council took approval action at a meeting held on September 20, 2002 and issued a consent to file letter on January 16, 2003 approving the Certificate of Incorporation of the Corporation. The Corporation now requests Department of Health and/or Public Health and Health Planning Council consent to dissolve.

On December 11, 2019, The Board of Directors of the Corporation unanimously consented and resolved to effect a voluntary dissolution of the Corporation pursuant to Article 10 of the NPCL. The Board determined that it was advisable and in the best interests of the Corporation to dissolve. The Board unanimously consented and resolved to approve a Plan of Dissolution and authorized the filing of a Certificate of Dissolution, upon approval of the Public Health and Health Planning Council and the State Attorney General or Supreme Court. On December 11, 2019, a Plan of Dissolution and Certificate of Dissolution of the Corporation were signed by the President of the Board, indicating that the plan and dissolution were authorized by the required unanimous written consent of the Board of Directors. On December 1, 2020, a Verified Petition was submitted to the State Attorney General for Approval of the Plan of Dissolution. The State Attorney General approved the Plan of Dissolution on December 23, 2020.

The required documents: Public Health Council Consent to File Letter; Unanimous Written Consent and Resolution of the Board of Directors of the Corporation, authorizing the proposed dissolution; Plan of Dissolution; Certificate of Dissolution; Verified Petition to the State Attorney General for Approval of Plan of Dissolution; State Attorney General Approval of the Plan of Dissolution; Decision and Order of Supreme Court; supporting organizational documents of the Corporation (Certificate of Incorporation and Bylaws); and a letter from Thomas Simcoe, Esq. of Bond, Schoeneck & King, PLLC, legal counsel to Adirondack Tri-County Nursing and Rehabilitation Center, Inc. explaining the need and desire for the dissolution were submitted to the Department. All of the aforementioned documents are attached.

There is no legal objection to the proposed dissolution, Verified Petition, Plan of Dissolution, and Certificate of Dissolution.

Attachments.

A

BOND SCHOENECK
& KING

22 Corporate Woods Boulevard, Suite 501 | Albany, NY 12211 | bsk.com

THOMAS W. SIMCOE, ESQ.
tsimcoe@bsk.com

December 1, 2020

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Colleen Leonard
New York State Department of Health
Public Health & Health Planning Council
Corning Tower, Room 1805
Albany, NY 12237

Re: *Dissolution of the Adirondack Tri-County Nursing and Rehabilitation Center, Inc.*

Dear Ms. Leonard:

This office represents the Adirondack Tri-County Nursing and Rehabilitation Center, Inc. (the "Corporation"), a charitable New York Not-for-Profit Corporation established for the purpose of operating a residential health care facility. By this submission we are requesting approval from the Public Health and Health Planning Council (the "PHHPC") for the Corporation's voluntary dissolution pursuant to section 1002(c) of the New York Not-for-Profit Corporation Law.

The Corporation was established in 2003 for the purpose of operating a residential health care facility consisting of skilled nursing home beds pursuant to Article 28 of the Public Health Law that served aged, disabled, and chronically impaired persons. The Corporation ceased its operations effective January 22, 2018 and surrendered its operating certificate to the New York State Department of Health on or about such date. The Corporation has not carried on any business or activities since that time, has no assets or liabilities (other than return of a certain Wind Down Fund, as defined below), and has no reason to continue its existence. Accordingly, there is a public need for the dissolution of the Corporation because it is now a corporate shell and its continued existence is economically inefficient.

Pursuant to Section 1.5 of that certain Amended and Restated Asset Purchase Agreement entered into by and between the Corporation and Post Acute Partners Acquisition, LLC ("Post Acute"), dated as of December 12, 2017 (the "Asset Purchase Agreement"), approved by Order of the Supreme Court of the State of New York on December 26, 2017, the Corporation currently holds approximately \$65,000 as a "Wind Down Fund" to cover the costs and expenses of winding up the Corporation's affairs, and any remaining assets in the Wind Down Fund must be returned to Post Acute on or prior to the date of the Corporation's dissolution. After all costs and expenses of

Ms. Colleen Leonard
December 1, 2020
Page 2

winding up the Corporation's affairs have been paid, including all costs and fees associated with dissolution and final tax and other filings, the balance of the Wind Down Fund shall be transferred to Post Acute.

Pursuant to 10 NYCRR section 650.1, enclosed please find the following exhibits in support of this submission:

1. A copy of the Corporation's Plan of Dissolution;
2. A copy of the Corporation's Certificate of Dissolution;
3. A copy of the Corporation's proposed Verified Petition to the Attorney General of the State of New York for approval of the Plan of Dissolution, with all exhibits included.

Please note that judicial approval is no longer required for the dissolution of a Not-for-Profit Corporation if approval has been obtained from the Office of the Attorney General.

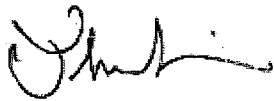
On behalf of the Corporation, we respectfully request that this application for the approval of the dissolution of the Corporation and the filing of the Certificate for Dissolution with the New York State Department of State be submitted to the PHHPC for consideration at its first available meeting. If you should require any additional information in connection with this request, please do not hesitate to contact us.

A copy of this letter, including all attachments, is also being provided to the Bureau of House Counsel in the New York State Department of Health's Office of Counsel.

Thank you for your attention to and consideration of this matter.

Sincerely,

BOND, SCHOENECK & KING, PLLC



Thomas W. Simcoe

TWS/dmrk
Enclosures

cc: Justin Pfeiffer, Esq., Bureau of House Counsel



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

JAN 23 2003

W. S. DEMPFF

JAN 21 2003

January 16, 2003

Ms. Karen Woodcook
Administrator
Adirondack Tri-County Nursing and
Rehabilitation Center
P.O. Box 500, Ski Bowl Road
North Creek, New York 12853

Re: Certificate of Incorporation of Adirondack Tri-County Nursing and Rehabilitation
Center, Inc.

Dear Ms. Woodcook:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 20th day of September, 2002, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Adirondack Tri-County Nursing and Rehabilitation Center, Inc., dated November 29, 2002.

Sincerely,

Karen S. Westervelt
Executive Secretary

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**UNANIMOUS WRITTEN CONSENT
OF
THE BOARD OF DIRECTORS
OF
ADIRONDACK TRI-COUNTY NURSING AND REHABILITATION CENTER, INC.**

Under N-PCL § 708

The undersigned, being all of the directors of the Adirondack Tri-County Nursing and Rehabilitation Center, Inc. (the "Corporation"), a charitable New York not-for-profit corporation, hereby adopt and give their unanimous consent to the following resolutions as action of the Board of Directors (the "Board"), and direct that this written consent be filed with the minutes of the Corporation.

