

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

**AGENDA**

*July 29, 2021*

*Immediately following the Committee on Codes, Regulations and Legislation Meeting  
(Codes scheduled to begin at 10:15 a.m.)*

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

**I. INTRODUCTION OF OBSERVERS**

Jeffrey Kraut, Chair

**II. APPROVAL OF MINUTES**

June 3, 2021 Meeting Minutes

**III. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES**

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

Lisa Pino, Executive Deputy Commissioner

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

Richard Becker, M.D., Deputy Commissioner, Office of Primary Care and Health Systems Management

**IV. REGULATION**

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

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

**TO BE DISTRIBUTED SEPARATELY**

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

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

Peter Robinson, Chair of Establishment and Project Review Committee

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

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

**CON Applications**

**Acute Care Services - Construction**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	211234 C	Mount St. Mary's Hospital and Health Center (Niagara County)	Contingent Approval
2.	202168 C	Lewis County General Hospital (Lewis County)	Contingent Approval
3.	211008 C	Roswell Park Cancer Institute (Erie County)	Contingent Approval

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

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

**CON Applications**

**Acute Care Services- Construction**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	211073 C	John T. Mather Memorial Hospital of Port Jefferson New York, Inc. (Suffolk County) Mr. Kraut – Recusal Dr. Strange - Recusal	Contingent Approval

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

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

**NO APPLICATIONS**

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

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

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

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

**CON Applications**

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

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	201275 B	New York City Health & Hospital Corporation/Gotham Health FQHC, Inc. d/b/a Tremont Community Health Center of Excellence (Bronx County)	Contingent Approval
2.	202004 B	New York City Health & Hospital Corporation/Gotham Health FQHC, Inc. d/b/a Broadway Community Health Center of Excellence (Kings County)	Contingent Approval
3.	202005 B	New York City Health & Hospital Corporation/Gotham Health FQHC, Inc. d/b/a Roosevelt Community Health Center of Excellence (Queens County)	Contingent Approval

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

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

**CON Applications**

**Ambulatory Surgery Centers – Establish/Construct**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	211054 B	Ainsworth Health, LLC (Nassau County) Dr. Lim – Interest/Abstaining	Contingent Approval

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

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

**NO APPLICATIONS**

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

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

**VI. NEXT MEETING**

September 23, 2021 (NYC)  
October 7, 2021 (NYC)

**VII. ADJOURNMENT**

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

**Minutes**  
**June 3, 2021**

The Annual Meeting of the Public Health and Health Planning Council was held on Thursday, June 3, 2021 via Zoom and live webcast. Chairman Jeffrey Kraut presided.

**COUNCIL MEMBERS PRESENT**

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

**DEPARTMENT OF HEALTH STAFF PRESENT**

Mr. Udo Ammon	Ms. Karen Madden
Dr Richard Becker	Ms. Kathy Marks
Mr. Ernest Clement	Ms. Shaymaa Mousa
Mr. Jason Corvino	Ms. Vanessa Murphy
Ms. Valarie Deetz	Ms. Marthe Ngwashi
Ms. Barbara DelCogliano	Mr. Mark Noe
Mr. Mark Furnish	Mr. Justin Pfeiffer
Mr. Brian Gallagher	Ms. Tracy Raleigh
Ms. Shelly Glock	Ms. Carol Rodat
Mr. Michael Heeran	Ms. Lora Santilli
Mr. Adam Herbst	Ms. Stephani Shulman
Dr. Eugene Heslin	Ms. Kerri Tily
Ms. Colleen Leonard	Ms. Lisa Thomson
Dr. Emily Lutterloh	Ms. Jennifer Treacy
Mr. George Macko	

**INTRODUCTION**

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

## **2020 ANNUAL MEETING**

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

### **ELECTION OF OFFICERS**

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

Mr. Kraut nominated Dr. Jo Ivey Boufford to serve as the Council's Vice Chair. The motion was seconded by Dr. Brown. The motion passed. Please see page 2 of the attached transcript.

#### **Standing Committee**

Mr. Kraut stated there are no changes to the Council's standing committee's and read the names of the chairs of the committees and thanked the Council members for their continued dedication. Please see page 2 of the attached transcript.

### **ADOPTION OF THE 2022 PHHPC MEETING DATES**

Mr. Kraut asked for a motion to adopt the 2022 PHHPC Meeting Dates. Dr. Berliner motioned for approval. Ms. Monroe seconded the motion. The minutes were unanimously adopted. Please refer to page 2 of the attached transcript.

### **APPROVAL OF THE MEETING MINUTES OF APRIL 8, 2020**

Mr. Kraut asked for a motion to approve the April 8, 2021 Minutes of the Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval. Dr. Brown seconded the motion. The minutes were unanimously adopted. Please refer to pages 2 and 3 of the attached transcript.

The Full Council meeting was suspended and the Committee on Codes, Regulations and Legislation was reconvened.

The Committee on Codes, Regulations and Legislation met and adjourned. Mr. Kraut reconvened the Full Council meeting.

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

#### **Department of Health Activities**

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

Dr. Zucker began his report by stating that a year ago tomorrow will mark our very first meeting that we did in the virtual format during the COVID-19 pandemic and that it was his hope that today's meeting will be one of the last ones that we have to hold virtually that we can get back to in-person meetings, starting with the next one.

Dr. Zucker noted that New York has just succeeded in limiting the incidence of new diagnoses to under a 1,000 hospitalizations per day, so that these numbers have dropped. New diagnoses under 1,000 a day. Percent positive was at the lowest point it's ever been at less than 2 percent. New York were testing between 50,000 and 70,000 New Yorkers per day more than ever before. We also saw the burden of COVID-19 gradually subsiding in our hospitals. And on this day last year, we had 2,840 New Yorkers hospitalized with COVID-19. That was down from 18,825, which was just 52 days earlier. The unbelievable progress of New York State made against COVID-19 last Spring following the immense tragedy was thanks to every New Yorker doing his or her part to keep our country safe. While we were making great progress throughout the Summer, we knew our battle was far from over and we were proceeding cautiously with our regional reopening plan and watching other states and countries as closely as we implemented and updated our travel advisories. An Autumn full of uncertainty lay ahead as we prepared for the school year to devise what is safe return to the classroom might look like for many millions of young New Yorkers. Meanwhile, the Fall and the Winter resurgence of cases and hospitalizations still lurked on the horizon at that point. As a vaccine was still several months away at that point, we knew that the path towards a new normal would be treacherous and uncertain without one.

Dr. Zucker said fast forward to today. Our footing against COVID-19 is much stronger. Like last year, we continue to see reductions in hospitalizations and new cases and fatalities following the surge this past Winter. The numbers are dramatically down. The number of daily new cases is declined precipitously from just weeks ago. We are now seeing fewer than 500 new cases per day. We have now seen 58 straight days of decline on a 7 day average positivity. New York State now has the lowest 7 day positivity rate in the nation. Hospitalizations continue to trend in the right direction as well, with 970 COVID-19 patients hospitalized. That's a long way from that 18,000 plus that we had at our peak last year. I was thinking about that this morning. 18,825 people with COVID in the hospital knowing that we only have 53,000, normally 53,000 beds, even though we did a surge and flex. It's an amazing number. In fact, yesterday marks the first time since mid-October of 2020 that we have fewer than a thousand New Yorkers that have been in the hospital with COVID-19. Since our last meeting in April, the hospitalizations have declined by over 75 percent, so really dramatically drop. So, based on the trajectory of new cases, we expect these trends to continue. A lot of this has to do with vaccinations. A little bit about vaccines. As I mentioned during our last meeting, this next and final stage of the COVID-19 pandemic will be a battle of the vaccines versus the variants. These last few months have brought us incredibly far in this fight. We have administered over 19 million doses to date and 11 million New Yorkers have now received at least one dose. 9 New Yorkers, and over 57 percent of our adult population have been fully vaccinated against COVID-19. We have the percentage of those who have received at least one dose is much higher as well. Since the last time we spoke, we've also moved to a very new phase of the vaccination program.

Dr. Zucker explained that two days before our last meeting, which was on April 6, two days before the meeting was on the 8th, we expanded eligibility for the COVID-19 vaccine to all New Yorkers age 16 and older. And at the time, demand to receive the vaccine was the highest it's ever been. And the biggest constraint on the number of New Yorkers who we could see today was really the amount of vaccine that we need from the federal government. As you all know, the situation has changed dramatically. The pace of vaccinations has slowed over the past several weeks now because of a vaccine shortage, but because some New Yorkers are not ready to be vaccinated or have not yet access the vaccine. Since our last meeting, the supply and demand have switched places, as has been true throughout the COVID-19 pandemic. As the situation changes and affected, New York State response is one that changes with it. So therefore our focus has shifted to those individuals who have yet to receive the vaccine. And those are young New Yorkers, New Yorkers who have not been able to access the vaccine, those for whom it needs to be more convenient, and New Yorkers who are hesitant or those that need more information to feel comfortable about getting vaccinated. Adolescents have been eligible for the least amount of time. It's pretty much understandable that they have the furthest to go. Thus far, 9.5 Percent of New Yorkers ages 12 to 17 have been vaccinated since May 12th, as since May 10th, when the FDA modified the vaccine to allow this group to be vaccinated. New York State is taking action to encourage adolescents to get vaccinated as speaking with the team this morning about this as well. On May 26, the Governor announced, the get a shot to make your future initiative, which New York State will give away 50 full scholarships to any SUNY or CUNY school to young people who get vaccinated. The early results show that that is actually working. Since announcing this initiative, nearly 46,000 12 to 17 year old have been vaccinated.

Commissioner Zucker noted that as New Yorkers, children and young adults prepare to go back to school in person in the Fall, vaccines are one of the most powerful tools at our disposal to make sure the schools are safe and remain safe as possible for all the students, for the teachers, for the staff and for the families. The second group I mentioned, New York vaccination hasn't been successful yet for those who haven't yet had a chance to get the vaccine. We appreciate that going into a mass vaccination site or make an appointment at a doctor's office may not be the most convenient for New Yorkers to get vaccinated. We've taken action to get the vaccine to those individuals wherever they are. We've established small pop up vaccination sites around the state and high traffic locations, including MTA stations in New York City and the NFTA stations in Western New York. Riders were even given a free 7 day pass to ride those systems for getting vaccinated. From the pop up clinics and churches to vaccine sites of public transit hubs, beaches, sports venues, state parks, New York State is bringing a vaccine to New Yorkers wherever they live, where they work, wherever they play. However, New Yorkers who still feel hesitant, that's the third but don't have enough information, we recognize that access is not enough. Research has shown that these individuals are the most effective messages to convey the fact that COVID-19 vaccines are safe and effective are not the politicians or the celebrities, it's really their own personal health care providers. And in many ways, I've experienced this on my own level, where my patients from when I was practicing medicine, they've called me. They've called me and said, hey, what do you think about the vaccine? Picked up the phone and called, because they trust those who they've known and they've spent their lives, who have been taking care of their health for the majority of their lives. A poll from the beginning of this year



shows that the setting in which most Americans feel comfortable receiving the vaccine is their own doctors offices. Hospitals follow obviously close behind. As such, New York is taking steps to make it as easy as possible for individual health care providers to acquire and administer the vaccine. Pfizer Biotech recently rolled out a smaller box size for distributing their vaccines in 450 packs in addition to continue with that package the vaccine supply. The original, which was 1,107 ship packs. This will help to some degree in getting the vaccines into the small provider settings, because the concern was people felt I don't take this whole big package, open them up and then unfortunately the waste vaccine, which we didn't want. The small packs are better. New York State also recently established a vaccine redistribution pilot program to assist physician practices that want to administer the vaccine, but cannot commit to administering that many doses before their expiration. The Department of Health remains committed to working with all the provider types to make sure they are well prepared to administer the vaccine to any eligible New Yorker. The Biden Administration has set the goal of 70 percent of all US adults that receive at least one shot by July 4th. New York State is on track to meet this goal in advance of Independence Day, and we will not stop there. The vaccine effort will continue.

Dr. Zucker said in conclusion, looking ahead to later this Summer in the Fall, we know that it will be necessary and necessary to stay vigilant in our fight against pandemic as more is known in the months to come about the necessity of booster doses to maintain the COVID-19 vaccines effectiveness. New York State will work with the health care providers, all types to facilitate booster doses as well as influenza vaccines. We remain on the lookout for variants of interest and variants of concern throughout New York State, as well as around the nation and around the world. While we have continued to have success in reducing our rates of COVID-19 in New York State, despite its variants, continued high rates of COVID-19 other states and other nations is still cause for concern. The fight between the vaccine and the vaccine variants, I should say, and the sorry, the fight between the viral variants and vaccine we continue to do, we are working to be sure that we win this global battle. It has been true throughout COVID-19, none of our previous state would have been possible without the partnership with all New York State health care providers. Thanks to all of them. I appreciate all that they're doing. We continue to make tremendous progress. The coming months to look brighter than the months since the pandemic's past.

Dr. Zucker concluded his report. To read the complete report and questions from the Members, please see pages 4 through 10 of the attached transcript.

## **REGULATION**

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

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

### **For Discussion**

- 20-22 Amendment of Section 405.11 of Title 10 NYCRR  
(Hospital Personal Protective Equipment (PPE) Requirements)
- 20-23 Amendment of Section 415.19 of Title 10 NYCRR  
(Nursing Home Personal Protective Equipment (PPE) Requirements)
- 20-24 Addition of Sections 1.2, 700.5 and Part 360 to Title 10 NYCRR;  
Amendment of Sections 400.1, 405.24 & 1001.6 of Title 10 NYCRR and  
Sections 487.3, 488.3 and 490.3 of Title 18 NYCRR (Surge and Flex Health  
Coordination System)
- 20-27 Amendment of Section 405.11 and Addition of New Sections 77.13, 77.14  
and 415.33 to Title 10 NYCRR (COVID-19 Confirmatory Testing)
- 20-06 Amendment of Part 2, Section 405.3 and Addition of Section 58-1.14 to  
Title 10 NYCRR (Investigation of Communicable Disease; Isolation and Quarantine)
- 21-06 Addition of Subpart 66-4 to Title 10 NYCRR (COVID-19 Vaccinations of Nursing  
Home and Adult Care Facility Residents and Personnel)

Dr. Gutiérrez began his report by briefly describing the proposed regulations that were discussed at the June 3, 2021 Committee on Codes, Regulations and Legislation meeting. Dr. Gutiérrez concluded his report. Please see page 10 of the transcript.

## **PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS**

Mr. Kraut introduced Mr. Robinson to give the Report of the Committee on Establishment and Project Review.

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

Peter Robinson, Chair, Establishment and Project Review Committee

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

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

**CON Applications**

**Hospice Services - Construction**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
211032 C	Niagara Hospice, Inc. (Niagara County)	Contingent Approval

Mr. Robinson introduced application 211032 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see page 11 of the transcript.

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

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

**NO APPLICATIONS**

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

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

**NO APPLICATIONS**

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

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

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

**CON Applications**

**Certified Home Health Agencies – Construction**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
211039 C	Guthrie Home Health (Tioga County)	Contingent Approval

Mr. Robinson introduced application 211039 and motioned for approval. Dr. Gutiérrez seconded the motion. After much discussion the members motion to approve with the additional condition carried. Please see pages 11 through 23 of the transcript.

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

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

**CON Applications**

**Ambulatory Surgery Centers – Establish/Construct**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
211035 E	Griffiss Surgery Center (Oneida County)	Approval

Mr. Robinson introduced application 211035 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see page 23 of the transcript.

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

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

**NO APPLICATIONS**

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

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

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

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

**CON Applications**

**Ambulatory Surgery Centers -Establish/Construct**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
202273 B	147 Wellness LLC t/b/k/a Midtown Endoscopy & Surgical Center, LLC (New York County) Mr. Kraut – Interest Dr. Strange - Interest	Contingent Approval

Mr. Robinson called application 202273 and noted for the record that Mr. Kraut and Dr. Strange have an interest. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see pages 24 and 25 of the transcript.

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

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
202250 E	Assured Care Home Health, LLC (Nassau County) Mr. Kraut Recusal Dr. Strange - Recusal	Contingent Approval

Mr. Robinson called application 202250 and noted for the record that Mr. Kraut and Dr. Strange have declared a conflict and have exited the meeting room. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried with the noted recusals. Mr. Kraut and Dr. Strange return to the meeting. Please see pages 25 and 26 of the transcript.

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

**NO APPLICATIONS**

Mr. Robinson concluded his report.

**I. ADMINISTRATIVE LAW JUDGE’S REPORT AND RECOMMENDATION**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
171041 E	Shining Star Home Health Care (Kings County) Ms. Carver-Cheney - Recusal	Disapproved

Mr. Kraut called application 171041 and noted for the record that Ms. Carver-Cheney has a conflict and has left the meeting room. Mr. Kraut turned it over to the Department. Ms. Raleigh, Ms. Ngwashi and Ms. Rodat advised the members on procedural matters pertaining to the Administrative Law Judge Recommendation and background information. Mr. Kraut motioned for approval, Dr. Gutiérrez seconded the motion. The motion to approve failed. Mr. Kraut made a second motion to disapprove, Dr. Berliner and Dr. Gutiérrez seconded the motion. The motion to disapprove carried. Please see pages 26 through 40 of the attached transcript for the complete discussion.

**ADJOURNMENT:**

Mr. Kraut announced the upcoming PHHPC meetings and adjourned the public portion of the meeting and was calling into order Executive Session to consider a Health Personnel and Interprofessional Relations matter.

**NEW YORK STATE DEPARTMENT OF HEALTH**  
**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL**  
**TRANSCRIPT**  
**JUNE 3, 2021**

**Jeffrey Kraut** What I'm going to do, folks, is because the Commissioner's schedule acutely changed and he's unable to join us at the time we expected. He's only available at 10:00. I am going to suspend the Codes Committee. I am going to convene the meeting. I'll go through my administrative stuff at the beginning, we'll then hear from the Commissioner, after the Commissioner speaks, I will return the venue to Dr. Gutierrez, and we'll continue the Codes Committee, when that concludes, will go back to the balance of the agenda.

**Jeffrey Kraut** I hope that's clear.

**Jeffrey Kraut** You agree to suspend the Codes Committee at this point in time, right?

**Dr. Angel Gutierrez** Yes, yes, that's fine.

**Jeffrey Kraut** My name is Jeff Kraut, and I have the privilege to call to order the June 3rd, 2021 meeting of the Public Health and Health Planning Council, both virtually. I want to welcome our members, Commissioner Zucker, participants and observers and members of the public. As a reminder for our audience, viewing the public meeting via the webcast, there's a form that needs to be filled out, which we require as part of in accordance with Executive Law, Section 166. The form is posted on the department's website, which is NYHealth.Gov, under Certificate of Need. We appreciate if you would e-mail the forms back to Colleen.Leonard@Health.NY.Gov. We appreciate your assistance in helping us comply. This meeting is subject to the open meeting law broadcast over the internet. We ask everybody who's participating to remain on mute until your speaking. Please avoid rustling of papers. Conversations will pick up everything. As you have just noticed, there's synchronized captioning and therefore we it's important we're not talking over each other. When you do speak for the first time, identify yourself as a council member, or DOH staff, that will be helpful for maintaining our record. We're going to encourage members, staff and the public to join the department's listserv on Certificate of Need, that will help inform the public as to what it's going to be on the agenda and to keep you aware of important meeting dates, information notices, our agenda, policy matters. You could join by [www.Health.NY.Gov/facilities/CON/Listserv](http://www.Health.NY.Gov/facilities/CON/Listserv). Go to the website and you'll find it. It's a little easier. You can always contact the Secretary, Collene Leonard, and she will assist you as well.

**Jeffrey Kraut** Today we're conducting a portion of our annual meeting which we're going to vote on the appointment of the council's Vice Chair. We'll hear a report from Dr. Zucker, followed by a report from Codes and Regulations, Dr. Gutierrez, then a report from Mr. Robinson for Establishment and Review Committee Actions. Then we're going to take up a matter about a recommendation from an administrative law judge considering an application before us and then we are going to enter into Executive Session to consider cases that are before us under public health law 280B. And then lastly, I'll make some statement about well, before we go into the Executive Session, I'll talk a little about some of the strategic conversations that we're hoping to have in the months ahead. Just before we get to Peters report, you'll have time. Take a look. We've organized the agenda by topics, the batching of CON applications. I'd ask the members, take a look at those

batches, make sure everything is okay. If you have any problems, want to have it removed, please notify Colleen.

**Jeffrey Kraut** I'd now like to make a motion to elect the Vice Chair and make a motion for Dr. Boufford to continue to serve as Vice Chair.

**Jeffrey Kraut** Dr. Boufford, I just realized I didn't call you when I saw your expression. I think that's on me, but I hope you will continue to serve as Vice Chair, and I hope we'll have a motion and the council will agree.

**Jeffrey Kraut** May I have a motion?

**Unknown** Second.

**Jeffrey Kraut** All those in favor, aye.

**All** Aye.

**Jeffrey Kraut** Thank you, Dr. Boufford.

**Dr. Jo Ivey Boufford** I'm honored for the confidence.

**Dr. Jo Ivey Boufford** Thank you, everybody.

**Jeffrey Kraut** You know, there are different activities about replenishing the members of the council in the upcoming year. Right now, I'm not going to make any changes to the standing committees. I want to thank everybody for the time they've spent. For the moment, I'm going to leave these appointments until we may revisit it a little later in the year is for Mr. Robinson to continue as Chair and Dr. Kalkut Vice Chair for Establishment of Project Review, Dr. Boufford as Chair, Dr. Torres, as Vice Chair for Public Health, Dr. Ruge, Chair of Health Planning, Committee on Codes and Regulations, Dr. Gutierrez as Chair and Mr. Holt as Vice Chair. Dr. Martin continued to serve as Chair of Health Personnel and Professional Relations Committee, and Dr. Boufford is also providing the Chair of the Ad Hoc Committee for the State Health Improvement Plan. You've received of agenda item for the 2022 meeting dates.

**Jeffrey Kraut** May I have a motion for the adoption and the posting of the 2022 meeting dates?

**Jeffrey Kraut** I have a motion, Dr. Berliner.

**Jeffrey Kraut** A second by Ms. Monroe.

**Jeffrey Kraut** All those in favor, aye?

**All** Aye.

**Jeffrey Kraut** The motion passed.

**Jeffrey Kraut** May I have a motion to adopt the April 8th, 2020 meeting minutes.

**Jeffrey Kraut** I have a motion from Dr. Berliner.



**Jeffrey Kraut** A second by Dr. Brown.

**Jeffrey Kraut** All those in favor, aye.

**All Aye.**

**Jeffrey Kraut** Thank you very much.

**Jeffrey Kraut** And I will now turn to Dr. Zucker, who will update the council about the department's meeting. At the conclusion of Dr. Zucker's statements, we will return to the Codes Committee.

**Jeffrey Kraut** Dr. Zucker.

**Colleen** Jeff, I'm still waiting for him to come on. I thought that one number may have been his cell phone number, but he will be joining us momentarily.

**Jeffrey Kraut** Okay, the topic is reimagining the reopening of...

**Jeffrey Kraut** Let me take a moment of, just to take the time. As was mentioned in a previous session, we have identified a series of topics that we think are important to discuss in a more thorough venue other than the council meeting or the full meeting or the committee meetings. We want to set up a series of dates over the next several months to dive into certain topics. I have been in discussion with the Department of Health. We are trying to kind of narrow down and prioritize what the department's focus is going to be in some of their priorities and trying to harmonize those discussions and making sure that we're going to have sufficient staff and support to do a good job of understanding and formulating some of the health policy issues that are coming before the health system. Let me just finish this thought. I think at the next meeting of the council, which will be held in July, we will have that as an agenda topic and we'll go through that in a more detailed way. I think we'll have a good sense of that. I will circulate something prior to that meeting that we can use as a basis. That's my hope now.

**Jeffrey Kraut** I've just been noticed that the Governor is on the phone with the Commissioner right now, and obviously he may take priority. So, what I'll do, if it's okay with everybody, I am going to suspend the meeting of the Public Health and Health Planning Council, and I will return to Dr. Gutierrez. And as soon as the Commissioner is available, I'll ask us to reconvene.

**Jeffrey Kraut** May I have a motion to suspend the council?

**Dr. Angel Gutierrez** So moved.

**Jeffrey Kraut** I have a motion.

**Jeffrey Kraut** I have a second.

**Jeffrey Kraut** All those in favor, aye.

**All Aye.**

**Jeffrey Kraut** Dr. Gutierrez, could you please resume the Codes meeting?

#### CODES COMMITTEE CONVENED

**Jeffrey Kraut** I will reconvene the Public Health and Health Planning Council, and ask Dr. Zucker to present his report and then we'll return to the Codes Committee for the other two codes.

**Jeffrey Kraut** Dr. Zucker, welcome.

**Dr. Zucker** Thank you. Thank you all. Thank you for for giving me the opportunity to speak. I was listening for a moment about the issue of the ---, I would love to follow u, that conversation at some point. It's an interesting point.

**Dr. Zucker** Good morning. It's good to see everyone. Thank you for continuing to contribute your time and expertise and furthering the work of New York State Public Health Council. A year ago tomorrow will mark our very first meeting that we did in the virtual format during the COVID-19 pandemic. It's my hope that today's meeting will be one of the last ones that we have to hold virtually that we can get back to in-person meetings, starting with the next one. We'll see where we are. And one year ago, New York State was in a very different place in our fight against COVID-19. And last year when we spoke following the horrific Spring surge that we had of hospitalizations and deaths that New York state endured. We were seeing signs of progress against the virus. We have just succeeded in limiting the incidence of new diagnoses to under a 1,000 hospitalizations per day, so that these numbers have dropped. New diagnoses under 1,000 a day. These numbers have really dropped dramatically. Percent positive was at the lowest point it's ever been at less than 2 percent. We were testing between 50,000 and 70,000 New Yorkers per day more than ever before. We also saw the burden of COVID-19 gradually subsiding in our hospitals. And on this day last year, we had 2,840 New Yorkers hospitalized with COVID-19. That was down from 18,825, which was just 52 days earlier. The unbelievable progress of New York State made against COVID-19 last Spring following the immense tragedy was thanks to every New Yorker doing his or her part to keep our country safe. While we were making great progress throughout the Summer, we knew our battle was far from over and we were proceeding cautiously with our regional reopening plan and watching other states and countries as closely as we implemented and updated our travel advisories. An Autumn full of uncertainty lay ahead as we prepared for the school year to devise what is safe return to the classroom might look like for many millions of young New Yorkers. Meanwhile, the Fall and the Winter resurgence of cases and hospitalizations still lurked on the horizon at that point. As a vaccine was still several months away at that point, we knew that the path towards a new normal would be treacherous and uncertain without one. So, fast forward to today. Our footing against COVID-19 is much stronger. Like last year, we continue to see reductions in hospitalizations and new cases and fatalities following the surge this past Winter. The numbers are dramatically down. The number of daily new cases is declined precipitously from just weeks ago. We are now seeing fewer than 500 new cases per day. We have now seen 58 straight days of decline on a 7 day average positivity. New York State now has the lowest 7 day positivity rate in the nation. Hospitalizations continue to trend in the right direction as well, with 970 COVID-19 patients hospitalized. That's a long way from that 18,000 plus that we had at our peak last year. I was thinking about that this morning. 18,825 people with COVID in the hospital knowing that we only have 53,000, normally 53,000 beds, even though we did a surge and flex. It's an amazing number. In fact, yesterday marks the first time since mid-October of 2020 that we have fewer than a thousand New Yorkers that have been in the hospital with

COVID-19. Since our last meeting in April, the hospitalizations have declined by over 75 percent, so really dramatically drop. So, based on the trajectory of new cases, we expect these trends to continue. A lot of this has to do with vaccinations. A little bit about vaccines. As I mentioned during our last meeting, this next and final stage of the COVID-19 pandemic will be a battle of the vaccines versus the variants. These last few months have brought us incredibly far in this fight. We have administered over 19 million doses to date and 11 million New Yorkers have now received at least one dose. 9 New Yorkers, and over 57 percent of our adult population have been fully vaccinated against COVID-19. We have the percentage of those who have received at least one dose is much higher as well. Since the last time we spoke, we've also moved to a very new phase of the vaccination program. Two days before our last meeting, which was on April 6, two days before the meeting was on the 8th, we expanded eligibility for the COVID-19 vaccine to all New Yorkers age 16 and older. And at the time, demand to receive the vaccine was the highest it's ever been. And the biggest constraint on the number of New Yorkers who we could see today was really the amount of vaccine that we need from the federal government. As you all know, the situation has changed dramatically. The pace of vaccinations has slowed over the past several weeks now because of a vaccine shortage, but because some New Yorkers are not ready to be vaccinated or have not yet access the vaccine. Since our last meeting, the supply and demand have switched places, as has been true throughout the COVID-19 pandemic. As the situation changes and affected, New York State response is one that changes with it. So therefore our focus has shifted to those individuals who have yet to receive the vaccine. And those are young New Yorkers, New Yorkers who have not been able to access the vaccine, those for whom it needs to be more convenient, and New Yorkers who are hesitant or those that need more information to feel comfortable about getting vaccinated. Adolescents have been eligible for the least amount of time. It's pretty much understandable that they have the furthest to go. Thus far, 9.5 Percent of New Yorkers ages 12 to 17 have been vaccinated since May 12th, as since May 10th, when the FDA modified the vaccine to allow this group to be vaccinated. New York State is taking action to encourage adolescents to get vaccinated as speaking with the team this morning about this as well. On May 26, the Governor announced, the get a shot to make your future initiative, which New York State will give away 50 full scholarships to any SUNY or CUNY school to young people who get vaccinated. The early results show that that is actually working. Since announcing this initiative, nearly 46,000 12 to 17 year olds have been vaccinated. As New Yorkers, children and young adults prepare to go back to school in person in the Fall, vaccines are one of the most powerful tools at our disposal to make sure the schools are safe and remain safe as possible for all the students, for the teachers, for the staff and for the families. The second group I mentioned, New York vaccination hasn't been successful yet for those who haven't yet had a chance to get the vaccine. We appreciate that going into a mass vaccination site or make an appointment at a doctor's office may not be the most convenient for New Yorkers to get vaccinated. We've taken action to get the vaccine to those individuals wherever they are. We've established small pop up vaccination sites around the state and high traffic locations, including MTA stations in New York City and the NFTA stations in Western New York. Riders were even given a free 7 day pass to ride those systems for getting vaccinated. From the pop up clinics and churches to vaccine sites of public transit hubs, beaches, sports venues, state parks, New York State is bringing a vaccine to New Yorkers wherever they live, where they work, wherever they play. However, New Yorkers who still feel hesitant, that's the third but don't have enough information, we recognize that access is not enough. Research has shown that these individuals are the most effective messages to convey the fact that COVID-19 vaccines are safe and effective are not the politicians or the celebrities, it's really their own personal health care providers. And in many ways, I've experienced this on my own level, where my patients from when I was

practicing medicine, they've called me. They've called me and said, hey, what do you think about the vaccine? Picked up the phone and called, because they they trust those who they've known and they've spent their lives, who have been taking care of their health for the majority of their lives. A poll from the beginning of this year shows that the setting in which most Americans feel comfortable receiving the vaccine is their own doctors offices. Hospitals follow obviously close behind. As such, New York is taking steps to make it as easy as possible for individual health care providers to acquire and administer the vaccine. Pfizer Biotech recently rolled out a smaller box size for distributing their vaccines in 450 packs in addition to continue with that package the vaccine supply. The original, which was 1,107 ship packs. This will help to some degree in getting the vaccines into the small provider settings, because the concern was people felt I don't take this whole big package, open them up and then unfortunately the waste vaccine, which we didn't want. The small packs are better. New York State also recently established a vaccine redistribution pilot program to assist physician practices that want to administer the vaccine, but cannot commit to administering that many doses before their expiration. The Department of Health remains committed to working with all the provider types to make sure they are well prepared to administer the vaccine to any eligible New Yorker. The Biden Administration has set the goal of 70 percent of all US adults that receive at least one shot by July 4th. New York State is on track to meet this goal in advance of Independence Day, and we will not stop there. The vaccine effort will continue.

**Dr. Zucker** So, in conclusion, looking ahead to later this Summer in the Fall, we know that it will be necessary and necessary to stay vigilant in our fight against pandemic as more is known in the months to come about the necessity of booster doses to maintain the COVID-19 vaccines effectiveness. New York State will work with the health care providers, all types to facilitate booster doses as well as influenza vaccines. We remain on the lookout for variants of interest and variants of concern throughout New York State, as well as around the nation and around the world. While we have continued to have success in reducing our rates of COVID-19 in New York State, despite its variants, continued high rates of COVID-19 other states and other nations is still cause for concern. The fight between the vaccine and the vaccine variants, I should say, and the sorry, the fight between the viral variants and vaccine we continue to do, we are working to be sure that we win this global battle. It has been true throughout COVID-19, none of our previous state would have been possible without the partnership with all New York State health care providers. Thanks to all of them. I appreciate all that they're doing. We continue to make tremendous progress. The coming months to look brighter than the months since the pandemics past.

**Dr. Zucker** I look forward to answering your questions.

**Dr. Zucker** Thank you for giving me the chance to speak today. I know it's been a long, long 15, 16 months. I appreciate everything that the committee has done. I appreciate everything that you're doing in your jobs and your environments where you work because you're helping carry the message to the public for us.

**Dr. Zucker** If you have any questions about this or other issues, I'm happy to answer them at this time.

**Jeffrey Kraut** I'm going to entertain some questions. I know Mr. Robinson does. But before he speaks, Commissioner, again, thank you and the department and they are tireless and exhausting efforts in rolling out the vaccine and being as successful we have and maintaining the low positivity rate. We just know how hard all the department staff are

working. On behalf of a grateful New Yorkers, we thank you. Recognizes the tremendous efforts.

**Jeffrey Kraut** Mr. Robinson.

**Mr. Peter Robinson** Thank you.

**Mr. Peter Robinson** I appreciate also, just echoing Mr. Kraut's comments. You, Commissioner, and the entire department. I think this has been just a tremendously grueling effort on the part of all of you, as well as New Yorkers. I think your leadership and the state's leadership has been really appreciated in doing all of this. Nothing could be perfect, but I think we have actually continued to improve what we've been doing in response to the crisis. I think we also have some lessons learned that we can then apply going forward.

**Mr. Peter Robinson** One area that I wanted to touch on actually relates to vaccines and vaccine reporting. A real positive outcome of the of the vaccination effort has been the fact that the department has enabled the immunization reporting system to not only report back to public health entities across the state to effectively use that data for surveillance and strategic purposes, but also that data has been redistributed back to --- and to health systems. Vaccination information for COVID is now moving back into individual patient records, which I think is a critical. I compliment the department and you on that. Two points that I want to raise with regard to that. One is we need to make that permanent, that process permanent, so that so that we continue to see this on a going forward basis. I am not sure whether the distribution of that data is being done under emergency authorities right now and whether there's any code or regulatory changes that need to be made to make that permanent. Second, I think that what we've learned in terms of distribution of vaccine data for COVID really needs to apply to all related data. At the moment, that information does not routinely move from the system and back to providers. So, the ability to get that information to individual patient records is done on a very ad hoc, informal and not routine basis. I would urge the department to consider a broader policy around vaccine reporting to make permanent the COVID vaccine reporting and add to it all other routine vaccinations that the system captures.

**Dr. Zucker** We are looking at this for a couple of reasons. One is that there are going to end up probably being booster shots. So, whatever we put into place now, it can't be just temporary because we want to know who had the booster shot. Number two, in the effort of creating the Excelsior Pass, we realize that this is information has to be, it ties to the system. We are looking at the entire system to figure out how do we make sure that this works. I agree. The reason we wanted to put it into the health records is because someone has to know. This has to be tied to the health record. Like, well, they got their shot and then they carry a card around. 2 years from now, did you get your shot or not? I don't remember. It has to be in the health records.

**Mr. Peter Robinson** I think this should apply to childhood vaccines, routine things that seniors get now, like the them shingles vaccines and all of that.

**Dr. Zucker** These are some of those things that come out of a situation like this that are good.

**Mr. Peter Robinson** Thank you very much. I'm delighted to hear that that's something under consideration by the department.

**Jeffrey Kraut** Dr. Gutierrez.

**Jeffrey Kraut** You're on mute.

**Jeffrey Kraut** Thank you.

**Dr. Angel Gutierrez** Since the health and the economy of New York is so tightly related to the health of the economy of Canada, what consideration has been given to facilitating the Canadian efforts by giving them vaccine, or at least from the Buffalo standpoint, can we open the peace bridge as a vaccination center?

