STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

June 2, 2022

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

90 Church Street, Conference Rooms 4 A/B, NYC

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

I. INTRODUCTION OF OBSERVERS

Jeffrey Kraut, Chair

II. APPROVAL OF MINUTES

April 5, 2022 PHHPC Meeting Minutes

III. 2023 PHHPC MEETING DATES

2023 PHHPC Meeting Dates

IV. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

Mary T. Bassett, M.D., M.P.H., Commissioner of Health

B. Report of the Office of Public Health

Ursula Bauer, PhD, MPH, Deputy Commissioner, Office of Public Health

C. Report of the Office of Primary Care and Health Systems Management

John Morley, M.D., Deputy Commissioner, Office of Primary Care and Health Systems Management

D. Report of the Office of Health Insurance Programs

Brett Friedman, Outgoing Medicaid Director

PACE Program Overview

V. REGULATION

Report of the Committee on Codes, Regulations and Legislation

Thomas Holt,Chair of the Committee on Codes, Regulations and Legislation

For Information

21-06 Addition of Subpart 66-4 to Title 10 NYCRR
(COVID-19 Vaccinations of Nursing Home and Adult Care Facility Residents and Personnel)

20-22 Amendment of Sections 405.11 and 415.19 of Title 10 NYCRR
(Hospital and Nursing Home Personal Protective Equipment (PPE) Requirements)

For Emergency Adoption

21-06 Addition of Subpart 66-4 to Title 10 NYCRR
(COVID-19 Vaccinations of Nursing Home and Adult Care Facility Residents and Personnel)

20-22 Amendment of Sections 405.11 and 415.19 of Title 10 NYCRR
(Hospital and Nursing Home Personal Protective Equipment (PPE) Requirements)

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)

20-07 Amendment of Section 2.60 of Title 10 NYCRR & Repeal of Subpart 66-3 of Title 10 NYCRR
(Face Coverings for COVID-19 Prevention)

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)
*****TO BE DISTRIBUTED UNDER SEPARATE COVER*****

For Adoption

21-14 Addition of Section 2.61 to Title 10 NYCRR, Amendment of Sections 405.3, 415.19, 751.6, 763.13, 766.11, 794.3 & 1001.11 of Title 10 NYCRR & Sections 487.9, 488.9 and 490.9 of Title 18 NYCRR (Prevention of COVID-19 Transmission by Covered Entities)

VI. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Peter Robinson Chair of Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services - Construction

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	212174 C	Westchester Medical Center (Westchester County)	Contingent Approval

Residential Health Care Facilities - Construction

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	221065 C	Elizabeth Seton Children's Center (Westchester County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services - Construction

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	211094 C	New York-Presbyterian Hospital - New York Weill Cornell Center (New York County) Dr. Kalkut - Recusal Dr. Lim - Interest/Abstaining	Contingent Approval
2.	212212 C	NYU Langone Orthopedic Center (New York County) Dr. Kalkut - Recusal Dr. Lim - Interest/Abstaining	Contingent Approval
3.	221054 C	Canton-Potsdam Hospital (St. Lawrence County) Mr. Thomas - 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

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	212258 B	Rego Park Counseling, LLC d/b/a Rego Park Diagnostic and Treatment Center (Queens County)	Contingent Approval

Residential Health Care Facilities – Establish/Construct

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	202106 E	Montgomery Operating Co., LLC d/b/a Montgomery Nursing and Rehabilitation Center (Orange County)	Contingent Approval

2.	202269 E	Ross OPCO LLC d/b/a Ross Center for Nursing and Rehabilitation (Suffolk County)	Contingent Approval
3.	192026 E	Eastside Opco LLC d/b/a East Side Nursing & Rehab (Wyoming County)	Contingent Approval

Certificate of Amendment of the Certificate of Incorporation

Applicant	**E.P.R.C. Recommendation**
St. Barnabas Nursing Home, Inc.	Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Residential Health Care Facilities - Establish/Construct

	Number	**Applicant/Facility**	**E.P.R.C. Recommendation**
1.	211139 E	Village Acquisition l, LLC d/b/a Lower West Side Rehabilitation and Nursing Center (New York County) Mr. LaRue - Interest	Contingent Approval

Certificate of Dissolution

Applicant	**E.P.R.C. Recommendation**
Kateri Residence Mr. LaRue - Recusal	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 HAS

CON Applications

Dialysis Services – Establish/Construct

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	201222 E	True North III DC, LLC d/b/a Grand Boulevard Dialysis (Suffolk County) Mr. Kraut – Recusal Dr. Gutierrez – Opposed at EPRC Dr. Berliner – Opposed at EPRC	Contingent Approval
2.	211244 E	True North VI DC, LLC d/b/a Peconic Bay Dialysis (Suffolk County) Mr. Kraut – Recusal Dr. Gutierrez – Opposed at EPRC Dr. Berliner – Opposed at EPRC	Contingent Approval

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

VII. NEXT MEETING

July 14, 2022
July 28, 2022

VIII. ADJOURNMENT

State of New York
Public Health and Health Planning Council

Minutes
April 5, 2022

The meeting of the Public Health and Health Planning Council was held on Tuesday, April 5, 2022 at the Empire State Plaza, Concourse Level, Meeting Room 6, Albany, New York and Zoom. Vice Chair Jo Ivey Boufford, M.D. presided.

COUNCIL MEMBERS PRESENT

Dr. John Bennett - Zoom	Ms. Ellen Rautenberg - Zoom
Dr. Howard Berliner – Zoom	Mr. Peter Robinson – Albany
Dr. Jo Boufford - Zoom	Dr. John Rugge – Zoom
Dr. Angel Gutiérrez – Zoom	Ms. Nilda Soto - Zoom
Mr. Thomas Holt – Albany	Dr. Theodore Strange – Zoom
Mr. Jeffrey Kraut – Zoom	Mr. Hugh Thomas - Albany
Mr. Scott LaRue – Zoom	Dr. Anderson Torres - Zoom
Mr. Harvey Lawrence - Zoom	Dr. Kevin Watkins – Zoom
Dr. Sabina Lim – Zoom	Dr. Patsy Yang – Zoom
Ms. Ann Monroe – Zoom	Commissioner Bassett Ex-Officio - Albany
Dr. Mario Ortiz – Zoom	

DEPARTMENT OF HEALTH STAFF PRESENT

Ms. Udo Ammon - Albany
Mr. Brian Backenson - Zoom
Ms. Lynn Baniak - Zoom
Dr. Ursula Bauer - Albany
Ms. Val Deetz - Zoom
Mr. Mark Furnish – Albany
Ms. Shelly Glock – Albany
Mr. Brian Gallagher - Zoom
Mr. Michael Heeran – Albany
Mr. Adam Herbst – Zoom
Dr Eugene Heslin – Albany
Mr. Jonathan Karmel - Albany
Ms. Colleen Leonard- Albany
Dr. Emily Lutterloh - Zoom
Ms. Kathy Marks – Zoom
Dr. John Morley - Albany
Ms. Marthe Ngwashi - Albany
Mr. Jason Riegert - Albany
Mr. William Sacks -Albany
Ms. Stephanie Shulman
Mr. Michael Stelluti - Albany
Ms. Lisa Thomson - Albany
Ms. Jennifer Treacy - Albany
Mr. William Sacks - Albany

INTRODUCTION

Dr. Boufford called the meeting to order and welcomed Council members, Commissioner Bassett, meeting participants and observers.

APPROVAL OF THE MEETING MINUTES OF FEBRUARY 10, 2022, MARCH 2, 2022, AND MARCH 17, 2022 MEETINGS

Dr. Boufford asked for a motion to approve the February 10, 2022 Revised Minutes of the Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval. Dr. Gutiérrez seconded the motion. The minutes were unanimously adopted. Please refer to page 2 of the attached transcript.

Dr. Boufford asked for a motion to approve the March 2, 2022 Minutes of the Special Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval. Dr. Rugge seconded the motion. The minutes were unanimously adopted. Please refer to page 2 of the attached transcript.

Dr. Boufford asked for a motion to approve the March 17, 2022 Minutes of the Special Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval. Dr. Gutiérrez seconded the motion. The minutes were unanimously adopted. Please refer to page 2 of the attached transcript.

APPROVAL OF THE 2020 AND 2021 PHHPC ANNUAL REPORTS

Dr. Boufford asked for a motion to approve the 2020 PHHPC Annual Report. Dr. Berliner motioned for approval. Dr. Torres seconded the motion. The report was unanimously adopted. Please refer to page 3 of the attached transcript.

Dr. Boufford asked for a motion to approve the 2021 PHHPC Annual Report. Dr. Gutiérrez motioned for approval. Dr. Watkins seconded the motion. The report was unanimously adopted. Please refer to page 3 of the attached transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Dr. Boufford introduced Dr. Bassett to give the Report on the Activities of the Department.

Commissioner Bassett began her report by updating the Council on the Department's COVID-19 response. In February, we were beginning to see a decline in the numbers of new cases and hospitalizations, and this decline was very rapid, matching the rapidity with which the variant had surged in the state during, particularly the month of January. The percent who tested positive statewide went down to below 2 percent, which was about the level that we had seen back during the beginning of the Delta variant increase in the Summer of last year and the number of new cases identified per 100,000 reached about 9. This virus continues to show its persistence, its ability to mutate and its ability to increase again. We are now seeing across the state increases in the number of cases, as well as the number of hospitalizations. The increase in new cases are especially pronounced in certain regions and specifically in Central New York. We have also seen increases in the Southern Tier and in the North Country as of the last week of March in the Central New York 7 day average case rate per 100,000 was 38 or, to be specific, 37.7, which was nearly two and a half times higher than the state on average. The Department has to tailor the responses to local conditions. Dr. Bassett announced that on Friday, April 1st,

she recommended that Central New York residents wear masks in indoor public spaces regardless of vaccination status. The Department continues to emphasize the importance of being fully vaccinated and up to date with vaccination, which includes being boosted and getting tested if you feel ill. These recommendations follow on the CDC's recent updating of its community levels. The CDC released maps recommending in Onondaga, Oswego and Cayuga counties that masking be resumed on the basis of high levels of transmission. New York extended this to Madison and Cortland counties.

Dr. Bassett noted that New York have the tools to prevent another surge of this virus, and these are very familiar exhortations. Dr. Bassett stated that she hopes New Yorkers will become more fully vaccinated, wear masks in areas where there's an increased risk of transmission, get tested and stay home when they're sick. The week of March 28th the FDA authorized and the CDC recommended an additional booster dose of the vaccine for certain individuals. For the individuals who are 50 or older, who received their last booster at least 4 months ago, they now have available to them a second booster of them MNA vaccines for adults, meaning people over the age of 18 who received their last J&J, Johnson and Johnson dose at least 4 months ago, a second booster is also available. Additionally, anyone 12 and older, the group that is eligible for boosters in general who are moderately or severely immunocompromised also have the booster available to them. The Department has issued clinical guidance that are in alignment with the CDC's recommendation. The mass vaccination sites have begun on Saturday administering these doses. She expressed that we want all New Yorkers to know that this second booster is available to them if they're eligible.

Dr. Bassett advised that the Department continues to make the testing available and including maintaining our mass vaccination sites. The Department recently distributed hundred thousand at home test kits. The state has procured something over 90 million tests and has distributed literally millions of these test kits to date. The Department is also working on increasing utilization of therapeutics which are effective against COVID-19 in terms of preventing people going from being infected to being severely ill, as reflected in hospitalization rates. People who are infected should be aware that these therapeutics are available. We want to see more attention to the availability of treatment, especially for people who are at high risk of severe illness, and these medications are best and only effective if taken early in the clinical course. She further explained why it's so important that we get the word out both to the public and to clinical providers. The Department is working with providers to increase their awareness and facilitate early connection between New Yorkers who test positive and the prescribers who can prescribe these medications. These are all prescription only medications.

Dr. Bassett stated that it is National Public Health Week. This is a week in which we recognize the importance of our public health infrastructure and the personnel who uphold it. The dates of National Public Health Week are April 4th to 10th. We celebrate and highlight the work of public health and call attention to it's important to maintaining the health of our communities. Each day of the week has a theme. April 4, 2022 was the first day when the Department kicked off the week we highlighted racism as a public health issue. And of course, COVID has provided an example of how race ethnicity affects health. Since the beginning of the pandemic and our recorded data in the United States; African-Americans, Latinos, Indigenous New Yorkers have had higher rates of COVID. This follows on data that have been available to

us for decades, if not centuries, that show poorer health and shorter lives for people of color as compared to their white counterparts. It's important to always to stress when we talk about these data that this is not because of biology, but because of the injustices that have been ingrained in our structures and our society for centuries. The Department has seen the same pattern with COVID. The Department has been at the forefront of gathering data to identify this. Viruses do not discriminate, but the path of COVID-19 and many other illnesses have followed the fissures that relate to longstanding and systemic failures in our society. For this reason that Governor Hochul at the end of last year signed a package of legislation declaring racism a public health crisis. She established a hate crimes review process aimed to bolster data collection requirements that make it possible for us to track these racial disparities and thereby target our interventions. The point, of course, is to do something about these disparities and not simply to measure them. The Department began this week with a clear message that we can't uplift and prioritize public health without prioritizing health equity and social justice. Today's theme is our public health workforce. COVID-19 revealed also the importance of maintaining our public health infrastructure and particularly our public health workforce. It revealed the work that we all do to protect society from pandemics, natural disasters and other threats, and that we have to have a public health workforce that is prepared and staffed at all levels of government from international to local. While it still remains in the final stages of approval, we are very excited that the new budget for the upcoming fiscal year involved a substantial investment in the public health workforce. Commissioner Bassett noted that the Council and its committees are part of the public health workforce, as are the members of the Department who have worked so tirelessly.

Dr. Bassett announced that April is Donate Life Month in New York. I want to take a moment to talk about the state organ donor registry. Since 2017, the Department has been focused on improving enrollment in the registry. Between October 2017 and today, we've increased the number of New Yorkers enrolled from 4.5 million to more than 7 million. Most of these names come from the DMV when we sign our forms on our driver's licenses. Some of the names come from the New York State of Health, rather our insurance portal. It's always important to remember how important it is to become a donor. A person who becomes a donor can save up to 8 lives through organ donation. Restore sight to cornea donation and improve up to 75 more lives through tissue donation. We're making progress, but we have a substantial shortage in the United States as a whole. There are over 100,000 adults and children who are on waiting lists for organ donation and that includes 8,300 New Yorkers, so we've been working to get the word out. I wanted to get the word out to you today.

Dr. Bassett concluded her report and stated she was pleased to have other members of the Department here to speak with you today and want to acknowledge them on the day in which we acknowledge the importance of the public health workforce, as well as thank all of you again for your time and commitment.

Dr. Bassett concluded her report. To review the complete report and members questions and comments please see pages 3 through 7 of the transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Report on the Activities of the Office of Public Health

Dr. Boufford introduced Dr. Bauer to give the Report on the Activities of the Office of Public Health.

Dr. Bauer stated that the Department remains focused on COVID and certainly glad to have the tools that the Council provides at our disposal to take the protective action that we need. COVID is becoming more preventable and treatable, but we need to remain vigilant and we need to strengthen our prevention measures and we need to expand access to treatment. We've known since early in the pandemic that some conditions put people at increased risk for severe COVID outcomes. These include obesity, diabetes and hypertension. Certainly redoubling the efforts to improve overall population health is something to focus on to better withstand future threats. Obesity is associated with impaired immune function, decreased lung capacity and increased risk of severe illness from COVID. It potentially triples the risk of hospitalization due to COVID infection and as body mass increases, the risk of death from COVID also increases. The Department's behavioral risk factor surveillance team just released a report on overweight and obesity in New York which is available on the Department's website. The key findings are that more than a quarter of adults in the state have obesity, and another 37 percent have overweight. These two conditions affect over 8 million New Yorkers. The prevalence of obesity in New York is higher among adults who are Black, non-Hispanic and who are Hispanic, and those currently living with disability and those living in a region outside of New York City. Obesity is less common in adults and the youngest age group 18 to 24 and, of course, adults with a college degree.

Dr. Bauer noted that on the obesity side, we have a number of efforts in the Office of Public Health. The Community Pharmacy Enhanced Services Network, which is a clinically integrated statewide network of pharmacies structured to advance community based pharmacy practice. Last month, a 7 member pharmacies were accredited by the Association of Diabetes Care and Education Specialists to provide diabetes self-management, education and to support people with diabetes. These newly accredited pharmacies join two others in providing these services and bring these services to more and more communities and people with diabetes to better manage their condition.

Dr. Bauer reiterated Dr. Bassett's announcement that we are celebrating National Public Health Week, and we recognize the public health workforce so essential to our future. Dr. Bauer shared some of our initial progress in rebuilding, re staffing and strengthening the Office of Public Health. While it's often the case that the Department, when you fill a position in one part, you create a vacancy in another part. Since October there have been new people hired to fill some positions that includes your OPH Director, Deputy Director and the Deputy Director for Science. We filled well over 100 positions in the Office of Public Health and have many more positions in various stages of recruitment. In addition, the Department has received over 800 applications for the state Public Health Corps fellowship program and across local health departments and the Department itself, we have onboarded 65 fellows in 15 different local health departments. OPH continues to make progress executing contracts with local health departments to support fellow placements and expect the numbers to increase rapidly.

Dr. Bauer concluded her report. To view the complete report and Members comments and questions, please see pages 9 through 12 of the transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Report on the Activities of the Office of Primary Care and Health Systems Management

Dr. Morley stated that it is a great honor to return to the Department of Health and honored to be working with Commissioner Bassett and an incredible team of professionals who, have endured profound impact on their lives from COVID over the last two and a half years. They as well as their family members. He noted that he is looking forward to continuing to work with you on our common goals. New York has never had a greater need for the leadership of the Council and the members of the Council as we come through that at this point in time from COVID. OPCHSM is working very hard to support our hospitals, adult homes, our nursing homes, our entire health care system to continue what it has been, which is the best health care system in the world. The Department's priorities have already been identified by Commissioner Bassett and OPCHSM will be working very hard to support those goals. OPCHSM is doing the utmost to improve staffing in hospitals and health care to encourage the next generation to enter the health care field for all the reasons that everyone on this Council is already very well aware of. I want to thank you all for your support of DOH and for your support of me and my work.

Dr. Morley concluded his report. To see the complete report please see pages 8 and 9 of the transcript.

PUBLIC HEALTH SERVICES AND HEALTH POLICY

Report on the Activities of the Public Health Committee and Health Planning Committee

Dr. Boufford briefed the Council on the recent joint meeting of the Public Health Committee and the Health Planning Committee, which was held on March 1, 2022.
Dr. Boufford acknowledged Ms. Monroe's ongoing support. Dr. Torres joined us really trying to look at how the Council, the Public Health Committee and the Primary Care Planning Committee can begin to work together to advance our shared agenda. She thanked Ms. Santilli and her Deputy, Mr. Roberts, in the Office of Public Health Practice, who are hopefully coming out from under at least partially the enormous burden that officers carried during the COVID epidemic. Dr. Boufford noted that they welcome their willingness to get engaged with us again and to help support the activities of both of our Council committees. She also thanked Dr. Bauer for her support in leading the Office of Public Health.

Dr. Boufford touched on the agenda topics and noted that she appreciated the broader engagement of the Council in the meeting. The meeting began with our update on the Prevention Agenda and was delighted that we heard an update on 2020 because we missed that since the committee meeting was canceled as the COVID epidemic hit. The 2021 reports from local health departments with at the time was over 80 percent of the departments were reporting in the requested metrics on their progress on the Prevention Agenda. The committee's really appreciated that update. The local health department's are continuing to engage in the Prevention

Agenda The committee's also were able to hear from a panel of public health directors, commissioners from Onondaga, Otsego and Orange County on their work on COVID, but especially on work on the broader public health agenda during COVID. They had lots of questions.

Dr. Boufford also expressed with sadness the retirement of Priti Irani, who has been fundamental in providing the data that allows this tracking of progress on the prevention that does take place. The Council is looking forward to knowing who her successor is, even though she can't really be replaced. We acknowledged her in the committee meeting and wanted to acknowledge her formally in this Council meeting.

Dr. Boufford explained the rest of the meeting was really jointly developed with the Office of Public Health Practice and the Commissioner's Office to put a marker down for what we hope will be an agenda for the Public Health Committee and the joint meetings of Public Health and Planning as appropriate on issues with the Council. She stated she hopes the Council will be able to take forward and hear more about the following. We heard on an update on the implementation, really continuing support and implementation for the Executive Order issued in 2018 on health across all policies and healthy aging in the state and that's an area we want to revisit. The agencies that have been involved in the health across our policies structure and meetings have continued to be active. They have been part of our convenings on the ad hoc committee for the Prevention Agenda. She noted that she hopes to re-engage them directly in our work, but especially take advantage of what can be mobilized in the broader determinants of health from other agencies and also a lot of activity in the aging area and several plans for aging. For healthy aging, the Governor has issued a notion in her state of the state and also may follow up with an Executive Order around healthy aging to complement the existing Executive Order that New York State would be an age friendly state. Mr. Herbst, who is taking over coordinating that at with the legislative recent legislative establishment of the Commission on Healthy Aging in New York and obviously in long term care, which has been a long term interest time interest of this council. We hope to invite him to join us at our next meeting and give us a more detailed update in this important area.

Dr. Boufford highlighted the second area which was a briefing on the public health workforce, which largely focused on the Public Health Service Corps, which has been a fellowship program which has been very popular, was mentioned by Dr. Bauer, it is also important as in terms of budgeting. It may be the issue of what happens when that funding goes away needs to be addressed. We are very interested in tackling broader public health workforce needs and hoping that there will be a complement to the recent order of the Governor's decision in her budget to cap up the salaries, the well deserve top up of salaries for the health care delivery system employees, but also how that may continue and how similar supports can be provided for the public health workforce. The committee talked about maternal mortality and received an update on the progress of the Governor's commission on Maternal Mortality, and this is an area that the Public Health Committee in its last meeting in early 2020, highlighted a desire to track. This Council really developed the first statement on maternal mortality after lots of meetings with the staff of the department, which led to the creation of a gubernatorial commission and Commissioner Zucker's activities with them and an ongoing report. We still want to keep progress in that area very much on our agenda going forward. We also highlighted

areas that have been activated in conjunction with the prevention agenda. Number one being the area of community benefit that there has been work on that by looking at it by the council, by the Public Health Committee, and we hope to revitalize our focus there, especially on the category of community health improvement, which is very aligned with potential for investment in communities and improving conditions in communities as part of the prevention agenda and aligning those activities. We also heard an update from Mr. Friedman on the waiver and as he noted, there are elements of the waiver, such as the heroes and the social determinants networks that are potentially very aligned with our interests in public health and in health planning, and we hope to connect even more on those items going forward as part of the prevention agenda work. Those are kind of our areas that the committee's would like to take on in 2022.

Dr. Rugge thanked Dr. Boufford for her leadership and the advocacy and the stamina that she has shown in promoting public health, especially through the Prevention Agenda, but also the focus change that the breath of vision in addressing so many challenges that we're facing in the delivery in the financing of health care. He mentioned even more daunting, of course, is the challenge and the work ahead for Dr. Bassett, Dr. Bauer and Dr. Morley in rebuilding the Health Department. Dr. Morley John alluded to that and so did Dr. Bauer in order to guide and shape all the changes underway again in the delivery and the financing of care. Dr. Rugge pointed out that many years ago, when he was a young physician, he found himself admitting patients to the hospital following their cataract surgery to stay immobile for a week with their head in a block. Plenty of time, then for us to diagnose and treat the blood clots that resulted. Now, cataract extraction takes 15 minutes in the office setting. Who knew? In so many ways, the practice of medicine in the performance of health care is changing. Once a matter of office visits and hospital rounds. Health care is now everywhere, even on the screen over the internet and by vision. We have to adjust. We have to learn. To keep up with to help lead all those changes and all the payment reforms got moving from paying for episodes of care to the value of care. We need a vigorous and effective Department of Health. He noted that this morning, he can only observe that this Council is available not only for meeting our regulatory responsibilities, but also as a health planning resource. Albeit in a role that I think has been undervalued, overlooked in recent years. 8 years ago, we spent a year looking ambulatory care generally and how to streamline the regulation and try to make advances. In recent years, our activities being confined to a day or two. But even those days, he noted have been helpful in terms of focusing how we can better address the problems of COVID. As everybody can see, looking at the screen, this Council brings lots of diversity. People of different backgrounds, different kinds of training, different professions, certainly different perspectives and different geography, and yet what we have in common is a commitment to public service and also a real deep appreciation for how important the Department of Health is to be strong, vigorous and a leader. Dr. Rugge stated that the Council is here to help and hope that we will be called upon.

Dr.'s Boufford and Rugge concluded their reports. To view the full report and members questions and comments please see pages 9 through 11 of the transcript.

REGULATION

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

Report of the Committee on Codes, Regulation and Legislation

For Emergency Adoption

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)

20-07 Amendment of Section 2.60 of Title 10 NYCRR & Repeal of Subpart 66-3 of Title 10 NYCRR (Face Coverings for COVID-19 Prevention)

21-15 Addition of Sections 2.9 and 2.62 to Title 10 NYCRR (COVID-19 Reporting and Testing)

Mr. Holt began his report by introducing 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) and motioned for emergency adoption. Dr. Torres seconded the motion. The motion carried. Please see page 12 of the transcript.

Mr. Holt introduced Amendment of Section 2.60 of Title 10 NYCRR & Repeal of Subpart 66-3 of Title 10 NYCRR (Face Coverings for COVID-19 Prevention) and motioned for emergency adoption. Dr. Berliner seconded the motion. The motion carried. Please see pages 12 and 13 of the transcript.

Mr. Holt introduced Addition of Sections 2.9 and 2.62 to Title 10 NYCRR (COVID-19 Reporting and Testing) and motioned for emergency adoption. Dr. Berliner seconded the motion. The motion carried. Please see page 13 of the transcript.

For Adoption

21-19 Amendment of Sections 600.1 and 600.2 of Title 10 NYCRR (Article 28 Nursing Homes; Establishment; Notice and Character and Competence Requirements)

Mr. Holt lastly introduced Amendment of Sections 600.1 and 600.2 of Title 10 NYCRR (Article 28 Nursing Homes; Establishment; Notice and Character and Competence Requirements) and motioned for adoption. Dr. Torres seconded the motion. The motion carried. Please see page 13 of the transcript.

Mr. Holt concluded his report. Mr. Kraut thanked Mr. Holt for his report

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

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

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Peter Robinson, Chair, Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services - Construction

Number	Applicant/Facility	Council Action
212259 C	Sisters of Charity Hospital - St. Joseph Campus (Erie County)	Contingent Approval

Ambulatory Surgery Centers - Construction

Number	Applicant/Facility	Council Action
212177 C	Buffalo Surgery Center, LLC (Erie County)	Contingent Approval

Mr. Robinson called applications 212259 and 212177 and motioned for approval. Dr. Berliner seconded the motion. The motion to approve carries. Please see page 14 of the transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services - Construction

Number	Applicant/Facility	Council Action
212223 C	New York-Presbyterian Hospital - New York Weill Cornell Center (New York County) Dr. Lim – Interest/Abstaining	Contingent Approval

Mr. Robinson introduced application 212223 and noted for the record that Dr. Lim has an interest and will be abstaining. Mr. Robinson motions for approval, Dr. Gutiérrez seconded the motion. The motion to approve carries with Dr. Lim's noted abstention. Please see page 15 of the transcript.

Hospice Services - Construction

Number	Applicant/Facility	Council Action
212251 C	Hospice Care Network d/b/a Hospice Care of Long Island, Queens South Shore (Nassau County) Mr. Kraut – Recusal Dr. Strange - Recusal	Contingent Approval

Mr. Robinson next calls application 212251 and notes that Mr. Kraut and Dr. Strange have a conflict and have exited the meeting room. Mr. Robinson motions for approval, Dr. Berliner seconds the motion. The motion carries with Mr. Kraut and Dr. Strange's recusals. Mr. Kraut and Dr. Strange return to the Zoom meeting. Please see page 15 of the transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

Number	Applicant/Facility	Council Action
212079 E	Ambulatory Surgery Center of Western New York LLC (Erie County)	Contingent Approval

Diagnostic and Treatment Centers – Establish/Construct

Number	Applicant/Facility	Council Action
212057 B	NY Med South Bronx, LLC (Bronx County)	Contingent Approval
212182 E	Main Street Radiology at Bayside LLC (Queens County)	Approval
212208 B	World Health Clinicians, Inc. d/b/a Circle Care Center – Westchester (Westchester County)	Contingent Approval

Mr. Robinson calls applications 212079, 212057, 212182, and 212208 and motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carries. Please see page 16 of the transcript.

212213 B	East 180 Operating, LLC d/b/a East 180th Street Health and Treatment Center (Bronx County) Dr. Torres – Recusal	Contingent Approval
212219 B	Bronx Community Health Network, Inc. (Bronx County)	Contingent Approval

Mr. Robinson next callas application 212213 and notes for the record that Dr. Torres has a conflict and has exited the meeting room. Mr. Robinson motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carries with Dr. Torres' noted recusal. Dr. Torres returns to the Zoom meeting. Please see page 17 of the transcript.

212219 B	Bronx Community Health Network, Inc. (Bronx County)	Contingent Approval

Certificates

Certificate of Amendment of the Certificate of Incorporation

Applicant	Council Action
NYP Community Programs, Inc.	Approval

Restated Certificate of Incorporation

Applicant	Council Action
The Northeast Health Foundation, Inc.	Approval

Mr. Robinson next calls application 212219, NYP Community Programs, Inc. and The Northeast Health Foundation, Inc. and motions for approval. Dr. Rugge seconds the motion. The motion to approve carries. Please see pages 17 and 18 of the transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Diagnostic and Treatment Centers – Establish/Construct

Number	Applicant/Facility	Council Action
212176 B	Columbia/New York-Presbyterian Advanced Imaging, Inc. (New York County) Dr. Lim – Interest/Abstaining	Contingent Approval

Mr. Robinson introduces application 212176 and notes for the record that Dr. Lim has declared an interest and will be abstaining. Mr. Robinson motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carries with Dr. Lim's abstention. Please see page 18 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

Diagnostic and Treatment Centers – Establish/Construct

Number	Applicant/Facility	Council Action
212242 B	NY PACE Care Facility, LLC (Kings County) Dr. Berliner – Opposed at EPRC Mr. LaRue – Opposed at EPRC *Mr. LaRue - Interest	Deferred

Mr. Robinson stated that application 212242 has been deferred at the Department's request.

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

Mr. Robinson concluded his report.

ADJOURNMENT:

Dr. Boufford announced the upcoming PHHPC meetings and adjourned the meeting.

NEW YORK STATE DEPARTMENT OF HEALTH
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
FULL COUNCIL MEETING
APRIL 5, 2022
10:15 AM
ESP, CONCOURSE LEVEL, MEETING ROOM 6, ALBANY
TRANSCRIPT

nysdoh_20220405_1_2.mp3

Dr. Boufford We'll give everybody a minute just to reorganize, and then I'm happy to call a meeting of the council to order.

Dr. Boufford I'll hope our audience will respect the meeting that we're going forward since we respected hearing their voices earlier.

Dr. Boufford I'm Jo Boufford. I'm Vice Chair of the council. I have the privilege to call the meeting of the council to order. I welcome the members and Commissioner Bassett, participants and observers of the law. As a reminder for our audience who are viewing the public meeting via the webcast and those that are in-person, there is a record of appearance form that we ask you to fill out that records your attendance at meetings. It's required by the Joint Commission on Public Ethics in accordance with Executive Law Section 166. This form is posted on the Department of Health's website, www.NYHealthCare.Gov. If you please complete it and please fill it out and send it to ColleenLeonard@Health.NewYork.Gov and we want to thank you for helping us follow our legal requirements. I'd like to remind council members, staff and the audience that this meeting is subject to the open meetings law and is broadcast over the internet. Again, just to repeat the ground rules about please muting your microphones when you're not speaking and when you have your mic open, please avoid rustling papers or other side conversations. The meeting is being presented in synchronized captions, so please don't talk over other individuals, since it will be make it really difficult to have the synchronized captioning. I think most members have put their notion of being a member on their name cap, but would you please state your name briefly and identify yourself as a council member or DOH staff to help with the broadcasting and recording of the meeting. I'd also like to encourage the member staff and public to join the Department Certificate of Need listserv. Regularly sends out all important council information and notices such as the agenda, meeting dates, policy matters, etc. On that listserv, we want to be sure you get it if you're not getting it regularly. There are printed instructions for others who would like to be placed on the listserv, or again, contact Colleen for assistance in joining.

Dr. Boufford The agenda for today's meeting I'm chairing because you may notice our colleague Jeff Kraut, who's actually Chair of the council is on vacation, but can't leave us. We're happy to have Jeff here, but I'll chair the meeting so that he can relax a little bit more than usual. I want to overview the agenda for you. Under Department of Health reports, we will hear from Commissioner Bassett on a report on the Department of Health Activity since our last council meeting. Dr. Ursula Bauer will provide a report on the activities of the Office of Public Health, and Dr. John Morley will provide a report on activities of the Office of Primary Care and Health Systems Management. Members of the council and most of our guests who regularly attend meetings are familiar with the reorganization of our agenda by topic and category. We want to remind everyone about

the batching of Certificate of Need applications. Hopefully, members have taken the chance to take a look at those particular applications under the batching in the agenda. If there's anyone who would like to pull an item, please let us know. Easier now than later. Not seeing anyone. But if it comes to you later, please note before we begin that section. Also, before we proceed with the formal agenda, I would like to welcome Dr. John Morley, who some of you whose recently appointed Deputy Commissioner of the Office of Primary Care and Health Systems Management. We are delighted to have him, especially Dr. Rugge and I, in that position representing that office today. Many of you will be familiar with Dr. Morley from his previous time as DOH Medical Director in 2005 for OHSM, as it was known then, and he left the department in 2011 to serve as Deputy Chief Medical Officer for Health and Hospitals Corporation, then Chief Medical Officer for Jacoby Medical Center. In 2017, he was appointed Chief Position Executive for the Adirondack Health Institute to work on this report. In 2018, accepted the position of Deputy Commissioner and CMO for the New York State Department of Corrections and Community Supervision, and in March of this year, Dr. Morley was appointed Deputy Commissioner for OPCHS. We are delighted to welcome you, John, back to our meetings. He'll get his first chance to meet with the public just later on in the agenda as you present a report from that office. Welcome.

Dr. Boufford Our next agenda item is the adoption of minutes for three previous meetings. I'll take them in order.

Dr. Boufford Can I have a motion for adoption of the revised February 10th, 2022 meeting. Move by Dr. Berliner. Second, please. Dr. Gutierrez.

Dr. Boufford All in favor?

Dr. Boufford Any opposed?

Dr. Boufford Any abstentions?

Dr. Boufford The second set of meetings for the March 2nd Special Committee meeting. Motion to approve? Dr. Berliner. Second, Dr. Rugge.

Dr. Boufford All in favor?

Dr. Boufford Any opposed?

Dr. Boufford Any abstentions?

Dr. Boufford The third set of minutes are for the March 17, 2022 special meeting. Dr. Berliner approving motion, motion to approve Dr. Gutierrez a second.

Dr. Boufford Members of the council members of council voting aye.

Dr. Boufford Any negative?

Dr. Boufford Any abstentions?

Dr. Boufford Not seeing any, those sets of minutes are approved.

Dr. Boufford I'd also like to acknowledge as part of the meeting materials, there is the 2020 and 2021 annual report. I'd like a motion to adopt the 2020 report. Dr. Berliner. Just for variety sake, I'll have Dr. Torres second.

Dr. Boufford All members of the council supporting the adoption of the 2020 report, raise aye.

Dr. Boufford Any negatives?

Dr. Boufford Any abstentions?

Dr. Boufford Same for a motion for adoption of the 2021 Annual Meeting Report. Dr. Gutierrez moves to approve. Dr. Watkins moves to second.

Dr. Boufford All members in favor signify by raising your hand aye.

Dr. Boufford Any opposed?

Dr. Boufford Any abstentions?

Dr. Boufford Excellent.

Dr. Boufford I think we're now ready to move on to the report from Commissioner Bassett, who I believe. I don't see her. Is she present or will she be zooming in for us to report on the department's activities since our last meeting?

Dr. Boufford Dr. Bassett, welcome.

Dr. Bassett Thanks very much.

Dr. Bassett I have the pleasure of being in Meeting Room 6 and for the first time being present in person with other members of the council and committees. I am very pleased to join you all this morning and give a brief report on behalf of the department. I'm going to begin with an update of our COVID-19 response, which, as you are aware, has occupied most of my tenure since I was appointed as Acting Commissioner on December 1st. During our last full council meeting, which was held in February, we were beginning to see a decline in the numbers of new cases and hospitalizations, and this decline was very rapid, matching the rapidity with which the variant had surged in the state during, particularly the month of January. The percent who tested positive statewide went down to below 2 percent, which was about the level that we had seen back during the beginning of the Delta variant increase in the Summer of last year and the number of new cases identified per 100,000 reached about 9. But as you're all aware, this virus continues to show its persistence, its ability to mutate and its ability to increase again. We are now seeing across the state increases in the number of cases, as well as the number of hospitalizations. The increase in new cases are especially pronounced in certain regions and specifically in cenCtral New York. Although we have also seen increases in the Southern Tier and in the North Country last week, the Central New York 7 day average case rate per 100,000 was 38 or, to be specific, 37.7, which was nearly two and a half times higher than the state on average. We have to tailor our responses to local conditions. We must be nimble. That's why on Friday last week, I recommended that Central New York residents wear masks in indoor public spaces regardless of vaccination status. We continue to emphasize the importance of being fully vaccinated and up to date

with vaccination, which includes being boosted and getting tested if you feel ill. These recommendations follow on the CDC's recent updating of its community levels. And on that map, actually, the CDC released these maps on Thursday, recommending in Onondaga, Oswego and Cayuga counties that masking be resumed on the basis of high levels of transmission. We extended this to Madison and Cortland counties. We all know that we are in a much different position than when COVID first arrived in this state. We have the tools to prevent another surge of this virus, and these are very familiar exhortations. New Yorkers, we hope, will become more fully vaccinated, wear masks in areas where there's an increased risk of transmission, get tested and stay home when they're sick. As you know, regarding vaccination last week, the FDA authorized and the CDC recommended an additional booster dose of the vaccine for certain individuals. For the individuals who are 50 or older, who received their last booster at least 4 months ago, they now have available to them a second booster of them MNA vaccines for adults, meaning people over the age of 18 who received their last J&J, Johnson and Johnson dose at least 4 months ago, a second booster is also available. And additionally, anyone 12 and older, the group that is eligible for boosters in general who are moderately or severely immunocompromised also have the booster available to them. We've issued clinical guidance that are in alignment with the CDC's recommendation. Our mass vaccination sites have begun on Saturday administering these doses. We want all New Yorkers to know that this second booster is available to them if they're eligible. On COVID testing, we continue to make the testing available and including maintaining our mass vaccination sites. We recently distributed hundred thousand at home test kits. The state has procured something over 90 million tests and has distributed literally millions of these test kits to date. We're also working on increasing utilization of therapeutics which are effective against COVID-19 in terms of preventing people going from being infected to being severely ill, as reflected in hospitalization rates. People who are infected should be aware that these therapeutics are available. We want to see more attention to the availability of treatment, especially for people who are at high risk of severe illness, and these medications are best and only effective if taken early in the clinical course. That's why it's so important that we get the word out both to the public and to clinical providers. We're doing what we can to achieve that. We're working with providers to increase their awareness and facilitate early connection between New Yorkers who test positive and the prescribers who can prescribe these medications. These are all prescription only medications. However, going beyond our work, which continues to focus on COVID-19, I want to note that this is National Public Health Week. This is a week in which we recognize the importance of our public health infrastructure and the personnel who uphold it. The dates of National Public Health Week are April 4th to 10th. We celebrate and highlight the work of public health and call attention to it's important to maintaining the health of our communities. Each day of the week has a theme. Yesterday, which was the first day when we kicked off the week we highlighted racism as a public health issue. And of course, COVID has provided an example of how race ethnicity affects health. Since the beginning of the pandemic and our recorded data in the United States; African-Americans, Latinos, Indigenous New Yorkers have had higher rates of COVID. This follows on data that have been available to us for decades, if not centuries, that show poorer health and shorter lives for people of color as compared to their white counterparts. It's important to always to stress when we talk about these data that this is not because of biology, but because of the injustices that have been ingrained in our structures and our society for centuries. We've seen, as I've said, the same pattern with COVID. Our department has been at the forefront of gathering data to identify this. Viruses do not discriminate, but the path of COVID-19 and many other illnesses have followed the fissures that relate to longstanding and systemic failures in our society. For this reason that Governor Hochul at the end of last year signed a package of legislation declaring racism a public health crisis. She established a hate crimes review process

aimed to bolster data collection requirements that make it possible for us to track these racial disparities and thereby target our interventions. The point, of course, is to do something about these disparities and not simply to measure them. We began this week with a clear message that we can't uplift and prioritize public health without prioritizing health equity and social justice. Today's theme is our public health workforce. COVID-19 revealed also the importance of maintaining our public health infrastructure and particularly our public health workforce. It revealed the work that we all do to protect society from pandemics, natural disasters and other threats, and that we have to have a public health workforce that is prepared and staffed at all levels of government from international to local. While it still remains in the final stages of approval, we are very excited that the new budget for the upcoming fiscal year involved a substantial investment in the public health workforce. I would like to pause and just note that the council and its committees are part of the public health workforce, as are the members of the department who have worked so tirelessly. All of you have worked so tirelessly during this time. Last, April is Donate Life Month in New York. I want to take a moment to talk about the state organ donor registry. Since 2017, we've been focused on improving enrollment in the registry. Between October 2017 and today, we've increased the number of New Yorkers enrolled from 4.5 million to more than 7 million. Most of these names come from the DMV when we sign our forms on our driver's licenses. Some of the names come from the New York State of Health, rather our insurance portal. It's always important to remember how important it is to become a donor. A person who becomes a donor can save up to 8 lives through organ donation. Restore sight to cornea donation and improve up to 75 more lives through tissue donation. We're making progress, but we have a substantial shortage in the United States as a whole. There are over 100,000 adults and children who are on waiting lists for organ donation and that includes 8,300 New Yorkers, so we've been working to get the word out. I wanted to get the word out to you today. This concludes my remarks in updating our activities as the department. I am very pleased to have other members of the department here to speak with you today and want to acknowledge them on the day in which we acknowledge the importance of the public health workforce, as well as thank all of you again for your time and commitment. I don't know if I'm allowed to answer questions here.

Dr. Boufford You are.

Dr. Bassett I am happy if time permits to answer some questions.

Dr. Boufford May I just ask one question?

Dr. Bassett Sure.

Dr. Boufford What is the effect, if any, on the availability of testing and vaccine COVID testing and vaccine from the failure of the Congress to pass the Emergency COVID Relief Act a few weeks ago on on the state? Can you just comment about that?

Dr. Bassett Well, we've been very concerned about the future impact of this, but I believe that that impasse has been overcome. Our reserves, which are substantial, meant that we could continue to offer testing and vaccination without any concern. We have no shortage of testing or vaccination. From what I heard and I haven't been briefed on it, the main losers in whatever compromise was reached at federal level were support to the global South, which continues to have very low rates of vaccination. The United States has reduced its global commitments. As a person who sees all public health as both global and local, I am concerned that we continue to make vaccine available around the world. We all know how rapidly these variants can travel. We have had adequate reserves and we see

no disruption. And of course, the Governor herself has pledged that she has proposed to put in substantial reserves so that we will be able to respond to New Yorkers needs even if the federal government reduces its commitment.

Dr. Boufford In terms of cost, the situation will remain the same that it has in New York.

Dr. Bassett I believe that the federal government is going to appropriate funds for vaccination and testing.

Dr. Boufford I think it's still pending, but I was just curious about the state's policy.

Dr. Bassett We are not closing any vaccination sites at the moment. And you heard we're tracking, we're looking carefully at the data. We are not going to close any. We have I believe it's 14 mass vaccination sites and literally thousands of individual sites where we shipped vaccination. There really shouldn't be any barrier to people getting vaccinated. The group that we just have to make more progress with our children. We have just something over a third of children statewide who have received all of the recommended doses. We also need more people to get the first booster. As the population we're standing at 55 percent of people who have been fully vaccinated, who have received the first booster. We have a lot of progress to make there.

Dr. Boufford Thank you.

Dr. Boufford Other questions from the council members? Just put your hand up. We're happy to call on you.

Dr. Boufford Dr. Gutierrez.

Dr. Gutierrez Yes, Commissioner. Thank you very much for your presentation. I'm concerned that the population at large does not have an understanding of how much longevity and health has improved by health planning and public health. Is there any interest or intent to educate at school level, perhaps how much we have gained in our life, quality of life and survival from efforts by public health? This is being a sort of a crusade by me. I find that the knowledge of people understanding, for instance, the presence of iodine in salt or pasteurized milk or vitamin D milk is not understood and people have no idea of how much vaccinations have improved our life.