WHEREAS, pursuant to a certain Amended and Restated Asset Purchase Agreement entered into by and between the Corporation and Post Acute Partners Acquisition, LLC ("Post Acute"), dated as of December 12, 2017 (the "Asset Purchase Agreement"), approved by Order of the Supreme Court of the State of New York on December 26, 2017, the Corporation sold substantially all of its assets; and

WHEREAS, since the completion of such sale, the Corporation has ceased business operations and proceeded to wind up its affairs; and

WHEREAS, pursuant to Section 1.5 of the Asset Purchase Agreement, the Corporation currently holds approximately \$ 108,812.48 as a "Wind Down Fund" to cover the costs and expenses of winding up the Corporation's affairs, and any remaining assets in the Wind Down Fund must be returned to Post Acute on or prior to the date of the Corporation's dissolution; and

WHEREAS, the Corporation is to receive two settlement payments from the New York State Department of Health, each in the amount of approximately \$99,919.80. Pursuant to Section 1.1(k) of the Asset Purchase Agreement, both payments shall be paid to Post Acute upon receipt; and

WHEREAS, the Board of Directors of the Corporation, having considered the advisability of dissolving the Corporation, have determined that it is in the best interest of the Corporation to dissolve in accordance with the provisions for voluntary dissolution under the New York Not-for-Profit Corporation Law.

NOW, THEREFORE, it is hereby

RESOLVED, that the Board of Directors authorizes the dissolution of the Corporation; and

RESOLVED, that the Plan of Dissolution annexed hereto as **Exhibit "A"** and incorporated as if fully set forth herein be, and hereby is, approved in all respects and adopted as the Plan of Dissolution of the Corporation; and

RESOLVED, that the Certificate of Dissolution annexed hereto as **Exhibit "B"** is hereby authorized to be filed with the New York State Department of State upon the approval of the Public

Health and Health Planning Council of the New York State Department of Health and the New York State Attorney General or the Supreme Court; and


RESOLVED, that the officers of the Corporation, including, without limitation, the President, are instructed and authorized to make any necessary changes to the Plan of Dissolution and to execute and deliver any and all documents necessary to effectuate the dissolution of the Corporation, including the execution and filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law; and

RESOLVED, that the officers of the Corporation, including, without limitation, the President, are authorized to take any further action and execute and deliver any agreements, instruments and documents, in the name of the Corporation, as in their judgment shall be necessary, proper or advisable in order to carry out the intent and accomplish the purposes of the resolutions adopted hereby.

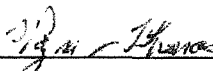
[Signature page follows]

IN WITNESS WHEREOF, the undersigned have signed this Unanimous Written Consent


the 11th day of December, 2019.



Karen Smith, Director




Wayne Thomas, Director



Ellen Eager, Director

CERTIFICATION

The undersigned, being the President of Adirondack Tri-County Nursing & Rehabilitation Center, Inc., does hereby certify under penalties of perjury that the following is a true copy of the Resolution of the Board of Directors of said corporation authorizing the Corporation to dissolve in accordance with the Plan of Dissolution, duly adopted by the unanimous written consent of the Board of Directors on the 11th day of December, 2019, and that the same is in full force and effect.



Karen Smith, President of the Board
Date: December 11, 2019

**PLAN OF DISSOLUTION
OF
ADIRONDACK TRI-COUNTY NURSING AND REHABILITATION CENTER, INC.**

A New York Not-for-Profit Corporation

The Board of Directors (the "Board") of the Adirondack Tri-County Nursing and Rehabilitation Center, Inc. (the "Corporation"), by unanimous written consent, after duly considering the advisability of voluntarily dissolving the Corporation and it being the opinion of the Board that it is advisable and in the best interests of the Corporation to effect such dissolution, resolved that the Corporation be dissolved in accordance with the following Plan of Dissolution (the "Plan"):

1. Approval for the dissolution of the Corporation shall be obtained from the Public Health and Health Planning Council of the New York State Department of Health and the Attorney General and/or a Justice of the Supreme Court of the State of New York.

2. Pursuant to Section 1.5 that certain Amended and Restated Asset Purchase Agreement entered into by and between the Corporation and Post Acute Partners Acquisition, LLC ("Post Acute"), dated as of December 12, 2017 (the "Asset Purchase Agreement"), approved by Order of the Supreme Court of the State of New York on December 26, 2017, the Corporation currently holds approximately \$ 108,812.48 as a "Wind Down Fund" to cover the costs and expenses of winding up the Corporation's affairs, and any remaining assets in the Wind Down Fund must be returned to Post Acute on or prior to the date of the Corporation's dissolution. Accordingly, after all costs and expenses of winding up the Corporation's affairs have been paid, including all costs and fees associated with dissolution and final tax and other filings, the balance of the Wind Down Fund shall be transferred to Post Acute.

3. In addition, the Corporation is to receive two settlement payments from the New York State Department of Health, each in the amount of approximately \$99,919.80. Pursuant to Section 1.1(k) of the Asset Purchase Agreement, both payments shall be paid to Post Acute upon receipt.


4. Other than as set forth in paragraphs 2. and 3., the Corporation has no assets or liabilities.

5. A certified copy of the resolution of the Board adopting this Plan of Dissolution shall be submitted, with the Plan, to the Attorney General for approval.

6. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached.

[signature page follows]

IN WITNESS WHEREOF, the undersigned has signed this Plan of Dissolution on the 11th
day of December, 2019.



Karen Smith, President of the Board

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**CERTIFICATE OF DISSOLUTION
OF
ADIRONDACK TRI-COUNTY NURSING AND REHABILITATION CENTER, INC.
UNDER SECTION 1003
OF
THE NOT-FOR-PROFIT CORPORATION LAW**

The undersigned, the President of the Board of Directors (the "Board") of the Adirondack Tri-County Nursing and Rehabilitation Center, Inc. (the "Corporation"), hereby certifies that:

1. The name of the Corporation is Adirondack Tri-County Nursing and Rehabilitation Center, Inc.

2. The Corporation's Certificate of Incorporation was filed with the Department of State on January 27, 2003. It has not been amended.

3. The name and address of each director of the Corporation is:

<u>Name and Title</u>	<u>Address</u>
Karen Smith President of the Board	3963 State Route 28 North Creek, NY 12853
Wayne Thomas Treasurer of the Board	PO Box 63 North Creek, NY 12853
Ellen Eager Secretary of the Board	PO Box 45 Minerva, NY 12851

4. The Corporation is a charitable corporation.

5. At the time of the authorization of the Corporation's Plan of Dissolution pursuant to Not-for-Profit Corporation Law section 1002, the Corporation holds no assets legally required to be used for a particular purpose. The Corporation's liabilities as set forth in the Plan of Dissolution will be discharged in accordance with the Plan of Dissolution.

6. The Corporation elects to dissolve.


7. The dissolution was authorized by the unanimous written consent of the Board.

The Corporation has no members.

8. Prior to delivery of the Certificate of Dissolution to the Department of State for filing, a copy of the Plan of Dissolution, which contains the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law, has been duly filed with the Attorney General.

[signature page follows; remainder of page intentionally blank]

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution on
the 11th day of December, 2019.