**Dr. Zucker** I received a note yesterday from Canadians about some of these questions about how to move this forward. And so at some point today, I'm going to try to figure out where we are on that, because I know Canada has been asking, is there a way to help us with this, particularly since the border is, it's border? I don't have an answer for you right now about that, but it is something that's actually sitting right there on my list on my left.

**Dr. Angel Gutierrez** Buffalo is ready, Commissioner.

**Dr. Zucker** That's good. That's good.

**Jeffrey Kraut** Yeah, we love Canadians. They're such nice unarmed Americans with health insurance.

**Jeffrey Kraut** Doctor Brown.

**Dr. Lawrence Brown** Good morning. This is Laurence Brown, member of the council. Commissioner. I, too, want to echo the comments by my colleagues. This has been a phenomenal effort by the parliament yourself. We really appreciate what you have done. I also want to underscore that clearly the collaboration with some of the sister agencies have been there as well. As you know, there is, in fact, a weekly report by Automation Oasis with respect to the fact vaccinations and declinations as well. I'm glad the fact that there's a reach out to all systems with respect to that. As you know, from my experience on this council way, I see public health is more than just physical health, and it's certainly much more than primary care. It's the entirety that's happening and what we have seen during this pandemic. At the success that we had by reducing the transmission, we have had some challenges with respect to containing the pandemic, as well as issues of mental health. It's important that we, in fact, have a comprehensive approach, that we embrace all aspects to make sure that the health of the state is, in fact, not just physical health, but also mental health issues dealing with substance use disorders.

**Dr. Zucker** You raised this a couple of months ago, and I actually went back to the team and we have started to look again at many of these issues that were not really put aside, but they needed to be bubbled back up. The issues of addiction, the issues of mental health issues, the issues of substance abuse in other areas, as well as back on the forefront, and the department is now looking at sort of what are some of the things we need to do moving forward as we are in the back end of this pandemic. How do we make sure that the lessons we learn from here are applied? Mental health issues, we've seen what happens to people who are sort of isolated and some of the challenges and the fact of the matter is long before this pandemic, many people who are isolated for other reasons and said they were experiencing some of these challenges. I think we'll be able to address

those moving forward. So, that addiction, obviously substance abuse and many other issues as well.

**Dr. Lawrence Brown** Just like my friend Dr. Kraut mentioned about how he will be continuing to down on certain comments for the longest he's on this council. You can bet your bottom dollar that I will continue to echo the comments that public health is more than just physical health.

**Dr. Zucker** And I agree a thousand percent.

**Dr. Lawrence Brown** Thank you.

**Jeffrey Kraut** Well said, Dr. Brown.

**Jeffrey Kraut** Dr. Watkins.

**Dr. Kevin Watkins** Commissioner, it's great to see you again. I want to commend you on the work that you are doing in this COVID response.

**Dr. Zucker** Thank you.

**Dr. Kevin Watkins** I want to let you know that the rural counties are really finding it a little bit more difficult to vaccinate a large portion of our residents. This is probably due to a large amount of skepticism that runs a little high in this area. I do know that there are incentives that are out there now that are being used in order to entice individuals to get vaccinated. Although I do not believe that incentives should have been the way that we should have moved and in the medical field, I believe that it is due to science and education that should entice individuals to get vaccinated. We have found that these incentives actually do work. But that being said, the rural communities who are lagging behind the vaccination rates of the state, are there potential incentives that are being used to just to those rural communities that could help to entice the rural community residents to get vaccinated?

**Dr. Zucker** It's a very timely question, because I was on with the Governor this morning talking about this exact issue, and trying to figure out where in the state are there specific areas where there may be some of these pockets? I was talking to my team to try to figure out where those are and what are the other incentives that may work and what are other incentives that are tailored to specific parts of the state. We continue to work on. If you have ideas, I welcome them. If you want to send me an e-mail, and I'll give you a buzz and we'll try to figure out what we could do. And if there's something that you say, why have you not tackled it from this angle, and we haven't thought about it. We're all for it. Does it pay to have sort of a van go into certain areas? Is there a certain pocket in one part of the county that we haven't been able to get vaccinated for reasons where. Is it education issues? Are they skeptical? We just need to educate people more about this, or is it just an access issue or is it something else? I mean, there are reasons for why that happens. If we can tackle that. Send me a e-mail, and I'll give you a buzz.

**Jeffrey Kraut** Well, Commissioner, I want to thank you. I don't believe any other members of the council had any other questions. I will just pause for a moment.

**Jeffrey Kraut** Having seen none.

**Jeffrey Kraut** Commissioner again, I thank you again, congratulate you and the department and the staff for a job that is really moving along and moving us to open.

**Dr. Zucker** Thank you, Jeff. It's everybody. This is a real tour de force this requires. I mean, we could put things out there, but if people don't listen. I appreciate it. Thank you.

**Jeffrey Kraut** Thanks so much for joining us.

**Jeffrey Kraut** I'm going to suspend once again the Public Health and Public Planning Council, and I will turn it back to Dr. Gutierrez to resume and conclude the Codes Committee.

**Dr. Angel Gutierrez** Thank you.

#### CODES COMMITTEE CONVENED

**Jeffrey Kraut** Thank you very much. I'm now reconvening the June 3rd meeting of the Public Health and Health Planning Council. Coincidentally, we will now hear a report of the Committee on Codes, Regulations and Legislation from Dr. Gutierrez, but hopefully this is fresh in your mind.

**Jeffrey Kraut** Go ahead, Dr. Gutierrez.

**Dr. Angel Gutierrez** Good morning still. At today's meeting, the Committee review for discussion purposes only the following proposals. Hospital, personal protective equipment. This proposal for discussion only will amend amendments of Section 405.11 of Title 10 NYCRR in relation to hospital personal protective equipment, PPE requirements. For discussion only was nursing home personal protective equipment. This proposal for discussion only would amend Section 415.19 of Title 10 NYCRR in relation to nursing home personal protective equipment requirements. The next reg was surge and flex health coordination systems. This proposal for discussion only would amend Section 1.2 700.5 and Part 360 to Title 10 NYCRR. Amendment to Section 400.1 405.24 and 1,001.6 of Title 10 NYCRR and Sections 487.34 88.34 90.3 of Title 18 NYCRR in relation to the surge and flex Health Coordination System. COVID-19 confirmatory testing. This proposal for discussion only would amend Section 405.11 Section 77137714 415.33 to Title 10 NYCRR in relation to COVID-19 confirmatory testing. Next reg, investigation of communicable disease, isolation and quarantine. This proposal for discussion only will amend Part 2, Section 405.3, in addition of Section 58.1-14 to Title 10 NYCRR in relation to the investigation of communicable disease, isolation and quarantine. And last, also for discussion only COVID-19 vaccination of nursing home and adult care residents and personnel. This proposal for discussion only would add Subpart 66-4 to Title 10 NYCRR in relation to vaccinations of nursing homes and adult care facility residents and personnel.

**Dr. Angel Gutierrez** I am done.

**Jeffrey Kraut** Thank you, Dr. Gutierrez.

**Jeffrey Kraut** I would say that in recent memory, this is one of the few robust discussions. We've added codes, not that every one is not robust, but this has engendered quite a lot of comment and uniquely, not necessarily from the public as much as from the council members themselves who are empowered to pass on these regs using their experience and expertise. I'm going to ask and direct the Department of Health to reflect on the



comments that you've heard in the Codes Committee and to return at our next meeting, having worked with stakeholder groups and other interested parties to present to us a set of revised regulations where they are warranted based on the comments. I think not every one of the regs we discussed have a lot of comments, but some of them do, particularly on the PPE, the flex, the most recent thing on the vaccination requirements. I would hope that the department does return to us and these regs should not move forward in their current form.

**Jeffrey Kraut** So, we'll thank you, Dr. Gutierrez, and thank members of the committee and the council for participating.

**Jeffrey Kraut** I'm now going to turn to Mr. Robinson. Would you please provide a report of the project review recommendations and the establishment actions?

**Peter Robinson** I certainly will, Mr. Kraut, thank you very much.

**Peter Robinson** Ordinarily, we would batch applications. It turns out that there's actually no batching possible given the number of applications that we have and the fact that most will warrant some further discussion by the full council, not necessarily the first one.

**Peter Robinson** I'm going to first bring forward application 2 1 1 0 3 2 C Niagara Hospice, Inc in Niagara County. This is to certify 6 additional residence beds to increase to 16 residents beds and 26 total certified beds and perform requisite construction. Both the department and the committee recommend approval with conditions and contingencies.

**Peter Robinson** And I so move.

**Jeffrey Kraut** I have a motion.

**Jeffrey Kraut** I have a second by Dr. Gutierrez.

**Jeffrey Kraut** Any comments from the department?

**Tracy Raleigh** No, this is Tracy. Just questions.

**Jeffrey Kraut** Any questions from the council?

**Jeffrey Kraut** Hearing none, I'll call for a vote.

**Jeffrey Kraut** All those in favor, aye, or indicate so by raising your hands.

**All Aye.**

**Jeffrey Kraut** Any opposed?

**Jeffrey Kraut** Hearing none or not seeing any, the motion carries.

**Peter Robinson** Thank you.

**Peter Robinson** This next application is 2 1 1 0 3 9 C Guthrie Home Health in Tioga County. The application calls for expansion of the service area for Guthrie Home Health to include Tompkins and Courtland counties through a pilot complex care collaboration model

under public health law 2805 / X waiver, the New York Hospital Home Care Physician Collaboration Law. This application was the subject of a lengthy and a discussion with much divided opinion. The department has recommended approval with a condition. The committee has not made any recommendation. We did not have a sufficient vote to bring this forward with a positive recommendation.

**Peter Robinson** In order to move this discussion forward, I make a motion for the approval of the application and turn it over to you, Mr. Kraut.

**Jeffrey Kraut** I have a motion.

**Jeffrey Kraut** May I have a second?

**Jeffrey Kraut** I have Dr. Gutierrez indicates both visually and literally that he seconds the application.

**Jeffrey Kraut** I'll ask the department to introduce and recap events leading up to this moment.

**Tracy Raleigh** Great. Thank you, Jeff.

**Tracy Raleigh** This is Tracy Raleigh, Director of Planning, Licensure and Finance at the department. And as Mr. Robinson stated, the committee forwarded this application with no recommendation after a very thorough discussion among members that followed the public comment. I plan to today just briefly summarize for you the committee discussion, restate the rationale for the department's approval of the waiver and the recommendation of approval of this CON and update the members on information and correspondence, which you should have all have received subsequent to the committee meeting from the applicant, as well as from various parties in opposition. The key concerns voiced by the opposition during the committee meeting and after and discussed extensively by the committee members, really boiled down in the department's opinion to a single argument that approval of this expansion, which would allow Guthrie to provide its services to its attributed lives in Tompkins County in particular, will competitively and significantly impact or harm the existing chaar in Tompkins, which is the VNS of Ithaca and Tompkins. This currently, this currently exclusively serves Tompkins County. There was no real opposition or discussion to Guthrie's expansion of its CHA and services to Cortland County. Members also raised concerns that Guthrie should have collaborated with the VNS of Tompkins on their application prior to submission. I'd like to also just remind the members of the intent and purpose of the public health law, 2805 X, which is the hospital home care physician collaboration law and the reasons for the department's approval of this waiver for Guthrie. The Hospital Home Care Physician Collaboration Program was created to facilitate innovation by allowing the department to waive regulations that would prohibit or provide barriers to integration or innovation among hospitals, home care agencies and physicians really to achieve the same goals in communities, which are to improve patient care, access to improve patient health outcomes, and to provide cost effectiveness in the use and delivery of health care through community population health strategies, and to encourage providers to enter into value-based and risk arrangements with payers consistent with the department's Value-Based Payer Roadmap Strategy. I'd also like to clarify the area of public need. While the department waived the existing need methodology that set in regulation, which is currently a barrier to allowing expansion of existing, we did not waive the statutory requirement of public need. And in fact, by approving the 2805 X waiver, we concluded that there is public value and need for this

expansion to Guthrie, as it will allow the residents in Cortland and Tompkins County, particularly, those lives that Guthrie directly manages and as at risk for, which is approximately 11,704 lives in Cortland and 15,909 lives in Tompkins County. It will afford those individuals access that has a strong track record of delivering quality services. Three and a half stars per the CMS star ratings is the quality ranking, star ranking for the Guthrie. And it has demonstrated experience and good outcomes, particularly in the areas of preventable admissions and avoidance of unnecessary utilization under its population health complex care collaboration model. I also want to make sure members in the public understand that while the Hospital Home Care Physician Collaboration program under 2805X does require participation of 2 of these 3 provider entities, in other words, a hospital, a home care agency and a physician group in a collaboration model, it doesn't specifically require that the partnership then collaborate with other existing providers in the area. In fact, this may be, you know, almost at cross purposes, since the partnership is often directly taking on the risk on managing its attributed lives. Guthrie's complex care collaboration model is very similar to how Cayuga Health Partners, which, voted its opposition, operates an accountable care organization through a collaborative between its Cayuga Area Physicians Alliance and Cayuga Medical Center. And they utilize the VNS of Ithaca and Tompkins County and they manage 50,000 lives under risk contracts in Tompkins County. There is nothing preventing Cayuga Health Partners and its Accountable Care Organization and VNS of Tompkins from submitting a 2805X waiver application to the department to allow it to expand its service area in order to provide direct health care services to the lives that it's at risk for. Guthrie points out in its rebuttal letter that, in fact, Cayuga Health Partners has actually prohibited Guthrie from entities from participating in Cayuga Health Partners Accountable Care Organization and does not collaborate with Guthrie in the provision of health care services to the members that it has under its risk based contracts. The department strongly supports Guthrie's application to expand its services and Tompkins and Cortland counties really for the following reasons; Guthrie has been established and operating in New York State since the 90's, and has a strong track record in population health strategies, primarily demonstrating this in Steuben and Chemung counties that deliver the aim. In particular, its performance has been noted in reductions in its readmissions and thus unnecessary utilization for COPD, asthma and cardiovascular disease. Guthrie's is currently unable to perform under its value-based arrangements with payers in Cortland and Tompkins counties because the need regulations prevent approval of this expansion, and the waiver under 2805X of buybacks would eliminate this barrier. As I stated, we see there is public value in permitting residents of Tompkins and Cortland counties choice in quality services, particularly when their care is under the direct management of Guthrie. The fourth point is that we, the department did not see that sufficient evidence based on Guthrie's existing home health care case, referral volume in Tompkins County, which is approximately 74 referrals over 2 years, or existing Guthrie referrals to VNS and Tompkins, which the applicant estimates that 164 over 2 and a half years, or about 66 cases per year. To conclude that the expansion of Guthrie's CHA into Tompkins County would threaten the continued operations of VNS of Ithaca and Tompkins. The last point is that the certificate of need process should not be used as a method to protect provider territories and prevent continued innovation of integrated provider networks, models centered on population health and encouraging contracting strategies.

**Tracy Raleigh** If the members would allow me, I'd like to read just sections and paragraphs from Guthrie's May 26, 2021 rebuttal letter, since the applicant points out that it was cut short at the committee meeting unintentionally in its ability to respond to the points raised by the opposition.

**Jeffrey Kraut** Go ahead and do so.

**Tracy Raleigh** Thank you.

**Tracy Raleigh** I'll just skip down to the meat of the rebuttal. Just a brief background on the Guthrie's system in the project. The project proposes to add 2 counties to the existing 3 county service area of the Guthrie Home Health CHA, Cortland County and Tompkins County. The Guthrie Home Health CHA is part of the Guthrie Clinic, which is a health system among New York and Pennsylvania, and has been established to operate in New York since the 1990's. The Guthrie Clinic was established as an active parent of Guthrie Cortland Medical Center in 2019. The Guthrie Clinic has operated extensive physician practices in Tompkins County for over a quarter century and, as noted, has within its system a Guthrie home health certified home health agency. Under 2805 X of the public health law, the New York State Department of Health has approved Guthrie Home Health for waiver of the public need regulations regarding the addition of new counties to the service area. The waiver was granted because Guthrie Health Clinic, one of the original 10 entities in the United States to be identified as delivering on the triple aim over a decade ago, made a compelling case that they're unable to perform under the Value-Based Payment and other managed care arrangements in Cortland and Tompkins counties because the CHA, their CHA are not approved to serve those counties. We will leave it to the Department of Health to discuss why it felt there was a public need to waive those regulations. For our part, we can say that the waiver and this approval are critical for us to be able to serve the lives attributed to our system in the manner that the patients deserve. That goal has been objected to both by the Visiting Nurse Service, Ithaca and Tompkins County, which is called VNS Tompkins, Cayuga, Health Partners and the Cayuga Medical Center. Their arguments focused on a single point, which is approval of this application will irreparably damage VNS Tompkins including depleting limited staff resources, and that the Guthrie Clinic should collaborate with the VNS Thomkins instead of expanding its CHA. In response to that point, I want to state for the record that the Guthrie clinic has been and is and will continue to be willing to collaborate with VNS Tompkins. But the record of VNS Tompkins, when we have attempted to collaborate, demonstrates more than any treatise we could have written on the growing need for home care services in this area. Why our proposal is needed? Please consider the following. From January 1st of 19 through May 20th of 21, the Guthrie Clinic's Corning Hospital, Robert Packard Hospital and its physician practices referred 268 patients to VNS Tompkins. Of that total VNS Tompkins served only 48 percent of the referrals and did not serve 52 percent of the referrals. For the majority of the referrals that VNS Tompkins did not serve, we incredibly received no response whatsoever from VNS Tompkins to our request. Most of the remainder were rejected for service for a variety of reasons, including pest infestation in the home. Further, for patients approved to start homecare services by VNS Tompkins, the average time from referral to start of service was 9.6 days, during which time patients languished in hospital beds or at home, or in two cases, patients died while waiting, discharged to home care. This is the level of performance that has been demonstrated by the 2 and a half CMS star rated VNS Tompkins. It is not a level of service that the Guthrie clinic can accept in order to serve its attributed patients under Value-Based Payment and other at risk arrangements, particularly when we have our own trusted home care entity, the Guthrie Home Health CHA, a 3 and a half CMS star rated provider. It merits emphasis that the scope of the problem is almost certainly greater. Guthrie Cortland Medical Center, which came into our system in 2019, and it's continuing to improve its IT capabilities with our assistance, tracked the number of referrals for home care services that it had in Cortland and Tompkins Counties in 2019 through 2021, but did not track the referral destination or outcome. A system is being put in place to do so going forward. As stated in our CON

application, Guthrie Cortland Medical Center made 724 referrals for home care in the 2 counties for the 2 year period from December 18th, 17 to December 17th of 19. Of that total, 74 were in Tompkins County. VNS Tompkins does not include Cortland in its service area. We have not gone through these 74 records by hand, but if the disposition of those cases was similar to those documented above, there may have been 38 additional cases that were not served by VNS Tompkins, bringing the total since January 1st of 19 to 178 of 342. The objections included spurious statements about approval of our project impacting staffing of VNS Tompkins. As we stated in our testimony on May of 21, we have in place all staffing needed to serve our tributed patients in Tompkins Courtland counties between the staff and our long term home health care program and outmoded delivery model that New York State has moved away from, which we will convert to the CHA in our existing CHA. We do not expect to have any impact on the VNS Tompkins staffing. Perhaps worst of all was the claim by Cayuga Health Partners, a collaborative arrangement between Cayuga Area Physicians Alliance and Cayuga Medical Center that operates an accountable care organization that the approval of our application would so grievously harm VNS Tompkins that it would damage the Cayuga Health Partners ability to serve its 50,000 covered lives in Tompkins County. First, with respect to collaboration, please know that Cayuga Health Partners has prohibited the Guthrie Clinic entities from participating in Cayuga Health Partners. Second, if we boil down all the objections to what is really being contested, we are talking about approximately 164 cases over a span of 2 and a half years. Per our Tompkins County referrals referenced above the total number of cases not rejected. This would be the cases not rejected or ignored by VNS Tompkins. No one has objected to our being approved to add Courtland County to Guthrie Home Care Service area. Those who have objected are only objecting to the addition of Tompkins County, but they are trying to pull the wool over the eyes, when they say that our being approved to serve our attributive lives and counseling in Tompkins County. The aforementioned 164 cases in 2 and a half years will somehow bring down VNS Tompkins, which they say is solely responsible for providing home care for 50,000 covered lives. The question is if VNS Tompkins is capable of and busy serving those 50,000 covered lies, is it really believable that losing about 66 cases per year will bring them down? We ask that having now been given the opportunity to see these objections for what they are, you vote approval of our project, which will allow us to take care of people in Cortland and Tompkins counties whose lives, health and well-being have been attributed to us. Thank you for your consideration of this request.

**Jeffrey Kraut** Thank you.

**Jeffrey Kraut** I open it up for questions for discussion from council members.

**Jeffrey Kraut** Is there any?

**Jeffrey Kraut** Ann, you're on mute.

**Ann Monroe** First of all, I have a question for the department. I know that we will not hear from the applicant or the opponents today. My question is whether or not you have received any additional information that tells you there have been discussions going on since the committee meeting between and among the partners. Have you heard anything? Have anyone informed you of that?

**Tracy Raleigh** Thanks, Ann.

**Tracy Raleigh** We have been informed that the Guthrie Clinic is not opposed to collaborating, but not that there has been active discussions between the Guthrie Clinic and the VNS of Tompkins.

**Jeffrey Kraut** What would you expect the outcome of those collaborations to produce, you know, so just out of curiosity.

**Ann Monroe** I'll get to that, if you let me finish.

**Jeffrey Kraut** Sure.

**Ann Monroe** First of all, as the committee notes, I oppose this proposal in committee. And it was said that that was a sign of anti competition. And I want to be very clear that, at least from my perspective, that I welcome healthy competition. I think it can bring the quality up and the access up, but it requires mutual respect among the parties that are in the collaboration. I am very concerned at this point that there's a lot of willingness to collaborate, but no one could point to where conversations have actually begun, where the goal of both health care agencies would break the quality up for all of Tompkins County residents. I am concerned that it's such a let me use the word hostile environment into which this organization would go, but the community will lose. Let me just say two other things. In the language of 2 8 0 5 X, the word collaboration appears far more than the word innovation. I have not seen any indication of collaboration between Guthrie and any of the other organizations in that county who have been involved for at least 5 years in building a community wide service system. Now, that doesn't mean they should prohibit Guthrie from coming in. But, yes, the medical group won't allow Guthrie in their group. And they're one of the letters talked about a community palliative care coordinating committee of which Guthrie refused to participate. We do not have the basis in Tompkins County, I believe, for a successful integration of this home health agency into the larger community system. Two letters suggest an alternative, and I'd like to pose it. I don't know the process for it Jeff, but I will speak the alternatives. The County Health Commissioner, who had never been approached by Guthrie and didn't know anything about this until the committee meeting suggests that the application should be sent back till there is some community input. Focused community health planning, so it's not a requirement, but to me it is a sign of successful integration. Also, the Director of Hospice Care says they have reached out to Guthrie, because they don't have any sense of the planning, the evaluation, how this is going to fit and would welcome that dialogue within Tompkins County. So, again, I am not anti competition. I think it can be wonderful for a community and several hospital systems have spoken today about how they have collaborated during COVID. To me, 2 8 0 5 X is all about innovation in a collaborative model, and I do not see that collaborative model here in effect in Tompkins County today. That does not mean it could not be done.

**Jeffrey Kraut** So, yeah. So let's you know, it's interesting. You look at we both look at the same facts and we reach different conclusions. I would argue the point here and we've seen this repetitively, that by approving this application, we will encourage collaboration, because right now the only opposition we have is in Tompkins County, where it was very clear, VNS explained, not factually, not giving us how it's going to be financially harmed, but they have the monopoly right now in home care in that county. We are now introducing a second player, different quality, as you've seen from the data that they've provided, different kind of business model that is taking and the tributed patient. And I would argue the fact that this is from the letters we've received, it's to keep a competitor out. This is a provider who has been serving those communities for 20 or more years, almost 25 years, who owns and operates hospitals in the area, who already serves Steuben, Chemung and

Tioga Counties, who is asking us to include 2 other counties, Cortland and Tompkins. But we've heard no, nothing from the Commissioner of Health and Cortland. This is all about what it is and we should call it out for what it is. We will get collaboration, but we don't use, in my opinion, CON is not the thing it has to happen, not because you mandate it, because it makes sense. If they're an established provider there, there will be opportunities to present itself. So, again, I see the facts the same as you do. I just come to a different conclusion.

**Ann Monroe** I hear what you're saying, Jeff, and I understand that that would be the result, if and when this is passed. I like to look at past performance being a prediction of future performance. The lack of collegiality, of collaboration, willingness to be.

**Jeffrey Kraut** Well, I think it's on both sides. I think we have evidence it's both sides.

**Ann Monroe** I agree.

**Jeffrey Kraut** That that's why you force the issue by approving it.

If I might add, Jeff, I can't tell you how strongly I agree with you. Jeff. This is about in some respects, Guthrie trying to bring enhanced services that they are not getting. I mean, you heard the DOH data. I commend the department for its summary. If you really listen to that carefully, Guthrie has risk for those lives and they are not getting the home care services that those people need. And they have a track record of being able to deliver those services. We see this in many communities across Upstate New York. Payers see it. Home care services are not readily available. Access is limited. I will tell you, in our communities, we can only get maybe half of the people we need to get into home care. And when they do get it, it takes weeks, not days. And so what Guthrie is saying is and the DOH laid it out beautifully, this other home care situation has not produced the results. You can talk about collaboration all you want, but these patients need results. I think to reject this, I'll say it. I was glad to hear Jeff say it pretty openly to reject this, I think will support, you know, what I see as only anti-competitive issues and in the absolute not interest of the patients of that community. I think the DOH laid it out beautifully. I think we ought to approve this.

**Ann Monroe** Because the data that was provided was provided by Guthrie, not the department. I'm not questioning it, but it was not the department analysis.

**Jeffrey Kraut** Let's get some questions.

**Jeffrey Kraut** Dr. Brown, I see you have a question or a statement.

**Dr. Lawrence Brown** Thank you so much.

**Dr. Lawrence Brown** I do have a question. I'm not taking a position one side or the other. I had an opportunity to review all the supplementary information since the last meeting of the committee. I thank the department for providing that. I do have a question for the department. It seems to me I recall that in Guthrie's application in 2019, that they committed to submitting a prevention agenda report. I'm sort of curious from the department, has the department received such a report?

**Tracy Raleigh** Yes, hi, Dr. Brown, it's Tracy. They were, they did provide a prevention agenda report out when that application was reviewed. I think and we I don't believe there

is an ongoing requirement of hospitals to provide updates on that. What was required at the time of the 2019 Cortland Guthrie application was something the council requested, which was reporting on the level of referrals that actually leave New York State. I think that was a concern. I don't know if that's maybe what you were thinking about, but they did address the prevention agenda issues at the time that that 2019 application for the active parent came before.

**Jeffrey Kraut** Excuse me. I want to do something. Dr. Martin asked to speak. I would like just if anybody who was not at the Project Review Committee, but would like to be heard or ask the question, please let me know. We're losing council members and we're going to lose a quorum. I'm very concerned about that.

**Jeffrey Kraut** Dr. Brown, I think your question was answered.

**Dr. Lawrence Brown** Yes, it was.

**Jeffrey Kraut** I'll turn to Dr. Martin, and then anybody else who wants to speak, please let me know.

**Dr. Glenn Martin** Okay, thank you.

**Dr. Glenn Martin** Just briefly as to the substance of today's presentation. Thank you very much. As you recall, I abstained the first time, mainly because I didn't think the state had formally addressed the impact of VNS, and whether or not they'd be able to remain viable and provide services there. I think that's been answered to my satisfaction. What I'm concerned about, though, and it's more of a process issue, is when you were reading the letter from Guthrie, their reports, I know it's not their words. They proceeded to basically diss VNS for refusing 50 percent of their referrals, gave some anecdotes about they didn't want to go to a pest infested home, which raises the interesting question, why are we discharging somebody to a pest infested home? They were concerned about somebody dropping dead in the hospital and didn't even get the home services. Makes you wonder whether or not they were discharged appropriately if they died in such a short period of time. What I'm pointing out is allegations like that when they cannot be confirmed by anyone and imply not just poor business practices, but perhaps violations of rules and regulations, I just think we should at some point discuss whether or not those things are appropriate, do we expect the state to look into it, whether we just let allegations like that drop and shrug and what. Because it was upsetting to me and it certainly is not Tracy's fault. I understand they didn't have a chance to present it a couple of weeks ago when I would have raised it. But I do find that to be disturbing. And it's not just for this applicant, but it just struck me to know.

**Jeffrey Kraut** It's a general issue we've talked about even in the 2 8 0 1 B stuff. We do have to come back to that. You're right.

**Dr. Glenn Martin** Thank you.

**Jeffrey Kraut** So, before I return back to the council, was there anybody who wasn't a member who wasn't present for establishment committee, who wants to have a question.

**Jeffrey Kraut** Having seen none, I'll turn it to anybody else who would like to make a question.



**Jeffrey Kraut** Mr. La Rue, then Dr. Watkins, go ahead.

**Mr. La Rue** I'll be quick.

**Mr. La Rue** At the committee meeting, my point that I was concerned about is that Guthrie said that they had not had a conversation with VNS. I'm one who firmly believes that the role of these smaller agencies is very important in the community and the hospital controls the discharges and the Medicare referrals. The survival of the other agencies depends on the referral patterns. I think it's difficult to make a competition discussion there because it's not really true competition in some respects. All that being said, I think it's important when people come forward that they demonstrate that they've attempted to work with the providers in the community. I don't think that's too much to ask. And if it doesn't work out, it doesn't work out. But I think they should take a look at the longstanding providers and try to do that. I'm going to change my vote on this application because so much stuff has come up between the last meeting and this meeting. I don't know what heads up and what isn't at this point. My point is people should collaborate. You don't have to do it yourself to get the results with a good partner. If you don't have a good partner, then you've got to do it yourself. I'm going to change my vote because I'm going to defer the department's opinion on this. I don't have the opportunity to ask more questions of either party. I'm going to go with the department's recommendation.

**Jeffrey Kraut** Thank you.

**Jeffrey Kraut** Dr. Watkins.

**Dr. Kevin Watkins** Well, I basically was just going to add to what Scott has just relayed to the committee, basically is that I would hate to see Guthrie lose the opportunity to expand their services in Tompkins County, just based on what we were hearing from VSN. With that being said, I do think that because there has been so much conversation about this collaboration, I was wondering if the state or if the department has just recommend that we may be postpone voting on this until there has been some type of collaboration between the two entities.

**Tracy Raleigh** This is Tracy. I can address that.

**Tracy Raleigh** And I tried to in my comments, but I reiterate the Public Health Law Hospital, Home Care Physician Collaborative Program encourages collaboration between hospitals, physicians and home care agencies. Guthrie has demonstrated that in that they have a, you know, physician group that provides medical services to the community. They have a home care agency and they have a hospital that they've, you know, recently invested in, in and Cortland in. They are innovating and collaborating across those service lines to provide better care in the triple aim to to residents in Cortland and Tompkins counties. They want to do that for, you know, they want the ability to expand for those reasons. Similarly and to the points and I understand they're well taken. We, the department is very much, you know, does not want this application to cause the VNS of Tompkins to, you know, certainly go out of business or a struggle to survive. They provide an important service. And that's evidenced by their own collaborative and collaboration with Cayuga Medical Center and in and its physician practice. What we're saying is in this new era that, you know, that work of health care where you are, where health systems are taking on more risk and there is incentive to improve patient outcomes in a more cost effective manner, that we remove the regulatory barriers and allow those systems to directly have access to the patients whose lives they're all risk for.

**Jeffrey Kraut** I'm going to call on Mr. Lawrence and then I see Dr. Martin and then I'd like to try to call a vote if there's no other comments.

**Jeffrey Kraut** And Dr. Berliner.

**Jeffrey Kraut** Mr. Lawrence. Dr. Martin and Dr. Berliner.

**Mr. Harvey Lawrence** Yeah, during the committee process, I voted against this application for a number of the reasons that have already been mentioned, but I felt at the time that there was not really a needs analysis completed by the department. I think I sort of echo some of the feelings that I've heard from Mr. Scott, which was that the local community provider should always be provided with an opportunity to collaborate with hospital systems and with new entrants to their neighborhoods into the marketplace. I don't see where this is really a level playing field in terms of competition, and especially to the extent that a parent entity is going to subsidize by 700,000 annually the loss of this operation. I am prepared to vote for this if there's an amendment to this resolution that dictates that there would be a good faith effort on the part of Guthrie to engage in a collaborative discussion with VNS. So otherwise, I would be voting against this.

**Mr. Harvey Lawrence** Thank you.

**Jeffrey Kraut** Thank you.

**Jeffrey Kraut** Dr. Martin has declined.

**Jeffrey Kraut** Dr. Berliner and then Ms. Monroe, and then I would like to call because I just got notice some other people are leaving.

**Dr. Howard Berliner** Just quickly. First, I'd like to thank Colleen and the department staff for getting all those letters to us over the holiday weekend. I was more surprised to get something on a Sunday evening, you know. Just this, I wasn't thinking about business at that point. Secondly, I want to thank Ann, you know, for the bravery of taking the stand on this issue on which she is absolutely correct. There is nothing that says if we turned down this application that Guthrie can't resubmit. And in light of what Dr. Lawrence has just said, resubmit, you know, after documenting some attempts at discussion for cooperation. My third point, my third and fourth points, one of which involves Dr. Bennett's mention of, you know, Guthrie suffering from, you know, not being able to control their were tributed lives. It's their tributed lives. They took them. They didn't have the ability to handle them when they took them, so to complain about it now seems a bit much. And finally, as usual in one of these discussions, Jeff, competition always sounds good when you are not involved in it, when it's two other people going after it. As was recently raised, this is not a level playing field. This is not a real competition in that sense. And really, if we wanted competition in the health system in New York, we wouldn't have systems. Because systems are the most anti-competitive things that we have. But I, we're short on time, so I will rest my remarks there.

**Jeffrey Kraut** I will hold my tongue for rebuttal when we have the strategic conversations.

**Jeffrey Kraut** I'll give you the last word, Ann.

**Ann Monroe** Thank you very much.

**Ann Monroe** One last last comment. Number one, I do not believe that Guthrie's taking on responsibility for their currently attributed lives is going to sink VNS. I don't believe that side of the argument either. I don't know what our options are. One is, as Kevin suggested, that we postpone this. Another might be to, I would like to hear a report from the county, from the providers in that county in 5 or 6 months that tells us how this is going, because I think we're going to see this kind of thing over and over in more rural counties or more counties away from the city. I believe that even if I don't vote for it, that this probably will go through. And when it goes through, I would like there to be some kind of recognition of what can we learn from this? What happens at that county? How does it proceed over time? If there's a possibility of adding an amendment or whatever to either postpone it, as Kevin said, or to ask for a report in 6 months from both sides of this equation, and Cayuga Health Partners and the others who feel so strongly about this. Could we learn from this by finding out what happens when we make such a decision?

**Jeffrey Kraut** Let me go on that comment and Mr. Lawrence's comment. And then, Mr. Robinson, you made the motion and Dr. Gutierrez seconded. We can add a and correct me, guys, this is not a contingency, but kind of a condition. This would be a condition, Mr. Robinson, to amend the motion and add a condition to our approval that if this as part of the approval, there is to be a discussion with Guthrie with I guess it's VNS.

**Ann Monroe** ---county wants to.

**Jeffrey Kraut** Well, you know, it's hard to say who without being exclusive, but we expect there to be reach out to appropriate stakeholders in the county to further the objectives of this demonstration project and for the department to give us a report, as Ann had suggested, 6 months from the date of implementation to give us an update. You know, that's not part of the condition. I would say to the department, we want you to go back and check on it and come back to us in 6 months. So, I just say the condition would be that a condition of the approval is for Guthrie to have conversations with stakeholders in that community as to other methods to collaborate for collaboration, to effectuate the goals of the demonstration project.

**Jeffrey Kraut** Mr. Robinson, if you accept that.

**Peter Robinson** I accept that amendment to my motion.

**Jeffrey Kraut** Dr. Gutierrez if you approve it.

**Jeffrey Kraut** We have a motion for approval with that additional condition. The department, we are requesting you return back in 6 months, basically the end of the year from implementation and just inform us of what the impact of that condition that's produced.