Dr. Gutierrez Thank you.

Dr. Bassett Well, thank you for being a consistent champion of these interventions. This has been a really difficult two years. We're now into the third year. It is a good time to remember how much progress has been made in terms of extending life. During the 20th century, we saw more increases in life expectancy than at any other time in human history, and most of this was due to the interventions of the sort that you mentioned in addition to other standards around environmental protection around our buildings, our air. All of these public health interventions have been more important in terms of general population health than individual medical care. I don't know. I now speak with the Department of Education Commissioner. We had a meeting recently in which we laughed afterwards, and I was talking about how important education is and particularly how important it has been to keep kids in school. She was talking about how important public health is. She was sounding like a Health Commissioner, and she said I was sounding like an Education Commissioner, but I agree that it's always been difficult to convince the public that

something like public health is worthwhile because when it works, it's invisible. This has been a longstanding observation. People notice its failures and they assume it's successes. All of you just keep telling people how important it is to have public health.

Dr. Boufford Other questions from council members?

Dr. Boufford Everybody seems happy.

Dr. Boufford We just send out the package on Public Health Week. Colleen sent it out to all of you, so hopefully you'll take a look at it. Thanks for bringing it up, Dr. Bassett. Wouldn't expect anything less, but that's terrific for highlighting that.

Dr. Boufford Thank you so much, Commissioner Bassett. Appreciate your being with us in your report and your service.

Dr. Boufford Let's move on now to Dr. Ursula Bauer, who will give a report on the activities of the Office of Public Health.

Dr. Ursula Bauer Thank you, Dr. Boufford, and thanks to the council members.

Dr. Ursula Bauer Appreciate your service.

Dr. Ursula Bauer I'll keep my remarks brief and thank Dr. Bassett for the COVID update. As the Commissioner noted, we remain focused on COVID and we're certainly glad to have the tools that the council provides at our disposal to take the protective action that we need. COVID is becoming more preventable and treatable, but we need to remain vigilant and we need to strengthen our prevention measures and we need to expand access to treatment. We've known since early in the pandemic that some conditions put people at increased risk for severe COVID outcomes. These include obesity, diabetes and hypertension. Certainly redoubling our efforts to improve overall population health is something we need to focus on to better withstand future threats. Obesity is associated with impaired immune function, decreased lung capacity and increased risk of severe illness from COVID. It potentially triples the risk of hospitalization due to COVID infection and as body mass increases, the risk of death from COVID also increases. Our behavioral risk factor surveillance team just released a report on overweight and obesity in New York. That's available on our website. The key findings are that more than a quarter of adults in the state have obesity, and another 37 percent have overweight. These two conditions affect over 8 million New Yorkers. The prevalence of obesity in New York is higher among adults who are Black, non-Hispanic and who are Hispanic, and those currently living with disability and those living in a region outside of New York City. Obesity is less common in adults and the youngest age group 18 to 24 and, of course, adults with a college degree. On the obesity side, we have a number of efforts in the Office of Public Health. I'll just call out the Community Pharmacy Enhanced Services Network, which is a clinically integrated statewide network of pharmacies structured to advance community based pharmacy practice. Last month, a 7 member pharmacies were accredited by the Association of Diabetes Care and Education Specialists to provide diabetes self-management, education and to support people with diabetes. These newly accredited pharmacies join two others in providing these services and bring these services to more and more communities and people with diabetes to better manage their condition. Dr. Bassett also noticed we're celebrating National Public Health Week, and today we recognize the public health workforce so essential to our future. I just want to share with you some of our initial progress in rebuilding, re staffing and strengthening the Office of Public Health. While it's

often the case that the department, when you fill a position in one part, you create a vacancy in another part. We have actually been able since October to bring new people into the department to fill some positions. That includes your OPH Director, our Deputy Director and our Deputy Director for Science, whom you met at the February meeting. We filled well over 100 positions in the Office of Public Health and have many more positions in various stages of recruitment. In addition, I'll just mention that we've received over 800 applications for the state Public Health Corps fellowship program and across local health departments and the department itself, we've onboarded 65 fellows in 15 different local health departments, and at this stage. We continue to make progress executing contracts with our local health departments to support fellow placements, and we expect these numbers to increase rapidly.

Dr. Ursula Bauer That is the end of my update.

Dr. Ursula Bauer Thanks.

Dr. Boufford Thank you.

Dr. Boufford Any questions for Dr. Bauer from council members?

Dr. Boufford Not seeing any.

Dr. Boufford Thank you very much for your report.

Dr. Boufford And now we'll hear from Dr. Morley, who I introduced briefly earlier to give a report on the activities of the Primary Care and Health Systems Management office. Welcome.

Dr. Morley I'm usually accused of carrying my own internal microphone, but I'm happy to use this one.

Dr. Morley Thank you, Dr. Boufford.

Dr. Morley Good morning to all the members of the council. My remarks this morning, as has been my time in the department, will be particularly brief and will be much longer the next time, I can promise. It's a great honor to return to the Department of Health. I'm honored to be working with Commissioner Bassett and an incredible team of professionals who, regardless of whether or not they tested positive for COVID, they've endured profound impact on their lives from COVID over the last two and a half years. They as well as their family members. Thank you, Dr. Boufford and Dr. Rugge for your particularly warm welcome. I'm looking forward to continuing to work with you on our common goals. New York has never had a greater need for the leadership of the council and the members of the council as we come through that at this point in time from COVID. OPCHSM is working very hard to support our hospitals, adult homes, our nursing homes, our entire health care system to continue what it has been, which is the best health care system in the world. Our priorities have already been identified by our Commissioner and OPCHSM will be working very hard to support those goals. We'll be doing our utmost to improve staffing in hospitals and health care to encourage the next generation to enter the health care field for all the reasons that everyone on this council is already very well aware of. I want to thank you all for your support of DOH and for your support of me and my work. I'm happy to take any questions now or feel free to contact me in between meetings directly. That's an invitation to all members of this council at any time.

Dr. Morley Thank you.

Dr. Boufford Thank you.

Dr. Boufford Any questions for Dr. Morley from any members of the council?

Dr. Boufford We're waiting for coming attractions, then. John, next time, I'm sure people will have many questions. We look forward to your report.

Dr. Boufford I'm now going to brief the council on the recent joint meeting of the Public Health Committee and the Health Planning Committee, which is what we've done since the last meeting of the council. I'll start off and then John will join. This was jointly planned with John. I want to acknowledge Ann Monroe's ongoing support. Now, Dr. Torres's joined us really trying to look at how the council, the Public Health Committee and the Primary Care Planning Committee can begin to work together to advance our shared agenda. We were able to meet. I want to thank also Laura Santilli and her Deputy, Shane Roberts, in the Office of Public Health Practice, who are hopefully coming out from under at least partially the enormous burden that officers carried during the COVID epidemic. We just really welcome their willingness to get engaged with us again and to help support the activities of both of our council committees. And for Dr. Bauer for her support in leading the Office of Public Health. I wanted to just touch on the agenda for the meeting, which I think is certainly has been posted. Many of you were there. We really appreciate the broader engagement of the council in the meeting. We really started out with our update on the prevention agenda, and we're really delighted that we sort of heard an update on 2020 because we missed that. Our meeting was canceled as the COVID epidemic hit. Sort of update the 2021 reports from local health departments with at the time was over 80 percent of the departments were reporting in the requested metrics on their progress on the prevention agenda. We really, really appreciate that update. They're continuing to engage in the prevention agenda, and we also were able to hear from a panel of public health directors, commissioners from Onondaga, Otsego and Orange County on their work on COVID, but especially on work on the broader public health agenda during COVID. They had lots of questions. It was a long session. It was really, really very, very productive. I just wanted to note with sadness actually the retirement of Priti Irani, who has been fundamental in providing the data that allows this tracking of progress on the prevention that does take place. We are looking forward to knowing who her successor is, even though she can't really be replaced. We acknowledged her in the meeting. I just wanted to acknowledge her formally in this council meeting. The rest of the meeting was really jointly developed with the Office of Public Health Practice and the Commissioner's Office to kind of put a marker down for what we hope will be an agenda for the Public Health Committee and the joint meetings of Public Health and Planning as appropriate on issues that we think the council. We hope the council will be able to take forward and hear more about the following. I'll just highlight them. We heard on an update on the implementation, really continuing support and implementation for the Executive Order issued in 2018 on health across all policies and healthy aging in the state and that's an area we want to revisit. The agencies that have been involved in the health across our policies structure and meetings have continued to be active. They have been part of our convenings on the ad hoc committee for the Prevention Agenda. We hope to re-engage them directly in our work, but especially take advantage of what can be mobilized in the broader determinants of health from other agencies and also a lot of activity in the aging area and several plans for aging. For healthy aging, the Governor has issued a notion in her state of the state and also may follow up with an Executive Order around healthy aging to complement the existing

Executive Order that New York State would be an age friendly state. Adam Herbst, who is taking over coordinating that at with the legislative recent legislative establishment of the Commission on Healthy Aging in New York and obviously in long term care, which has been a long term interest time interest of this council. We hope to invite him to join us at our next meeting and give us a more detailed update in this important area. The second area was a briefing on the public health workforce, which largely focused on the Public Health Service Corps, which has been a fellowship program which has been very popular, was mentioned by Dr. Bauer, I think we noted the importance of this, but also in terms of budgeting. It may be the issue of what happens when that funding goes away needs to be addressed. We are very interested in tackling broader public health workforce needs and hoping that there will be a complement to the recent order of the Governor's decision in her budget to cap up the salaries, the well deserve top up of salaries for the health care delivery system employees, but also how that may continue and how similar supports can be provided for the public health workforce. We talked about maternal mortality, got an update on the progress of the Governor's commission on Maternal Mortality, and this is an area that the Public Health Committee in its last meeting in early 2020, highlighted a desire to track. This council really developed the first statement on maternal mortality after lots of meetings with the staff of the department, which led to the creation of a gubernatorial commission and Commissioner Zucker's activities with them and an ongoing report. We still want to keep progress in that area very much on our agenda going forward. We also highlighted areas that have been activated in conjunction with the prevention agenda. Number one being the area of community benefit that there has been work on that by looking at it by the council, by the Public Health Committee, and we hope to revitalize our focus there, especially on the category of community health improvement, which is very aligned with potential for investment in communities and improving conditions in communities as part of the prevention agenda and aligning those activities. We also heard an update from Brett Freedman on the waiver and as he noted, there are elements of the waiver, such as the heroes and the social determinants networks that are potentially very aligned with our interests in public health and in health planning, and we hope to connect even more on those items going forward as part of the prevention agenda work. I mentioned the waiver. Those are kind of our areas. As I said, it's like a table of contents for what we want to take on in 2022.

Dr. Boufford Let me turn it over to John for his comments.

Dr. Boufford Oops. John, just stepped away.

Dr. Boufford John, do you want to give us your comments, any other comments you have?

Dr. Rugge Thank you. Just on behalf of everybody in the room, I would like to thank Dr. Boufford. Thank you for your leadership and the advocacy and the stamina that you've shown in promoting public health, especially through the prevention agenda, but also the focus change that the breath of vision in addressing so many challenges that we're facing in the delivery in the financing of health care. Even more daunting, of course, is the challenge and the work ahead for Dr. Bassett, Dr. Bauer and Dr. Morley in rebuilding the health department. John alluded to that and so did Ursula in order to guide and shape all the changes underway again in the delivery and the financing of care. I like to point out that many years ago, when I was a young physician, I found myself admitting patients to the hospital following their cataract surgery to stay immobile for a week with their head in a block. Plenty of time, then for us to diagnose and treat the blood clots that resulted. Now, cataract extraction takes 15 minutes in the office setting. Who knew? In so many ways, the

practice of medicine in the performance of health care is changing. Once a matter of office visits and hospital rounds. Health care is now everywhere, even on the screen over the internet and by vision. We have to adjust. We have to learn. To keep up with to help lead all those changes and all the payment reforms got moving from paying for episodes of care to the value of care. We need a vigorous and effective Department of Health. This morning, I can only observe that this Council of the Health Policy and Health Planning Council is available not only for meeting our regulatory responsibilities, but also as a health planning resource. Albeit in a role that I think has been undervalued, overlooked in recent years. 8 years ago, we spent a year looking ambulatory care generally and how to streamline the regulation and try to make advances. In recent years, our activities being confined to a day or two. But even those days, I think, have been helpful in terms of focusing how we can better address the problems of COVID. As everybody can see, looking at the screen, this council brings lots of diversity. People of different backgrounds, different kinds of training, different professions, certainly different perspectives and different geography, and yet what we have in common is a commitment to public service and also a real deep appreciation for how important the Department of Health is to be strong, vigorous and a leader. All I can do is say we are here to help. I hope that we will be called upon. Thank you.

Dr. Boufford Thanks, John. Any other comments from council members? Many of you were members of the public health and planning committees might want to add any comments? John and I would be happy to answer any questions.

Dr. Boufford Not seeing any, we'll move on to the Mr. Holt will give the report of the Codes, Regulations and Legislation Committee.

Tom Holt Thank you, Dr. Boufford.

Tom Holt Good afternoon. At today's meeting of the Committee on Codes, Regulations and Legislation, the committee reviewed and voted to recommend for adoption the following six emergency regulation proposals for approval to the full council. The first was the investigation of communicable disease isolation and quarantine. Staff in the department are here to answer any questions that the council or committee may have. Though I think most of the members were in attendance at this morning's meeting. With that, I make a motion for the adoption of this regulation.

Dr. Boufford Do I have a second from council members?

Dr. Boufford Second for adoption, Dr. Berliner.

Dr. Boufford Any questions for staff or for Mr. Holt or the committee members from council members?

Dr. Boufford Seeing none, asking for then all in favor of this resolution, say aye.

Dr. Boufford Opposed?

Dr. Boufford Any abstentions?

Dr. Boufford Not seeing any, the motion passes.

Tom Holt Thank you.

Tom Holt The second regulation was face coverings for COVID-19 prevention, and again, there are members of the department who are here to answer any additional questions that you may have. I so move

Dr. Boufford Second, please, Dr. Berliner.

Dr. Boufford Any questions from members of council?

Dr. Boufford All in favor?

Dr. Boufford Any opposed?

Dr. Boufford Any abstentions?

Dr. Boufford Seeing none, it's unanimously passed.

Dr. Boufford Next resolution.

Tom Holt The third is hospital and nursing home personal protective equipment requirements. Again, members of the department are here to answer any additional questions. I would make a motion for its adoption.

Dr. Boufford Second from Dr. Gutierrez.

Dr. Boufford Any questions from council members?

Dr. Boufford Seeing none, all in favor say aye.

Dr. Boufford Nay.

Dr. Boufford Any abstentions?

Dr. Boufford Seeing none, it's passed unanimously.

Dr. Boufford Next.

Tom Holt Surge and Flex Health Coordination System and again, members of the Department are here should there be any any additional questions. I'd like to make a motion for its adoption.

Dr. Boufford A second from Dr. Gutierrez.

Dr. Boufford I'd just like to make one comment before we vote on this. I'm continuing to hope, as we discussed before, and perhaps this is an early item on Dr. Morley's agenda that we would come up with either some parallel process or some approach that would further integrate the hospital response with the response of the primary care practices and local health departments, as was highlighted in the sessions at this council held in July of 2020, actually with a set of recommendations about greater integration of the overall health care system in our emergency response. I just want to put that on the record again. We look forward to seeing some process that reflects that better integration beyond hospitals for the future.

Dr. Boufford Any questions from members of the council?

Dr. Boufford All in favor, say aye.

Dr. Boufford Any opposed?

Dr. Boufford Any abstentions?

Dr. Boufford Unanimously passed.

Dr. Boufford Next.

Tom Holt Next, we have COVID-19 vaccinations of nursing home and adult care facility residents and personnel. Department staff are available for any questions. I'd like to make a motion for its adoption.

Dr. Boufford Second, Dr. Gutierrez.

Dr. Boufford Any questions from council members?

Dr. Boufford All in favor?

Dr. Boufford Any opposed?

Dr. Boufford Any abstentions?

Dr. Boufford Unanimously passes.

Tom Holt Last, we have COVID-19 reporting and testing again. Department staff are available for any questions. I'd like to make a motion for its adoption.

Dr. Boufford Second, Dr. Gutierrez.

Dr. Boufford Any questions from council members?

Dr. Boufford All in favor?

Dr. Boufford Any opposed?

Dr. Boufford Any abstentions?

Dr. Boufford Seeing none, unanimously approved.

Tom Holt Thank you.

Tom Holt This completes the agenda of the Codes, Regulations and Legislation Committee.

Dr. Boufford I'd like to turn now to Peter Robinson to turn reading over to him for a report on the actions of the Establishment and Project Review Committee.

Dr. Boufford Peter.

Peter Robinson Thank you very much, Dr. Boufford.

Peter Robinson Just a couple of opening comments. One is to note that we now have a deferral on the application related to the program and the associated Article 28 application. That application has been deferred at the department's request. That's application 2 1 2 2 4 2 B. I would note, though, that we did have a very vigorous conversation at committee on that topic. I think the members of the committee and the other members of the council participated in the committee meeting were very interested in having a broader ranging policy discussion, perhaps initiated by a briefing from the appropriate people from the Health Department who are expert and oversea programs. What setting that should take place in, I will defer to Mr. Kraut and the members of the committee. I think some kind of a broader policy briefing to the committee and the council would be in order at some appropriate point. A note to Dr. Gutierrez that the dialysis applications that we are anticipating will probably be at least some of them in the next batch, so at the next committee meeting of the Establishment and Project Review Committee. They're not here today. Nonetheless, Dr. Gutierrez, if you are interested in making any comments about that as part of this report, you're welcome to do so.

Peter Robinson With that, let me move to the applications that the committee reviewed. As Dr. Boufford said, we'll batch these unless there are reasons not to. In this first category of applications for approval with no issues or recusals or abstentions or interests, I am proposing that application 2 1 2 2 5 9 C, Sisters of Charity Hospital St. Joseph Campus in Erie County to perform renovations to create an addiction treatment unit and convert 40 medical surgical beds to 40 chemical dependence rehab beds. The department and the committee recommend approval with conditions and contingencies. Application 2 1 2 1 7 7 C, Buffalo Surgery Center LLC in Erie County to relocate the GI suite to an adjacent building on the same campus with requisite renovations, renovate and expand existing space to create additional operating rooms and convert to a multi specialty ambulatory surgery center. The department recommends approval with conditions and contingencies, as does the committee. I move both those applications.

Dr. Boufford I have a second from Dr. Berliner.

Dr. Boufford Any questions from council members?

Dr. Boufford Seeing none, all in favor?

All Aye.

Dr. Boufford Any opposed?

Dr. Boufford Any abstentions?

Dr. Boufford Seeing unanimous approval, I'll move onto the next.

Peter Robinson Thank you very much.

Peter Robinson This application, I note an interest and abstention by Dr. Lim.

Peter Robinson Application 2 1 2 2 2 3 C, New York Presbyterian Hospital New York Weill Cornell Center in New York County. This is to certify New York Presbyterian Brooklyn Methodist Hospital as a new division of the New York Presbyterian Hospital. The department recommends approval with a condition and contingencies, as does the committee. I so move.

Dr. Boufford Dr. Gutierrez had his hand up before you even moved, so he seconds.

Dr. Boufford Any questions from members of the council?

Dr. Boufford All in favor?

All Aye.

Dr. Boufford Any opposed?

Dr. Boufford Any abstentions?

Peter Robinson Delighted to have such active participation in the report.

Peter Robinson Thank you very much.

Peter Robinson With this application, I'm noting a conflict in recusal by both Mr. Kraut and Dr. Strange.

Peter Robinson Application 2 1 2 2 5 1 C, Hospice Care Network doing business as Hospice Care of Long Island and Queens South Shore. This is in Nassau County. They're aquiring the assets of Hospice of Westchester, Putnam and adding Westchester and Putnam as approved counties. They're closing HWP's 540 White Plains Road Tarrytown office and will use a new assumed name in the expanded service area. All of that has the approval of the department with a condition and contingencies as it does from the committee. I so move.

Dr. Boufford A second, please.

Dr. Boufford Dr. Berliner.

Dr. Boufford I notice Mr. Kraut has left the space. I don't see Dr. Strange's name, so I assume he is no longer on the call in terms of the recusals.

Dr. Boufford Any questions from council members?

Dr. Boufford All in favor?

Dr. Boufford Any opposed?

Dr. Boufford Any abstentions?

Dr. Boufford Unanimous approval.

Dr. Boufford We can invite Mr. Kraut back and Dr. Strange if he's still holding.

Peter Robinson Very good. Very good.

Peter Robinson Another batch. 2 1 2 0 7 9 E, Ambulatory Surgery Center of Western New York LLC in Erie County. This transfer 77 percent of ownership interest from 23 existing members to one new member. The department recommends approval with conditions and contingencies with an expiration of the operating certificate 3 years from the date of issuance, as does the committee. Application 2 1 2 0 5 7 B, New York Med South Bronx LLC in Bronx County establish and construct a diagnostic and treatment center to be located at 2825 Third Avenue in the Bronx. The department recommends approval with conditions and contingencies, as did the committee. Application 2 1 2 1 8 2 E, Main Street Radiology at Bayside LLC in Queens County. Transfer ownership interest in a member LLC from 10 withdrawing members to the remaining members and 7 new members. Here, the department recommends approval, as does the committee. Application 2 1 2 2 0 8 B, World Health Clinicians Inc doing business as Circle Care Center in Westchester, Westchester County. Establish and construct an Article 28 Diagnostic and Treatment Center to be located at 34 South Broadway in White Plains. The department recommends approval with conditions and contingencies, as does the committee. I make a motion for this batch.

Dr. Boufford A second by Dr. Gutierrez.

Dr. Boufford Any questions from council members?

Dr. Boufford Did you leave out on purpose the Bronx Community Health or did I just not hear you?

Peter Robinson New York Med South Bronx, is that what you're talking about?

Dr. Boufford Number 5.

Peter Robinson I paused at the application because this next one has a recusal that just came in.

Dr. Boufford Sorry.

Dr. Boufford We're voting on 1-4 then.

Peter Robinson On the ones that I've just brought forward.

Dr. Boufford Any questions from the council members?

Dr. Boufford All in favor?

Dr. Boufford Any nays?

Dr. Boufford Any abstentions?

Dr. Boufford Unanimous approval.

Dr. Boufford Moving on to the next one.

Peter Robinson This application includes a recusal by Dr. Torres.

Peter Robinson Application 2 1 2 2 1 3 B, East 180 Operating LLC doing business as East 180th Health Street Health and Treatment Center in the Bronx to establish and construct a diagnostic and treatment center located at 870 East 180th Street in the Bronx. The department and the committee recommend approval with conditions and contingencies. I so move.

Dr. Boufford A second from Dr. Gutierrez.

Dr. Boufford Dr. Torres, would you leave the meeting, please, so that we can vote.

Dr. Boufford There he goes.

Dr. Boufford Any questions from council members?

Dr. Boufford All in favor?

Dr. Boufford Opposed?

Dr. Boufford Any abstentions?

Dr. Boufford Unanimous approval.

Dr. Boufford Dr. Torres can come back.

Peter Robinson Thank you.

Peter Robinson Now, your favorite Bronx Community Health Network.

Peter Robinson Application 2 1 2 2 1 9 B, Bronx Community Health Network in Bronx County to establish and construct a diagnostic and treatment center at 3763 White Plains Road in the Bronx with a mobile van extension clinic to provide primary care and dental services. Here, the department recommends approval with conditions and contingencies, as does the committee. Also certificates of amendment to the Certificate of Incorporation for NYP Community Programs Inc for change purposes. Here, the department and the Committee recommend approval. A restated certificate of incorporation for the Northeast Health Foundation, which is a name change. The department recommends and the committee recommend approval as well. I move that batch.

Dr. Boufford A second?

Dr. Boufford Dr. Rugge.

Dr. Boufford I want to correct my misstatement. The initial vote in this sequence was on items 1, 2 and 3. We can just make that change and then 4 was taken separately because of the recusal of Dr. Torres. We have Item 5 with the Bronx Community Health Center. I may have an old copy of the agenda, but that's the order they're in.

Peter Robinson The certificates that I mentioned.

Dr. Boufford And the certificates that you mentioned. We're voting on five and then the two amendments.

Peter Robinson Correct.

Dr. Boufford Any questions from the council?

Dr. Boufford All in favor?

Dr. Boufford Any opposed?

Dr. Boufford Any abstentions?

Dr. Boufford Unanimous approval.

Peter Robinson Thank you.

Peter Robinson Application 2 1 2 1 7 6 B, Columbia, New York Presbyterian Advanced Imaging Inc in New York County.

Peter Robinson I want to note here an interest and abstention by Dr. Lim.

Peter Robinson To establish and construct a diagnostic and treatment center at 710 West 168th Street in New York and an extension clinic at 722 West 168th Street in New York, both specializing in radiology and imaging services. The department and the committee recommend approval with conditions and contingencies. I so move.

Dr. Boufford Again, from Dr. Gutierrez.

Dr. Boufford Any questions from council members?

Dr. Boufford All in favor?

Dr. Boufford Any opposed?

Dr. Boufford Any abstentions?

Dr. Boufford Dr Lim is abstaining.

Peter Robinson Yes, it's an interest and abstention. Correct.

Dr. Boufford Yeah.

Dr. Boufford Just notice she actually did it in in real time just a minute ago.

Peter Robinson Very good.

Peter Robinson And then finally, I did note at the opening of my remarks the deferral of application 2 1 2 2 4 2 B, New York Pace Care Facility LLC in Kings County. This was the related application that I was making reference to earlier.

Peter Robinson And with that, I conclude the report of the Establishment and Project Review Committee.

Dr. Boufford Thank you very much.

Dr. Boufford Just as we go here, I wanted to before adjourning. I wanted to take this time. This is another turnover in the Department of Health, which is going to be a great loss for this council, which is to recognize Lisa Thompson. This is her last meeting. She'll be retiring at the end of this month. We want to have the camera on Lisa. She began her service in June of 1987, working with the then Codes Committee. In the early 2000's, she was liaison with the Public Health Council's Establishment Committee. In 2010, appointed by Commissioner to serve as the Assistant Executive Secretary to this group. Obviously anyone here who knows the work that goes on behind the scenes, I don't even have to elaborate. We would not be here as well organized and our follow ups would not be as well tracked without the work of Colleen and especially Lisa since she is going to be leaving us. She's been somebody we have been counting on for over the past 10 years. She's also worked to help establish procedures that have helped the meeting run seamlessly regardless of circumstances. I think I've got a quote here from her colleague. Blizzards, storms, floods, technical difficulties, interruptions of transportation, sometimes walking when all those didn't work to get to the meetings, both in New York City, I have to say, and also in Albany and other locations over the years. She's met a lot of people on the way. I think everybody just has such incredible positive feelings for Lisa. She's famous and infamous. Maybe give her a chance to to respond. We hope she'll find retirement very boring. Who knows, we might see her again in some other incarnation, but we will have a sort of formal statement for you at the next meeting, but we did want to wish her all the best in this formal meeting.

Dr. Boufford Lisa, let me invite you to make a comment if you'd like.

All (Clapping)

Dr. Boufford Let me make you make a comment, maybe ask you to make a comment, please, before we give you our request.

Lisa Thomson I don't know if I can. I just want to thank all of you for work on the council and especially my twin. I just have to say, just look for our book, because we're going to have many, many episodes in it. Honestly, thank you all for the work we've done. You've all been so kind to me. I'm going to miss you all. Who knows, I may make an appearance at one of these meetings.

Lisa Thomson Thank you so much.

Dr. Boufford Thank you very much, Lisa. I really appreciate it.

Jeffrey Kraut Lisa, I just want to add you are truly a dedicated public service. We're so grateful for all the support you've given us over the years. People do not understand how much work goes into getting one of these meetings done. We really appreciate it. I can't add anything more than Jo said.

Jeffrey Kraut Thank you.

Dr. Boufford Everyone says they're going to miss you and they wish you well and got lots of handshaking and applause, so thanks so much again, Lisa.

Dr. Boufford Thank you.

Dr. Boufford That ends the public portion of the Public Health and Health Planning Council for this meeting. We're now adjourned. Our next regularly scheduled committee just May 12th. Our full council meeting will convene again on June 2nd. Thank you all so much for your continuing engagement and commitment, and we'll see you in May and or June. Thanks a lot.

Peter Robinson Where is the meeting?

Dr. Boufford Meeting stands adjourned.

Public Health and Health Planning Council
2023 Timeline

PHHPC Committee Meeting	PHHPC Full Council Meeting	*Main PHHPC Meeting Location
01/26/23	02/09/23	NYC
03/30/23	04/18/23	Albany
06/15/23	06/29/23	NYC
08/24/23	09/07/23	NYC
11/02/23	11/16/23	Albany

PHHPC meetings begin @ 10:00 a.m. *Main meeting site is listed but there may be multiple meeting locations available for attendance by PHHPC members, applicants, and members of the general public.

Albany Location – Empire State Plaza, Concourse Level, Meeting Room 6
NYC Location - 90 Church Street, Meeting Rooms A/B, 4th Floor, New York, NY

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by sections 201, 206 and 2803 of the Public Health Law and sections 461 and 461-e of the Social Services Law, Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) is hereby amended by adding a new Subpart 66-4, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

A new Subpart 66-4, titled COVID-19 Nursing Home and Adult Care Facility Vaccination Program, is added to read as follows:

66-4.1. Requirements for Nursing Homes

(a) Every nursing home regulated pursuant to Part 415 of this Title shall offer all consenting, unvaccinated existing personnel and residents an opportunity to receive the first or any recommended next or booster dose of the COVID-19 vaccine.

(b) The operator and administrator of every nursing home regulated pursuant to Part 415 of this Title must ensure that all new personnel, including employees and contract staff, and every new resident and resident readmitted to the facility has an opportunity to receive the first or any recommended next or booster dose of the COVID-19 vaccine within fourteen days of having been hired by or admitted or readmitted to such facility, as applicable.

(c) The requirement to ensure that all new and current personnel and residents have an opportunity to receive the COVID-19 vaccination, as set forth in subdivisions (a) and (b) of this section, shall include, but not be limited to:

(1) Posting conspicuous signage throughout the facility, including at points of entry and exit and each residential hallway, reminding personnel and residents that the facility offers COVID-19 vaccination; and

(2) Providing all personnel and residents who decline to be vaccinated a written affirmation for their signature, which indicates that they were offered the opportunity for a COVID-19 vaccination but declined. Such affirmation must state that the signatory is aware that, if they later decide to be vaccinated for COVID-19, it is their responsibility to request vaccination from the facility. The facility shall maintain signed affirmations on file at the facility and make such forms available at the request of the Department.

(d) Nursing homes must comply with the requirements for vaccination of personnel in 10 NYCRR § 415.19(a)(5).

66-4.2. Requirements for Adult Care Facilities

(a) The operator and administrator of every adult care facility regulated pursuant to Parts 487, 488 and 490 of Title 18 of the NYCRR and Part 1001 of this Title shall make diligent efforts to arrange for all consenting, unvaccinated existing personnel and residents to register for a vaccine appointment and an appointment to receive any recommended booster, and shall document attempts to schedule and methods used to schedule the vaccine in the individual's personnel file or case management notes, as applicable.

(b) The operator and administrator of every adult care facility regulated pursuant to Parts 487, 488 and 490 of Title 18 of the NYCRR and Part 1001 of this Title must arrange for the COVID-19 vaccination, including the first or any recommended next or booster dose, of all new personnel, including employees and contract staff, and every new resident and resident

readmitted to the facility. The requirement to arrange for COVID-19 vaccination of such personnel and residents shall include, but not be limited to:

(1) For residents:

(i) during the pre-admission screening process, and in no event after the first day of admission or readmission, the adult care facility shall screen the prospective or newly-admitted or readmitted resident for COVID-19 vaccine eligibility, including whether any first doses of the vaccine were previously administered, and whether the resident is interested in obtaining the COVID-19 vaccine, including a recommended booster. Such information shall be documented with the resident's pre-admission screening information and, if admitted, retained in the resident's case management records; and

(ii) within seven days of admission or readmission, the facility shall make diligent efforts to schedule all consenting and eligible new or readmitted residents for the COVID-19 vaccination, including a recommended booster. The facility must document attempts to schedule and methods used to schedule the vaccine appointment in the resident's case management notes.

(2) For personnel:

(i) during the pre-employment screening process, the facility shall solicit information from the prospective personnel regarding their vaccination status, including whether any first doses of the vaccine were previously administered, and whether the prospective personnel is interested in obtaining the COVID-19 vaccine. Such information must be documented with the personnel's pre-employment screening information and, if hired, retained in the personnel file; provided, however, that nothing in this paragraph shall be construed to require an adult care facility to make any hiring determination based upon

the prospective personnel's COVID-19 vaccination status, history, or interest in COVID-19 vaccination; and

(ii) within seven days of hiring new personnel, the facility shall make diligent efforts to schedule all consenting and eligible new personnel for the COVID-19 vaccination. The facility must document attempts to schedule and methods used to schedule the vaccine appointment in the individual's personnel file.

(iii) Adult care facilities must comply with the requirements for vaccination of personnel in 18 NYCRR §§487.9(a)(18), 488.9(a)(14), 490.9(a)(15), and 10 NYCRR §1001.11(q)(5), as applicable.

(c) The facility shall further provide all current and new personnel and residents who decline to be vaccinated a written affirmation for their signature, which indicates that they were offered the opportunity for the facility to arrange for a COVID-19 vaccination, but declined. Such affirmation must state that the signatory is aware that, if they later decide to be vaccinated for COVID-19, it is their responsibility to request the facility arrange for their vaccination. The facility shall maintain signed affirmations on file at the facility and make such forms available at the request of the Department.

66-4.3. Penalties.

(a) A violation of any provision of this Subpart shall be subject to penalties in accordance with sections 12 and 12-b of the Public Health Law.

(b) For adult care facilities, failure to arrange for the vaccination of every facility resident and personnel as set forth in section 66-4.2 of this Part constitutes a "failure in systemic practices and procedures" under Social Services Law 460-d(7)(b)(2)(iii) and pursuant to 18 NYCRR

486.5(a)(4)(v).

(c) In addition to any monetary penalties or referral for criminal investigation to appropriate entities, the Department shall be empowered to immediately take custody and control of such vaccine at a nursing home and re-allocate to another provider.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority is provided under sections 201, 206, and 2803 of the Public Health Law (PHL) and sections 461 and 461-e of the Social Services Law (SSL).

PHL § 201 authorizes the New York State Department of Health (Department) to control and promote the control of communicable diseases to reduce their spread. Likewise, PHL § 206 authorizes the Commissioner of Health to take cognizance of the interests of health and life of the people of the state, and of all matters pertaining thereto and exercise the functions, powers and duties of the department prescribed by law, including control of communicable diseases.

PHL § 2803 authorizes the promulgation of such regulations as may be necessary to implement the purposes and provisions of PHL Article 28, including the establishment of minimum standards governing the operation of health care facilities.

SSL § 461 requires the Department to promulgate regulations establishing general standards applicable to Adult Care Facilities (ACF). SSL § 461-e authorizes the Department to promulgate regulations to require adult care facilities to maintain certain records with respect to the facilities residents and the operation of the facility.

Legislative Objectives:

The legislative objectives of PHL §§ 201 and 206 are to protect the health and life of the people of the State of New York, including by controlling the spread of communicable diseases. The legislative objectives of PHL Article 28, including PHL § 2803, include the efficient provision and proper utilization of health services of the highest quality. The legislative objective of SSL § 461 is to promote the health and well-being of residents of adult care

facilities. Collectively, the legislative purpose of these statutes is to protect the residents of New York's long-term care facilities by providing safe, efficient, and adequate care.

Needs and Benefits:

These regulations are necessary to prevent the spread of COVID-19 in nursing homes and adult care facilities and to help ensure the health and life of residents of nursing homes and ACFs by requiring such congregate care facilities to offer or arrange for consenting residents and personnel to receive the COVID-19 vaccine. This requirement will help ensure residents are less likely to suffer a COVID-related death or severe illness and that fewer staff test positive for COVID-19. To date, there are an approximate 8,200 (9%) nursing home and 1,100 (4%) adult care facility residents that remain unvaccinated. As such, the potential for COVID-19 introduction or re-introduction to this vulnerable population remains a risk and the need for protecting their health and safety a top high priority.

COVID-19 is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal. Given the disproportionate adverse health impacts of COVID-19 for older adults and those with comorbidities, many of whom reside in New York's nursing homes and ACFs, it is imperative that nursing homes and ACFs facilitate the prompt vaccination of its residents. Moreover, in order to ensure that nursing home and ACF personnel can safely provide resident care, it is critically important that nursing homes offer continued COVID-19 vaccinations on-site for their current and new personnel and that ACFs arrange for

their current and new personnel to receive the COVID-19 vaccine at an off-site location, such as a pharmacy.

Based on the foregoing, the Department has made the determination that this emergency regulation is necessary to best protect the residents of New York's nursing homes and ACFs.

COSTS:

Costs to Regulated Parties:

The purpose of this regulation is to require nursing homes and ACFs to promptly coordinate the COVID-19 vaccination of their residents and personnel. For nursing homes, costs are expected to be minimal given that the COVID-19 vaccine is provided free of charge, and Medicare reimbursement is available to help Medicare-enrolled nursing homes cover administrative costs; specifically, pursuant to April 2, 2021 guidance from the Centers for Medicare & Medicaid Services (CMS), "starting on March 15, 2021, for single dose COVID-19 vaccines, Medicare pays approximately $40 for its administration. Starting on March 15, 2021, for COVID-19 vaccines requiring multiple doses, Medicare pays approximately $40 for each dose in the series." Nursing homes will need in some circumstances to absorb the administrative costs associated with reporting doses of vaccine administered to the appropriate vaccine registry when not reported by an outside vendor or pharmacy provider.

For ACFs, costs to facilities are minimal to none, as ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. Many ACFs have vehicles which can be used for necessary transport, but there may be minimal costs associated with transportation, particularly if the distance to the vaccination site is great and/or if the ACF does not readily have access to a vehicle.

Costs to Local and State Governments:

This regulation will not impact local or State governments unless they operate a nursing home or ACF, in which case costs will be the same as costs for private entities. Currently, there are 21 nursing homes operated by local governments (counties and municipalities) and 6 nursing homes operated by the State. Additionally, there are currently two adult care facilities operated by county governments.

Costs to the Department of Health:

This regulation will not result in any additional operational costs to the Department of Health.

Paperwork:

This regulation imposes no additional paperwork. Although the regulation requires recordkeeping by facilities, including documentation in personnel files and resident clinical or case management records, these records must already be maintained by facilities.

Local Government Mandates:

Nursing homes and ACFs operated by local governments will be affected and will be subject to the same requirements as any other nursing home licensed under PHL Article 28 or ACF licensed under SSL Article 7, Title 2.

Duplication:

These regulations do not duplicate any State or federal rules.

Alternatives:

The Department believes that promulgation of this regulation is the most effective means of ensuring that nursing homes and ACFs adequately ensure their residents and personnel are vaccinated against COVID-19. Accordingly, the alternative of not issuing these regulations was rejected.

Federal Standards:

No federal standards apply.

Compliance Schedule:

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

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

This regulation will not impact local governments or small businesses unless they operate a nursing home or ACF. Currently, there are 21 nursing homes operated by local governments (counties and municipalities) and 6 nursing homes operated by the State. Additionally, there are currently two ACFs operated by county governments (Chenango and Warren Counties).

Additionally, to date, 79 nursing homes in New York qualify as small businesses given that they have 100 or fewer employees. There are also 483 ACFs that have 100 or fewer employees and therefore qualify as small businesses.

Compliance Requirements:

This regulation primarily requires nursing homes and ACFs to promptly coordinate the COVID-19 vaccination of their residents and personnel. Specifically, nursing homes will be required to offer ongoing COVID-19 vaccinations at the facility, and ACFs will be responsible for arranging vaccinations at off-site locations, such as State-run vaccination sites or a local pharmacy. The regulation also requires facilities to provide all current and new personnel and residents who decline to be vaccinated a written affirmation for their signature, which indicates that they were offered the opportunity for the facility to arrange for or offer, as applicable, a COVID-19 vaccination, but they declined. Further, nursing homes are required to post conspicuous signage throughout the facility reminding personnel and residents that the facility offers COVID-19 vaccinations.

Professional Services:

No professional services are required by this regulation. However, nursing homes may choose to partner with a pharmacy to offer COVID-19 vaccinations for personnel and residents of the facility, rather than receiving and administering the vaccine directly.

Compliance Costs:

This regulation requires nursing homes and ACFs to promptly coordinate the COVID-19 vaccination of their residents and personnel. Specifically, nursing homes will be required to offer ongoing COVID-19 vaccinations at the facility, and ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. For nursing homes, costs are expected to be minimal given that the COVID-19 vaccine is provided free of charge, and Medicare reimbursement is available to help Medicare-enrolled nursing homes cover administrative costs; specifically, pursuant to April 2, 2021 guidance from the Centers for Medicare & Medicaid Services (CMS), "starting on March 15, 2021, for single dose COVID-19 vaccines, Medicare pays approximately $40 for its administration. Starting on March 15, 2021, for COVID-19 vaccines requiring multiple doses, Medicare pays approximately $40 for each dose in the series." Nursing homes will need in some circumstances to absorb the administrative costs associated with reporting doses of vaccine administered to the appropriate vaccine registry when not reported by an outside vendor or pharmacy provider.

For ACFs, costs to facilities are minimal to none, as ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. Many ACFs have vehicles which can be used for necessary transport, but there may be minimal costs associated with

transportation particularly if the distance to the vaccination site is great and/or if the ACF does not readily have access to a vehicle.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

This regulation is consistent with the existing responsibilities nursing homes and ACFs have to maintain the health and safety of residents, ensure sufficient staffing levels, and ensure staff are free from communicable diseases. Therefore, any adverse impacts are expected to be minimal and are outweighed by the regulation's health and safety benefits to residents and staff.

Small Business and Local Government Participation:

Due to the urgent need to ensure ACF and NH staff and residents are vaccinated as soon as possible given the seriousness of COVID-19 if contracted, particularly by older adults or persons with comorbidities, small business and local governments were not directly consulted. However, the Department will notify such entities of the existence of these regulations and the opportunity to submit comments or questions to the Department.

Cure Period:

This regulation does not include a cure period given the serious threat the COVID-19 virus causes to all New Yorkers, particularly those residing in nursing homes and adult care facilities, considering such residents' age and comorbidities. As detailed more fully within the

regulations, nursing homes and adult care facilities will have 14 and 7 days, respectively, to offer vaccinations to residents and staff. The Department finds these 14- and 7-day periods to comply with the regulatory requirements are sufficient to ensure facilities can establish or revise their vaccination policies and procedures, while balancing the urgent need to protect facility residents and personnel from this dangerous disease.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

Although this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), "rural area" means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as "counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population 'rural areas' means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein."

The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010:

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

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

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

Both licensed nursing homes and ACFs are located in these identified rural areas.

Reporting, recordkeeping, and other compliance requirements; and professional services:

This regulation imposes no additional paperwork. Although the regulation requires recordkeeping by facilities, including documentation in personnel files and resident clinical or case management records, these records must already be maintained by facilities. Additionally, no professional services are required by this regulation. However, nursing homes may choose to partner with a pharmacy to offer COVID-19 vaccinations for personnel and residents of the facility, rather than receiving and administering the vaccine directly.

Compliance Costs:

This regulation requires nursing homes and ACFs to promptly coordinate the COVID-19 vaccination of their residents and personnel. Specifically, nursing homes will be required to offer ongoing COVID-19 vaccinations at the facility, and ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. For nursing homes, costs are expected to be minimal given that the COVID-19 vaccine is provided free of charge, and Medicare reimbursement is available to help Medicare-enrolled nursing homes cover

administrative costs; specifically, pursuant to April 2, 2021 guidance from the Centers for Medicare & Medicaid Services (CMS), "starting on March 15, 2021, for single dose COVID-19 vaccines, Medicare pays approximately $40 for its administration. Starting on March 15, 2021, for COVID-19 vaccines requiring multiple doses, Medicare pays approximately $40 for each dose in the series." Nursing homes will need in some circumstances to absorb the administrative costs associated with reporting doses of vaccine administered to the appropriate vaccine registry when not reported by an outside vendor or pharmacy provider.

For ACFs, costs to facilities are minimal to none, as ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. Many ACFs have vehicles which can be used for necessary transport, but there may be minimal costs associated with transportation particularly if the distance to the vaccination site is great and/or if the ACF does not readily have access to a vehicle.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

This regulation is consistent with the existing responsibilities nursing homes and ACFs have to maintain the health and safety of residents, ensure sufficient staffing levels, and ensure staff are free from communicable diseases. Therefore, any adverse impacts are expected to be minimal and are outweighed by the regulation's health and safety benefits to residents and staff.