Karen Smith, President of the Board

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ATTORNEY GENERAL OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of the Application of

**ADIRONDACK TRI-COUNTY NURSING AND
REHABILITATION CENTER, INC.**

VERIFIED PETITION

For Approval of Plan of Dissolution pursuant to Section
1002 of the New York Not-for-Profit Corporation Law

TO: OFFICE OF THE ATTORNEY GENERAL
Charities Bureau
The Capitol
Albany, NY 12224-0341

Petitioner, ADIRONDACK TRI-COUNTY NURSING AND REHABILITATION
CENTER, INC. (the "Corporation"), by its attorneys, Bond, Schoeneck & King, PLLC, for its
Verified Petition alleges, upon information and belief, that:

1. The Corporation, whose principal address is located in the County of Warren, was
incorporated pursuant to Section 402 of the New York Not-for-Profit Corporation Law on January
27, 2003. A copy of the Corporation's Certificate of Incorporation is annexed hereto and made a
part hereof as **Exhibit "A"** and a complete and current copy of the Corporation's bylaws are
annexed hereto and made a part hereof as **Exhibit "B."**

2. The names, addresses, and titles of the Corporation's Directors are:

<u>Name and Title</u>	<u>Address</u>
Karen Smith Board President	3963 State Route 28, North Creek, NY 12853
Wayne Thomas Board Treasurer	P.O. Box 63, North Creek, NY 12853
Ellen Eager Board Secretary	P.O. Box 45, Minerva, NY 12851

3. The purposes for which the Corporation was organized are as follows:
 - a. To serve aged, disabled and chronically impaired persons by establishing and operating a residential health care facility consisting of skilled nursing home beds pursuant to Article 28 of the Public Health Law of the State of New York;
 - b. To buy, own, sell, convey, assign, mortgage, or lease any interest in real estate and personal property and to construct, maintain and operate improvements thereon necessary or incident to the foregoing purposes;
 - c. To borrow money and issue evidence of indebtedness in furtherance of any or all of the objects of its business, and to secure the same by mortgage, pledge or other lien on the corporation's property;
 - d. To do any other act of thing incidental to or in connection with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain or its individual members, directors or officers, except as provided under Article 5 of the Not-for-Profit Corporation Law; and
 - e. To operate exclusively for charitable and benevolent purposes as defined by Section 501(c)(3) of the Internal Revenue Code of 1986 (or corresponding provisions of any future United States Internal Revenue Law).
4. The Corporation is a charitable corporation.
5. The Corporation is the former owner and operator of a New York State Department of Health-licensed 82-bed residential health care facility known as the "Adirondack Tri-County Nursing and Rehabilitation Center" (the "Facility"). The Corporation also formerly operated adult day health care and physical, occupational, and speech language pathology outpatient therapy programs at the Facility. By Decision and Order dated December 26, 2017 (the "Decision and

Order”), the Supreme Court, Warren County, approved the sale of substantially all of Petitioner’s assets pursuant to Sections 510 and 511 of the Not-for-Profit Corporation Law, which sale closed on January 22, 2018. A copy of the Decision and Order is annexed hereto as **Exhibit “C.”**

6. The Corporation is dissolving because its assets have been sold, its affairs have been wound down, and it no longer has any purpose. The Corporation plans to dissolve in accordance with the Plan of Dissolution annexed hereto as **Exhibit “D.”**

7. The Board of Directors of the Corporation by unanimous written consent adopted the Plan of Dissolution and authorized the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. The Board’s unanimous written consent is annexed hereto as **Exhibit “E.”**

8. The Corporation does not have any members.

9. Pursuant to Section 1.5 of that certain Amended and Restated Asset Purchase Agreement entered into by and between the Corporation and Post Acute Partners Acquisition, LLC (“Post Acute”), dated as of December 12, 2017 (the “Asset Purchase Agreement”), approved by the Decision and Order, the Corporation currently holds approximately \$46,000¹ as a “Wind Down Fund” to cover the costs and expenses of winding up the Corporation’s affairs, and any remaining assets in the Wind Down Fund must be returned to Post Acute on or prior to the date of the Corporation’s dissolution. Accordingly, after all costs and expenses of winding up the Corporation’s affairs have been paid, including all costs and fees associated with dissolution and final tax and other filings, the balance of the Wind Down Fund shall be transferred to Post Acute.

10. In addition, the Corporation is to receive two settlement payments from the New York State Department of Health, each in the amount of approximately \$99,919.80. Pursuant to

¹ It was approximately \$108,000 at the time the Plan of Dissolution was adopted.

Section 1.1(k) of the Asset Purchase Agreement, both payments shall be paid to Post Acute upon receipt.

11. Other than as set forth in paragraphs 9. and 10., the Corporation has no assets or liabilities.

12. The Corporation acknowledges its obligation to file a final financial report on form CHAR500, with all required attachments, with the Charities Bureau showing no assets or liabilities. Attached as **Exhibit "F"** is a copy of the Corporation's most recently filed Form 990 and an internal financial report showing financial information through November 24, 2020. The Corporation gives its assurance that (i) the final financial report shall be the same in all material respects to the information provided herewith (to be adjusted, as applicable, for further costs and expenses of dissolution and the final return of the Wind Down Fund balance after receipt of necessary governmental approvals for the Corporation's dissolution) and (ii) the Corporation shall duly file its final CHAR500 report with all required attachments with the Charities Bureau.

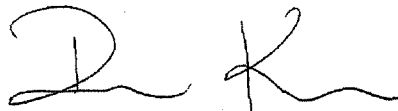
13. The Corporation is not aware of any ongoing or completed audit or inquiry by the Internal Revenue Service (the "IRS") in the past three years. The Corporation has not paid any excise taxes or disclosed an excess benefit transaction or any diversion of assets on its information return to the IRS.

14. In addition to approval by the Attorney General and/or a Justice of the Supreme Court, the Public Health and Health Planning Council's approval of dissolution is required. The approval is annexed hereto as **Exhibit "G."**

WHEREFORE, Petitioner requests that the Attorney General approve the Plan of Dissolution of Adirondack Tri-County Nursing and Rehabilitation Center, Inc., a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1002.

IN WITNESS WHEREFORE, the Corporation has caused this Petition to be executed this 1st day of December, 2020, by:

BOND, SCHOENECK & KING, PLLC



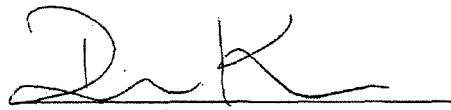
By: Delaney M. R. Knapp, Esq.
Thomas W. Simcoe, Esq.
Attorneys for Adirondack Tri-County
Nursing and Rehabilitation Center, Inc.
Address and Post Office Address:
22 Corporate Woods Blvd, Suite 501
Albany, NY 12211
Phone: (518) 533-3235
Email: tsimcoe@bsk.com

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)


DELANEY M. KNAPP, being an attorney duly admitted in New York State, affirms under penalties of perjury that she is the attorney for the petitioner in this action; that she has read the within Petition; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, as to those matters he believes it to be true and that the basis of her knowledge are the records and communications of her client to her. The reason for this petition being verified by deponent is that the client has its principal place of domicile and location in a county other than the county wherein deponent maintains her offices.

Dated: December 1st, 2020
Albany, New York


Delaney M. R. Knapp

Sworn to before me this

1st day of December, 2020


Notary Public

JESSICA M. BLANCHETTE
Notary Public, State of New York
Qualified in Albany County
No. 02BL6400202
Commission Expires Nov. 12, 2023

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ATTORNEY GENERAL OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of the Application of

**ADIRONDACK TRI-COUNTY NURSING AND
REHABILITATION CENTER, INC.**

For Approval of Plan of Dissolution and Distribution of Assets
pursuant to Section
1002 of the New York Not-for-Profit Corporation Law

OAG Approval #
OAG-AL-2020-324

1. By Petition verified on December 1, 2020, Adirondack Tri-County Nursing and Rehabilitation Center, Inc. (the "Corporation"), by its attorneys, Bond, Schoeneck & King, PLLC, applied to the Attorney General pursuant to section 1002 of the Not-for-Profit Corporation Law for approval of a Plan of Dissolution.