**Jeffrey Kraut** All those in favor, aye.

All Aye.

**Jeffrey Kraut** All those opposed?

**Jeffrey Kraut** Let's just to be clear, because it's hard not everybody is on camera.

**Jeffrey Kraut** Colleen, could you please do a roll call vote so we have a record of it, please?

**Colleen Leonard** Yes.

**Colleen Leonard** Dr. Bennett?

**Dr. Bennett** Aye.

**Colleen Leonard** Dr. Berliner?

**Dr. Howard Berliner** No.

**Colleen Leonard** Dr. Boufford?

**Dr. Jo Ivey Boufford** Aye.

**Colleen Leonard** Dr. Brown?

**Dr. Lawrence Brown** Aye.

**Colleen Leonard** Dr. Gutierrez?

**Jeffrey Kraut** Your muted.

**Dr. Angel Gutierrez** I'm sorry. Aye.

**Jeffrey Kraut** Thank you.

**Colleen Leonard** Mr. Holt?

**Tom Holt** Aye.

**Colleen Leonard** Mr. La Rue?

**Mr. La Rue** Aye.

**Colleen Leonard** Mr. Lawrence?

**Mr. Harvey Lawrence** Aye.

**Colleen Leonard** Ms. Monroe?

**Ann Monroe** No.

**Colleen Leonard** Dr. Martin?

**Dr. Glenn Martin** Yes.

**Colleen Leonard** Mr. Robinson?

**Peter Robinson** Yes.

**Colleen Leonard** Dr. Ruggie?

**Dr. Ruggie** Aye.

**Colleen Leonard** Ms. Soto?

**Colleen Leonard** Can you repeat that?

**Jeffrey Kraut** It's yes.

**Colleen Leonard** Dr. Strange?

**Dr. Strange** Aye.

**Colleen Leonard** Mr. Thomas?

**Mr. Thomas** Yes.

**Colleen Leonard** Dr. Torres?

**Dr. Torres** Aye.

**Colleen Leonard** Dr. Watkins?

**Dr. Kevin Watkins** Aye.

**Colleen Leonard** 17 to 2. It carries.

**Jeffrey Kraut** Thank you.

**Jeffrey Kraut** Mr. Robinson.

**Jeffrey Kraut** And thank everybody, and thank you Ann, and thank everybody for participating.

**Ann Monroe** Jeff, could I just make an existential comment here for a moment? When we're thinking about strategy, it seems bizarre to me that an organization would have to get a waiver of a need methodology to set up what everybody would agree would be an appropriate integrated system for linkage of care. I don't understand that in terms of getting in there. I just flag that to come back.

**Jeffrey Kraut** Listen, I think we have that. It's crazy. They're handcuffed by the regs and some of the actions that have been taken previously. I think the Department of Health, as we've said it, you need to air out all of these past actions that doesn't recognize a contemporary framework for delivering care. It just doesn't mean. We should never have been in this position. The home care, you know, just should have never have happened. I agree.

**Peter Robinson** I'm going to continue then.

**Peter Robinson** Thank you.

**Peter Robinson** Application 2 1 1 0 3 5 E Griffeth Surgery Center in Oneida County. This is a simple transfer of 2 percent interest from existing members to one new member. The department and the committee recommend approval with a condition.

**Peter Robinson** I so move.

**Jeffrey Kraut** I have a motion.

**Jeffrey Kraut** May I have a second?

**Jeffrey Kraut** I have a second, Dr. Gutierrez.

**Jeffrey Kraut** Any comments?

**Tracy Raleigh** Just questions.

**Jeffrey Kraut** Are there any questions for any members of the council?

**Jeffrey Kraut** I have not seen any and I have not heard any and I can't read any, so I'll say no.

**Jeffrey Kraut** We'll call for a vote.

**Jeffrey Kraut** All those in favor, aye.

All Aye.

**Jeffrey Kraut** Opposed?

**Jeffrey Kraut** Nobody's opposed.

**Jeffrey Kraut** The motion carries.

**Peter Robinson** Thank you.

**Peter Robinson** This application contains an interest for Mr. Kraut and Dr. Strange.

**Peter Robinson** Application 2 0 2 2 7 3 B 1 4 7 Wellness LLC DPKA doing business were known as, I guess, Midtown Endoscopy and Surgical Center LLC in New York County to establish and construct 3 single specialty ambulatory surgery center for gastroenterology, gynecology and pediatric surgery services to be located at 147 East Twenty Sixth Street in Manhattan. The department is recommending approval with conditions and contingencies with an expiration of the operating certificate 5 days from the date of issuance. And that is also the recommendation of the committee.

**Peter Robinson** I so move.

**Jeffrey Kraut** I have a motion.

**Jeffrey Kraut** May I have a second?

**Jeffrey Kraut** I have a second from Dr. Gutierrez.

**Jeffrey Kraut** Any comment from the department?

**Tracy Raleigh** Just questions.

**Jeffrey Kraut** Any questions from the council?

**Jeffrey Kraut** All those in favor, aye.

**All** Aye.

**Jeffrey Kraut** Anyone opposed?

**Jeffrey Kraut** Hearing none, the motion carries.

**Peter Robinson** Mr. Kraut and Dr. Strange need to recuse themselves from this next application.

**Peter Robinson** Dr. Boufford, I'm going to be making this motion to you.

**Jeffrey Kraut** Before I do what I'm going to do, because I'm afraid of losing the connection. Sometimes there's an instability here. I'm going to physically walk out of the room and Colleen, please text me when it's over. It'll just be like I was there with you. I'm walking out.

**Peter Robinson** And Dr. Strange is also gone.

**Peter Robinson** Application 202250 E Assured Care, Home Health LLC in Nassau County. This is to establish Assured Care Home Health LLC as the new operator of Long Island Jewish Medical Center Home Care Department, a certified home health agency, and relocate the CHA to 100-04 Ditmars Boulevard in East Elmhurst, serving the same counties as it currently does. The department is recommending approval with a condition and contingencies, as did the committee.

**Peter Robinson** I so move.

**Dr. Jo Ivey Boufford** I have a motion.

**Dr. Jo Ivey Boufford** I have a second from Dr. Gutierrez.

**Dr. Jo Ivey Boufford** Department, any comments?

**Tracy Raleigh** Just questions.

**Dr. Jo Ivey Boufford** Any comments from any of the council members or questions?

**Dr. Jo Ivey Boufford** Seeing none, I'll call for a vote.

**Dr. Jo Ivey Boufford** All in favor, say aye.

**Dr. Jo Ivey Boufford** Any opposed?

**Dr. Jo Ivey Boufford** Any abstentions?

**Dr. Jo Ivey Boufford** Motion passes.

**Dr. Jo Ivey Boufford** Thank you.

**Dr. Jo Ivey Boufford** Call Dr. Strange and Mr. Kraut back in to just to note for the record, they were both absent during the vote.

**Peter Robinson** They were.

**Peter Robinson** And there he is.

**Peter Robinson** And that concludes the report of the Establishment of Project Review Committee.

**Peter Robinson** Mr. Kraut, back to you.

**Jeffrey Kraut** Thank you very much.

**Jeffrey Kraut** We're now going to turn our attention on an oldie but goodie. That's a little flippant of me to say that. I'm sorry. We have to review the administrative law judges review and recommendation regarding an applicant number 1 7 1 0 4 1 E Shining Star Home Health Care, Kings County. Ms. Carver-Cheney has a recusal and we will request Ms. Carver-Cheney if you disconnect from the meeting. We'll wait till she does.

**Jeffrey Kraut** She has left the meeting.

**Jeffrey Kraut** Let me turn it over to the department to introduce this application and we'll go through our you know, we'll explain some of the process of procedures.

**Jeffrey Kraut** Tracy.

**Tracy Raleigh** Thanks, Jeff.

**Tracy Raleigh** I'm going to just give a brief, you know, as Jeff said, this does have a history. I know members received an awful lot of materials to try to review this, you know, the history. I'm just going to go through the timeline. I'm then I'm going to turn it over to Carol Rodat, who is the Director of our Home Care program, to give you an overview from a surveillance perspective about Shining Star home care. And then finally, we'll turn it over to Mark from our Division of Legal Affairs to remind, you know, the members of the purpose and you know what your approving or, you know, the procedurally what your options are.

**Tracy Raleigh** Just briefly, Shining Star Home Health Care received its initial certification in January of 2012 as a special needs certified home health agency, serving patients with heart disease, stroke and diabetes at higher risk for hospitalization. They were authorized to serve in a Bronx, Kings, New York and Queens counties. It was issued as part of a pilot program solicitation during a moratorium on licensing new CHA's and thus had a 5 year limited life placed on its establishment. The department placed a contingency on the application requiring Shining Star to submit a plan detailing how it would meet the



regulatory requirement to provide at least 2 percent charity care. The department approved Shining Stars Plan in March of 2011. That's sort of the initial approval under a pilot demonstration. In January of 2017, prior to the expiration of its limited life, Shining Star submitted application 171041 seeking a 3 year extension rather than a request for indefinite life. The establishment of Project Review Committee at the time deferred action on the application twice, first and May 18th, 2017, due to concerns about low patient utilization and again on January 25th, 2018 at Shining Star's request. On May 17th, 2018, the Department of Health recommended disapproval based on a lack of financial feasibility and the committee recommended deferral of the application for two agenda cycles to allow a Shining Star to submit its 2017 audited financial statement. On June 7th of 2018, the full council deferred action on the application for two agenda cycles based on the recommendations of the committee to defer action to allow for the audited financial statements to be produced. On November 28th of 18, DOH recommended approval of the 3 year extension with contingencies and conditions. The department noted that Shining Star would need to maintain patient utilization levels, control costs and fund operational shortfalls. To fund the operations, there was discussion at the time, Shining Star proposed having its majority member fund working capital and for that member to secure an interest free personal loan. Shining Star acknowledged that it failed to meet the 2 percent charity care requirement in previous years and submitted applications, or excuse me projections showing how it would meet the requirement going forward by utilizing its relationships with an outreach to area hospitals and community providers serving the indigent population. Since the 2 percent charity care requirement is an ongoing obligation under 10NYCRR under the regulations 7 63 11 A11, neither the committee nor the department requested any contingencies or conditions related to Shining Stars Provision of charity care. Essentially, it is regulation, so we did not place a condition or contingency. On December 13th of 18, the full council voted to disapprove Shining Star's application because it failed to meet its charity care requirements. Because we voted to disapprove the application, the applicant had a right to a hearing under public health law 36 06 2. Shining Star requested a hearing on January 23, 2019, and the administrative law judge held a hearing on October 2nd of 2019 and December 5th of 2019. On May 21st of 2020, the Administrative Law Judge issued a proposed order approving Shining Stars 3 year extension, finding that aired in its disapproval of Shining Stars application, when it based its reasoning solely on Shining Stars failure to meet the 2 percent charity care requirement because the committee had not included a contingency or condition relating to charity care. We had approved similar applications and those applications had also failed to meet the charity care requirement, thus concluding that there was some arbitrary activity. In your materials, we included the ALJ summary report and findings in order and in fact there was a DOH rebuttal to the ALJ decision.

**Tracy Raleigh** I'm going to quickly turn it over to Carol Rodat, who as I said is the Director of our Home Care program to give an overview of the performance essentially of Shining Star from a surveillance perspective.

**Carol Rodat** Good afternoon.

**Carol Rodat** Can everyone hear me?

**Jeffrey Kraut** Yes, Carol.

**Carol Rodat** Thank you.

**Carol Rodat** So, there are 31 CHA's that serve the same borough as Shining Star. The first complete survey that the department did was in December of 2017, and we found multiple deficiencies which were repeated again in December of 2018. However, in November of 2020, there was a recertification survey and the findings were very small and very minor. There was only one unsubstantiated complaint recorded at that time. I'd like to turn now to the star ratings because those ratings have been mentioned in the past. Shining Star has a rating of 1.5 stars. There are 3 CHA's in the State of New York with a 1.5 star rating. The average for the state is 3 stars, and the average in those boroughs for CHA's is between 3 and 3.5 stars in the CMS highest rating. The reason that Shining Star fell down to 1.5 stars is that they fell below the state average and 3 out of 4 of the outcome measures and 2 out of the 3 of the process measures. With respect to the caseload for the CHA's in those boroughs. I've already talked about the fact that there are numerous CHA's, 31 the average caseload is 1,195 cases, although I will tell you that most of the CHA's in those boroughs have around 2,000 cases regularly. As of yesterday, Shining Star reported on the --- report that they have 146 patients. Let me just say one other thing, which is that our surveillance record, our profiles are somewhat different from the star ratings and so that is why I gave you both in this discussion.

**Carol Rodat** I will be happy to take any questions you might have.

**Jeffrey Kraut** Any questions from the council, please?

**Unknown** Do you need a motion in order to continue?

**Jeffrey Kraut** I will make a motion after we get the facts.

**Jeffrey Kraut** And so everybody's clear on the facts?

**Jeffrey Kraut** I have a motion.

**Jeffrey Kraut** Dr. Boufford.

**Dr. Jo Ivey Boufford** I just have a question. I think you said that in your last review, there were only minor concerns against the state regulations and yet the star ratings are 1.5, which is very low. I'm a little concerned about the consistency issue there. Maybe I misheard you, if you could clarify.

**Carol Rodat** Thank you, Dr. Boufford.

**Carol Rodat** No, you did not mishear me. There are very different methods of review. The surveillance methods look at the regulations and rate the provider against their compliance with our regulations. Whereas the star ratings have a number of Oasis data elements that are used, they are both outcome measures and process measures. For example, did the provider teach the patients and family caregiver how to take medications? Did they begin care in a timely manner? How often were patients admitted to the hospital? And how does that relate to the state's average? Those are very different from the approach we take when we do surveillance and when we're creating a profile that includes the compliant records for a provider.

**Jeffrey Kraut** Carol, could I ask a question?

**Jeffrey Kraut** I mean, they have a panel of 146 patients, just for those of you who might not have followed or understood this. These are limited to, this is a special need CHA. That's why this applicant was treated very differently. There wasn't ever a basis in contradiction to the administrative law judge. This is a unique applicant. Am I correct that they are still limited to treating special needs patients?

**Carol Rodat** Well, that is the designation for the CHA. If a patient presents to a CHA that is designated as special needs and wishes to be admitted to the CHA, the CHA is allowed to admit the patient regardless of whether or not the patient fits the criteria.

**Jeffrey Kraut** These could be people that are not special needs?

**Carol Rodat** That is correct and we would have to do a review of each one.

**Jeffrey Kraut** And I know Scott La Rue kind of gave us a lesson on the stars rating. When you're dealing with this low ends, aren't the stars ratings affected by the ends at some point? Because, you know, one bad survey has a more dramatic averaging. Is that correct? I just wanted to make sure we're fairly interpreting the information.

**Carol Rodat** Our surveys, a bad survey does not necessarily affect the star rating, although it has the potential to.

**Jeffrey Kraut** Okay.

**Jeffrey Kraut** Dr. Berliner, and then Mr. Robinson and then anybody else.

**Dr. Howard Berliner** My recollection is that the special needs approval was given on the basis that this entity was going to the special need it was going to deal with with minority patients who had stroke and heart disease and something else. Is that correct?

**Carol Rodat** That's correct.

**Tracy Raleigh** That is correct.

**Tracy Raleigh** Sorry, Carol.

**Dr. Howard Berliner** When we say that, you know, special, I mean, basically it defined special needs purely in racial and ethnic terms.

**Tracy Raleigh** I'll just clarify that. I'm not 100 percent sure on the racial and ethnic piece, but it was geared at patients with chronic conditions in the areas of heart disease, stroke and diabetes and particularly, you know, focused on lowering readmission rates and, you know, hospitalizations for those types of patients with chronic conditions

**Jeffrey Kraut** Mr. Robinson and Dr. Boufford.

**Peter Robinson** Thank you.

**Peter Robinson** We approved this application for a 5 year limited life in I believe it was 2012, but you can correct me on the date.

**Tracy Raleigh** That's correct.

**Peter Robinson** Their appeal, Shining Stars appeal was essentially to get an extension on that 5 year limited life in order to remedy the fact that they did not achieve the charity care numbers that they were targeted to achieve during the first 5 years. Now, I am not a brilliant person at math, but 2012 and 5 is 2017. If you look at 3 years more, that gets you to 2020. So, unless I'm mistaken, de facto, they've gotten 3 more years. And my question is, since the 5 year limited life was up, whether they had it, the approval for the extension or not, they've been operating. What have they done in the last 3 years? And have they achieved that 2 percent charity care number during that time or not? I mean, to some extent, this whole discussion is moot if they still haven't done it, in my opinion.

**Jeffrey Kraut** Would the department be able to respond to that? I know you don't have audited financials. And if we need to wait for that to answer that question, just let us know.

**Tracy Raleigh** Unfortunately, the data and Carol can speak to this, you know, lags, but, you know, the data that we can report is coming from Shining Star, so it's self reported. And in that for 2019, the charity care was at 2 percent and for 2020 it was at 2 and a half percent. That is self reported data that, you know, we would have to wait for the cost report, information to be, you know, the audited cost reports to be released to be able to validate that.

**Peter Robinson** Thank you.

**Jeffrey Kraut** Dr. Boufford, then, Dr. Gutierrez.

**Dr. Jo Ivey Boufford** The use of the term special needs it seems, you know, I wonder if in 2012, special needs was people with severe chronic disease, because I don't think that's the way it's used at this point in time. And then the question about being for minority patients, I mean, I've never heard of that either has been special needs. I think we've got an antiquated definition here, which it sounds like a home care agency dealing with people with chronic illnesses, its normal. I'm not sure why the special needs category would apply relative to the actual functions of this group, other than the fact that at that time perhaps this was called special needs. It certainly doesn't sound like it's special needs in that sense of we think about it these days.

**Jeffrey Kraut** Okay.

**Dr. Jo Ivey Boufford** So, I mean, it's a question. I'm just asking. Why should it get special attention is, I guess, special exemptions, I guess, from some of the quality issues or some of the other issues as a special needs entity? It doesn't sound like that definition really would hold. I don't know in the current contemporary world anyway.

**Jeffrey Kraut** Carol, do you want to respond to that?

**Carol Rodat** I would say that the majority of our special needs CHA's serve an OPWDD population and this special needs was unique.

**Jeffrey Kraut** Okay.

**Jeffrey Kraut** Dr. Gutierrez, then Dr. Berliner.

**Dr. Angel Gutierrez** A quick question for the department. Among the criteria measured or looked that up to for rating, is patient and or family satisfaction considered?

**Carol Rodat** It is, but they did not have sufficient number of surveys for them to be rated on that basis.

**Jeffrey Kraut** Okay.

**Jeffrey Kraut** Dr. Berliner.

**Dr. Howard Berliner** Yeah, I just want to answer Jo's question. It was quite obvious that this was not a special needs population back in 2012. I was a member of the council back then. I'm not sure how many other people who were current members were on it then, but this was. This is a very political application when it came up. This was seen widely by the members of the committee and later the council as a way to get around the moratorium and so that's where we are.

**Jeffrey Kraut** Okay.

**Jeffrey Kraut** So, one of the things I would like to throw a motion on the table and I'll, let me go through process with you. Unless the department, is there any other comments that need to be made before I do so?

**Carol Rodat** --- was just going to kind of set out the procedures.

**Jeffrey Kraut** ---, you want to set this up, please?

**Unknown** I hope this is on.

**Unknown** Can you hear me?

**Jeffrey Kraut** Yes, we can.

**Marthe Ngwashi** Okay, thank you.

**Marthe Ngwashi** I'm an attorney at the Department of Health and Counsel. Today, we are tasked with reconsidering an application for establishment subsequent to a disapproval and after an administrative hearing. Now, I'd like to go over the statutory criteria for an establishment application. It's found in public health law and it states that they must use for its consideration of an establishment application the following areas; public need, character and competence, financial feasibility and any other factors that they deem relevant. So today, application number 1 7 1 0 4 1 E Shining Star Home health Care is the application for establishment that you will consider, that you will reconsider. Your charge is to reconsider this application using these areas. One is the history of the application prior to disapproval. Number two is the complete record of the administrative hearing proceedings. And number three, it's the statutory criteria set forth in public health law for consideration of an establishment application. Now, I need you all to note that the findings and the conclusions of the administrative law judge are not binding, because under public health law, you all are the body with exclusive authority to make a final determination about an establishment application. Therefore, you are permitted to either approve the application with the same or different contingencies or conditions as previously recommended, or you are permitted to disapprove the application for the same or different

reasons as previously recommended. If you disapprove the application, the applicant may seek judicial review in an Article 78 proceeding, but the matter is final and closed with this body. I'll turn it back over to you.

**Jeffrey Kraut** So, with those statements, I'm going to ask if anybody has a question?

**Jeffrey Kraut** Dr. Brown wanted to speak first. I see Dr. Berliner.

**Dr. Lawrence Brown** Yes, I do. I guess my question and fairly this is more for the department. Jeff, please forgive me, maybe can defer this. Because I'm a bit concerned about relying on self reports when it comes to decisions such as this. It just makes it a little more uncomfortable, particularly when you have other really troubling pieces of information like the star rating. I'd like to suggest that in the future.

**Dr. Lawrence Brown** Thank you, Jeff.

**Jeffrey Kraut** Okay.

**Jeffrey Kraut** Dr. Berliner, then Dr. Boufford.

**Dr. Howard Berliner** I have a question for ---, and if you go back through all the transcripts, I've raised this question actually going back to 2000, well, whenever this thing was considered. But the question is, what happens if we turn it down? That is, if we don't extend its life, what is the process? And I understand they can go back to the administrative law judge, but assuming that we don't approve the extension, what actually happens? Does it ever close?

**Unknown** Well, it wouldn't actually go back to an administrative law judge. If the application is disapproved, that's when they may seek a judicial remedy in an Article 78 proceeding. It would go to Supreme Court. And at that time, the application is going to sit pending and the applicant will, Shining Star Home Health Care will continue to operate until that matter is resolved, that if they choose to do that.

**Dr. Howard Berliner** What happens, so it goes to the Supreme Court. Let's assume, for argument's sake, the Supreme Court agrees with us, who has turned down, who was not extended the limited life. Then what happens?

**Unknown** We would have to follow what the court has instructed us to do at that time, but I wouldn't want to speculate on whatever that outcome would be.

**Dr. Howard Berliner** This is the question I've been trying to raise over many applications over many years. If we don't approve something that's already existing, what happens? I don't think we've ever gotten a clear.

**Tracy Raleigh** This is Tracy. Just to follow what -- saying. If in your hypothetical, Dr. Berliner, if the Supreme Court votes similar to us in not extending the limited life and if it takes that position. And -- and correct me, but there would be you know, there would be and say, the the court, you know, directs the closure of, you know, in the revocation of the license because there is no more life. That would be subject to a closure plan that's overseen by the Department of Health in terms of the placement of the current, you know, caseload with other certified home health agencies and Carol can correct me, but there would be a closure plan requirement overseen by the department.

**Jeffrey Kraut** Dr. Boufford.

**Dr. Jo Ivey Boufford** This may be somewhat procedural, but it sounds to me like we were dinged for not addressing it explicitly. We have the right to deal to adjudicate. I mean, the 3 criteria she mentioned our need, financial viability and character and competence. Now, if there are 30 some odd other home care agencies in those boroughs, whether the need is there, I'm just concerned about the staff being explicit about those 3 criteria in this conversation, because otherwise it seems a bit circular. I mean, obviously, we know and love the character and competence issue, but it sounds like there may not be a need. There has been questions about financial viability. Character comments we haven't discussed. It's vague. I'm just concerned that whatever decision we make, we need to be explicit about the conditions we have the right to adjudicate.

**Jeffrey Kraut** I think what's going to happen is this. I'm going to put forward a resolution. I'll just tell you right now, we sent you 2 resolutions. We kind of adopted the one for disapproval. Needed to be tweaked. But you had received that as part of the preparatory material. You have a resolution for approval and I have a new resolution of disapproval. What I'm suggesting is we go back procedurally, to go back to the November 29th, 2018, where the department recommended an extension of a 3 year life, which we approved in committee, but disapproved at the council. We have two choices. We could approve that or disapprove it. We need 13 affirmative votes to approve a resolution. If I did not get 13 votes, the resolution to approve will be turned down. We can entertain another resolution. We have two choices. We can resolve to disapprove it, or we can pick up on what Dr. Brown said, if that is meaningful to people and say we will defer this as many cycles as it takes for the applicant to give us validated, audited data, however they continue to operate under those circumstances if you're deferring it.

**Jeffrey Kraut** And did I say that correctly? I want somebody to validate what I said is correct.

**Unknown** It's correct.

**Jeffrey Kraut** Thank you.

**Jeffrey Kraut** You also, we have the benefit of the administrative law judges review and that person's decision, as you heard, we are not bound by it if you took exception to it. The only thing I would ask and we are required that if we are disapproving the application, each individual for the matter of the record, because they'll be probably another judicial meeting should be clear as to why they disapprove the application. I will ask each of you to make a statement as to why you disapproved it.

**Jeffrey Kraut** That's all.

**Jeffrey Kraut** Yes, Jo.

**Dr. Jo Ivey Boufford** Yeah, I think that's I mean, I think that's an important point, important request, but if the only 3 criteria we can use our need, financial viability and character and competency, I don't think we've heard explicit statements by the department about those. Otherwise, it seems like all of us might have a different impression of the reason, but it would sound to me like that probably---

**Jeffrey Kraut** Yes.

**Unknown** That's correct.

**Unknown** In public health law, for an establishment application, there are 4 criteria. The other, the last factor is any other matter or factor that you deem relevant in addition to the public need financial feasibility and character and competence. So, it's not just the t3. While those are important and we talk about those routinely, that was the purpose of Carol giving an update so that you would have some additional information for your consideration.

**Dr. Jo Ivey Boufford** If we all have different reasons, it doesn't matter.

**Unknown** I'm sorry if you're saying for disapproval, if you have a different reason?

**Dr. Jo Ivey Boufford** I mean, is everybody has a different reason. There's no I mean, I'm just trying to set up some clarity relative.

**Jeffrey Kraut** Well, you're creating a record. We should just be clear to what the reasons are.

**Dr. Jo Ivey Boufford** Okay.

**Unknown** I guess just for my clarity, what is the reason provided by the department? Should we adopt that reason? I mean, typically, what is the explanation just for my own edification.

**Jeffrey Kraut** You mean the reason why they recommended 3 year life extension in the first place?

**Unknown** Yes, and at this point, are they continuing to recommend?

**Tracy Raleigh** Yes, so at the time, you know, in 2018, the applicant had given the department, you know, sufficient evidence that it was meeting the financial feasibility and that was an issue that had been resolved from previous time. They are sustainable. Their volume had been increasing. We concluded that, you know, there wasn't a basis to disapprove from a public need perspective and from a compliance, current compliance perspective in the character and competency they were meeting, you know, the conditions of participation. There was nothing in the application that would lead us to conclude a reason to disapprove based on character and competence so that you know those factors continue. The charity care, you know, at the time was an issue brought up by, as I've stated. You know, the charity care, just for the record, is self reported for all CHA's, and Carol can correct me on that. So, you know, that is, you know, they are required to submit statistical reports and that is how the department, you know, tracks and monitors the charity care requirement. You know, I think we've stated we have self reported data from the applicant from 2019 and 2020 that does indicate that they are meeting, you know, the 2 percent charity care requirement from their own reported data.

**Jeffrey Kraut** Mr Lawrence.

**Mr. Harvey Lawrence** How do I reconcile the one point to what is 1.2, 1.3 Star rating? Is that a factor in any of this or is that not?



**Tracy Raleigh** Well, I think that's where, you know, the fourth criteria can come in. You know, Carol stated very factually, you know, how many CHA's operating in New York State. You know, there are 3 that have 1 and a half stars. But on balance, when you get behind the stars, we just caution that, you know, there are and Carol can, you know, speak a little bit more to this. There are some good metrics in there. And then there are some metrics that need improvement. But overall, 1 and a half stars meets the conditions of participation to continue, you know, providing home care services, but there are only 3 CHA's, you know, in the state that are at that level.

**Unknown** And are they involved with the corrective action or some other mitigation program with the department at all to get them up to a higher standard of performance?

**Tracy Raleigh** Carol, I defer to you.

**Jeffrey Kraut** I think you said there were only minor corrections in the November 2020 survey.

**Carol Rodat** That is correct. And let me just clarify, if an agency wanted to mitigate or let's just say improve their star ratings, there are consultants that can be hired to do this. And providers do hire such consultants regularly and are very careful about various reporting methods with respect to Oasis. There are you can go into the home health compare and you can pull up a Shining Star and look at each individual measure, so you can see exactly where they fell down. With respect to our service, they do file a plan of correction. But again, the survey is looking at different regulation requirements and they must meet those requirements or else they receive a deficiency. And that's where their plan of correction comes in. They'll be very, very different things. If they wanted to bring up their star rating, they would look more closely at what they were doing with patients and how they were entering their Oasis data. If they have a deficiency on a survey, they would have to file a plan of correction.

**Jeffrey Kraut** What I'm going to propose is, as a matter of process, is I'm going to first propose and make a motion for the resolution of approval that was originally kind of recommended. And it is in the material you've received. I won't read the whole thing, but it's substantively says talks about that on December of 2019, we proposed to disapprove the following application for a 3 year extension for CON 0 7 2 0 9 4 E following the applicant's request for public hearing, they did so before the Ministry of Law Judge. We have received a report and recommendations that are dated on May 15, 2020 recommending approval of the application. We've now considered the record, the report and the recommendation. And on this, after due deliberation on the third day of June, 2021, we propose to approve the following application for a 3 year extension of a limited life CON number 0 7 2 0 9 4 E with the conditions and contingencies that have been specified below. We list those contingencies and contingencies. They're going to have to provide information to the Department of Issues about Medicaid assistance and liabilities, documentation within the timeframes that are resolved and information to satisfy the Department of Health that they have met all the contingencies. And if they have not, they must return to the council for any actions that we deem appropriate. So, that's the motion.

**Jeffrey Kraut** May I have a second?

**Jeffrey Kraut** I have a second, Dr. Gutierrez.

**Jeffrey Kraut** Are there any other questions that you may have on this motion? Again, you can vote yes to approve, no, to disapprove, or and, just level with yes and no, and if it fails to get 13 votes, we will consider a second motion.

**Jeffrey Kraut** All those in favor, aye.

**Jeffrey Kraut** Actually I got to do a roll call.

**Jeffrey Kraut** Colleen.

**Colleen Leonard** Dr. Bennett?

**Dr. Bennett** No.

**Colleen Leonard** Dr. Berliner?

**Dr. Howard Berliner** No.

**Colleen Leonard** Dr. Boufford?

**Dr. Jo Ivey Boufford** No.

**Colleen Leonard** Dr. Brown?

**Dr. Lawrence Brown** No.

**Colleen Leonard** Dr. Gutierrez?

**Dr. Angel Gutierrez** No.

**Colleen Leonard** Mr. Holt?

**Tom Holt** No.

**Colleen Leonard** Mr. La Rue?

**Mr. La Rue** No.

**Colleen Leonard** Mr. Lawrence?

**Mr. Harvey Lawrence** No.

**Colleen Leonard** Ms. Monroe?

**Ann Monroe** No.

**Colleen Leonard** Dr. Martin?

**Dr. Glenn Martin** No.

**Colleen Leonard** Mr. Robinson?

**Peter Robinson** No.

**Colleen Leonard** Dr. Ruggie?

**Dr. Ruggie** No.

**Colleen Leonard** Ms. Soto?

**Ms. Soto** No.

**Colleen Leonard** We are at 13. Do you want me to keep going, Jeff?

**Jeffrey Kraut** Yes, we need to have a complete record.

**Colleen Leonard** Dr. Strange?

**Dr. Strange** No.

**Colleen Leonard** Mr. Thomas?

**Mr. Thomas** No.

**Colleen Leonard** Dr. Torres?

**Dr. Torres** No.

**Colleen Leonard** Dr. Watkins?

**Dr. Kevin Watkins** No.

**Colleen Leonard** And the Chair?

**Jeffrey Kraut** No.

**Colleen Leonard** That fails.

**Jeffrey Kraut** Now, I'm going to make another resolution for disapproval. Let me read you the resolution. It's slightly different than the one you received. Whereas the Public Health and Health Planning Council, pursuant to the provisions of Section 28 01 - A of the public health law, has considered any advice offered by any applicable regional health systems agency, the staff of the New York State Department of Health and the established committee of this council. And whereas on December 13th, 2018, the council proposed to disapprove the following application for a 3 year extension of its limited life for CON number 0 7 2 0 9 4 - E, and whereas following the applicant's request for a public hearing pursuant to said Section 2 8 0 1 - A, such a hearing was held before the Ministry of Law Judge and the Administrative Law Judge has, by her reported and recommendation dated May 15, 2020, recommended approval of the application. And whereas the Public Health and Health Planning Council has considered the record of the hearing and reported and recommendation. It hereby resolve that this council, after due deliberation and for the reasons stated on the record at its meeting of the council on this third day of June, 2021 hereby rejects the conclusions set forth in the report and recommendation. And it further resolved that this council on this third day of June, 2021, hereby disapproves the following

application for the establishment of a special pilot program, certified home health agency, and the request for a 3 year extension to its limited life operating certificate application 1 7 1 0 4 1 E Shining Star Home Health Care in Kings County.

**Jeffrey Kraut** May I have a second, please?

**Jeffrey Kraut** I have a second, Dr. Berliner, Dr. Gutierrez as well.

**Jeffrey Kraut** Any other questions?

**Jeffrey Kraut** Any comments?

**Jeffrey Kraut** Any statements from the department before we vote?

**Unknown** Yes, Mr. Chair. I just have one comment that I'd like to make. I'd like to clarify and I apologize, but we are in Article 36 land, so the reference should be to Section 3 6 0 6. Thank you.

**Jeffrey Kraut** I inadvertently said in the first part of my resolutions, where is the Public Health and Health Planning Council pursuant to Section 3 6 0 6, is that correct, of the public health law.

**Unknown** Correct.

**Jeffrey Kraut** I stand corrected. I amend the resolution and Dr. Berliner and Dr. Gutierrez, you amend the second. Thank you. I have it amended resolution correctly, referring to the section of the public health law.

**Jeffrey Kraut** I will call a vote by roll-call.

**Jeffrey Kraut** And yes. Mr. Torres, do you have a question?

**Dr. Torres** I just want clarification. The judge stated not to approve this application in the letter in the last part of your narrative.

**Jeffrey Kraut** I'm sorry, the judge? The judge did not agree with the decision---

**Unknown** The administrative law judge did not agree that the application should have been disapproved when it was just approved in December, so that was the conclusion. She stated that it had error in its reasoning for disapproving the application. Does that clarify for you?

**Dr. Torres** Yes.

**Unknown** Okay, thank you.

**Unknown** When we vote, do we have to say why we're voting the way we're voting?

**Jeffrey Kraut** I, I believe we do.

**Unknown** For all the yes votes to this disapproval motion, you will have to state your reason for voting yes.

**Jeffrey Kraut** Yes.

**Jeffrey Kraut** So, Colleen, is everybody understand that? You have to give the reasons you voted yes. We'll call your name and you'll, yes means you're voting to disapprove. A no vote is you're not voting to disapprove.

**Jeffrey Kraut** Colleen, could you please do the call?

**Colleen Leonard** Dr. Bennett?

**Dr. Bennett** Yes, reason being concerns over the quality scores.

**Colleen Leonard** Dr. Berliner?

**Dr. Howard Berliner** Yes, due to concerns over the quality of care provided.

**Colleen Leonard** Dr Boufford?

**Dr. Jo Ivey Boufford** Yes, concerns over quality of care. I would say low utilization relative to the needs issue, and then I'd like to raise the question around the eligibility, the special eligibility under which it was originally approved. It seems to be not applicable any longer.