Rural Area Participation:

Due to the urgent need to ensure ACF and NH staff and residents are vaccinated as soon as possible given the seriousness of the COVID-19 virus on this population, facilities located in rural areas were not directly consulted. However, the Department will notify covered entities located in rural areas of the existence of these regulations and the opportunity to submit comments or questions to the Department.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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

Pursuant to the authority vested in the Commissioner of Health by Section 2803 of the Public Health Law, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by amending sections 405.11 and 415.19, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 405.11 is amended by adding a new subdivision (g) as follows:

(g) (1) The hospital shall possess and maintain a supply of all necessary items of personal protective equipment (PPE) sufficient to protect health care personnel, consistent with federal Centers for Disease Control and Prevention guidance, for at least 60 days, by August 31, 2021.

(2) The 60-day stockpile requirement set forth in paragraph (1) of this subdivision shall be determined by the Department as follows for each type of required PPE:

(i) for single gloves, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 550;

(ii) for gowns, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 41;

(iii) for surgical masks, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 21; and

(iv) for N95 respirator masks, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 9.6.

(3) The Commissioner shall have discretion to increase the stockpile requirement set forth in paragraph (1) of this subdivision from 60 days to 90 days where there is a State or local public

health emergency declared pursuant to Section 24 or 28 of the Executive Law. Hospitals shall possess and maintain the necessary 90-day stockpile of PPE by the deadline set forth by the Commissioner.

(4) In order to maximize the shelf life of stockpiled inventory, providers should follow the appropriate storage conditions as outlined by manufacturers and inventory should be rotated through regular usage and replace what has been used in order to ensure a consistent readiness level, and expired products should be disposed of when their expiration date has passed. Expired products shall not be used to comply with the stockpile requirement set forth in paragraph (1) of this subdivision.

(5) Failure to possess and maintain the required supply of PPE may result in the revocation, limitation, or suspension of the hospital's license; provided, however, that no such revocation, limitation, or suspension shall be ordered unless the Department has provided the hospital with a fourteen day grace period, solely for a hospital's first violation of this section, to achieve compliance with the requirement set forth herein.

Section 415.19 is amended by adding a new subdivision (f) as follows:

(f) (1) The nursing home shall possess and maintain a supply of all necessary items of personal protective equipment (PPE) sufficient to protect health care personnel, consistent with federal Centers for Disease Control and Prevention guidance, for at least 60 days, by August 31, 2021.

(2) The 60-day stockpile requirement set forth in paragraph (1) of this subdivision shall be determined by the Department as follows for each type of required PPE:

(i) for single gloves, the applicable positivity rate, multiplied by the number of certified nursing home beds as indicated on the nursing home's operating certificate, multiplied by 24;

(ii) for gowns, the applicable positivity rate, multiplied by the number of certified nursing home beds as indicated on the nursing home's operating certificate, multiplied by 3;

(iii) for surgical masks, the applicable positivity rate, multiplied by the number of certified nursing home beds as indicated on the nursing home's operating certificate, multiplied by 1.5; and

(iv) for N95 respirator masks, the applicable positivity rate, multiplied by the number of certified nursing home beds as indicated on the nursing home's operating certificate, multiplied by 1.4.

(v) For the purposes of this paragraph, the term "applicable positivity rate" shall mean the greater of the following positivity rates:

(a) The nursing home's average COVID-19 positivity rate, based on reports made to the Department, during the period April 26, 2020 through May 20, 2020; or

(b) The nursing home's average COVID-19 positivity rate, based on reports made to the Department, during the period January 3, 2021 through January 31, 2021; or

(c) 20.15 percent, representing the highest Regional Economic Development Council average COVID-19 positivity rate, as reported to the Department, during the periods April 26, 2020 through May 20, 2020 and January 3, 2021 through January 31, 2021.

(3) In order to maximize the shelf life of stockpiled inventory, providers should follow the appropriate storage conditions as outlined by manufacturers and inventory should be rotated through regular usage and replace what has been used in order to ensure a consistent readiness

level, and expired products should be disposed of when their expiration date has passed. Expired products shall not be used to comply with the stockpile requirement set forth in paragraph (1) of this subdivision.

(4) Failure to possess and maintain the required supply of PPE may result in the revocation, limitation, or suspension of the nursing home's license; provided, however, that no such revocation, limitation, or suspension shall be ordered unless the Department has provided the nursing home with a fourteen day grace period, solely for a nursing home's first violation of this section, to achieve compliance with the requirement set forth herein.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Section 2803 of the Public Health Law (PHL) authorizes the promulgation of such regulations as may be necessary to implement the purposes and provisions of PHL Article 28, including the establishment of minimum standards governing the operation of health care facilities, including hospitals and nursing homes.

Legislative Objectives:

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

Needs and Benefits:

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions.

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had existed since January 27, 2020, nationwide. Thereafter, the situation rapidly evolved throughout

the world, with many countries, including the United States, quickly progressing from the identification of travel-associated cases to person-to-person transmission among close contacts of travel-associated cases, and finally to widespread community transmission of COVID-19.

In order for hospital and nursing home staff to safely provide care for COVID-19 positive patients and residents, or patients and residents infected with another communicable disease, while ensuring that they themselves do not become infected with COVID-19 or any other communicable disease, it is critically important that personal protective equipment (PPE), including masks, gloves, respirators, face shields and gowns, is readily available and are used. Therefore, as a result of global PPE shortages at the outset of the State of Emergency, New York State provided general hospitals, nursing homes, and other medical facilities with PPE from the State's emergency stockpile from the beginning of the COVID-19 outbreak. However, hospitals and nursing homes must ensure sufficient PPE stockpiles exist for any future communicable disease outbreaks to ensure each facility is adequately prepared to protect its staff and patients or residents, without needing to rely on the State's emergency stockpile.

Based on the foregoing, the Department has made the determination that this regulation is necessary to ensure that all general hospitals and nursing homes maintain a 60-day supply of PPE to ensure that sufficient PPE is available in the event of a continuation or resurgence of the COVID-19 outbreak or another communicable disease outbreak.

COSTS:

Costs to Regulated Parties:

The purpose of this regulation is to require general hospitals and nursing homes to maintain adequate stockpiles of PPE. The initial cost to facilities as they establish stockpiles of PPE will vary depending on the number of staff working at each facility. However, the

Department anticipates that hospitals and nursing homes will routinely use stockpiled PPE as part of their routine operations; while facilities must maintain the requisite stockpile at all times in the event of an emergency need, facilities are expected to rotate through their stockpiles routinely to ensure the PPE does not expire and is replaced with new PPE, thereby helping to balance facility expenditures over time. Further, in the event of an emergency need, hospitals and nursing homes are expected to tap into their stockpiles; as such, hospitals and nursing homes will ultimately use equipment which would have been purchased had a stockpile not existed, thereby mitigating overall costs. Moreover, nursing homes are statutorily obligated to maintain or contract to have at least a two-month supply of PPE pursuant to Public Health Law section 2803(12). As such, this regulation imposes no long-term additional costs to regulated parties.

Costs to Local and State Governments:

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

Costs to the Department of Health:

This regulation will not result in any additional operational costs to the Department of Health.

Paperwork:

This regulation imposes no addition paperwork.

Local Government Mandates:

General hospitals and nursing homes operated by local governments will be affected and will be subject to the same requirements as any other general hospital licensed under PHL Article 28.

Duplication:

These regulations do not duplicate any State or federal rules.

Alternatives:

The Department believes that promulgation of this regulation is the most effective means of ensuring that general hospitals and nursing homes have adequate stockpiles of PPE necessary to protect hospital staff from communicable diseases, compared to any alternate course of action.

Federal Standards:

No federal standards apply to stockpiling of such equipment at hospitals.

Compliance Schedule:

The regulations will become effective upon publication of a Notice of Adoption in the New York State Register. These regulations are expected to be proposed for permanent adoption at a future meeting of the Public Health and Health Planning Council.

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

This regulation will not impact local governments or small businesses unless they operate a general hospital or a nursing home. Currently there are five general hospitals in New York that employ less than 100 staff and qualify as small businesses, and there are 79 nursing homes in New York qualify as small businesses given that they employ less than 100 staff.

Compliance Requirements:

These regulations require all general hospitals and nursing homes to purchase and maintain adequate stockpiles of PPE, including but not limited to masks, respirators, face shields and gowns.

Professional Services:

It is not expected that any professional services will be needed to comply with this rule.

Compliance Costs:

The purpose of this regulation is to require general hospitals and nursing homes to maintain adequate stockpiles of PPE. The initial cost to facilities as they establish stockpiles of PPE will vary depending on the number of staff working at each covered facility. However, the Department anticipates that hospitals and nursing homes will routinely use stockpiled PPE as part of their routine operations; while facilities must maintain the requisite stockpile at all times in the event of an emergency need, facilities are expected to rotate through their stockpiles routinely to ensure the PPE does not expire and is replaced with new PPE, thereby helping to

balance facility expenditures over time. Further, in the event of an emergency need, hospitals and nursing homes are expected to tap into their stockpiles; as such, hospitals and nursing homes will ultimately use equipment which would have been purchased had a stockpile not existed, thereby mitigating overall costs. Moreover, nursing homes are statutorily obligated to maintain or contract to have at least a two-month supply of PPE pursuant to Public Health Law section 2803(12). As such, this regulation imposes no long-term additional costs to regulated parties.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

The Department anticipates that any adverse impacts will be minimal, as both hospitals and nursing homes have already mobilized their stockpiling efforts since early 2020, when the spread of the COVID-19 virus was first recognized in New York State, including through two surges of the COVID-19 pandemic. As such, the continuance of these stockpiling requirements is not expected to create any additional adverse impact on hospitals or nursing homes. Moreover, for nursing homes, these PPE regulations are consistent with the existing directive in Public Health Law section 2803(12) to maintain a two-month PPE supply.

Small Business and Local Government Participation:

Small business and local governments were not directly consulted given the urgent need to ensure hospital patients and nursing home residents are adequately protected in the event of a resurgence of COVID-19 or another communicable disease outbreak. However, the Department

plans to issue an advisory to hospital CEOs and nursing home administrators alerting them to the anticipated proposed rulemaking on these regulations and opportunity to submit public comments.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

Although this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), "rural area" means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as "counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population 'rural areas' means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein."

The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010:

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County

Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

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

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

There are 47 general hospitals located in rural areas as well as several licensed nursing homes.

Reporting, Recordkeeping, and Other Compliance Requirements; and Professional Services:

These regulations require all general hospitals and nursing homes, including those in rural areas, to purchase and maintain adequate stockpiles of PPE, including but not limited to masks, respirators, face shields and gowns.

Compliance Costs:

The purpose of this regulation is to require general hospitals and nursing homes to maintain adequate stockpiles of PPE. The initial cost to facilities as they establish stockpiles of PPE will vary depending on the number of staff working at each facility. However, the Department anticipates that hospitals and nursing homes will routinely use stockpiled PPE as

part of their routine operations; while facilities must maintain the requisite stockpile at all times in the event of an emergency need, facilities are expected to rotate through their stockpiles routinely to ensure the PPE does not expire and is replaced with new PPE, thereby helping to balance facility expenditures over time. Further, in the event of an emergency need, hospitals and nursing homes are expected to tap into their stockpiles; as such, hospitals and nursing homes will ultimately use equipment which would have been purchased had a stockpile not existed, thereby mitigating overall costs. Moreover, nursing homes are statutorily obligated to maintain or contract to have at least a two-month supply of PPE pursuant to Public Health Law section 2803(12). Therefore, this regulation imposes no long-term additional costs to regulated parties.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

The Department anticipates that any adverse impacts will be minimal, as both hospitals and nursing homes have already mobilized their stockpiling efforts since early 2020, when the spread of the COVID-19 virus was first recognized in New York State, including through two surges of the COVID-19 pandemic. As such, the continuance of these stockpiling requirements is not expected to create any additional adverse impact on hospitals or nursing homes. Moreover, for nursing homes, these PPE regulations are consistent with the existing directive in Public Health Law section 2803(12) to maintain a two-month PPE supply.

Rural Area Participation:

Parties representing rural areas were not directly consulted given the urgent need to ensure hospital patients and nursing home residents are adequately protected in the event of a resurgence of COVID-19 or another communicable disease outbreak. However, the Department plans to issue an advisory to hospital CEOs and nursing home administrators alerting them to the anticipated proposed rulemaking and opportunity to submit public comments.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by sections 201, 206 and 2803 of the Public Health Law and sections 461 and 461-e of the Social Services Law, Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) is hereby amended by adding a new Subpart 66-4, to be effective upon filing with the Secretary of State, to read as follows:

A new Subpart 66-4, titled COVID-19 Nursing Home and Adult Care Facility Vaccination Program, is added to read as follows:

66-4.1. Requirements for Nursing Homes

(a) Every nursing home regulated pursuant to Part 415 of this Title shall offer all consenting, unvaccinated existing personnel and residents an opportunity to receive the first or any recommended next or booster dose of the COVID-19 vaccine.

(b) The operator and administrator of every nursing home regulated pursuant to Part 415 of this Title must ensure that all new personnel, including employees and contract staff, and every new resident and resident readmitted to the facility has an opportunity to receive the first or any recommended next or booster dose of the COVID-19 vaccine within fourteen days of having been hired by or admitted or readmitted to such facility, as applicable.

(c) The requirement to ensure that all new and current personnel and residents have an opportunity to receive the COVID-19 vaccination, as set forth in subdivisions (a) and (b) of this section, shall include, but not be limited to:

(1) Posting conspicuous signage throughout the facility, including at points of entry and exit and each residential hallway, reminding personnel and residents that the facility offers COVID-19 vaccination; and

(2) Providing all personnel and residents who decline to be vaccinated a written affirmation for their signature, which indicates that they were offered the opportunity for a COVID-19 vaccination but declined. Such affirmation must state that the signatory is aware that, if they later decide to be vaccinated for COVID-19, it is their responsibility to request vaccination from the facility. The facility shall maintain signed affirmations on file at the facility and make such forms available at the request of the Department.

(d) Nursing homes must comply with the requirements for vaccination of personnel in 10 NYCRR § 415.19(a)(5).

66-4.2. Requirements for Adult Care Facilities

(a) The operator and administrator of every adult care facility regulated pursuant to Parts 487, 488 and 490 of Title 18 of the NYCRR and Part 1001 of this Title shall make diligent efforts to arrange for all consenting, unvaccinated existing personnel and residents to register for a vaccine appointment and an appointment to receive any recommended booster, and shall document attempts to schedule and methods used to schedule the vaccine in the individual's personnel file or case management notes, as applicable.

(b) The operator and administrator of every adult care facility regulated pursuant to Parts 487, 488 and 490 of Title 18 of the NYCRR and Part 1001 of this Title must arrange for the COVID-19 vaccination, including the first or any recommended next or booster dose, of all new personnel, including employees and contract staff, and every new resident and resident

readmitted to the facility. The requirement to arrange for COVID-19 vaccination of such personnel and residents shall include, but not be limited to:

(1) For residents:

(i) during the pre-admission screening process, and in no event after the first day of admission or readmission, the adult care facility shall screen the prospective or newly-admitted or readmitted resident for COVID-19 vaccine eligibility, including whether any first doses of the vaccine were previously administered, and whether the resident is interested in obtaining the COVID-19 vaccine, including a recommended booster. Such information shall be documented with the resident's pre-admission screening information and, if admitted, retained in the resident's case management records; and

(ii) within seven days of admission or readmission, the facility shall make diligent efforts to schedule all consenting and eligible new or readmitted residents for the COVID-19 vaccination, including a recommended booster. The facility must document attempts to schedule and methods used to schedule the vaccine appointment in the resident's case management notes.

(2) For personnel:

(i) during the pre-employment screening process, the facility shall solicit information from the prospective personnel regarding their vaccination status, including whether any first doses of the vaccine were previously administered, and whether the prospective personnel is interested in obtaining the COVID-19 vaccine. Such information must be documented with the personnel's pre-employment screening information and, if hired, retained in the personnel file; provided, however, that nothing in this paragraph shall be construed to require an adult care facility to make any hiring determination based upon

the prospective personnel's COVID-19 vaccination status, history, or interest in COVID-19 vaccination; and

(ii) within seven days of hiring new personnel, the facility shall make diligent efforts to schedule all consenting and eligible new personnel for the COVID-19 vaccination. The facility must document attempts to schedule and methods used to schedule the vaccine appointment in the individual's personnel file.

(iii) Adult care facilities must comply with the requirements for vaccination of personnel in 18 NYCRR §§487.9(a)(18), 488.9(a)(14), 490.9(a)(15), and 10 NYCRR §1001.11(q)(5), as applicable.

(c) The facility shall further provide all current and new personnel and residents who decline to be vaccinated a written affirmation for their signature, which indicates that they were offered the opportunity for the facility to arrange for a COVID-19 vaccination, but declined. Such affirmation must state that the signatory is aware that, if they later decide to be vaccinated for COVID-19, it is their responsibility to request the facility arrange for their vaccination. The facility shall maintain signed affirmations on file at the facility and make such forms available at the request of the Department.

66-4.3. Penalties.

(a) A violation of any provision of this Subpart shall be subject to penalties in accordance with sections 12 and 12-b of the Public Health Law.

(b) For adult care facilities, failure to arrange for the vaccination of every facility resident and personnel as set forth in section 66-4.2 of this Part constitutes a "failure in systemic practices and procedures" under Social Services Law 460-d(7)(b)(2)(iii) and pursuant to 18 NYCRR

486.5(a)(4)(v).

(c) In addition to any monetary penalties or referral for criminal investigation to appropriate entities, the Department shall be empowered to immediately take custody and control of such vaccine at a nursing home and re-allocate to another provider.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority is provided under sections 201, 206, and 2803 of the Public Health Law (PHL) and sections 461 and 461-e of the Social Services Law (SSL).

PHL § 201 authorizes the New York State Department of Health (Department) to control and promote the control of communicable diseases to reduce their spread. Likewise, PHL § 206 authorizes the Commissioner of Health to take cognizance of the interests of health and life of the people of the state, and of all matters pertaining thereto and exercise the functions, powers and duties of the department prescribed by law, including control of communicable diseases.

PHL § 2803 authorizes the promulgation of such regulations as may be necessary to implement the purposes and provisions of PHL Article 28, including the establishment of minimum standards governing the operation of health care facilities.

SSL § 461 requires the Department to promulgate regulations establishing general standards applicable to Adult Care Facilities (ACF). SSL § 461-e authorizes the Department to promulgate regulations to require adult care facilities to maintain certain records with respect to the facilities residents and the operation of the facility.

Legislative Objectives:

The legislative objectives of PHL §§ 201 and 206 are to protect the health and life of the people of the State of New York, including by controlling the spread of communicable diseases. The legislative objectives of PHL Article 28, including PHL § 2803, include the efficient provision and proper utilization of health services of the highest quality. The legislative objective of SSL § 461 is to promote the health and well-being of residents of adult care

facilities. Collectively, the legislative purpose of these statutes is to protect the residents of New York's long-term care facilities by providing safe, efficient, and adequate care.

Needs and Benefits:

These regulations are necessary to prevent the spread of COVID-19 in nursing homes and adult care facilities and to help ensure the health and life of residents of nursing homes and ACFs by requiring such congregate care facilities to offer or arrange for consenting residents and personnel to receive the COVID-19 vaccine. This requirement will help ensure residents are less likely to suffer a COVID-related death or severe illness and that fewer staff test positive for COVID-19. To date, there are an approximate 8,200 (9%) nursing home and 1,100 (4%) adult care facility residents that remain unvaccinated. As such, the potential for COVID-19 introduction or re-introduction to this vulnerable population remains a risk and the need for protecting their health and safety a top high priority.

COVID-19 is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal. Given the disproportionate adverse health impacts of COVID-19 for older adults and those with comorbidities, many of whom reside in New York's nursing homes and ACFs, it is imperative that nursing homes and ACFs facilitate the prompt vaccination of its residents. Moreover, in order to ensure that nursing home and ACF personnel can safely provide resident care, it is critically important that nursing homes offer continued COVID-19 vaccinations on-site for their current and new personnel and that ACFs arrange for

their current and new personnel to receive the COVID-19 vaccine at an off-site location, such as a pharmacy.

Based on the foregoing, the Department has made the determination that this emergency regulation is necessary to best protect the residents of New York's nursing homes and ACFs.

COSTS:

Costs to Regulated Parties:

The purpose of this regulation is to require nursing homes and ACFs to promptly coordinate the COVID-19 vaccination of their residents and personnel. For nursing homes, costs are expected to be minimal given that the COVID-19 vaccine is provided free of charge, and Medicare reimbursement is available to help Medicare-enrolled nursing homes cover administrative costs; specifically, pursuant to April 2, 2021 guidance from the Centers for Medicare & Medicaid Services (CMS), "starting on March 15, 2021, for single dose COVID-19 vaccines, Medicare pays approximately $40 for its administration. Starting on March 15, 2021, for COVID-19 vaccines requiring multiple doses, Medicare pays approximately $40 for each dose in the series." Nursing homes will need in some circumstances to absorb the administrative costs associated with reporting doses of vaccine administered to the appropriate vaccine registry when not reported by an outside vendor or pharmacy provider.

For ACFs, costs to facilities are minimal to none, as ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. Many ACFs have vehicles which can be used for necessary transport, but there may be minimal costs associated with transportation, particularly if the distance to the vaccination site is great and/or if the ACF does not readily have access to a vehicle.

Costs to Local and State Governments:

This regulation will not impact local or State governments unless they operate a nursing home or ACF, in which case costs will be the same as costs for private entities. Currently, there are 21 nursing homes operated by local governments (counties and municipalities) and 6 nursing homes operated by the State. Additionally, there are currently two adult care facilities operated by county governments.

Costs to the Department of Health:

This regulation will not result in any additional operational costs to the Department of Health.

Paperwork:

This regulation imposes no additional paperwork. Although the regulation requires recordkeeping by facilities, including documentation in personnel files and resident clinical or case management records, these records must already be maintained by facilities.

Local Government Mandates:

Nursing homes and ACFs operated by local governments will be affected and will be subject to the same requirements as any other nursing home licensed under PHL Article 28 or ACF licensed under SSL Article 7, Title 2.

Duplication:

These regulations do not duplicate any State or federal rules.

Alternatives:

The Department believes that promulgation of this regulation is the most effective means of ensuring that nursing homes and ACFs adequately ensure their residents and personnel are vaccinated against COVID-19. Accordingly, the alternative of not issuing these regulations was rejected.

Federal Standards:

No federal standards apply.

Compliance Schedule:

The regulations will become effective upon filing with the Department of State.

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

This regulation will not impact local governments or small businesses unless they operate a nursing home or ACF. Currently, there are 21 nursing homes operated by local governments (counties and municipalities) and 6 nursing homes operated by the State. Additionally, there are currently two ACFs operated by county governments (Chenango and Warren Counties).

Additionally, to date, 79 nursing homes in New York qualify as small businesses given that they have 100 or fewer employees. There are also 483 ACFs that have 100 or fewer employees and therefore qualify as small businesses.

Compliance Requirements:

This regulation primarily requires nursing homes and ACFs to promptly coordinate the COVID-19 vaccination of their residents and personnel. Specifically, nursing homes will be required to offer ongoing COVID-19 vaccinations at the facility, and ACFs will be responsible for arranging vaccinations at off-site locations, such as State-run vaccination sites or a local pharmacy. The regulation also requires facilities to provide all current and new personnel and residents who decline to be vaccinated a written affirmation for their signature, which indicates that they were offered the opportunity for the facility to arrange for or offer, as applicable, a COVID-19 vaccination, but they declined. Further, nursing homes are required to post conspicuous signage throughout the facility reminding personnel and residents that the facility offers COVID-19 vaccinations.

Professional Services:

No professional services are required by this regulation. However, nursing homes may choose to partner with a pharmacy to offer COVID-19 vaccinations for personnel and residents of the facility, rather than receiving and administering the vaccine directly.

Compliance Costs:

This regulation requires nursing homes and ACFs to promptly coordinate the COVID-19 vaccination of their residents and personnel. Specifically, nursing homes will be required to offer ongoing COVID-19 vaccinations at the facility, and ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. For nursing homes, costs are expected to be minimal given that the COVID-19 vaccine is provided free of charge, and Medicare reimbursement is available to help Medicare-enrolled nursing homes cover administrative costs; specifically, pursuant to April 2, 2021 guidance from the Centers for Medicare & Medicaid Services (CMS), "starting on March 15, 2021, for single dose COVID-19 vaccines, Medicare pays approximately $40 for its administration. Starting on March 15, 2021, for COVID-19 vaccines requiring multiple doses, Medicare pays approximately $40 for each dose in the series." Nursing homes will need in some circumstances to absorb the administrative costs associated with reporting doses of vaccine administered to the appropriate vaccine registry when not reported by an outside vendor or pharmacy provider.

For ACFs, costs to facilities are minimal to none, as ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. Many ACFs have vehicles which can be used for necessary transport, but there may be minimal costs associated with

transportation particularly if the distance to the vaccination site is great and/or if the ACF does not readily have access to a vehicle.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

This regulation is consistent with the existing responsibilities nursing homes and ACFs have to maintain the health and safety of residents, ensure sufficient staffing levels, and ensure staff are free from communicable diseases. Therefore, any adverse impacts are expected to be minimal and are outweighed by the regulation's health and safety benefits to residents and staff.

Small Business and Local Government Participation:

Due to the urgent need to ensure ACF and NH staff and residents are vaccinated as soon as possible given the seriousness of COVID-19 if contracted, particularly by older adults or persons with comorbidities, small business and local governments were not directly consulted. However, the Department will notify such entities of the existence of these regulations and the opportunity to submit comments or questions to the Department.

Cure Period:

This regulation does not include a cure period given the serious threat the COVID-19 virus causes to all New Yorkers, particularly those residing in nursing homes and adult care facilities, considering such residents' age and comorbidities. As detailed more fully within the

regulations, nursing homes and adult care facilities will have 14 and 7 days, respectively, to offer vaccinations to residents and staff. The Department finds these 14- and 7-day periods to comply with the regulatory requirements are sufficient to ensure facilities can establish or revise their vaccination policies and procedures, while balancing the urgent need to protect facility residents and personnel from this dangerous disease.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

Although this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), "rural area" means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as "counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population 'rural areas' means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein."

The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010:

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

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

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

Both licensed nursing homes and ACFs are located in these identified rural areas.

Reporting, recordkeeping, and other compliance requirements; and professional services:

This regulation imposes no additional paperwork. Although the regulation requires recordkeeping by facilities, including documentation in personnel files and resident clinical or case management records, these records must already be maintained by facilities. Additionally, no professional services are required by this regulation. However, nursing homes may choose to partner with a pharmacy to offer COVID-19 vaccinations for personnel and residents of the facility, rather than receiving and administering the vaccine directly.

Compliance Costs:

This regulation requires nursing homes and ACFs to promptly coordinate the COVID-19 vaccination of their residents and personnel. Specifically, nursing homes will be required to offer ongoing COVID-19 vaccinations at the facility, and ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. For nursing homes, costs are expected to be minimal given that the COVID-19 vaccine is provided free of charge, and Medicare reimbursement is available to help Medicare-enrolled nursing homes cover

administrative costs; specifically, pursuant to April 2, 2021 guidance from the Centers for Medicare & Medicaid Services (CMS), "starting on March 15, 2021, for single dose COVID-19 vaccines, Medicare pays approximately $40 for its administration. Starting on March 15, 2021, for COVID-19 vaccines requiring multiple doses, Medicare pays approximately $40 for each dose in the series." Nursing homes will need in some circumstances to absorb the administrative costs associated with reporting doses of vaccine administered to the appropriate vaccine registry when not reported by an outside vendor or pharmacy provider.

For ACFs, costs to facilities are minimal to none, as ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. Many ACFs have vehicles which can be used for necessary transport, but there may be minimal costs associated with transportation particularly if the distance to the vaccination site is great and/or if the ACF does not readily have access to a vehicle.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

This regulation is consistent with the existing responsibilities nursing homes and ACFs have to maintain the health and safety of residents, ensure sufficient staffing levels, and ensure staff are free from communicable diseases. Therefore, any adverse impacts are expected to be minimal and are outweighed by the regulation's health and safety benefits to residents and staff.

Rural Area Participation:

Due to the urgent need to ensure ACF and NH staff and residents are vaccinated as soon as possible given the seriousness of the COVID-19 virus on this population, facilities located in rural areas were not directly consulted. However, the Department will notify covered entities located in rural areas of the existence of these regulations and the opportunity to submit comments or questions to the Department.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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

EMERGENCY JUSTIFICATION

As stated in the declaration of the State disaster emergency in Executive Orders No. 11 through 11.6 (November 26, 2021, through June 14, 2022; see 9 NYCRR §§9.11 through 9.11.6), New York continues to experience high rates of COVID-19 transmission. The Omicron variant is known to be highly transmissible, and it necessitates that nursing home and adult care facility residents are vaccinated for optimal protection.

New York State data show that unvaccinated individuals continue to be more likely to be diagnosed with COVID-19 compared to vaccinated individuals. In fact, those who are unvaccinated have over 10 times the risk of being hospitalized with COVID-19 compared with vaccinated individuals. Many nursing home and adult care facility residents remain unvaccinated or have not received all recommended doses of the COVID-19 vaccine, and new residents continue to enter nursing homes every day. As such, the potential for COVID-19 introduction or re-introduction to this vulnerable population remains a risk and the need for protecting their health and safety a top high priority.

The COVID-19 vaccines are safe and effective. They offer the benefit of helping to reduce the number of COVID-19 infections, including the Delta and Omicron variants, which is a critical component to protecting public health. Booster doses of the COVID-19 vaccine are important to maximize protection against infection. Certain settings, such as healthcare facilities and congregate care settings, pose increased challenges and urgency for controlling the spread of this disease because of the vulnerable patient and resident populations that they serve. Personnel in such settings who have not received all recommended doses of the COVID-19 vaccine, including boosters, have an unacceptably high risk of both acquiring COVID-19 and transmitting

the virus to colleagues and/or vulnerable patients or residents, exacerbating staffing shortages, and causing an unacceptably high risk of complications.

Based on the foregoing, the Department has made the determination that this emergency regulation is necessary to best protect the residents of New York's nursing homes and ACFs.

Pursuant to the authority vested in the Commissioner of Health by Section 2803 of the Public Health Law, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by amending sections 405.11 and 415.19, to be effective upon filing with the Secretary of State, to read as follows:

Section 405.11 is amended by adding a new subdivision (g) as follows:

(g) (1) The hospital shall possess and maintain a supply of all necessary items of personal protective equipment (PPE) sufficient to protect health care personnel, consistent with federal Centers for Disease Control and Prevention guidance, for at least 60 days, by August 31, 2021.

(2) The 60-day stockpile requirement set forth in paragraph (1) of this subdivision shall be determined by the Department as follows for each type of required PPE:

(i) for single gloves, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 550;

(ii) for gowns, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 41;

(iii) for surgical masks, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 21; and

(iv) for N95 respirator masks, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 9.6.

(3) The Commissioner shall have discretion to increase the stockpile requirement set forth in paragraph (1) of this subdivision from 60 days to 90 days where there is a State or local public

health emergency declared pursuant to Section 24 or 28 of the Executive Law. Hospitals shall possess and maintain the necessary 90-day stockpile of PPE by the deadline set forth by the Commissioner.

(4) In order to maximize the shelf life of stockpiled inventory, providers should follow the appropriate storage conditions as outlined by manufacturers and inventory should be rotated through regular usage and replace what has been used in order to ensure a consistent readiness level, and expired products should be disposed of when their expiration date has passed. Expired products shall not be used to comply with the stockpile requirement set forth in paragraph (1) of this subdivision.

(5) Failure to possess and maintain the required supply of PPE may result in the revocation, limitation, or suspension of the hospital's license; provided, however, that no such revocation, limitation, or suspension shall be ordered unless the Department has provided the hospital with a fourteen day grace period, solely for a hospital's first violation of this section, to achieve compliance with the requirement set forth herein.

Section 415.19 is amended by adding a new subdivision (f) as follows:

(f) (1) The nursing home shall possess and maintain a supply of all necessary items of personal protective equipment (PPE) sufficient to protect health care personnel, consistent with federal Centers for Disease Control and Prevention guidance, for at least 60 days, by August 31, 2021.

(2) The 60-day stockpile requirement set forth in paragraph (1) of this subdivision shall be determined by the Department as follows for each type of required PPE:

(i) for single gloves, the applicable positivity rate, multiplied by the number of certified nursing home beds as indicated on the nursing home's operating certificate, multiplied by 24;

(ii) for gowns, the applicable positivity rate, multiplied by the number of certified nursing home beds as indicated on the nursing home's operating certificate, multiplied by 3;

(iii) for surgical masks, the applicable positivity rate, multiplied by the number of certified nursing home beds as indicated on the nursing home's operating certificate, multiplied by 1.5; and

(iv) for N95 respirator masks, the applicable positivity rate, multiplied by the number of certified nursing home beds as indicated on the nursing home's operating certificate, multiplied by 1.4.

(v) For the purposes of this paragraph, the term "applicable positivity rate" shall mean the greater of the following positivity rates:

(a) The nursing home's average COVID-19 positivity rate, based on reports made to the Department, during the period April 26, 2020 through May 20, 2020; or

(b) The nursing home's average COVID-19 positivity rate, based on reports made to the Department, during the period January 3, 2021 through January 31, 2021; or

(c) 20.15 percent, representing the highest Regional Economic Development Council average COVID-19 positivity rate, as reported to the Department, during the periods April 26, 2020 through May 20, 2020 and January 3, 2021 through January 31, 2021.

(3) In order to maximize the shelf life of stockpiled inventory, providers should follow the appropriate storage conditions as outlined by manufacturers and inventory should be rotated through regular usage and replace what has been used in order to ensure a consistent readiness

level, and expired products should be disposed of when their expiration date has passed. Expired products shall not be used to comply with the stockpile requirement set forth in paragraph (1) of this subdivision.

(4) Failure to possess and maintain the required supply of PPE may result in the revocation, limitation, or suspension of the nursing home's license; provided, however, that no such revocation, limitation, or suspension shall be ordered unless the Department has provided the nursing home with a fourteen day grace period, solely for a nursing home's first violation of this section, to achieve compliance with the requirement set forth herein.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Section 2803 of the Public Health Law (PHL) authorizes the promulgation of such regulations as may be necessary to implement the purposes and provisions of PHL Article 28, including the establishment of minimum standards governing the operation of health care facilities, including hospitals and nursing homes.

Legislative Objectives:

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

Needs and Benefits:

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions.

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had existed since January 27, 2020, nationwide. Thereafter, the situation rapidly evolved throughout

the world, with many countries, including the United States, quickly progressing from the identification of travel-associated cases to person-to-person transmission among close contacts of travel-associated cases, and finally to widespread community transmission of COVID-19.

In order for hospital and nursing home staff to safely provide care for COVID-19 positive patients and residents, or patients and residents infected with another communicable disease, while ensuring that they themselves do not become infected with COVID-19 or any other communicable disease, it is critically important that personal protective equipment (PPE), including masks, gloves, respirators, face shields and gowns, is readily available and are used. Therefore, as a result of global PPE shortages at the outset of the State of Emergency, New York State provided general hospitals, nursing homes, and other medical facilities with PPE from the State's emergency stockpile from the beginning of the COVID-19 outbreak. However, hospitals and nursing homes must ensure sufficient PPE stockpiles exist for any future communicable disease outbreaks to ensure each facility is adequately prepared to protect its staff and patients or residents, without needing to rely on the State's emergency stockpile.

Based on the foregoing, the Department has made the determination that this emergency regulation is necessary to ensure that all general hospitals and nursing homes maintain a 60-day supply of PPE to ensure that sufficient PPE is available in the event of a continuation or resurgence of the COVID-19 outbreak or another communicable disease outbreak.

COSTS:

Costs to Regulated Parties:

The purpose of this regulation is to require general hospitals and nursing homes to maintain adequate stockpiles of PPE. The initial cost to facilities as they establish stockpiles of PPE will vary depending on the number of staff working at each facility. However, the

Department anticipates that hospitals and nursing homes will routinely use stockpiled PPE as part of their routine operations; while facilities must maintain the requisite stockpile at all times in the event of an emergency need, facilities are expected to rotate through their stockpiles routinely to ensure the PPE does not expire and is replaced with new PPE, thereby helping to balance facility expenditures over time. Further, in the event of an emergency need, hospitals and nursing homes are expected to tap into their stockpiles; as such, hospitals and nursing homes will ultimately use equipment which would have been purchased had a stockpile not existed, thereby mitigating overall costs. Moreover, nursing homes are statutorily obligated to maintain or contract to have at least a two-month supply of PPE pursuant to Public Health Law section 2803(12). As such, this regulation imposes no long-term additional costs to regulated parties.

Costs to Local and State Governments:

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

Costs to the Department of Health:

This regulation will not result in any additional operational costs to the Department of Health.

Paperwork:

This regulation imposes no addition paperwork.

Local Government Mandates:

General hospitals and nursing homes operated by local governments will be affected and will be subject to the same requirements as any other general hospital licensed under PHL Article 28.

Duplication:

These regulations do not duplicate any State or federal rules.

Alternatives:

The Department believes that promulgation of this regulation is the most effective means of ensuring that general hospitals and nursing homes have adequate stockpiles of PPE necessary to protect hospital staff from communicable diseases, compared to any alternate course of action.

Federal Standards:

No federal standards apply to stockpiling of such equipment at hospitals.

Compliance Schedule:

The regulations will become effective upon filing with the Department of State. These regulations are expected to be proposed for permanent adoption at a future meeting of the Public Health and Health Planning Council.

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

This regulation will not impact local governments or small businesses unless they operate a general hospital or a nursing home. Currently there are five general hospitals in New York that employ less than 100 staff and qualify as small businesses, and there are 79 nursing homes in New York qualify as small businesses given that they employ less than 100 staff.

Compliance Requirements:

These regulations require all general hospitals and nursing homes to purchase and maintain adequate stockpiles of PPE, including but not limited to masks, respirators, face shields and gowns.

Professional Services:

It is not expected that any professional services will be needed to comply with this rule.

Compliance Costs:

The purpose of this regulation is to require general hospitals and nursing homes to maintain adequate stockpiles of PPE. The initial cost to facilities as they establish stockpiles of PPE will vary depending on the number of staff working at each covered facility. However, the Department anticipates that hospitals and nursing homes will routinely use stockpiled PPE as part of their routine operations; while facilities must maintain the requisite stockpile at all times in the event of an emergency need, facilities are expected to rotate through their stockpiles routinely to ensure the PPE does not expire and is replaced with new PPE, thereby helping to

balance facility expenditures over time. Further, in the event of an emergency need, hospitals and nursing homes are expected to tap into their stockpiles; as such, hospitals and nursing homes will ultimately use equipment which would have been purchased had a stockpile not existed, thereby mitigating overall costs. Moreover, nursing homes are statutorily obligated to maintain or contract to have at least a two-month supply of PPE pursuant to Public Health Law section 2803(12). As such, this regulation imposes no long-term additional costs to regulated parties.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

The Department anticipates that any adverse impacts will be minimal, as both hospitals and nursing homes have already mobilized their stockpiling efforts since early 2020, when the spread of the COVID-19 virus was first recognized in New York State, including through two surges of the COVID-19 pandemic. As such, the continuance of these stockpiling requirements is not expected to create any additional adverse impact on hospitals or nursing homes. Moreover, for nursing homes, these PPE regulations are consistent with the existing directive in Public Health Law section 2803(12) to maintain a two-month PPE supply.

Small Business and Local Government Participation:

Small business and local governments were not directly consulted given the urgent need to ensure hospital patients and nursing home residents are adequately protected in the event of a resurgence of COVID-19 or another communicable disease outbreak. However, the Department

plans to issue an advisory to hospital CEOs and nursing home administrators alerting them to the anticipated proposed rulemaking on these regulations and opportunity to submit public comments.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

Although this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), "rural area" means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as "counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population 'rural areas' means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein."

The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010:

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County

Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

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

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

There are 47 general hospitals located in rural areas as well as several licensed nursing homes.

Reporting, Recordkeeping, and Other Compliance Requirements; and Professional Services:

These regulations require all general hospitals and nursing homes, including those in rural areas, to purchase and maintain adequate stockpiles of PPE, including but not limited to masks, respirators, face shields and gowns.

Compliance Costs:

The purpose of this regulation is to require general hospitals and nursing homes to maintain adequate stockpiles of PPE. The initial cost to facilities as they establish stockpiles of PPE will vary depending on the number of staff working at each facility. However, the Department anticipates that hospitals and nursing homes will routinely use stockpiled PPE as

part of their routine operations; while facilities must maintain the requisite stockpile at all times in the event of an emergency need, facilities are expected to rotate through their stockpiles routinely to ensure the PPE does not expire and is replaced with new PPE, thereby helping to balance facility expenditures over time. Further, in the event of an emergency need, hospitals and nursing homes are expected to tap into their stockpiles; as such, hospitals and nursing homes will ultimately use equipment which would have been purchased had a stockpile not existed, thereby mitigating overall costs. Moreover, nursing homes are statutorily obligated to maintain or contract to have at least a two-month supply of PPE pursuant to Public Health Law section 2803(12). Therefore, this regulation imposes no long-term additional costs to regulated parties.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

The Department anticipates that any adverse impacts will be minimal, as both hospitals and nursing homes have already mobilized their stockpiling efforts since early 2020, when the spread of the COVID-19 virus was first recognized in New York State, including through two surges of the COVID-19 pandemic. As such, the continuance of these stockpiling requirements is not expected to create any additional adverse impact on hospitals or nursing homes. Moreover, for nursing homes, these PPE regulations are consistent with the existing directive in Public Health Law section 2803(12) to maintain a two-month PPE supply.

Rural Area Participation:

Parties representing rural areas were not directly consulted given the urgent need to ensure hospital patients and nursing home residents are adequately protected in the event of a resurgence of COVID-19 or another communicable disease outbreak. However, the Department plans to issue an advisory to hospital CEOs and nursing home administrators alerting them to the anticipated proposed rulemaking and opportunity to submit public comments.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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

EMERGENCY JUSTIFICATION

These regulations are needed on an emergency basis to ensure hospital and nursing home staff, as well as the patients and residents for whom they provide care, are adequately protected during the 2019 Coronavirus (COVID-19) or another communicable disease outbreak. These regulations are specifically meant to address the lessons learned in New York State from 2020 to 2021 during the COVID-19 pandemic with respect to PPE. As stated in the declaration of the State disaster emergency in Executive Orders No. 11 through 11.6 (November 26, 2021, through June 14, 2022; see 9 NYCRR §§9.11 through 9.11.6), New York continues to experience high rates of COVID-19 transmission. A possible resurgence of COVID-19 or another communicable disease outbreak necessitates that hospitals and nursing homes continue to have an adequate supply of PPE.

New York State first identified COVID-19 cases on March 1, 2020 and thereafter became the national epicenter of the outbreak. However, as a result of global PPE shortages, many hospitals and nursing homes in New York State had difficulty obtaining adequate PPE necessary to care for their patients and residents. New York State provided general hospitals, nursing homes, and other medical facilities with PPE from the State's emergency stockpile from the beginning of the COVID-19 outbreak.

These regulations are needed on an emergency basis to ensure that hospitals and nursing homes Statewide do not again find themselves in need of PPE from the State's stockpile should another communicable disease outbreak occur, COVID-19 or otherwise. It is critically important that PPE, including masks, gloves, respirators, face shields and gowns, is readily available and used when needed, as hospital and nursing home staff must don all required PPE to safely

provide care for patients and residents with communicable diseases, while ensuring that they themselves do not become infected with a communicable disease.

Based on the foregoing, the Department has made the determination that this emergency regulation is necessary to ensure that all general hospitals and nursing homes maintain a 60-day supply of PPE to ensure that sufficient PPE is available in the event of a resurgence of COVID-19 or another communicable disease outbreak.

SUMMARY OF EXPRESS TERMS

These regulations clarify the authority and duty of the New York State Department of Health ("Department") and local health departments to protect the public in the event of an outbreak of communicable disease, through appropriate public health orders issued to persons diagnosed with or exposed to a communicable disease. These regulations also require hospitals to report syndromic and disease surveillance data to the Department upon direction from the Commissioner and clarify reporting requirements for clinical laboratories with respect to communicable diseases.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 225, 576, and 2803 of the Public Health Law, Section 2.2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, Section 2.6 is repealed and a new Section 2.6 is added, a new Section 2.13 is added, Sections 2.25 through 2.30 are repealed, a new Section 58-1.14 is added, and Section 405.3 is amended, to be effective upon filing with the Secretary of State, to read as follows:

Subdivision (b) and (c) of Section 2.2 are amended, and new subdivisions (h) through (p) are added, to read as follows:

(b) [A *case* is defined as] <u>*Case* shall mean</u> a person who has been diagnosed [as likely to have] <u>as having</u> a particular disease or condition. The diagnosis may be based [solely] on clinical judgment<u>, signs and symptoms combined with known exposure based on the best available evidence of transmissibility to a case or suspected case,</u> [solely] <u>and/or</u> on laboratory evidence, [or on both criteria] <u>as applicable</u>.