2. Based on a review of the Petition and its attachments, and the verification and certification of Delaney M. R. Knapp of Bond, Schoeneck and King, PLLC, the Attorney General has determined that the Corporation has complied with the provisions of section 1002 of the Not-for-Profit Corporation Law applicable to the dissolution of not-for-profit corporations with assets.

3. The Plan of Dissolution is approved. Attorney General of the State of New York.

Attorney General of the State of New York

By: Nathan M. Courtney
Assistant Attorney General Nathan M. Courtney

Dated: Dec 23, 2020

STATE OF NEW YORK
SUPREME COURT COUNTY OF WARREN

In the Matter of the Application of

DECISION AND ORDER

ADIRONDACK TRI-COUNTY NURSING
AND REHABILITATION CENTER, INC.,

Index No. 64771

RJI No. 56-1-2017-05

Petitioner,

For an Order Approving the Sale of All or
Substantially All Assets Pursuant to Sections
510 and 511 of the New York Not-for-Profit
Corporation Law,

LIBER OF
PAGE AND EXAMINER
WARREN COUNTY, N.Y.
PAMELA J. VOGEL, CLERK
17 DEC 26 PM 2:02

Bond, Schoeneck & King, PLLC, Albany (*Mark A. Mainello* and *Thomas W. Simcoe* of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, Albany (*Nathan M. Courtney* of counsel), for respondent.

ROBERT J. MULLER, J.S.C.

Petitioner Adirondack Tri-County Nursing and Rehabilitation Center, Inc. is a not-for-profit corporation which owns and operates a licensed 82-bed residential healthcare facility located at 112 Ski Bowl Road in North Creek, Warren County. The facility also offers adult day health care services, as well as physical, occupational, and speech therapy programs. Petitioner owns the facility, together with the 7.59-acre parcel of real property upon which it is situated.¹ Petitioner also owns a medical center adjacent to the facility, which center is leased to an unrelated physicians group. Presently before the Court is petitioner's application by Order to Show Cause to sell the facility and substantially all of its assets – including its real property – to Post Acute Partners Acquisition, LLC (hereinafter Post Acute) for the sum of \$3,475,501 (*see N-*

¹ This real property is subject to a mortgage in the amount of approximately \$2,100,000.

PCL 510, 511).

N-PCL 510 (a) (3) and 511 (b) require that this application be made on notice to the Attorney General. N-PCL 511 (b) further provides that the Attorney General shall be given “a minimum of fifteen days notice[.]” with the Court having the “authority to shorten [the] time for service . . . upon a showing of good cause.” Petitioner requested that the Court exercise such authority here, stating as follows:

“[T]he majority of [p]etitioner’s revenue is from Medicaid reimbursement. Petitioner’s Medicaid reimbursement rate is inadequate to cover its operating expenses and, as a result, in the current year [p]etitioner has operated at a loss of \$815,157 through October 31, 2017. These continue to date, and thus [p]etitioner is rapidly running out of cash to sustain its operations. Based on current budget forecasts, it is anticipated that this will occur before the end of December 2017. In that event, [p]etitioner will no longer have funds to continue the operation of its facility, which will likely result in significant harm to [p]etitioner and its mission, and hardship and disruption to its nursing home residents, staff and employees.”

Given these financial concerns, this Court found that petitioner demonstrated good cause and the Attorney General was given only nine days notice of the application. The Attorney General appeared in opposition, “object[ing] to the proposed sale because Post Acute is unwilling to commit to continued operation of the [f]acility for a minimum 5-year period after the sale”. During oral argument additional documents, referenced hereinafter, were submitted by the Attorney General and, with petitioner’s consent, were accepted and considered by the Court.

The procedure set forth in N-PCL 510 and 511 is “designed to preserve charitable assets to serve public purposes” (*64th Assoc., L.L.C. v Manhattan Eye, Ear & Throat Hosp.*, 2 NY3d 585, 590 [2004] [internal quotation marks and citation omitted]; see *Rose Ocko Found. v Lebovits*, 259 AD2d 685, 688 [1999], *appeal dismissed and lv denied* 93 NY2d 997 [1999]). The

Attorney General is made a statutory party to applications under N-PCL 510 and 511 “to ensure that the interests of the ultimate beneficiaries of the corporation, the public, are adequately represented and protected from improvident transactions” (*Matter of Manhattan Eye, Ear & Throat Hosp. v Spitzer*, 186 Misc 2d 126, 151 [Sup Ct, NY County 1999]; see *64th Assoc., L.L.C. v Manhattan Eye, Ear & Throat Hosp.*, 2 NY3d at 590). In determining whether to grant an application under N-PCL 510 and 511, the Court “must assess whether ‘the consideration and the terms of the transaction are fair and reasonable to the corporation and that the purposes of the corporation or the interests of the members will be promoted’” (*64th Assoc., L.L.C. v Manhattan Eye, Ear & Throat Hosp.*, 2 NY3d at 590, quoting N-PCL 511 [d]; see *Church of God of Prospect Plaza v Fourth Church of Christ, Scientist, of Brooklyn*, 76 AD2d 712, 716 [1980], *aff’d* 54 NY2d 742 [1981]).

Here, petitioner contends that the consideration and the terms of the transaction are fair and reasonable. Petitioner had an appraisal done on April 25, 2016 which estimated the going concern value of its assets and operations to be \$4,500,000. This appraisal “relied upon and assumed” the corporation’s continued receipt of funding through a New York State Department of Health (DOH) Vital Access Provider (VAP) grant. According to petitioner, the grant expired earlier this year, thereby reducing its going concern value. Petitioner received offers from five potential purchasers, with most offers in the vicinity of \$4,000,000. According to petitioner, its Board of Directors

“evaluated each of the offers in consideration of various criteria, including not only the proposed purchase price, but also the quality and culture of the potential purchasers’ other long-term care facilities, the potential purchaser’s apparent ability to preserve quality nursing home services in the North Creek area, the

relative certainty of successfully completing the transaction, and the purchaser's overall ability to achieve [petitioner's] mission and economic objectives".

Although Post Acute's offer of \$3,475,501 was not the highest offer received, it was accepted based upon petitioner's "assessment of [Post Acute's] ability to maintain quality care in the North Creek region in light of the other facilities operated by [Post Acute] in the larger Adirondack region". To that end, Post Acute recently acquired or is in the process of acquiring – through its affiliates – the Adirondack Health-Uihlein Living Center in the Village of Lake Placid, Essex County (hereinafter Adirondack Health) and Heritage Commons Residential Health at Inter-Lakes in the Town of Ticonderoga, Essex County (hereinafter Heritage Commons). Petitioner further notes that it "had significant doubts about the ability of the cash offerors to consummate a transaction at the prices offered,² and it also had concerns about the ability of the other offerors that were not selected to structure the transaction so that all liabilities would in fact be adequately assumed".