**Colleen Leonard** Dr. Brown?

**Dr. Lawrence Brown** Yes, due to the quality care issue.

**Colleen Leonard** Dr. Gutierrez?

**Dr. Angel Gutierrez** Yes, based on the quality of care and competence.

**Colleen Leonard** Mr. Holt?

**Tom Holt** Yes, based on quality of care.

**Colleen Leonard** Mr. La Rue?

**Mr. La Rue** Yes, based on need and quality of care.

**Colleen Leonard** Mr. Lawrence?

**Mr. Harvey Lawrence** Yes, based on the quality of care.

**Colleen Leonard** Ms. Monroe?

**Colleen Leonard** I think you're on mute.

**Ann Monroe** Yes, quality of care concern.

**Colleen Leonard** Dr. Ortiz?

**Dr. Ortiz** Yes, based on need and quality of care.

**Colleen Leonard** Dr. Martin?

**Dr. Glenn Martin** Thank you.

**Dr. Glenn Martin** Yes, on the basis of quality of care, access and lack of demonstrated continued need.

**Colleen Leonard** Mr. Robinson?

**Peter Robinson** Yes, based on quality of care and failure of the applicant to meet the charity care standards during the first 5 years of its life.

**Colleen Leonard** Dr. Ruggie?

**Dr. Ruggie** Yes, based on lack of quality of care and confidence in the face of no clear public need.

**Colleen Leonard** Ms. Soto?

**Ms. Soto** Yes, due to quality of care.

**Colleen Leonard** Dr. Strange?

**Dr. Strange** Yes, based on quality of care.

**Colleen Leonard** Mr. Thomas?

**Mr. Thomas** Yes, based on quality of care concerns and lack of demonstrated need.

**Colleen Leonard** Dr. Torres?

**Dr. Torres** Yes, need and quality of care concerns.

**Colleen Leonard** Dr. Watkins?

**Dr. Kevin Watkins** Yes, based on quality of care concerns.

**Colleen Leonard** And the Chair?

**Jeffrey Kraut** Yes, based on quality of care, concerns and recognition that this is a unique applicant, as is no other one that has been before us and has been provided ample opportunity to address the concerns of this council, has extended its license beyond the 5 years initially granted and has still not achieved the level of quality that we had expected.

**Jeffrey Kraut** Could I have a number of votes that was affirmative?

**Colleen Leonard** 19, affirmative.

**Colleen Leonard** The motion carries

**Jeffrey Kraut** We have 19 affirmative votes. I thank you for your time.

**Jeffrey Kraut** I am now going to ask that we are going to conclude the public portion of the Health and Planning Council to adjourn and to go into Executive Session for consideration of cases arising under Public Health Law Section 2 8 0 1 B. The next committee day is on July 15th and the full council will convene on July 29th.

**Jeffrey Kraut** May I have a motion to adjourn?

**Unknown** Jeff, do you know yet whether that meeting will be in person or remote?

**Jeffrey Kraut** The expectation is it's going to be in person for those people who can do so, but it's going to be a hybrid meeting. We have to see what the regs are about the public participation. If you're unable to travel at that time, we still will be able to participate in the manner in which we're doing now. We'll give you an advisory as soon as the state advises us.

**Unknown** Thank you.

**Jeffrey Kraut** Dr. Gutierrez moves.

**Jeffrey Kraut** We are adjourned.

**Jeffrey Kraut** And could you please tell me when I can go into Executive Session?

**Regulations to be distributed under separate cover.**





**Project # 211234-C**

**Mount St. Mary's Hospital and Health Center**

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

**County:** Niagara  
**Acknowledged:** June 3, 2021

**Executive Summary**

**Description**

Mount St. Mary's Hospital and Health Center, a 175-bed not-for-profit hospital located at 5300 Military Road, Lewiston (Niagara County), requests approval to construct a new hospital division that will replace the current Eastern Niagara Hospital (ENH), a 134-bed not-for-profit hospital located at 521 East Avenue, Lockport (Niagara County). The new hospital will be located three miles from the current site of ENH at 6001 Shimer Drive, Lockport, NY and be named Lockport Memorial Hospital, a Campus of Mount St. Mary's.

Mount St. Mary's Hospital and Health Center's (Mount St. Mary's) active parent is Catholic Health System, Inc. (CHS). CHS is an integrated healthcare delivery system that includes: Mount St. Mary's; Mercy Hospital of Buffalo; Kenmore Mercy Hospital; Sisters of Charity Hospital and Sisters of Charity Hospital – St. Joseph Campus; four long-term care facilities; three home health agencies; primary care and imaging centers; a physician network; and other healthcare-related services as well as with five charitable foundations.

ENH has been in financial distress for several years. In November 2019, Eastern Niagara Hospital filed for Chapter 11 bankruptcy and began implementing a restructuring plan. The financial impact of the COVID-19 pandemic in 2020 exacerbated ENH's financial challenges and absent an intervention, the hospital was projected to close in January 2021. CHS and ENH identified an opportunity to collaborate that would preserve and enhance

access to hospital services benefitting the residents of the Niagara County communities they both serve.

The proposed Lockport Memorial Hospital campus of Mount St. Mary's will be two one-story buildings occupying 63,000 square feet on a 97 acre parcel of apple orchard and farm land in the Town of Lockport and includes 10 private rooms for inpatient medical/surgical beds with shell space for 10 additional beds to accommodate future growth. The initial 10 medical/surgical beds to be constructed at the new hospital is consistent with ENH's current average daily census (ADC), which was 10.56 for the period April 1, 2021 to June 7, 2021. The hospital will also include an emergency department, a full suite of imaging services, laboratory testing, and a primary and multispecialty clinic.

The proposed hospital project will benefit from CHS' existing healthcare network in several ways including

- Economies of scale from CHS administrative and clinical support services, including group purchasing savings and access to the system's enterprise resource planning (ERP) IT system.
- Deployment of Epic electronic health record system to more effectively and efficiently manage and coordinate care
- Access to CHS primary and tertiary services and full care continuum

Mount St. Mary's in western Niagara County has also experienced underutilization and is expected to benefit from the integration of services with the proposed Lockport Memorial Hospital.

CHS is currently managing ENH and providing liquidity and working capital support through an \$8.5M grant from the Mount St. Mary's Foundation.

**OPCHSM Recommendation**

Contingent Approval

**Need Summary**

The average daily census for medical/surgical services at ENH has steadily declined in the last few years from 33 in 2019, to 23 in 2020, to 10 patients on average in 2021. ADC for pediatric inpatient beds has been 0 since 2019. ENH closed its 12-bed inpatient child/adolescent psychiatric program as of 2020 given low volume, lack of staff, and related safety concerns and program deficits. The behavioral health needs for children and adolescents requiring inpatient services are currently being met through services offered at BryLin Behavioral Health System as well as Erie County Medical Center in the Buffalo area.

The proposed scope and distribution of services planned for the new Lockport Memorial Hospital campus of Mount St. Mary's Hospital preserves local access to care, is sized to meet the needs of the community, avoids duplication of services, and is designed to efficiently and effectively integrate the proposed operation with existing CHS network facilities, capabilities, and resources.

**Program Summary**

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

**Financial Summary**

The total project cost of \$65,008,773 will be met through cash of \$20,697,123, fundraising of \$500,000, a Statewide Grant of \$5,921,650, and a \$37,890,000 public tax-exempt revenue demand bond issue for a 30-year term at 4% interest.

The following represents the consolidated budget for Mount St. Mary's Hospital and Health Center and the incremental financial impact of the proposed Lockport Memorial Hospital. The clinical, operational, and financial synergies between Mount St. Mary's existing and the proposed new Lockport Memorial Hospital campus will help preserve access to care in Eastern Niagara County and stabilize Mount St. Mary's Hospital in western Niagara County. The consolidated budget is as follows:

	<u>Current Year</u> <u>(2020)</u>	<u>Year One</u> <u>(2023)</u>	<u>Year Three</u> <u>(2025)</u>
Revenues	\$105,398,000	\$138,793,405	\$144,206,283
Expenses	<u>\$105,162,000</u>	<u>\$139,788,451</u>	<u>\$144,852,715</u>
Net Income	\$236,000	(\$995,046)	(\$646,432)

The CFO of CHS has submitted a letter indicating CHS will fund the working capital requirements and any initial operating deficits for the Lockport Memorial Hospital campus. CHS has over 100 days of unrestricted cash and investments on hand. As of April 30, 2021, CHS maintained \$170 million in cash and cash equivalents (BFA Attachment A).

The incremental operating budget for just the proposed Lockport Memorial Hospital campus is presented below. The applicant projects the new hospital will have a net income of approximately \$3.3M in Year One and \$3.9M by Year Three.

	<u>Year One</u> <u>(2023)</u>	<u>Year Three</u> <u>(2025)</u>
Revenues	\$27,668,532	<u>\$29,747,664</u>
Expenses	<u>\$24,373,008</u>	<u>\$25,799,143</u>
Net Income	\$3,295,524	<u>\$3,948,521</u>

## Recommendations

### Health Systems Agency

There will be no HSA recommendation for this project.

### Office of Primary Care and Health Systems Management

#### Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a bond resolution acceptable to the New York State Department of Health (Department). Included with the submitted bond resolution must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
3. Submission of documentation confirming final approval of the Statewide Health Care Facility Transformation program executed grant contract, acceptable to the Department. [BFA]
4. Submission of an executed management services agreement acceptable to the Department. [BFA]
5. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
6. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
7. Submission of State Environmental Quality Review (SEQR) Summary of Findings pursuant to 6 NYCRR Part 617.4(b) (6), and 10NYCRR 97.12. [SEQ]

#### Approval conditional upon:

1. Completion of the project by **July 1, 2023**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and an expiration of the approval. It is the responsibility of the applicant to request prior approval for any extension to the project approval expiration date. [PMU]
2. Construction must start on or before **December 1, 2021**, and construction must be completed by **April 1, 2023**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. Staff of the facility must be separate and distinct from the staff of other entities; signage must clearly denote the facility is separate and distinct from other entities; clinical space must be used exclusively for the approved purpose; and entrance must not disrupt any other entity's clinical program space. [HSP]
4. 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

July 29, 2021

# Need Analysis

## Background

ENH currently operates significantly below its certified capacity of 134 beds.

Bed Type	Current Beds
Medical/Surgical	84
Pediatric	8
Psychiatric	12
Chemical Dependency/Rehabilitation	30
Total	134

Source: HFIS

## Analysis

The average daily census for medical/surgical services has steadily declined in the last few years from 33 in 2019, to 23 in 2020, to 10 patients in 2021. ENH's ADC for pediatric inpatient beds has been zero since 2019.

Service	2019		2020	
	ADC	OCC	ADC	OCC
Med/Surg	33		22.9	
Med/Surg Chem. Dependency	22		-	
<b>Sub Total Med/Surg</b>	<b>55.5</b>	<b>66.1%</b>	<b>22.9</b>	<b>27.3%</b>
Pediatric	0	0%	0	0%
Psychiatric	5	42%	0	0%
All Other (incl. Chem Dependency in 2020)	1	3%	15.9	53%
<b>Grand Total</b>	<b>60.7</b>	<b>45.3%</b>	<b>38.8</b>	<b>28.9%</b>

Source: SPARCS. Reporting is blended as Chemical Dependency Beds transitioned between the Newfane and Lockport campuses in 2019. ADC is displayed in "Med/Surg Chem Dependency in 2019, in "Other" in 2020.

ENH closed its 12-bed inpatient child/adolescent psychiatric program in 2020 given low volume, lack of staff, and related safety concerns and program deficits. The behavioral health needs for children and adolescents requiring inpatient services are currently being met through services offered by BryLin Behavioral Health System as well as Erie County Medical Center in the Buffalo area.

The inpatient chemical dependency program was transferred from the Newfane to the current ENH campus in Lockport at the end of 2019 and had an average daily census of 16 in 2020. These needs will be met by the inpatient chemical dependency program operated by CHS at Mount St. Mary's which has just added 24 beds through CON 201051 for this service.

ADC for pediatric inpatient beds has been 0 since 2019. ENH states that keeping the eight pediatric beds on the operating certificate has allowed them to care for the occasional low acuity pediatric admission through the ED but the higher acuity pediatric cases are being treated at John R. Oishei Children's Hospital in Buffalo.

As shown in Table 3 below, Niagara County residents in need of medical/surgical inpatient care will have sufficient access to these services at the new Lockport Memorial Hospital, Mount St. Mary's Hospital, a CHS hospital, or in one of the several other hospitals in the region within a 30-mile radius, with ample capacity. See the BPNR Attachment for a map of the surrounding facilities.

Med/Surg	Distance In miles	Beds	2018			2019		2020	
			ADC	Occ.	ADC	Occ.	ADC	Occ.	
Buffalo General Medical Center	28.5	484	403	83.3%	412	85.1%	369	76.2%	
Erie County Medical Center	25.0	353	206	58.4%	208	58.9%	214	60.6%	
Millard Fillmore Suburban Hospital	14.8	227	146	64.3%	146	64.3%	134	59.0%	
Mount St Mary's Hospital and Health Center	20.3	120	48	40.0%	42	35.0%	27	22.5%	
Niagara Falls Memorial Medical Center	21.6	97	31	32.0%	35	36.1%	33	34.0%	
Sisters of Charity Hospital	26.3	230	96	41.7%	79	34.4%	54	23.5%	

Data source: SPARCS inpatient data (Apr. 1, 2019 - Mar. 31, 2020) - Date last update:10/21/2020

The table below shows the distribution of discharges from the hospitals that service the area (generally contiguous zip codes) from which ENH has drawn 85% of its discharges defined as ENH's primary service area (PSA). There are approximately 84,000 people that reside in this geographic area. The most recent data show ENH had only 7.5% of total hospital discharges in its PSA, while Kaleida is the market leader with a combined 37.8 percent market share between its Millard Fillmore Suburban, Buffalo General Hospital, and John R. Oishei Children's Hospital.

Facility	Annual Discharges	Percent	Cumulative Discharges	Cumulative Percentage
Millard Fillmore Suburban Hospital	4,172	15.7	4,172	15.7
Buffalo General Medical Center	3,847	14.5	8,019	30.2
Erie County Medical Center	2,963	11.2	10,982	41.4
Niagara Falls Memorial Medical Center	2,654	10.0	13,636	51.4
Mount St. Mary's Hospital and Health Center	2,432	9.2	16,068	60.6
Sisters of Charity Hospital	2,064	7.8	18,132	68.3
John R. Oishei Children's Hospital	2,016	7.6	20,148	75.9
<b>Eastern Niagara Hospital - Lockport Division</b>	<b>1,998</b>	<b>7.5</b>	<b>22,146</b>	<b>83.5</b>
Kenmore Mercy Hospital	1,165	4.4	23,311	87.9
All Other Area Hospitals	3,219	12.1	26,530	100.0

Data source: SPARCS inpatient data (Apr. 1, 2019 - Mar. 31, 2020) - Date last update:10/21/2020

It should be noted that Mount St Mary's and Sisters of Charity already had a higher percentage of discharges than ENH in the ENH primary service area.

### Conclusion

The proposed scope and distribution of services planned for the new Lockport Memorial Hospital campus of Mount St. Mary's Hospital preserves, enhances, and sustains local access to hospital care, is sized to meet the needs of the community, avoids duplication of services, and is designed to efficiently and effectively integrate the proposed operation with existing CHS network facilities, capabilities, and resources.

## **Program Analysis**

### **Program Description**

ENH, Mount St. Mary's Hospital, and CHS came together to develop a plan to maintain the provision of health services for the 84,000+ residents in Eastern Niagara County. In 2020, CHS agreed to purchase certain assets from ENH, including a freestanding ambulatory surgery center (ASC), located at 5875 South Transit Road in Lockport, and enter into a management services agreement with the aim of reducing operating expenses at ENH. Both CHS and ENH have worked to stabilize the workforce and improve operations and cash flow, creating greater stability to provide the runway for the development and construction of this new, more efficient neighborhood hospital.

CHS has done significant demand analysis on inpatient and outpatient service needs in this area. The new Lockport Memorial Hospital facility is designed to meet the needs of the community in a financially sustainable fashion. One such example is that by leveraging economies of scale with the resources of Mount St. Mary's Hospital and CHS, the new facility will have access to centralized purchasing, legal, human resources, finance, and compliance resources. Additionally, the new hospital will be supported by the CHS primary and specialty physician network and integrated with its EPIC EHR.

The project is expected to increase staffing to 161.9 FTEs.

### **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.

### **Prevention Agenda**

The applicant states that the proposed project will advance local Prevention Agenda priorities by bringing a number of existing interventions and new services to the area. The new campus will bring increased access to primary and specialty care in the region and will house a specialty clinic that provides access to cardiologists, endocrinologists, vascular, orthopedic, and other specialists allowing earlier interventions in a more convenient way to reduce obesity and the underlying causes of diabetes and heart disease. The new site will have a significant primary care and OB/GYN presence to promote health for the entire family including women and children. CHS also has a wide array of substance use disorder services within the network to promote well-being and will bring community awareness to programs such as "Medication Assisted Treatment" programs available and support groups in the system. CHS is one of the largest hospital providers of Methadone Maintenance services outside New York City.

CHS has a long history in the Niagara Region for community engagement. The applicant states their action plan to address the prevention agenda includes community representation from across the region. They are currently collaborating with Catholic Charities to support behavioral health and will look to expand their current relationship with Feedmore WNY to address food insecurities at their primary care locations. The applicant states they have developed specific relationships in the Lockport region with Niagara University, Town of Lockport, Niagara County Department of Health and their opioid task force, and a dozen of local businesses and community organizations. Mount St. Mary's is one of the founding members of Niagara Falls Health Equity Task Force and has been invited to participate in Niagara Falls Mayor Commission on social justice associated with health equity. The applicant states they are part of the newly formed Niagara Falls workforce development consortium.

Progress toward achieving local Prevention Agenda goals is tracked through Niagara County Department of Health, New York State Department of Health, and the EPIC EMR system data.

In 2019, the applicant spent \$744,510 on community health improvement services, representing 0.696% of total operating expenses.

**Conclusion**

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

<b>Financial Analysis</b>
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**Total Project Cost and Financing**

The total project cost of \$65,008,773, which includes the cost for the Article 28 shell space of \$523,200, will be met via cash of \$20,697,123, fundraising \$500,000, a statewide grant of \$5,921,650, and a \$37,890,000 public tax-exempt revenue demand bond issue for a 30-year term at 4% interest. Bank of America Securities has provided a letter of interest to arrange an underwriting for the bond issue. A statewide grant was previously awarded to ENH for the construction of a medical office building, ambulatory care services, and IT improvements to enhance integration. The Department of Health is in the process of transferring it to Mount St. Mary's for use in this project.

Total project cost, which is for construction of the hospital and associated services building, and acquisition of moveable equipment, is detailed as follows:

Land Acquisition	\$800,000
New Construction	\$29,931,471
Site Development	\$5,665,000
Design Contingency	\$1,779,824
Construction Contingency	\$1,779,824
Fixed Equipment	\$1,838,632
Planning Consultant Fees	\$711,930
Architect/Engineering Fees	\$1,740,700
Construction Manager Fees	\$2,884,000
Other Fees	\$515,000
Moveable Equipment	\$6,705,455
Telecommunications	\$7,898,213
Financing Costs	\$762,104
Interim Interest Expense	\$1,641,900
Con Fees	\$2,000
Additional Processing Fee	\$352,720
Total Project Cost	\$65,008,773

The Department's Bureau of Architectural and Engineering Review has determined that this project includes direct costs and space allocations totaling \$523,200 for shell space. As a result, the total approved project cost for reimbursement purposes shall be limited to \$64,485,573.

## Operating Budget

The applicant has submitted an incremental operating budget for the inpatient and outpatient services to be provided at the Lockport Memorial Hospital campus of Mount St. Mary's Hospital in 2021 dollars, during the first and third years, summarized below:

	<u>Per Discharge</u>	<u>Year One</u> <u>(2023)</u>	<u>Per Discharge</u>	<u>Year Three</u> <u>(2025)</u>
<u>Inpatient Revenues</u>				
Commercial-FFS	\$7,737	\$696,308	\$8,155	\$709,460
Commercial-MC	\$7,146	343,025	\$7,598	349,504
Medicare-FFS	\$5,527	950,615	\$5,870	968,571
Medicare-MC	\$6,656	1,044,956	\$7,051	1,064,693
Medicaid-FFS	\$7,248	108,714	\$7,384	110,767
Medicaid -MC	\$5,652	463,485	\$6,054	472,240
Private Pay	\$9,970	59,821	\$10,159	60,951
Other *		<u>4,047,031</u>		<u>4,210,531</u>
Total Inpatient Revenues		<u>\$7,713,955</u>		<u>\$7,946,717</u>
<u>Outpatient Revenues</u>				
	<u>Per Visit</u>		<u>Per Visit</u>	
Commercial-FFS	\$229.12	\$4,554,826	\$242.11	\$5,059,280
Commercial-MC	\$134.84	2,539,614	\$143.27	2,821,258
Medicare- FFS	\$84.69	1,124,302	\$90.00	1,248,345
Medicare-MC	\$183.72	2,350,530	\$195.00	2,606,717
Medicaid-FFS	\$58.63	109,219	\$61.74	120,393
Medicaid-MC	\$294.27	2,643,131	\$308.89	2,931,076
Private Pay	\$286.36	1,648,268	\$303.23	1,820,867
Other **		<u>4,984,687</u>		<u>5,193,013</u>
Total Outpatient Revenues		<u>\$19,954,577</u>		<u>\$21,800,947</u>
Total Revenues		<u>\$27,668,532</u>		<u>\$29,747,664</u>
<u>Inpatient Expenses</u>				
	<u>Per Discharge</u>		<u>Per Discharge</u>	
Operating	\$5,646	\$3,353,818	\$6,266	\$3,577,710
Depreciation and Interest	<u>\$1,690</u>	<u>1,004,052</u>	<u>\$1,760</u>	<u>1,004,752</u>
Total Inpatient Expenses	\$7,336	\$4,357,870	\$8,026	\$4,581,762
<u>Outpatient Expenses</u>				
	<u>Per Visit</u>		<u>Per Visit</u>	
Operating	\$198.23	\$16,455,319	\$203.02	\$17,657,562
Depreciation and Interest	<u>\$42.88</u>	<u>3,559,819</u>	<u>\$40.93</u>	<u>3,559,819</u>
Total Outpatient Expenses	\$241.11	\$20,015,138	\$243.95	\$21,217,381
Total Expenses		<u>\$24,373,008</u>		<u>\$25,799,143</u>
Net Income		<u>\$3,295,524</u>		<u>\$3,948,521</u>
Total Discharges		594		571
Total Visits		83,012		86,974

\* Other inpatient revenues are comprised entirely of non-tertiary referrals (non-tertiary care is defined as hospital care that does not require highly specialized skills, technology, or support services).

\*\* Other outpatient revenues are comprised of 340B program revenue (Year One = \$503,626 and Year Three = \$523,973) and surgical referrals (Year One = \$4,481,061 and Year Three = \$4,669,038).

The following is noted with respect to the submitted budgets:

- Revenue was calculated based on actual revenue per case received at Mount St. Mary's Hospital in 2019 for a similar inpatient case mix and outpatient services that are anticipated at Lockport Memorial Hospital. This methodology was applied at a department level.



- Staffing expense and skill mix were determined by reviewing specific needs by department based on anticipated volume. Where appropriate, productivity targets per unit of service were applied to calculate FTEs, salary, and benefit expenses. Support positions, such as management, environmental, and facility services, were determined based on the building footprint and hours of service, as well as, efficiencies that are achievable through shared services between Mount St. Mary's Hospital and Lockport Memorial Hospital.
- Supply expenses were determined on a variable per unit of volume basis in line with historical trending of Mount St. Mary's Hospital for like departments. Purchased Services were determined through consultation of department managers with Mount St. Mary's historical trending as a baseline with adjustments based on specific needs to support the proposed services at Lockport Memorial Hospital. Utilities were projected using Mount St. Mary's expense as a baseline with adjustments for the square footage of Lockport Memorial Hospital; utilization assumptions were determined applying a combination of two methods. The first method included consultant reports of market volume for the geographical service areas of the proposed location of Lockport Memorial Hospital. This methodology was applied at a department level where appropriate. For areas where this methodology was not applied, historical volume from ENH System was utilized.
- Utilization by payor source for Years One and Three is as follows:

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Inpatient</u>	<u>Outpatient</u>	<u>Inpatient</u>	<u>Outpatient</u>
Commercial FFS	15.15%	23.95%	15.24%	24.03%
Commercial MC	8.08%	22.69%	8.06%	22.64%
Medicare FFS	28.96%	16.00%	28.90%	15.95%
Medicare MC	26.43%	15.41%	26.44%	15.37%
Medicaid FFS	2.53%	2.24%	2.63%	2.24%
Medicaid MC	13.80%	10.82%	13.66%	10.91%
Private Pay	1.01%	6.93%	1.05%	6.90%
Charity Care	<u>4.04%</u>	<u>1.96%</u>	<u>4.02%</u>	<u>1.96%</u>
Total	100.0%	100.0%	100.0%	100.0%

### Management Agreement

The applicant provided a draft management agreement; the terms are summarized below.

Date:	TBD
Consultant:	Catholic Health Systems, Inc
Facility:	Eastern Niagara Hospital, Inc.
Manager Responsibilities:	Manage the day-to-day operations including: supervision, clerical and support services, monitor patient care, charges relating to business negotiations, rates and filing of cost reports, personnel administration related to pay wage and benefits, purchasing care policies and procedures, patient records management, quality control indicators, complaint procedures development, contract services, policy and procedure development, management reports, compliance reports, insurance, maintain licenses, permits, accreditation and provider numbers, maintenance of fiscal stability.
Compensation:	\$478,322.40 per year payable in 12 equal monthly installments. They are also entitled to manager's out of pocket expenses paid by manager on hospital's behalf.
Terms:	3-year term on anniversary of the effective date.
Provisions:	Manager may terminate the agreement, with or without cause, at any time with a written notice and 90-day termination period. Either party may terminate with 90 days of written notice. Hospital may terminate the agreement, with or without cause, any time with a written notice to the manager, the Department, and citizens. The hospital must also provide to the Department a plan for the operation of the facility.

## Capability and Feasibility

The total project cost of \$65,008,773, which includes the cost for the Article 28 shell space of \$523,200. will be met via cash of \$20,697,123, fundraising of \$500,0000, a statewide grant of \$5,921,650, and a \$37,890,000 public tax-exempt revenue demand bond issue for a 30-year term at 4% interest. BFA Attachment B is the 2018-2020 Certified Financial Statement and the 1/1/21-4/30/21 Internal Financial Statements of Catholic Health System, Inc., which indicates the availability of sufficient funds for the cash equity contribution.

The submitted budget for the new Mount St. Mary's Lockport Memorial Hospital indicates an excess of revenues over expenses of \$3,295,524 and \$3,948,521 during the first and third years, respectively. Working capital requirements are estimated at \$4,299,957 based on two months of third year expenses. The CFO of CHS has submitted a letter indicating CHS will fund the working capital requirements and any initial operating deficits for the Mount St. Mary's Lockport Memorial Hospital campus.

As shown on BFA Attachment A, Mount St. Mary's Hospital had a positive working capital position, a positive net asset position and an excess of revenues over expenses of \$1,262,000 through December 31, 2020. These results are inclusive of \$14,116,000 in federal stimulus dollars from the CARES Act Provider Relief Fund. The clinical, operational, and financial synergies between Mount St. Mary's existing hospital and the proposed new Lockport Memorial Hospital campus will help stabilize Mount St. Mary's Hospital in western Niagara County and mitigate future deficits absent the CARES liquidity provided in 2020. Through April 2021, Mount St. Mary's Hospital and Health Center achieved positive working capital and net asset positions. The entity had an excess (deficiency) of revenues over expenses of (\$1,514,000). The month of April 2021 had an excess of revenue over expenses of \$938,000.

The consolidated budget for Mount St. Mary's Hospital and Health Center and the incremental financial impact of the proposed new Mount St. Mary's Lockport Memorial Hospital is projected to have a \$995,000 loss in Year One, decreasing to a \$646,000 loss in Year Three. CHS, the active parent company of Mount St. Mary's Hospital, will absorb the projected deficits for the organization.

	<u>Current Year</u> <u>(2020)</u>	<u>Year One</u> <u>(2023)</u>	<u>Year Three</u> <u>(2025)</u>
Revenues	\$105,398,000	\$138,793,405	\$144,206,283
Expenses	<u>\$105,162,000</u>	<u>\$139,788,451</u>	<u>\$144,852,715</u>
Net Income	\$236,000	(\$995,046)	(\$646,432)

As shown on BFA Attachment B, CHS had average positive working capital and a positive net asset positions for the period 2018-2020. The entity achieved an average (deficiency) of revenue over expenses of (\$33,313,000) over this same period. CHS was at break-even operating performance as of CY end 2018 and had an excess (deficiency) of (\$35.6M) of revenue over expenses at CY end 2019 and (\$64.9M) at CY end 2020. For the first four months ending on April 30, 2021, CHS achieved positive working capital and net asset positions with an excess (deficiency) of revenues over expenses of (\$40,641,00). CHS has over 100 days of unrestricted cash and investments on hand. As of April 30, 2021, CHS maintained \$170 million in cash and cash equivalents, and they continue to meet all debt covenant requirements.

The losses in 2019 were attributed to several one-time items, including workforce reduction restructuring charges, electronic health record implementation costs that could not be capitalized, and interest rate swap termination charges. Margin was also negatively impacted by expenses outpacing payment rate increases, a continued shift to less intensive ambulatory care settings, and a decline in surgical volume. These trends were exacerbated during 2020 through YTD April 2021 by the COVID-19 pandemic, due to the reduction in hospital volume and lost revenue of over \$190 million from the suspension of elective procedures, and other social distancing and isolation measures. This has only partially been offset by Federal stimulus from the CARES Act Provider Relief Fund, from which CHS has received approximately \$96 million. CHS has also incurred several one-time costs to prepare its facilities for COVID-19 patients, including establishing the St. Joseph COVID-19 Treatment facility in Cheektowaga. Between premium wage costs and the acquisition of supplies and equipment, the incremental expense to the CHS

exceeded \$40 million. CHS financial performance in 2020 was also impacted by \$30 million of one-time operating expenses for CHS' electronic health record implementation.

The CHS 2021 budget includes approximately \$63 million of initiatives to improve CHS's operating performance and generate a positive operating margin by 2022. Several of these initiatives are part of CHS' 2025 Strategic Plan, including the Lockport Memorial Hospital project. These initiatives include operational performance improvement tactics, system-wide cost containment measures, evolving third-party payer arrangements and strategies to maintain and grow market position that includes the Lockport Memorial Hospital project. These initiatives will be supported and enabled by implementation of the new electronic health record systemwide.

CHS' current balance sheet strength and planned performance improvement initiatives are indicators of future success that will enable support of the proposed Lockport Memorial Hospital project.

**Conclusion**

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

**Attachments**

- BPNR Attachment Map
- BFA Attachment A Financial Summary – 2020 Certified Financial Statements and 1/1/21-4/30/21 Internal Financial Statements of Mount St. Mary's
- BFA Attachment B Financial Summary- 2018-2020 Certified Financial Statements and 1/1/21-4/30/21 Internal Financial Statements of Catholic Health Services, Inc.
- BFA Attachment C Organization Chart of Catholic Health Services, Inc.



**Project # 202168-C  
Lewis County General Hospital**

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

**County: Lewis**  
**Acknowledged: October 22, 2020**

**Executive Summary**

**Description**

Lewis County General Hospital (LCGH), a 25-bed Public Critical Access Hospital located at 7785 North State Street, Lowville (Lewis County) requests approval to construct a 36,000 sq. ft, two-story surgical pavilion on the existing campus and to renovate 13,700 sq. ft. of the existing medical/surgical patient wing, creating 24 private rooms. The proposed pavilion will have a new surgical suite on the second floor with three operating rooms, one procedure room and separate pre-operative and post anesthesia care unit (PACU) areas. It will also house three relocated specialty clinics (orthopedic surgery, general surgery and women’s health services) on the first floor and community space with health education classrooms.

By adding an operating room (OR) and a procedure room to the existing two OR’s, LCGH seeks to modernize and increase surgical capacity, attract physicians and recapture outmigration of outpatient procedures. The project will more conveniently co-locate the clinics where physicians practice with the operating rooms (ORs) where they perform surgery and provide more operating room capacity to allow surgeons more block times. The modernization of the existing medical/surgical patient wing will result in greater patient privacy, improved infection control, and patient-centered care.

The applicant indicates the current operating rooms were at capacity in 2019 when surgical volume was at 1,657 cases and over 80% of the cases were ambulatory surgery. Through this project, LCGH expects to retain 25%-35%

(1,055 –1,476) of market area residents who currently go to Utica, Syracuse, and Carthage for outpatient surgery.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**  
Expansion and modernization of the facilities for surgery and other services will bolster physician recruitment and retention and reduce patient outmigration.

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

**Financial Summary**  
Total project costs of \$33,067,278 will be funded through a county bond issuance for \$25,757,125 at 2.25% for a 25-year term, \$5,310,153 in accumulated funds, and \$2,000,000 pledged from the Hospital Foundation capital campaign. The submitted budget indicates net income of \$336,209 and \$667,157 during the first and third years of after completion of the project, respectively. The budget is as follows:

Budget			
	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$82,565,311	\$87,805,213	\$91,592,084
Expenses	81,826,845	87,469,004	90,924,927
Gain	\$738,466	\$336,209	\$667,157

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of the Bond and Note Resolution acceptable to the Department of Health. Included with the submission must be a source and uses statement and debt amortization schedule, for both new and refinanced debt. [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. This project must be completed by **February 1, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and an expiration of the approval. It is the responsibility of the applicant to request prior approval for any extension to the project approval expiration date. [PMU]
2. Construction must start on or before **February 1, 2022** and construction must be completed by **November 1, 2023**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

July 29, 2021

## Need Analysis

### Background

Lewis County General Hospital (LCGH), a Critical Access Hospital and the only hospital in Lewis County, who's last major capital project with the expansion of the ED in 2007. The next nearest hospital is 14 miles away. LCGH is part of the Lewis County Health System which also includes post acute long term care services comprised of a 160 bed skilled nursing facility, an Adult Day Health Care Program, hospice services, and a Certified Home Health Agency (CHHA), as well as community based clinics.

Nearest Hospitals				
County	Facility	Capacity	Distance (miles)	CAH
Lewis	Lewis County General Hospital	25	-	Yes
Jefferson	Carthage Area Hospital	25	14	Yes
Jefferson	Samaritan Medical Center	290	24	No
St. Lawrence	Clifton Fine	20	34	Yes
Oneida	Rome Memorial	130	39	No
Oswego	Oswego Hospital	132	56	No

Due to frequent turnover and difficulty recruiting surgeons in general surgery, orthopedics, and obstetrics in past years, LCGH has had to refer many surgeries to other hospitals in the region. Even so, the hospital has seen a 7.25% increase in surgical procedures from 2015 through 2019. In 2019, LCGH performed 1,657 surgeries, which is the maximum amount of cases LCGH can perform under the current physical plant constraints.

LCGH Procedures						
	2015	2016	2017	2018	2019	% Change 2015 - 2019
Operating Room Cases	202	235	198	272	305	51%
Ambulatory Surgery	1,343	1,311	1,259	1,348	1,352	0%
Total	1,545	1,546	1,457	1,620	1,657	7.25%

Source: Applicant

### Analysis

A market analysis by zip code of Lewis County residents conducted by the applicant indicates that a large percentage of residents are leaving the area for outpatient surgery. The goal of this project is to recapture those residents with a modernized facility, increased capacity and additional surgeons. With a third operating room and new procedure room, the applicant projects increasing to 1,979 procedures by 2023, (Year One after completion of the project), 2,395 procedures in 2025, and over 3,000 procedures annually thereafter.

As shown in the market analysis below, LCGH is the market share leader in seven of the ten zip codes, representing 84% of its discharges. Preservation of this capacity is critical to the region given the rural geography and travel times to other hospitals.