(c) [A *suspected case* is defined as] <u>*Suspected case* shall mean</u> a person who has been [diagnosed] <u>determined</u> as [likely to have] <u>possibly having</u> a particular disease or condition. [The suspected diagnosis] <u>A suspected case</u> may be based [solely] on signs and symptoms, <u>signs and symptoms combined with known exposure based on the best available evidence of transmissibility to a case or suspected case,</u> [or solely] <u>and/or</u> on laboratory evidence, [or on both criteria] <u>as applicable</u>. <u>The term "suspected case" shall include persons under</u>

investigation, consistent with any guidance that the Commissioner of Health may issue with respect to a particular disease.

* * *

(h) *Contact* shall mean any person known to have been sufficiently associated with a case or suspected case that, based on the best available evidence of transmissibility, such person has had the opportunity to contract a particular disease or condition.

(i) *Isolation* shall mean the physical separation and confinement of an individual or group of individuals who are infected or reasonably determined by the State Commissioner of Health or local health authority to be infected with a highly contagious disease or organism, for such time as will prevent or limit the transmission of the reportable disease or organism to non-isolated individuals, in the clinical judgment of the State Commissioner of Health, or of the local health authority and consistent with any direction that the State Commissioner of Health may issue.

(j) *Quarantine* shall mean the physical separation and confinement of an individual or groups of individuals who are reasonably determined by the State Commissioner of Health or local health authority to have been exposed to a highly contagious communicable disease, but who do not show signs or symptoms of such disease, for such time as will prevent transmission of the disease, in the clinical judgment of the State Commissioner of Health, or of the local

health authority and consistent with any direction that the State Commissioner of Health may issue.

(k) *Home quarantine* or *home isolation* shall mean quarantine or isolation in a person's home, consistent with this Part and any direction that the State Commissioner of Health may issue;

(l) *Highly contagious communicable disease* shall mean a communicable disease or unusual disease that the State Commissioner of Health determines may present a serious risk of harm to the public health, for which isolation or quarantine may be required to prevent its spread.

(m) *Monitor* shall mean contacting a person who is the subject of an isolation or quarantine order by the State Department of Health or local health authority, to ensure compliance with the order and to determine whether such person requires a higher level of medical care, consistent with any direction that the State Commissioner of Health may issue.

(n) *Mandatory quarantine* shall mean quarantine pursuant to a legal order consistent with this Part.

(o) *Voluntary quarantine* shall mean quarantine pursuant to a voluntary agreement with a public health authority.

(p) *Confinement* shall mean enforcement of an isolation or quarantine order through the use or possible use of law enforcement personnel.

Section 2.6 is repealed and replaced as follows:

2.6 Investigations and Response Activities.

(a) Except where other procedures are specifically provided in law, every local health authority, either personally or through a qualified representative, shall immediately upon receiving a report of a case, suspected case, outbreak, or unusual disease, investigate the circumstances

of such report at any and all public and private places in which the local health authority has reason to believe, based on epidemiological or other relevant information available, that such places are associated with such disease. Such investigations and response activities shall, consistent with any direction that the State Commissioner of Health may issue:

(1) Verify the existence of a disease or condition;

(2) Ascertain the source of the disease-causing agent or condition;

(3) Identify unreported cases;

(4) Locate and evaluate contacts of cases and suspected cases, as well as those reasonably expected to have been exposed to the disease;

(5) Collect and submit, or cause to be collected or submitted, for laboratory examination such specimens as may furnish necessary or appropriate information for determining the source of disease, or to assist with diagnosis; and furnish or cause to be furnished with such specimens pertinent data on forms prescribed by the State Commissioner of Health, including but not limited to the history of cases, physical findings and details of the epidemiological investigation;

(6) Examine the processes, structures, conditions, machines, apparatus, devices, equipment, records, and material within such places that may be relevant to the investigation of disease or condition;

(7) Instruct a responsible member of a household or entity, as applicable, to implement appropriate actions to prevent further spread of a disease; and

(8) Take any other steps to reduce morbidity and mortality that the local health authority determines to be appropriate.

(b) When a case or suspected case of a disease, condition, outbreak, or unusual disease occurs in any business, organization, institution, or private home, the person in charge of the business, organization, institution or the home owner, as well as any individuals or entities required to report pursuant to sections 2.10 and 2.12 of this Part, shall cooperate with the State Department of Health and local health authorities in the investigation of such disease, condition, outbreak, or unusual disease.

(c) Investigation Updates and Reports.

(1) Upon request of the State Department of Health, the local health authority shall submit updates and reports on outbreak investigations to the State Department of Health. The content, timeframe, and manner of submission of such updates shall be determined by the State Department of Health.

(2) The local health authority shall complete investigation reports of outbreaks within 30 days of the conclusion of the investigation in a manner prescribed by the State Commissioner of Health, unless the State Commissioner of Health prescribes a different time period.

(d) Commissioner authority to lead investigation and response activities.

(1) The State Commissioner of Health may elect to lead investigation and response activities where:

(i) Residents of multiple jurisdictions within the State are affected by an outbreak of a reportable disease, condition, or unusual disease; or

(ii) Residents in a jurisdiction or jurisdictions within the State and in another state or states are affected by an outbreak of a reportable disease, condition, or unusual disease; or

(iii) An outbreak of an unusual disease or a reportable disease or condition involves a single jurisdiction with the high potential for statewide impact.

(2) Where the State Commissioner of Health elects to lead investigation and response activities pursuant to paragraph (1) of this subdivision, local health authorities shall take all reasonable steps to assist in such investigation and response, including supply of personnel, equipment or information. Provided further that the local health authority shall take any such action as the State Commissioner of Health deems appropriate and that is within the jurisdiction of the local health authority. Any continued investigation or response by the local health authority shall be solely pursuant to the direction of the State Commissioner of Health, and the State Commissioner of Health shall have access to any investigative materials which were heretofore created by the local health authority.

New section 2.13 is added to read as follows:

2.13 Isolation and Quarantine Procedures

(a) Duty to issue isolation and quarantine orders

(1) Whenever appropriate to control the spread of a highly contagious communicable disease, the State Commissioner of Health may issue and/or may direct the local health authority to issue isolation and/or quarantine orders, consistent with due

process of law, to all such persons as the State Commissioner of Health shall determine appropriate.

(2) Paragraph (1) of this subdivision shall not be construed as relieving the authority and duty of local health authorities to issue isolation and quarantine orders to control the spread of a highly contagious communicable disease, consistent with due process of law, in the absence of such direction from the State Commissioner of Health.

(3) For the purposes of isolation orders, isolation locations may include home isolation or such other residential or temporary housing location that the public health authority issuing the order determines appropriate, where symptoms or conditions indicate that medical care in a general hospital is not expected to be required, and consistent with any direction that the State Commissioner of Health may issue. Where symptoms or conditions indicate that medical care in a general hospital is expected to be required, the isolation location shall be a general hospital.

(4) For the purposes of quarantine orders, quarantine locations may include home quarantine, other residential or temporary housing quarantine, or quarantine at such other locations as the public health authority issuing the order deems appropriate, consistent with any direction that the State Commissioner of Health may issue.

(b) Any isolation or quarantine order shall specify:

(1) The basis for the order;

(2) The location where the person shall remain in isolation or quarantine, unless travel is authorized by the State or local health authority, such as for medical care;

(3) The duration of the order;

(4) Instructions for traveling to the isolation or quarantine location, if appropriate;

(5) Instructions for maintaining appropriate distance and taking such other actions as to prevent transmission to other persons living or working at the isolation or quarantine location, consistent with any direction that the State Commissioner of Health may issue;

(6) If the location of isolation or quarantine is not in a general hospital, instructions for contacting the State and/or local health authority to report the subject person's health condition, consistent with any direction that the State Commissioner of Health may issue;

(7) If the location of isolation or quarantine is a multiple dwelling structure, that the person shall remain in their specific dwelling and in no instance come within 6 feet of any other person, and consistent with any direction that the State Commissioner of Health may issue;

(8) If the location of isolation or quarantine is a detached structure, that the person may go outside while remaining on the premise, but shall not leave the premise or come within 6 feet of any person who does not reside at the premise, or such other distance as may be appropriate for the specific disease, and consistent with any direction that the State Commissioner of Health may issue;

(9) Such other limitations on interactions with other persons as are appropriate, consistent with any direction that the State Commissioner of Health may issue;

(10) Notification of the right to request that the public health authority issuing the order inform a reasonable number of persons of the conditions of the isolation or quarantine order;

(11) A statement that the person has the right to seek judicial review of the order;

(12) A statement that the person has the right to legal counsel, and that if the person is unable to afford legal counsel, counsel will be appointed upon request.

(c) Whenever a person is subject to an isolation or quarantine order, the State Department of Health or local health authority, or the local health authority at the State Department of Health's direction shall, consistent with any direction issued by the State Commissioner of Health:

(1) monitor such person to ensure compliance with the order and determine whether such person requires a higher level of medical care;

(2) whenever appropriate, coordinate with local law enforcement to ensure that such person comply with the order; and

(3) the extent such items and services are not available to such person, provide or arrange for the provision of appropriate supports, supplies and services, including, but not limited to: food, laundry, medical care, and medications.

(d) If the location of an isolation or quarantine order is owned by a landlord, hotel, motel or other person or entity, no such landlord or person associated with such hotel, motel or other person or entity shall enter the isolation or quarantine location without permission of the local health authority, and consistent with any direction that the State Commissioner of Health may issue.

(e) No article that is likely to be contaminated with infective material may be removed from a premise where a person is isolated or quarantined unless the local health authority determines

that such article has been properly disinfected or protected from spreading infection, or unless the quarantine period expires and there is no risk of contamination. Such determinations shall be made pursuant to any direction that the State Commissioner of Health may issue.

(f) Any person who violates a public health order shall be subject to all civil and criminal penalties as provided for by law. For purposes of civil penalties, each day that the order is violated shall constitute a separate violation of this Part.

(g) Duty of attending physician

(1) Every attending physician shall immediately, upon discovering a case or suspected case of a highly contagious reportable communicable disease, cause the patient to be appropriately isolated and contact the State Department of Health and the local health authority where the patient is isolated and, if different, the local health authority where the patient resides.

(2) Such physician shall advise other members of the household regarding precautions to be taken to prevent further spread of the disease, consistent with any direction that the State Commissioner of Health may issue.

(3) Such physician shall furnish the patient, or caregiver of such patient where applicable, with detailed instructions regarding the disinfection and disposal of any contaminated articles, consistent with any direction that the State Commissioner of Health may issue.

Sections 2.25, 2.26, 2.27. 2.28, 2.29, and 2.30 are repealed.

Paragraph (11) of subdivision (d) of section 405.3 is amended, paragraph (12) is renumbered paragraph (13), and a new paragraph (12) is added, to read as follows:

(d) Records and reports. Any information, records or documents provided to the department shall be subject to the applicable provisions of the Public Health Law, Mental Hygiene Law, Education Law, and the Public Officers Law in relation to disclosure. The hospital shall maintain and furnish to the Department of Health, immediately upon written request, copies of all documents, including but not limited to:

* * *

(11) written minutes of each committee's proceedings. These minutes shall include at least the following:

(i) attendance;

(ii) date and duration of the meeting;

(iii) synopsis of issues discussed and actions or recommendations made; [and]

(12) whenever the commissioner determines that there exists an outbreak of a highly contagious communicable disease pursuant to Part 2 of this Title or other public health emergency, such syndromic and disease surveillance data as the commissioner deems appropriate, which the hospital shall submit in the manner and form determined by the commissioner; and

(13) any record required to be kept by the provisions of this Part.

* * *

New section 58-1.14 is added to read as follows:

Section 58-1.14 Reporting of certain communicable diseases.

(a) The commissioner shall designate those communicable diseases, as defined by section 2.1 of the Sanitary Code, that require prompt action, and shall make available on the Department's website a list of such communicable diseases.

(b) Laboratories performing tests for screening, diagnosis or monitoring of communicable diseases requiring prompt action pursuant to subdivision (a) of this section, for New York State residents and/or New York State health care providers, shall:

(i) immediately report to the commissioner all positive results for such communicable diseases in a manner and format as prescribed by the commissioner; and

(ii) report all results, including positive, negative and indeterminate results, to the commissioner in a time and manner consistent with Public Health Law § 576-c.

* * *

Section 405.3 is amended by adding a new subdivision (g) as follows:

(g) Whenever the commissioner determines that there exists an outbreak of a highly contagious communicable disease pursuant to Part 2 of this Title or other public health emergency, the commissioner may direct general hospitals, as defined in Article 28 of the public health law, and consistent with the federal Emergency Medical Treatment and Labor Act (EMTALA), to accept patients pursuant to such procedures and conditions as the commissioner may determine appropriate.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority for the regulatory amendments to Part 2 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is Section 225 of the Public Health Law (PHL), which authorizes the Public Health and Health Planning Council (PHHPC), subject to the approval of the Commissioner of Health (Commissioner), to establish and amend the State Sanitary Code (SSC) provisions related to any matters affecting the security of life or health or the preservation and improvement of public health in the State of New York. Additionally, Section 2103 of the PHL requires all local health officers to report cases of communicable disease to the New York State Department of Health (Department).

The statutory authority for the proposed new section 58-1.14 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is section 576 of the PHL, which authorizes the Department to adopt regulations prescribing the requirements for the proper operation of a clinical laboratory, including the methods and the manner in which testing or analyses of samples shall be performed and reports submitted.

The statutory authority for the proposed amendments to section 405.3 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is section 2803 of the PHL, which authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objective of PHL § 225 is, in part, to protect the public health by authorizing PHHPC, with the approval of the Commissioner, to amend the SSC to address public health issues related to communicable disease.

The legislative objective of PHL § 576 is, in part, to promote public health by establishing minimum standards for clinical laboratory testing and reporting of test results, including to the Department for purposes of taking prompt action to address outbreaks of disease.

The legislative objective of PHL § 2803 includes among other objectives authorizing PHHPC, with the approval of the Commissioner, to adopt regulations concerning the operation of facilities licensed pursuant to Article 28 of the PHL, including general hospitals.

Needs and Benefits:

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory and other symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions.

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had

existed since January 27, 2020, nationwide. Thereafter, the situation rapidly evolved throughout the world, with many countries, including the United States, quickly progressing from the identification of travel-associated cases to person-to-person transmission among close contacts of travel-associated cases, and finally to widespread community transmission of COVID-19.

Now, two years after the first cases were identified in the United States, the COVID-19 pandemic continues to impact New York State. In light of this situation, these regulations update, clarify and strengthen the Department's authority as well as that of local health departments to take specific actions to control the spread of disease, including actions related to investigation and response to a disease outbreak, as well as the issuance of isolation and quarantine orders.

The following is a summary of the amendments to the Department's regulations:

Part 2 Amendments:

- Relocate and update definitions, and add new definitions

- Repeal and replace current section 2.6, related to investigations, to clarify existing local health department authority.
  - Sets forth specific actions that local health departments must take to investigate a case, suspected case, outbreak, or unusual disease.
  - Requires individuals and entities subject to a public health investigation to cooperate with the Department and local health departments.
  - While the Department works collaboratively with local health departments on a variety of public health issues, including disease control, this regulation clarifies the authority for the Commissioner to lead disease investigation activities under certain circumstances (i.e., where there is potential for statewide impact, multiple jurisdictions impacted, or impact on one or more New York State

jurisdictions and another state or states), while working collaboratively with impacted local health departments. In all other situations, local health departments retain the primary authority and responsibility to control communicable disease within their respective jurisdictions, with the Department providing assistance as needed.

(i) Codifies in regulation the requirement that local health departments send reports to the Department during an outbreak.

- New section 2.13 added to clarify isolation and quarantine procedures.
  - Clarify that the State Department of Health has the authority to issue isolation and quarantine orders, as do local departments of health.
  - Clarifies locations where isolation or quarantine may be appropriate.
  - Sets forth requirements for the content of isolation and quarantine orders.
  - Specifies other procedures that apply when a person is isolated or quarantined.
  - Explicitly states that violation of an order constitutes grounds for civil and/or criminal penalties
  - Relocates and updates existing regulatory requirements that require the attending physician to report cases and suspected cases to the local health authority, and requires physicians to provide instructions concerning how to protect others.

Part 58 Amendments

- New section 58-1.14 added clarifying reporting requirements for certain communicable diseases

- Requires the Commissioner to designate those communicable diseases that require prompt action, and to make available a list of such diseases on the State Department of Health website.
- Requires clinical laboratories to immediately report positive test results for communicable diseases identified as requiring prompt attention, in a manner and format identified by the Commissioner.
- Requires clinical laboratories to report all test results, including negative and indeterminate results, for communicable diseases identified as requiring prompt attention, via the Electronic Clinical Laboratory Reporting System (ECLRS).

Part 405 Amendments

- Mandates hospitals to report syndromic surveillance data during an outbreak of a highly contagious communicable disease.
- Permits the Commissioner to direct hospitals to take patients during an outbreak of a highly contagious communicable disease, which is consistent with the federal Emergency Medical Treatment and Labor Act (EMTALA).

COSTS:

Costs to Regulated Parties:

The requirement that hospitals submit syndromic surveillance reports when requested during an outbreak is not expected to result in any substantial costs. Hospitals are already regularly and voluntarily submitting data to the Department, and nearly all of them submit such reports electronically. With regard to the Commissioner directing general hospitals to accept

patients during an outbreak of a highly contagious communicable disease, hospitals are already required to adhere to the federal Emergency Medical Treatment and Labor Act (EMTALA). Accordingly, both of these proposed amendments will not impose any substantial additional cost to hospitals.

Clinical laboratories must already report communicable disease testing results using the ECLRS and must also immediately report communicable diseases pursuant to PHL § 2102. The regulation simply clarifies existing requirements and is not anticipated to imposes any substantial additional costs beyond those costs that laboratories would incur in the absence of these regulations.

Although there are costs associated with disease investigation and response for any outbreak, these regulations clarify and strengthen the existing authorities and responsibilities of local governments. As such, these regulations do not impose any substantial additional costs beyond what local health departments would incur in the absence of these regulations.

Costs to Local and State Governments:

Although there are costs associated with disease investigation and response for any outbreak, these regulations clarify and strengthen the existing authorities and responsibilities of local governments. As such, these regulations do not impose any substantial additional costs beyond what local health departments would incur in the absence of these regulations. Further, making explicit the Department's authority to lead investigation activities will result in increased coordination of resources, likely resulting in a cost-savings for State and local governments.

Any clinical laboratories operated by a local government must already report communicable disease testing results using the ECLRS and must also immediately report communicable diseases pursuant to PHL § 2102. The regulation simply clarifies existing

requirements and is not anticipated to imposes any substantial additional costs beyond those costs that laboratories would incur in the absence of these regulations.

To the extent that the State Department of Health and local health departments issue isolation and quarantine orders in response to COVID-19, such actions will impose costs upon the state. As the scope of any outbreak is difficult to predict, the cost to the State of issuing such orders cannot be predicted at this time.

Paperwork:

Some hospitals may be required to make additional syndromic surveillance reports that they are not already making. Otherwise, these regulations do not require any additional paperwork.

Local Government Mandates:

Under existing regulation, local health departments already have the authority and responsibility to take actions to control the spread of disease within their jurisdictions. The proposed amendments clarify these existing authorities and duties.

Duplication:

There is no duplication in existing State or federal law.

Alternatives:

The alternative would be to leave in place the current regulations on disease investigation and isolation and quarantine. However, many of these regulatory provisions have not been

updated in fifty years and should be modernized to ensure appropriate response to a disease outbreak, such as COVID-19.

Federal Standards:

States and local governments have primary authority for controlling disease within their respective jurisdictions. Accordingly, there are no federal statutes or regulations that apply to disease control within NYS.

Compliance Schedule:

These emergency regulations will become effective upon filing with the Department of State and will expire, unless renewed, 90 days from the date of filing. As the COVID-19 pandemic is consistently and rapidly changing, it is not possible to determine the expected duration of need at this point in time. The Department will continuously evaluate the expected duration of these emergency regulations throughout the aforementioned 90-day effective period in making determinations on the need for continuing this regulation on an emergency basis or issuing a notice of proposed rulemaking for permanent adoption. This notice does not constitute a notice of proposed or revised rule making for permanent adoption.

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

Under existing regulation, local health departments already have the authority and responsibility to take actions to control the spread of disease within their jurisdictions. The proposed amendments clarify these existing authorities and duties.

Compliance Requirements:

Under existing regulation, local health departments already have the authority and responsibility to take actions to control the spread of disease within their jurisdictions. The proposed amendments clarify these existing authorities and duties. With respect to mandating syndromic surveillance reporting during an outbreak of a highly infectious communicable disease, hospitals are already reporting syndromic surveillance data regularly and voluntarily. With respect to clinical laboratories, they must already report communicable disease testing results using the ECLRS and must also immediately report communicable diseases pursuant to PHL § 2102. The regulation simply clarifies existing requirements and is not anticipated to imposes any substantial additional costs beyond those costs that laboratories would incur in the absence of these regulations.

Professional Services:

It is not expected that any professional services will be needed to comply with this rule.

Compliance Costs:

Although there are costs associated with disease investigation and response for any outbreak, these regulations clarify and strengthen the existing authorities and responsibilities of local governments. As such, these regulations do not impose any substantial additional costs beyond what local health departments would incur in the absence of these regulations.

Further, making explicit the Department's authority to lead investigation activities will result in increased coordination of resources, likely resulting in a cost-savings for State and local governments.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

As the proposed regulations largely clarify existing responsibility and duties among regulated entities and individuals, any adverse impacts are expected to be minimal. The Department, however, will work with regulated entities to ensure they are aware of the new regulations and have the information necessary to comply.

Small Business and Local Government Participation:

Due to the emergent nature of COVID-19, small business and local governments were not consulted. If these regulations are proposed for permanent adoption, all parties will have an opportunity provided comments during the notice and comment period.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

While this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), "rural area" means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as "counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population 'rural areas' means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein."

The following 44 counties have a population of less than 200,000 based upon 2020 United States Census data:

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

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

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

Reporting, Recordkeeping, and Other Compliance Requirements; and Professional Services:

As the proposed regulations largely clarify existing responsibilities and duties among regulated entities and individuals, no additional recordkeeping, compliance requirements, or professional services are expected. With respect to mandating syndromic surveillance reporting during an outbreak of a highly infectious communicable disease, hospitals are already reporting syndromic surveillance data regularly and voluntarily. Additionally, the requirement for local health departments to continually report to the Department during an outbreak is historically a practice that already occurs. With respect to clinical laboratories, they must already report communicable disease testing results using the ECLRS and must also immediately report communicable diseases pursuant to PHL § 2102.

Compliance Costs:

As the proposed regulations largely clarify existing responsibility and duties among regulated entities and individuals, no initial or annual capital costs of compliance are expected above and beyond the cost of compliance for the requirements currently in Parts 2, 58 and 405.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

As the proposed regulations largely clarify existing responsibility and duties among regulated entities and individuals, any adverse impacts are expected to be minimal. The Department, however, will work with local health departments to ensure they are aware of the new regulations and have the information necessary to comply.

Rural Area Participation:

Due to the emergent nature of COVID-19, parties representing rural areas were not consulted. If these regulations are proposed for permanent adoption, all parties will have an opportunity provided comments during the notice and comment period.

JOB IMPACT STATEMENT

The Department of Health has determined that this regulatory change will not have a substantial adverse impact on jobs and employment, based upon its nature and purpose.

EMERGENCY JUSTIFICATION

Where compliance with routine administrative procedures would be contrary to public interest, the State Administrative Procedure Act (SAPA) § 202(6) empowers state agencies to adopt emergency regulations necessary for the preservation of public health, safety, or general welfare. In this case, compliance with SAPA for filing of this regulation on a non-emergency basis, including the requirement for a period of time for public comment, cannot be met because to do so would be detrimental to the health and safety of the general public.

As stated in the declaration of the State disaster emergency in Executive Orders No. 11 through 11.6 (November 26, 2021, through June 14, 2022; see 9 NYCRR §§9.11 through 9.11.6), New York continues to experience high rates of COVID-19 transmission. The constant threat of a possible resurgence of COVID-19 or another communicable disease outbreak necessitates that the adoption of these regulatory amendments on an emergency basis. In addition to updating and clarifying the process for issuing isolation and quarantine orders, the emergency regulations also require clinical laboratories to report all test results, including negative and indeterminate results, for communicable diseases such as COVID-19; mandate hospitals to report syndromic surveillance data; and permit the Commissioner to direct hospitals to take patients during a disease outbreak such as COVID-19.

Based on the ongoing burden of COVID-19, the Department has determined that these regulations, while applicable to several diseases, are necessary to promulgate on an emergency basis to control the spread of COVID-19 in New York State. Accordingly, current circumstances necessitate immediate action, and pursuant to the State Administrative Procedure Act Section 206(6), a delay in the issuance of these emergency regulations would be contrary to public interest.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 201, 206, and 225 of the Public Health Law, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by repealing Subpart 66-3 and repealing and replacing Section 2.60, to be effective upon filing with the Secretary of State, to read as follows:

Subpart 66-3 is hereby repealed.

Section 2.60 is repealed and replaced to read as follows:

2.60. Face Coverings for COVID-19 Prevention

(a) As determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread, any person who is two years of age or older and able to medically tolerate a face-covering may be required to cover their nose and mouth with a mask or face-covering when: (1) in a public place and unable to maintain, or when not maintaining, physical distance; or (2) in certain settings as determined by the Commissioner, which may include schools, public transit, homeless shelters, correctional facilities, nursing homes, and health care settings, and which may distinguish between individuals who are vaccinated against COVID-19 and those that are not vaccinated. The Commissioner shall issue findings regarding the necessity of face-covering requirements at the time such requirements are announced.

(b) Businesses must provide, at their expense, face-coverings for their employees required to wear a mask or face-covering pursuant to subdivision (a) of this section.

(c) large-scale indoor event venues with more than five thousand attendees shall require patrons to wear face coverings consistent with subdivision (a) of this section; may require all patrons to wear a face covering irrespective of vaccination status; and may deny admittance to any person who fails to comply. This regulation shall be applied in a manner consistent with the federal Americans with Disabilities Act, New York State or New York City Human Rights Law, and any other applicable provision of law.

(d) No business owner shall deny employment or services to or discriminate against any person on the basis that such person elects to wear a face-covering that is designed to inhibit the transmission of COVID-19, but that is not designed to otherwise obscure the identity of the individual.

(e) For purposes of this section face-coverings shall include, but are not limited to, cloth masks, surgical masks, and N-95 respirators that are worn to completely cover a person's nose and mouth.

(f) Penalities and enforcement.

(i) A violation of any provision of this Section is subject to all civil and criminal penalties as provided for by law. Individuals or entities that violate this Section are subject to a maximum fine of $1,000 for each violation. For purposes of civil penalties, each day that an entity operates in a manner inconsistent with the Section shall constitute a separate violation under this Section.

(ii) All local health officers shall take such steps as may be necessary to enforce the provisions of this Section accordance with the Public Health Law and this Title.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority for adding a new Section 2.60 is sections 201, 206, and 225 of the Public Health Law.

Legislative Objectives:

The legislative objective of PHL § 201 includes authorizing the New York State Department of Health ("Department") to control and promote the control of communicable diseases to reduce their spread. Likewise, the legislative objective of PHL § 206 includes authorizing the Commissioner of Health to take cognizance of the interests of health and life of the people of the state, and of all matters pertaining thereto and exercise the functions, powers and duties of the department prescribed by law, including control of communicable diseases. The legislative objective of Public Health Law § 225 is, in part, to protect the public health by authorizing PHHPC, with the approval of the Commissioner, to amend the State Sanitary Code to address public health issues related to communicable disease.

Needs and Benefits:

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory and other symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal, with a disproportionate risk of severe illness for older adults, those who have serious underlying medical health conditions and those who are unvaccinated.

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had existed since January 27, 2020, nationwide. Thereafter, the situation rapidly evolved throughout the world, with many countries, including the United States, quickly progressing from the identification of travel-associated cases to person-to-person transmission among close contacts of travel-associated cases, and finally to widespread community transmission of COVID-19.

Now, two years after the first cases were identified in the United States, the COVID-19 pandemic continues to impact New York State. Beyond the ongoing COVID-19 burden in communities, certain settings such as crowded indoor spaces, public transit, nursing homes, and health care settings, have been at increased risk for transmission. These regulations provide that masking may be required under certain circumstances, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread. The regulations are necessary to permit flexibility to allow the Department to quickly adapt to changing circumstances related to the spread of COVID-19 and increasing transmission rates.

COSTS:

Costs to Regulated Parties:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19

within the state since March of 2020. Accordingly, this regulation does not impose additional costs to regulated parties.

Costs to Local and State Governments:

State and local government are authorized to enforce civil and criminal penalties related to the violation of these regulations, and there may be some cost of enforcement, however such costs are anticipated to be minimal as these provisions continue existing enforcement requirements.

Paperwork:

This regulation imposes no additional paperwork.

Local Government Mandates:

As part of ongoing efforts to address the COVID-19 pandemic, local governments have been partners in implementing and enforcing measures to limit the spread and/or mitigate the impact of COVID-19 within their jurisdictions since March of 2020. Further, local governments have separate authority and responsibilities to control disease within their jurisdictions pursuant to PHL § 2100 and Part 2 of the State Sanitary Code.

Duplication:

There is no duplication of federal law.

Alternatives:

The alternative would be to not promulgate these emergency regulations. However, this alternative was rejected, as the Department believes this regulation will facilitate the Department's ability to respond to the evolving nature of this serious and ongoing communicable disease outbreak.

Federal Standards:

States and local governments have primary authority for controlling disease within their respective jurisdictions. Accordingly, there are no federal statutes or regulations that apply to disease control within NYS.

Compliance Schedule:

The regulations will become effective upon filing with the Department of State and will expire, unless renewed, 60 days from the date of filing. As the COVID-19 pandemic is consistently and rapidly changing, it is not possible to determine the expected duration of need at this point in time. The Department will continuously evaluate the expected duration of these emergency regulations throughout the aforementioned 60-day effective period in making determinations on the need for continuing this regulation on an emergency basis or issuing a notice of proposed ruling-making for permanent adoption. This notice does not constitute a notice of proposed or revised rule making for permanent adoption.

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

As part of ongoing efforts to address the COVID-19 pandemic, businesses and local government have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, this regulation will not have a significant impact on or cost to small business and local government.

Compliance Requirements:

These regulations update previously filed emergency regulations to provide that masking may be required under certain circumstances, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread.

Professional Services:

It is not expected that any professional services will be needed to comply with this rule.

Compliance Costs:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, this regulation will not have a significant impact.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, any adverse impacts are expected to be minimal.

Small Business and Local Government Participation:

Due to the emergent nature of COVID-19, small business and local governments were not consulted.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

While this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), "rural area" means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as "counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population 'rural areas' means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein."

The following 44 counties have an estimated population of less than 200,000 based upon the 2019 United States Census county populations projections:

Allegany County	Greene County	Schoharie County
Broome County	Hamilton County	Schuyler County
Cattaraugus County	Herkimer County	Seneca County
Cayuga County	Jefferson County	St. Lawrence County
Chautauqua County	Lewis County	Steuben County
Chemung County	Livingston County	Sullivan County
Chenango County	Madison County	Tioga County
Clinton County	Montgomery County	Tompkins County
Columbia County	Ontario County	Ulster County
Cortland County	Orleans County	Warren County
Delaware County		

Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties of have population of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon the 2019 United States Census population projections:

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

Reporting, recordkeeping, and other compliance requirements; and professional services:

These regulations update previously filed emergency regulations to provide that masking may be required under certain circumstances, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread.

Compliance Costs:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of

COVID-19 within the state since March of 2020. Accordingly, this regulation does not impose additional costs to regulated parties.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, adverse impacts are expected to be minimal.

Rural Area Participation:

Due to the emergent nature of COVID-19, parties representing rural areas were not consulted.

JOB IMPACT STATEMENT

The Department of Health has determined that this regulatory change is necessary to prevent further complete closure of the businesses impacted, and therefore, while there may be lost revenue for many businesses, the public health impacts of continued spread of COVID-19 are much greater.

EMERGENCY JUSTIFICATION

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory and other symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions.

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had existed since January 27, 2020, nationwide. Thereafter, the situation rapidly evolved throughout the world, with many countries, including the United States, quickly progressing from the identification of travel-associated cases to person-to-person transmission among close contacts of travel-associated cases, and finally to widespread community transmission of COVID-19.

Now, two years after the first cases were identified in the United States, the COVID-19 pandemic continues to impact New York State. Beyond the ongoing COVID-19 burden in communities, certain settings such as crowded indoor spaces, public transit, nursing homes, and health care settings, have been at increased risk for transmission.

To that end, these regulations provide that masking may be required under certain circumstances, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread. Based on the foregoing, the Department has determined that these emergency

regulations are necessary to permit flexibility to quickly adapt to changing circumstances and increasing transmission rates and control the spread of COVID-19, necessitating immediate action. Accordingly, pursuant to the State Administrative Procedure Act Section 202(6), a delay in the issuance of these emergency regulations would be contrary to public interest.

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)

****TO BE DISTRIBUTED UNDER SEPARATE COVER****

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Public Health Law Sections 225, 2800, 2803, 3612, and 4010, as well as Social Services Law Sections 461 and 461-e, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Part 2 is amended to add a new section 2.61, as follows:

2.61. Prevention of COVID-19 transmission by covered entities.

(a) Definitions.

(1) "Covered entities" for the purposes of this section, shall include:

(i) any facility or institution included in the definition of "hospital" in section 2801 of the Public Health Law, including but not limited to general hospitals, nursing homes, and diagnostic and treatment centers;

(ii) any agency established pursuant to Article 36 of the Public Health Law, including but not limited to certified home health agencies, long term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, and limited licensed home care service agencies;

(iii) hospices as defined in section 4002 of the Public Health Law; and

(iv) adult care facility under the Department's regulatory authority, as set forth in Article 7 of the Social Services Law.

(2) “Personnel,” for the purposes of this section, shall mean all persons employed or affiliated with a covered entity, whether paid or unpaid, including but not limited to employees, members of the medical and nursing staff, contract staff, students, and volunteers, who engage in activities such that if they were infected with COVID-19, they could potentially expose other covered personnel, patients or residents to the disease.

(3) “Fully vaccinated,” for the purposes of this section, shall be determined by the Department in accordance with applicable federal guidelines and recommendations. Unless otherwise specified by the Department, documentation of vaccination must include the manufacturer, lot number(s), date(s) of vaccination; and vaccinator or vaccine clinic site, in one of the following formats:

(i) record prepared and signed by the licensed health practitioner who administered the vaccine, which may include a Centers for Disease Control and Prevention (CDC) COVID-19 vaccine card;

(ii) an official record from one of the following, which may be accepted as documentation of immunization without a health practitioner’s signature: a foreign nation, NYS Countermeasure Data Management System (CDMS), the NYS Immunization Information System (NYSIIS), City Immunization Registry (CIR), a Department-recognized immunization registry of another state, or an electronic health record system; or

(iii) any other documentation determined acceptable by the Department.

(c) Covered entities shall continuously require personnel to be fully vaccinated against COVID-19, absent receipt of an exemption as allowed below. Covered entities shall require all personnel to receive at least their first dose before engaging in activities covered under paragraph (2) of subdivision (a) of this section. Documentation of such vaccination shall be made in personnel records or other appropriate records in accordance with applicable privacy laws, except as set forth in subdivision (d) of this section.

(d) Exemptions. Personnel shall be exempt from the COVID-19 vaccination requirements set forth in subdivision (c) of this section as follows:

(1) Medical exemption. If any licensed physician, physician assistant, or certified nurse practitioner certifies that immunization with COVID-19 vaccine is detrimental to the health of member of a covered entity's personnel, based upon a pre-existing health condition, the requirements of this section relating to COVID-19 immunization shall be inapplicable only until such immunization is found no longer to be detrimental to such personnel member's health. The nature and duration of the medical exemption must be stated in the personnel employment medical record, or other appropriate record, and must be in accordance with generally accepted medical standards, (see, for example, the recommendations of the Advisory Committee on Immunization Practices of the U.S. Department of Health and Human Services), and any reasonable accommodation may be granted and must likewise be documented in such record. Covered entities shall document medical exemptions in personnel records or other appropriate records in accordance with applicable privacy laws by: (i) September 27, 2021 for general hospitals and nursing homes; and (ii) October 7, 2021 for all other covered entities. For all covered

entities, documentation must occur continuously, as needed, following the initial dates for compliance specified herein, including documentation of any reasonable accommodation therefor.

(e) Upon the request of the Department, covered entities must report and submit documentation, in a manner and format determined by the Department, for the following:

(1) the number and percentage of personnel that have been vaccinated against COVID-19;

(2) the number and percentage of personnel for which medical exemptions have been granted;

(3) the total number of covered personnel.

(f) Covered entities shall develop and implement a policy and procedure to ensure compliance with the provisions of this section and submit such documents to the Department upon request.

(g) The Department may require all personnel, whether vaccinated or unvaccinated, to wear an appropriate face covering for the setting in which such personnel are working in a covered entity. Covered entities shall supply face coverings required by this section at no cost to personnel.

Subparagraph (vi) of paragraph (10) of subdivision (b) of Section 405.3 of Part 405 is added to read as follows:

(vi) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making such documentation immediately available upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (5) of subdivision (a) of Section 415.19 of Part 415 is added to read as follows:

(5) collects documentation of COVID-19 or documentation of a valid medical exemption to such vaccination, for all personnel pursuant to section 2.61 of this title, in accordance with applicable privacy laws, and making such documentation immediately available upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (7) of subdivision (d) of Section 751.6 is added to read as follows:

(7) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (6) of subdivision (c) of Section 763.13 is added to read as follows:

(6) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making

such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (7) of subdivision (d) of Section 766.11 is added to read as follows:

(7) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (8) of subdivision (d) of Section 794.3 is added to read as follows:

(8) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (5) of subdivision (q) of Section 1001.11 is added to read as follows:

(5) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (18) of subdivision (a) of Section 487.9 of Title 18 is added to read as follows:

(18) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of Title 10, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (14) of subdivision (a) of Section 488.9 of Title 18 is added to read as follows:

(14) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of Title 10, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (15) of subdivision (a) of Section 490.9 of Title 18 is added to read as follows:

(15) Operator shall collect documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of Title 10, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of these regulations is contained in Public Health Law (PHL) Sections 225(5), 2800, 2803(2), 3612 and 4010 (4). PHL 225(5) authorizes the Public Health and Health Planning Council (PHHPC) to issue regulations in the State Sanitary Code pertaining to any matters affecting the security of life or health or the preservation and improvement of public health in the state of New York, including designation and control of communicable diseases and ensuring infection control at healthcare facilities and any other premises.

PHL Article 28 (Hospitals), Section 2800 specifies that "hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state, pursuant to section three of article seventeen of the constitution, the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services, and all public and private institutions, whether state, county, municipal, incorporated or not incorporated, serving principally as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition or for the rendering of health-related service shall be subject to the provisions of this article."

PHL Section 2803(2) authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

PHL Section 3612 authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to certified home health agencies, long term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, and limited licensed home care service agencies. PHL Section 4010 (4) authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to hospice organizations.

Social Service Law (SSL) Section 461 requires the Department to promulgate regulations establishing general standards applicable to Adult Care Facilities (ACF). SSL Section 461-e authorizes the Department to promulgate regulations to require adult care facilities to maintain certain records with respect to the facilities residents and the operation of the facility.

Legislative Objectives:

The legislative objective of PHL Section 225 empowers PHHPC to address any issue affecting the security of life or health or the preservation and improvement of public health in the state of New York, including designation and control of communicable diseases and ensuring infection control at healthcare facilities and any other premises. PHL Article 28 specifically addresses the protection of the health of the residents of the State by assuring the efficient provision and proper utilization of health services of the highest quality at a reasonable cost. PHL Article 36 addresses the services rendered by certified home health agencies, long term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, and limited licensed home care service agencies. PHL Article 40 declares that hospice is a socially and financially beneficial alternative to conventional

curative care for the terminally ill. Lastly, the legislative objective of SSL Section 461 is to promote the health and well-being of residents of ACFs.

Needs and Benefits:

The vaccine mandate for health care workers at covered entities, which required general hospital and nursing home personnel to receive their first dose of COVID-19 vaccine by September 27, 2021, and required all other covered personnel to receive their first dose of COVID-19 vaccine by October 7, 2021, has greatly increased the percentage of health care workers who are vaccinated against COVID-19. The vaccine mandate has decreased and will continue to decrease COVID cases, hospitalizations, and deaths.

The COVID-19 vaccines are safe and effective. Full COVID-19 vaccination offers the benefit of helping to reduce the number of COVID-19 infections, which is a critical component to protecting public health. Certain settings, such as healthcare facilities and congregate care settings, pose increased challenges and urgency for controlling the spread of this disease because of the vulnerable patient and resident populations that they serve. Unvaccinated personnel in such settings have an unacceptably high risk of both acquiring COVID-19 and transmitting the virus to colleagues and/or vulnerable patients or residents, exacerbating staffing shortages, and causing unacceptably high risk of complications.

In response to this significant public health threat, through this regulation, the Department is requiring covered entities to ensure their personnel are fully vaccinated against COVID-19, and to document evidence thereof in appropriate records. Covered entities are also required to review and make determinations on medical exemption requests, and provide reasonable accommodations therefor to protect the wellbeing of the patients, residents and

personnel in such facilities. Documentation and information regarding personnel vaccinations as well as exemption requests granted are required to be provided to the Department immediately upon request.

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

Covered entities must ensure that personnel are fully vaccinated against COVID-19 and document such vaccination in personnel or other appropriate records. Covered entities must also review and make determinations on requests for medical exemptions, which must also be documented in personnel or other appropriate records, as well as any reasonable accommodations. This is a modest investment to protect the health and safety of patients, residents, and personnel, especially when compared to both the direct medical costs and indirect costs of personnel absences.

Cost to State and Local Government:

The State operates several healthcare facilities subject to this regulation. Most county health departments are licensed under Article 28 or Article 36 of the PHL and are therefore also subject to regulation. Similarly, certain counties and the City of New York operate facilities licensed under Article 28. These State and local public facilities would be required to ensure that personnel are fully vaccinated against COVID-19 and document such vaccination in personnel or other appropriate records. They must also review and make determinations on requests for medical exemptions, which must also be documented in personnel or other appropriate records, along with any reasonable accommodations.

Although the costs to the State or local governments cannot be determined with precision, the Department does not expect these costs to be significant. State facilities should already be ensuring COVID-19 vaccination among their personnel, subject to State directives. Further, these entities are expected to realize savings as a result of the reduction in COVID-19 in personnel and the attendant loss of productivity and available staff.

Cost to the Department of Health:

There are no additional costs to the State or local government, except as noted above. Existing staff will be utilized to conduct surveillance of regulated parties and to monitor compliance with these provisions.

Local Government Mandates:

Covered entities operated by local governments will be subject to the same requirements as any other covered entity subject to this regulation.

Paperwork:

This measure will require covered entities to ensure that personnel are fully vaccinated against COVID-19 and document such vaccination in personnel or other appropriate records. Covered entities must also review and make determinations on requests for medical exemptions, which must also be documented in personnel or other appropriate records along with any reasonable accommodations.

Upon the request of the Department, covered entities must report the number and percentage of total covered personnel, as well as the number and percentage that have been

vaccinated against COVID-19 and those who have been granted a medical exemption, along with any reasonable accommodations. Facilities and agencies must develop and implement a policy and procedure to ensure compliance with the provisions of this section, making such documents available to the Department upon request.

Duplication:

This regulation will not conflict with any state or federal rules.

Alternative Approaches:

One alternative would be to require covered entities to test all personnel in their facility before each shift worked. This approach is limited in its effect because testing only provides a person's status at the time of the test and testing every person in a healthcare facility every day is impractical and would place an unreasonable resource and financial burden on covered entities if PCR tests couldn't be rapidly turned around before the commencement of the shift. Antigen tests have not proven as reliable for asymptomatic diagnosis to date.

Another alternative to requiring covered entities to mandate vaccination would be to require covered entities to mandate all personnel to wear a fit-tested N95 face covering at all times when in the facility, in order to prevent transmission of the virus. However, acceptable face coverings, which are not fit-tested N95 face coverings have been a long-standing requirement in these covered entities, and, while helpful to reduce transmission it does not prevent transmission and; therefore, masking in addition to vaccination will help reduce the numbers of infections in these settings even further.

Federal Requirements:

There are no minimum standards established by the federal government for the same or similar subject areas.

Compliance Schedule:

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

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

This regulation will not impact local governments or small businesses unless they operate a covered entity as defined in the emergency regulation. Currently, 5 general hospitals, 79 nursing homes, 75 certified home health agencies (CHHAs), 20 hospices and 1,055 licensed home care service agencies (LHCSAs), and 483 adult care facilities (ACFs) are small businesses (defined as 100 employees or less), independently owned and operated affected by this rule. Local governments operate 19 hospitals, 137 diagnostic and treatment facilities, 21 nursing homes, 12 CHHAs, at least 48 LHCSAs, 1 hospice, and 2 ACFs.