Petitioner next contends that its purposes and the interests of its members will be promoted by the sale. Specifically, petitioner contends that Post Acute will continue to operate the facility as a nursing home, thus making the transition in ownership smooth for both patients, staff, and employees. Petitioner further contends that, if the sale is not approved, it will likely have to close the facility as a result of insufficient funds – which would obviously have a negative impact on all involved.

In opposition, the Attorney General contends that the consideration and the terms of the transaction are not fair and reasonable. Specifically, the Attorney General contends that Post

² One potential purchaser offered \$5,000,000 in cash.

Acute must agree to continue to operate the facility as a nursing home for five years from the date of the sale. The Attorney General requests this commitment to continuation of operations based upon its "recent experiences with CABS Nursing Home and Rivington House, two New York City-based not-for-profit nursing homes that were purchased by for-profits". The Attorney General describes these experiences as follows:

"Based on the expectation that the for-profits would continue to provide skilled nursing services on the sites, the Attorney General did not object to, and the Supreme Court approved the CABS and Rivington sales. Nonetheless, the for-profits each subsequently terminated the nursing home operations within one year of the purchase. In the case of Rivington House, the for-profit sold the underlying real estate to developers at a substantial profit".

The Attorney General notes that petitioner's facility "is located a mere 430 feet from Ski Bowl Village at Gore Mountain, which currently has a townhouse listed for \$745K". In view of this, the Attorney General is concerned that Post Acute may close the nursing home and sell the property to a developer for a profit. According to the Attorney General, "the ultimate beneficiaries are the nursing home residents who require 24-hour care". In this context, the Attorney General discusses the "very real risk of transfer trauma to [these residents] if they are forced to relocate from the facility where they have been living".

The Attorney General further contends that the purposes of petitioner and the interests of its members will not be promoted by the sale. Petitioner's mission, as set forth in its Certificate of Incorporation, is "[t]o serve aged, disabled and chronically impaired persons by establishing and operating a residential health care facility consisting of skilled nursing home beds pursuant to [a]rticle 28 of the Public Health Law of the State of New York". According to the Attorney General, this mission will not be fulfilled if Post Acute submits a closure plan to the DOH

immediately after its purchase of the facility.

In reply, petitioner contends that the sale of its skilled nursing facility in North Creek cannot be compared to the sale of skilled nursing facilities on the lower east side of Manhattan. Petitioner further contends “that there is no indication whatsoever that [Post Acute] intends to acquire [p]etitioner’s property for [the purpose of] flipping it”. Insofar as the Ski Bowl Village at Gore Mountain is concerned, petitioner has submitted the affidavit of Hal Payne – its Administrator and Chief Executive Officer – which shared his observations that “it took approximately eight years for the Adirondack Park Agency to approve the Village project, which approval was separate from the Town of Johnsbury approval process, which was also very lengthy”. Payne further states that “[o]ne or more townhouse properties [in the Village] has been on the market since 2012” and “no further efforts for development . . . are currently underway”. Based upon this, petitioner suggests that it would be difficult in any event for its property to be developed for commercial purposes.

This Court concludes that the consideration and the terms of the sale are fair and reasonable and, further, that the sale will promote petitioner’s purposes and the interests of its members. Petitioner has amply demonstrated its diligence in researching all of the potential purchasers before deciding to sell its facility to Post Acute. Further – and as noted by petitioner – there is no evidence whatsoever that Post Acute plans to flip the property. Rather, the record establishes that Post Acute is a Delaware limited liability company in the business of owning and operating long-term care facilities. In addition to Adirondack Health and Heritage Commons, it

operates 10 nursing homes in the Buffalo area as well as several others out-of-state.³ Finally, while the Attorney General expresses concern regarding the risk of transfer trauma if Post Acute purchases and then closes the facility, although given petitioner's financial status this risk may be more imminent if the facility is not sold.

Briefly, petitioner has submitted a December 13, 2017 appraisal of its real property in support of the application. This appraisal values the property at \$1,540,000 because, *inter alia*, it is zoned for "Public and Semi-Public" uses, which excludes tourist accommodations. The Attorney General has requested that the record remain open until January 12, 2018 in order that he might retain his own expert to conduct a full real estate appraisal of the facility and provide "an affidavit regarding the 'reasonable likelihood' that a change in zoning for the [f]acility would happen".⁴

This final application is denied. Even if the Attorney General's appraiser finds that the real property is worth more than \$1,540,000 and a zoning change is reasonably achievable, the record still contains nothing whatsoever to suggest that Post Acute will sell the property – or to use it for anything other than a skilled nursing facility.

³ Interestingly, the Attorney General recently challenged Post Acute's acquisition of Odd Fellow and Rebekah Rehabilitation and Health Care Center, Inc. (hereinafter Odd Fellow) in the Town of Lockport, Niagara County – again, because it would not commit to continued operation of the facility as a nursing home for at least five years. The Supreme Court of Niagara County (Caruso, J.) held oral argument in that case on December 19, 2017 and approved the proposed sale.

⁴ The Attorney General indicates he was not able obtain this appraisal prior to submitting opposition because of the expedited notice of the application.

Therefore, having considered the Verified Petition of Adirondack Tri-County Nursing and Rehabilitation Center, Inc. together with Exhibits "A" through "L", attached thereto, the supporting affirmation of Roderick S. McDonald, Esq., dated November 29, 2017, and the affirmation of Thomas W. Simcoe, Esq., dated December 13, 2017 submitted in support of the petition, the opposing affirmation of Nathan M. Courtney, Esq., dated December 19, 2017 together with Exhibits "1" through "5", the opposing affirmation of David M. Slutsky, Esq., dated December 21, 2017 together with Exhibits "A" through "G" and the single page petition on behalf the 1199 SEIU "members of the Adirondack Tri-County Nursing and Rehabilitation Center, Inc.," submitted in opposition to the petition, the reply affirmation of Thomas W. Simcoe, Esq., dated December 21, 2017 together with Exhibit "A", the supporting affidavit of Hal Payne sworn to December 20, 2017, and upon the extensive oral arguments of counsel on December 22, 2017, it is hereby

ORDERED that petitioner Adirondack Tri-County Nursing and Rehabilitation Center, Inc. be and hereby is authorized to transfer title to Post Acute Partners Acquisition, LLC all assets and properties as described in the petition herein, and upon the conditions of sale set forth therein, and it is further;

ORDERED that any relief not specifically addressed has nonetheless been considered and is hereby expressly denied.

The above constitutes the Decision and Order of this Court.

The original of this Decision and Order has been filed by the Court together with the submissions enumerated above and the Order to Show Cause. Counsel for petitioner is hereby directed to promptly obtain a filed copy of the Decision and Order for service with notice of entry in accordance with CPLR 5513.

Dated: December 26, 2017
Lake George, New York



ROBERT J. MULLER, J.S.C.

ENTER:

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CERTIFICATE OF INCORPORATION

OF

F080127000347

ADIRONDACK TRI-COUNTY NURSING AND
REHABILITATION CENTER, INC.

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

THE UNDERSIGNED, for the purpose of forming a corporation under Section 402 of the Not-For-Profit Corporation Law, hereby certifies:

FIRST: The name of the corporation is ADIRONDACK TRI-COUNTY NURSING AND REHABILITATION CENTER, INC.