<b>Market Share Analysis for Lewis County General Hospital Service Area -Inpatient Services</b>						
<b>Patient Zip Code</b>	<b>Post Office</b>	<b>Annual Average Dischgs</b>	<b>% of Total Dischgs</b>	<b>Cumulative %</b>	<b>LCGH's % of Zip Code</b>	<b>Facility with Largest % of Zip Code</b>
13367	LOWVILLE	546	38.7	38.7	50.6	Lewis County General Hospital (51%)
13343	GLENFIELD	101	7.2	45.9	43.2	Lewis County General Hospital (43%)
13620	CASTORLAND	90	6.4	52.3	42.1	Lewis County General Hospital (42%)
13327	CROGHAN	87	6.2	58.4	39.2	Lewis County General Hospital (39%)
13309	BOONVILLE	86	6.1	64.5	14.9	Faxton-St Lukes Healthcare St Lukes Division (27%)
13433	PORT LEYDEN	84	6.0	70.5	46.2	Lewis County General Hospital (46%)
13368	LYONS FALLS	56	4.0	74.5	40.6	Lewis County General Hospital (41%)
13619	CARTHAGE	55	3.9	78.4	4.2	Carthage Area Hospital (31%)
13473	TURIN	41	2.9	81.3	43.6	Lewis County General Hospital (44%)
13626	COPENHAGEN	38	2.7	84.0	19.0	Samaritan Medical Center (39%)

Data source: SPARCS inpatient data (Apr. 1, 2019 - Mar. 31, 2020)- Date last update: 10/21/2020

#### Conclusion

This project will provide transformational change to the medical and surgical services at Lewis County General Hospital and will promote an integrated, patient-centered model of health care deliver, improve local access to basic surgical services and reduce travel times. The new construction and revitalization will help in recruiting and retaining primary care providers and nursing staff. Taken all together, this project will help improve sustainability of the hospital.

## Program Analysis

#### Program Description

Lewis County General Hospital (LCGH), a 25-bed Critical Access Hospital, located at 7785 North State Street in Lowville (Lewis County) seeks approval for the construction of a two-story surgical pavilion consisting of a new surgical suite, new space for the women's health, general surgery, and orthopedic clinics.

The Applicant states the purpose of the project is to assist LCGH in improving the patient care experience, improving the health of the community. The project will integrate a patient centered model of care to improve patient privacy and infection control. This will also offer patient centered care and quality outcomes that will preserve, enhance, and expand essential health care for the community.

Staffing is expected to increase as a result of this construction/expansion project by 49.1 FTEs in Year One of the completed project and a total of 51.1 FTEs by Year Three of the completed project.

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

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

#### Prevention Agenda

Lewis County General Hospital (LCGH) identified their new mission as: Lewis County Health System is committed to work cooperatively with interested individuals and organizations in helping the people of Lewis County and surrounding communities in achieving their highest level of health and wellness. Their new vision is: The communities of Lewis County are the healthiest in New York State and America.

In the CON application, the hospital states: "Specifically, through our Primary Care Medical Home (PCMH) designation we are addressing the following: Adult and Child Obesity, Tobacco Cessation, Depression, Diabetes, Blood Pressure Control and Preterm births.

In the Community Service Plan, LCGH is stated to be working with the local health department and community partners on three priorities: (1) Prevent Chronic Disease focusing on screening for food security; promoting complete streets; promoting physical activity in schools; and evidence-based self-care management related to diabetes and arthritis; (2) Promote Healthy Women, Infants and Children focus on increasing access to prenatal care; increasing support for breastfeeding in the workplace; and preventing dental caries among children; and (3) Promote Well-Being and Prevent Mental and Substance Use Disorders focusing on preventing suicides using Zero Suicide strategy in health care systems, and identifying and supporting people at risk for suicide in the community.

According to the information submitted by LCGH, "the median income for a household in the county is approximately \$34,361, and the median income for a family is \$39,287. The per capita income for the county is \$14,971. About 10.10% of families and 13.20% of the population are below the poverty line, including 16.40% of those under age 18 and 14.00% of those age 65 or over. Current payor mix: Medicaid-10% 2. Medicare-31% 3. uninsured-19% Commercially Insured-34%." Based on demographics, the LCBH is serving a community with high needs, and the surgical unit is important

As a public hospital, Lewis County General Hospital is not obligated to report community benefit spending.

#### Conclusion

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



## Financial Analysis

### Total Project Cost and Financing

Project costs of \$33,067,278 will be funded through a county bond issuance for \$25,757,125 at 2.25% for a 25-year term, \$5,310,153 in accumulated funds, and \$2,000,000 pledged from the Hospital Foundation capital campaign. The Hospital Foundation capital campaign began in October 2020 and has raised \$188,000 to date. Fiscal Advisors & Marketing, Inc. provided an amortization schedule for the term and rate and a letter of interest to underwrite the tax-exempt bonds.

New Construction	\$15,808,000
Renovation & Demolition	5,604,000
Site Development	2,028,000
Asbestos Abatement Removal	728,000
Design Contingency	2,323,000
Construction Contingency	1,859,000
Fixed Equipment	900,000
Architect/Engineering Fees	1,843,000
Construction Manager Fees	250,000
Other Fees (Consultant)	140,000
Movable Equipment	998,414
Telecommunications	403,000
CON Application Fees	2,000
Additional Processing Fee	<u>180,864</u>
<b>Total Project Cost</b>	<b>\$33,067,278</b>

### Operating Budget

The applicant has submitted an incremental operating budget, in 2021 dollars, for the first and third years, summarized below:

	<u>Current Year (2019)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Patient</u>	<u>Total</u>	<u>Per Patient</u>	<u>Total</u>	<u>Per Patient</u>	<u>Total</u>
<b>Inpt Revenues</b>	<u>Day</u>	<u>Total</u>	<u>Day</u>	<u>Total</u>	<u>Day</u>	<u>Total</u>
Commercial MC	\$2,863.20	\$3,636,267	\$3,099.44	\$4,016,872	\$3,224.08	\$4,171,955
Medicare FFS	\$1,078.45	\$10,096,442	\$1,167.39	\$11,153,227	\$1,214.49	\$11,583,829
Medicare MC	\$143.04	\$17,022	\$155.40	\$18,803	\$161.40	\$19,529
Medicaid FFS	\$219.16	\$5,595,711	\$237.23	\$6,181,409	\$246.81	\$6,420,060
Medicaid MC	\$344.97	\$6,793,097	\$373.40	\$7,504,124	\$388.49	\$7,793,843
Private Pay	\$1,516.33	\$3,614,927	\$1,641.31	\$3,993,298	\$1,707.48	\$4,147,470
All Other	\$416.77	\$14,587	\$447.61	\$16,114	\$464.89	\$16,736
(Bad Debt)		(\$326,662)		(\$340,903)		(\$354,676)
<b>Total Inpt Rev</b>		<u>\$29,441,391</u>		<u>\$32,542,944</u>		<u>\$33,798,746</u>
<b>Outpt Revenues</b>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial MC	\$373.73	\$22,721,192	\$411.03	\$25,099,397	\$427.64	\$26,068,431
Medicare FFS	\$204.85	\$7,948,990	\$221.74	\$8,781,003	\$230.69	\$9,120,019
Medicare MC	\$88.99	\$369,114	\$96.33	\$407,748	\$100.21	\$423,491
Medicaid FFS	\$254.59	\$703,166	\$275.55	\$776,766	\$286.69	\$806,755
Medicaid MC	\$104.34	\$3,038,739	\$112.94	\$3,356,801	\$117.51	\$3,486,400
Private Pay	\$283.83	\$3,214,093	\$307.22	\$3,550,509	\$319.63	\$3,687,587
Other	\$109.15	\$373,303	\$118.16	\$412,376	\$122.93	\$428,297
(Bad Debt)		(\$421,041)		(\$439,397)		(\$457,297)
<b>Total Outpt Rev</b>		\$37,947,556		\$41,945,203		\$43,563,832
Other Revenue*		<u>\$15,176,364</u>		<u>\$13,317,066</u>		<u>\$14,229,506</u>
<b>Total Revenue</b>		<b>\$82,565,311</b>		<b>\$87,805,213</b>		<b>\$91,592,084</b>

	<u>Current Year (2019)</u>	<u>Year One</u>	<u>Year Three</u>
<u>Expenses</u>			
Operating	\$78,359,935	\$81,805,713	\$85,266,657
Capital	<u>3,466,910</u>	<u>5,663,291</u>	5,658,270
Total Expenses	\$81,826,845	\$87,469,004	\$90,924,927
Gain/(Loss)	<u>\$738,466</u>	<u>\$336,209</u>	<u>\$667,157</u>
Total Inpt Days	58,394	59,594	59,492
Total Outpt Visits	149,416	152,485	152,223

*\*Other Revenue is DSRIP, Intergovernmental Transfer Payments, 340B, Cafeteria, Gift shop, and Vital Access Program State assistance through the Critical Access Hospital allocation.*

The following is noted with respect to the incremental budget projections for the first and third years:

- Revenue and rate assumptions for inpatient and outpatient services are based on the current experience of the facility.
- Surgical volume in 2020 was 1,435 surgeries (~120 a month) compared with 1,657 in 2019 due to spikes in COVID-19 cases. While surgical volume is recovering more slowly than other services, LCGH expects that the surgical volume recovery trend will continue to pre-COVID-19 utilization levels as COVID-19 cases continue to decline. Through April 30, 2021, surgical volume was 485 (124 per month). Historically, surgical volume has increased 7% from 2015 – 2019. The applicant believes that recovery to pre pandemic volume levels and retaining cases from residents currently leaving the area for care will allow LCGH to achieve the year 1 and 3 CON projections. Total projected surgical volume in Year 1 after completion of the project is 1,759 (147 per month), while Year 3 is projected to be 1,860 (155 per month).
- Expense projections are based on the current experience of LCGH.
- Utilization by payor source for inpatient and outpatient services for Current Year, Year One and Year Three, is projected as follows:

	<u>Current</u>	<u>Years One &amp; Three</u>
<u>Inpatient</u>		
Commercial-MC	2.1%	2.1%
Medicare FFS	16.0%	16.0%
Medicare MC	0.20%	0.20%
Medicaid FFS	43.7%	43.7%
Medicaid MC	33.7%	33.7%
Private Pay	4.0%	4.0%
Other	0.06%	0.30%
<u>Outpatient</u>		
Commercial-MC	40.0%	40.0%
Medicare FFS	25.9%	25.9%
Medicare MC	2.7%	2.7%
Medicaid FFS	1.8%	1.8%
Medicaid MC	19.4%	19.4%
Private Pay	7.5%	7.5%
Other	2.7%	2.7%

#### Capability and Feasibility

Project costs of \$33,067,278 will be funded by:

- A county bond issuance for \$25,757,125 at 2.25% for a 25-year term for which Fiscal Advisors & Marketing, Inc has provided a bond resolution and letter of interest to underwrite the bonds
- Accumulated funds of \$5,127,289; and,
- A pledge of \$2,000,000 from the Hospital Foundation capital campaign.

Internal financial statements (BFA Attachment B) indicate the hospital had a net operating surplus of \$260,272 for the year ended December 31, 2020, which was down from \$4,238,374 in 2019 due primarily

to a reduction in volume and revenue resulting from the closure of non-emergent elective surgery services in the midst of the COVID-19 pandemic. Internal financial statements from April 30, 2021 (BFA Attachment C) show a net loss of (\$292,100). As of April 30,2021, LCGH has over \$30M cash on hand and maintains a positive working capital position, indicating the ability to take on the incremental debt service. A portion of this liquidity is \$7M in federal stimulus dollars received from the Provider Relief Fund through the CARES Act. Historically, LCGH's financial sustainability has been bolstered by receiving CAH designation in 2014, grant support through the Essential Health Care Provider Support Program for debt relief, other operating assistance programs (IGT, DSRIP, VBP-QIP) and continued efforts by LCGH management to operate efficiently. LCGH no longer receives State operating assistance.

BFA Attachment A shows sufficient accumulated funds for this project and the applicant indicates the foundation has a history of raising funds for the hospital for other capital projects successfully. If the foundation cannot raise the full amount of the campaign money, the facility will provide the required amount from accumulated funds. The full bond issuance will be held by Lewis County, which is ultimately responsible for the debt service payments should LCGH not be able to make payments; however, LCGH is in good financial position and will be responsible for debt service payments of \$1M.

The submitted budget indicates net income of \$336,209 and \$667,157 during the first and third years of operation, respectively. Revenues reflect current reimbursement methodologies for current services. The budget appears reasonable. BFA Attachment A provides 2018 and 2019 certified financial statements, which indicate the hospital maintained positive working capital and a negative net asset positions and generated an excess of operating income over expenses of \$3,772,816 and \$6,911,153 during 2019 and 2018 respectively. BFA Attachment C is the internal financial statements from April 30, 2021. The internals show a positive working capital position, negative net asset position and net loss of \$292,100.

Achieving the CON financial projections will be dependent on volume and revenue recovery to pre-pandemic levels, although LCGH has sufficient cash to meet the debt service payments and working capital requirements.

#### Conclusion

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

## Attachments

BFA Attachment A	Financial Summary, - 2018 and 2019 (LCGH) certified financials
BFA Attachment B	Financial Summary, (Internal) as of December 31, 2020
BFA Attachment C	Financial Summary, (Internal) as of April 30, 2021



Project # 211008-C Roswell Park Cancer Institute

Program: Hospital Purpose: Construction

County: Erie Acknowledged: February 3, 2021

Executive Summary

Description

Roswell Park Care Institute (Roswell Park), a 133-bed, voluntary not-for-profit, Article 28 hospital located at 665 Elm St, Buffalo (Erie County), requests approval to certify 24 additional medical/surgical (M/S) beds and convert two medical/surgical beds to Intensive Care Unit (ICU) beds and perform related construction/renovations. Roswell Park is the only National Cancer Institute (NCI) Certified Comprehensive Cancer Center in New York State outside of the New York City region.

Nine of the requested 24 beds are currently operational under an Emergency Approval in space previously vacant on the 6th floor of the hospital. Fifteen additional M/S beds will be located on the 7th floor of the North wing with related construction and two converted ICU beds will be on the 8th floor of the West Wing. Upon approval of the additional 24 beds, Roswell Park's total bed complement will increase from 133 to 157.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant reports over the last five years, the number of patients with stage 3 and 4 cancers who are coming to Roswell Park has increased by 46%. In addition, the number of patients coming from communities federally designated as medically underserved areas is up more than 30% in the last five years. With more individuals coming to Roswell Park for their care, and more available therapies

requiring inpatient care, Roswell Park needs additional inpatient bed capacity.

The volume is expected to continue to grow due to several factors, including projected increases in cancer incidence, expected continued growth in referrals through the Roswell Park Care Network outside of the Western region, and the availability of new cellular therapies.

The expansion of beds will address existing capacity constraints and projected utilization growth. With the increased bed capacity, the occupancy is projected to be approximately 81% in Year One and 84% in Year Three, following the completion of this project.

Program Summary

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

Financial Summary

Total project costs of \$2,651,493 will be met through equity from Roswell Park operations.

The inpatient operating budget is as follows:

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

## Recommendations

### Health Systems Agency

There will be no HSA recommendation for this project.

### Office of Primary Care and Health Systems Management

#### Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health (the Department). Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

#### Approval conditional upon:

1. Completion of this project by **October 31, 2022**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and an expiration of the approval. It is the responsibility of the applicant to request prior approval for any extension to the project approval expiration date. [PMU]
2. Construction must start on or before **December 1, 2021**, and construction must be completed by **July 1, 2022**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. 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

July 29, 2021

## Need Analysis

### Analysis

Roswell Park Comprehensive Cancer Center (Roswell Park) service area expands well past the home and neighboring counties into the Finger Lakes and Central New York regions. Medical/Surgical occupancy has increased pre-pandemic, and late-stage cancer cases have increased markedly in recent years. The applicant states they have seen a 46% increase in patients presenting with stage 3 and stage 4 cancer and a 30% increase in patients coming from communities federally designated as medically underserved areas over the last 5 years.

The project consists of:

- Nine medical/surgical beds currently operational under an Emergency Approval in space previously vacant on the 6th floor of the Hospital.
- Fifteen additional medical/surgical beds to be located on the 7 North wing of the Hospital, and related construction.
- The conversion of two medical/surgical beds to intensive care beds on the 8<sup>th</sup> floor of the West Wing. These beds currently meet ICU code and the space requires no renovations.

Table 1: Bed Table			
Bed Type	Current Beds	Bed Change	Proposed Beds
Bone Marrow Transplant	14		14
Intensive Care	16	+ 2	18
Medical/Surgical	94	+ 22	116
Pediatric	9		9
Total	133	+ 24	157

Source: 2020 HIFIS/Applicant

Cancer incidence in New York exceeds the National average. Based on 2013-2017 cancer incidence rates available through SEER, CDC, and the Department, the national cancer incidence rate is 442.2 per 100,000 residents while NYS has 482.9 per 100,000 residents. The mortality rate per 100,000 residents in NYS is lower than the national average, approximately 148 vs. 158 respectively.

Part of the growth in utilization is due to new therapies including Novel Chimeric Antigen Receptor T-Cell (CAR-T) therapies (currently only available at Roswell Park for the Western NY region) and other inpatient therapies that previously haven't been available to cancer patients. These treatments require intensive care and monitoring of patients, necessitating both longer and more frequent inpatient hospital stays.

Table 2: Occupancy Trend- Non-ICU Beds	
Year	Days over 95% Occupancy
FY 2017	43
FY 2018	30
FY 2019	71
FY 2020	149
FY 2021	231

The applicant has maintained optimal to high medical/surgical bed utilization. The Department has a planning standard of 85% for urban areas. While Med/Surg occupancy was under the 85% planning standard in 2020, the chart above indicated that there are peak loads where occupancy has exceeded 95%, and this is a growing trend.

Table 3: Beds, Average Daily Census, Occupancy							
Roswell Park		2018		2019		2020	
Service Line	Beds	ADC	Occ.	ADC	Occ.	ADC	Occ.
Med/Surg	124	105.4	85.0%	114.4	92.2%	101.9	82.2%
Pediatric	9	0	0.0%	0	0.0%	0	0.0%
Total	133	105.4	79.2%	114.4	86.0%	101.9	76.6%

Source: Data run 1/29/21 from DMAR SPARCS. Years 2018 - 2020 from Health Commerce site SPARCS (2/2/21)

By adding 22 Medical/Surgical beds and two ICU beds, Roswell anticipates an increase of 776 discharges by Year Three, an increase of 14.5%, and projects occupancy to be approximately 81% in Year One and 84% in Year Three following completion of this project.

Table 4: Projected Medical/Surgical Discharges			
	2019	Year One (2022)	Year Three (2024)
Discharges	5,406	5,949	6,182

Source: Applicant

### Conclusion

The proposed expansion is an appropriate and necessary response to the volume and acuity of cancer patients presenting as well as the new therapies used to treat them.

## Program Analysis

### Program Description

Roswell Park is one of 71 NCI Designated Cancer Centers located in 36 states and the District of Columbia, and the only Comprehensive Cancer Center of four such centers within New York State outside of the New York City region. It is the only facility in Western NY approved to provide the "living drug" treatment known as CART T-cell therapy, which is a new approach to treat solid tumors and blood-related cancers. The Center's location in Western NY provides patients an upstate option rather than having to travel to the NYC region for highly acute treatments.

The Applicant reports the care and resources Roswell Park provides to patients with rare and hard to treat cancers are especially important, as these resources are often available only at a comprehensive cancer center. Roswell Park is also the only facility approved to provide cellular therapies in the Buffalo area. These treatments require intensive care and monitoring of patients, necessitating both longer and more frequent inpatient hospital stays.

As a result of this construction/expansion project, staffing is expected to increase by 33.7 FTEs in Year One of the completed project and increase to 52.3 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, including all pertinent records and reports regarding the facility's

enforcement history and the results of routine Article 28 surveys, as well as, investigations of reported incidents and complaints.

**Conclusion**

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

**Financial Analysis**

**Total Project Cost and Financing**

Total project costs, estimated at \$2,651,493, are as follows:

Renovation & Demolition	\$1,200,000
Design Contingency	\$120,000
Construction Contingency	\$120,000
Fixed Equipment	\$275,000
Architect/Engineering Fees	\$150,000
Construction Manager Fees	\$50,000
Movable Equipment	\$702,537
Telecommunications	\$17,463
CON Application Fee	\$2,000
CON Processing Fee	<u>\$14,493</u>
Total Project Cost	\$2,651,493

The applicant will fund this project with equity of \$2,651,493 provided from hospital operations. BFA Attachment A is the 2019-2020 certified financial Statements of Roswell Park, which show the availability of sufficient resources to cover both the project costs and the requisite working capital requirements.

**Operating Budget**

The applicant submitted their current certified fiscal year (2020) and first and third year incremental inpatient operating budgets in 2021 dollars as summarized below:

	<u>Current Year (2020)</u>		<u>Year One (2023)</u>		<u>Year Three (2025)</u>	
	<u>Per</u>		<u>Per</u>		<u>Per</u>	
<u>Inpatient Revenue</u>	<u>Diem</u>	<u>Total</u>	<u>Diem</u>	<u>Total</u>	<u>Diem</u>	<u>Total</u>
Commercial MC	\$8,328	\$119,949,641	\$8,367	\$128,807,797	\$8,440	\$135,064,091
Medicare FFS	\$3,808	40,225,324	\$3,808	42,992,440	\$3,808	44,690,781
Medicare MC	\$4,980	58,609,836	\$5,003	62,939,579	\$5,047	65,997,570
Medicaid FFS	\$2,739	1,312,071	\$2,739	1,402,329	\$2,740	1,457,725
Medicaid MC	\$4,555	18,970,089	\$4,576	20,371,485	\$4,617	21,361,257
Other	\$10,788	<u>20,907,605</u>	\$10,841	<u>22,452,134</u>	\$10,935	<u>23,542,505</u>
Total Inpt. Revenue		\$259,974,566		\$278,965,794		\$292,114,420
	<u>Per</u>		<u>Per</u>		<u>Per</u>	
<u>Inpatient Expense</u>	<u>Diem</u>	<u>Total</u>	<u>Diem</u>	<u>Total</u>	<u>Diem</u>	<u>Total</u>
Operating	\$5,861	\$253,887,940	\$5,692	\$263,561,816	\$5,621	\$270,568,433
Capital	<u>\$51</u>	<u>2,209,611</u>	<u>\$52</u>	<u>2,388,602</u>	<u>\$50</u>	<u>2,388,602</u>
Total Inpt. Expense	\$5,912	\$256,097,551	\$5,744	\$265,950,418	\$5,671	\$272,957,035
Net Operating Income		<u>\$3,877,015</u>		<u>\$13,015,376</u>		<u>\$19,157,385</u>
Patient Days		43,320		46,300		48,129



The applicant has over \$20,000,000 in Other Inpatient Operating Revenue from contractual agreements with the organizations as listed in the table below. Current Year Other Inpatient Operating Revenue was \$20,907,605 and is projected to be \$22,451,846 and \$23,542,505 in Years One and Three, respectively.

Type	Current Year	Year One	Year Three
Ontario Ministry of Health	\$11,125,421	\$11,947,147	\$12,527,512
Cancer Resource Services	\$8,746,689	\$9,392,722	\$9,848,998
Veterans Administration	\$467,215	\$501,724	\$526,096
Workers Compensation	\$394,803	\$423,963	\$444,558
State and Federal Prisons	\$38,285	\$41,113	\$43,110
Other*	\$135,192	\$145,177	\$152,231
Total	\$20,907,605	\$22,451,846	\$23,542,505

\* Other includes parking and cafeteria revenue.

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

Payor	First and Third Year
Commercial FFS	33.25%
Medicare FFS	24.39%
Medicare MC	27.17%
Medicaid FFS	1.11%
Medicaid MC	9.61%
All Other	4.47%
Total	100.00%

The following is noted with respect to the submitted budget:

- Revenue per day is based on Roswell Park's current actual revenue per day and inflated in future years based on current and projected payer contract rates.
- Utilization assumptions are based on Roswell Park's 5-year volume projections consistent with those provided in the NYS Annual Budget filing. Inpatient volume is projected to increase 6.9% (2,980 patient days) between the current year (2020) and the first year after completion of the project. It is expected to increase by an additional 3.9% (1,829 patient days) between the first and third years after completion of this project.
- Expense assumptions for salaries are based on projected annual salaries of the 33.7 and 52.3 (incrementally increased) FTEs in years one and three respectively, related to the project, including estimated inflation. Other operating expenses are based on Roswell Park's current expense per inpatient day and inflated for future years using their budgeted inflation rates.
- The COVID-19 pandemic began to materially affect Roswell Park, and the surrounding Western New York area in March 2020, which is close to the end of Roswell's fiscal year that ended March 31, 2020. FY 21 inpatient volumes were initially negatively impacted by 30% in April 2020 (Q1 FY 21) and began to recover to pre-pandemic expectations by September 2020 (Q2 FY 21). The "second wave" of COVID-19 negatively impacted utilization in late Q3 (December 2020) and early Q4 (January 2021), and volume subsequently returned to pre-pandemic levels in February 2021 (mid/late Q4). In March and April 2021, the applicant reports inpatient volumes have exceeded expectations, and continue to sustain at that level. See BFA Attachment C Roswell Park's FY2019-2025 Actual and Projected Inpatient Volume.

The submitted budget appears reasonable.

### Capability and Feasibility

Total project cost of \$2,651,493 will be satisfied entirely with equity from Roswell Park's operations. BFA Attachment A is Roswell Park's Fiscal Year 2019-2020 Certified Financial Statements, which show significant liquid assets to meet the equity contribution for this application.

Working capital requirements are estimated at \$2,809,914 based on two months of incremental third year expenses. The applicant will satisfy this requirement with equity from operations. As shown on BFA Attachment A, the facility has significant liquid assets to cover the working capital needs.

The facility projects net income of \$13,015,376 and \$19,157,383 in the first year and third year, respectively, after the completion of the project. Revenue per day is based on Roswell Park's current actual revenue per day and inflated in future years based on current and projected payer contract rates. The budgets appear reasonable.

As shown on BFA Attachment A, the entity achieved an average positive working capital position, an average positive net asset position, and generated an average excess (deficiency) of revenues over expenses of \$5,372,500 for the two-year period 4/1/2018-3/31/2020 (FY19-FY20). For the period 4/1/2018-3/31/2019 (FY19), the hospital had excess (deficiency) of revenue over expenses of (\$18.3 million), primarily the result of accrued retiree health insurance expense (Other Postemployment Benefits, or "OPEB") of \$35.5 million. For the period 4/1//19-3/31/20 (FY20), Roswell Park generated excess of revenues over expenses of \$29.1 million. The improved results are due to increased volume, higher margin on outpatient pharmaceuticals, and improved service/payer mix. Roswell Park volume increased in FY20 due to the emergence of CAR-T cell therapy (a novel therapy to treat certain types of blood cancers) and a new inpatient therapy for Leukemia patients. Outpatient pharmaceutical margin improved due to the use of generics and biosimilars instead of name brand drugs. Lastly, payor mix and service mix were favorable, primarily due to the Bone Marrow Transplant service.

During FY20 Roswell Park also sold a portion of its holdings in a formerly majority owned subsidiary, OmniSeq, a specialized reference lab created to commercialize proprietary cancer genomic assays and technology developed at Roswell Park. In exchange, Roswell Park received approximately \$10 million in cash and recorded an additional \$12.4 million non-cash gain because of the remeasurement of Roswell's retained minority equity interest in OmniSeq. Roswell Park maintained an approximately 35% ownership interest in OmniSeq. The Roswell Park Cancer Institute is a Public Benefits Corporation Hospital and Medical Research Center operated by the State of New York Department of Health, and, as such, they receive annual operating support from the State. Roswell Park received \$51.3 million in both FY19 and FY20 and \$37.9M in FY21. The grant is given to fund legacy costs for Roswell Park to subsidize a portion of the contractual obligation for annual increases in union salary and benefit costs, as well as, facility overhead costs, given the building is owned by New York State.

The 4/1/20 - 3/31/21 Roswell Park Internal Financial Statements indicate the entity achieved a positive working capital position, a positive net asset position, and generated an excess (deficiency) of revenues over expenses of (\$37,332,000) (BFA Attachment B). The deficiency for the period can be primarily attributed to the COVID-19 pandemic and associated reduced clinical volume. While Roswell Park received \$14.2 million in the first two Provider Relief Fund (PRF) distributions to offset COVID-19 related losses, the organization was ineligible to receive additional PRF funds, as the criteria used by Health Human Services (HHS) did not include specialty hospitals. The applicant estimates the bottom-line financial impact of COVID-19 on its clinical activities to be approximately \$48.5 million for the period 4/1/20-3/31/21 before consideration of the PRF distributions noted above.

Roswell Park initially experienced a reduction in volume between March and June 2020. Office visits, scheduled surgical procedures, and certain ancillary services were the most significantly impacted services. Patients canceled scheduled appointments and delayed treatment due to the concern for the spread of the COVID-19 virus. Inpatient volume returned to pre-pandemic levels in February 2021, exceeded budget in March and April 2021, and continues to sustain at that level. See BFA Attachment C for Roswell Park's FY2019-2025 Actual and Projected Inpatient Volumes.

## **Conclusion**

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

## **Attachments**

- BFA Attachment A 2019-2020 Certified financial statements of Roswell Park Cancer Institute Corporation d/b/a Roswell Park Comprehensive Care Center
- BFA Attachment B 4/1/20-3/31/21 Internal Financial Statements of Roswell Park Cancer Institute Corporation d/b/a Rowell Park Comprehensive Care Center
- BFA Attachment C Roswell Park's FY2019-2025 Actual and Projected Inpatient Volume



**Project # 211073-C**

**John T. Mather Memorial Hospital of  
Port Jefferson New York, Inc.**

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

**County:** Suffolk  
**Acknowledged:** March 19, 2021

**Executive Summary**

**Description**

J. T. Mather Memorial Hospital (Mather), a 248-bed community hospital at 75 North Country Road in Port Jefferson (Suffolk County), seeks approval to construct an addition containing a replacement Emergency Department (ED), modernizing and expanding these services, and creating expansion potential for Surgical Services where the current ED is located.

Mather is pursuing this project with support from Northwell Healthcare Inc. (Northwell). On January 1, 2018, Northwell and Mather negotiated a five-year transitional integration timeline, during which Northwell would first become Mather's passive parent and then their active parent/co-operator. The active parent CON 182124 received PHHPC approval on August 11, 2019, and Northwell became the active parent of Mather on September 13, 2019.

The project will allow for the replacement of the existing undersized and inefficiently laid out ED in newly created space that will meet all current space requirements and standards and provide expansion potential for the Surgical Services department into the vacated space.

The current Emergency Department (ED) is approximately 13,000 sq ft which is programmatically undersized and poorly laid out by today's standards. Additional treatment areas have been added over the years which has led to inadequate space and an inefficient layout.

There will be no change to the total number of ED bays or ORs. However, several general ED bays will be converted; increasing the infectious isolation bays by two and increasing the psychiatric intake bays by three to address mental health and substance abuse cases.

The project will correct spatial inefficiencies and improve workflow. Patient flow will be improved by including a Super Track area to efficiently triage patients and provide treatment swing space, and a Results Waiting Area to alleviate overcrowding and optimize treatment spaces. Staff use will be improved by providing additional support spaces. The project will also promote workflow by providing a separate entrance for ambulance personnel from the general population.

The proposed ED location meets current space requirements, preferred adjacencies to existing hospital functions, and provides shell space to accommodate future needs for the ED and/or adjacent Surgical Services department. Renovations also include new X-ray and CT rooms and associated site work to improve patient and emergency access. The total renovation will encompass 48,250 sq ft., of which the ED will increase to 29,500 sq ft, 13,950 will be shell space, and 4,800 sq ft designated for building support space.

**OPCHSM Recommendation**

Contingent Approval

**Need Summary**

The new ED will be designed to handle the increasing acuity of an aging population and create private treatment rooms to meet the growing need for behavioral health services, There will not be any net increase in the number of treatment spaces or operating rooms.

**Program Summary**

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

**Financial Summary**

The total project cost is \$82,397,804; \$77,559,942 for the ED (Article 28) space and \$4,837,862 for shell space. The Article 28 project cost will be met through equity of \$7,755,994 and \$69,803,948 financed through a tax-exempt bond issuance with the Dormitory Authority of the State of New York (DASNY) at a fixed interest rate of 6.5% interest over 30 years.

Citigroup Global Markets, Inc. provided a letter of interest to underwrite the bonds. The shell space of \$4,837,862 will be paid in accumulated funds until it is programmed Article 28 space, and a separate CON application will be is submitted for the use of the space.

The submitted budget indicates a net loss of revenues over expenses of (\$2,286,261) and (\$373,678) during the first and third years, respectively. Northwell has submitted a statement that they are willing to absorb the net operational losses in Year One and Year Three.

Budget	Year One	Year Three
Revenues	\$388,019,480	\$392,474,570
Expenses	\$390,305,741	\$392,848,248
Excess of Revenues over Expenses	(\$2,286,261)	(\$373,678)

## 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 permanent mortgage for the project from a recognized lending institution at an interest rate acceptable to the Department. Submission of the executed permanent mortgage must be provided within 120 days of approval of the New York State hospital code drawings and before the start of construction. Included with the submission must be a sources and uses statement and a debt amortization schedule, for both new and refinanced debt. [BFA]
3. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 2.18 LSC Chapter 18 Healthcare Facilities Public Use, for review and approval. [DAS]
4. Submission of State Environmental Quality Review (SEQR) Summary of Findings pursuant to 6 NYCRR Part 617.4(b) (6), and 10NYCRR 97.12. [SEQ]

#### Approval conditional upon:

1. Completion of the project by February 15, 2024. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before May 15, 2022 and construction must be completed by November 15, 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. Staff of the facility must be separate and distinct from the staff of other entities; signage must clearly denote the facility is separate and distinct from other entities; clinical space must be used exclusively for the approved purpose; and entrance must not disrupt any other entity's clinical program space. [HSP]
4. Submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [DAS]

### Council Action Date

July 29, 2021

## Need and Program Analysis

### Background

J.T. Mather Memorial Hospital is a 248-bed community hospital, located at 75 North Country Road, Port Jefferson, NY 11777. The proposed addition will allow for the replacement of the existing undersized and inefficient layout of the existing ED in newly created space and provides expansion for the existing Surgical Services department into the vacated space. The new area will be right sized to handle the increasing acuity of an aging population, the growing need for behavioral health services, and will meet all current code requirements and standards.

### Analysis

Age	2020		2025		% Change 20-25'
	Pop	% Total	Pop	% Total	
<18	56,431	20.7%	53,492	20%	-5.2%
18-44	89,648	32.9%	88,889	33%	-0.8%
45-64	78,689	28.9%	75,138	28%	-4.5%
65+	47,543	17.5%	54,416	20%	14.5%
Total	272,311	100.0%	271,935	100%	-0.1%

Source: Northwell / Applicant

The Mather service area is projected to have near zero change in total population, but a significant shift to those aged 65+.

ED Bay Type	Existing	Change	Proposed
Triage/Intake	3	0	3
Trauma	2	0	2
Isolation	1	2	3
Psychiatric	4	3	7
OB/GYN	1	0	1
General	29	-5	24
Total	40	0	40

Through this project to modernize and right size the ED, there will be no change to the total ED bays. Mather is increasing the psychiatric intake bays by three and the isolation bays by two to address mental health and substance abuse cases.

Volume / OR/ ED	2015	2016	2017	2018	2019	%change 2015 -19
Treat and Release	30,069	29,484	27,383	27,407	26,655	-11.4%
Treat and Admit	9,351	9,620	10,176	9,397	8,165	-12.7%
Total	39,420	39,104	37,559	36,804	34,820	-11.7%

Source: SPARCS Prepared by the applicant

Despite a decreasing trend in ED visits, the applicant is projecting an increase of approximately 3,600 ED visits by Year Three due to the projected shift in population over age 65 and the market impact of the newly designed space. Staffing is expected to increase as a result of this construction/expansion project by 12.4 FTEs in Year One of the completed project and increase by 20.8 FTEs by Year Three of the completed project.

The applicant's service area includes facilities also displaying a slight decline in ED visits from 2015 through 2019. 2020 is not included because it is not representative due to COVID-19.

<b>Facility</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
St. Charles Hospital	18,060	16,997	17,084	16,497	15,581
St. Catherine of Siena Hospital	20,518	19,942	19,245	17,588	16,729
University Hospital	80,034	85,785	83,193	84,454	84,046

Source: SPARCS

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

The medical staff will continue to ensure that the procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and expertise. The facility's admissions policy includes anti-discrimination provisions regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures are performed in accordance with all applicable federal and state codes, rules, and regulations.

- The Department issued a Stipulation and Order (S&O) dated November 21, 2016, and fined Northwell Health Long Island Jewish Medical Center \$4,000 based on findings from a survey that completed on July 11, 2016. Deficient practice was cited in infection control.
- The Department issued a S&O dated January 31, 2017, and fined Northwell Health Plainview Hospital \$4,000 based on findings from a survey that completed on June 13, 2016. Deficient practice was cited in infection control. Specifically, the facility staff failed to use standard infection control practices.
- The Department issued a S&O dated September 11, 2017, and fined Northwell Health Lenox Hill Hospital \$10,000 based on findings from a survey that completed on November 1, 2016. Deficient practice was cited regarding surgical services.