Compliance Requirements:

Covered entities are required to ensure their personnel are fully vaccinated against COVID-19, and to document evidence thereof in appropriate records. Covered entities are also required to review and make determinations on medical exemption requests, along with any reasonable accommodations.

Upon the request of the Department, covered entities must report the number and percentage of total covered personnel, as well as the number and percentage that have been vaccinated against COVID-19 and those who have been granted a medical exemption, along with any reasonable accommodations. Facilities and agencies must develop and implement a policy and procedure to ensure compliance with the provisions of this section, making such documents available to the Department upon request.

Professional Services:

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

Compliance Costs:

Covered entities must ensure that personnel are fully vaccinated against COVID-19 and document such vaccination in personnel or other appropriate records. Covered entities must also review and make determinations on requests for medical exemptions, which must also be documented in personnel or other appropriate records, along with any reasonable accommodations. This is a modest investment to protect the health and safety of patients, residents, and personnel, especially when compared to both the direct medical costs and indirect costs of personnel absenteeism.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the Department since March of 2020. Further, the Department currently has an emergency regulation in place, which requires nursing homes and adult care facilities to offer COVID-19 vaccination to personnel and residents, which has helped to facilitated vaccination of personnel. Further, it is the Department's understanding that many facilities across the State have begun to impose mandatory vaccination policies. Lastly, on August 18, 2021, President Biden announced that as a condition of participating in the Medicare and Medicaid programs, the United States Department of Health and Human Services will be developing regulations requiring nursing homes to mandate COVID-19 vaccination for workers.

Small Business and Local Government Participation:

Organizations that include as members health care and residential facilities that are small businesses and local governments were consulted on the proposed regulations. Any member of the public had an opportunity to submit comments during a 60-day public comment period on the Proposed Rule from December 15, 2021 until February 14, 2022. In addition, four separate Emergency Rules required personnel to receive the primary series of the vaccine since August 26, 2021. These Emergency Rules were approved by the Public Health and Health Planning Council at public meetings that took place on August 26, 2021, November 18, 2021, January 11, 2022, and March 17, 2022. Members of the public were permitted to speak and did speak at these meetings.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

While this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), "rural area" means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as "counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population 'rural areas' means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein."

The following 44 counties have an estimated population of less than 200,000 based upon 2020 United States Census data:

Allegany County	Greene County	Schoharie County
Broome County	Hamilton County	Schuyler County
Cattaraugus County	Herkimer County	Seneca County
Cayuga County	Jefferson County	St. Lawrence County
Chautauqua County	Lewis County	Steuben County
Chemung County	Livingston County	Sullivan County
Chenango County	Madison County	Tioga County
Clinton County	Montgomery County	Tompkins County
Columbia County	Ontario County	Ulster County
Cortland County	Orleans County	Warren County
Delaware County		

Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties of have population of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon 2019 United States Census population projections:

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

Reporting, recordkeeping, and other compliance requirements; and professional services:

Covered entities are required to ensure their personnel are fully vaccinated against COVID-19, and to document evidence thereof in appropriate records. Covered entities are also required to review and make determinations on medical exemption requests, along with any reasonable accommodations.

Upon the request of the Department, covered entities must report the number and percentage of total covered personnel, as well as the number and percentage that have been vaccinated against COVID-19 and those who have been granted a medical exemption, along with any reasonable accommodations. Facilities and agencies must develop and implement a policy

and procedure to ensure compliance with the provisions of this section, making such documents available to the Department upon request.

Compliance Costs:

Covered entities must ensure that personnel are fully vaccinated against COVID-19 and document such vaccination in personnel or other appropriate records. Covered entities must also review and make determinations on requests for medical exemptions, which must also be documented in personnel or other appropriate records, along with any reasonable accommodations. This is a modest investment to protect the health and safety of patients, residents, and personnel, especially when compared to both the direct medical costs and indirect costs of personnel absenteeism.

Minimizing Adverse Impact:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the Department since March of 2020. Further, the Department currently has an emergency regulation in place, which requires nursing homes and adult care facilities to offer COVID-19 vaccination to personnel and residents, which has helped to facilitated vaccination of personnel. Further, it is the Department's understanding that many facilities across the State have begun to impose mandatory vaccination policies. Lastly, on August 18, 2021, President Biden announced that as a condition of participating in the Medicare and Medicaid programs, the United States Department of Health and Human Services will be developing regulations requiring nursing homes to mandate COVID-19 vaccination for workers.

Rural Area Participation:

Organizations that include as members health care and residential facilities that are located in rural areas were consulted on the proposed regulations. Any member of the public had an opportunity to submit comments during a 60-day public comment period on the Proposed Rule from December 15, 2021 until February 14, 2022. In addition, four separate Emergency Rules required personnel to receive the primary series of the vaccine since August 26, 2021. These Emergency Rules were approved by the Public Health and Health Planning Council at public meetings that took place on August 26, 2021, November 18, 2021, January 11, 2022, and March 17, 2022. Members of the public were permitted to speak and did speak at these meetings.

JOB IMPACT STATEMENT

Nature of Impact:

Covered entities may terminate personnel who are not fully vaccinated and do not have a valid medical exemption and are unable to otherwise ensure individuals are not engaged in patient/resident care or expose other covered personnel.

Categories and numbers affected:

This rule may impact any individual who falls within the definition of "personnel" who is not fully vaccinated against COVID-19 and does not have a valid medical exemption on file with the covered entity for which they work or are affiliated.

Regions of adverse impact:

The rule would apply uniformly throughout the State and the Department does not anticipate that there will be any regions of the state where the rule would have a disproportionate adverse impact on jobs or employment.

Minimizing adverse impact:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the Department since March of 2020. Further, the Department currently has an emergency regulation in place, which requires nursing homes and adult care facilities to offer COVID-19 vaccination to personnel and residents, which has helped to facilitated vaccination of personnel. Further, it is the Department's understanding that many facilities across the State have begun to impose mandatory vaccination policies. Lastly, on August 18, 2021, President Biden announced that as a condition of participating in the Medicare and Medicaid programs, the United States Department of Health and Human Services will be developing regulations requiring nursing homes to mandate COVID-19 vaccination for workers.

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 212174-C
Westchester Medical Center

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

County: **Westchester**
Acknowledged: **November 19, 2021**

Executive Summary

Description
Westchester County Health Care Corporation (WCHCC), d/b/a as Westchester Medical Center (WMC), is an existing 895-bed, not-for-profit quaternary care hospital, that requests approval for the construction of a new inpatient bed tower on the medical center's main campus at 100 Woods Road, Valhalla (Westchester County).

WCHCC proposes to construct the five-story building adjacent to the Maria Faruri Children Hospital, connected to WMC's original University Hospital building via a direct corridor. The building is sized for a total of 128 private rooms. Initially, 96 beds (41 Intensive Care Unit (ICU) beds and 55 Medical/Surgical) will be moved from their current locations at WMC to floors two-four in the tower. The 5th floor will initially remain shell space that can accommodate an additional 32 certified beds.

Goals for this project include: improved patient experience, greater pandemic readiness, full compliance with current room codes, improved infection control, improved efficiency, and addressing national trends indicating increased demand for tertiary services.

OPCHSM Recommendation
Contingent Approval

Need Summary
There will be no change to beds or services as a result of this application. Expanding the number of single-bedded rooms will provide multiple benefits including infection control, updated compliance, and pandemic readiness.

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

Financial Summary
The total Project Costs of $165,800,164 will be funded by $65,800,164 of WCHCC equity and tax-exempt bond issuance of $100,000,000 by the Westchester County Health Care Corporation. The bond issuance will be underwritten by BarClays at an interest rate of less than 4% (aggregate yield to maturity) for a 30-year term. The applicant has submitted a letter of interest at the stated terms. The proposed budget is submitted as follows:

Budget	Year One	Year Three
Total Revenue	$24,681,037	$37,600,552
Total Expense	23,397,000	27,774,000
Total Net Income	$1,284,037	$9,826,552

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 Department. The submitted bond resolution must include a sources and uses statement and debt amortization schedule, for both the 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 BAER Drawing Submission Guidelines DSG-1.0 [AER]
5. 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. This project must be completed on or before **April 30, 2025**, 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 the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **December 2, 2022,** and construction must be completed by **January 31, 2025**, 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. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. Approved TPC is 165,800,164 (reflects A.P. Fee on art. 28/subproject 1 only). Reimbursable TPC is limited to approved art. 28 space totaling $151,571,200. [CCC]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

Council Action Date

June 2, 2022

Need and Program Analysis

Program Description

Westchester Medical Center seeks approval to construct a new, five-story 162,626 square foot building adjacent to the Maria Fareri Children's Hospital connected via a corridor. The applicant seeks to certify 96 beds including 41 Intensive Care Unit beds and 55 Medical-Surgical beds on the second, third and fourth floors. Initially, the fifth floor will be shell space.

The creation of the tower will allow a greater number of private rooms, almost 100% more than current while maintaining the same number of licensed beds. The tower is consistent with WMC's long-term strategic strategy to improve clinical care and patient experience. The new ICU rooms will be 115% larger than many of the current ICU rooms.

The applicant reports that WMC has averaged 2,560 annual tertiary discharges from 2018 to 2020 and has maintained a market share of approximately 23% during that time. WMC has started to experience an increase in demand for tertiary services. The 2019 average length of stay (ALOS) in the ICU for WMC was 4.9 days. The ALOS in ICU through August 2021 has increased to 5.5 days, a. A review of national trends regarding inpatient volume indicates overall inpatient volume sharply declined by approximately 10% in 2020 due primarily to COVID-19, however, these volumes are expected to recover to pre-pandemic levels by 2022. Although the forecasted overall inpatient volume is expected to decrease by 1%, the number of inpatient days and ALOS are expected to significantly increase with a clear rise in patient acuity. This forecasted increase in ALOS is already being seen at WMC.

Staffing is expected to increase as a result of this construction/expansion project to a total of 48.4 FTEs and remain at 64.4 FTEs at Year Three of the completed project.

Analysis

Westchester Medical is a Level 1 Adult and Pediatric Trauma Center, as well as, a Regional Perinatal Center. According to Data USA, in 2019 95.5% of the population in Westchester County has health coverage as follows.

Employer Plans	55.8%
Medicaid	13.8%
Medicare	13.3%
Non-Group Plans	12.3%
Military or VA	.333%

The applicant stated the expected benefits of the new bed tower to be:

- Fully code compliant ICU-capable rooms;
- Reduce infection control risks due to the creation of private rooms;
- Enhance patient privacy and experience through modern renovations;
- Pandemic and disaster readiness capable flex beds;
- Keeping pace with area facilities offering more private rooms;
- Improving throughput.

WMC is only projecting an increase in ICU discharges, showing an increase from the current 790 discharges to 1,215 discharges in the first year after completion of the tower, and to 1,865 by the third year after completion. That equates to an ICU occupancy of 30.2% currently, 46.5% in the first year after completion, and 71.4% by the third year after completion of the tower.

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.

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. Expanding the number of single-bedded rooms will provide multiple benefits including infection control, updated compliance, and pandemic readiness.

Financial Analysis

Total Project Cost and Financing

The total project cost, which is for new construction and the acquisition of moveable equipment, is estimated at $165,800,164 and allocated as follows:

	Article 28	Shell Space	Total
New Construction	$108,207,539	11,542,461	$119,750,000
Site Development	650,000	0	$650,000
Temporary Utilities	850,000	0	$850,000
Asbestos Abatement	235,000	0	$235,000
Design Contingency	10,820,754	1,154,246	$11,975,000
Construction Contingency	5,410,377	577,123	$5,987,500
Planning Consultant Fees	194,276	20,724	$215,000
Architect/Engineering Fees	4,909,119	523,654	$5,432,773
Construction Manager Fees	2,259,030	240,970	$2,500,000
Other Fees (Consultant)	1,591,700	169,786	$1,761,486
Moveable Equipment	5,096,334	0	$5,096,334
Telecommunications	3,150,000	0	$3,150,000
Financing Costs	1,300,000	0	$1,300,000
Interim Interest Expense	6,066,000	0	$6,066,000
CON Fee	2,000	0	$2,000
Additional Processing Fee	829,071	0	$829,071
Total Project Cost	$151,571,200	14,228,964	$165,800,164

Project costs are based on an August 1, 2022, construction start date and a 24-month construction period. The applicant's financing plan appears as follows:

Equity	$65,800,164
Tax-exempt bonds by Westchester County Health Care Corporation (4% interest rate for a 30-year term)	$100,000,000

The application contains $151,571,200 of project costs that will be allowable for reimbursement purposes and the remainder of the costs are related to shell space.

Operating Budget

The applicant has submitted an operating budget for WMC for the current year (2020), year one, and year three after project completion that is summarized below:

Inpatient Revenues	Per Disch	Current Year	Per Disch	Year One	Per Disch	Year Three
Commercial FFS	$69,737	$277,692,610	$69,518	$8,860,789	$70,656	$13,551,794
Commercial MC	$64,065	$169,771,566	$63,194	$0	$63,194	$0
Medicare FFS	$27,433	$147,699,738	$27,477	$5,486,833	$27,998	$8,391,568
Medicare MC	$12,796	$64,879,060	$12,796	$0	$12,796	$0
Medicaid FFS	$57,116	$118,859,867	$57,104	$5,340,379	$57,104	$8,167,638
Medicaid MC	$14,720	$131,672,345	$14,720	$0	$14,720	$0
Private Pay	$37,241	$4,208,282	$37,241	$0	$37,421	$0
OMH	$14,449	$56,166,469	$14,449	$0	$14,449	$0
Charity Care		($10,653,997)		$0		$0
Bad Debt		($39,296,198)		$0		$0
Total IP Revenues		$920,999,742		$19,688,001		$30,111,000
Outpatient Revenues	Per Visit	Current Year	Per Visit	Year One	Per Visit	Year Three
Commercial FFS	$1,655	$89,108,403	$1,657	$1,782,168	$1,657	$2,673,252
Commercial MC	$730	$40,435,143	$731	$808,703	$731	$1,213,054
Medicare FFS	$1,238	$45,773,995	$1,239	$915,480	$1,239	$1,373,220
Medicare MC	$1,386	$22,140,396	$1,388	$442,808	$1,388	$664,212
Medicaid FFS	$1,172	$12,729,182	$1,173	$254,584	$1,173	$381,875
Medicaid MC	$565	$27,548,311	$566	$550,966	$566	$826,449
Private Pay	$2,114	$16,363,146	$2,116	$327,263	$2,117	$490,894
OASAS	$224	$1,575,871	$224	$31,517	$224	$47,276
OMH	$198	$3,654,076	$198	$73,082	$198	$109,622
Charity Care	$50	$443,557	$50	$8,871	$50	$13,307
Bad Debt	$0	($37,159,970)	$0	($743,199)	$0	($1,114,799)
All Other	$2,238	$27,039,674	$2,240	$540,793	$2,240	$811,190.00
Total Outpatient Revenues		$249,651,784		$4,993,036		$7,489,552
Total Revenues		$1,170,651,526		$24,681,037		$37,600,552
Inpatient Expenses:						
Operating	$36,366	$966,351,747	$36,163	$9,258,000	$35,961	$12,603,000
Capital	3,451	91,701,014	$3,708	8,344,000	$3,675	$8,344,000
Total IP Expenses	$39,817	$1,058,052,761	$39,872	$17,602,000	$39,636	$20,947,000
Outpatient Expenses:						
Operating	$1,142	$315,026,445	$1,131	$3,077,000	$1,124	$4,109,000
Capital	$108	29,894,131	$116	2,718,000	$115	$2,718,000
Total OP Expenses	$1,250	$344,920,576	$1,247	$5,795,000	$1,239	$6,827,000
Total Expenses		$1,402,973,337		$23,397,000		$27,774,000
Net Income/(Loss)		($232,321,811)		$1,284,037		$9,826,552
Utilization:						
Inpatient Discharges		26,573		425		650
Outpatient Visits		275,911		5,242		8,000

The following is noted concerning the operating budget:

- Projected year one and year three revenues, expenses, and utilization projections represent the incremental change associated with this project relative to the 2020 WMC submitted budget.
- Revenue, Expense, and Utilization assumptions are based upon the historical experience of WMC. The incremental outpatient revenue is based on the historical experience of the facility.
- In 2020, WCHCC received $207,636,000 of Government Stimulus grants (CARES Act Funding), which is included on their 2020 certified financial statements.
- In 2020, WMC received $95 million of Medicare payment advances, of which $32 million has been repaid. This amount is included in the 2020 certified financial statements of WCHCC.

Utilization, detailed by payor source for inpatient and outpatient services during the current year, year one, and year three are as follows:

Inpatient	Current Year	Year One	Year Three
Commercial FFS	14.99%	15.27%	15.42%
Commercial MC	9.97%	9.82%	9.73%
Medicare FFS	20.26%	20.65%	20.85%
Medicare MC	8.77%	8.63%	8.56%
Medicaid FFS	7.85%	8.07%	8.18%
Medicaid MC	22.78%	22.42%	22.24%
Private Pay	0.43%	0.42%	0.42%
OMH	14.63%	14.40%	14.28%
Charity Care	0.33%	0.32%	0.32%
Total	100.00%	100.00%	100.00%

Outpatient	Current Year	Year One	Year Three
Commercial FFS	19.51%	19.51%	19.51%
Commercial MC	20.06%	20.06%	20.06%
Medicare FFS	13.40%	13.40%	13.40%
Medicare MC	5.79%	5.79%	5.79%
Medicaid FFS	3.94%	3.98%	3.94%
Medicaid MC	17.67%	17.84%	17.67%
Private Pay	2.80%	2.83%	2.80%
OASAS	2.55%	2.58%	2.55%
OMH	6.70%	6.77%	6.70%
Charity Care	3.20%	3.23%	3.20%
Other	4.38%	4.02%	4.38%
Total	100.00%	100.00%	100.00%

Capability and Feasibility

The applicant will satisfy total project costs of $165,800,164 via equity of $65,800,160 from WCHCC hospital equity and tax-exempt bond issuance of $100,000,000 by WCHCC for a 30-year term at an interest rate of less than 4% (aggregate yield to maturity). December 31, 2021 Internal Financial Statements and the 2020 certified Financial Statements for WCHCC, in BFA Attachment A, indicate the availability of sufficient funds for the equity contribution.

The submitted operating budget for the proposed project indicates an incremental net gain of $1,284,037 and $9,826,552 in the first and third years, respectively. As a result, this project is expected to improve the hospital's bottom line. Revenue projections were derived from current reimbursement methodologies. The submitted budget appears reasonable.

WCHCC had an average positive working capital position and an average negative net asset position during the period shown as shown in BFA attachment A. The organization incurred an operating loss of $252,069,000 at year-end on December 31, 2020. In 2021, the entity had a positive working capital position, a negative net asset position, and achieved a net income of $10,263,000 for the year, demonstrating the organization's recovery from the negative impacts of the COVID-19 pandemic.

The Certified Financial Statements for Westchester County Health Care Corporation for 2019 and 2020 are shown as BFA Attachment B. As shown, prior to the COVID-19 pandemic the entity recorded an operating gain of $15,108,000 in 2019.

Conclusion

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

Attachments

BFA Attachment A	Financial Summary- 2021 internal financial statements and the 2020 certified financial statements of Westchester County Health Care Corporation.
BFA Attachment B	Financial Summary- 2019 and 2020 certified financial statements of Westchester County Health Care Corporation.

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 221065-C
Elizabeth Seton Children's Center

Program: **Residential Health Care Facility** ***County:*** **Westchester**
Purpose: **Construction** ***Acknowledged:*** **February 17, 2022**

Executive Summary

Description
Elizabeth Seton Pediatric Center (ESPC), a 169-bed, voluntary not-for-profit Article 28 Residential Health Care Facility (RHCF) located at 300 Corporate Boulevard South, Yonkers (Westchester County) requests approval to construct a new 96-bed RHCF for a Young Adult Demonstration Program at 315 North Street, White Plains (Westchester County), to improve the quality of care for young adults with medical fragility. Upon Public Health and Health Planning Council (PHHPC) approval, the center will be named The Elizabeth Seton Young Adult Center and will serve young adults between the ages of 18 and 35 years old who are medically fragile.

ESPC currently provides medical services, rehabilitation therapy, special education, and early intervention services to children and young adults who are medically fragile. The applicant was one of two providers in New York State awarded the opportunity to operate a young adult demonstration program for medically fragile children in transition to young adults and young adults with complex medical conditions, as provided for by Public Health Law § 2808-e. The Elizabeth Seton Young Adult Center will operate under the shared leadership and governance of Elizabeth Seton Children's Center.

The applicant proposes a standalone multi-story residential skilled nursing facility for Young Adults, with a mix of private and semi-private resident rooms, providing therapy, recreation, and clinical support spaces. The new building and program will be in proximity to the center's Elizabeth Seton Children's Rehabilitation Center and Elizabeth Seton Children's School.

OPCHSM Recommendation
Contingent Approval

Need Summary
Approval of this application will provide continuity of care and appropriate programming for medically fragile youth ages 18+ who are aging out of existing pediatric nursing home beds, thereby improving the health outcomes of these individuals who might otherwise be placed in a geriatric setting.

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 $118,000,000 will be met through a HUD Mortgage of $100,300,000 from Berkadia at an interest rate of 4% for a 30-year term and a 30-year payout period, and $17,700,000 in equity raised by the Elizabeth Seton Children's Center. The sources of equity include $9,025,214 from Capital Campaign funds, donations of $4,821,930 from foundations, a pledge of $3,000,000 from corporations, and $852,856 from board/Individual contributions. The proposed incremental budget is as follows:

	Year One	Year Three
Revenues	$42,572,287	$71,119,981
Expenses	$53,017,006	$70,264,053
Gain/ (Loss)	($10,444,719)	$855,928

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 Sale and Purchase Agreement, acceptable to the Department of Health. [BFA]
3. Submission of a bank letter of credit acceptable to the Department of Health, documenting receipt and conversion of pledges, to be submitted either within 15 months from the date of approval or before approval to go to construction, whichever is earlier. [BFA]
4. Submission of documentation of Capital Campaign to be used as a source of financing, acceptable to the Department of Health. [BFA]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
6. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER 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. This project must be completed by **January 1, 2025**, 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 the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **March 1, 2023,** and construction must be completed by **October 1, 2024**, 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. 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

June 2, 2022

Need and Program Analysis

Program Description

	Proposed
Facility Name	Elizabeth Seton Children's Center
Address	315 North Street, White Plains, NY 10605 (Westchester)
RHCF Capacity	96 beds
ADHCP Capacity	N/A
Type of Operator	Voluntary
Class of Operator	Not for Profit Corporation
Operator	Elizabeth Seton Pediatric Center

Elizabeth Seton Children's Center was one of two providers in New York State awarded the opportunity to operate a young adult demonstration program for medically fragile children in transition to young adults and young adults with complex medical conditions, as provided for by Public Health Law § 2808-e. The center has acquired a tract of land at 315 North Street, White Plains, NY 10605 to construct a new 96-bed specialty care nursing facility for young adults.

Physical Environment

The proposed layout of Elizabeth Seton Children's Center is a five-story L-shaped asymmetrical design composed of a centralized space located between two wings.

The first-floor centralized space between the two wings consists of the facility entryway, chapel, large open lobby, café with seating for 48, elevator lobby, therapy gym with ADL kitchen, adaptive technology room, and two multipurpose rooms. Directly off the central core are the east and south wings. Residential floors two through five have a similar layout, with resident rooms lining the exterior walls of the east and south wings of the floors. The floors will have a total of 24 beds each, composed of ten double bedded rooms and four private rooms. Resident rooms are spacious for ventilator-dependent residents and feature ADA-accessible bathrooms with a shower. Resident dining/community space is centrally located on each floor between the east and south wings and features an adjacent pantry. Resident support service space will be provided on each floor adjacent to the elevator lobby and across from the dining/community space. All resident floors will have a resident exam room. Additionally, the second floor will feature a family lounge for overnight family visits, the third floor will feature a resident spa, and the fourth and fifth floors will feature an additional resident activity room. The staff support service space on each resident floor provides access to a staff lounge, conference room, staff offices, and both central and decentralized nursing stations.

Analysis

Public Health § 2808-E will allow current pediatric nursing home residents aged 18+, or residents recently aging out of pediatric nursing home beds, transitional opportunities to two newly created Young Adult Demonstration Programs, one of which is the current application. The chart below shows the trend for the aging of residents in pediatric nursing home beds in NYC/Westchester County, with over 100 residents aged 16 and up nearing aging out of pediatric nursing home beds.

	2016	2017	2018	2019	2020
Number age 16+	51	52	64	105	101
Percentage of total pediatric residents	16.7%	14.8%	18.1%	26.9%	25.4%

Source: RHCF Cost Report for NYC/Westchester County pediatric programs.

There have also been consistently high occupancy rates for pediatric skilled nursing beds in NYC/Westchester County, with most facilities operating near or at capacity:

2018	2019	2020	2021	Current
97.7%	98.5%	97.8%	96.8%	95.7%

Source: Nursing Home Weekly Bed Census Survey. Current is reported as of April 6, 2022

The historically high occupancy rates in pediatric skilled nursing beds demonstrate a consistent demand for specialized skilled nursing services and programs for those with medically complex conditions. The Young Adult Demonstration Program established in Public Health Law is an effort to address the aging of the medically fragile population residing in pediatric skilled nursing beds. While the preference is to have children transitioned to home or community placement when clinically appropriate, the level of care required by existing residents in pediatric skilled nursing beds sometimes makes a transition outside of a skilled nursing environment challenging. In such cases, pediatric skilled nursing providers have encountered difficulty finding programs in traditional skilled nursing beds that meet the complex medical and social needs of the young adults aging out of pediatric skilled nursing programs. Specialized Young Adult Programs create an opportunity to transition existing young adults from pediatric skilled nursing beds into programs that offer continuing long-term residential care specific to the unique needs of this population.

The need for a 96-bed stand-alone Young Adult Demonstration Program has been justified in the application through the applicant's own historical experience serving an aging pediatric nursing home population, their collaboration with other pediatric providers who face similar challenges in finding an appropriate placement for young adults with medical fragility, and the applicant's understanding of the longer-range needs of the medically fragile population in the geographic location served. The applicant estimates that by the end of 2022 there will be 27 current pediatric residents at their facility over age 21, with another 14 aging out over age 21 at St. Mary's Hospital for Children and Sunshine Children's Home and Rehab. The established relationship between these three facilities would provide appropriate placement in the proposed young adult beds for children aging out of the pediatric beds. ESPC also has standing relationships with the Steven and Alexandra Cohen Long-Term Care Pavilion and social agencies and hospitals in Westchester County and the New York City area that will provide additional sources of referrals for the Young Adult Demonstration Program beds.

As per information provided by the applicant, by December 31, 2025, Elizabeth Seton Children's Center, St. Mary's Hospital for Children, and Sunshine Children's Home and Rehab are expected to have a total of 92 children combined who will be over 21 years of age and require placement in programs such as the Young Adult Demonstration Program proposed within this application. 60 of the 92 children will come from Elizabeth Seton Children's Center alone. The demand for the young adult services within the three facilities mentioned would result in significant occupancy of the proposed Young Adult Demonstration Program shortly after the beds are made available.

Access

The proposed population to be served by the new Young Adult Demonstration Program beds will predominantly have a Medicaid payor source and reflect the high rate of Medicaid payor sources currently experienced in pediatric skilled nursing home beds. The applicant asserts existing non-pediatric nursing homes lack the expertise and resources to meet the complex and highly specialized needs of the young adults that have outlived childhood congenital, neurological, neuromuscular, and genetic disorders. This cohort of young adults requires nursing home beds that have a hospital-grade infrastructure and enhanced staffing to safely care for the medical complexity of these residents. The proposed Young Adult Demonstration Program would help to address this stated service gap and improve health outcomes for those aging out of pediatric skilled nursing home beds.

The proposed Young Adult Demonstration Program will also provide opportunities to those residents currently receiving care in other states. New York State Medicaid claims data from August 2017 to August 2018 detailed 20 unique nursing home residents ages 18-35 in Massachusetts and another 16 in New Jersey. New York State Medicaid claims data from the same period also showed 22 teens between the ages of 13 and 16 in New Jersey nursing homes.

Quality Review

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Elizabeth Seton Children's Center	Current	*****	*****	*****	*****
	12/2009 Data	*****	****	*****	*****

***Data date**: 03/2022*

Conclusion

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law. Approval of this application will create a continuity of care and programming for medically fragile youth ages 18+ who are aging out of existing pediatric nursing home beds, thereby improving health outcomes that may otherwise occur if discharged to other environments.

Financial Analysis

Total Project Cost and Financing

The total project cost, which is for new construction and the acquisition of moveable equipment, is estimated at $118,000,000 and down as follows:

	Total
Land Acquisition	$8,000,000
New Construction	74,292,293
Design Contingency	7,429,200
Construction Contingency	4,086,100
Architect/Engineering Fees	4,653,495
Other Fees	3,255,255
Moveable Equipment	2,765,000
Telecommunications	1,975,000
Financing Costs	6,673,812
Interim Interest Expense	4,233,196
CON Fees	2,000
Additional Processing Fees	634,649
Total Project Cost	$118,000,000

Project costs associated with the Young Adult Program amount to $118,000,000.

The applicant's financing plan appears as follows:

HUD Mortgage (4% interest for a 30-year term)	$100,300,000
Capital Campaign	$9,025,214
Foundations (Received)	$4,821,930
Corporations (Pledged)	$3,000,000
Board/Individual Contributions (Received)	$852,856
Total	$118,000,000

Operating Budget

The applicant has provided an incremental operating budget for the Young Adult Program in 2022 dollars for years one and three. The incremental budget is summarized as follows:

	Year One		Year Three	
	Per PD	Total	Per PD	Total
Revenues				
Medicaid FFS	$2,036	$37,796,742	$2,032	$63,115,369
Medicaid MC	$2,034	4,199,638	$2,033	7,012,819
Bad Debt		(202,705)		(337,551)
Net Revenues		$41,793,675		69,790,637
Other Operating Rev		778,612		1,329,344
Total Revenue		$42,572,287		$71,119,981
Expenses	Per PD	Total	Per PD	Total
Operating	$2,155	44,448,548	$1,792	61,834,621
Capital	$415	8,568,458	$244	8,429,432
Total Expenses	$2,570	$53,017,006	$2,036	$70,264,053
Excess of Rev. over Exp.		($10,444,719)		$855,928
Patient Days		20,630		34,513
Occupancy		58.88%		98.50%

The following is noted concerning the incremental budget for the proposed Young Adult Program:

- For budget years one and three, Medicaid revenues will be based on the operating component for pediatric residential health care facilities with an increase or decrease adjustment to account for any discrete expenses associated with caring for this population.
- Expense and utilization assumptions are based on current historical experience caring for this population.
- Utilization projections assume a 12-month ramp-up of young adult residents admitted to the facility with 29 admitted in the first quarter and an average of eight young adults admitted every month thereafter. The ramp-up projection is based on prior experience in 2017 when the center opened a 32-bed expansion.
- The projected occupancy rate of 98.5% by year three is based on ESPC's historical occupancy levels.

The applicant has submitted their current year (2020) operations and an enterprise operating budget in 2022 dollars for all services provided by Elizabeth Seton Children's Center, for the first and third years after occupancy in the Young Adult Center. The budget is summarized as follows:

	Current Year		Year One		Year Three	
Revenues	Per PD	Total	Per PD	Total	Per PD	Total
Medicaid FFS	$1,671	$102,081,581	$1,784	$141,525,442	$1,817	$166,844,069
Medicaid MC	$1,669	1,006,200	$2,034	4,199,638	$2,033	7,012,819
Bad Debt		0		(202,705)		(337,551)
Net Revenues		103,087,781		145,522,375		173,519,337
Other Operating Rev		5,960,253		3,225,712		3,776,444
Non-Operating Rev		1,078,005		350,000		350,000
Total Revenue		$110,126,039		$149,098,087		$177,645,781

Expenses	Per PD	Total	Per PD	Total	Per PD	Total
Operating	$1,538	94,892,055	1,731	140,849,707	1,661	158,235,780
Capital	173	10,702,520	222	18,089,874	185	17,662,926
Total Expenses	$1,712	$105,594,575	$1,953	$158,939,581	$1,846	$175,898,706
Excess of Rev. over Exp.		$4,531,464		($9,841,494)		$1,747,075
Patient Days		61,691		81,390		95,273
Occupancy		100%		84%		98%

The following is noted for the enterprise operating budget:

- Expense and utilization assumptions are based on current historical experience.
- Per the applicant, ESPC received CARES Act funding for $1,286,902 and $1,748,859 in 2020 and 2021 respectively. This funding is also reflected on ESPC's certified financial statement as of December 31, 2020, and their internal report as of December 31, 2021, in Attachment A.
- Other operating revenues consist of the following: pharmacy, investment income, contributions income, and others.

Utilization by payor source is projected as follows:

	Current Year		Year Two		Year Three	
	%	Patient days	%	Patient days	%	Patient days
Medicaid FFS	99.02%	61,088	97.46%	79,325	96.38%	91,823
Medicaid MC	0.98%	603	2.54%	2,065	3.62%	3,450
	100.00%	61,691	100.00%	81,390	100.00%	95,273

ESPC's breakeven occupancy for the first and third years is projected at 85% and 98% respectively.

Letter of Intent for Sale and Purchase Agreement

The applicant has submitted a draft sale and purchase agreement for the site to be occupied, which is summarized below:

Property:	315 North Street, White Plains, NY 10605 (Westchester County)
Seller:	North Street Community, LLC
Purchaser:	Elizabeth Seton Children's Center
Purchase Price:	$8,000,000
Payment of Purchase Price:	$250,000 deposit to escrow; $4,750,000 at closing; and seller will forgive payment of the $3,000,000 remaining balance as a charitable donation to purchase.

Capability and Feasibility

Total project costs of $118,000,000 will be met through a HUD Mortgage loan of $100,300,000 from Berkadia at an interest rate of 4% for a 30-year term and a 30-year payout period, and the remaining $17,700,000 will be provided by equity raised by the Elizabeth Seton Children's Center. The sources of equity include $9,025,213 from Capital Campaign funds, donations of $4,821,930 from foundations, a pledge of $3,000,000 from corporations, and the remaining $852,856 from board/Individual contributions. The applicant has provided supporting documentation for the donations received, and a letter of interest has been provided by Berkadia Commercial Mortgage LLC in support of the financing.

Review of BFA Attachment A, Elizabeth Seton's certified financial statement as of December 31, 2020, and their internal report as of December 31, 2021, indicates the entity maintained an average positive

working capital position, an average positive net asset position, and an average positive net income. The submitted enterprise-wide budget indicates a net loss in year one ($9,841,494) and a net income of $1,747,075 will be generated for the first and third years, respectively. The applicant has provided a letter from the CEO of Elizabeth Seton Children's Center indicating that the losses in year one will be offset utilizing funds from their $30 million Capital Campaign fund.

Conclusion

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

Attachments

BFA Attachment A	Elizabeth Seton Children's Center December 31, 2020 Certified Financial Statements and December 31, 2021, Internal Financial Statements

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 211094-C
New York-Presbyterian Hospital - New York Weill Cornell Center

Program: **Hospital** ***County:*** **New York**
Purpose: **Construction** ***Acknowledged:*** **March 19, 2021**

Executive Summary

Description

New York-Presbyterian Hospital – New York Weill Cornell Center (NYP/Weill Cornell), a 744-bed hospital located at 525 East 68th Street, New York (New York County), requests approval to certify adult heart transplant services and acquire the requisite equipment. The proposed program represents an expansion of the existing adult heart transplant program at New York-Presbyterian/Columbia University Irving Medical Center (NYP/Columbia) a 1,022-bed facility located at 622 West 168th Street, New York. The NYP/Columbia adult heart transplant program began in 1971 and the first transplant was in 1977, and to date, 2,875 patients have received a heart transplant.

All adult heart transplant procedures will be provided within two designated operating rooms (ORs) on the third floor of the Greenberg Pavilion on the hospital's campus. These operating rooms are currently used for other types of transplant cases, including liver, kidney, and pancreas.

The applicant indicates that 321 candidates are currently on the New York State adult heart transplant waitlist and NYP/Columbia's adult heart transplant waitlist has 110 candidates. NYP had 124 waitlist additions in 2021, a 48% increase over 84 waitlist additions in 2020.

Establishing an adult heart transplant program at NYP/Weill Cornell would enhance cardiology services and health equity in the New York City region, with a special focus on Kings and Queens Counties. NYP has expanded its reach into the Brooklyn and Queens communities with the addition of two hospitals (NYP Brooklyn Methodist - December 2016 and NYP Queens - July 2015) to the New York-Presbyterian (NYP) network. In both Brooklyn and Queens, NYP has established full-service heart failure programs with dedicated providers in each borough, with direct access to, and shared care with, advanced heart failure programs at NYP/Weill Cornell.

David Majure, M.D., M.P.H. will serve as the Medical Director, and Yoshifumi Naka, M.D., Ph.D. will serve as the Surgical Director of transplant services at NYP/Weill Cornell. NYP/Weill Cornell already has an entire transplantation team ready to provide the adult heart transplantation service upon the approval of this project, as a full-service cardiac surgery provider and existing kidney/pancreas and liver transplant programs.

NYPH is the sole member and passive parent of NYP Community Programs, Inc. (NYPCP). NYPCP, formed in 2014, is the sole member, active parent, and co-operator of New York-Presbyterian/Hudson Valley Hospital (128 beds), New York-Presbyterian/Queens (535 beds), and New York-Presbyterian/Brooklyn Methodist Hospital (591 beds). The hospital maintains academic affiliations with two medical colleges: The Columbia University College of Physicians & Surgeons (Columbia VP&S) and the Joan and Sanford I. Weill Medical College of Cornell University (Weill Cornell Medical College).

OPCHSM Recommendation

Contingent Approval

Need Summary

Establishing an adult heart transplant program at NYP/Weill Cornell would enhance cardiology services and health equity in the New York City region, with a special focus on Kings and Queens Counties.

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 for moveable equipment and fees is $8,352,970 and will be met via equity. The adult heart transplant program is projected to complete 20 and 24 annual transplants in years one and three, respectively, but will operate at a net loss. NYP/Weill Cornell Group's Senior Vice President, Financial Officer, and Treasurer have submitted a letter stating their commitment to financially supporting the program and absorbing the projected losses. The proposed incremental budget is as follows:

Budget	Year One	Year Three
Revenues	$12,656,260	$16,374,840
Expenses	16,529,948	21,737,573
Net Income	($3,873,688)	($5,362,733)

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]

Approval conditional upon:

1. This project must be completed by one year from the date of the recommendation 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 the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
3. Submit evidence of active membership in the NY Cardiothoracic Consortium (NYCTC) to the Department within 3 months of notification of project approval. [HSP]
4. Annually review, and update as needed, policies, procedures, and protocols related to donor management, organ acceptance practices, and other relevant care-related issues to ensure they are consistent with current evidence and best practices in the field. [HSP]
5. Work with NYCTC, LiveOnNY, other regional OPOs, and others to identify opportunities for improvement and implement strategies resulting in increased donation and transplant rates while maintaining quality of care. [HSP]
6. Provide education and opportunities for staff, patients, and members of the community to enroll in the NYS Donate Life Registry including consideration of integrating opportunities for Registry enrollment in NYPH public-facing electronic transactions and educational sites. [HSP]
7. Report to the Department annually on actions and outcomes of actions taken to meet Conditions five and six. [HSP]

Council Action Date

June 2, 2022

Need and Program Analysis

Program Description

New York Presbyterian-Weill Cornell Medical Center (NYP/Weill Cornell) is a 744-bed Article 28 hospital affiliated with Weill Cornell Medicine/Medical College within the NYP Hospital (NYPH) Network. NYP/Weill Cornell seeks approval to certify an adult heart transplant program at 525 East 68th Street, New York, New York location (New York County).

Of note, NYP/Weill Cornell's 744 beds include 85 intensive care beds, twenty of which are in the Cardiothoracic ICU; 427 medical/surgical beds, 33 of which are located in the surgical step-down unit and 38 of which are cardiology beds. In addition, NYP/Weill Cornell offers a broad range of services, a subset of which includes cardiac catheterization (adult diagnostic, electrophysiology, pediatric diagnostic, pediatric interventional elective and percutaneous coronary intervention (PCI), cardiac surgery (adult and pediatric), primary care and other medical specialties including nephrology, renal dialysis (acute and chronic), gastroenterology and hepatology, and kidney, pancreas, and liver transplant programs.

The New York and Presbyterian Hospital (NYPH), an existing, not-for-profit corporation, has the following divisions:

The NYPH network, an existing not for profit corporation, has the following divisions:

- Columbia Presbyterian Medical Center, 1,022 beds, located in New York, New York
- New York Weill Cornell Medical Center, 744 beds, located in New York, New York
- Allen Hospital, 196 beds, located in New York, New York
- David H. Koch Center, 135 beds, located in New York, New York
- Lower Manhattan Hospital, 180 beds, located in New York, New York
- Westchester Division, 274 beds, located in White Plains, New York
- Lawrence Hospital, 288 beds, located in Bronxville, New York.

NYPH is also the sole member and passive parent of NYP Community Programs (NYPCP) which became the active parent and co-operator of:

- NYP-Queens, 535 beds, in July 2015
- NYP-Brooklyn Methodist Hospital, 591 beds, in December 2016 and
- NYP-Hudson Valley Hospital, 128 beds, during that same period.

Analysis

The service area of the NYP/Weill Cornell is comprised of the five counties of New York City; however, the applicant identifies the primary focus of the new heart transplant program is to bring advanced heart failure and heart transplantation services to Kings (Brooklyn) and Queens Counties.

The applicant notes the following characteristics of the project area with a focus on Brooklyn and Queens:

- Population: the population of the 5 boroughs of NYC is projected to grow to over 9 million people by 2025 representing a growth of 7.6% from the population size in 2018. Population growth in the target boroughs is expected to similarly increase.
- Age: As the population grows, it also ages with significant increases expected in persons 45+ and 65+ in all boroughs.
- Ethnicity: The population of NYC is diverse with that of the target borough of Brooklyn reported as 32.2% African American, 11.9% Asian, and 19.8% Hispanic. The ethnicity of the population of Queens is reported as 20.7% African American, 26.9 Asian, and 28.2% Hispanic.
- Income: Nearly 20% of the population of Brooklyn is reported as at or below the poverty line and that of Queens is reported as slightly over 10%.

- Relevant disease and healthcare-related information:
  - The number one cause of death in NYS is heart disease with significant disparities by race and ethnicity.
  - Heart failure and advanced heart failure have a mortality rate of 50% at 5 years and one year, respectively.
  - Rates of diabetes and hypertension, conditions contributing to the development of heart failure, are higher in Brooklyn and Queens than in the rest of NYC.
  - Where heart failure discharges are projected to increase by 10% in NYC and Westchester County over the next ten years, during that same period of time it is projected that heart failure discharges will grow by 11% and 17% at NYP-Brooklyn Methodist and NYP-Queens Hospital, respectively.
  - In addition, the applicant reports that in 2018 over 3,100 Brooklyn and Queens residents with heart failure left their home borough to seek heart failure care; 14% from Brooklyn and 32% from Queens.

Over the last five years, since the addition of Brooklyn Methodist and Queens Hospital to the NYPH network, the applicant reports expanding its reach into these communities and enhancing access to primary care, cardiology, and advanced cardiology/heart failure care to the residents of these ethnically diverse communities. NYPH seeks to further enhance the availability of and access to advanced heart failure care and treatment in these communities with the addition of heart transplantation services provided at Weill Cornell Medical Center in Manhattan and under the care of physicians and other providers affiliated with Weill Cornell Medicine, NYP Brooklyn Methodist and NYP Queens in the communities in which the patients live.

In recognition of the diversity of these communities and the need to understand and address health inequities in access to care and outcomes, in 2020 NYP launched the Dalio Center for Health Justice. An early undertaking of this newly formed Center is the Black Transplant Health Initiative, that in collaboration with community partners, seeks to educate community residents about organ failure and organ donation and provide access to organ transplantation.

Although the applicant describes this project as an expansion of the existing, high volume, high quality, adult heart transplant program at its sister facility NYP/Columbia University Medical Center, in the eyes of the oversight agencies including NYSDOH, CMS, and United Network for Organ Sharing (UNOS), this application represents the establishment of a new program requiring separate approvals and certifications.

Over the last few years, NYPH reports developing a standardized approach to heart failure implemented across the enterprise ensuring that all patients receive equal and timely access to care standardized under one protocol, augmented by an early identification of patients who should be seen/who are at risk of heart failure algorithm, remote monitoring, and a care management program that seeks to ensure early intervention if/when needed.

NYP/Weill Cornell has established Cardiothoracic Surgery and Organ Transplant Programs. The 2016-18 Report of the NYSDOH Cardiac Advisory Committee on Adult Cardiac Surgery notes that NYP Columbia, Weill Cornell, Brooklyn Methodist, and Queens Hospital perform cardiac surgery. NYP/Columbia and Weill Cornell are the most active programs with risk-adjusted mortality rates for isolated CABG and valve or valve with CABG procedures being lower than the statewide average.