SECOND: The corporation is not formed for pecuniary profit or financial gain. All income and earnings of the corporation shall be used exclusively for its corporate purposes. The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-For-Profit Corporation Law.

THIRD: The purposes for which the corporation is to be formed are as follows:

(a) To serve aged, disabled and chronically impaired persons by establishing and operating a residential health care facility consisting of skilled nursing home beds pursuant to Article 28 of the Public Health Law of the State of New York;

(b) To buy, own, sell, convey, assign, mortgage, or lease any interest in real estate and personal property and to construct, maintain and operate improvements thereon necessary or incident to the foregoing purposes;

(c) To borrow money and issue evidence of indebtedness in furtherance of any or all of the objects of its business, and to secure the same by mortgage, pledge or other lien on the corporation's property;

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(d) To do any other act of thing incidental to or in connection with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its individual members, directors or officers, except as provided under Article 5 of the Not-For-Profit Corporation Law; and

(e) To operate exclusively for charitable and benevolent purposes as defined by Section 501(c)(3) of the Internal Revenue Code of 1986 (or corresponding provisions of any future United States Internal Revenue Law).

FOURTH: This corporation, pursuant to Section 201 of the Not-for-Profit Corporation Law, shall be a Type "B" corporation.

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

SIXTH: The names and addresses of the directors of the corporation until the first annual meeting are:

<u>Name</u>	<u>Address</u>
John Harvey	282 Main Street, North Creek, NY 12853
George Canon	159 Marcy Lane, Newcomb, NY 12852
Brian E. Towers	Algonquin Drive, Wells, NY 12190
Alan F. Smith	69 State Route 28, Warrensburg, NY 12885
Frederick H. Monroe	117 Blythewood Island Road, Chestertown, NY 12817

SEVENTH: The name and residence of the incorporator to this Certificate of Incorporation is as follows:

David A. Ruffo 2 Thoroughbred Drive,
East Greenbush, New York 12061

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The incorporator is of the age of 18 years or over and each person named as a Director of the corporation is 18 years or older.

EIGHTH: The duration of the corporation shall be perpetual.

NINTH: The corporation is organized and shall be operated as a non-profit organization, and shall not have power to issue certificates of stock or to declare or pay any dividends, and shall be operated exclusively for the purposes enumerated in Paragraph Third hereof, thereby to lessen the burdens of government and promote social welfare.

TENTH: No part of the net income or net earnings of the corporation shall inure to the benefit or profit of any individual member, or any trustee, director or officer of the corporation. No director, officer or employee of the corporation shall receive or be lawfully entitled to receive any pecuniary benefits from the operation thereof except as reasonable compensation for services to or for the corporation.

ELEVENTH: No substantial part of the activities of the corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, or participating in, or intervening in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

TWELFTH: In the event of dissolution, liquidation or winding up of the corporation, whether voluntary or involuntary, the funds, property, or other assets then held legally or beneficially by the corporation shall be distributed to charitable corporations or institutions within the County of Warren, State of New York entitled to the exemption status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, as determined by the Board of Directors of the corporation and subject to approval of a Justice of the Supreme Court of the State of New York, Fourth Judicial District.

THIRTEENTH: Adirondack Tri-County Nursing and Rehabilitation Center, Inc. designates the Secretary of State of the State of New York as its agent upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process served upon him is as follows:

ADIRONDACK TRI-COUNTY NURSING AND
REHABILITATION CENTER, INC.
P.O. Box 500, Ski Bowl Road
North Creel, New York 12853

FOURTEENTH: Notwithstanding any other provision of this Certificate of Incorporation, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 (or corresponding provision of any future United States Internal Revenue Law) or (b) by a corporation contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code of 1986 (or corresponding provision of any future United States Internal Revenue law).

FIFTEENTH: To do and perform all acts necessary to accomplish the purposes of the corporation, including the execution of the regulatory agreement with the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, and such other instruments and undertakings as may be necessary to enable the corporation to secure the benefits of financing with the assistance of mortgage insurance under the provisions of the National Housing Act. Such regulatory agreement and other instruments and undertakings shall remain binding upon the corporation, its successors and assignees, so long as the Corporation's mortgage is insured or held by the Secretary of Housing and Urban Development.

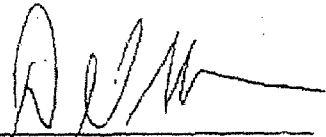
SIXTEENTH: To provide, on a nonprofit basis, nursing home facilities and services for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care where no adequate housing exists for such groups pursuant to Section 232 of the

National Housing Act, as amended.

SEVENTEENTH: Notwithstanding the foregoing, so long as the mortgage on the corporation's property is insured or held by the Secretary of Housing and Urban Development, the corporation shall, at all times, have the power to convey any or all of its property covered by the subject mortgage to the Secretary of Housing and Urban Development or his nominee.

EIGHTEENTH: Bylaws of the corporation may be adopted by the Directors at any regular meeting or any special meeting called for that purpose, so long as they are not inconsistent with the provisions of this Certificate or the Regulatory Agreement between the Corporation and the Secretary of Housing and Urban Development. So long as a mortgage on the corporation's property is insured or held by the Secretary of Housing and Urban Development, this Certificate of Incorporation may not be amended without the prior written approval of the Secretary of Housing and Urban Development.

IN WITNESS WHEREOF, this certificate has been signed by the incorporator this 29th day of November, 2002.



David A. Ruffo
2 Thoroughbred Drive
East Greenbush, New York 12061

1080127000349.

CERTIFICATE OF INCORPORATION
OF
ADIRONDACK TRI-COUNTY NURSING AND
REHABILITATION CENTER, INC.,

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

LAW OFFICES
TOBIN AND DEMPSEY
33 ELK STREET
ALBANY, NEW YORK 12207

dk jo

J.C.C.
STATE OF NEW YORK
DEPARTMENT OF STATE

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STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of
the Department of State, at the City of
Albany, on January 26, 2011.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State

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BY LAWS
OF
ADIRONDACK TRI-COUNTY NURSING AND REHABILITATION CENTER, INC.

ARTICLE I

Name, Seal and Offices

1. Name. The name of this not-for-profit corporation (hereinafter "Corporation") is the Adirondack Tri-County Nursing and Rehabilitation Center, Inc.
2. Seal. The Corporation shall have a corporate seal and shall use such seal personally, but the use of same shall be necessary only as required by law.
3. Offices. The principal office of the Corporation shall be in the County of Warren. The Corporation may also have offices at such other places as the Board of Directors may from time to time appoint or the purposes of the Corporation may require.

ARTICLE II

Purpose

1. Purpose. The purposes of the Corporation are as set forth in the Corporation's Certificate of Incorporation, as same may be amended from time to time.

ARTICLE III

Directors

1. Election. The business, property and assets of the Corporation shall be managed and controlled by a Board of Directors who shall be elected to hold office until the expiration of their respective terms of office and until the election and qualification of their respective successors, except as hereinafter or otherwise provided for filling vacancies.
2. Number. The Board of Directors shall consist of not less than three (3) nor more than fifteen (15) directors. The number of directors shall be set by majority vote of the Board of Directors at any annual or special meeting of the Board of Directors but no decrease shall shorten the term of an incumbent director.
3. Term. The directors of the Corporation shall be divided into three classes with an equal number of directors in each class. The term of office of the first class shall expire at the first annual meeting of the Corporation after their election. The terms of office of the second class shall expire at the second succeeding annual meeting and the third class at the third succeeding annual meeting. At each annual meeting after the election of the first classified board, directors shall be elected for a term of three years to replace those whose terms shall expire.