### **Prevention Agenda**

The application states that the proposed project will advance local Prevention Agenda priorities:

*“For many populations, the emergency department of a community hospital serves as the first touchpoint of care and often a nexus for referrals to other treatment settings like substance abuse, mental health services, and inpatient treatment. Thus, modernizing and right-sizing the ED at Mather Hospital will only continue to serve the patient population by facilitating chronic disease prevention through evidence based treatment and self-management skills, improve patient experience and staff workflow and foster care continuity through referrals to other treatment settings for issues such as depressive disorders, cardiac and other chronic illnesses, as well as social services like food insecurity and wellness.”*

Mather is implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda:

1. Health U (seminar series and interactive health fair)
2. Speakers Bureau (provides health experts to speak to community groups)
3. Living Health (Northwell Health's Chronic Disease Self-Management Program)
4. Stepping On (falls prevention program)
5. Stop the Bleed (training for the public on responding to bleeding emergencies)

The application states that Mather engaged the Long Island Health Collaborative and the American Heart Association (AHA) Training Center in their Prevention Agenda efforts. One of the data indicators that Mather tracks to measure progress toward achieving local Prevention Agenda goals is age-adjusted preventable hospitalization rate per 10,000 – Aged 18+ years.

### **Conclusion**

Construction of the new addition provides the community with a more modern and efficiently designed space for emergency services, improving the wait times and patient experience and addressing behavioral health patient needs through the addition of psychiatric bays. Additionally, it frees up space



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

## Financial Analysis

### Total Project Cost and Financing

The total project cost is \$82,397,804; \$77,559,942 for the ED (Article 28) space and \$4,837,862 for shell space. The total project cost of \$82,397,804 in 2021 dollars for new construction, renovation & demolition, and acquisition of moveable equipment is detailed in the chart below.

Category	Article 28	Shell Space	Total
New Construction	\$34,750,000	\$355,7250	\$3,830,7250
Renovation & Demolition	766,950	-	766,950
Site Development	12,654,543	-	12,564,543
Asbestos Abatement/Removal	500,000	-	500,000
Design Contingency	480,8149	355,725	5,163,874
Construction Contingency	3,070,649	177,863	3,248,512
Architect/Engineering Fees	3,846,519	284,580	4,131,099
Construction Manager Fees	2,404,075	177,863	2,581,838
Other Fees	2,402,075	177,863	2,581,938
Moveable Equipment	5,572,263	4,837,862	10,410,125
Telecommunications	1,300,000	-	1,300,000
Financing Costs	3,704,039	-	3,704,039
CON Fee	2,000	-	2,000
Additional Processing Fee	424,235		424,235
<b>Total Project Cost</b>	<b>\$77,559,942</b>	<b>\$4,837,862</b>	<b>\$82,397,804</b>

The Article 28 project cost will be met through equity of \$7,755,994 and financing in the amount of \$69,803,948 through a tax-exempt bond issuance with the Dormitory Authority of the State of New York (DASNY) at a fixed interest rate of 6.5% interest over 30 years. Citigroup Global Markets, Inc. provided a letter of interest to underwrite the bonds. The shell space of \$4,837,862 will be paid in accumulated funds until it is programmed Article 28 space, and a separate CON application will be submitted for the use of the space.

Total reimbursable project costs shall be limited to \$77,559,942 and exclude the cost of the shell space. Department staff notes that since the shell space will be utilized for possible future Article 28 medical/surgical services, the applicant will pay accumulated funds of \$4,837,862 for the shell space within the Department's guidelines. Until a CON application is approved for the build-out of the shell space, the facility will not receive reimbursement for it. BFA Attachment A shows sufficient funds for the equity contribution for the shell space and equity requirement for the Article 28 space.

## Operating Budget

The applicant has submitted an operating budget, in 2021 dollars, during the first and third years, summarized below:

	Current Year (2019)	Year One	Year Three
<u>Inpt. Revenues</u>			
Commercial MC	\$ 88,791,000	\$ 90,343,600	\$ 91,049,810
Medicare FFS	\$91,003,000	\$92,540,220	\$ 93,255,560
Medicare MC	\$14,675,000	\$15,085,480	\$15,261,400
Medicaid FFS	\$ 3,498,000	\$ 3,558,479	\$ 3,582,671
Medicaid MC	\$ 8,206,000	\$ 8,465,390	\$ 8,576,557
Private Pay	\$ 414,700	\$ 423,960	\$ 433,220
Charity Care	\$259,300	\$ 259,300	\$ 259,300
All Other	\$ 2,412,000	\$ 2,436,120	\$2,460,240
Total Input Revenues	\$209,259,000	\$213,112,549	\$214,878,758
<u>Outpt. Revenues</u>			
Commercial MC	\$105,358,000	\$106,393,960	\$108,113,360
Medicare FFS	39,113,000	39,391,800	39,858,380
Medicare MC	7,756,000	7,857,370	8,027,560
Medicaid FFS	718,000	732,700	757,480
Medicaid MC	6,946,000	7,054,360	7,235,380
Private Pay	2,010,000	2,055,750	2,133,000
Charity Care	489,000	489,000	489,000
Other Oper. Rev.	2,686,000	2,715,120	2,762,720
All Other Revenue	8,212,000	0	0
Total Outpt Revenues	\$165,076,000	\$166,690,060	\$169,376,880
Total Revenues	\$382,547,000	\$388,019,480	\$392,474,570
<u>Expenses</u>			
Operating	\$361,281,027	\$364,204,943	\$366,872,556
Capital	17,460,274	26,100,798	25,975,692
Total Expenses	\$378,741,301	\$390,305,741	\$392,848,248
Excess of Revenues over Expenses	<u>\$3,805,699</u>	<u>(\$2,286,261)</u>	<u>(\$373,678)</u>
Discharges	11,075	11,284	11,380
Output Visits	162,082	163,441	165,708

The following is noted for the year one and year three budgets:

- Expense and utilization assumptions are based on the hospital's historical experience.
- For the nine months ended September 30, 2020, Mather claims \$22,717,000 in Cares Act revenues. For the three months ended March 31, 2021, an additional \$1,113,000 in Cares Act revenues was claimed.
- The budget was based on 2019 volume as a normalized year rather than 2020 utilization, which was an anomaly given the COVID-19 pandemic resulting in significant variance in patient utilization of healthcare services.
- The first- and third-year losses are due to an increase in interest and depreciation expenses.
- ED total visit volume was 34,820 visits and the applicant projects Year One to increase by 1,359 visits and Year Three by 3,626 visits, as a result of the aging population and the design and workflow improvements.
- Based on borrowing \$69,803,948 at a rate of 6.5% for a 30-year term, estimated annual debt service payments are \$5,294,501 for the thirty-year term.

- Utilization by payor source for the inpatient discharges and outpatient visits are as follows:

Payor	Visits			Discharges		
	Current Year	Year One	Year Three	Current Year	Year One	Year Three
Commercial MC	44.6%	44.5%	44.4%	27.3%	27.2%	27.2%
Medicare FFS	33.9%	33.8%	33.7%	51.1%	51.1%	51.1%
Medicare MC	5.7%	5.7%	5.8%	10.4%	10.4%	10.5%
Medicaid FFS	1.4%	1.4%	1.4%	2.0%	2.0%	2.0%
Medicaid MC	10.2%	10.3%	10.4%	7.4%	7.4%	7.4%
Private Pay	1.7%	1.7%	1.7%	0.4%	0.4%	0.4%
Charity Care	0.0%	0.0%	0.0%	0.1%	0.1%	0.1%
All Other	0.1%	0.1%	0.1%	1.3%	1.3%	1.2%
Total	100%	100%	100%	100%	100%	100%

### Capability and Feasibility

The total project cost of \$82,397,804 includes the cost of the ED and shell space construction. The project cost is broken down as follows: assigned Article 28 space for \$77,559,942 and shell space of \$4,837,862. The project cost will be met via equity of \$12,593,856 and \$69,803,94 in anticipated tax-exempt bonds (DASNY) at a proposed rate of 6.5% over 30 years. A letter of interest to underwrite the bonds has been submitted by Citi Global Markets, Inc.

Working capital requirements are estimated at \$1,001,112 and are based on two months of third year incremental operating expenses, which will be provided through operations. BFA Attachment A is Northwell Health, Inc. Certified Financial Statements for the Years Ended December 31, 2019 and 2020, which indicate the availability of sufficient funds for the equity contribution to meet the total project cost and the working capital requirements.

The submitted budget indicates a net loss of revenues over expenses of (\$2,286,261) and (\$373,678) during the first and third years, respectively. The applicant has stated that there are positive operating margins in Years One and Three and the overall loss is due to the incremental depreciation and interest experienced from start-up costs related to the new program. BFA Attachment A shows sufficient funds, via cash of and cash equivalents of \$831M as of December 31, 2020. The submitted budget appears reasonable.

BFA Attachment A shows Northwell had a positive working capital position and a positive net asset position for 2019 and 2020. Northwell had excess (deficiency) of operating revenue over operating expenses of \$178,307,000 and (\$52,700,000) in 2019 and 2020, respectively. 2020 losses were driven in part due to the negative impacts of COVID -19 on patient revenue, along with increases in operating expenses (salaries, employee benefits, supplies and expenses, depreciation and amortization, and interest). Northwell Health, Inc. received \$1.2B in CARES Act Provider Relief Funds in 2020 to offset the negative financial impacts of COVID-19. As a result of the COVID-19 pandemic, net patient service revenue was down ~\$420M and physician practice revenue was down ~\$40M. BFA Attachment B is the Northwell Health, Inc. Consolidated Statements of Operations (Unaudited) for the three months ending March 31, 2020 and 2021. Year-to-date 2021 operating losses of \$43 million shows signs of recovery as compared to the same three-month period in 2020, which posted losses of approximately \$141M. Total patient revenue for the period is up 11% (\$3.1M in 2021 and \$2.8M in 2020) from the same period in 2020.

### Conclusion

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

## **Attachments**

- BFA Attachment A Northwell Health Inc. Certified Financial Statements for Year Ended December 31, 2019 and 2020
- BFA Attachment B Northwell Health Inc., Consolidated Statements of Operations (Unaudited) for the Three Months ended March 31, 2020 and 2021
- BFA Attachment C Organizational Chart of Northwell Health, Inc.



**Project # 201275-B**

**New York City Health and Hospital Corporation/Gotham  
Health FQHC, Inc. d/b/a Tremont Community Health Center  
of Excellence**

**Program:** Diagnostic and Treatment Center    **County:** Bronx  
**Purpose:** Establishment and Construction    **Acknowledged:** July 28, 2020

**Executive Summary**

**Description**

New York City Health and Hospital Corporation (NYC H+H) and Gotham Health FQHC, Inc. (Gotham Health), co-operators of six (6) Diagnostic and Treatment Centers (D&TC) and numerous extension clinics that are federally certified as Federally Qualified Health Centers (FQHCs), are seeking approval to establish and construct a new D&TC that will also be an FQHC. The proposed D&TC, named the Tremont Community Health Center of Excellence, will occupy approximately 23,158 sq. ft. of sub-leased space located on the ground floor of the building at 1920 Webster Avenue, (Bronx County).

On May 19, 2020, NYC H+H/Gotham Health received a COVID-19 emergency approval from the Department to construct and certify this site as an extension clinic to the operating certificate of NYC H+H/Gotham Health Morrisania Diagnostic and Treatment Center. NYC H+H/Gotham Health identified an immediate need to provide outpatient care to address the short, medium, and long-term health impacts on the residents of Bronx who have been disproportionately affected by the COVID-19 virus. The site allows the applicant to better serve low-income, uninsured, and underinsured communities of color and to reduce hospitalizations related to the after-effects of COVID-19 that could be better controlled with increased access to ambulatory care. The Tremont Community Health Center of Excellence opened on November 16, 2020 with

two primary care providers to address the critical and time-sensitive needs of the community during the COVID-19 pandemic. As of March 31, 2021, there had been 2,000 visits, which is consistent with the proposed model of 2,700 visits per provider. The facility expects to recruit fourteen more primary care providers and five medical specialists.

NYC H+H/Gotham Health requests certification for Primary Care, Dental, and Other Medical Specialties (to include pulmonology, cardiology, vascular, and diagnostic radiology services), as well as mental health services, to provide outpatient services to individuals who need follow-up care after recovering from the COVID-19 virus.

New York City Health and Hospital Corporation d/b/a New York City Health + Hospitals was created by the New York State Legislature in the New York City Health and Hospitals Corporation Act of 1969 and is not subject to establishment approval under §2801-a of the Public Health Law. However, Gotham Health FQHC, Inc., a not-for-profit corporation, is subject to approval for establishment by PHHPC, including the requirement for a character and competence review of its board.

CONs 202005 Roosevelt Community Health Center of Excellence and 202004 Broadway Community Health Center of Excellence have been submitted and are being reviewed concurrently to establish two additional D&TCs.

**OPCHSM Recommendation**

Contingent Approval

**Need Summary**

The D&TC will improve access to a variety of medical services for individuals residing in the Health Professional Shortage and Medically Underserved Areas (as designated by HRSA) of Hunts Point/Mott Haven, Fordham/Bronx Park, and Crotona/Tremont, as well as, the surrounding communities in Bronx County.

The applicant projects 56,700 visits in Year One and 60,102 in Year Three.

**Program Summary**

Upon review, 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 \$34,455,861 will be met with \$6,329,935 in cash and \$28,125,726 through New York City budget appropriations.

The submitted incremental budget projects losses of \$5,319,702 and excess revenue over expenses of \$369,418 during the first and third years, respectively. The Chief Financial Officer of NYC H+H Health has submitted a letter indicating that any operating losses of the proposed D&TC, including those in Year One, will be supported by NYC H+H funds. The budget appears reasonable and is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$17,230,646	\$23,065,198
Expenses	<u>\$22,550,348</u>	<u>\$22,695,780</u>
Gain/(Loss)	(\$5,319,702)	\$369,418

## **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 forty-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 photocopy of an executed Certificate of Amendment of the Certificate of Incorporation of Gotham Health FQHC, Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed amendment to the Amended and Restated Co-Applicant Agreement, acceptable to the Department. [CSL]
5. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. 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. 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]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospital/docs/hcs\\_access\\_form\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]
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**

July 29, 2021

## Need and Program Analysis

### Program Description

<b>Proposed Operator Proposed Co-Operator</b>	New York City Health and Hospital Corporation Gotham Health FQHC, Inc.
<b>To Be Known As</b>	Tremont Community Health Center of Excellence
<b>Site Address</b>	1920 Webster Avenue Bronx, New York 10457 (Bronx County)
<b>Services</b>	Medical Services – Primary Care Dental O/P Medical Services - Other Medical Specialties Neurology Pulmonology Cardiology Vascular Diagnostic Radiology Mental Health
<b>Hours of Operation</b>	Monday-Thursday 8:30 AM to 7 PM Friday 8:30 AM to 5 PM Saturday 9 AM to 5 PM
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	129.00 FTEs / 129.00 FTEs
<b>Medical Director(s)</b>	David John, M.D.
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Will be provided by Lincoln Medical & Mental Health Center 2.8 miles / 15 minutes away

### Analysis

The primary service area includes the neighborhoods of Hunts Point/Mott Haven, Fordham/Bronx Park and Crotona/Tremont within Bronx County. The population of Bronx County was 1,385,108 in 2010 and is estimated to grow to 1,567,988 by 2025; an increase of 13.2%.

The Health Resources & Services Administration (HRSA) has designated Crotona a Health Professional Shortage Area for Primary Care, Dental, and Mental Health Services, and has designed the Bathgate Service Area as a Medically Underserved Area.

On May 19, 2020, NYC H+H/Gotham Health received a COVID-19 emergency approval from the Department to construct and certify this site as an extension clinic to the operating certificate of NYC H+H/Gotham Health Morrisania Diagnostic and Treatment Center. NYC H+H/Gotham Health identified an immediate need to provide outpatient care to address the short, medium, and long-term health impacts on the residents of Bronx who have been disproportionately affected by the COVID-19 virus. The site allows the applicant to better serve low-income, uninsured, and underinsured communities of color and to reduce hospitalizations related to the after-effects of COVID-19 that could be better controlled with increased access to ambulatory care. The site opened in November 2020. This CON seeks approval from the Department to establish this site as a D&TC with its own operating certificate number. The D&TC will be federally certified as an FQHC.

The applicant projects 56,700 visits in Year One and 60,102 in Year Three. The D&TC is projecting Medicaid utilization of 57.3%

The applicant is committed to serving all persons in need without regard to the ability to pay or source of payment.



## Character and Competence

New York City Health and Hospital Corporation d/b/a New York City Health + Hospitals was created by the New York State Legislature in the New York City Health and Hospitals Corporation Act of 1969 and is not subject to establishment approval under §2801-a of the Public Health Law. However, Gotham Health FQHC, Inc., a not-for-profit corporation, is subject to approval for establishment by PHHPC, including the requirement for a character and competence review of its board.

Gotham Health currently co-operates six D&TCs with numerous extension clinics:

*East New York D&TC*

*Cumberland D&TC*

*Morrisania D&TC*

*Sydenham D&TC*

*Seugndo Ruiz Belvis D&TC*

*Gouverneur Health D&TC*

The board of Gotham Health FQHC, Inc. is comprised of the following individuals:

<b>Name</b>	<b>Title</b>
Dolores McCray	Chair
Angelo Moutair	Vice Chair
Elissa Macklin	Secretary
Alyse Portera	Treasurer
Vivian Bright	Member
Fernando Brinn	Member
Antoinette Brown	Member
Paul Covington	Member
Lori Ferguson	Member
Henrietta Ho-Asjoe	Member
Jacqueline Narine	Member
Herman Smith	Member
Edolphus Towns	Member
Denisha Williams Johnson	Member
Donald Young	Member

**Delores McCray, PhD**, is the Vice President of the Amalgamated Bank in New York. She oversees the retail community bank and her responsibilities include branch growth, profitability, and community outreach. She also trains and develops the branch staff, builds account relationships, and new business development. She was the previous President and CEO of McCray Company, a financial service company.

**Angelo Moutair** is the Vice President/Branch Manager of JP Morgan Chase. He is responsible for identifying and addressing the needs of new hires and current employees; directing strategies for the growth of the bank's overall depository balance; developing innovative ways to encourage, inspire, motivate, and support team members, and; build a healthy environment which promotes employee development and growth. He was previously employed as the Assistant Vice President and Store Manager 3 of Wells Fargo Bank.

**Elissa Macklin** has been retired for approximately 11 years. She was previously employed as the Director of Operations in Ambulatory Care Services at Woodhull Hospital Center and was responsible for product and program development, technical applications, labor relations, and organizational infrastructure; development of policies and procedures to ensure quality, efficiency, productivity, and compliance; and experience in governance of community health centers.

**Alyse Portera** has been retired for over three years. She was previously the Operations Director of the National Havurah Coordinating Committee. Her responsibilities included working with the chair of the Board of Directors and Program Director to support the mission of NHC. She was previously the Regional Director of Science Operations/Director of Special Projects at Howard Hughes Medical Institute, Chevy

Chase, MD and provided strategic leadership to eight teams throughout the United States which deliver financial, human resources, procurement, and lab management services to 175 research labs with \$150M budget and 900 employees.

**Vivian Bright** has been retired for six years. She was previously employed as the Business Administrator and Director of the Community and Family Center of the Berean Baptist Church for over 25 years. She was the outreach coordinator, providing strong leadership and team building.

**Fernando Brinn** is the current President of The Brinn Group, a marketing, public relations, and real estate company that he founded. He also founded F. Brinn and Associates, a company that provides services for individuals seeking training and job placement, including a subsidiary company that provides services to individuals with disabilities.

**Antoinette Brown** is employed by the NYC Department of Education, currently as the Director of the Administrative Payroll Department. She is responsible for the planning and supervision of day-to-day operations, oversight and management of payroll functions, policies, and systems. She oversees the payroll of managers original jurisdictions, and 17 unions encompassing 49 bargaining units. She conducts training and authors manuals tailored to specific audiences. She arranges hiring, firing, leaves, transfers, and retirement of staff.

**Paul Covington** has been retired for over nine years. He was previously employed at Paul L. Covington Enterprises, a Tax and Accounting Consultant Firm. He provided tax and financial counseling to individuals, corporate profit, and non-profit clients.

**Lori Ferguson** is the former Director of Health Services and Systems of Lighthouse Guild International. Her responsibilities included the integration of efficient service provisions all related services and programs to ensure seamless patient care. She prepared, presented, and executed strategic plans; evaluated opportunities based on market trends and industry shifts; developed dashboard and analyze financial and operational data to determine root cause and manage trends; developed systematic quality review and evaluate the effectiveness of the QAPI activities. Before Lighthouse Guild, she was employed as the Senior Director of Urban Health Plan and was responsible for directing daily operations of two Article 28 FQHC centers, managing 12 FQHC School Based Health programs, and was responsible for the annual collective budget of \$6.6M.

**Henrietta Ho-Asjoe** is a Consultant and provides expertise in best practices in non-profit management and board development. She also provides expertise and knowledge in addressing public health, social disparities, and assists in culturally and linguistically appropriate program design development, implementation, and evaluation. She was previously employed as the Interim Executive Director of the Coalition for Asian American Children and Families. Her responsibilities included providing administrative and financial oversight of the non-profit with a budget of \$1.8M and ten employees. She was the Executive Director of the General Human Outreach in the Community for three years. She was responsible for providing strategic and administrative oversight to ensure the fiscal integrity of the multi-location non-profit with a budget of \$6M and more than 160 employees.

**Jacqueline Narine** has been retired for over ten years. Before retirement, Jacqueline was the Liaison of NYC H+H/Cumberland Community Advisory Board. She worked with the auxiliary board and the reach out and read Program of Great New York. After retirement, she served as Chairperson of the NYC H+H/Cumberland Community Advisory Board and as a member of the Auxiliary Board. She was successful in gaining capital funding from elected official New York City Council Majority Leader.

**Herman Smith** has been retired for three years. He was previously the Vice President of Human Resources /Chief Human Resources Executive at the Wildlife Conservation Society and his responsibility included developing and managing all policies and procedures affecting workforce economics, benefits, and employee relations; served as an advisor to senior management for the establishment of strategic planning goals; and managing three workforces (two domestic and one international) encompassing the United States and 65 countries across all continents. He oversaw organizational performance measures and Human Capital strategic planning initiatives and oversaw the central management with a \$230M personnel services budget connected to 64 countries globally.

**Edolphus Towns** has been retired for approximately seven years. Prior to retirement, he was a Congressman in the United States House of Representatives. He served on the Energy and Commerce Committee, and three sub committees: Health; Communications, Technology, and the Internet; and Commerce, Manufacturing, and Trade. He was also a Ranking Member of the Subcommittee on Government Organization, Efficiency and Financial Management on the Committee on Oversight and Government Reform-the committee he chaired during the 111<sup>th</sup> Congress. He is also an Ordained Minister and Social Worker.

**Denisha Williams Johnson** is Care Manager at Montefiore. Her responsibilities include working with an interdisciplinary team to schedule, organize, and participate in case conferences with medical and mental health providers, residential hospital discharge planners, and substance abuse providers in the development and ongoing coordination of client's care plans. She was previously employed as a Substance Abuse Counselor at Narco Freedom BO-MMTP Program, a Senior Supportive Case Manager at Federation of Organizations, a Case Manager at the Black Veterans of Social Justice, a CRT Social Worker at Fed Cap WeCare, and the Clinical Coordinator of the Bowery Residence Committee, Inc.

**Donald Young** is an Instructor at the International Center in New York for approximately 22 years. He teaches intermediate and advanced English classes for foreign-born English language students. He is also employed as a Tutor/Instructor at LaGuardia Community College, ESL Laboratory for approximately 23 years. He teaches English language skills to immigrant college students using grammar and other texts, audiovisual aids, and original materials in seminar and classroom settings. He has received the Barney Rainbow award for outstanding achievement and contribution to the Department of City Planning.

**David John, MD** is the proposed Medical Director. He is the current Chief Medical Officer of New York City Health + Hospitals Gotham and Gotham Health Center for over three (3) years. He is a clinical consultant for Cyril Ross Nursery for HIV/AIDS Children, based in Trinidad, for over 25 years. He received his medical degree from Weill Cornell Medical College. He completed his residency in Family Medicine at Catholic Medical Center. He is board-certified in Family Practice. He holds the New York State HIV Specialist Designation.

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

- The Department issued a Stipulation and Order (S&O) dated June 18, 2021 and fined Bellevue Hospital Center \$10,000.00 based on finding from a complaint survey completed on September 25, 2020. Deficient practice was cited in patient rights resulting in a patient death.
- The Department issued a S&O dated June 21, 2021 and fined Woodhull Medical & Mental Health Center \$2,000.00 based on findings from a complaint survey completed on December 3, 2020. Deficient practice was cited in patient rights and hospital responsibilities resulting in three patients eloping from the facility.
- The Department issued a S&O dated June 21, 2021 and fined Woodhull Medical & Mental Health Center \$20,000.00 based in findings from a complaint survey completed in August 24, 2020. Deficient practice was cited due to the facility's failure to ensure that adverse events regarding anesthesia administration to Obstetrics and Gynecology(OB/GYN) patients were reported, investigated, analyzed and corrective actions implemented by the facility's (Quality Assessment Performance Improvement (QAPI) program, which resulted in patient harm and death.

- The Department issued a S&O dated January 27, 2021 and fined Elmhurst Hospital Center \$10,000.00 based on findings from a complaint survey that was completed on February 18, 2020. Deficient practice was cited regarding patient rights-free from abuse and harassment. Specifically, after allegations of sexual assault, the facility failed to complete an investigation to identify issues and areas to improve patient safety.
- The Department issued a S&O dated December 10, 2020 and fined Kings County Hospital Center \$4,000 based on findings from a survey completed on January 24, 2020. Deficient practice was cited in the area of patient elopement. Specifically, the facility failed to identify and assess all patients at risk of elopement, analyze facility data of those at risk of elopement, and develop or implement corrective action to ensure patient safety
- The Department issued a S&O dated November 23, 2020 and fined Lincoln Medical & Mental Health Center \$10,000.00 based on findings from a complaint survey completed on January 15, 2020. Deficient practice was cited in the areas of patient rights and quality assurance. Specifically, the facility failed to prevent unauthorized access of people into patient care areas, which resulted in a stranger being in a patient's room and a patient being sexually assaulted.
- The Department issued a S&O dated July 26, 2018 and fined Elmhurst Hospital Center \$2,000.00 based on findings from a complaint survey completed on January 16, 2018. Deficient practice was cited regarding patient rights. Specifically, the facility failed to monitor patients who had altered mental status with known elopement risk and self-injurious behavior.
- The Department issued a S&O dated August 7, 2017 and fined Jacobi Medical Center \$2,000.00 based on findings from an allegation survey completed on November 9, 2016. Deficient practice was cited regarding patient rights. Specifically, the hospital was found to be using metal handcuffs to restrain a patient who was transported from the Comprehensive Psychiatric Emergency Program (CPEP) unit to the Medical Emergency Department.
- The Department issued a Stipulation and Order S&O dated August 7, 2017 and fined Kings County Hospital Center \$2,000.00 for findings on an allegation survey completed on June 23, 2016. Deficient practice was cited regarding patient rights. Specifically, it was identified that hospital security guards used metal handcuffs to restrain a patient who eloped to a wheelchair.
- The Department issued a S&O dated April 17, 2017 and fined Kings County Hospital Center \$2,000.00 based on findings from an allegation survey completed August 29, 2016. Deficient practice was cited regarding patient rights-sexual assault/abuse. Specifically, the facility failed to develop and implement an adequate plan, including training, that would protect patients from sexual abuse.
- The Department issued a S&O dated February 24, 2014 and fined Kings County Hospital Center \$14,000.00 based on findings from a complaint survey completed on April 24, 2013. Deficient practice was cited for quality assurance and emergency services. Specifically, the facility failed to have a mechanism to ensure communication of positive radiology results to patients, resulting in a patient that had a positive chest x-ray that did not have the results communicated. This resulted in metastatic process.

## **Conclusion**

The individual background review indicates the proposed board members have met the standard for approval as set forth in Public Health Law §2801-a(3). Approval of this project will improve access to a variety of medical services for the neighborhoods of Hunts Point/Mott Haven, Fordham/Bronx Park, and Crotona/Tremont, as well as, the surrounding communities in Bronx County.

## Financial Analysis

### Total Project Cost

Total project cost for renovations and equipment is estimated at \$34,455,661; broken down as follows:

Renovations and Demolition	\$20,062,497
Design Contingency	2,006,249
Construction Contingency	2,006,249
Architect/Engineering Fees	1,462,867
Construction Manager Fees	3,500,499
Other Fees	1,271,512
Moveable Equipment	3,990,188
CON Application Fee	1,250
CON Additional Processing Fee	<u>154,350</u>
Total Project Cost	<u>\$34,455,661</u>

NYC H+H/Gotham Health received emergency approval on May 19, 2020 to proceed with construction of this project due to the COVID-19 emergency, and the facility opened on November 16, 2020.

NYC H&H/Gotham Health will fund the total project cost through \$6,239,935 in accumulated funds and \$28,125,726 in New York City budget appropriations.

### Lease Rental Agreement

The applicant has submitted an executed lease agreement; the terms are summarized below:

Date:	September 1, 2019
Premises:	23,158 sq. ft. located on the ground floor
Lessor:	Tremont Renaissance, LLC (TR Master Lease, LLC)
Lessee:	TR Master Lease, LLC
Sublease:	New York City Health + Hospitals
Term:	15 years with one five-year option to renew
Rent:	\$969,043.48 annually or \$80,753.53/month Year One; approximately 3% increase each year thereafter.
Provisions:	Responsible for utilities, taxes, insurance and maintenance of occupied premise.

The applicant indicated that the lease will be an arm's-length lease arrangement. Two letters of rent reasonableness have been submitted from New York licensed real estate brokers.

### Operating Budget

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

	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
Commercial MC	\$123.68	\$820,496	\$123.68	\$869,721
Medicare FFS	\$122.03	249,702	\$121.98	\$263,960
Medicare MC	\$184.17	793,602	\$184.17	841,303
Medicaid FFS	\$279.23	791,624	\$279.23	839,094
Medicaid MC	\$265.61	7,876,404	\$265.61	8,348,924
Private Pay *	\$14.53	162,247	\$14.53	171,979
Other **		<u>6,537,201</u>		<u>11,730,217</u>
Total Revenues		\$17,230,646		\$23,065,198

	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Expenses</u>				
Operating	\$346.07	\$19,622,443	\$327.89	\$19,706,146
Capital	<u>\$51,64</u>	<u>2,927,905</u>	<u>\$49.73</u>	<u>2,989,146</u>
Total Expenses	\$397.71	\$22,550,348	\$377.62	\$22,695,780
Excess Revenues over Expenses		<u>(\$5,319,702)</u>		<u>\$369,418</u>
Cost Per Visit		\$397.71		\$377.62
Utilization (Visits)		56,700		60,102

\* Private pay is for services provided to people who pay their fees on their own. This Center uses it for many reasons such as self-insured or sliding scale payments for individuals who can pay what they can afford.

\*\* Other Revenue is Medicaid Managed Care Panel-Based Revenue and HRSA Grant Revenue of \$400,000 per year. As an underserved community, both Medicaid MC and Medicare MC participate in this incentive revenue program, defined as an increased rate to provide certain populations, who otherwise may not be able to pay for care, with health care. The total with HRSA and Medicaid and Medicare Panel Program is combined above.

The budget is based on the following:

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

<u>Payor</u>	<u>Utilization</u>
Commercial FFS	11.7%
Medicare FFS	3.6%
Medicare MC	7.6%
Medicaid FFS	5.0%
Medicaid MC	52.3%
Charity Care	0.1%
Private Pay	19.7%
Total	100%

- The projected utilization and staffing for this project are based upon the historical experience of NYC H+H/Gotham Health in providing the outpatient services that will be offered at the proposed D&TC.
- The incremental operating expenses and revenues for this project are based on the utilization projections for the services that are part of this project, given the experience of NYC H+H/Gotham Health.
- The projected first-year loss is due to the high start-up costs relative to the number of projected outpatient visits and ramp up of physician participation in payer incentive programs.

### **Capability and Feasibility**

Total project costs of \$34,455,861 will be met with \$6,329,935 in cash and \$28,125,726 through New York City budget appropriations. According to the New York City Office of Management and Budget, the bonding cash proceeds have been appropriated and made available for this project.

BFA Attachment A is the 2019 certified financial statements of NYC Health and Hospitals Corporation, which indicates the availability of sufficient resources for project costs and working capital needs.

As shown on BFA Attachment A, NYC H+H/Gotham Health maintained a negative working capital position, a negative net deficit position, and experienced an operating gain of \$69,235,000, as of June 30, 2020. As shown on BFA Attachment B, NYC H+H/Gotham Health maintained a positive working capital position, total net negative deficit position and experienced an operating loss of \$131,144,000 according to the December 31, 2020 internal financial statement.

NYC H+H/Gotham Health serves an under-served population, many without insurance, and, therefore, receives grants, State/Federal funding and NYC appropriation support. As provided in the budget projections, the HRSA Federal Grant is projected to be \$400,000 for Year One and Year Three, and the enhanced reimbursement from the Medicaid Managed Care panel is projected to be \$6,137,201 in Year One and \$11,330,217 in Year Three.

**Conclusion**

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

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**Attachments**

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BHFP Attachment    Map  
BFA Attachment A    New York City, Health and Hospitals Corporation, 2019 Certified Financial  
Statements (June 30, 2019 Fiscal Year)  
BFA Attachment B    New York City, Health and Hospitals Corporation, 2020 Un-audited internal  
financial statement (July 1, 2019 to December 31, 2020)

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 29th day of July 2021, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new diagnostic and treatment center to be located at 1920 Webster Avenue, Bronx, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

201275 B

FACILITY/APPLICANT:

New York City Health and Hospital  
Corporation/Gotham Health FQHC, Inc.  
d/b/a Tremont Community Health Center of  
Excellence



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 forty-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 photocopy of an executed Certificate of Amendment of the Certificate of Incorporation of Gotham Health FQHC, Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed amendment to the Amended and Restated Co-Applicant Agreement, acceptable to the Department. [CSL]
5. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. 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. 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]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospital/docs/hcs\\_access\\_form\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf).  
Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]
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]

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



**Project # 202004-B**

**New York City Health and Hospital Corporation/Gotham  
Health FQHC, Inc. d/b/a Broadway Community  
Health Center of Excellence**

**Program:** Diagnostic and Treatment Center    **County:** Kings  
**Purpose:** Establishment and Construction    **Acknowledged:** July 29, 2020

**Executive Summary**

**Description**

New York City Health and Hospital Corporation (NYC H+H) and Gotham Health FQHC, Inc. (Gotham Health), co-operators of six Diagnostic and Treatment Centers (D&TC) and numerous extension clinics that are federally certified as Federally Qualified Health Centers (FQHCs), are seeking approval to establish and construct a new D&TC that will also be an FQHC, at 815 Broadway, Brooklyn (Kings County). The D&TC, which will be named Broadway Community Health Center of Excellence, occupies approximately 51,400 square feet of leased space located on all floors of a five-story building, inclusive of basement space.

On May 19, 2020, NYC H+H/Gotham Health received a COVID-19 emergency approval from the Department to construct and certify this site as an extension clinic to the operating certificate of NYC H+H/Gotham Health East NY Diagnostic and Treatment Center. NYC H+H/Gotham Health identified an immediate need to provide outpatient care to address the short, medium, and long-term health impacts on the residents of Brooklyn who have been disproportionately affected by the COVID-19 virus. The extension site allows the applicant to better serve low-income, uninsured, and underinsured communities of color and to reduce hospitalizations related to the after-effects of COVID-19 that could be better controlled with increased access to ambulatory care. Broadway Community Health Center of Excellence is anticipating opening in Summer 2021.

NYC H+H/Gotham Health requests certification for Primary Care, Dental, CT, MRI, and Other Medical Specialties (to include pulmonology, cardiology, vascular, and diagnostic radiology services), as well as mental health services, to provide outpatient services to individuals who need follow-up care after recovering from the COVID-19 virus.