Two NYPH Network hospitals provide United Network for Organ Sharing (UNOS) approved, CMS certified organ transplant services. Specifically, NYP/Columbia currently provides adult kidney, pancreas, heart, lung, liver, and pediatric heart, liver, and intestine transplant services and NYP/Weill Cornell currently provides adult kidney, pancreas, and liver transplant services. Via this application, Weill Cornell is seeking approval to provide adult heart transplant services.

NYP/Weill Cornell is familiar with the extensive infrastructure required to support an organ transplant program and has recently undergone a successful CMS recertification survey of their existing programs. One and three years, patient and graft survival for all existing Weill Cornell programs range from slightly below to slightly above the mean among transplant programs.

NYP/Weill Cornell's proposal includes providing as much as is safe and appropriate pre-transplant and post-transplant care to Brooklyn and Queens residents in the community in which they live. If required, insertion of ventricular assist devices (VAD) would be carried out at the Weill Cornell main hospital but follow-up VAD care would be provided in the community. Provision of ongoing monitoring, non-invasive and invasive, as well as, supportive and palliative care with intravenous medication, is available in the community. Many components of the transplant evaluation process can be carried out in the community or via telehealth visits with a few exceptions, i.e., meeting with transplant surgeons, etc. Transplant procedures would be carried out in two dedicated ORs at the Weill Cornell campus in Manhattan. Immediate pre and post-procedure care will be provided at the hospital in the Cardiothoracic ICU and step-down surgical unit. Patients would need to return to the Weill Cornell campus for immediate post-transplant care such as clinic visits with transplant providers, heart biopsies, etc. but this will transition to community physicians as time and the patient's condition progress.

The NYP/Weill Cornell heart transplant program received UNOS approval to begin performing heart transplants in December 2021. The primary surgeon and primary physician of the program meet UNOS criteria to hold those roles. They are supported by team transplant and advanced heart failure certified cardiologists and surgeons on-site and at the Columbia site.

The applicant's position is that there is an unmet need for advanced heart failure and transplant services in their service area, specifically in Brooklyn and Queens. They point to evidence that NYS has less heart transplant programs than other states of similar population size and that the recent opening of two new heart transplant programs in NYC increased the number of heart transplants performed and had little if any impact on existing programs.

Transplant Program Review

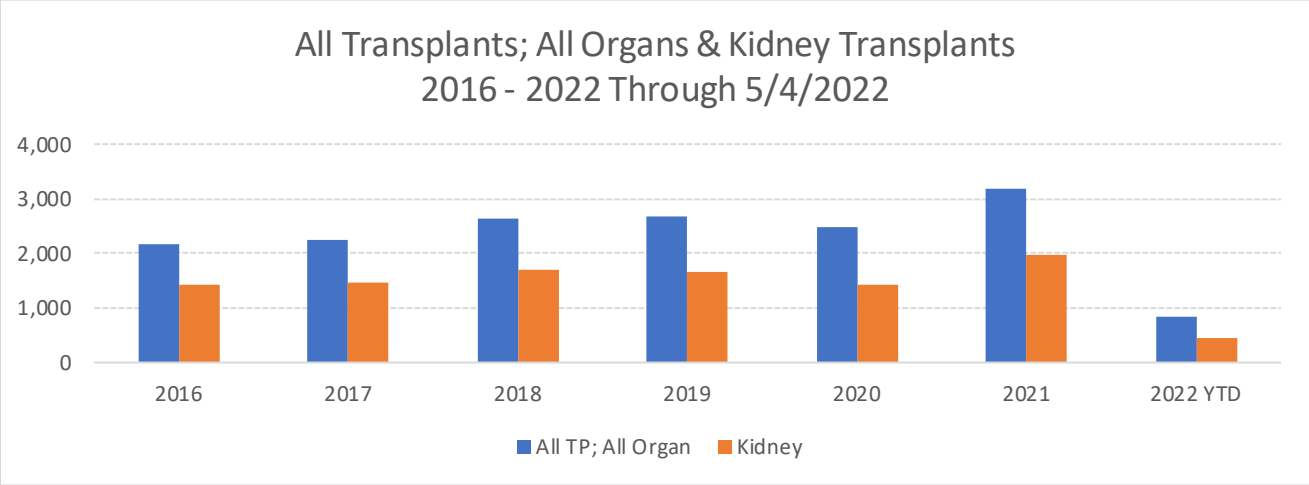
Status of Donation and Transplantation in NYS and NYP/Weill Cornell

In addition to materials provided as part of the CON application and the applicant's response to the Department's Requests for Additional Information, staff reviewed the facility's most recent:

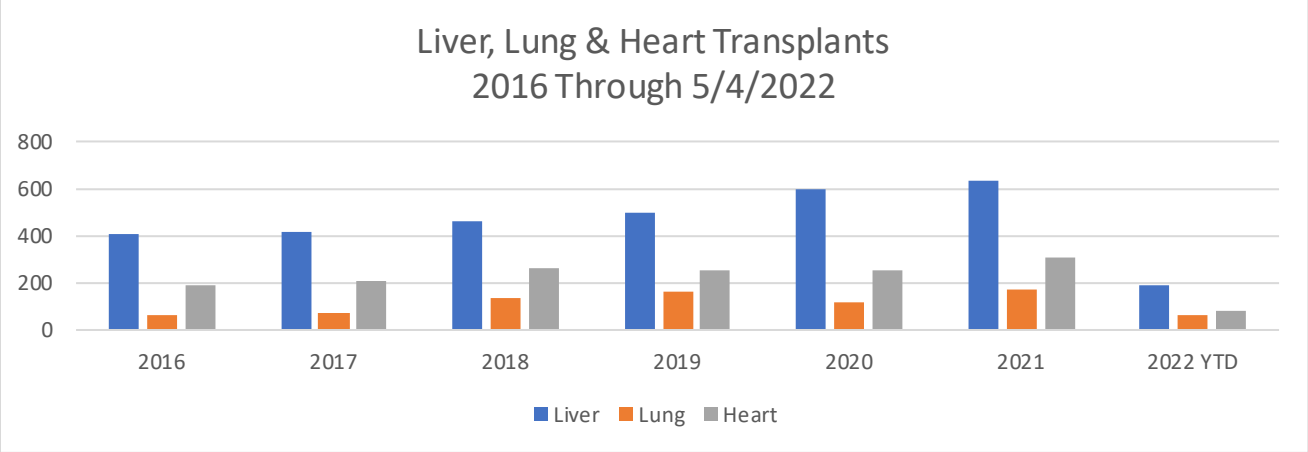
- CMS survey(s);
- UNOS/Organ Procurement and Transplantation Network (UNOS/OPTN) data;
- Scientific Registry of Transplant Recipients (SRTR) data;
- SRTR data of other NYS hospitals that perform heart transplants and
- The most recent Report of the NYS Cardiac Advisory Committee (CAC) on Cardiac Surgery (2016-18).

In NYS and nationally, the number of solid organs transplanted through time is cyclical. Overall, the number of solid organ transplants performed in NYS has been increasing since 2013. Since changes to the UNOS organ allocation rules began taking effect in 2020, more organ offers have been made and accepted by NYS transplant centers. See below Graphs 1 and 2.

Graph 1. NYS Transplant Volumes-All Organs and Kidney Transplants

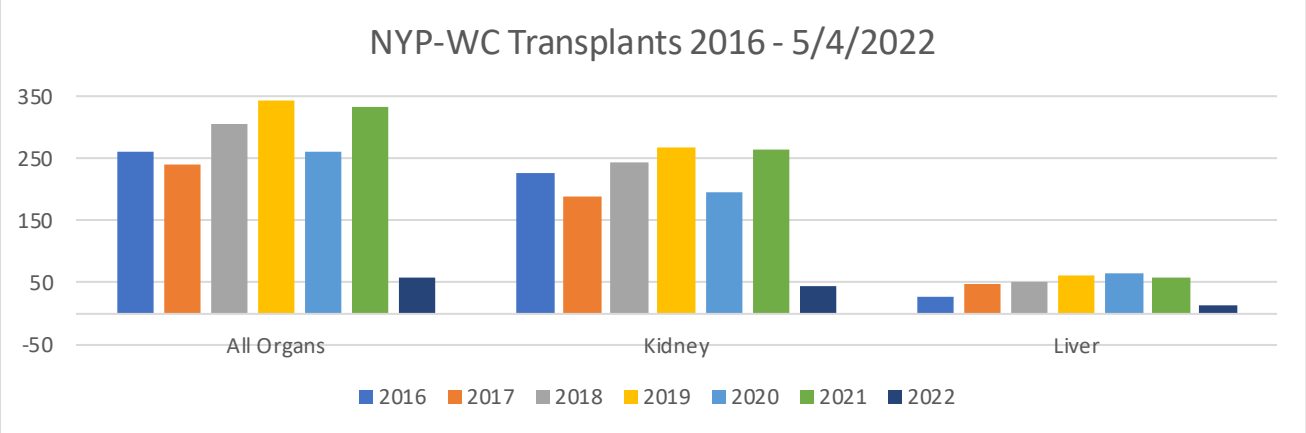


Graph 2. NYS Transplant Volumes-Liver, Lung, and Heart Transplants



Data from UNOS/OPTN shows that NYP/Weill Cornell performed 265 kidney, 59 liver, and 2 pancreas and 8 kidney-pancreas transplants in 2021. SRTR reports that graft and patient survival post-transplant outcomes are similar to other facilities performing these procedures. Graph 3 below shows the total number and number of kidney and liver transplants carried out at NYP/Weill Cornell 2016 through May 4, 2022.

Graph 3 NYP Weill Cornell Transplants by Organ by Year



Heart Transplantation in NYS

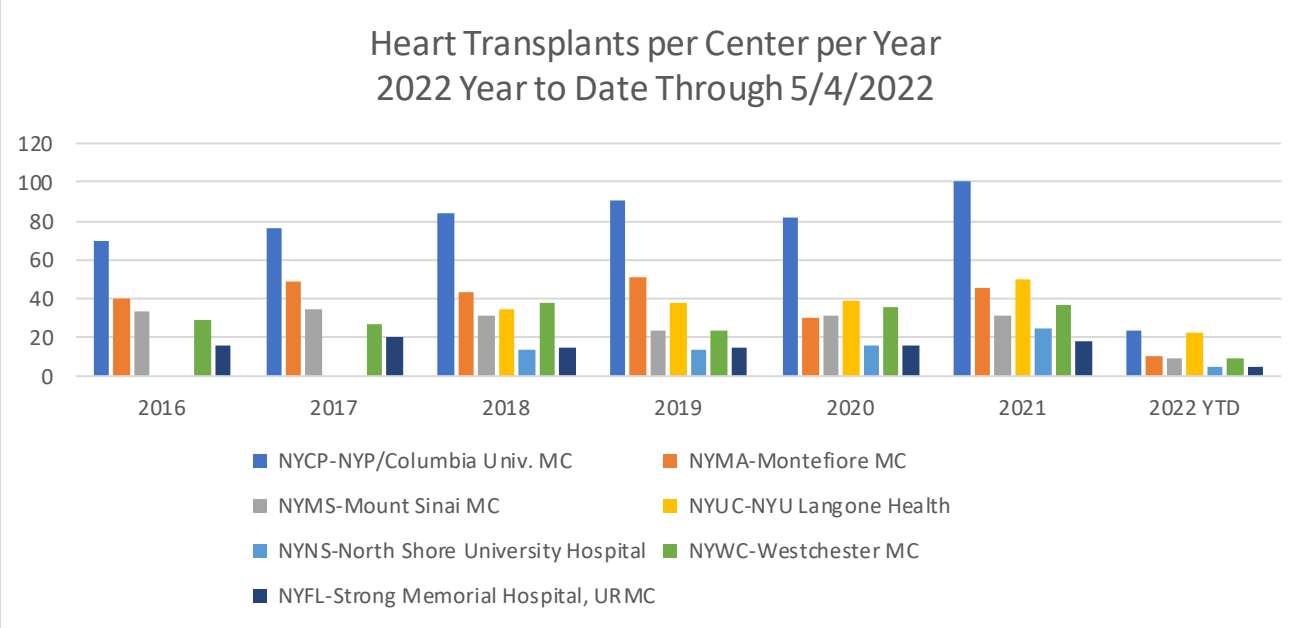
There are seven existing adult heart transplant programs in NYS; four of the seven centers also perform pediatric heart transplants. Three of the seven centers are located in Manhattan, and one is in the Bronx. Outside of NYC, there is one adult heart transplant program located in Nassau County (Manhasset), one in Westchester County (White Plains), and one in Monroe County (Rochester).

Table 1 and Graph 4 indicate NYS heart transplant centers' total transplant volumes from 2016 through May 4, 2022, as reported to UNOS/OPTN.

Table 1. Total Number of Heart Transplant NYS Transplant Centers 2016 - 05/04/2022

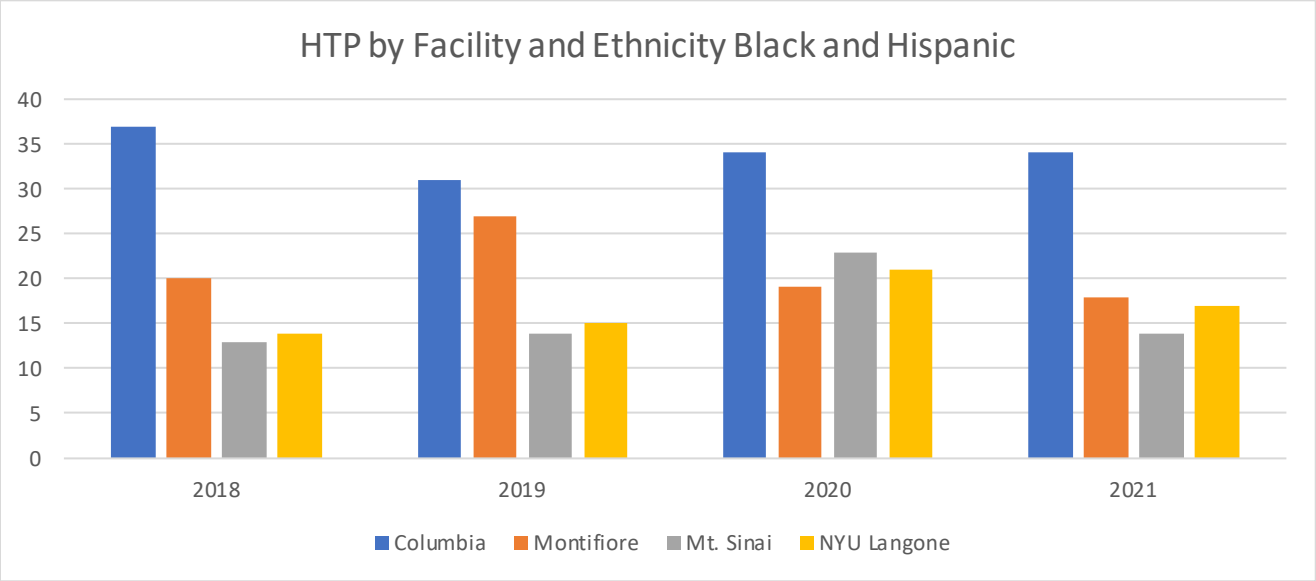
	2016	2017	2018	2019	2020	2021	2022 YTD
NYP/Columbia Univ. MC	70	76	84	91	82	100	24
Montefiore MC	40	49	43	51	30	46	10
Mount Sinai MC	33	35	31	23	31	31	9
NYU Langone Health	0	0	35	38	39	50	22
North Shore Univ. Hospital	0	0	14	14	16	25	5
Westchester MC	29	27	38	23	36	37	9
Strong Memorial Hospital	16	20	15	15	16	18	5

Graph 4. Total Number of Heart Transplants per Center Per Year



Though all NYS centers perform more heart transplants than the federal and state minimum, it is clear from the volumes reported to UNOS shown in Table 1 and Graph 4 that NYP/Columbia consistently performs more heart transplants than the other centers. When examining data related to race and ethnicity of those receiving heart transplants in NYS, the data shows that NYP/Columbia also transplants more persons of African American and Hispanic race/ethnicity than other NYS transplant centers. See Graph 5.

Graph 5. Heart Transplants by Center and Recipient Ethnicity



Indicators of heart transplant program activity include their waitlist size and how many additions to their waitlist they make per year. See Table 2.

Table 2 Waitlist size & Number of Additions to the Heart Waitlist 2020-22 Year to Date

	Waitlist	Waitlist Additions		
	05/04/2022	2020	2021	2022 YTD
NYP/Columbia	119	114	139	31
Montefiore	29	40	54	11
Mount Sinai	75	47	43	12
NYU	14	46	62	20
North Shore	16	27	24	3
Westchester	14	36	41	12
Strong	28	18	22	7

Of the 3,411 people awaiting a heart transplant nationally on 05/04/2022, 295, or 8.6% of them, are listed at NYS heart transplant centers; eleven are under the age of eighteen.

Prolonged Median time to Transplant and elevated Waitlist Mortality Rates are viewed as indirect indicators of a potential need for additional transplant services in an area.

SRTR data published in January 2022 reveals that all centers other than Mount Sinai in Manhattan and Strong Memorial Hospital in Rochester have Median Times to Transplant at or below the national time. This same data indicates that the waitlist mortality for all centers except Mount Sinai is below or within an acceptable range of the national Waitlist Mortality Rate. See Table 3.

Table 3

May 6, 2022 12

Median Transplant Time & Waitlist Mortality Rate

		Median Time to Transplant 07/01/2015-12/31/2020		Mortality After Listing Rate 07/1/19-03/12/20;06/13/20-06/30/21	
		Center	National	Center	National
NYCP/NY Presbyterian Hospital/ Columbia Univ. MC	Adult	5.3 mo.	5.5 mo.	3.9	6.0
NYMA/Montefiore Medical Center	Adult	4.7 mo.	5.5 mo.	6.7	6.0
NYMS/Mount Sinai Medical Center	Adult	*18.6 mo.*	5.5 mo.	*9.4*	6.0
NYUC/NYU Langone Health	Adult	1.3 mo.	5.5 mo.	1.3	6.0
NYNS/North Shore Univ. Hospital Northwell Health	Adult	4.3 mo.	5.5 mo.	5.3	6.0
NYWC/Westchester Medical Center	Adult	2.3 mo.	5.5 mo.	6.8	6.0
NYFL/Strong Memorial Hospital, Univ. of Rochester MC	Adult	*17.6 mo.*	5.5 mo.	4.7	6.0

Data Source: SRTR January 2022 Report

The Department surveyed all seven of the existing heart transplant centers asking them if they were at capacity, and, if not, what they were doing to meet their capacity to perform more heart transplants. Four of the seven replied that they were at capacity. Three centers reported that they could perform more heart transplants if more hearts were available for transplantation.

The SRTR report on LiveOnNY's performance on organ procurement organization (OPO) performance measures published in January 2022, shown below in Table 4, indicates that a number of hospitals in the NYPH network have opportunities for improvement in the identifying and actualizing organ donors. The table data is not limited to heart donors.

Table 4

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Additional Information
Measures of Donation per NYP Hospital

	State Donors Meeting Eligible Death Definition	Eligible Deaths	Observed Donation Rate	Expected Donation Rate	Additional Donors
NYP/Columbia University MC	5	10	50	58.8	6
NYP/Lower Manhattan Hospital	0	1	0	53.2	0
NYP/The Allen Hospital	0	1	0	44.2	0
NYP/Weill Cornell MC	4	8	50	59.9	5
NYP/Queens	1	7	14.3	70.2	0
NYP/Brooklyn	2	4	50	65.1	0

Data source: **SRTR January 2022 Report**

NEW YORK STATE OF OPPORTUNITY. Department of Health

It is important to note that CMS has recently finalized and will be implementing changes to the Conditions for Coverage (CfC) for OPOs starting the 2022 survey cycle. Their most recent assessment of NYS OPO performance identified that NYS has one OPO functioning in the top 25% of OPOs nationally (Tier 1), one that is in the middle (Tier 2), and two that are in the lowest performance category (Tier 3). LiveOnNY is one of the NYS OPOs in Tier 3. If their donation and transplant rates do not improve by 2026, the Donor Service Area that they cover will be re-assigned to an OPO with better performance.

Compliance with Applicable Codes, Rules, and Regulations

A successful Medicare Transplant re-certification survey was conducted for the NYP/Weill Cornell adult kidney, pancreas, and liver transplant programs in November 2021.

This facility has no outstanding Article 28 surveillance or enforcement actions and 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. NYP Hospitals are accredited by The Joint Commission with their last full survey in July 2021. Weill Cornell has achieved an advanced comprehensive stroke center certification with its last surveyed in August 2021 and has a certified ventricular assist device program last surveyed in March 2022.

Review Committee Discussion and Recommendation

The Department convened a committee consisting of experts in the field to review the application, provide feedback as to its strengths and weaknesses and make recommendations to the PHHPC and the Commissioner of Health.

The review committee was co-facilitated by Department staff and a member of the Transplant Council and included additional representation from the NYS Transplant Council (TC); a heart transplant surgeon and cardiologist from non-competing out-of-state programs, a chief operating officer from high performing out-of-state OPO and a transplant administrator also from an out-of-state program.

Review Committee members were provided with the following information for review and evaluation:

- Relevant components of the CON application and attachments;
- NYP/Weill Cornell's response to the Department's requests for additional information;
- UNOS/OPTN and SRTR data for volumes, outcomes, transplant rates, and other data regarding existing heart transplant centers in NYS;
- Most recent Report of the NYS Cardiac Advisory Committee on Cardiac Surgery in NYS (2015-17); and
- Information regarding public comments received about the application.

Committee members were asked to review the proposed program on the merits of the application and the material supplied. Each member was asked their thoughts and opinions and discussion followed.

Committee members noted the:

- Population size, ethnicity, and other demographic information about NYC with particular focus on the boroughs of Brooklyn and Queens and the locations of the existing heart transplant centers.
- Volume of heart transplants performed by the existing centers and the relevant quality indicators.
- NYP/Columbia heart transplant program is the most active program in NYS supported by SRTR data indicating the quality of their outcomes on these procedures.
- NYP/Weill Cornell plans for the heart transplant program to:
    - act as an extension, using the same policies, procedures, and protocols for treatment of heart failure and heart transplant patient evaluation, selection, management, etc.;
    - utilize the existing quality assurance performance improvement (QAPI) structure and processes, etc. of NYP/Weill Cornell integrated with that of the heart transplant program at Columbia;
    - focus on bringing needed heart failure, advanced heart failure, and heart transplant-related care to the residents of their service area but focused on the boroughs of Brooklyn and Queen;
    - provide as much of this care as is safe and appropriate to assure patient safety in the communities in which their patients reside; and
    - provide heart transplant-related care regardless of the patient's ability to pay.
- NYPH efforts to improve and increase organ donation within their system and existing opportunities for improvement.

- NYP/Weill Cornell receipt of UNOS approval for their proposed new heart transplant program in December 2021.
- Responses of existing heart transplant centers to the Department's survey regarding existing capacity.
- Absence of letters of opposition to the establishment of a new heart transplant program in NYC and letters of support received from community physicians and practices.

Questions the Review Committee was asked to consider were:

1. If opening a new program would increase access to heart transplant care in NYS;
2. If approval of this new program would adversely affect other existing heart transplant programs;
3. The effect that opening this new program will have on the number of hearts available for transplant in the area; and
4. Other, as identified by staff or Committee members.

Committee members raised questions about and asked for additional information from the applicant about the experience and support of the proposed program's primary physician and medical director and the extent of the applicant's commitment to providing care regardless of the patient's ability to pay for needed care.

Prior to contemplating the questions above, the Committee discussed the topic of the need for another heart transplant program in NYC. Looking at the OPTN and SRTR data and the responses of the NYC heart transplant facilities would suggest that there is additional capacity in at least one of the NYC area hospitals. The limiting factor identified by facilities identifying that they had additional capacity was an insufficient number of organs available for transplant. Mount Sinai, the closest facility identifying that they had additional capacity has a fairly large waitlist and prolonged median time to transplant on the most recently available SRTR data.

Regarding question one, the Committee thought that the evidence suggested that opening new, assertive heart transplant programs in NYS has shown not only an increase in the number of heart transplants performed overall but also the choices that residents had as to where to obtain that care.

As above, looking at the historical data of when two new heart transplant centers were opened in the metropolitan NY area, the volume of existing heart transplant programs in the area was not significantly affected.

Committee members agreed that opening a new program would likely increase the number of hearts available for transplantation in the area if only due to the recent changes to the UNOS allocation rules added that if the patients listed by the applicant are sicker, this factor will automatically bring more offers in and result in more transplants performed.

Committee questions about the experience of the primary physician and support for him within the NYP/Weill Cornell and Columbia transplant programs were resolved by information provided by the applicant. In addition, Review Committee members were assured that NYPH's plan to provide care to patients in need regardless of their ability to pay extended through the post-op period and included ongoing support for treatment with immunosuppressives as long as they were needed and no other payment source was available.

Review Committee Recommendation

The Review Committee recommends approval of the NYP/Weill Cornell application for a new heart transplant program.

Prevention Agenda

NYP Hospital - New York Weill Cornell Center states that the proposed project will advance Focus Area 4 (Chronic Disease Preventive Care and Management) of the Prevent Chronic Diseases priority area of the 2019-2024 Prevention Agenda, but notably does not specify how the focus area would be advanced by increased access to heart transplant services.

NYP Hospital - New York Weill Cornell Center is implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

Prevent Chronic Diseases

1. Choosing healthy & active lifestyles for kids (CHALK)

Promote Healthy Women, Infants, and Children

2. Providing integrated mental health services to low-income and uninsured pregnant women and their newborn child, and establishing co-management strategies with partner community agencies

Promote Well-Being & Prevent Mental & Substance Use Disorders

3. OMH licensed mental health program providing treatment in the home, community, and clinic sites in targeted communities and for targeted patients utilizing in-person and tele-mental health modalities

The application states that NYP Hospital - New York Weill Cornell Center engaged the Center for Community Health Navigation, NYP Health Home, NYP Performing Provider System, REACH Collaborative (Ready to End AIDS and Cure Hep C), Kress Vision Program, Washington Heights Youth Opportunity Hub, CHALK, Family PEACE (Preventing Early Adverse Childhood Experiences) Program, Reach Out and Read, School-based Health Center, WIC Program, and Lange Youth Medical Program in their Prevention Agenda efforts.

NYP Hospital - New York Weill Cornell Center cites data sources (including NYS BRFSS, NYC Open Data, and NYC Health Atlas) that it uses to measure progress toward achieving local Prevention Agenda goals. The indicators tracked are not specified.

In 2018 New York-Presbyterian Hospital spent $15,881,083 on community health improvement services, representing 0.266% of its $5,966,434,053 total operating expenses.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total project cost for moveable equipment and fees is $8,352,970 as follows:

Movable Equipment	$8,305,291
CON Application Fee	2,000
Additional CON Fees	45,679
Total Project Cost	$8,352,970

The applicant will fund project costs with equity.

Incremental Operating Budget

The applicant has submitted an incremental operating budget, in 2022 dollars, for the first and third years,

Revenues	Year One	Year Three
Total Revenue	$12,656,260	$16,374,840

Expenses		
Operating	$14,590,866	$20,395,131
Capital	1,939,082	1,342,442
Total Expense	$16,529,948	$21,737,573
Net Income (Loss)	($3,873,688)	($5,362,733)
Transplants	20	24
Cost per Procedure	$826,497	$905,732

Note included in 1st and 3rd expenses is non-cash depreciation of $1,939,082 and $1,342,442, respectively.

The budget is based on the following assumptions:

- The projected utilization and staffing are based upon the expectations of the transplant team at NYP/Weill Cornell.
  - The service area is comprised of the five counties of New York City (New York, Kings, Queens, Bronx, and Richmond) with a focus on serving Kings and Queens Counites with a large number of low-income residents.
  - The applicant states through population research there is an unmet need for cardiology care and in particular advanced heart care in Brooklyn and Queens. NYP has invested in the recruitment of advanced heart failure cardiologists, advanced practice providers, and expansion of primary care to address this need. Through outreach and earlier access, there has been an increase in the number of patients referred to the centralized and advanced heart failure programs across the network. Expansion of the heart failure network system includes:
    - A centralized heart failure program across the entire network utilizing noninvasive Remote Care Monitoring (RCM) and implantable monitoring;
    - A prospective heart failure inpatient identification dashboard;
    - Continued development of Artificial Intelligence (AI) algorithms for enhanced inpatient and outpatient identification.
- Transplant programs are not eligible to apply for CMS certification until after the completion of ten transplants, and CMS certification is required as a Condition of Payment (COP) for Medicare and Medicaid reimbursement.
- The Medicare and Medicaid service rates are established by the Centers for Medicare and Medicaid Services diagnosis-related group rates. The commercial contracts are based on negotiated rates.
- Incremental revenues and expenses are based on NYP/Columbia's experience in providing adult heart transplant services.
- Costs related to organ acquisition and fees for United Network for Organ Sharing and New York Organ Donor Network are included in inpatient expenses.
- The applicant states the increase in 3rd year budgeted loss is due to added FTEs, and particularly the skill mix of that increase, which includes a number of Advanced Practice Providers (APP) whose compensation is higher than other types. The projected level of APP staffing is to provide quality and safe care to heart transplant patients.
- NYP/Weill Cornell's Group Senior Vice President, Financial Officer, and Treasurer have submitted a letter stating they're committed to financially supporting the program and absorbing the budgeted losses.

Transplant utilization by payor source is anticipated as follows:

	Year One		**Year Three**	
Payor	Discharge	%	Discharge	%
Medicaid MC	4	20%	5	20.83%
Medicare FFS	4	20%	5	20.83%
Medicare MC	3	15%	3	12.50%
Commercial FFS	9	45%	11	45.84%

Capability and Feasibility

The total project cost of $8,352,970 will be met with equity from accumulated funds.

Third-year working capital is estimated at $8,985,662 based on two months of third-year expenses of $3,622,929 plus a third-year budgeted loss of ($5,362,733). Working capital will be funded from operations. A review of The New York-Presbyterian Hospital 2019 and 2020 consolidated certified financial statements (BFA Attachment A) shows $2.7B in working capital available to meet equity and working capital requirements. As of December 31, 2020, The New York-Presbyterian Hospital had $647M in cash, cash equivalents, and a positive working capital ratio, indicating its ability to take on new debt.

The submitted budget indicates an incremental loss of ($3,873,688) and ($5,362,733) in years one and three, respectively. NYP/Weill Cornell's Group Senior Vice President, Financial Officer, and Treasurer have submitted a letter stating they're committed to financially supporting the program and absorbing the budgeted losses. The budget appears reasonable.

Conclusion

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

Attachments

BFA Attachment A	Certified Financial Statement for the New York-Presbyterian Hospital Consolidated 2019 and 2020
BFA Attachment B	New York-Presbyterian Hospital Statement of Operations, April 30, 2021

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 212212-C
NYU Langone Orthopedic Center

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

County: **New York**
Acknowledged: **December 17, 2021**

Executive Summary

Description

NYU Langone Hospitals (NYULH), an existing New York voluntary not-for-profit corporation, requests approval to construct an Article 28 ambulatory surgery center (ASC) licensed as a hospital extension clinic at 333 East 38th Street, New York (New York County). The ASC will serve as an extension of the NYULH as an acute care facility and will specialize in orthopedics, gynecology, general surgery, and reconstructive plastic surgery.

The ASC will be on the currently vacant 8th, 9th, and 10th floors, in an existing 12-story building owned by NYULH, and will include 18 operating rooms, 81 Prep/PACU bays, clinical offices, clinical support areas, a central sterile processing department (CSPD), patient waiting and reception areas and employee areas.

NYULH is experiencing an extended lead time of several weeks for scheduling less complex surgical cases. The new ASC will allow NYU Langone to shift outpatient procedures that do not require a postoperative hospital stay from NYU Langone and NYU Langone Orthopedic hospitals to an outpatient setting, thus freeing up OR capacity at the two hospitals and allowing the hospitals to accommodate patients that are higher acuity, have procedural complexities, and/or are urgent /emergent in nature in a timelier manner. The larger operating rooms will accommodate robotic procedures enabling NYULH to better meet the community demand.

OPCHSM Recommendation

Contingent Approval.

Need Summary

The new ASC will allow NYU Langone to free up capacity for higher acuity surgeries at the hospitals and provide flexibility for future OR renovations.

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 $189,297,119 will be met via accumulated funds from NYULH. The proposed budget is as follows:

Budget	First Year	Third Year
Revenues	$179,645,770	$190,635,126
Expenses	84,400,264	89,360,589
Net Income	$95,245,506	$101,274,537

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 3.38 LSC Chapter 38, Business Occupancies Public Use, and 3.3.0 Programmatic Design Guidelines for Outpatient Diagnostic and Treatment Facilities for review and approval. [DAS]

Approval conditional upon:

1. This project must be completed by **November 30, 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 the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **October 31, 2022,** and construction must be completed by **August 31, 2024**, 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. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The 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]

Council Action Date

June 2, 2022

Need and Program Analysis

Program Description

NYU Langone Hospitals seeks approval to perform renovations to add an 18 operating room ambulatory surgery extension clinic at 333 East 38th Street in New York (New York County) and certify Ambulatory Surgery-Multi-Specialty on the operating certificate.

The new extension clinic will be named NYU Langone Orthopedic Center and will operate as a department of NYU Langone Hospitals Center. The facility is designed to provide surgical and anesthesia services to adult outpatients. The hours of operations will be Monday to Friday from 6 am to 11 pm. The services to be provided will be Orthopedics, Gynecology, General Surgery, and Reconstructive Plastic Surgery.

The proposed Ambulatory Surgery Center program includes:

- The addition of 6 ORs/floor x three floors, totaling 18 operating rooms
- An addition of 27 prep/PACU bays/floor x three floors, totaling 81 prep/PACU bays
- A new Central Sterile Processing Department, decontamination, prep, and pack areas
- A new waiting room, reception, and family waiting area
- Expansion of pathology, pharmacy, and supportive departments
- The addition to locker rooms and lounges

The applicant reports the reason for the expansion is there is currently an extended lead time for scheduling cases. This will enable the accommodation of cases promptly. In addition, the larger rooms will accommodate more robotic surgery.

Staffing is expected to increase as a result of this construction/expansion project to a total of 345.0 FTEs and increase to 361 FTEs in Year Three of the completed project.

Analysis

Currently, NYU Langone's surgical case volume ratio is 63% outpatient and 37% inpatient. The growth in outpatient cases impacts the availability of in-hospital OR capacity for all types of cases. The hospital also states that the transplant volume at NYU Langone has grown 944% since 2015, and transplant surgeries have a typical surgery time of 8-10 hours and require the use of multiple ORs, thus exacerbating the capacity problem.

To reduce the caseload that overwhelms the OR schedule, the hospital seeks to transfer those surgeries that meet the specific criteria to the new ASC setting. These criteria include elective, length of stay less than 24 hours, ASA scores of either I or II, and case complexity is low. The hospital has determined that nearly 12,000 surgery cases could be moved to the new ambulatory surgery center.

The average procedure time for all cases will be approximately 150 minutes. Prep time is estimated at 60 minutes and average recovery time will range from 60-120 minutes based upon case type and anesthesia needs. The center will provide the opportunity for some extended recovery capacity for some of the operating rooms. This extended recovery time will likely extend to the late evening for the first year and then may grow to include up to 23 hours of post-operative recovery in later years.

Once the targeted surgeries have been moved to the new site, it will also allow the hospital to renovate and/or combine in-hospital ORs to modernize its in-hospital surgical facilities and accommodate future inpatient volume growth. The hospital will be combining small operating rooms to create larger operating rooms to meet current hospital codes and will provide the space to perform more complex surgery cases in a safe environment. These changes are projected to result in a net decrease of ORs across their hospital campuses.

The primary service area is New York County, with the other four boroughs being the secondary service area. According to Data USA, in 2019 95.5% of the population in New York County has health coverage as follows.

Employer Plans	55.1%
Medicaid	18.1%
Medicare	10.1%
Non-Group Plans	11.9%
Military or VA	0.351%

The table below shows the number of patient visits to multi-specialty ambulatory surgery centers in New York County for the years 2018 through 2020. 2020 visits were impacted by COVID-19.

Facility Name	**Patient Visits**		
	2018	**2019**	**2020**
East Side Endoscopy	8,828	8,812	6,038
Fifth Ave Surgery Center	4,121	3,936	3,464
Fifth Ave Surgery (opened 7/20/21)	N/A	N/A	N/A
Gramercy Surgery Center	3,105	4,851	3,521
Manhattan Surgery Center	6,100	6,326	4,091
Midtown Surgery Center	2,745	3,749	2,449
NY Center for Ambulatory Surgery (opened 12/13/19)	N/A	N/A	480
Surgicare of Manhattan	4,377	4,257	2,878
Surgicare of Westside (opened 12/16/20)	N/A	N/A	N/A
Total Visits	**29,276**	**31,931**	**22,921**

The applicant projects 13,563 visits in Year One and 14,389 in Year Three with Medicaid utilization projected at 15.3% and charity care at 0.4%.

Prevention Agenda

NYU Langone Orthopedic Center states that the proposed project does not explicitly advance the local Prevention Agenda priorities. They are implementing interventions to support two goals of the 2019-2024 New York State Prevention Agenda:

1. Tobacco-Free Communities smoking cessation
2. Health and Housing Project
3. Greenlight, health literacy and foster healthful behavior
4. Racial and Ethnic approaches to community health
5. Parent-Child evidence-based early literacy, parenting, and school-readiness program
6. Video Interactive Project (VIP) – evidence-based parenting program

The application states that NYU Langone Orthopedic Center engaged Sunset Park Health Council, Teen Health Council, City, and State Health Departments, State Office of Mental Health, City Department of Education, NYC Housing Authority, NYC Office of Housing Preservation and Development in their Prevention Agenda efforts. NYU Langone Orthopedic Center cites data indicators that it tracks to measure progress toward achieving local Prevention Agenda goals, including:

- Smoking cessation rates
- Socioemotional improvement markers in children
- Also, data from City Health dashboard, US Census, NYC Neighborhood Atlas, NYS Youth Tobacco Survey

NYU Langone Hospital is consistently cited as a good example of a Community Health Needs Assessment/Community Health Improvement Plan in New York State.

In 2019, the applicant spent $ 33,155,569 on community health improvement services, representing .72% of total operating expenses.

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,

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. The new ASC will allow NYU Langone to accommodate more, higher acuity surgeries at the hospitals and right-size volumes to allow for future OR renovations.

Financial Analysis

Total Project Cost and Financing

The total project cost for renovations and movable equipment is estimated at $189,297,119 broken down as follows:

Renovation & Demolition	$105,255,000
Asbestos Abatement or Removal	300,000
Design Contingency	10,525,500
Construction Contingency	10,525,500
Fixed Equipment	3,200,000
Planning Consultant Fees	300,000
Architect/Engineering Fees	6,000,000
Construction Manager Fees	16,520,600
Other Fees	1,400,000
Movable Equipment	31,233,091
Telecommunications	3,000,000
Application Fee	2,000
Additional Processing Fee	1,035,428
Total Project Cost	$189,297,119

The financing for this project will be through equity of NYULH. BFA Attachments A and B show sufficient resources to meet the equity requirement.

Operating Budget

The applicant has submitted an operating budget, in 2022 dollars, for Years One and Three, summarized below:

	Year One (2025)		Year Three (2027)	
Revenues	Per Visit	Total	Per Visit	Total
Commercial FFS	$16,695.33	$103,661,321	$16,697.33	$110,118,899
Commercial MC	$20,523.62	48,718,594	$22,504.62	51,535,587
Medicare FFS	$6,014.87	12,925,960	$6,020.58	13,763,040
Medicare MC	$6,206.89	5,170,341	$6,210.56	5,502,558
Medicaid FFS	$2,563.82	158,957	$2,445.32	144,274
Medicaid MC	$4,887.81	9,878,257	$4,879.10	10,421,767
Private Pay	$27,491.49	2,034,370	$27,179.73	2,228,738
Bad Debt		(2,902,029)		(3,079,737)
Total Revenue		$179,645,770		$190,635,126

Expenses				
Operating	$6,222.83	$84,400,264	$6,210.34	$89,360,589
Capital	$0.00	0	$0.00	0
Total	$6,222.83	$84,400,264	$6,210.34	$89,360,589
Net Income / (Loss)		$95,245,506		$101,274,537
Total Visits		13,563		14,389
Cost per Visit		$6,222.83		$6,210.34

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

Payor	Year One	Year Three
Commercial FFS	45.8%	45.8%
Commercial MC	15.9%	15.9%
Medicare FFS	15.8%	15.9%
Medicare MC	6.1%	6.2%
Medicaid FFS	0.5%	0.4%
Medicaid MC	14.9%	14.8%
Private Pay	0.6%	0.6%
Charity Care	0.4%	0.4%
Total	100.0%	100.0%

The following is noted concerning the submitted budget:

- Payor rates are based on reimbursement rates through July 2021 for services/cases being moved to the proposed ASC from Kimmel Pavilion/Tisch Hospital and the NYU Langone Orthopedic Hospital.
- Projected volume for Year One and Year Three is based on actual volume through 2021 for Kimmel Pavillion/Tisch Hospital and Langone Orthopedic Hospital.
- The number and mix of staffing were determined by using the current ambulatory ratio required for similar operating rooms and extrapolated to the total number of operating rooms proposed.
- Salary and wages are based on current average salaries for the projected staff mix.
- Operating expenses are based on historical cost accounting averages based on case type.

The applicant indicated they are committed to serving all persons in need without regard to the patient's ability to pay or the source of payment. The FASC will develop, maintain and update a sliding fee scale, as well as, policies and procedures for serving the uninsured and persons without the ability to pay.

Capability and Feasibility

The total project cost of $189,297,119 will be met via accumulated funds from NYULH. Working capital requirements are estimated at $14,893,432 based on two months of third-year expenses and will be funded through equity from NYULH. The submitted budget projects a net income of $95,245,506 and $101,274,537 during years one and three of operations, respectively. The budget appears reasonable. BFA Attachment A is NYULH's 2021 certified financial statements, which show the entity maintained positive working capital, a positive net equity position, and had a net operating income of $594,650,000 for the period. BFA Attachment B is NYULH's 2021 internal financial statements for the period ending December 31, 2021, which shows the entity has maintained positive working capital, a positive net equity position, and had a net operating income of $419,409,000, which was reduced by support for NYU Schools of Medicine for $219,197,000, resulting in gain from operations after the support of $200,212,000.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	2021 Audited Financial Statements for year ended August 31, 2021
BFA Attachment B	2021 Internal Financial Statements for period ended December 31, 2021

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 221054-C
Canton-Potsdam Hospital

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

County: **St. Lawrence**
Acknowledged: **February 24, 2022**

Executive Summary

Description

Canton-Potsdam Hospital (CPH), a 94-bed not-for-profit hospital located at 50 Leroy Street, Potsdam (St. Lawrence County), is seeking approval to certify 15 additional medical/surgical beds and construct a four-story addition to include 60 single bedded rooms, shell space, and an expansion and renovation of the existing emergency department (ED).

The applicant reports that the greater availability of single-occupancy rooms in the new bed tower will enable CPH to provide a more patient-centered experience. CPH is currently certified for 63 medical/surgical beds, but the hospital has been unable to fully utilize all its beds due to having to accommodate patients that need single occupancy rooms (e.g., isolation, gender, and pediatric/adult separation). The new four-story building is expected to alleviate this issue and expand capacity to meet demand. The new total certified bed capacity of CPH, including all bed types, will be 109 beds, of which 78 will be medical/surgical beds.

Rochester Reginal Health (RRH) is the sole corporate member and active parent of St. Lawrence Health System (SLHS). SLHS is the sole corporate member, active parent, and co-operator of CPH, Gouverneur Hospital (GH), and Massena Hospital. RRH is the co-active parent and co-operator of the hospitals.

OPCHSM Recommendation

Contingent Approval

Need Summary

Approval of this project will expand the ED and modernize the rooms containing the medical/surgical beds to meet the current and future needs of residents of St. Lawrence County and the surrounding communities.

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 $71,295,281 will be funded by CPH operations equity of $11,795,281 and bond financing of $60,000,000 at an interest rate of 3.50% for a 30-year term through RRH. The proposed budget is as follows:

Budget	Year One	Year Three
Revenues	$264,335,064	$267,483,933
Expenses	252,628,924	254,667,868
Net Gain	$11,706,140	$12,816,065

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 (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 a bond resolution, acceptable to the Department. Included with the submitted bond resolution must be sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA].
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0 [AER]

Approval conditional upon:

1. TPC of $71,795,281 is approved, Reimbursable TPC however shall be limited to $65,195,281 representing approved Article 28 space only. Non Article 28 Shell Space costs totaling $6,600,000 are not reimbursable under this CON. [CCC]
2. This project must be completed by **November 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 the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
3. Construction must start on or before **December 1, 2022**, and construction must be completed by **August 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]
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

June 2, 2022

Need and Program Analysis

Program Description

Canton Potsdam Hospital (CPH), a 94-bed not-for-profit hospital seeks approval to construct a new four-story tower building adjacent to the hospital's existing main building. The addition of the four-story tower will allow for renovation and expansion of the Emergency Department (ED) and shell space, allow for 60 single bedded rooms in the new tower, and the certification of an additional 15 medical/surgical beds bringing the total to 78. The new total certified bed capacity including all bed types will be 109 beds.