4. Honorary Directors. Upon recommendation of the Nominating Committee and majority vote of the directors present at an Annual Meeting, a person may be elected as an honorary director. The person must have shown continued outstanding contribution and exceptional interest in Adirondack Tri-County Health care and Rehabilitation Center. The person being considered does not have to be a previous board member. Notice of the nominations should be given at least 30 days prior to the Annual Meeting. A past board member being considered for an honorary director position can be nominated at any regular board meeting of the year, not necessarily just an annual meeting. Honorary directors will have the privilege of attending board meetings with voice but no vote.
5. Resignation. Any director may resign at any time by giving written notice of such resignation to the Board of Directors.
6. Removal. Any director may at any time be removed with cause by a majority vote of the Board of Directors or without cause by a two-thirds vote of the Board of Directors.
7. Vacancies. Any vacancy occurring among the directors, including any vacancy to be filled by reason of an increase in the number of directors, may be filled by the Board of Directors of the Corporation, unless otherwise required by law, the Certificate of Incorporation or these Bylaws. A director elected to fill a vacancy shall serve until the next succeeding annual meeting of the Board of Directors and until his successor shall have been elected and qualified.
8. Annual Meeting. The annual meeting of the Board of Directors shall be held in January of each year for the purpose of the election of directors, the election of officers and the transaction of such other business as may properly come before the meeting. The annual meeting shall be held at the Corporation's principal office on a date and time determined by the Board of Directors.
9. Special Meetings. Special meetings of the Board of Directors may be called by the President, and must be called by the President on the written request of three (3) members of the Board.
10. Notice of Meetings. Notice, Financial Reports, and Planned Agenda of all directors' meetings except as herein otherwise provided, shall be given at least three (3) days before the meeting to the usual business or residence address of the director, but such notice may be waived in writing by any director. At any meeting at which every director shall be present even though without any notice or waiver thereof, any business may be transacted.
11. Quorum. At all meetings of the Board of Directors, a majority of the directors shall be necessary and sufficient to constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors except as may be otherwise specifically provided by statute or by these Bylaws.
12. Participation by Conference Telephone. Any one or more members of the Board of Directors, or of any committee thereof, may participate in any meeting of the Board or such

committee by means of a conference telephone or similar equipment which allows all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence of a person at such a meeting.

13. Contracts and Services. The directors and officers of the Corporation may be interested directly or indirectly in any contract relating to or incidental to the operations conducted by the transaction, notwithstanding that they may also be acting as individuals, or as trustees of trusts, or as agents for other persons or corporations, or may be interested in the same matters as shareholders, directors or otherwise; provided, however, that any contract, transaction, or act on behalf of the Corporation in a matter which the directors or officers are personally interested as shareholders, directors or otherwise shall be at arm's length and not violate the proscription in the Certificate of Incorporation against the Corporation's use or application of its funds for private benefit; and provided further that no contract, transaction, or act shall be taken on behalf of the Corporation if such contract, transaction or act is a prohibited transaction or would result in the denial of the tax exemption under the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended. Each year immediately following the annual meeting a disclosure statement identifying such transactions, contracts or acts in which the directors and officers or their immediately family members are personally interested, shall be submitted to the President of the Board of Directors.

14. Compensation. Directors shall not receive any stated salary for their services as such, but the Board of Directors shall have power in its discretion to contract for and pay to directors rendering unusual or exceptional services to the Corporation special compensation appropriate to the value of such services.

15. Powers. All the corporate powers, except as are otherwise provided for in these Bylaws and in the laws of the State of New York, shall be and are hereby vested in and shall be exercised by the Board of Directors. The Board of Directors may by general resolution delegate to committees of their own number, or to officers of the Corporation, such powers as they may see fit.

16. General Management. The general management of the affairs of the Corporation shall be vested in the Board of Directors unless otherwise specifically provided for in the Corporation's Certificate of Incorporation.

17. Indemnification. The Corporation shall indemnify its officers, directors, committee members, agents and administrative personnel, and each of them in accordance with and to the full extent permitted by law, and in no way limited the foregoing in settlement and expenses, including, reasonable attorneys' fees, arising out of or resulting from actions or claims against them, (including, without limitation, civil and criminal actions and proceedings, instituted or threatened and appeals therein) by reason of being or having been officers, directors, committee members, agents or administrative personnel of this corporation or service or having served any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity at the request of the Corporation. To the extent available, the Corporation shall carry directors' and officers' liability insurance in such amounts and with such companies as are acceptable to the Board of Directors.

ARTICLE IV

Officers

1. Number. The officers of the Corporation shall be the President, Secretary, Treasurer and such other officers with such powers and duties not inconsistent with these Bylaws as may be appointed and determined by the Board of Directors. The offices of President and Secretary may not be held by the same person.
2. Election, Terms of Office and Qualifications. The officers shall be elected annually by the Board of Directors from among such persons as the Board of Directors shall determine at the annual meeting of the Board of Directors. The President shall hold office for no more than three (3) consecutive one (1) year terms.
3. Vacancies. In case any office of the Corporation becomes vacant by death, resignation, retirement, disqualification, or any other cause, the majority of the directors then in office may elect an officer to fill such vacancy, and the officer so elected shall hold office and serve until the next succeeding annual meeting of the Board of Directors and until the election and qualification of his successor.
4. President. The President shall preside at all meetings of the Board of Directors. He shall have and exercise general charge and supervision of the affairs of the Corporation and shall do and perform such other duties as may be assigned to him/her by the Board of Directors.
5. Secretary. The Secretary shall be responsible for such books, documents, and papers as the Board of Directors may determine. He/she shall attend and cause the minutes of all the meetings of the Board of Directors of the Corporation to be kept. He/she may sign with the President in the name and on behalf of the Corporation, any contracts or agreements authorized by the Board of Directors, and when so authorized or ordered by the Board of Directors, he/she may affix the seal of the Corporation. He/she shall, in general, perform all the duties incident to the office of Secretary, subject to the control of the Board of Directors, and shall do and perform such other duties as may be assigned to him/her by the Board of Directors.
6. Treasurer. The Treasurer shall have custody of all funds, property, and securities of the Corporation, subject to such regulations as may be imposed by the Board of Directors. He may be required to give bond for the faithful performance of his duties, in such sums and with such sureties as the Board of Directors may require. When necessary or proper he/she may endorse on behalf of the Corporation for collection checks, notes and other obligations and shall deposit, or cause them to be deposited by delegation of authority to Fiscal Services, to the credit of the Corporation at such bank or banks or depository as the Board of Directors may designate. By delegation of authority the Fiscal Services, he/she shall cause payments as may be necessary or property to be made on behalf of the Corporation. He/she shall cause the books of the Corporation to be kept for the purpose of full and accurate account of all monies and obligations received and paid or incurred for on account of the Corporation and he/she shall exhibit such books at all reasonable times to any Director on application at the Offices of the Fiscal Services

of the Corporation. He/she shall, in general, perform all the duties incident to the office of Treasurer, subject to the control of the Board of Directors.