New York City Health and Hospital Corporation d/b/a New York City Health + Hospitals was created by the New York State Legislature in the New York City Health and Hospitals Corporation Act of 1969 and is not subject to establishment approval under §2801-a of the Public Health Law. However, Gotham Health FQHC, Inc., a not-for-profit corporation, is subject to approval for establishment by PHHPC, including the requirement for a character and competence review of its board.

CON 201275 Tremont Community Health Center of Excellence and CON 202005 Roosevelt Community Health Center of Excellence have been submitted and are being reviewed concurrently to establish two additional D&TCs.

**OPCHSM Recommendation**

Contingent Approval

**Need Summary**

The D&TC will improve access to a variety of medical services for individuals residing in the Health Professional Shortage and Medically Underserved Areas (as designated by HRSA) of Williamsburg/Bushwick, East NY, and Bedford-Stuyvesant, as well as, the surrounding communities in Kings County.

The applicant projects 140,400 visits in Year One and 148,692 in Year Three.

**Program Summary**

Upon review, 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 \$77,347,207 will be met with \$11,090,066 in accumulated funds and \$66,257,141 in New York City budget appropriations.

The submitted incremental budget projects losses of \$1,386,758 and an excess of revenue over expenses during the first and third years, respectively. The Chief Financial Officer of NYC H+H/Gotham Health has submitted a letter indicating that any operating losses of the proposed D&TC, including those in Year One, will be supported by NYC H+H funds. The proposed budget appears reasonable and is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$41,265,444	\$55,967,092
Expenses	<u>\$42,652,202</u>	<u>\$42,935,125</u>
Gain/(Loss)	(\$1,386,758)	\$13,031,967

## **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 forty-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 photocopy of an executed amendment to the Amended and Restated Co-Applicant Agreement, acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed Certificate of Amendment of the Certificate of Incorporation of Gotham Health FQHC, Inc., acceptable to the Department. [CSL]
5. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. 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. 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]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospital/docs/hcs\\_access\\_form\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]
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**

July 29, 2021

## Need and Program Analysis

### Program Description

<b>Proposed Operator Proposed Co-Operator</b>	New York City Health and Hospital Corporation Gotham Health FQHC, Inc
<b>To Be Known As</b>	Broadway Community Health Center of Excellence
<b>Site Address</b>	815 Broadway Brooklyn, New York 11206 (Kings County)
<b>Specialties</b>	Medical Services – Primary Care Dental O/P CT MRI Medical Services - Other Medical Specialties Pulmonology Neurology Cardiology Vascular Diagnostic Radiology Mental Health
<b>Hours of Operation</b>	Monday-Thursday 8:30 AM to 7 PM Friday 8:30 AM to 5 PM Saturday 9 AM to 5 PM
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	279.00 FTEs / 279.00 FTEs
<b>Medical Director(s)</b>	David John, M.D.
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Will be provided by Woodhull Medical and Mental Health Center 0.4 miles / 3 minutes away

### Analysis

The primary service area includes the neighborhoods of Williamsburg/Bushwick, East NY, and Bedford-Stuyvesant within Kings County. The population of Kings County was 2,504,700 in 2010 and is estimated to grow to 2,810,876 by 2025; an increase of 12.2%.

The Health Resources & Services Administration (HRSA) has designated the Williamsburg-Bushwick area a Health Professional Shortage Area for Mental Health Services, Williamsburg for Dental Services, Bushwick for Primary Care Services, and the Kings Service Area as a Medically Underserved Area.

On May 19, 2020, NYC H+H/Gotham Health received a COVID-19 emergency approval from the Department to construct and certify this site as an extension clinic to the operating certificate of NYC H+H/Gotham Health East NY Diagnostic and Treatment Center. NYC H+H/Gotham Health identified an immediate need to provide outpatient care to address the short, medium, and long-term health impacts on the residents of Brooklyn who have been disproportionately affected by the COVID-19 virus. The extension site allows the applicant to better serve low-income, uninsured, and underinsured communities of color and to reduce hospitalizations related to the after-effects of COVID-19 that could be better controlled with increased access to ambulatory care. Broadway Community Health Center of Excellence is anticipating opening in Summer 2021. This CON seeks approval to establish this site as a D&TC with its own operating certificate number. The D&TC will be federally certified as an FQHC.

The applicant projects 140,400 visits in Year One and 148,692 in Year Three. The D&TC is projecting Medicaid utilization of 56.1%.

The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

## Character and Competence

New York City Health and Hospital Corporation d/b/a New York City Health + Hospitals was created by the New York State Legislature in the New York City Health and Hospitals Corporation Act of 1969 and is not subject to establishment approval under §2801-a of the Public Health Law. However, Gotham Health FQHC, Inc., a not-for-profit corporation, is subject to approval for establishment by PHHPC, including the requirement for a character and competence review of its board.

Gotham Health currently co-operates six D&TCs with numerous extension clinics:

*East New York D&TC*

*Cumberland D&TC*

*Morrisania D&TC*

*Sydenham D&TC*

*Seugndo Ruiz Belvis D&TC*

*Gouverneur Health D&TC*

The board of Gotham Health FQHC, Inc. is comprised of the following individuals:

<b>Name</b>	<b>Title</b>
Dolores McCray	Chair
Angelo Moutair	Vice Chair
Elissa Macklin	Secretary
Alyse Portera	Treasurer
Vivian Bright	Member
Fernando Brinn	Member
Antoinette Brown	Member
Paul Covington	Member
Lori Ferguson	Member
Henrietta Ho-Asjoe	Member
Jacqueline Narine	Member
Herman Smith	Member
Edolphus Towns	Member
Denisha Williams Johnson	Member
Donald Young	Member

**Delores McCray, PhD**, is the Vice President of the Amalgamated Bank in New York. She oversees the retail community bank and her responsibilities include branch growth, profitability, and community outreach. She also trains and develops the branch staff, builds account relationships, and new business development. She was the previous President and CEO of McCray Company, a financial service company.

**Angelo Moutair** is the Vice President/Branch Manager of JP Morgan Chase. He is responsible for identifying and addressing the needs of new hires and current employees; directing strategies for the growth of the bank's overall depository balance; developing innovative ways to encourage, inspire, motivate, and support team members, and; build a healthy environment which promotes employee development and growth. He was previously employed as the Assistant Vice President and Store Manager 3 of Wells Fargo Bank.

**Elissa Macklin** has been retired for approximately 11 years. She was previously employed as the Director of Operations in Ambulatory Care Services at Woodhull Hospital Center and was responsible for product and program development, technical applications, labor relations, and organizational infrastructure; development of policies and procedures to ensure quality, efficiency, productivity, and compliance; and experience in governance of community health centers.

**Alyse Portera** has been retired for over three years. She was previously the Operations Director of the National Havurah Coordinating Committee. Her responsibilities included working with the chair of the Board of Directors and Program Director to support the mission of NHC. She was previously the Regional Director of Science Operations/Director of Special Projects at Howard Hughes Medical Institute, Chevy

Chase, MD, and provided strategic leadership to eight teams throughout the United States which deliver financial, human resources, procurement, and lab management services to 175 research labs with \$150M budget and 900 employees.

**Vivian Bright** has been retired for six years. She was previously employed as the Business Administrator and Director of the Community and Family Center of the Berean Baptist Church for over 25 years. She was the outreach coordinator, providing strong leadership and team building.

**Fernando Brinn** is the current President of The Brinn Group, a marketing, public relations, and real estate company that he founded. He also founded F. Brinn and Associates, a company that provides services for individuals seeking training and job placement, including a subsidiary company that provides services to individuals with disabilities.

**Antoinette Brown** is employed by the NYC Department of Education, currently as the Director of the Administrative Payroll Department. She is responsible for the planning and supervision of day-to-day operations, oversight and management of payroll functions, policies, and systems. She oversees the payroll of managers original jurisdictions, and 17 unions encompassing 49 bargaining units. She conducts training and authors manuals tailored to specific audiences. She arranges hiring, firing, leaves, transfers, and retirement of staff.

**Paul Covington** has been retired for over nine years. He was previously employed at Paul L. Covington Enterprises, a Tax and Accounting Consultant Firm. He provided tax and financial counseling to individuals, corporate profit, and non-profit clients.

**Lori Ferguson** is the former Director of Health Services and Systems of Lighthouse Guild International. Her responsibilities included the integration of efficient service provisions all related services and programs to ensure seamless patient care. She prepared, presented, and executed strategic plans; evaluated opportunities based on market trends and industry shifts; developed dashboard and analyze financial and operational data to determine root cause and manage trends; developed systematic quality review and evaluate the effectiveness of the QAPI activities. Before Lighthouse Guild, she was employed as the Senior Director of Urban Health Plan and was responsible for directing daily operations of two Article 28 FQHC centers, managing 12 FQHC School Based Health programs, and was responsible for the annual collective budget of \$6.6M.

**Henrietta Ho-Asjoe** is a Consultant and provides expertise in best practices in non-profit management and board development. She also provides expertise and knowledge in addressing public health, social disparities, and assists in culturally and linguistically appropriate program design development, implementation, and evaluation. She was previously employed as the Interim Executive Director of the Coalition for Asian American Children and Families. Her responsibilities included providing administrative and financial oversight of the non-profit with a budget of \$1.8M and ten employees. She was the Executive Director of the General Human Outreach in the Community for three years. She was responsible for providing strategic and administrative oversight to ensure the fiscal integrity of the multi-location non-profit with a budget of \$6M and more than 160 employees.

**Jacqueline Narine** has been retired for over ten years. Before retirement, Jacqueline was the Liaison of NYC H+H/Cumberland Community Advisory Board. She worked with the auxiliary board and the reach out and read Program of Great New York. After retirement, she served as Chairperson of the NYC H+H/Cumberland Community Advisory Board and as a member of the Auxiliary Board. She was successful in gaining capital funding from elected official New York City Council Majority Leader.

**Herman Smith** has been retired for three years. He was previously the Vice President of Human Resources /Chief Human Resources Executive at the Wildlife Conservation Society and his responsibility included developing and managing all policies and procedures affecting workforce economics, benefits, and employee relations; serving as an advisor to senior management for the establishment of strategic planning goals; managing three workforces (two domestic and one international) encompassing the United States and 65 countries across all continents. He oversaw organizational performance measures and Human Capital strategic planning initiatives and oversaw the central management with a \$230M personnel services budget connected to 64 countries globally.

**Edolphus Towns** has been retired for approximately seven years. Before retirement, he was a Congressman in the United States House of Representatives. He served on the Energy and Commerce Committee, and three sub-committees: Health; Communications, Technology, and the Internet; and Commerce, Manufacturing, and Trade. He was also a Ranking Member of the Subcommittee on Government Organization, Efficiency and Financial Management on the Committee on Oversight and Government Reform-the committee he chaired during the 111<sup>th</sup> Congress. He is also an Ordained Minister and Social Worker.

**Denisha Williams Johnson** is Care Manager at Montefiore. Her responsibilities include working with an interdisciplinary team to schedule, organize, and participate in case conferences with medical and mental health providers, residential hospital discharge planners, and substance abuse providers in the development and ongoing coordination of client's care plans. She was previously employed as a Substance Abuse Counselor at Narco Freedom BO-MMTP Program, a Senior Supportive Case Manager at Federation of Organizations, a Case Manager at the Black Veterans of Social Justice, a CRT Social Worker at Fed Cap WeCare, and the Clinical Coordinator of the Bowery Residence Committee, Inc.

**Donald Young** is an Instructor at the International Center in New York for approximately 22 years. He teaches intermediate and advanced English classes for foreign-born English language students. He is also employed as a Tutor/Instructor at LaGuardia Community College, ESL Laboratory for approximately 23 years. He teaches English language skills to immigrant college students using grammar and other texts, audiovisual aids, and original materials in seminar and classroom settings. He has received the Barney Rainbow award for outstanding achievement and contribution to the Department of City Planning.

**David John, MD** is the proposed Medical Director. He is the current Chief Medical Officer of New York City Health + Hospitals Gotham and Gotham Health Center for over three (3) years. He is a clinical consultant for Cyril Ross Nursery for HIV/AIDS Children, based in Trinidad, for over 25 years. He received his medical degree from Weill Cornell Medical College. He completed his residency in Family Medicine at Catholic Medical Center. He is board-certified in Family Practice. He holds the New York State HIV Specialist Designation.

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

- The Department issued a Stipulation and Order (S&O) dated June 18, 2021 and fined Bellevue Hospital Center \$10,000.00 based on finding from a complaint survey completed on September 25, 2020. Deficient practice was cited in patient rights resulting in a patient death.
- The Department issued a S&O dated June 21, 2021 and fined Woodhull Medical & Mental Health Center \$2,000.00 based on findings from a complaint survey completed on December 3, 2020. Deficient practice was cited in patient rights and hospital responsibilities resulting in three patients eloping from the facility.
- The Department issued a S&O dated June 21, 2021 and fined Woodhull Medical & Mental Health Center \$20,000.00 based in findings from a complaint survey completed in August 24, 2020. Deficient practice was cited due to the facility's failure to ensure that adverse events regarding anesthesia administration to Obstetrics and Gynecology(OB/GYN) patients were reported, investigated, analyzed and corrective actions implemented by the facility's (Quality Assessment Performance Improvement (QAPI) program, which resulted in patient harm and death.



- The Department issued a S&O dated January 27, 2021 and fined Elmhurst Hospital Center \$10,000.00 based on findings from a complaint survey that was completed on February 18, 2020. Deficient practice was cited regarding patient rights-free from abuse and harassment. Specifically, after allegations of sexual assault, the facility failed to complete an investigation to identify issues and areas to improve patient safety.
- The Department issued a S&O dated December 10, 2020 and fined Kings County Hospital Center \$4,000 based on findings from a survey completed on January 24, 2020. Deficient practice was cited in the area of patient elopement. Specifically, the facility failed to identify and assess all patients at risk of elopement, analyze facility data of those at risk of elopement, and develop or implement corrective action to ensure patient safety
- The Department issued a S&O dated November 23, 2020 and fined Lincoln Medical & Mental Health Center \$10,000.00 based on findings from a complaint survey completed on January 15, 2020. Deficient practice was cited in the areas of patient rights and quality assurance. Specifically, the facility failed to prevent unauthorized access of people into patient care areas, which resulted in a stranger being in a patient's room and a patient being sexually assaulted.
- The Department issued a S&O dated July 26, 2018 and fined Elmhurst Hospital Center \$2,000.00 based on findings from a complaint survey completed on January 16, 2018. Deficient practice was cited regarding patient rights. Specifically, the facility failed to monitor patients who had altered mental status with known elopement risk and self-injurious behavior.
- The Department issued a S&O dated August 7, 2017 and fined Jacobi Medical Center \$2,000.00 based on findings from an allegation survey completed on November 9, 2016. Deficient practice was cited regarding patient rights. Specifically, the hospital was found to be using metal handcuffs to restrain a patient who was transported from the Comprehensive Psychiatric Emergency Program (CPEP) unit to the Medical Emergency Department.
- The Department issued a Stipulation and Order S&O dated August 7, 2017 and fined Kings County Hospital Center \$2,000.00 for findings on an allegation survey completed on June 23, 2016. Deficient practice was cited regarding patient rights. Specifically, it was identified that hospital security guards used metal handcuffs to restrain a patient who eloped to a wheelchair.
- The Department issued a S&O dated April 17, 2017 and fined Kings County Hospital Center \$2,000.00 based on findings from an allegation survey completed August 29, 2016. Deficient practice was cited regarding patient rights-sexual assault/abuse. Specifically, the facility failed to develop and implement an adequate plan, including training, that would protect patients from sexual abuse.
- The Department issued a S&O dated February 24, 2014 and fined Kings County Hospital Center \$14,000.00 based on findings from a complaint survey completed on April 24, 2013. Deficient practice was cited for quality assurance and emergency services. Specifically, the facility failed to have a mechanism to ensure communication of positive radiology results to patients, resulting in a patient that had a positive chest x-ray that did not have the results communicated. This resulted in metastatic process.

## **Conclusion**

The individual background review indicates the proposed board members have met the standard for approval as set forth in Public Health Law §2801-a(3). Approval of this project will improve access to a variety of medical services for the neighborhoods of Williamsburg/Bushwick, East NY, and Bedford-Stuyvesant, as well, as the surrounding communities in Kings County.

## Financial Analysis

### Total Project Cost

Total project cost for renovations and equipment is estimated at \$77,347,207; broken down as follows:

Renovations and Demolition	\$47,588,547
Design Contingency	4,758,855
Construction Contingency	4,758,855
Architect/Engineering Fees	2,564,973
Construction Manager Fees	8,275,597
Other Fees	2,289,382
Moveable Equipment	6,763,250
CON Application Fee	1,250
CON Additional Processing Fee	<u>346,498</u>
Total Project Cost	<u>\$77,347,207</u>

NYC H+H/Gotham Health received emergency approval on May 19, 2020 to proceed with construction of this project due to the COVID-19 emergency.

NYC H+H/Gotham Health will fund the total project cost through \$11,090,066 in accumulated funds and \$66,257,141 in New York City budget appropriations.

### Lease Rental Agreement

The applicant has submitted a draft lease agreement; the terms are summarized below:

Date:	December 1, 2018
Premises:	(Approximately 51,400 sq. ft.) at 813/815 Broadway and Ellery Street, New York (Brooklyn)
Landlord:	815 Broadway Equities, LLC
Tenant:	New York City Health and Hospital Corporation
Term:	31 years and 8 months from commencement date
Rent:	\$195,833.33 monthly or \$2,350,000 per annum (Increasing approximately 12% every five (5) years)
Provisions:	Maintenance, utilities, excess taxes, and insurance are to be paid by tenant.

The applicant indicated that 815 Broadway Equities, LLC and NYC H+H are not related in any way, and the lease will be an arm's-length agreement. Also, two letters of rent reasonableness have been submitted from two licensed real estate brokers in NY.

### Operating Budget

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

	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
Commercial Managed Care	\$123.62	\$1,992,273	\$128.95	\$2,202,656
Medicare Fee-for-Service	\$121.98	604,898	\$121.98	641,127
Medicare Managed Care	\$183.96	1,931,396	\$183.96	2,047,475
Medicaid Fee-for-Service	\$278.46	1,940,005	\$278.46	2,056,678
Medicaid Managed Care	\$264.61	19,043,453	\$264.61	20,186,038
Private Pay *	\$14.52	393,992	\$14.52	415,714
Other **		<u>15,359,427</u>		<u>28,417,404</u>
Total Revenues		<u>\$41,265,444</u>		<u>\$55,967,092</u>

	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Expenses</u>				
Operating	\$264.48	\$37,273,078	\$252.58	\$37,556,001
Capital	<u>\$38.31</u>	<u>5,379,124</u>	<u>\$36.18</u>	<u>5,379,124</u>
Total Expenses	\$303.79	\$42,652,202	\$288.75	\$42,935,125
Excess Revenues over Expenses		<u>(\$1,386,758)</u>		<u>\$13,031,967</u>
Utilization (Visits)		140,400		148,692
Cost Per Visit		\$303.79		\$288.75

\* Private pay is for services provided to people who pay their fees on their own. This Center uses it for many reasons such as self-insured or sliding scale payments for individuals who can pay what they can afford.

\*\* Other Revenue is Medicaid Managed Care Panel-Based Revenue and HRSA Grant Revenue of \$800,000 per year. As an underserved community, both Medicaid MC and Medicare MC participate in this incentive revenue program, defined as an increased rate to provide certain populations, who otherwise may not be able to pay for care, with health care. The total with HRSA and Medicaid and Medicare Panel Program is combined above.

The budget is based on the following:

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

<u>Payor</u>	<u>Utilization</u>
Commercial	11.8%
Medicare Fee-for-Service	3.5%
Medicare Managed Care	7.4%
Medicaid Fee-for-Service	4.9%
Medicaid Managed Care	51.2%
Charity Care	1.9%
Private Pay	19.3%
Total	100%

- The projected utilization and staffing for this project are based upon the historical experience of NYC H+H/Gotham Health in providing the outpatient services that will be offered at the proposed D&TC.
- The incremental operating expenses and revenues for this project are based on the utilization projections for the services that are part of this project, given the experience of NYC H+H/Gotham Health.
- The projected first-year loss is due to the high start-up costs relative to the number of projected outpatient visits and ramp up of physician participation in payer incentive programs.

### **Capability and Feasibility**

Total project costs of \$77,347,207 will be met with \$11,090,066 in cash and \$66,257,141 in New York City budget appropriations.

As shown on BFA Attachment A, NYC H+H/Gotham Health maintained a negative working capital position, a negative net deficit position and experienced an operating gain of \$69,235,000 as of June 30, 2020. BFA Attachment B shows NYC H+H/Gotham Health maintained a positive working capital position, total net negative deficit position and experienced an operating loss of \$131,144,000 according to the December 31, 2020 internal financial statement.

NYC H+H/Gotham Health serves an under-served privileged population, many without insurance, and, therefore, receives various grants, State/Federal funding, and NYC appropriation support. The facility expects to receive \$800,000 in Year One and Year Three in Health Resources and Service Administration (HRSA) grant revenue from the Federal Government. They also project Medicaid Managed Care panel-based reimbursement revenue to be \$14,559,427 in Year One and \$27,617,404 in Year Three.

### **Conclusion**

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

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## **Attachments**

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BHFP Attachment	Map
BFA Attachment A	New York City Health and Hospitals Corporation - 2019 Certified Financial Statements (July 1, 2019 to June 30, 2020)
BFA Attachment B	New York City, Health and Hospitals Corporation, (Internal Financial Statement) July 1, 2020 to December 31, 2020

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 29th day of July 2021, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new diagnostic and treatment center to be located at 815 Broadway, Brooklyn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

202004 B

FACILITY/APPLICANT:

New York City Health & Hospital  
Corporation/Gotham Health FQHC, Inc  
d/b/a Broadway Community Health Center of  
Excellence

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 forty-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 photocopy of an executed amendment to the Amended and Restated Co-Applicant Agreement, acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed Certificate of Amendment of the Certificate of Incorporation of Gotham Health FQHC, Inc., acceptable to the Department. [CSL]
5. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. 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. 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]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospital/docs/hcs\\_access\\_form\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf).  
Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]
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]

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



Project # 202005-B
New York City Health and Hospital Corporation/Gotham Health FQHC, Inc. d/b/a Roosevelt Community Health Center of Excellence

Program: Diagnostic and Treatment Center County: Queens
Purpose: Establishment and Construction Acknowledged: July 28, 2020

Executive Summary

Description

New York City Health and Hospital Corporation (NYC H+H) and Gotham Health FQHC, Inc. (Gotham Health), co-operators of six (6) Diagnostic and Treatment Centers (D&TC) and numerous extension clinics that are federally certified as Federally Qualified Health Centers (FQHCs), are seeking approval to establish and construct a new D&TC that will also be an FQHC, at 37-50 72nd Street, Jackson Heights (Queens County). The D&TC will occupy approximately 23,100 square feet of leased space on the second floor and be called the Roosevelt Community Health Center of Excellence.

On May 19, 2020, NYC H+H/Gotham Health received a COVID-19 emergency approval from the Department to construct and certify this site as an extension clinic to the operating certificate of NYC H+H/Gotham Health East NY Diagnostic and Treatment Center. NYC H+H/Gotham Health identified an immediate need to provide outpatient care to address the short, medium, and long-term health impacts on the residents of Queens who have been disproportionately affected by the COVID-19 virus. The site allows the applicant to better serve low-income, uninsured, and underinsured communities of color and to reduce hospitalizations related to the after-effects of COVID-19 that could be better controlled with increased access to

ambulatory care. The facility opened in March 2021.

NYC H+H/Gotham Health requests certification for Primary Care, Dental, and Other Medical Specialties (to include pulmonology, cardiology, vascular, and diagnostic radiology services), as well as mental health services, to provide outpatient services to individuals who need follow-up care after recovering from the COVID-19 virus.

New York City Health and Hospital Corporation d/b/a New York City Health + Hospitals was created by the New York State Legislature in the New York City Health and Hospitals Corporation Act of 1969 and is not subject to establishment approval under §2801-a of the Public Health Law. However, Gotham Health FQHC, Inc., a not-for-profit corporation, is subject to approval for establishment by PHHPC, including the requirement for a character and competence review of its board.

CON 201275 Tremont Community Health Center of Excellence and CON 202004 Broadway Community Health Center of Excellence have been submitted and are being reviewed concurrently to establish two additional D&TCs.

**OPCHSM Recommendation**

Contingent Approval

**Need Summary**

The D&TC will improve access to a variety of medical services for individuals residing in the Health Professional Shortage Areas (as designated by HRSA) of Jackson Heights and Astoria/Long Island City, as well as, the surrounding communities in Queens County.

The applicant projects 78,300 visits in Year One and 83,000 visits in Year Three.

**Program Summary**

Upon review, 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 \$31,244,030 will be met with \$4,966,183 in accumulated funds and \$26,247,847 in New York City budget appropriations.

The submitted incremental budget projects losses of \$1,325,871 in Year One and an excess of revenues over expenses of \$6,255,483 by Year Three. The Chief Financial Officer of NYC H+H/Gotham Health has submitted a letter indicating that any operating losses of the proposed D&TC, including those incurred in Year One, will be supported by NYC H+H funds. The budget appears reasonable and is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$23,074,795	\$30,813,243
Expenses	<u>\$24,400,666</u>	<u>\$24,557,760</u>
Gain/(Loss)	(\$1,325,871)	\$6,255,483



## **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 forty-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 photocopy of an executed Certificate of Amendment of the Certificate of Incorporation of Gotham Health FQHC, Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed amendment to the Amended and Restated Co-Applicant Agreement, acceptable to the Department. [CSL]
5. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
6. 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. 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]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospital/docs/hcs\\_access\\_form\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]
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**

July 29, 2021

## Need and Program Analysis

### Program Description

<b>Proposed Operator Proposed Co-Operator</b>	New York City Health and Hospital Corporation Gotham Health FQHC, Inc.
<b>To Be Known As</b>	Roosevelt Community Health Center of Excellence
<b>Site Address</b>	37-50 72 <sup>nd</sup> Street Jackson Heights, New York 11372 (Queens County)
<b>Services</b>	Medical Services – Primary Care Dental O/P Medical Services - Other Medical Specialties Neurology Pulmonology Cardiology Vascular Diagnostic Radiology Mental Health
<b>Hours of Operation</b>	Monday-Thursday 8:30 AM to 7 PM Friday 8:30 AM to 5 PM Saturday 9 AM to 5 PM
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	163.00 FTEs / 163.00 FTEs
<b>Medical Director(s)</b>	David John, M.D.
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Will be provided by Elmhurst Hospital Center 0.5 miles / 3 minutes away

### Analysis

The primary service area includes the neighborhoods of Jackson Heights and Astoria/Long Island City within Queens County. The population of Queens County was 2,230,722 in 2010 and is estimated to grow to 2,508,764 by 2025; an increase of 12.5%.

The Health Resources & Services Administration (HRSA) has designated West Queens a Health Professional Shortage Area for Primary Care and Mental Health Services.

NYC H + H/Gotham Health received a COVID-19 emergency approval from the Department in May 2020 to construct and certify this site as an extension clinic of East NY Diagnostic and Treatment Center and the site became operational in March of this year. NYC H+H/Gotham Health identified an immediate need to provide outpatient care to address the short, medium, and long-term health impacts on the residents of Queens who have been disproportionately affected by the COVID-19 virus. The site allows the applicant to better serve low-income, uninsured, and underinsured communities of color and to reduce hospitalizations related to the after-effects of COVID-19 that could be better controlled with increased access to ambulatory care. The facility opened in March 2021. This CON seeks approval to establish this site as a D&TC with its own operating certificate number. The D&TC will be federally certified as an FQHC.

The applicant projects 78,300 visits in Year One and 83,000 in Year Three. The D&TC is projecting Medicaid utilization of 57%.

The applicant is committed to serving all persons in need without regard to the ability to pay or source of payment.

## Character and Competence

New York City Health and Hospital Corporation d/b/a New York City Health + Hospitals was created by the New York State Legislature in the New York City Health and Hospitals Corporation Act of 1969 and is not subject to establishment approval under §2801-a of the Public Health Law. However, Gotham Health FQHC, Inc., a not-for-profit corporation, is subject to approval for establishment by PHHPC, including the requirement for a character and competence review of its board.

Gotham Health currently co-operates six D&TCs with numerous extension clinics:

*East New York D&TC*

*Cumberland D&TC*

*Morrisania D&TC*

*Sydenham D&TC*

*Seugndo Ruiz Belvis D&TC*

*Gouverneur Health D&TC*

The board of Gotham Health FQHC, Inc. is comprised of the following individuals:

<b>Name</b>	<b>Title</b>
Dolores McCray	Chair
Angelo Moutair	Vice Chair
Elissa Macklin	Secretary
Alyse Portera	Treasurer
Vivian Bright	Member
Fernando Brinn	Member
Antoinette Brown	Member
Paul Covington	Member
Lori Ferguson	Member
Henrietta Ho-Asjoe	Member
Jacqueline Narine	Member
Herman Smith	Member
Edolphus Towns	Member
Denisha Williams Johnson	Member
Donald Young	Member

**Delores McCray, PhD**, is the Vice President of the Amalgamated Bank in New York. She oversees the retail community bank and her responsibilities include branch growth, profitability, and community outreach. She also trains and develops the branch staff, builds account relationships, and new business development. She was the previous President and CEO of McCray Company, a financial service company.

**Angelo Moutair** is the Vice President/Branch Manager of JP Morgan Chase. He is responsible for identifying and addressing the needs of new hires and current employees; directing strategies for the growth of the bank's overall depository balance; developing innovative ways to encourage, inspire, motivate, and support team members, and; build a healthy environment which promotes employee development and growth. He was previously employed as the Assistant Vice President and Store Manager 3 of Wells Fargo Bank.

**Elissa Macklin** has been retired for approximately 11 years. She was previously employed as the Director of Operations in Ambulatory Care Services at Woodhull Hospital Center and was responsible for product and program development, technical applications, labor relations, and organizational infrastructure; development of policies and procedures to ensure quality, efficiency, productivity, and compliance; and experience in governance of community health centers.

**Alyse Portera has been** is retired for over three years. She was previously the Operations Director of the National Havurah Coordinating Committee. Her responsibilities included working with the chair of the Board of Directors and Program Director to support the mission of NHC. She was previously the Regional Director of Science Operations/Director of Special Projects at Howard Hughes Medical Institute, Chevy

Chase, MD and provided strategic leadership to eight teams throughout the United States which deliver financial, human resources, procurement, and lab management services to 175 research labs with \$150M budget and 900 employees.

**Vivian Bright** has been retired for six years. She was previously employed as the Business Administrator and Director of Community and Family Center of the Berean Baptist Church for over 25 years. She was the outreach coordinator, providing strong leadership and team building.

**Fernando Brinn** is the current President of The Brinn Group, a marketing, public relations, and real estate company that he founded. He also founded F. Brinn and Associates, a company that provides services for individuals seeking training and job placement, including a subsidiary company that provides services to individuals with disabilities.

**Antoinette Brown** is employed by the NYC Department of Education, currently as the Director of the Administrative Payroll Department. She is responsible for the planning and supervision of day to day operations, oversight and management of payroll functions, policies, and systems. She oversees the payroll of managers original jurisdictions, and 17 unions encompassing 49 bargaining units. She conducts training and authors manuals tailored to specific audiences. She arranges hiring, firing, leaves, transfers, and retirement of staff.

**Paul Covington** has been retired for over nine years. He was previously employed at Paul L. Covington Enterprises, a Tax and Accounting Consultant Firm. He provided tax and financial counseling to individuals, corporate profit and non-profit clients.

**Lori Ferguson** is the former Director of Health Services and Systems of Lighthouse Guild International. Her responsibilities included integration of efficient service provisions all related services and programs to ensure seamless patient care. She prepared, presented, and executed strategic plans; evaluated opportunities based on market trends and industry shifts; developed dashboard and analyze financial and operational data to determine root cause and manage trends; developed systematic quality review and evaluate effectiveness of the QAPI activities. Prior to Lighthouse Guild, she was employed as the Senior Director of Urban Health Plan and was responsible for directing daily operations of two Article 28 FQHC centers, managing 12 FQHC School Based Health programs and was responsible for the annual collective budget of \$6.6M.

**Henrietta Ho-Asjoe** is a Consultant and provides expertise in best practice in non-profit management and board development. She also provides expertise and knowledge in addressing public health, social disparities, and assists in culturally and linguistically appropriate program design development, implementation, and evaluation. She was previously employed as the Interim Executive Director of the Coalition for Asian American Children and Families. Her responsibilities included providing administrative and financial oversight of the non-profit with a budget of \$1.8M and ten employees. She was the Executive Director of the General Human Outreach in the Community for three years. She was responsible for providing strategic and administrative oversight to ensure the fiscal integrity of the multi-location non-profit with a budget of \$6M and more than 160 employees.

**Jacqueline Narine** has been retired for over ten years. Prior to retirement, Jacqueline was the Liaison of NYC H+H/Cumberland Community Advisory Board. She worked with the auxiliary board and the reach out and read Program of Great New York. After retirement, she served as Chairperson of the NYC H+H/Cumberland Community Advisory Board and as a member of the Auxiliary Board. She was successful in gaining capital funding from elected official New York City Council Majority Leader.

**Herman Smith** has been retired for three years. He was previously the Vice President of Human Resources /Chief Human Resources Executive at the Wildlife Conservation Society and his responsibility included developing and managing all policies and procedures effecting workforce economics, benefits, and employee relations; served as advisor to senior management for establishment of strategic planning goals; and managing three workforces (two domestic and one international) encompassing the United States and 65 countries across all continents. He oversaw organizational performance measures and Human Capital strategic planning initiatives and oversaw the central management with a \$230M personnel services budget connected to 64 countries globally.

**Edolphus Towns** has been retired for approximately seven years. Prior to retirement, he was a Congressman in the United States House of Representatives. He served on the Energy and Commerce Committee, and three sub committees: Health; Communications, Technology, and the Internet; and Commerce, Manufacturing, and Trade. He was also a Ranking Member of the Subcommittee on Government Organization, Efficiency and Financial Management on the Committee on Oversight and Government Reform-the committee he chaired during the 111<sup>th</sup> Congress. He is also an Ordained Minister and Social Worker.

**Denisha Williams Johnson** is Care Manager at Montefiore. Her responsibilities include working with interdisciplinary team to schedule, organize, and participate in case conferences with medical and mental health providers, residential hospital discharge planners and substance abuse providers in the development and ongoing coordination of client's care plans. She was previously employed as a Substance Abuse Counselor at Narco Freedom BO-MMTP Program, a Senior Supportive Case Manager at Federation of Organizations, a Case Manager at the Black Veterans of Social Justice, a CRT Social Worker at Fed Cap WeCare, and the Clinical Coordinator of the Bowery Residence Committee, Inc.

**Donald Young** is an Instructor at the International Center in New York for approximately 22 years. He teaches intermediate and advanced English classes for foreign born English language students. He is also employed as a Tutor/Instructor at LaGuardia Community College, ESL Laboratory for approximately 23 years. He teaches English language skills to immigrant college students using grammar and other texts, audiovisual aides, and original materials in seminar and classroom settings. He has received the Barney Rainbow award for outstanding achievement and contribution to the Department of City Planning.

**David John, MD** is the proposed Medical Director. He is the current Chief Medical Officer of New York City Health + Hospitals Gotham and Gotham Health Center for over three (3) years. He is a clinical consultant for Cyril Ross Nursery for HIV/AIDS Children, based in Trinidad, for over 25 years. He received his medical degree from Weill Cornell Medical College. He completed his residency in family Medicine at Catholic Medical Center. He is board certified in Family Practice. He holds the New York State HIV Specialist Designation.

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

- The Department issued a Stipulation and Order (S&O) dated June 18, 2021 and fined Bellevue Hospital Center \$10,000.00 based on finding from a complaint survey completed on September 25, 2020. Deficient practice was cited in patient rights resulting in a patient death.
- The Department issued a S&O dated June 21, 2021 and fined Woodhull Medical & Mental Health Center \$2,000.00 based on findings from a complaint survey completed on December 3, 2020. Deficient practice was cited in patient rights and hospital responsibilities resulting in three patients eloping from the facility.
- The Department issued a S&O dated June 21, 2021 and fined Woodhull Medical & Mental Health Center \$20,000.00 based in findings from a complaint survey completed in August 24, 2020. Deficient practice was cited due to the facility's failure to ensure that adverse events regarding anesthesia administration to Obstetrics and Gynecology(OB/GYN) patients were reported, investigated, analyzed and corrective actions implemented by the facility's (Quality Assessment Performance Improvement (QAPI) program, which resulted in patient harm and death.