The first floor of the new tower will provide the space to expand modernize and expand the ED. The second and third floors will have 30 medical/surgical beds on each floor for a total of 60 medical/surgical beds in the new building. The entire fourth floor, as well as, 3,167 square feet of space on the first floor, will be unfinished shell space for future expansion. Renovations will also be performed to the existing ED in the main building as part of this project.

CPH is currently certified for 63 medical/surgical beds but has been unable to fully utilize them due to space constraints in the main building, currently operating only 52. The majority of the medical/surgical rooms in the existing hospital building were constructed as double-occupancy rooms. All of the medical/surgical beds in the new building will be single occupancy rooms, with each being larger than the current double occupancy rooms in the existing main building. The greater availability of single occupancy rooms in the new tower will enable CPH to provide a more patient-centered experience. The renovation and expansion of the ED will allow for improved access to care for the residents by increasing capacity and decreasing wait times. The current size and configuration are insufficient for the current volumes of patients, lack privacy for patients, and prohibits more efficient use of space to improve workflow.

Staffing is expected to increase as a result of this construction/expansion project by 228.5 FTEs to a total of 1309.9 FTEs in Year One and increase by 7.6 FTEs to a total of 1317.5 FTES in Year Three of the completed project.

Analysis

The Department uses a planning standard of 1500 visits per emergency department bay along with other indicators, including but not limited to, patient flow, severity of treatment, accessibility, growth, and treatment times.

Medical/Surgical Beds Increase

CPH is one of five hospitals in St. Lawrence County and is the only hospital in the county that is designated as a Level III Trauma Center. The county is predominantly rural; therefore, the applicant's service area is large and this area of the state can experience harsh weather and difficult travel.

Hospitals in St. Lawrence County Facilities Source: HFIS			
Facility	**Distance from Applicant**	**City**	**No. of Beds**
Canton-Potsdam Hospital	Applicant	Potsdam	94
Massena Hospital	21.2 miles	Massena	25
Claxton-Hepburn Medical Center	30.5 miles	Ogdensburg	127
Gouverneur Hospital *	36 miles	Gouverneur	25
Clifton-Fine Hospital *	41.9 miles	Star Lake	20

**Critical Access Hospital*

As the flagship hospital of St. Lawrence Health System, there is a growing reliance on the services provided by CPH in St. Lawrence County. Recently, Alice Hyde Medical Center in Malone (39 miles and 50 minutes travel time) closed its maternity unit in early 2022, and CPH has the closest maternity unit to this hospital.

RRH was recently approved as the sole corporate member and active parent of SLHS. As the relationship with RRH continues to develop, CPH hopes to provide for increasingly higher-acuity patients, due to being able to accept more critical patients. Since 2008, CPH has successfully undertaken a medical staff recruitment program to bring additional services to the hospital and it plans to utilize RRH recruiting best practices and infrastructure in strengthening services at CPH. One example of clinical initiatives emerging from this affiliation is CPH's intent to become a Primary Stroke Center, which will complement their current Level III Trauma Center and increase the hospital's utilization of beds.

The space constraints in the current main building allow the hospital to operate 52 medical/surgical beds out of the certified 63 beds. Also, the smaller size of the rooms has frequently resulted in the hospital taking additional beds offline when the need for more single-occupancy rooms occurs, such as when there is a need to isolate patients (different genders, pediatric, MRSA, COVID). The hospital may also block beds that are being used for the observation of patients, as the hospital has a 10-bed observation unit, which is almost always full. The table below shows occupancy based upon the 63 certified medical/surgical beds and the projected occupancy for 52 medical/surgical beds that are in use.

Canton-Potsdam Bed Utilization				
Type of Bed	**Beds**	**2018**	**2019**	**2020**
Medical/Surgical	63	60.9%	56.5%	50.7%
Medical/Surgical	52	80.8%	75.0%	67.3%

The applicant projects 17,520 medical/surgical bed days in the first year of operation after completion of the project, increasing to 18,480 medical/surgical bed days by the third year of operation. That translates into an 80% occupancy rate in the first year of the 60 beds in the new tower and 85 % occupancy in the third year. CPH is also requesting to maintain 18 medical/surgical beds in the main building to provide additional flex capacity or for observation patients when the 10-bed observation unit is full. This will leave the 60-bed medical/surgical beds in the tower to be used by admitted patients. The table below shows the proposed utilization of the medical/surgical beds once this project is completed.

Proposed Bed Utilization			
Type of Bed	**Beds**	**1st year**	**3rd year**
Medical/Surgical	60	80.0%	85.0%
Medical/Surgical	78	61.5%	65.4%

The table below shows the proposed change in the number of overall beds at the hospital.

Canton-Potsdam Beds			
Bed Type	**Current**	**Add**	**Proposed**
Med/Surg	63	15	78
Intensive care	6		6
Maternity	8		8
Chem Dep-Rehab	17		17
Total Beds	**94**	**15**	**109**

Emergency Department

CPH currently has 17 ED bays. The current size and configuration of the hospital's ED are insufficient for the current volume of patients, lack privacy for patients, and prohibits more efficient use of space to

improve workflow. This project will provide a more modernized and efficient space plan for the hospital, increasing the number of bays to 28 and the square footage to 12,630. The table below shows the progression of ED visits, historical and projected, against the parameters of the existing ED and the proposed new ED in this application.

ED Visits and Size, Historical and Projected						
	2018	2019	2020	2021	1st year	3rd year
Visits	27,118	28,422	22,170	26,132	30,500	32,000
Area in ft^2	5,786	5,786	5,786	5,786	12,630	12,630
Visits per ft^2	4.7	4.9	3.8	4.5	2.4	2.5
# Of ED Bays	17	17	17	17	28	28
Visits per ED Bay	1,595	1,672	1,304	1,537	1,089	1,143

Source: Applicant Supplied

Current and Proposed ED Layout			
ED Bay Type	**Existing**	**Change**	**Proposed**
General	12	7	19
Trauma	2	2	4
Isolation	N/A	1	1
Fast Track	3	1	4
Total	17	11	28

The proposed expansion of the ED will enable the hospital to improve access to care for residents by increasing capacity and reducing wait times. Because CPH is the only level III Trauma Center in St. Lawrence County, increasing ED volume at the hospital is also one of the factors driving the need for additional medical/surgical beds. ED volume at the hospital has been steading increasing, as shown in the table above, and approximately 10% of ED visits result in hospital admission. As visits to the ED rise, so do the number of patients being admitted to the hospital through the ED, and this has also resulted in a substantial number of patients who are kept in observation status. According to the applicant, on average from 2018 to 2021, nearly 2,000 patients per year are placed in observation status.

According to Data USA, in 2019 94% of the population in St. Lawrence County has health coverage as follows.

Employer Plans	45.1%
Medicaid	20.4%
Medicare	12.3%
Non-Group Plans	14.8%
Military or VA	1.46%

Prevention Agenda

CPH states that the proposed project will advance local Prevention Agenda priorities by improving access to services provided at the hospital and improving the efficiency of care delivered. CPH is implementing interventions to support two goals of the 2019-2024 New York State Prevention Agenda:

1. Chronic disease self-care management, focusing on healthy eating and physical activity in the workplace.
2. Under Preventing Substance Use Disorders, increasing access to medication-assisted treatment and promoting prescriber education on opioid prescriptions.

CPH states that they have engaged local health departments, academia, other hospitals, health centers, and community-based organizations in their Prevention Agenda efforts. CPH cites input-output measures to track and measure progress toward achieving local Prevention Agenda goals, including:

- Number and type of programs that will expand access to evidence-based self-management interventions; number of patients who participate; and percentage of patients who complete the interventions.
- Number of places that implement new, or improve existing, community planning and transportation interventions that support safe and accessible physical activity.

In 2019 the applicant spent $275,910 on community health improvement services, representing 0.13% of total operating expenses.

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.

Conclusion

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law. Approval of this project will allow the hospital to expand the hospital's ED and modernize the rooms containing the medical/surgical beds to meet the current and future needs required by the hospital's growth and expansion of services for residents of St Lawrence and the surrounding communities

Financial Analysis

Total Project Cost and Financing

The total project cost, which is for new construction and the acquisition of moveable equipment, is estimated at $71,795,281, and allocated as follows:

	Article 28	Shell Space	Total
New Construction	$39,514,063	$5,020,210	$40,712,618
Renovation and Demolition	$1,198,555		$1,198,555
Site Development	2,306,153		$2,306,153
Asbestos Abatement or Removal	25,000		$25,000
Design Contingency	2,026,327	298,345	$2,324,672
Construction Contingency	2,026,327	298,345	$2,324,672
Temporary Utilities		350,000	$350,000
Architect/Engineering Fees	2,892,317	343,165	$3,235,482
Construction Manager Fees	2,493,920	289,935	$2,783,855
Other Fees (Consultant)	930,531		$930,531
Moveable Equipment	6,474,885		$6,474,885
Financing Costs	1,200,000		$1,200,000
Interim Interest Expense	3,712,500		$3,712,500
CON Fee	2,000		$2,000
Additional Processing Fee	392,703		$392,703
Total Project Cost	$65,195,281	$6,600,000	$71,795,281

Project costs are based on August 1, 2022, construction start date and a twenty-one-month construction period. The applicant's financing plan follows:

Equity (Canton operations)	$11,795,281
Bond Financing (3.50% for a 30-year term)	$60,000,000

The application contains $65,195,281 of project costs that will be allowable for reimbursement purposes. The remainder of the costs is related to 3,167 square feet of shell space.

Operating Budget

The applicant has submitted an operating budget for CPH for the current year (2020), year one (2025), and year three (2027) after project completion, which is summarized below. The submitted budget appears reasonable.

Inpatient Revenues		Current Year		Year One		Year Three
Commercial FFS	$8,029	$1,702,177	$12,268	$3,238,730	$12,193	$3,353,075
Medicare FFS	$10,989	$13,076,793	$11,486	$17,033,195	$11,421	$17,634,563
Medicare MC	$10,414	$5,852,704	$10,891	$7,623,448	$10,827	$7,892,599
Medicaid FFS	$2,943	$476,755	$2,227	$447,647	$2,207	$463,452
Medicaid MC	$8,568	$7,933,593	$6,450	$7,449,211	$6,416	$7,712,210
Private Pay	$16,977	$746,975	$14,654	$805,958	$14,639	$834,412
Charity Care		($118,373)		($15,860)		($16,419)
Other	$9,698	$7,574,228	$10,883	$10,589,486	$10,823	$10,963,354
Total IP Revenues		$37,244,852		$47,171,815		$48,837,246
Outpatient Revenues						
Commercial FFS	$445	$13,304,390	$427	$16,153,988	$430	$16,281,125
Medicare FFS	$330	$27,015,795	$313	$32,408,817	$314	$32,663,884
Medicare MC	$299	$12,220,847	$284	$14,660,431	$285	$14,775,813
Medicaid FFS	$47	$260,046	$53	$374,714	$54	$377,663
Medicaid MC	$172	$13,202,200	$196	$19,023,734	$197	$19,173,457
Private Pay	$857	$4,726,397	$704	$4,907,026	$707	$4,945,646
Charity Care		($382,047)		($514,218)		($518,265)
Other	$406	$69,690,549	$468	$101,470,721	$470	$102,269,327
Total Opt Rev		$140,038,177		$188,485,213		$189,968,650
Total Op Rev		$177,283,029		$235,657,028		$238,805,896
Other Op Rev		$41,551,610		$28,009,755		$28,009,755
Non-Operating Rev		$383,286		$668,281		$668,282
Total Revenues		$219,217,925		$264,335,064		$267,483,933
Inpatient Expenses						
Operating	$10,721	$41,682,234	$10,688	$51,792,482	$10,306	$52,005,073
Capital	$573	$2,226,030	$604	$2,927,628	$626	$3,156,678
Total IP Expenses	$11,294	$43,908,264	$11,292	$54,720,110	$10,932	$55,161,751

Outpatient Expenses						
Operating	$382	$157,706,464	$359	$187,320,325	$360	$188,089,212
Capital	$20	8,422,277	$20	10,588,489	$22	11,416,905
Total OP Expenses	$402	$166,128,741	$380	$197,908,814	$381	$199,506,117
Total Expenses		$210,037,005		$252,628,924		$254,667,868
Excess Revenues		$9,180,920		$11,706,140		$12,816,065
Utilization						
Inpatient		4,465		4,846		5,046
Outpatient		500,023		521,459		522,959

The following is noted for the operating budget:

- Revenue, Expense, and Utilization assumptions are based upon the historical experience of CPH.
- Capital expense is allocated between inpatient and outpatient services based on historical allocation methodologies.
- In 2020, CPH received approximately $11.5M of non-recurring Government Stimulus Grants (CARES Act Funding) that is included in other operating revenue for the current year. Other Income in 2020 of $41,551,410 included 340B Income, CARES Funding, Salaries/Expenses due to CPH that were paid for affiliates, and DSRIP payments for Medicaid Redesign purposes ($2,101,799 in 2020 and $1,959,856 in 2019). Over 70% of other was from the 340B program ($18.6M) and CARES Act funding ($11.5M).
- CPH was advanced $14.5M in Medicare Advances, and as of December 31, 2021, has an outstanding balance of $8.7M.
- Other Income in year one and year three does not include CARES Act funding and DSRIP from the current year, which are not expected to recur, but does include 340B income and Salary/Expenses paid for affiliates.

Utilization, detailed by payor source for inpatient and outpatient services during the current year, year one, and year three are as follows:

Inpatient

Payor	Current Year	Year One	Year Three
Commercial FFS	5.45%	5.45%	5.45%
Medicare FFS	30.61%	30.60%	30.60%
Medicare MC	14.45%	14.44%	14.45%
Medicaid FFS	4.17%	4.15%	4.16%
Medicaid MC	23.82%	23.83%	23.82%
Private Pay	1.13%	1.13%	1.13%
Charity Care	0.31%	0.31%	0.32%
Other	20.06%	20.08%	20.08%
Total	100.00%	100.00%	100.00%

Outpatient

Payor	Current Year	Year One	Year Three
Commercial FFS	7.25%	7.25%	7.25%
Medicare FFS	19.86%	19.86%	19.86%
Medicare MC	9.91%	9.91%	9.91%
Medicaid FFS	1.35%	1.35%	1.35%
Medicaid MC	18.62%	18.62%	18.62%
Private Pay	1.34%	1.34%	1.34%
Charity Care	0.07%	0.07%	0.07%
Other	41.61%	41.61%	41.61%
Total	100.00%	100.00%	100.00%

Capability and Feasibility

The applicant will satisfy total project costs of $71,295,281 through equity of $11,795,281 from CPH and bond financing through RRH of $60,000,000 at an interest rate of 3.50% for a 30-year term. The 2020 certified financial statements of CPH, in BFA Attachment A, indicate the availability of sufficient funds for the equity contribution. CPH has "Due To/From Other Parties" listed on their 2020 Certified Financial Statements which shows a liability of $29.3M. This liability consists of the Medicare Advance Program liability ($8.7 million in December 2021), General Reserves of $9.9 million, and other third-party liabilities of $10 million. The applicant states there is no risk that these liabilities will be called in part or whole and they are part of the normal course of business for CPH/SLHS.

The submitted operating budget for the proposed project indicates a net gain of $11,706,140 and $12,816,065 in the first and third years, respectively. Revenue projections were derived from current reimbursement methodologies. The submitted budget appears reasonable.

CPH had an average positive working capital position and an average positive net asset position in 2019, 2020, and YTD November 2021, as well as, an operating gain in these three time periods (refer to BFA Attachments A, B, and C). These operating results include CARES Act funds of approximately $11.5M in 2020 and $4.36M in 2021. The hospital also benefits from the 340B program that generated approximately $18.6M in operating revenue in 2020 and $15.3M in 2021.

The 2020 certified financial statements for CPH's active parent, RRH are in Attachment D. The entity had a positive net asset position and a positive working capital position in 2020 and achieved an excess of revenues over expenses of $14,585,000 in 2020.

Conclusion

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

Attachments

BFA Attachment A	Financial Summary- 2020 Certified Financial Statements of Canton Potsdam Hospital.
BFA Attachment B	2019 Certified Financial Statements of Canton Potsdam Hospital.
BFA Attachment C	November 30, 2021, Internal Financial Statements of Canton Potsdam Hospital
BFA Attachment D	Financial Summary- Rochester Regional Health 2020 Certified Financial Statements.

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 212258-B
Rego Park Counseling, LLC d/b/a Rego Park Diagnostic and Treatment Center

Program: **Diagnostic and Treatment Center** ***County:*** **Queens**
Purpose: **Establishment and Construction** ***Acknowledged:*** **January 7, 2022**

Executive Summary

Description

Rego Park Counseling, LLC d/b/a Rego Park Diagnostic and Treatment Center (D&TC), an existing New York limited liability company, and the current operator of an Article 32 outpatient Office of Addiction Services and Supports (OASAS) program, requests approval to establish and construct an Article 28 diagnostic and treatment center at 63-36 99th Street, Rego Park (same address as current OASAS program). The proposed D&TC will provide Primary Care and Other Medical Specialties including gynecology, podiatry, gastro-enterology, pulmonology, pain management, orthopedics, oncology, cardiology, urology, and endocrinology.

The applicant has also applied to the Office of Mental Health (OMH) for the establishment of an Article 31 outpatient mental health clinic in the same building.

With the three co-located clinics, Rego Park Counseling, LLC seeks to reduce preventable admissions for patients with co-occurring conditions of substance abuse, mental health issues, and medical conditions. Each licensed program will be separate and distinct from the others with clear signage to direct people to the proper program.

The proposed members of Rego Park Counseling, LLC and their ownership percentages are as follows:

Name	Interest
Emanuil Kalendarev	90.0%
Raul Ulloa, M.D.	10.0%
Total	100.0%

Raul Alberto Ulloa, M.D., who is board-certified in Family Medicine, will serve as the Medical Director. Elmhurst Hospital, located two miles and six-minute travel time, has communicated support for the project and has been in discussion with the applicant regarding a transfer agreement.

OPCHSM Recommendation

Contingent Approval

Need Summary

The new D&TC is part of a plan to provide integrated health care services including primary care and other medical specialties through this clinic.

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

The total project cost of $418,480 will be met with $45,698 in members' equity and a 5-year permanent financing loan for $372,782 at 5% interest. Hudson Capital has provided a letter of interest. The proposed budget is as follows:

Budget	Year One	Year Three
Revenues	$612,652	$1,212,707
Expenses	$756,838	$1,112,420
Net Income (Loss)	($144,186)	$100,287

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 (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 an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

Approval conditional upon:

1. This project must be completed by **May 31, 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 the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **December 31, 2022,** and construction must be completed by **February 28, 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. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date
June 2, 2022

Need and Program Analysis

Program Description

Proposed Operator	Rego Park Counseling, LLC
To Be Known As	Rego Park Diagnostic and Treatment Center
Site Address	63-36 99th Street Rego Park, NY 11374 (Queens County)
Services	Medical Services-Primary Care Medical Services-Other Medical Services Gynecology Gastroenterology Pulmonology Pain Management Orthopedics Oncology Cardiology Endocrinology Urology Podiatry
Hours of Operation	Sunday through Thursday 9:00 am to 8:00 pm Friday 9:00 am to 2:00 pm
Staffing (1st Year / 3rd Year)	8.05 FTEs / 12.17 FTEs
Medical Director(s)	Raul Ulloa, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Elmhurst Hospital 2 miles / 6 minutes away

Analysis

The primary service area is the neighborhood of Rego Park/Forest Hills in Queens County. The population of Queens County was 2,405,464 in 2020 and is expected to grow to 2,508,764 by 2025. According to Data USA, in 2019, 90.7% of the population in Queens County has health coverage as follows.

Employer Plans	43.4%
Medicaid	25.7%
Medicare	10.5%
Non-Group Plans	10.8%
Military or VA	0.277%

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

2017 PQI Rates	Queens County	New York State
All PQIs	1,239	1,431

The applicant projects 4,367 visits in Year One and 8,645 in Year Three with Medicaid utilization at 65% and charity care at 2%. The applicant is committed to serving all persons in need without regard to the ability to pay or a source of payment.

Character and Competence

The members of Rego Park Counseling, LLC are:

Name	Interest
Emanuil Kalendarev	90.00%
Raul Ulloa, M.D.	10.000%
Total	100.0%

Dr. Raul Ulloa is the Owner of Rego Park Counseling, LLC. He is also the Medical Director of Westchester County Correctional Facility and Basics Residential of Acacia Network. Previously, he was the Medical Director of Health Innovative Systems, Staff Physician at Arms Acres, per diem Physician at Split Rock Nursing Home, Associate Director of the Infirmary of Corrections Healthcare, Staff Physician of Boston Medical Group, Staff Physician at Bainbridge Nursing Home, and Staff Physician at Care Level Management. He received his medical degree from the Autonomous University of Guadalajara in Mexico and completed his Internal Medicine residency at Westchester Medical Center and his Family Practice residency at St. Joseph's Medical Center. Dr. Ulloa is the proposed Medical Director for the facility.

Emanuil Kalendarev is the Managing Member of Rego Park Counseling, LLC where he manages the day-to-day operations and all aspects of the company, including hiring and firing nonclinical staff, purchasing, budgets, marketing, recruitment, community outreach, networks, obtaining managed care and other reimbursable contracts, and compliance. He is the Managing Member and Owner of Rego Park Seniors Club LLC where he is responsible for managing day-to-day operations including payroll, compliance, and contract negotiations with insurance and other vendors. He also oversees the compliance such as adhering to best practices and the organization's policy standards. In addition to these positions, he is also the Owner of EZ Parking, the Vice President of Ohel Joseph Burho Toxsur, Inc, and a Personal Assistant at Elite Choice LLC. Previously, he was the Owner of New Generation Consulting, Inc. and an Owner of Manny's Cutz, Inc. Emanuil Kalendarev discloses ownership interest in the following healthcare facilities:

Rego Park Counseling, LLC *07/2018-present*

Staff from the Department's Division of Hospitals and Diagnostic & Treatment Centers (DHDTC) 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, Office of Professional Medical Conduct, and Education Department databases, as well a,s the U.S. Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

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

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3). The new D&TC is part of a plan to provide integrated health care services including primary care and other medical specialties through this clinic.

Financial Analysis

Total Project Cost and Financing

The total project cost for renovations and movable equipment is estimated at $418,480 and is distributed as follows:

Renovation & Demolition	$178,500
Design Contingency	17,850
Construction Contingency	17,850
Architect/Engineering Fees	14,000
Other Fees	50,000
Movable Equipment	119,310
Financing Costs	11,128
Interim Interest Expense	5,564
Application Fee	2,000
Additional Processing Fee	2,278
Total Project Cost	$418,480

The financing for this project will be as follows:

Cash	$45,698
Loan (5 years, 5% interest)	372,782
Total	$418,480

Operating Budget

The applicant has submitted an operating budget, in 2022 dollars, for years one and three, summarized below:

	Year One		Year Three	
	Per Visit	Total	Per Visit	Total
Revenues				
Commercial FFS	$165.00	$72,105	$165.00	$142,725
Medicare FFS	$150.00	98,250	$150.00	194,550
Medicare MC	$120.00	26,160	$120.00	51,840
Medicaid FFS	$169.02	36,846	$169.02	73,017
Medicaid MC	$135.33	354,401	$135.22	701,365
Private Pay	$190.00	24,890	$190.00	49,210
Total Revenue		$612,652		$1,212,707
Expenses				
Operating	$132.10	$576,869	$109.04	$942,656
Capital	41.21	179,969	19.64	169,764
Total	$173.31	$756,838	$128.68	$1,112,420
Net Income / (Loss)		($144,186)		$100,287
Total Visits		4,367		8,645
Cost per Visit		$173.31		$128.68

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

Payor	Year One	Year Three
Commercial FFS	10.01%	10.01%
Medicare FFS	15.00%	15.0%
Medicare M/C	4.99%	5.00%
Medicaid FFS	4.99%	5.00%
Medicaid M/C	60.02%	60.00%
Private Pay	3.00%	3.00%
Charity	1.99%	2.00%
Total	100.00%	100.00%

The following is noted for the submitted budget:

- The Medicaid Fee for Service rate is conservatively estimated based on the Medicaid APG of $169.02 as obtained from the Department of Health's Bureau of D&TC Reimbursement.
- Medicaid Managed Care is assumed to be 80% of the Medicaid APG Fee for Service rate.
- Commercial Insurance and Medicare Fee for Service are based on the Medicare Part B fee schedule.
- Medicare Managed Care is based on 80% of the Medicare Part B fee schedule.
- Expenses are based predominantly on the labor costs for the staffing model that includes Registered Nurse (1.00 FTE by year three), Aides, Orderlies and Attendants (at 3.00 FTEs by year three), Physicians (2.22 FTEs by year three) Infection Control (1.50 FTEs by year three), Clerical and Administrative (2.50 FTEs by year three), as well as, medical supplies, other direct expenses and rent expense as documented per the lease assignment agreement.

Lease Agreement

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

Date:	July 1, 2018
Premises:	Approx. 2,275 sq. ft. located at 63-36 99th Street, Queens, New York, 11374
Landlord:	63-36 Holdings LLC
Tenant:	Rego Park Counseling LLC
Term:	10 years with an option to renew through October 31, 2032.
Rent:	Base rent for total leased space is $153,066.87 per year ($12,755.57 per month) for the 1st year, increasing at 3.5% per year through the remainder of the lease term. Security deposit $10,376.67.
Provisions:	Tenant is responsible for real estate taxes, insurance, utilities, and maintenance

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

Capability and Feasibility

The project cost of $418,480 will be met with $45,698 in members' equity and a 5-year permanent financing loan for $372,782 at 5% interest. Hudson Capital has provided a letter of interest. Working capital requirements are estimated at $185,403 based on two months of third-year expenses. The working capital will be funded via members' equity of $92,701 and a bank loan for $92,702 for a three-year term at 5% interest. Hudson Capital has provided a letter of interest. BFA Attachment A is the member's personal net worth statement, which indicates sufficient resources overall to fund the equity requirements.

BFA Attachment B is the Pro-Forma balance sheet for Rego Park D&TC, which shows the operation will start with $282,585 in members' equity.

The submitted budget projects a net loss of $144,186 and a net income of $100,287 during years one and three of operations, respectively. Proposed members of Rego Park D&TC provided an affidavit indicating a portion of the first-year loss will be covered by operations of the existing Article 32 OASAS clinic operated by Rego Park Counselling, LLC. Attachment C is the internal financial statements for Rego Park Counselling LLC, which shows for the year ending December 31, 2021, the entity reported positive working capital of $17,082 and a net income of $70,624. Attachment D is Rego Park Counseling LLC's internal financial statements for the period ending March 31, 2022; the facility reported positive working capital of $67,596 and a net income of $101,364. Attachments B and C show available cash to cover a portion of the first-year loss. Raul Ulloa, M.D. provided a disproportionate share affidavit indicating a willingness to cover the remaining portion of the first-year loss. The budget appears reasonable.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Net Worth Statement of Proposed Members of Rego Park Diagnostic and Treatment Center
BFA Attachment B	Pro-Forma Balance Sheet
BFA Attachment C	Rego Park Counseling LLC Internal Financial Statements-December 31, 2021
BFA Attachment D	Rego Park Counseling LLC Internal Financial Statements-March 31, 2022

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 2nd day of June 2022, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a Diagnostic and Treatment Center at 63-36 99th Street, Rego Park, co-located with mental health and substance use disorder services, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
212258 B	Rego Park Counseling, LLC d/b/a Rego Park Diagnostic and Treatment Center

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health (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 an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **May 31, 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 the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **December 31, 2022,** and construction must be completed by **February 28, 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. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
   https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf.
   Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

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

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 202106-E
Montgomery Operating Co., LLC d/b/a
Montgomery Nursing and Rehabilitation Center

Program: **Residential Health Care Facility** ***County:*** **Orange**
Purpose: **Establishment** ***Acknowledged:*** **October 7, 2020**

Executive Summary

Description

Montgomery Operating Co., LLC, the operator of a 100-bed, proprietary, Article 28 residential health care facility (RHCF) at 2817 Albany Post Road, Montgomery (Orange County), requests approval to transfer 91% ownership from four withdrawing members and 8% from one remaining member to six new members.

On September 12, 2019, the current members of Montgomery Operating Co., LLC entered into a Membership Interest Purchase Agreement (MIPA) with the six new members for the sale and acquisition of 99% interest in the RHCF operations for $100 plus excess assets over liabilities of $663,370.

The current and proposed ownership of Montgomery Operating Co, LLC is as follows:

Members	Current	Proposed
Alexander Cornfeld	45.50000%	0.00%
Isabelle Fisher-Krishana	15.16667%	0.00%
Meredith Fisher	15.16667%	0.00%
Zachary Fisher	15.16666%	0.00%
Larry Goldfarb	9.00000%	1.00%
Lizer Jozefovic*	0.00000%	10.00%
Yosef Jozefovic	0.00000%	20.00%
Ari Kriesmann	0.00000%	19.00%
Robert Izsak	0.00000%	25.00%
Ethel Markovics	0.00000%	12.50%
Menachem Markovics	0.00000%	12.50%
Total	**100.00%**	**100.00%**

**Managing Member*

On September 12, 2019, the real property owner, Bram Property Corp., Inc., entered into a real estate purchase agreement (REPA) with 2817 Post Road Realty, LLC, for the sale and acquisition of the real property for $13,500,000 plus a $1,500,000 to reimburse Bram Property for a renovation. There is a relationship between 2817 Post Road Realty LLC and the new members of Montgomery Operating Co., LLC. The applicant will lease the premises from 2817 Post Road Realty LLC.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no need review per Public Health Law §2801-a (4).

Program Summary

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

Financial Summary

The proposed new members will acquire 99% of Montgomery Operating Co., LLC RHCF's operations for $100 plus the excess assets over liabilities of $663,370. The proposed budget for the LLC with new membership is as follows:

Budget	Year One	Year Three
Revenues	$11,999,700	$12,041,800
Expenses	10,369,349	10,395,808
Net Income	$1,630,351	$1,645,992

Recommendations

Long Term Care Ombudsman Program
The LTCOP recommends Approval (See LTCOP Attachment A).

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

Office of Primary Care and Health Systems Management
Approval contingent upon:

1. Submission of a photocopy of an amended and executed Lease between 2817 Post Road Realty, LLC and Montgomery Operating Co., LLC, acceptable to the Department [CSL]

Council Action Date
June 2, 2022

Program Analysis

Program Description

	Existing	Proposed
Facility Name	Montgomery Nursing and Rehabilitation Center (Orange County)	Same
Address	2817 Albany Post Road, Box 158 Montgomery, NY 12549	Same
RHCF Capacity	100 beds	Same
ADHCP Capacity	N/A	Same
Type of Operator	Limited Liability Corporation	Same
Class of Operator	Proprietary	Same
Operator	Montgomery Operating Co., LLC **Current Members:** Alexander Cornfeld 45.5% Isabelle Fisher-Krishana 15.1% Meredith Fisher 15.1% Zachary Fisher 15.1% Larry Goldfarb 9%	Montgomery Operating Co., LLC **Proposed Members:** *Lizer Jozefovic 10% Yosef Jozefovic 20% Ari Kreismann 19% Robert Izsak 25% Ethel Markovics 12.5% Menachem Markovics 12.5% Larry Goldfarb 1% **Managing Member*

Montgomery Operating Co., LLC proposes to transfer a total of 99% ownership interest from four withdrawing members and one remaining member to six new members. Montgomery Operating Co., LLC. is the operator of Montgomery Nursing and Rehabilitation Center a 100-bed residential health care facility located at 2817 Albany Post Road, Montgomery, New York. There will be no change in beds or services provided.

Character and Competence

Lizer (Herbert) Jozefovic is a managing partner of Epic Healthcare Management LLC, a management company for residential health care facilities. He lists concurrent employment as the managing partner at Sky View Rehabilitation and Health Care Center and Director of Waters Edge Healthcare (NJ). Lizer Jozefovic holds a bachelor's degree from Yeshiva Gedola of Los Angeles. He discloses the following health care facility interests:

<u>New York State Nursing Homes</u>		
Epic Rehabilitation and Nursing at White Plains (50%)		11/2019 - present
Cedar Manor Nursing and Rehabilitation Center (16.66%)		04/2017 - present
Sky View Rehabilitation and Health Care (25.5%)		10/2003 - present
Putnam Rehabilitation and Care Center (42%)		07/2014 - present
Middletown Park Rehabilitation Center (29%)		03/2010 - present
Waterview Hills Rehabilitation and Health Care (70.1%)		10/2005 - present
Salem Hills Rehabilitation and Nursing Center (70.1%)		10/2005 - present
<u>Out of State Nursing Homes</u>		
Martin Nursing and Rehabilitation Center (15%)	[FL]	08/2018 - present
Bay Vue Nursing and Rehabilitation Center (15%)	[FL]	06/2015 - present
Krystal Bay Nursing and Rehabilitation (12.5%)	[FL]	05/2013 - present
West Broward Rehabilitation and Health Care (17.5%)	[FL]	06/2010 - present

Assisted Living Facility
Residence at Bayview – (15%) [FL] 06/2015 - present

End Dated Ownership
Aventura at Terrace View (25%) [PA] 07/2011- 08/2021

Yosef Jozefovic is a New York State licensed Nursing Home Administrator who is employed as the Administrator of Waterview Hills Rehabilitation and Health Care. Prior to this, he was an Administrator in Training at Northern Manor Multicare Center. Yosef Josefovic holds a bachelor's degree from Fairleigh Dickinson University and has taken online courses. He discloses no health facility interests.

Ari Kreismann is a corporate purchaser for Epic Senior, LLC, a management company for skilled nursing facilities. Before this, he worked in corporate purchasing at Epic Healthcare Management, LLC. Ari Kreismann lists a high school diploma plus some additional studies beyond high school. He discloses no health facility interests.

Robert Izsak is the president of Rizaro Organization, a residential and commercial property management company. He holds a bachelor's degree from Baruch College and discloses the following health care facility interests:

Nursing Homes
Hollis Park Manor Nursing Home (5%) 11/2012 to present

Ethel Markovics is a New York State licensed Pharmacist who is employed as an office manager for SMM Construction Corp, a development company. She holds a pharmacy degree from Long Island University and discloses no health care facility interests.

Menachem Markovic is the office manager for Royal Home Improvements, a general contractor business. He lists a high school diploma and no health care facility interests.

Quality Review

The proposed owners have been evaluated on the distribution of CMS Star ratings for their portfolios as per 10 NYCRR § 600.2(b)(5)(iv). For all proposed owners the distribution of CMS star ratings for their facilities meet the standard described therein.

CMS Star Rating Criteria					
Proposed Owner	Total Nursing Homes	Duration of Ownership*			
		< 48 Months		48 Months or More	
		Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating
Lizer Jozefovic	11	2	50%	9	33%
Robert Izsak	1	0	0%	1	0%

**Duration of ownership as of 6/2/2022* *Data date: 04/2022*

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Montgomery Nursing and Rehabilitation Center	Subject Facility	***	***	****	**
Waterview Hills Rehabilitation and Health Care	Current	*****	****	*****	**
	10/2005 **Data Date 01/2009**	***	***	**	***
Middletown Park Rehabilitation and Care Center	Current	*****	*****	*****	**
	03/2010	**	**	****	**
Cedar Manor Nursing and Rehabilitation Center	Current	****	****	***	**
	04/2017	*****	****	*****	**
Sky View Rehabilitation and Health Care	Current	***	***	****	**
	10/2013	*****	*****	*****	*
Salem Hills Rehabilitation and Nursing Center	Current	****	****	****	***
	10/2005 **Data Date 01/2009**	****	****	**	**
Putnam Rehabilitation and Care Center	Current	*	***	*	*
	07/2014	**	**	**	***
Hollis Park Manor Nursing Home	Current	***	***	****	***
	11/2012	****	****	*****	*
Epic Rehabilitation and Nursing at White Plains	Open 11/2019 *	N/A	N/A	N/A	N/A
* Two standard surveys not recorded by CMS due to its recent opening. Too new to establish a rating.					

Data date: *04/2022*

New York

The proposed owners' portfolio includes ownership in eight New York facilities. Six of the New York facilities have a CMS overall quality rating of average or higher, one facility is too new to have established a rating, and one facility has a CMS overall quality rating of below average or lower.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Florida					
Martin Nursing and Rehabilitation Center	Current	*	*	****	*
	08/2018	****	***	****	****
Bay Vue Nursing and Rehabilitation Center	Current	**	**	*****	*
	06/2015	*****	****	****	*****
Krystal Bay Nursing and Rehabilitation	Current	***	***	*****	*
	05/2013	**	*	*****	**
West Broward Rehabilitation and Health Care	Current	**	***	****	*
	06/2010	*	*	**	**

Data date: *04/2022*

Florida

The proposed owners' portfolio includes ownership in four Florida facilities. One Florida facility has a CMS overall quality rating of average or higher, the three remaining facilities have a CMS overall quality rating of below average or lower.

End Dated Nursing Home Ownership

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Pennsylvania					
Aventura at Terrace View	08/2021	*	*	**	**
	07/2011	*	*	*	**

Enforcement History

A review of the information for West Broward Rehabilitation and Health Care for the period indicated above revealed the following:

- Surveillance findings from November 9, 2018, resulted in a $30,000 fine from Florida relating to smoking safety and fire hazards.
- Surveillance findings from May 30, 2019, resulted in a $500 fine from Florida relating to criminal background screening violations.

A review of the information for Bay Vue Nursing and Rehabilitation Center revealed the following:

- Surveillance findings from March 5, 2021, resulted in an $11,000 fine from Florida relating to failure to follow the comprehensive care plan interventions related to fall risk.
- Surveillance findings from October 14, 2019, resulted in a $2,500 fine from Florida relating to failure to provide continuity of care related to wound care.
- Surveillance findings from October 17, 2019, resulted in a $9,760 fine from CMS relating to failure to provide appropriate treatment and care according to orders, resident's preferences, and goals.
- Surveillance findings from January 21, 2021, resulted in a $14,508 fine from CMS relating to failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents.

A review of the information for Martin Nursing and Rehabilitation revealed the following:

- A $2,000 fine was initiated on 10/31/2019.
- A $2,000 fine was initiated on 9/30/2019.
- Surveillance findings from August 5, 2019, resulted in a $4,000 fine from Florida relating to failure to provide the required minimum staffing.
- Surveillance findings from February 26, 2020, resulted in a $16,000 fine from Florida relating to failure to provide basic life support, including CPR, prior to the arrival of emergency medical personnel.
- Surveillance findings from April 29, 2021, resulted in a $1,000 fine from Florida relating to failure to ensure accurate reconciliation of controlled medications.
- Surveillance findings from August 11, 2021, resulted in a $1,000 fine from Florida relating to failure to uphold residents' right to choose personal care.
- The facility was assessed a federal CMP of $655.00 on 8/9/2021 for failure to report COVID data.
- Federal CMPs of $29,526.00 was assessed on 2/26/2020, $16,465.00 on 8/8/2019, and $42,328.00 on 8/11/2021.

A review of the information presented on CMS nursing home compare for Aventura at Terrace View for the period indicated above revealed the following:

- A federal CMP in the amount of $116,652 was assessed on 10/4/2018.

A review of the information presented on CMS nursing home compare for Krystal Bay Nursing and Rehabilitation for the period indicated above revealed the following:

- A federal CMP in the amount of $5,850 was assessed on 1/24/2019.
- Surveillance findings from July 11, 2016, resulted in a $2,000 fine from Florida relating to failure to comply with the fire safety code; deficiency in corridor doors.
- Surveillance findings from May 18, 2017, resulted in a $1,500 fine from Florida relating to criminal background screening violations.
- Surveillance findings from June 16, 2020, resulted in a $7,500 fine from Florida relating to failure to provide proof of an alternate power source.
- The facility was assessed a federal CMP of $650.00 on 8/16/2021 for failure to report COVID data.
- A federal CMP in the amount of $9,750 was assessed on 8/27/2021.
- A federal CMP in the amount of $34,094 was assessed on 7/14/2016.
- A federal CMP in the amount of $5,850 was assessed on 1/24/2019.

A review of the information presented on CMS nursing home compare for Cedar Manor Nursing and Rehabilitation Center for the period indicated above revealed the following:

- The facility was assessed a federal CMP of $650.00 on 4/5/2021 for failure to report COVID data.
- The facility was fined $10,000 pursuant to Stipulation and Order NH-21-215 issued on 11/23/2021 for surveillance findings on 10/5/2021 related to the quality of care.

A review of the information presented on CMS nursing home compare for Waterview Hills Rehabilitation and Health Care for the period indicated above revealed the following:

- The facility was assessed a federal CMPs of $650.00 on 8/9/2021 and $975.00 on 11/22/2021 for failure to report COVID data.
- The facility was assessed a federal CMP of $10,172.00 on 03/12/2015 related to Life Safety Code 0038 K.

A review of information for Hollis Park Manor Nursing Home for the period indicated above revealed the following:

- The facility was assessed a federal CMP of $18,427.50 on 6/23/2017 for failure to ensure that a resident maintains acceptable parameters of nutritional status, such as body weight and protein levels unless the resident's clinical condition demonstrates that this is not possible.
- A federal CMP in the amount of $18,427.00 was assessed on 5/16/2017.

A review of information for Salem Hills Rehabilitation and Nursing Center for the period indicated above revealed the following:

- The facility was fined $2,000.00 pursuant to Stipulation and Order NH-21-020 issued on 1/22/2021 for surveillance findings on 12/9/2020 related to failure to maintain a required supply of PPE.

A review of information for Putnam Nursing and Rehabilitation Center for the period indicated above revealed the following:

- The facility was fined $2,000.00 pursuant to Stipulation and Order NH-21-120 issued on 6/25/2021 for surveillance findings on 2/4/2021 related to a failure of infection control, failure to wash hands after disposing of garbage, and handling linen.
- The facility was assessed a federal CMP of $1,012.00 on 3/21/2022 for failure to report complete information about COVID-19 to the Centers for Disease Control and Prevention's National Healthcare Safety Network.

Conclusion

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

Financial Analysis

Operating Budget

The applicant has provided the current year (2020) results and the first and third-year operating budgets after the change in membership, in 2022 dollars, summarized as follows:

	Current Year		First Year		Third Year	
Revenues	Per Diem	Total	Per Diem	Total	Per Diem	Total
Medicaid FFS	$222.08	$2,825,774	$313.43	$7,824,900	$313.43	$7,824,900
Medicaid MC	$222.08	891,207	$220.87	277,634	$220.87	277,634
Medicare FFS	$710.78	7,471,692	$510.09	2,299,500	$515.11	2,322,100
Medicare MC	$525.00	$658,350	$525.00	351,750	535.50	358,785
Commercial FFS	$426.80	65,727	$537.12	82,716	$540.79	83,281
Private Pay	$378.52	638,941	$372.32	1,162,000	$376.13	1,173,900
All Other		8,539		1,200		1,200
Non-Transferring*		732,339		0		0
Total		$13,292,569		$11,999,700		$12,041,800
Expenses						
Operating	$380.99	$11,561,081	$266.57	$9,243,300	$266.60	$9,244,500
Capital	$43.58	1,322,561	$32.47	1,126,049	$33.20	1,151,308
Total Expenses	$424.57	$12,883,642	$299.04	$10,369,349	$299.80	$10,395,808
Net Income (Loss)		$408,927		$1,630,351		$1,645,992
Patient Days		30,345		34,675		34,675
Utilization %		83.14%		95.00%		95.00%

** Provider Relief Funds*

The following is noted concerning the submitted RHCF operating budget:

- The current year reflects the facility's 2020 revenues and expenses.
- Medicaid rates are based on the facility's current 2021 Medicaid Regional Pricing rate. The Medicare rates are projected based on the full federal rate for the Medicare Prospective Payment System in effect for 2021 plus 1% per annum. The Commercial and Private Pay rates were based on similar facilities in the same geographical area plus 1% per annum.
- Expense and staffing assumptions were based on the current operator's model and then adjusted based on the applicant's experience.
- The facility's projected utilization for Years One and Three is 95.0%. The utilization for the past three years was 95.5% in 2018, 93.5% in 2019, and 83.14% in 2020, with current occupancy being 90.0% as of March 23, 2022.
- Medicare Utilization in 2020 was skewed due to the COVID Medicare waiver eliminating the requirement for the 3-day hospital stay. The 72% Medicaid and 13% Medicare utilization are based on pre-pandemic levels and reflect the expectation of where the facility will be once things are stabilized post-COVID.