7. Removal: Any officer may be removed with cause by the affirmative vote of a majority of the entire Board of Directors or without cause by a two-thirds vote of the entire Board of Directors at any regular or special meeting called for that purpose.

ARTICLE V

Agents and Representatives

The Board of Directors may appoint such agents and representatives of the Corporation with such powers and to perform such acts or duties on behalf of the Corporation as the Board of Directors may see fit, so far as may be consistent with these Bylaws, to the extent authorized or permitted by law.

ARTICLE VI

Contracts

The Board of Directors, except as in these Bylaws otherwise provided, may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to a specific instance; and unless as authorized by the Board of Directors, no officer, agent, or employee shall have any power or authority to bind the corporation by any such contract or engagement, or to pledge its credit, or render it liable pecuniarily for any purpose or to any amount.

ARTICLE VII

Committees

1. Executive Committee. There may exist an Executive Committee of the Board of Directors. The membership of the Executive Committee shall consist of the President, the Secretary and the Treasurer of the Corporation.

- 1a. The President of the Board of Directors shall serve as Chairperson of the Executive Committee.
- 1b. The Executive Committee may act on behalf of the Corporation in any manner when the Board of Directors is not in session, except as prohibited by statute. Actions undertaken by the Executive Committee shall be reported to the Board of Directors at the next regular or special meeting of the Board.
- 1c. A majority of the entire Executive Committee shall constitute a quorum for the transaction of all business that may properly come before it. Except as otherwise required by law or these Bylaws, the act of a majority of the members of the

entire Executive Committee present at a meeting at which a quorum is present shall be an act of the Executive Committee.

- 1d. Each member of the Executive Committee shall be entitled to one vote. There shall be no voting by proxy.
- 1e. The term of office of each member of the Executive Committee shall be co-extensive with his/her term of office as an officer of the Corporation. Any member of the Executive Committee who shall cease to be an officer of the Corporation shall ipso facto cease to be a member of the Executive Committee.
- 1f. Vacancies in the membership of the Executive Committee shall be filled by such officer's successor in office.

2. Standing Committees. The Standing Committees of the Corporation are the Nominating, and Finance.

- 2a. The Nominating Committee shall be appointed by the President. The Committee shall recommend a slate of candidates for the Board of Directors of this Corporation for the class of Directors whose term is expiring at the given annual meeting and to fill vacancies in the Board of Directors, recommend a slate of candidates for officers of this Corporation.
- 2b. The Finance Committee shall consist of the Treasurer and others appointed by the President. This committee will assure that this not-for-profit organization is managed in a financially competent manner. The committee will monitor and provide guidance on specific issues, review the budget and internal and external financial statements. Committee members shall receive copies of cash flow statements, financial statements, accounts payable analysis, accounts receivable analysis, bank account balances, mandated reports due and insurance/wage/fringe benefits analysis.
- 2c. Each Standing Committee shall consist of not less than three (3) directors. Non-directors can sit as members of a Standing Committee without voting rights.

A majority of the voting members of the Standing Committee shall constitute a quorum for the transaction of all business that may properly come before it. The act of the majority of the voting members of a Standing Committee present at a meeting at which a quorum is present shall be the act of the Standing Committee.

Each voting member of the Standing Committee shall be entitled to one (1) vote. There shall be no voting by proxy.

The term of office of each voting member of a Standing Committee shall be co-extensive with the term of his/her office as a Director, unless the President of the

Board of Directors at the time of his/her designation shall affix a shorter period of term of office.

3. Special Committees. The Board of Directors by resolution adopted by a majority of the Board may create such special committees:

- 3a. Personnel Committee shall conduct/review employee relations matters for recommendation to the Board of Directors, (i.e., employee handbook, union negotiations, employee bonuses, employer policies and procedures).
- 3b. The medical Advisory Committee/Quality Assurance Committee shall monitor and ensure continued quality assurance in programs; develop/amend medical policies; review medical services; advise the Board of Directors regarding medical and related problems; establish procedure for matters such as physician visits, records, consultant and other related services. This committee shall meet quarterly.
- 3c. Building and grounds committee shall meet with Support Services Supervisor and Assistant to review results of maintenance inspection and operation within the facility – to include interior and exterior maintenance, grounds, parking areas, and any needs that should be addressed for repair or replacement.
- 3d. All Special Committees shall report to the Board of Directors at the next meeting following the committee's meeting.

4. Advisory Committee. In addition to the above, the Board of Directors may appoint from its number, or from among such persons as the Board may see fit, one or more advisory committees, and at any time may appoint additional members thereto. Such advisory committees shall advise with and aid the officers of the Corporation in all matters designated by the approval of the Board of Directors, prescribe rules and regulations for the call and conduct of meetings of the committee and other matters relating to its procedure.

The members of any of the above committees shall not receive any stated salary for their services as such, but by resolution of the Board of Directors a fixed reasonable sum for expenses for attendance at each regular or special meeting of such committee may be allowed. The Board of Directors shall have power in its discretion to contract for and to pay to any member of any such committee, rendering unusual or exceptional service to the Corporation, special compensation appropriate to the value of such services.

ARTICLE VIII Fiscal Year

The fiscal year of the Corporation shall commence on January 1 of each year and end on December 31.

ARTICLE IX

Prohibition Against Sharing in Corporate Earnings

No director, officer or employee of or member of a committee of or person connected with the Corporation, or any other private individual shall receive at any time any of the net earnings or pecuniary profit from the operations of the Corporation, provided that this shall not prevent the payment to any such person of such reasonable compensation for services rendered to or for the Corporation in effecting any of its purposes as shall be fixed by the Board of Directors and no such person or persons shall be entitled to share in the distribution of any of the corporate assets upon the dissolution of the Corporation.

ARTICLE X

Investments

The Corporation shall have the right to retain all or any part of any securities or property acquired by it in whatever manner, and to invest and reinvest any funds held by it, according to the judgment of the Board of Directors, provided, however, that no action taken is a prohibited transaction or would result in the denial of the tax exemption under the Internal Revenue Code and its regulations as they now exist or they may hereafter be amended.

ARTICLE XI

Voting Upon Shares of Other Corporation

Unless otherwise ordered by the Board of Directors, the President shall have full power and authority on behalf of the Corporation to vote in person at any meeting of shareholders of any corporation in which this Corporation may hold shares, and at any such meeting may possess and exercise all of the rights and powers incident to the ownership of such shares which, as the owner thereof, this Corporation might have possessed and exercised if present. The Board of Directors may confer like powers upon any other person and may revoke any such powers as granted at its pleasure.

ARTICLE XII

Shared Services or Services Between Related Corporations

Any shared services between the Corporation any or organization related to the Corporation shall be charged to the Corporation in an amount and in a manner consistent with generally accepted accounting practices and applicable rules and/or regulations of any then existing third-party reimbursement agencies.

ARTICLE XIII

The Bylaws may be amended by an affirmative vote of two-thirds of the entire Board of Directors at any meeting of the Board provided that at least ten (10) days written notice of the proposed amendment is given.