- The Department issued a S&O dated January 27, 2021 and fined Elmhurst Hospital Center \$10,000.00 based on findings from a complaint survey that was completed on February 18, 2020. Deficient practice was cited regarding patient rights-free from abuse and harassment. Specifically, after allegations of sexual assault, the facility failed to complete an investigation to identify issues and areas to improve patient safety.
- The Department issued a S&O dated December 10, 2020 and fined Kings County Hospital Center \$4,000 based on findings from a survey completed on January 24, 2020. Deficient practice was cited in the area of patient elopement. Specifically, the facility failed to identify and assess all patients at risk of elopement, analyze facility data of those at risk of elopement, and develop or implement corrective action to ensure patient safety
- The Department issued a S&O dated November 23, 2020 and fined Lincoln Medical & Mental Health Center \$10,000.00 based on findings from a complaint survey completed on January 15, 2020. Deficient practice was cited in the areas of patient rights and quality assurance. Specifically, the facility failed to prevent unauthorized access of people into patient care areas, which resulted in a stranger being in a patient's room and a patient being sexual assaulted.
- The Department issued a S&O dated July 26, 2018 and fined Elmhurst Hospital Center \$2,000.00 based on findings from a complaint survey completed on January 16, 2018. Deficient practice was cited regarding patient rights. Specifically, the facility failed to monitor patients who had altered mental status with known elopement risk and self-injurious behavior.
- The Department issued a S&O dated August 7, 2017 and fined Jacobi Medical Center \$2,000.00 based on findings from an allegation survey completed on November 9, 2016. Deficient practice was cited regarding patient rights. Specifically, the hospital was found to be using metal handcuffs to restrain a patient who was transported from the Comprehensive Psychiatric Emergency Program (CPEP) unit to the Medical Emergency Department.
- The Department issued a Stipulation and Order S&O dated August 7, 2017 and fined Kings County Hospital Center \$2,000.00 for findings on an allegation survey completed on June 23, 2016. Deficient practice was cited regarding patient rights. Specifically, it was identified that hospital security guards used metal handcuffs to restrain a patient who eloped to a wheelchair.
- The Department issued a S&O dated April 17, 2017 and fined Kings County Hospital Center \$2,000.00 based on findings from an allegation survey completed August 29, 2016. Deficient practice was cited regarding patient rights-sexual assault/abuse. Specifically, the facility failed to develop and implement an adequate plan, including training, that would protect patients from sexual abuse.
- The Department issued a S&O dated February 24, 2014 and fined Kings County Hospital Center \$14,000.00 based on findings from a complaint survey completed on April 24, 2013. Deficient practice was cited for quality assurance and emergency services. Specifically, the facility failed to have a mechanism to ensure communication of positive radiology results to patients, resulting in a patient that had a positive chest x- ray that did not have the results communicated. This resulted in metastatic process.

## **Conclusion**

The individual background review indicates the proposed board members have met the standard for approval as set forth in Public Health Law §2801-a(3). Approval of this project will improve access to a variety of medical services for the neighborhoods of Jackson Heights and Astoria/Long Island City, as well as, the surrounding communities in Queens County.

## Financial Analysis

### Total Project Cost

Total project cost for renovations and equipment is estimated at \$31,244,030; broken down as follows:

Renovations and Demolition	\$18,693,141
Design Contingency	1,869,314
Construction Contingency	1,869,314
Architect/Engineering Fees	1,259,615
Construction Manager Fees	3,265,590
Other Fees	1,075,405
Moveable Equipment	3,070,438
CON Application Fee	1,250
CON Additional Processing Fee	<u>139,963</u>
Total Project Cost	\$31,244,030

NYC H+H/Gotham Health received emergency approval on May 19, 2020 to proceed with construction of this project due to the COVID-19 emergency.

NYC H+H/Gotham Health will fund the total project cost through \$4,996,183 in accumulated funds and \$26,247,847 in New York City budget appropriations.

### Lease Rental Agreement

The applicant has submitted an executed lease agreement; the terms are summarized below:

Date:	August 1, 2019
Premises:	19,289 sq. ft. in a building commonly known as, and located at, 37-46 72nd Street, Jackson Heights (Queens County)
Landlord:	Roosevelt Parc, LLC
Tenant:	New York City Health and Hospitals Corporation
Term:	15-year period, subject to tenant's right to exercise the extension option, which is one additional five-year period.
Rent:	\$1,033,056.00 (\$86,088.00/month) Year One; 3% increases each year thereafter.
Provisions:	\$71,740.00 per annum for common area maintenance, utilities, excess taxes, and insurance.

The applicant indicated that Roosevelt PARC, LLC and NYC H + H are not related in any way, and the lease will be an arm's-length agreement.

### Operating Budget

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

	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
Commercial MC	\$123.27	\$1,121,248	\$127.95	\$1,233,655
Medicare FFS	\$121.70	342,342	\$121.70	362,909
Medicare MC	\$182.97	1,085,184	\$182.97	1,150,319
Medicaid FFS	\$275.47	1,076,812	\$275.47	1,141,547
Medicaid MC	\$262.61	10,769,413	\$262.61	11,415,699
Private Pay *	\$14.53	224,720	\$14.53	238,204
Other **		<u>23,074,795</u>		<u>30,813,243</u>
Total Revenues		\$14,619,719		\$15,542,333

	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Expenses</u>				
Operating	\$276.54	\$21,652,886	\$262.01	\$21,747,067
Capital	<u>\$35.09</u>	<u>2,747,780</u>	<u>\$33.86</u>	<u>2,810,693</u>
Total Expenses	\$311.63	\$24,400,666	\$295.88	\$24,557,760
Excess Revenues over Expenses		<u>(\$1,325,871)</u>		<u>\$6,255,483</u>
Cost Per Visit		\$311.63		\$295.88
Utilization (Visits)		78,300		83,000

\* Private pay is for services provided to people who pay their fees on their own. This Center uses it for many reasons such as self-insured or sliding scale payments for individuals who can pay what they can afford.

\*\* Other Revenue is Medicaid Managed Care Panel-Based Revenue and HRSA Grant Revenue of \$400,000 per year. As an underserved community, both Medicaid MC and Medicare MC participate in this incentive revenue program, defined as an increased rate to provide certain populations, who otherwise may not be able to pay for care, with health care. The total with HRSA and Medicaid and Medicare Panel Program is combined above.

The budget is based on the following:

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

<u>Payor</u>	<u>Utilization</u>
Commercial MC	11.6%
Medicare FFS	3.6%
Medicare MC	7.6%
Medicaid FFS	5.0%
Medicaid MC	52.4%
Private Pay	19.7%
Charity Care	0.1%
Total	100.0%

- The projected utilization and staffing for this project are based upon the historical experience of NYC H+H/Gotham Health in providing the outpatient services that will be offered at the proposed D&TC.
- The incremental operating expenses and revenues for this project are based on the utilization projections for the services that are part of this project, given the experience of NYC H+H/Gotham Health.
- The projected first-year loss is due to the high start-up costs relative to the number of projected outpatient visits and ramp up of physician participation in payer incentive programs.
- Incentive pool revenue is projected at approximately 54% of full participation in Year One.

### **Capability and Feasibility**

Total project costs of \$31,244,030 will be met with \$4,996,183 in accumulated funds and \$26,247,847 in New York City budget appropriations.

As shown on BFA Attachment A, NYC H+H/Gotham Health maintained a negative working capital position, a negative net deficit position and experienced an operating gain of \$69,235,000 as of June 30, 2020. BFA Attachment B shows NYC H+H/Gotham Health maintained a positive working capital position, total net negative deficit position and experienced an operating loss of \$131,144,000 according to the December 31, 2020 internal financial statement.

NYC H+H/Gotham Health serves an under-served population, many without insurance and/or homeless, and, therefore, receives various grants and federal funding to support this work. As provided in the budget projections, the HRSA Federal Grant is projected to be \$400,000 for Year One and Year Three, and the enhanced reimbursement from the Medicaid Managed Care panel is projected to be \$8,055,076 in Year One, increasing in Year Three.

### **Conclusion**

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.



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## **Attachments**

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BHFP Attachment	Map
BFA Attachment A	New York City Health and Hospitals Corporation - 2019 Certified Financial Statements
BFA Attachment B	New York City, Health and Hospitals Corporation, (Internal Financial Statement) July 1, 2020 to December 31,2020

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 29th day of July 2021, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new diagnostic and treatment center to be located at 37-50 72<sup>nd</sup> Street, Jackson Heights, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

202005 B

FACILITY/APPLICANT:

New York City Health & Hospital  
Corporation/Gotham Health FQHC, Inc  
d/b/a Roosevelt Community Health Center of  
Excellence

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 forty-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 photocopy of an executed Certificate of Amendment of the Certificate of Incorporation of Gotham Health FQHC, Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed amendment to the Amended and Restated Co-Applicant Agreement, acceptable to the Department. [CSL]
5. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
6. 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. 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]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospital/docs/hcs\\_access\\_form\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf).  
Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]
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]

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



**Project # 211054-B  
Ainsworth Health, LLC**

**Program:** Diagnostic and Treatment Center      **County:** Nassau  
**Purpose:** Establishment and Construction      **Acknowledged:** March 10, 2021

**Executive Summary**

**Description**

Ainsworth Health, LLC, an existing New York State limited liability company, requests approval to establish and construct a single-specialty Article 28 freestanding ambulatory surgery center (FASC) for the provision of pain management procedures. The Center will have three procedure rooms and be in a sub-leased space on the 3rd floor of the building at 1103 Stewart Avenue, Garden City (Nassau County). Because the proposed FASC space was built to Article 28 standards, there will be no renovations needed to implement this project. After PHHPC approval, the FASC will do business as Ainsworth Ambulatory Surgery Center.

Edward Rubin, M.D, who is Board-Certified in Pain Medicine and Anesthesiology, will serve as Medical Director and is a proposed member of the facility

The applicant will enter into a Transfer and Affiliation Agreement with Mount Sinai South Nassau, which is approximately 9.8 miles (eighteen minutes) from the proposed FASC site.

Ainsworth Health, LLC is member-managed, and the sole manager is Corey Hunter, M.D.

Proposed Ownership	
Ainsworth Health, LLC	
<b>Class A Members</b>	<b>%</b>
Corey Hunter, MD	25.0%
Amitabh Gulati, MD	7.5%
Edward Rubin, MD	7.0%
Timothy Canty, MD	7.5%
Madankumar Raj, MD	5.0%
Paul Manadan, MD	5.0%
Frank Ocasio, MD	5.0%
James Romanelli, MD	5.0%
Shariyar Hadi, DO	5.0%
Anthony Fernandes, MD	2.5%
Edward Yost, MD	2.5%
Stewart Avenue Management, LLC	10.0%
Ashraf Boutros, MD (23.33%)	
Anthony Fernandes, MD (10%)	
Arturo Mazzeo, Jr., MD (16.67%)	
Abraham Peller, MD (23.33%)	
David Kessler, DO (6.67%)	
Song Yu, MD (10%)	
Mohammed Safer, DO (10%)	
<b>Class B Member</b>	<b>%</b>
Edward Rubin, MD	13.0%
<b>Total</b>	<b>100.0%</b>

**OPCHSM Recommendation**

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

**Need Summary**

The applicant projects 7,643 procedures in Year One and 8,110 in Year Three, with Medicaid participation at 5.0% and Charity Care at 2.0% each year.

These projections are based on the current practices of participating surgeons. Of the procedures moving to the surgery center, 47% are performed in an office-based setting, 42% are performed at a hospital and 12% are performed at another ASC.

**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.

Budget	<u>Year One</u>	<u>Year Three</u>
Revenues	\$4,460,906	\$4,732,858
Expenses	<u>\$3,676,797</u>	<u>\$3,877,161</u>
Net Income	\$784,109	\$855,697

## 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 an executed building sublease agreement, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of a fully executed Certificate of Amendment of the Articles of Organization of Ainsworth Health, LLC, acceptable to the Department. [CSL]
3. Submission of an amended Second Amended and Restated Operating Agreement, acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended and executed Certificate of Amendment of the Articles of Organization of Stewart Avenue Management, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of a complete and amended Operating Agreement of Stewart Avenue Management, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended Lease Agreement between Landlord R Starz Garden City, LLC and Tenant Corey W. Hunter, M.D PLLC, transacting as Ainsworth Pain Institute, acceptable to the Department. [CSL]
7. Submission of a photocopy of a complete and executed Sublease Agreement between Tenant/Sublessor Corey W. Hunter, M.D PLLC, transacting as Ainsworth Pain Institute and sublessee/applicant Ainsworth Health, LLC, acceptable to the Department. [CSL]
8. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
9. 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]
10. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
  - a. Data displaying actual utilization including procedures;
  - b. Data displaying the breakdown of visits by payor source;
  - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - d. Data displaying the number of emergency transfers to a hospital;
  - e. Data displaying the percentage of charity care provided;
  - f. The number of nosocomial infections recorded during the year reported;
  - g. A list of all efforts made to secure charity cases; and
  - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]

#### Approval conditional upon:

1. This project must be completed by **one year from the date of this letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and an expiration of the approval. It is the responsibility of the applicant to request prior approval for any extension to the project approval expiration date. [PMU]

2. 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]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospitals/docs/hcs\\_access\\_forms\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]
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 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**

**July 29, 2021**

## Need Analysis

### Analysis

The service area is Nassau County. The population of Nassau County in 2010 was 1,339,532 with 594,998 individuals (44.4%) age 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. Ainsworth will be the first pain management single-specialty ASC in Nassau County.

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 <sup>1,2</sup>	6,437	5,844	0
Multi	ProHealth Day OP ASC <sup>1,2</sup>	1,861	2,172	0
Multi	South Shore Ambulatory Surgery Center	7,419	7,226	7,325
Gastroenterology	Star Surgical Suites (opened 10/20/20)	N/A	N/A	N/A
Multi	Syosset SurgiCenter (opened 1/15/19) <sup>2</sup>	N/A	N/A	0
<b>Total Visits</b>		<b>58,809</b>	<b>67,448</b>	<b>64,118</b>

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

<sup>2</sup> No data located for 2019.

The number of projected procedures is 7,643 in Year One and 8,110 in Year Three. These projections are based on the current practices of participating surgeons. Currently, of the procedures moving to the surgery center, 47% are performed in an office-based setting, 42% 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 MC	382	5.0%	406	5.0%
Medicare FFS	382	5.0%	406	5.0%
Medicare MC	3,134	41.0%	3,325	41.0%
Commercial FFS	1,911	25.0%	2,028	25.0%
Commercial MC	1,452	19.0%	1,541	19.0%
Private Pay	229	3.0%	242	3.0%
Charity Care	153	2.0%	162	2.0%
<b>Total</b>	<b>7,643</b>	<b>100%</b>	<b>8,110</b>	<b>100%</b>

The Center initially plans to obtain contracts with the following Medicaid Managed care plans: Fidelis, Affinity and Health First. The Center will work collaboratively with federally qualified health centers (FQHC) and other providers to provide service to the under-insured in their service area. The Center has developed a financial assistance policy with a sliding fee scale to be utilized when the Center is operational.



**Conclusion**

Approval of this project will provide increased access to pain management surgery services in an outpatient setting for the residents of Nassau County.

<b>Program Analysis</b>
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**Project Proposal**

<b>Proposed Operator</b>	Ainsworth Health, LLC
<b>Doing Business As</b>	Ainsworth Ambulatory Surgery Center
<b>Site Address</b>	1103 Stewart Avenue, Garden City, New York 11530 (Nassau County)
<b>Surgical Specialties</b>	Single Specialty: Pain Management
<b>Operating Rooms</b>	0
<b>Procedure Rooms</b>	3
<b>Hours of Operation</b>	Monday through Friday, 7 am to 5 pm Hours will expand based upon patient demand.
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	12.3 FTEs / 13.3 FTEs
<b>Medical Director(s)</b>	Edward Rubin, M.D.
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Is expected to be provided by: Mount Sinai South Nassau 9.8 Miles / 18 minutes
<b>On-call service</b>	Patients who require assistance during hours when the Center is not in operation will be provided with the number of an on-call service, which will be available 24 hours per day, seven (7) day per week, to immediately refer the patient to the Center's on-call physician.

**Character and Competence**

The ownership of Ainsworth Healthcare, LLC is:

<b>Class A</b>	<b>%</b>
Corey Hunter, M.D.	25%
Edward Rubin, M.D.	7%
Amitabh Gulati, M.D.	7.5%
Timothy Canty, M.D.	7.5%
Mandankumar Raj, M.D.	5%
Paul Manadan, M.D.	5%
Frank Ocasio, M.D.	5%
James Romanelli, M.D.	5%
Shariyar Hadi, D.O.	5%
Anthony Fernandes, M.D.	2.5%
Edward Yost, M.D.	2.5%
Stewart Avenue Management, LLC	10%
Abraham Peller, M.D. (23.33%)	
Ashraf Boutros, M.D. (23.33%)	
Mohammed Safur, M.D. (10.00%)	
David Kessler, D.O. (6.67%)	
Song Yu, M.D. (10.00%)	
Arturo Mezzeo, M.D. (16.67%)	
Anthony Fernandez, M.D. (10.00%)	
<b>Class B</b>	
Edward Rubin, M.D.	13%
<b>TOTAL</b>	<b>100%</b>

Ainsworth Health, LLC is member-managed and the sole manager is Corey Hunter, M.D.

Edward Rubin, M.D, who is Board-Certified in Pain Medicine and Anesthesiology, will serve as Medical Director. Dr. Rubin is both a Class A and Class B member of this facility. According to the applicant, this is due to Dr. Rubin being instrumental in the development of this project, and his Class B membership interests represent the value of this development work. Class B interests are awarded to an individual for their service to the operating entity such that the Class B owner receives a percentage of the profit of the Center without having to contribute capital. In this instance, Dr. Rubin contributed a substantial amount of his time to help develop the Center and will be compensated for his time through Class B membership interests.

**Dr. Edward Rubin** is the proposed Medical Director and Member. He is the Assistant Professor of Anesthesiology at Hofstra/North Shore Long Island Jewish Medical School. He is an Assistant Attending of Anesthesia at Mount Sinai South Nassau Hospital. He was the previous Director of Chronic Pain Medicine at NYU Winthrop University Hospital. He was the previous Assistant Professor of Anesthesiology at Weill Cornell College of Cornell University. He received his medical degree from St. George's University School of Medicine in Grenada. He completed his residency in Anesthesia at New York Presbyterian Hospital Cornell Medical Center. He completed his residency in Pain Medicine at New York Presbyterian, New York Presbyterian Columbia, Hospital for Special Surgery, and Memorial Sloan-Kettering. He completed his fellowship at the Quad Institute Fellowship Program. He is board-certified in Anesthesiology and Pain Medicine.

**Dr. Ashraf Boutros** is a retired Anesthesiologist as of March 2020. He was previously employed as an Attending Anesthesiologist at Winthrop University Hospital. He was previously employed as an Attending Anesthesiologist at State University of New York Downstate Medical Center, Kings County Hospital, and Long Island University Hospital for over seven years. He received his medical degree from the State University Medical Center of New York Downstate Medical Center at Brooklyn. He completed his residency in Internal Medicine at Long Island University Hospital. He completed his residency in Anesthesia at State University of New York Downstate Medical Center at Brooklyn and Catholic University of Leuven in Belgium. He is board-certified in Critical Care and Anesthesiology.

**Dr. Timothy Canty** is a practicing Anesthesiologist and Director at Manhattan Pain Fellowship. He trains physicians to become board-certified interventional pain practitioners. He is an Adjunct Clinical Assistant Professor at New York University School of Nursing. He is an Attending Anesthesiologist in Mount Sinai Health System Department of Anesthesiology. He is the Executive Director of Comprehensive Spine and Pain Center of New York. He was previously employed as an Attending Anesthesiologist at Northwell Health. He was a Staff Physician in the Department of Pain Medicine at Beth Israel Hospital.

**Dr. Anthony Fernandes** is an Anesthesiologist at Envision and Nassau Anesthesia Associates. Before this employment, he was in his Pain Medicine fellowship at New York Presbyterian Hospital Weill Cornell, Hospital of Special Surgery, and Memorial Sloan Kettering. He completed his residency in Anesthesiology at New York Presbyterian Columbia. He received his medical degree from Rutgers Robert Wood Johnson Medical School in New Jersey. He is board-certified in Anesthesiology.

**Dr. Amitabh Gulati** is a practicing Anesthesiologist who is the present Director of Chronic Pain at Memorial Sloan Kettering and Weill Cornell School of Medicine. He received his medical degree from Baylor College of Medicine in Texas. He completed his residency in Internal Medicine at Baylor College of Medicine and in Anesthesiology at Emory University School of Medicine. He completed a fellowship in Chronic Pain Management at Weill Cornell College of Medicine, Memorial Sloan Kettering, and Hospital for Special Surgery, and in Medical Acupuncture at Helms Medical Institute and UCLA Continuing Medical Education. He is board-certified in Anesthesiology and Pain Management.

**Dr. Shariyar Hadi** is a practicing Family Medicine Physician and Medical Director at Shariyar Hadi DO PC. He was previously an Attending Physician at Purnima Kothari PC. He was a previous Attending Physician at Best Medical Care. He received his medical degree from New York College of Osteopathic Medicine. He completed his residency in Family Medicine at Peninsula Hospital Center and his

Fellowship in Family Medicine at St. John's Episcopal Hospital. He is board-certified in Family Practice Medicine.

**Dr. Corey Hunter** is an Assistant Clinical Professor at the Department of Physical Medicine & Rehabilitation at Icahn School of Medicine of Mount Sinai Medical Center. He is the Executive Director of the Ainsworth Institute of Pain Management. He was previously a Pain Medicine Fellow at the Tri-Institute Pain Medicine Fellowship at Cornell University. He received his medical degree from Drexel University College of Medicine. He completed his Physician Medicine and Rehabilitation Residency at NYU Langone Medical Center and his Pain Medicine fellowship at Cornell Institute Tri-Institute Pain Medicine Fellowship.

**Dr. David Kessler** is an Attending Anesthesiologist for Nassau Anesthesia Associates, P.C.. He is an Attending Anesthesiologist at NYU/Winthrop Hospital. He completed his medical degree from the New York College of Osteopathic Medicine. He completed his residency in Anesthesiology at Nassau University Medical Center. He is board-certified in Anesthesiology and Pain Management.

**Dr. Paul Manadan** is a practicing Anesthesiologist and Owner of New Millennium Pain and Spine Medicine, PLLC. He is a Pain Management Consultant at Flushing Hospital. He was the previous Staff Anesthesiologist and Interventional Pain Specialist at Avanguard Medical Group. He was a Staff Anesthesiologist at Westside GI. He was the previous Director of Flushing Hospital Pain Center. He was a locums Anesthesiologist for Three Rivers Health in Michigan. He received his medical degree from Northeast Ohio Medical University. He completed his residency in Anesthesiology and fellowship in Pain Management at the University of Michigan Medical Center. He is board-certified in Interventional Pain Management and Anesthesiology.

**Dr. Arturo Mazzeo** is an Attending Anesthesiologist at Winthrop University Hospital. He was previously an Attending Anesthesiologist at Maimonides Medical Center. He received his medical degree at Ross University School of Medicine in the Commonwealth of Dominica. He completed his residency in Anesthesiology at Maimonides Medical Center. He is board-certified in Anesthesiology.

**Dr. Frank Ocasio** is an Owner and Director of North Shore Headache and Spine. He is an Attending Anesthesiologist at Northwell Health Huntington Hospital. He is an Assistant Professor of Anesthesiology and Pain Management at Zucker School of Medicine at Hofstra. He is a Committee Chair of Enhanced Recovery After Surgery at Hunting Hospitals. He is the Director of the Acute Pain Management Department of Huntington Hospital. He is the Committee Chair of the Pain Management Committee of Huntington Hospital. He was a previous Partner at North American Partners in Anesthesia, LLP. He received his medical degree at Weill Cornell College of Cornell University. He completed his residency in Anesthesiology at New York Presbyterian Hospital, Weill Cornell Medical Center, Hospital for Special Surgery, and Memorial Sloan Kettering Cancer Center. He completed his fellowship in Pain Medicine at Mount Sinai Medical Center. He is board-certified in Anesthesiology.

**Dr. Abraham Peller** is a Physician Anesthesiologist and Partner at Nassau Anesthesia Associates. He is an Attending Physician at Winthrop University Hospital Department of Anesthesiology. He was previously an Attending Physician at Nassau County Medical Center Department of Anesthesiology. He was previously an Attending Physician at the Hospital for Joint Diseases Orthopedic Institute Department of Anesthesiology. He is the Founder and President of Hardama Medical Services, Proprietary Consultative Medicine and Innovation. He received his medical degree from the State University of New York Downstate Medical Center. He completed his residency in Anesthesia at the State University of New York Downstate Medical Center.

**Dr. Madankumar Raj** is the Director of New York iSpine Specialist Medical P.C. He was the previous Director of The Spine Center Neurological Surgery P.C. He was the previous Medical Director of The Spine Center Good Shepherd Rehabilitation Network. He was the previous Division Chief of Physical Medicine and Rehabilitation of Bassett Health Care. He received his medical degree from the Madurai Medical College in India. He completed his residency in Pain Medicine at State University of New York Downstate Medical Center and in Physical Medicine and Rehabilitation at Albert Einstein College of Medicine of Yeshiva University. He is board-certified in Physical Medicine and Rehabilitation with a sub-certification in Pain Medicine.

**Dr. James Romanelli** is a practicing Plastic Surgeon employed at James N. Romanelli, MD, PC. He is the Chief of Staff at Hunting Hospital. He is the Assistant Clinical Professor of Surgery at Zucker School of Medicine at Hofstra Northwell. He completed his medical degree at the State University of New York Health Science Center at Brooklyn. He completed his residency in General Surgery at Staten Island University Hospital and in Urology at State University of New York Downstate Hospital. He completed his residency in Plastic and Reconstructive Surgery at Baylor College of Medicine/St. Luke's Episcopal Hospital. He is board-certified in Plastic Surgery.

**Dr. Mohammed Safur** is an Attending Anesthesiologist who has been in private practice at Nassau Anesthesia Associates P.C. He is the Clinical Coordinator of the Anesthesiologist for the Operating Room where he manages the daily workflow, working along with the operating room staff to improve the efficiency and provide safe care to patients. He received his medical degree from the University of New England College of Osteopathic Medicine. He completed his residency In Anesthesiology at St. Luke's-Roosevelt Hospital Center. He is board-certified in Anesthesiology.

**Dr. Edward Yost** is an Anesthesiologist and Managing & Practicing Partner at North Coast Anesthesia where he provides anesthesia to multiple outpatient and office-based facilities throughout New York and Connecticut. He was the previous Owner of Connecticut Wellness & Pain. He was employed as an Anesthesiologist at PPG Anesthesia. He was employed as a General Anesthesia Attending Physician at Brookhaven Anesthesia Associates, LLC. He received his medical degree from the State University of New York Stony Brook. He completed his residency in Anesthesiology at Stony Brook University Hospital Medical Center. He is board-certified in Anesthesiology and Pain Medicine.

**Dr. Song Yu** is the Chief of Anesthesiology at NYU Winthrop Hospital. He is currently a Clinical Assistant Professor in the Department of Anesthesiology at State University of New York Stony Brook. He was the previous Vice Chairman of Anesthesiology at NYU Winthrop University Hospital. He was an Executive Board member of Nassau Anesthesia Associates. He is a present Member of the Trauma Committee of NYU Winthrop Trauma Committee. He is a present Representative of the Hospital Wide Critical Care Committee of NYU Winthrop University Hospital. He completed his medical degree at Tufts University School of Medicine. He completed his residency in General Surgery at Baystate Medical Center and Anesthesiology at Hartford Hospital. He is board-certified in Anesthesiology.

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. James Romanelli disclosed that he is named in a malpractice suit involving a patient who underwent surgery by his employed physician in 2018. The patient claims complications from that physician. She was never seen or treated by Dr. Romanelli. The case is open however Dr. Romanelli expects to be dismissed.*

*Dr. Romanelli disclosed in September 2018 he was sued for wrongful termination. He terminated an employee in March 2017 for poor attendance. She claimed wrongful termination. Upon the advice of counsel, Dr. Romanelli agreed to an insurance settlement of \$170,000.*

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 Center will refer the patient to the large network of primary care providers available at Mount Sinai South Nassau, the backup hospital for the proposed Center. In addition, prior to leaving the Center, each patient will be provided information concerning the local availability of primary care services.

The Applicant commits to providing charity care for persons without the ability to pay, and to utilize a sliding scale fee for persons who are unable to pay the full charge for services or are uninsured. The proposed budget projects two (2%) percent of cases will be for persons requiring charity, reduced compensation, or uncompensated care. This will be in addition to the revenue from the Center that will be redirected to the State's bad debt and charity care pool. In addition, the operating budget also includes 5% Medicaid. The Center will develop, maintain, and update a sliding fee scale considerate of the means for serving uninsured and persons without the ability to pay the entire charge.

The Center will collaborate with local community-based organizations such as churches, synagogues, and social services agencies to make them aware of the services available at the proposed Center. Dr. Rubin, a proposed member of the Center, is a current member of the Board of the Nassau County Medical Society and past President of the New York Society of Interventional Pain Physicians. He will specifically reach out to his colleagues at these organizations to make them aware of the Center and its services. The Applicant's mission of the Center is to serve all persons in need regardless of age, color, race, creed, national origin, religion, sex, marital status, disability, payor source, or any other personal characteristic or qualification, including the ability to pay. To accomplish this mission, the Center will: concentrate on serving residents of the local communities near its location, to satisfy the unmet needs of these communities, which originally led the Center to locate there. The Center will make physicians and patients in its local communities aware, and encourage the use, of the services, and promote the accessibility of its services by operating at times that promote accessibility, 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 intends on using an Electronic Medical Record (EMR) program and to fully integrate and exchange information with an established Regional Health Information Organization (RHIO) with the capability for clinical referral and event notification. The Center does not expect to participate in an Accountable Care Organization or a Medical Home.

### **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 submitted an executed lease rental agreement for the site to be occupied, the terms of which are summarized below:

Date:	November 1, 2016
Premises:	Approximately 13,412 sq. ft. located at Suites 300 and 301, 1103 Stewart Avenue, Garden City, New York 11530
Lessor:	R Starz Garden City, LLC
Lessee:	Corey W. Hunter, M.D., PLLC (transacting as Ainsworth Pain Institute)
Term:	10 years and 6 months with an option to renew with two additional 5-year terms
Rental:	\$402,360 annually (\$30 per sq. ft.) with a 3% annual increase after the first year
Provisions:	The lessee shall be responsible for taxes, insurance, maintenance, and utilities.

**Sublease Agreement**

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

Date:	TBD
Premises:	Approximately 13,412 sq. ft. located at Suites 300 and 301, 1103 Stewart Avenue, Garden City, New York 11530 (of this space Suite 300 with 8,002 Sq. ft. is being used for this project, the remaining suite 301 with 5,410 sq. ft will be sub-sub leased at a later date)
Sublessor:	Corey W. Hunter, M.D., PLLC (transacting as Ainsworth Pain Institute)
Sublessee:	Ainsworth Health, LLC
Term:	Remaining portion of the initial 10 year and 6 months term with an option to renew with two additional 5-year terms
Rental:	\$402,360 annually (\$30 per sq. ft.) with a 3% annual increase after the first year
Provisions:	The sublessee shall be responsible for taxes, insurance, maintenance, and utilities.

The applicant has submitted letters from two real estate brokers attesting to the reasonableness of the per square foot rental.

**Operating Budget**

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

	<u>Year One</u>		<u>Year Three</u>	
<u>Revenues</u>	<u>Per Procedure</u>	<u>Total</u>	<u>Per Procedure</u>	<u>Total</u>
Medicaid Managed Care	\$339.45	\$129,669	\$338.85	\$137,574
Medicare Fee-For-Service	\$534.47	204,168	\$533.53	216,615
Medicare Managed Care	\$454.07	1,423,050	\$454.08	1,509,804
Commercial Fee-For-Service	\$854.71	1,633,343	\$854.50	1,732,917
Commercial Managed Care	\$774.77	1,124,965	\$774.77	1,193,546
Private Pay	<u>\$160.48</u>	<u>36,750</u>	<u>\$160.46</u>	<u>38,991</u>
Total Patient Revenues		\$4,551,945		\$4,829,447
Bad Debt Expense		<u>(91,039)</u>		<u>(96,589)</u>
Total Net Patient Revenues		\$4,460,906		\$4,732,858
 <u>Expenses</u>				
Operating	\$393.36	\$3,006,864	\$391.39	\$3,174,180
Capital	<u>\$87.64</u>	<u>669,933</u>	<u>\$86.68</u>	<u>702,981</u>
Total Expenses	\$481.00	\$3,676,797	\$478.07	\$3,877,161
 Net Income				
		\$784,109		\$855,697
Utilization (Procedures)		7,643		8,110

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

<u>Payor</u>	<u>Years One &amp; Three</u>
Medicaid Managed Care	5%
Medicare Fee-For-Service	5%
Medicare Managed Care	41%
Commercial Fee-For-Service	25%
Commercial Managed Care	19%
Private Pay	3%
Charity Care	<u>2%</u>
	100%

- Expense assumptions are based on the participating physician’s experience providing pain management services.
- Revenue assumptions are based on the experience of similar FASCs in New York State.
- Physicians letters have been submitted by the applicant to support the volume budgeted for the ambulatory surgery center. The Physicians expect to have an annual growth rate of 3%.
- A Charity Care policy will be in place to provide financial assistance to patients in need based on a sliding fee scale.

**Capability and Feasibility**

There are no project costs associated with this application.

Working capital requirements are estimated at \$646,194, which is equivalent to two months of third year expenses and will be met entirely with proposed member’s equity. BFA Attachment A is the Net Worth Statement of Ainsworth Health, LLC, which indicates the availability of sufficient funds to meet the working capital requirements. BFA Attachment B, the pro forma balance sheet for the applicant, indicates that the facility will begin operations with members’ equity of \$3,206,208.

The submitted budget indicates net income of \$784,109 and \$855,697 during the first and third years. Revenues are based on current reimbursement rates for pain management services.

**Conclusion**

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

**Supplemental Information**

**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 Net Worth Statements for Ainsworth Health, LLC
- BFA Attachment B Pro Forma Balance Sheet for Ainsworth Health, LLC
- BHFP Attachment Map

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 29th day of July 2021, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a pain management single-specialty Freestanding Ambulatory Surgery Center to be located at 1103 Stewart Avenue, 3<sup>rd</sup> Floor, Garden City, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

211054 B

Ainsworth Health, LLC



APPROVAL CONTINGENT UPON:

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

1. Submission of an executed building sublease agreement, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of a fully executed Certificate of Amendment of the Articles of Organization of Ainsworth Health, LLC, acceptable to the Department. [CSL]
3. Submission of an amended Second Amended and Restated Operating Agreement, acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended and executed Certificate of Amendment of the Articles of Organization of Stewart Avenue Management, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of a complete and amended Operating Agreement of Stewart Avenue Management, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended Lease Agreement between Landlord R Starz Garden City, LLC and Tenant Corey W. Hunter, M.D PLLC, transacting as Ainsworth Pain Institute, acceptable to the Department. [CSL]
7. Submission of a photocopy of a complete and executed Sublease Agreement between Tenant/Sublessor Corey W. Hunter, M.D PLLC, transacting as Ainsworth Pain Institute and sublessee/applicant Ainsworth Health, LLC, acceptable to the Department. [CSL]
8. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
9. 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]
10. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
  - a. Data displaying actual utilization including procedures;
  - b. Data displaying the breakdown of visits by payor source;
  - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - d. Data displaying the number of emergency transfers to a hospital;
  - e. Data displaying the percentage of charity care provided;
  - f. The number of nosocomial infections recorded during the year reported;
  - g. A list of all efforts made to secure charity cases; and
  - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **one year from the date of this letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and an expiration of the approval. It is the responsibility of the applicant to request prior approval for any extension to the project approval expiration date. [PMU]
2. 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]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospitals/docs/hcs\\_access\\_forms\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf).  
Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]
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 submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

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