Utilization by payor source for the first and third year after the change in ownership is summarized below:

	Current Year		Year One		Year Three	
Payor	Days	%	Days	%	Days	%
Medicaid FFS	12,724	41.93%	24,965	72.00%	24,965	72.00%
Medicaid MC	4,013	13.22%	1,257	3.63%	1,257	3.63%
Medicare FFS	10,512	34.65%	4,508	13.00%	4,508	13.00%
Medicare MC	1,254	4.13%	670	1.93%	670	1.93%
Commercial FFS	154	0.51%	154	0.44%	154	0.44%
Private Pay	1,688	5.56%	3,121	9.00%	3,121	9.00%
Total	30,345	100%	34,675	100%	34,675	100%

The facility's Medicaid admissions of 28.8% in 2019 and 39.7% in 2020 exceeded Orange County's 75% threshold rates of 24.0% for 2019 and 24.1% for 2020. The breakeven utilization is projected at 82.1% for the first year.

Membership Interest Purchase Agreement

The applicant has submitted an executed MIPA to acquire the RHCF's operating interests, which will become effective upon PHHPC approval. The terms are summarized below:

Date:	September 12, 2019, with an execution date of December 8, 2021
Seller:	Alexander Cornfeld (45.50%); Isabelle Fisher-Krishana (15.16667%); Meredith Fisher (15.16667%); Zachary Fisher (15.16666%); and Larry Goldfarb (8.00%) for a total of (99%)
Buyer:	Lizer Jozefovic 10.00%; Yosef Jozefovic 20.00%; Ari Kriesmann 19.00%; Robert Izsak 25.00%; Ethel Markovics 12.50% and Menachem Markovics 12.50% for a total of 99%.
Asset Acquired:	New members acquired 99% interest in Montgomery Operating Co., LLC membership, with one member, Larry Goldfarb, maintaining 1% membership interest. Buyer shall own all of the Membership Interest owned by Sellers free and clear of all security interest, lien, encumbrances, or other restrictions or claims.
Purchase Price:	Purchase Price $100 plus excess assets over liabilities of $663,370

The applicant states that 2817 Post Road Realty, LLC members deposited $663,370 on behalf of Montgomery Operating Co. LLC's MIPA agreement at the real property closing. This payment is reflected as Due to Realty on the pro forma balance sheet and has no set repayment terms, and accrues no interest.

Real Estate Purchase Agreement

The applicant submitted a copy of the real property purchase agreement, the terms of which are summarized below:

Date:	September 12, 2019, and closed on March 3, 2020, and December 29, 2020
Seller:	Bram Property Corp., Inc.
Buyer:	2817 Post Road Realty, LLC (Members are Lizer Jozefovic 9.0%, Yosef Jozefovic 20.0%, Ari Kriesmann 20.0%, Ethel Markovics 12.5%, Robert Izsak 25.0%, Menachem Markovics 12.5%, and Larry Goldfarb 1.0% for a total of 100.0%)
Asset Transferred:	Real property located at 2817 Albany Post Road, Montgomery, NY 12549
Purchase Price:	$13,500,000 plus $1,500,000 for reimbursement of renovation project
Payment of Purchase Price:	$15,000,000 -250,000 execution & delivery of agreement (paid with equity) -3,000,000 promissory note at 1st closing (paid off 2nd closing 12-29-20 -10,250,000 mortgage payable -1,500,000 Renovation Deposit – paid with equity

2817 Post Road Realty, LLC had two closings, the first one on March 3, 2020, and again on December 29, 2020, to pay off the remaining balance, a $3,000,000 promissory note. 2817 Post Road Realty, LLC, on December 29, 2020, refinanced its debt into a consolidated mortgage which needs to be refinanced by January 2024. As of April 22, 2022, Popular Bank has committed to two automatic extensions on the current $12,807,734 outstanding balance; (1st) a five-year extension ending January 1, 2029, and the (2nd) a three-year extension ending January 1, 2032. Terms for the extensions are based on the One-Month CME Term SOFR Reference Rate administered by the CME Group Benchmark Administration Limited, plus 3% with a minimum rate (floor) of 3.60% with a 25-year amortization, the rate as of April 22, 2022, would be 3.64601%. Their objective is to refinance the conventional mortgage into HUD financing.

Lease Agreement

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

Date:	February 28, 2020
Premises:	100-bed RHCF located at 2817 Post Road, Montgomery, NY 12549
Landlord/Lessor:	2817 Post Road Realty, LLC
Lessee:	Montgomery Operating Co., LLC
Term:	Ten years
Rent:	$1,124,549 in 1st year & $1,149,808 in 3rd year (includes debt service on all debts, additional rent of $195,000 plus $216,800 for property tax, insurance, and replacement reserve in the first year)
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement; there are members in common between landlord and lessee.

Capability and Feasibility

The proposed new members and the remaining member will acquire and own 100% of Montgomery Operating Co., LLC RHCF's operations for $100 plus the excess assets over liabilities of $663,370. The real property has already been acquired by 2817 Post Road Realty, LLC from Bram Property Corp., Inc. for $13,500,000 plus $1,500,000 to reimburse Brain Property for renovations. The REPA had two closings, the first one on March 3, 2020, and again on December 29, 2020, to pay off the remaining balance, a $3,000,000 promissory note. On December 29, 2020, 2817 Post Road Realty refinanced its debt into a $10,000,000 consolidated mortgage plus a $650,000 line of credit at stated terms, which needs to be refinanced by January 2024.

The applicant states that they have been advised that there is an opportunity to extend the conventional loan. Their objective is to refinance the conventional mortgage into a HUD financing arrangement in the third year. At the real property closing, the applicant states that 2817 Post Road Realty, LLC deposited $663,370 on behalf of Montgomery Operating Co. LLC's MIPA agreement via members equity. This payment is reflected as Due to Realty on the pro forma balance sheet and has no set repayment terms and accrues no interest. There are no project costs associated with this application.

The working capital requirement is estimated at $1,664,956 based on two months of first-year expenses of $1,728,225, less adjusted current assets of $1,952,070 plus current liabilities of $1,888,801 as shown on the pro forma balance sheet (BFA Attachment B). Funding of $1,664,956 will be from members' equity. BFA Attachment A proposed members' net worth summaries, reveals sufficient resources to meet equity requirements. Liquid resources may not be available in proportion to ownership interest; as such, Lizer Jozefovic, Menachem Markovics, and Ethel Markovics have provided an affidavit stating the willingness to contribute resources disproportionate to their membership interest.

The submitted budget projects a first- and third-year profit of $1,630,351 and $1,645,992 respectively. Revenues are expected to decrease by $560,530 in the first year (excluding $732,339 in non-transferring revenues, as shown above). Overall expenses are expected to decrease by $2,514,293 in the first year resulting from a $2,317,781 reduction in operating expense and a $196,512 reduction in capital expense. The decline in operating expenses is due to the following categories: employee benefits $610,774;

professional fees $1,531,960; supplies $703,177; purchased services $129,093; offset by increases in salaries and wages of $453,340 and other direct expenses of $203,883. Reasons for the decline in employee benefits include negotiating a collective bargaining agreement (CBA) with Union Pension and Health/Welfare; improving policy costs for health insurance and workers' compensation. The decline in professional fees includes eliminating consulting fees, payments to the former owner, and replacing agency fees for therapy and nursing with salaried and hourly employees.

A review of BFA Attachment B, Montgomery Operating Co., LLC's pro forma balance sheet shows the entity will start with $1,080,056 in member's equity. Equity includes $100 in goodwill, which is not a liquid resource, nor is it recognized for Medicaid reimbursement. If goodwill were eliminated from the equation, the total net assets would become a positive $1,079,956. The budget appears reasonable.

BFA Attachment C is the Financial Summary of Montgomery Operating Co. from 2018 through 2020. The RHCF had average positive net assets, average positive net income, and average negative working capital. BFA Attachment D is the September 30, 2021 internal financials, which show positive working capital of $1,617,243, positive net assets of $3,116,384, and net income of $2,738,611.

BFA Attachment E is the proposed members' ownership interest in the affiliated RHCFs and their financial summaries. In 2020, there was an overall loss of $314,644 (primarily due to Epic Rehabilitation and Nursing start-up loss of $7,681,595). For the years 2019 and 2018, the facilities generated a combined net income of $9,155,184 and $7,002,916. In all of the years (2018 – 2020) the facilities had positive net assets and negative working capital. The negative Working Capital declined from $4,215,150 in 2018 to $2,601,335 in 2020.

Conclusion

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

Attachments

LTCOP Attachment A	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Net Worth of proposed members of Montgomery Operating Co, LLC and 2817 Post Road Realty, LLC
BFA Attachment B	Pro Forma Balance Sheet, Montgomery Operating Co, LLC
BFA Attachment C	Financial Summary 2018 – 2020, Montgomery Operating Co, LLC
BFA Attachment D	September 30, 2021 Internal Financial Statement, Montgomery Operating Co, LLC
BFA Attachment E	Proposed Members' Ownership Interest in the Affiliated RHCFs and Financial Summary

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of June 2022, 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 transfer a total of 99% ownership interest from four withdrawing members and one existing member to six new members, 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:
202106 E	Montgomery Operating Co., LLC d/b/a Montgomery Nursing and Rehabilitation Center

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of an amended and executed Lease between 2817 Post Road Realty, LLC and Montgomery Operating Co., LLC, acceptable to the Department [CSL]

APPROVAL CONDITIONAL UPON:

N/A

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

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 202269-E
Ross OPCO LLC d/b/a
Ross Center for Nursing and Rehabilitation

Program: **Residential Health Care Facility** ***County:*** **Suffolk**
Purpose: **Establishment** ***Acknowledged:*** **April 21, 2021**

Executive Summary

Description

Ross OPCO, LLC d/b/a Ross Center for Nursing and Rehabilitation (Ross Center), a New York limited liability company, requests approval to be established as the new operator of Ross Center for Nursing and Rehabilitation, a 120 -bed, proprietary Article 28 residential health care facility (RHCF) located at 839 Suffolk Ave, Brentwood (Suffolk County).

Ross Center for Nursing and Rehabilitation is the current operator of the facility and Ross Propco, LLC is the real property owner. On 10/30/2020, Ross Acquisition, LLC (as Seller,) and Ross Opco, LLC (as Buyer,) entered into an Asset Purchase Agreement (APA) for the sale and acquisition of the operating interests of the RHCF. The total purchase price of the RHCF operations is $9,600,000,

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

Ross Acquisition, LLC	
Members	**%**
Joel Leifer	57.89%
Avi Philipson	20.00%
Deena Hersch	21.05%
Deborah Philipson	1.06%
Total	**100%**

The proposed Operator of Ross OPCO, LLC d/b/a Ross Center for Nursing and Rehabilitation's sole member is SSNY Holdco, LLC.

The members of SSNY Holdco, LLC are as follows:

SSNY Holdco, LLC	
Members	**%**
Shalom Stein*	50%
Nosson Stein	25%
Peretz Stein	25%
Total	**100%**

**Shalom Stein is the managing member of the facility.*

Upon approval of this application by the Public Health and Health Planning Council (PHHPC), Ross Center will lease the premises via a non-arm's length lease. The membership of the realty entity, Ross Propco, LLC is the same as that of SSNY Holdco, LLC.

Ownership of the realty is as follows:

Ross Propco, LLC	
Members	**%**
Shalom Stein	50%
Nosson Stein	25%
Peretz Stein	25%
Total	**100%**

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this project.

Program Summary

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

Financial Summary

There are no project costs associated with this application. Ross Center will acquire the RHCF's operations for $9,600,000 funded by $1,920,000 of members' equity and a $7,680,000 loan. The facility currently has an LOI from Meridian Capital Group for a term of 25 years with a 5% interest rate. The proposed budget is as follows:

Budget	Year One	Year Three
Revenues	$16,304,700	$16,387,300
Expensed	$15,674,395	$15,701,000
Gain/(Loss)	$630,305	$686,300

Recommendations

Long Term Care Ombudsman Program
The LTCOP recommends Approval. (See LTCOP Attachment A)

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

Office of Primary Care and Health Systems Management
Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR].
2. Submission of an executed Certificate of Amendment of the Articles of Organization of Ross OPCO, LLC, acceptable to the Department. [CSL]
3. Submission of a photocopy of an amended and executed Lease Agreement between Ross PROPCO, LLC and Ross OPCO, LLC, acceptable to the Department. [CSL]
4. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
5. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. This project must be completed by one year from the date of the recommendation 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]

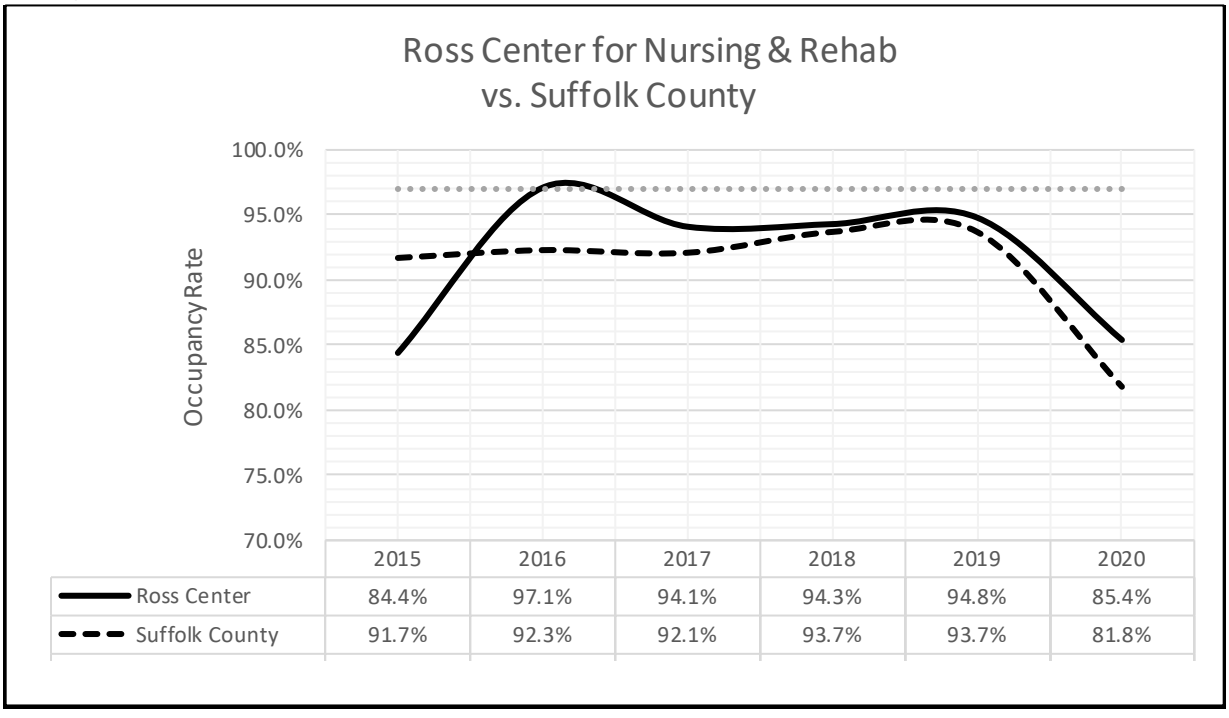
Council Action Date
June 2, 2022

Need and Program Analysis

Program Description

	Existing	Proposed
Facility Name	Ross Center for Nursing and Rehabilitation	Same
Address	839 Suffolk Ave. Brentwood, NY 11717	Same
RHCF Capacity	120 beds	Same
ADHCP Capacity	N/A	N/A
Type of Operator	Limited Liability Corporation	Limited Liability Corporation
Class of Operator	Proprietary	Proprietary
Operator	**Ross Acquisition, LLC** Avi Philipson 19% Deena Hersh 20% Joel Leifer 55% Leo Friedman 5% Deborah Philipson 1%	**Ross OPCO, LLC** SSNY HOLDCO, LLC *Shalom Stein 50% Nosson Stein 25% Peretz Stein 25% *Managing Member

Analysis



Since 2017 the facility had occupancy in the mid-90's. 2020 Occupancy was negatively impacted by COVID-19, but based upon weekly census data, it has rebounded with current occupancy, as of March 16, 2022, at 94.2% for the facility and 83.9% for Suffolk County.

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long-term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay of 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data, which have been received and analyzed by the Department. An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Ross Center for Nursing & Rehabilitation's Medicaid admissions rate has exceeded the threshold of 75% of the Suffolk County rate, as demonstrated below.

Medicaid Access	2018	2019	2020
Suffolk County Total	24.9%	19.9%	20.6%
Suffolk Threshold Value	*18.7%*	*15.0%*	*15.4%*
Ross Center for Nursing.	44.7%	33.0%	29.6%

Character and Competence

Shalom (Sam) Stein is a New Jersey State licensed Nursing Home Administrator. He lists his employment as CEO and President of Peace capital LLC/ Complete Care Management, LLC, which he indicates is a multi-state owner and operator of skilled nursing, assisted living, and independent living facilities company located in Howell, New Jersey. He holds a bachelor's degree in Talmudic Studies from the Talmudic Academy of Central Jersey and discloses the following health care facility interests:

Out-of-State Nursing Homes

Complete Care at Arbors (59%)	[NJ]	09/2019 - present
Complete Care at Bey Lea (59%)	[NJ]	06/2018 - present
Complete Care at Fairlawn Edge (60%)	[NJ]	06/2017 - present
Complete Care at Green Acres (50%)	[NJ]	10/2017 - present
Complete Care at Green Knoll (54%)	[NJ]	02/2019 - present
Complete Care at Hamilton (59%)	[NJ]	06/2018 - present
Complete Care at Holiday City (49%)	[NJ]	09/2019 - present
Complete Care at Laurelton (59%)	[NJ]	06/2018 - present
Complete Care at Linwood (59%)	[NJ]	06/2018 - present
Complete Care at Shorrock (59%)	[NJ]	09/2019 - present
Complete Care at Summit Ridge (54%)	[NJ]	02/2019 - present
Complete Care at Whiting (60%)	[NJ]	10/2019- present
Complete Care at Willow Creek (60%)	[NJ]	04/2020- present
Complete Care at Woodlands (60%)	[NJ]	04/2020- present
Kensington Care & Rehab Center (28%)	[WI]	08/2017- present
Manitowoc Healthcare Center (40%)	[WI]	06/2018- present
Nazareth Health and Rehab Center (40%)	[WI]	06/2018- present
Ridgewood Care Center (14%)	[WI]	09/2017- present
Villa Pines Living Center (40%)	[WI]	06/2018- present
Glendale Care and Rehab Center (4.9%)	[WI]	04/2021- present
Complete Care at Brakeley Park (4.9%)	[NJ]	07/2021- present
Complete Care at Burlington Woods (4.9%)	[NJ]	07/2021- present
Complete Care at Cedar Grove (4.9%)	[NJ]	07/2021- present

Complete Care at Chestnut Hill (60%)	[NJ]	04/2021- present
Complete Care at Court House (4.9%)	[NJ]	07/2021- present
Complete Care at Inglemoor (4.9%)	[NJ]	07/2021- present
Complete Care at Kresson View (4.9%)	[NJ]	07/2021- present
Complete Care at Madison (4.9%)	[NJ]	07/2021- present
Complete Care at Marcella (4.9%)	[NJ]	07/2021- present
Mercerville Center (4.9%)	[NJ]	07/2021- present
Windsor Gardens Care Center (2.94%)	[NJ]	10/2021- present
Complete Care at Park Place (4.9%)	[NJ]	07/2021- present
Complete Care at Phillipsburg (4.9%)	[NJ]	07/2021- present
Complete Care at Voorhees (4.9%)	[NJ]	07/2021- present
Complete Care at Westfield (4.9%)	[NJ]	07/2021- present
Complete Care at Barn Hill (4.9%)	[NJ]	08/2021- present
Complete Care at Corsica Hills (4.9%)	[MD]	05/2021- present
Complete Care at Heritage (4.9%)	[MD]	05/2021- present
Complete Care at La Plata (4.9%)	[MD]	05/2021- present
Complete Care at Severna Park (4.9%)	[MD]	05/2021- present
Complete Care at Multi Medical Center (4.9%)	[MD]	05/2021- present
Complete Care at Berkshire (4.9%)	[PA]	08/2021- present
Complete Care at Harston Hall (4.9%)	[PA]	05/2021- present
Complete Care at Lehigh (4.9%)	[PA]	05/2021- present
Complete Care at Brackenville (4.9%)	[DE]	06/2021- present
Complete Care at Hillside (4.9%)	[DE]	06/2021- present
Complete Care at Silverlake (4.9%)	[DE]	06/2021- present
Complete Care at Oak Ridge (4.9%)	[WV]	06/2021- present
Complete Care at Dawnview (4.9%)	[WV]	06/2021- present
Glendale Center (4.9%)	[CT]	09/2021- present
Groton Regency Center (4.9%)	[CT]	09/2021- present
Harrington Court (4.9%)	[CT]	09/2021- present
Meriden Center (4.9%)	[CT]	09/2021- present

End Dated Ownership

Complete Care at Asheville (50%)	[NC]	06/2017- 08/2018
Complete Care at Charlotte (24%)	[NC]	06/2017- 04/2019
Complete Care at Myers Park (50%)	[NC]	06/2017- 04/2019

Out-of-State Assisted Living Facilities

Complete Care at Shorrock Haven- AL (59%)	[NJ]	09/2019- present
Complete Care at Arbors Haven – AL (59%)	[NJ]	06/2015- present
Chestnut Hill Residences by Complete Care (60%)	[NJ]	04/2021- present
Complete Care at Victoria Commons (4.9%)	[NJ]	07/2021- present

Out-of-State Residential Care Homes

Complete Care at Brakeley Park (4.9%)	[NJ]	07/2021- present
Groton Regency Residences by Complete Care (4.9%)	[CT]	09/2021- present

Nosson Stein lists employment as the CFO of the subject facility, Ross Center for Nursing & Rehabilitation located in Brentwood, NY. Prior to this, he indicates employment as Director of Accounts Receivable at Champion Care LLC a health care company. Nosson Stein holds a bachelor's degree from Yeshiva of Far Rockaway and discloses no health facility interests.

Peretz Stein is a licensed Nursing Home Administrator in the states of New York and New Jersey. He lists his employment as the Administrator Ross Center for Health and Rehabilitation, which is the subject facility. Prior to this, he indicates work as the Administrator at The Grand Rehabilitation and Nursing at Queens, and employment at The Grand Rehabilitation and Nursing at South Point. Peretz Stein holds a master's degree from Shor Yoshov Institute and discloses no health facility interests.

Quality Review

The proposed owners have been evaluated, in part, on the distribution of CMS Star ratings for their portfolios per 10 NYCRR §600.2(b)(5)(iv). For all proposed owners the distribution of CMS star ratings for their facilities meets the standard described in state regulations.

CMS Star Rating Criteria					
		Duration of Ownership*			
		< 48 Months		48 months or more	
Proposed Owner	Total Nursing Homes	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating
Shalom Stein	53	42	40.5%	11	27%

**Duration of ownership as of 6/2/2022* *Data date: 04/2022*

The Nursing Home Compare website now includes information to alert consumers about abuse or neglect in nursing homes. Facilities that have been recently cited for resident harm or potential harm for abuse or neglect are indicated with an icon of a red circle with a hand in it. This symbol has been included in the chart below due to its inclusion on the Nursing Home Compare website.

New Jersey. The proposed owner's portfolio includes ownership in thirty New Jersey facilities. Eighteen of the New Jersey facilities in the owner's portfolio have a CMS overall quality rating of average or higher. The remaining twelve New Jersey facilities have a CMS overall quality rating of below average or lower. To help improve the low overall CMS quality ratings in New Jersey facilities the applicants have implemented the following action items in their facilities. Reviewed facility policy and procedures, recruited local physicians, provided staff education regarding facility-specific issues, hired new administrative staff where needed, held additional mock surveys, and monitoring/auditing quality measures.

Wisconsin. The proposed owner's portfolio includes ownership in six Wisconsin facilities. Three of the Wisconsin facilities in the owner's portfolio have a CMS overall quality rating of average or higher. The remaining three Wisconsin facilities have a CMS overall quality rating of below average or lower. To help improve the low overall CMS quality ratings in Wisconsin facilities the applicants have implemented the following action items in their facilities. Recruiting additional staff, utilizing an agency for staffing as needed, monitoring/auditing quality measures, providing regional clinical support, hired new administrative staff.

Maryland. The proposed owner's portfolio includes ownership in five Maryland facilities. All five Maryland facilities have a CMS overall quality rating of average or higher.

Pennsylvania. The proposed owner's portfolio includes ownership in three Pennsylvania facilities. Two Pennsylvania facilities have a CMS overall quality rating of average or higher. One Pennsylvania facility has a CMS overall quality rating of below average or lower.

Delaware. The proposed owner's portfolio includes ownership in three Delaware facilities. All three Delaware facilities have a CMS overall quality rating of average or higher.

West Virginia. The proposed owner's portfolio includes ownership in two West Virginia facilities. Both West Virginia facilities have a CMS overall quality rating of average or higher.

Connecticut. The proposed owner's portfolio includes ownership in four Connecticut facilities. All four Connecticut facilities have a CMS overall quality rating of below average or lower. To help improve the low overall CMS quality ratings in Connecticut facilities the applicants have implemented the following

action items in their facilities. Phased out agency staffing for supervisor positions at one facility, all centers have changed their nutritional services to a new provider, monitoring/auditing quality measures, provided staff education regarding facility-specific issues, working with the regional director to better monitor therapy services, and reviewed overall staffing hours being captured and reported.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Ross Center for Nursing and Rehabilitation	Subject Facility	***	**	*****	**
New Jersey					
Complete Care at Arbors	Current	**	**	****	**
	09/2019	****	***	*****	**
Complete Care at Bey Lea	Current	***	***	*****	*
	06/2018	****	***	*****	***
Complete Care at Fairlawn Edge	Current	**	*	*****	*
	06/2017	****	**	*****	****
Complete Care at Green Acres	Current	****	***	*****	***
	10/2017	*****	***	*****	***
Complete Care at Green Knoll	Current	**	*	*****	**
	02/2019	****	***	*****	***
Complete Care at Hamilton	Current	*****	*****	****	***
	06/2018	***	**	*****	***
Complete Care at Holiday City	Current	*****	****	*****	**
	09/2019	**	**	****	**
Complete Care at Laurelton	Current	***	**	*****	***
	06/2018	***	**	*****	***

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Complete Care at Linwood	Current	***	**	*****	***
	06/2018	*	*	***	***
Complete Care at Shorrock	Current	****	***	*****	**
	09/2019	*****	****	*****	**
Complete Care at Summit Ridge	Current	****	***	*****	***
	02/2019	***	**	*****	**
Complete Care at Whiting	Current	***	***	****	***
	10/2019	***	**	*****	***
Complete Care at Willow Creek	Current	***	****	****	*
	04/2020	*	*	***	***
Complete Care at Woodlands	Current	*****	****	*****	****
	04/2020	****	**	*****	****
Complete Care at Brakeley Park	Current	****	***	*****	**
	07/2021	***	***	****	***
Complete Care at Burlington Woods	Current	**	*	*****	****
	07/2021	***	**	****	****
Complete Care at Cedar Grove	Current	**	*	*****	****
	07/2021	**	*	***	****
Complete Care at Chestnut Hill	Current	*	*	***	***
	04/2021	**	*	***	****
Complete Care at Court House	Current	*****	****	*****	**

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
	07/2021	*****	****	*****	****
Complete Care at Inglemoor	Current	**	*	****	****
	07/2021	****	***	***	****
Complete Care at Kresson View	Current	**	**	***	**
	07/2021	***	***	***	**
Complete Care at Madison	Current	**	*	****	****
	07/2021	**	*	*****	****
Complete Care at Marcella	Current	***	***	***	***
	07/2021	***	**	***	****
Mercerville Center	Current	***	**	****	****
	07/2021	***	**	***	****
Windsor Gardens Care Center	Current	**	*	*****	**
	10/2021	**	*	*****	**
Complete Care at Park Place	Current	*****	****	*****	***
	07/2021	****	****	****	***
Complete Care at Phillipsburg	Current	**	*	*****	***
	07/2021	*	*	***	***
Complete Care at Voorhees	Current	*	*	***	***
	07/2021	**	*	**	*****
Complete Care at Westfield	Current	***	**	*****	**
	07/2021	*	*	****	***

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Complete Care at Barn Hill	Current	***	***	****	**
	08/2021	***	***	****	***
Wisconsin					
Kensington Care & Rehab Center	Current	*	*	***	***
	08/2017	**	*	*****	*
Manitowoc Healthcare Center	Current	***	***	****	***
	06/2018	****	***	*****	***
Nazareth Health and Rehab Center	Current	**	**	****	**
	06/2018	*	*	****	**
Ridgewood Care Center	Current	***	**	***	****
	09/2017	***	**	***	****
Villa Pines Living Center	Current	***	***	***	***
	06/2018	***	**	*****	***
Glendale Care and Rehab Center	Current	*	*	***	**
	04/2021	*	*	****	***
Maryland					
Complete Care at Corsica Hills	Current	****	***	***	****
	05/2021	****	***	****	****
Complete Care at Heritage	Current	***	**	*****	***
	05/2021	***	**	****	****
Complete Care at La Plata	Current	*****	****	*****	**

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
	05/2021	*****	****	*****	**
Complete Care at Severna Park	Current	***	**	****	****
	05/2021	***	**	****	****
Complete Care at Multi Medical Center	Current	****	****	****	***
	05/2021	****	***	****	****
Pennsylvania					
Complete Care at Berkshire	Current	*****	****	*****	***
	08/2021	*****	*****	*****	***
Complete Care at Harston Hall	Current	**	**	***	***
	05/2021	***	**	***	****
Complete Care at Lehigh	Current	*****	*****	*****	***
	05/2021	*****	*****	****	***
Delaware					
Complete Care at Brackenville	Current	*****	***	*****	****
	06/2021	*****	***	*****	****
Complete Care at Hillside	Current	***	***	****	***
	06/2021	*****	***	*****	*****
Complete Care at Silverlake	Current	***	**	***	****
	06/2021	***	**	****	*****
West Virginia					
Complete Care at Oak Ridge	Current	***	**	**	****
	06/2021	**	*	****	****

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Complete Care at Dawnview	Current	****	***	***	****
	06/2021	***	****	*	***
Connecticut					
Glendale Center	Current	**	**	***	***
	09/2021	**	**	***	***
Groton Regency Center	Current	**	*	****	****
	09/2021	*	*	****	***
Harrington Court	Current	*	*	****	***
	09/2021	**	*	****	****
Meriden Center	Current	*	*	***	***
	09/2021	**	**	***	**

Data date: *04/2022*

End Dated Nursing Home Ownership

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
North Carolina					
Complete Care at Asheville	08/2018	*	*	**	**
	06/2017	*	*	*	*
Complete Care at Charlotte	04/2019	*	*	***	**
	06/2017	*	*	**	**
Complete Care at Myers Park	04/2019	**	**	**	***
	06/2017	*	*	*	**

Enforcement History

A review of **Complete Care at Brackenville** for the period indicated above revealed the following:

- The facility was assessed a federal CMP of $650.00 on 7/19/2021 for failure to report COVID data.

A review of **Complete Care at Heritage** for the period indicated above revealed the following:

- The facility was assessed a federal CMP of $650.00 on 9/6/2021 for failure to report COVID data.

A review of the information presented on CMS nursing home compare for **Complete Care at Whiting** for the period indicated above revealed the following:

- A federal CMP in the amount of $223,605 was assessed on 2/12/2021 the facility was found to be not in compliance with 42 CFR §483.80 infection control regulations as it relates to the implementation of the CMS and Centers for Disease Control and Prevention (CDC) recommended practices for COVID-19.

A review of the information presented on CMS nursing home compare for **Complete Care at Green Knoll** for the period indicated above revealed the following:

- A federal CMP in the amount of $9,750 was assessed on 1/13/2021 the facility was found to be not in compliance with 42 CFR §483.80 infection control regulations as it relates to the implementation of the CMS and Centers for Disease Control and Prevention (CDC) recommended practices for COVID-19.

A review of the information presented on CMS nursing home compare for **Complete Care at Laurelton** for the period indicated above revealed the following:

- A federal CMP in the amount of $6,923 was assessed on 4/6/2021 The Facility failed to ensure that medications that could cause significant harm if ingested were stored/secured and inaccessible to cognitively impaired residents living on the dementia unit.

A review of the information presented on CMS nursing home compare for **Complete Care at Fair Lawn Edge** for the period indicated above revealed the following:

- A federal CMP in the amount of $5,000 was assessed on 1/5/2021 the facility was found to be not in compliance with 42 CFR §483.80 infection control regulations as it relates to the implementation of the CMS and Centers for Disease Control and Prevention (CDC) recommended practices for COVID-19.

A review of the information presented on CMS nursing home compare for **Complete Care at Arbors** for the period indicated above revealed the following:

- A federal CMP in the amount of $31,430 was assessed on 1/27/2021 it was determined that the facility failed to provide services necessary to prevent physical harm for a resident.

A review of the information presented on CMS nursing home compare for **Kensington Care and Rehab Center** for the period indicated above revealed the following:

- A federal CMP in the amount of $124,651 was assessed on 2/11/2020 the facility must ensure that a resident receives care, consistent with professional standards of practice, to prevent pressure ulcers and does not develop pressure ulcers unless the individual's clinical condition demonstrates that they were unavoidable.
- On 7/19/2021 Kensington Care and Rehab Center was cited for failure to provide appropriate pressure ulcer care and prevent new ulcers from developing Federal Tag 686 at a G level.
- On 7/19/2021 Kensington Care and Rehab Center was cited for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents Federal Tag 689 at a G level.
- On 4/25/2018 Kensington Care and Rehab Center was cited for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents Federal Tag 689 at a G level.
- The facility was assessed federal CMP of $655.00 on 6/21/2021 for failure to report COVID data.
- A federal CMP in the amount of $12,938 was assessed on 12/11/2018 the facility

- failed to ensure that each resident is free from medications that restrain them, unless needed for medical treatment.

A review of the information presented on CMS nursing home compare for **Villa Pines Living Center** for the period indicated above revealed the following:

- A federal CMP in the amount of $53,294 was assessed on 8/6/2020 the facility failed to ensure residents were free from sexual abuse.

A review of the information presented on CMS nursing home compare for **Manitowoc Healthcare Center** for the period indicated above revealed the following:

- A federal CMP in the amount of $13,000 was assessed on 5/12/2021 the facility must establish and maintain an infection prevention and control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of communicable diseases and infections.

A review of **Complete Care at Chestnut Hill** for the period indicated above revealed the following:

- The facility was assessed a federal CMP of $983.00 on 5/10/2021 for failure to report COVID data.

A review of **Complete Care at Willow Creek** for the period indicated above revealed the following:

- The facility was assessed a federal CMP of $650.00 on 4/12/2021 for failure to report COVID data.

A review of **Complete Care at Barn Hill** for the period indicated above revealed the following:

- The facility was assessed federal CMPs of $650.00 on 9/6/2021 and $975.00 on 9/13/2021 for failure to report COVID data.

A review of **Glendale Care and Rehab Center** for the period indicated above revealed the following:

- On 7/13/2021 Glendale Care and Rehab Center was cited for failure to provide appropriate pressure ulcer care and prevent new ulcers from developing Federal Tag 686 at a G level.
- The facility was assessed federal CMPs of $650.00 on 8/16/2021 and $975.00 on 8/30/2021 for failure to report COVID data.

A review of the information presented on CMS nursing home compare for **Ridgewood Care Center** for the period indicated above revealed the following:

- A federal CMP in the amount of $10,716 was assessed on 7/31/2019 the facility failed to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents.
- On 4/9/2018 Ridgewood Care Center was cited for failure to provide appropriate pressure ulcer care and prevent new ulcers from developing Federal Tag 686 at a G level.

A review of **Complete Care at Meriden** for the period indicated above revealed the following:

- On 10/25/2021 Complete Care at Meriden was cited for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents Federal Tag 689 at a G level.

A review of the information presented on CMS nursing home compare for **Complete Care at Burlington Woods** for the period indicated above revealed the following:

- A federal CMP in the amount of $11,300 was assessed on 7/29/2021. The facility failed to ensure the following: proper medical gas storage and administration areas; install smoke barrier doors that can resist smoke for at least 20 minutes; add doors in an exit area that do not require the use of a key from the exit side unless in case of special locking arrangements; keep aisles, corridors, and exits free of obstruction in case of emergency; have exits that are accessible at all times; ensure heating and ventilation systems that have been properly installed according to the manufacturer's instructions.

Conclusion
The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3). There will be no changes to beds or services as a result of this project.

Financial Analysis

Operating Budget
The applicant has provided the current year (2020) results, and the first- and third-year operating budget, in 2022 dollars, after the change in ownership. The budget is summarized below:

	Current Year		Year One		Year Three	
Revenues	Per Diem	Total	Per Diem	Total	Per Diem	Total
Medicare FFS	$800.09	$4,704,551	$756.23	$4,295,400	$764.96	$4,345,000
Medicare MC	$640.07	$625,990	$650.00	$635,700	$650.00	$635,700
Medicaid FFS	$277.58	$5,952,072	$294.80	$5,697,602	$294.80	$5,697,602
Medicaid MC	$277.58	$2,258,113	$294.80	$2,398,198	$294.80	$2,398,198
Commercial FFS	$325.00	$49,075	$443.69	$2,954,100	$448.11	$2,983,500
Private Pay	$364.45	$338,940	$387.62	322,500	$391.95	$326,100
Other Oper Rev		$1,861		$1,200		$1,200
Non-Oper Rev		$1,065,352		$0		$0
Total		$14,995,954		$16,304,700		$16,387,300
Expense:						
Operating	$397.93	$14.929,031	$332.29	$13,826,503	$338.62	$14,090,000
Capital	$34.32	$1,287,584	$44.41	$1,847,892	$38.72	$1,611,000
Total Expenses	$432.25	$16,216,615	$376.70	$15,674,395	$377.34	$15,701,000
Net Income (Loss)		($1,220,661)		$630,305		$686,300
Patient Days		37,517		41,610		41,610
Utilization %		85.66%		95.00%		95.00%
Breakeven %		92.63%		91.33%		91.02%

The following is noted for the submitted budget:

- Medicaid revenue is based on the facility's current 2020 Medicaid Regional Pricing rate. The Medicare, Private Pay, and Commercial rates are based on the current (2020) rates being received by the facility.

Utilization by payor source currently and after the change in ownership is as follows:

Payor	Current Year	Years One & Three
Medicare FFS	15.67%	13.65%
Medicare MC	2.61%	2.35%
Medicaid FFS	57.16%	46.45%
Medicaid MC	21.68%	19.55%
Private Pay	2.48%	2.00%
Commercial FFS	.4%	16.00%
Total	100.00%	100.00%

- Breakeven utilization is projected at 91.33% or 40,001 patient days for Year One and 91.02% or 39,867 patient days for Year Three. The Ross Center occupancy rate was 91.7% as of March 30,

2022, which was higher than the combined occupancy rate of 84.3% for all nursing homes in Suffolk County.

- The facility's Medicaid admissions, which were 44.7% in 2018, 33.0% in 2019 and 29.6% in 2020 are above Suffolk County's 75% threshold rate of 18.7% in 2018, 15.0% in 2019 and 15.4% in 2020.
- In 2019 Ross had Commercial utilization of over 13%. Due to the pandemic, the reported 2020 utilization dipped significantly, and the projected years are based on a return to pre-pandemic utilization trends. Commercial utilization is currently at 13.24% as of February 28, 2022.

Asset Purchase Agreement

The applicant submitted an executed APA to acquire certain assets related to the RHCF's operations to be effectuated upon approval by the PHHPC. The terms are summarized below:

Date:	10/30/2020
Seller:	Ross Acquisition, LLC
Purchaser:	Ross Opco, LLC
Assets Transferred:	All cash/deposits, cash equivalents and short-term investments on hand as of the closing date that were not in existence as of the effective date; all accounts receivable for services performed on or after the effective date; all checking, savings and operating accounts of the seller related to the business; All inventory; all stimulus funds that purchaser is entitled to all books and records, except for any proprietary information; all assigned contracts; all tangible personal property located at the property; Permits; Goodwill; Medicare/Medicaid/ provider numbers; provider agreements and all computer applications, operating, security or programming software owned by seller and used in the operation of the business; all other assets owned by seller solely used in and necessary for the operation of the business.
Excluded Assets:	Cash/Cash Equivalents; All Accounts Receivable and other rights to payment from third parties prior to the effective date; all prepaid expenses, advance payments, security deposits and other prepaid items and duties immediately prior to the effective date, all tax returns, records and financial statements of seller and its affiliates, corporate minute books, stock ledgers and other books and records, all the rights of seller under this agreement and all transaction documents
Assumed Liabilities	Accounts payable arising on or after the effective date, all liabilities of the Business, including, without limitation, those arising under the assigned contracts, which relate to the operation of the Business on or after the Effective date, all liabilities of the business relating to any business assets in respect of any period on or after the effective date and all liabilities expressly assumed by purchaser
Purchase Price:	$9,600,000
Payment of Purchase Price:	In full at closing

The purchase price of the operations is proposed to be satisfied with $1,920,000 in members' equity and a loan of $7,680,000.

Meridian Capital Group has provided the facility with a letter of interest for the loan financing with a 25-year term at a 5% interest rate.

The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of March 30, 2022, the facility had no outstanding Medicaid liabilities.

Lease Agreement

The applicant submitted a draft lease agreement, the terms of which are summarized below:

Premises:	120-bed RHCF located at 839 Suffolk Avenue, Brentwood (Suffolk County)
Landlord:	Ross Propco, LLC
Tenant:	Ross Opco, LLC
Term:	10 years
Rent:	$1,541,895 Annually for year one with an annual 2% raise from years two-ten
Provisions:	Taxes, insurance, repairs and maintenance, improvements, and alterations.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an original affidavit attesting to the relationship between landlord and tenant.

Capability and Feasibility

Ross OPCO, LLC d/b/a Ross Center for Nursing and Rehabilitation will acquire the RHCF's operations for $9,600,000 funded via $1,920,000 in members' equity and a loan of $7,680,000 with a 25-year term at a 5% interest rate. There are no project costs associated with this application.

The working capital requirement is $2,612,399 based on two months of first-year expenses. Working capital will be satisfied via equity from the proposed members. BFA Attachment A, the proposed members' net worth summaries, shows sufficient assets overall to meet the acquisition and working capital equity requirements. Nosson Stein and Peretz Stein do not have sufficient equity to fully fund their portion of the purchase price and the working capital equity requirement and Shalom Stein has provided an affidavit confirming he will contribute personal resources disproportionate to his membership interest in the operations to fund any other proposed member's equity shortfall. BFA Attachment C provides the pro forma balance sheet as of the first day of operation, which indicates a positive members' equity of $2,143,500.

The submitted budget indicates net incomes of $630,305 for the first year and $686,300 for the third year. The budget appears reasonable.

BFA Attachment D presents a financial summary of Ross Acquisition, LLC D/B/A Ross Center for Health and Rehabilitation for the period 2018 through 2020. As shown, the 2018-2020 Certified Financial Summary indicates the facility had an average negative net asset position, an average negative working capital position, and generated an average operating loss of $1,091,348 for the period 2018-2020. The Internal Financials Summary as of 12/31/21 shows the facility has both negative working capital and net asset position and generating a net income of $753,448.

Leadership implemented changes to reduce expenses and improve revenue after the June 2016 change in ownership. It was determined that operating costs were not in line with the facility size and billing issues were discovered in 2019. Both issues had a significant negative impact on operating results. The expense base has now been aligned with the facility scale and a new billing company has been retained. The operating loss for 2020 was due to the reduced census and increased expenses resulting from the COVID-19 pandemic. Occupancy rates have recovered to almost pre-pandemic levels. In 2019, Ross Center's occupancy was 94.8%. As stated previously, occupancy as of 3/31/22 was 91.7% This combined with the other initiatives mentioned has resulted in a positive net income as of 12/31/21

Conclusion

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

Attachments

LTCOP Attachment A	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Net Worth Summary, Members of Ross Opco, LLC
BFA Attachment B	Organizational Chart of the Proposed Members of the RHCF Operations
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	2018-2020 Certified and 1/1/21-12/31/21 Internal Financial Summary of Ross Acquisition, LLC D/B/A Ross Center for Health and Rehabilitation

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 2nd day of June 2022, 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 Ross OPCO LLC as the new operator of Ross Center for Nursing and Rehabilitation, an existing 120 bed skilled nursing facility located at 839 Suffolk Avenue, Brentwood, 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:
202269 E	Ross OPCO LLC d/b/a Ross Center for Nursing and Rehabilitation

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR].
2. Submission of an executed Certificate of Amendment of the Articles of Organization of Ross OPCO, LLC, acceptable to the Department. [CSL]
3. Submission of a photocopy of an amended and executed Lease Agreement between Ross PROPCO, LLC and Ross OPCO, LLC, acceptable to the Department. [CSL]
4. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
5. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by one year from the date of the recommendation 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]

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

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 192026-E
Eastside Opco LLC d/b/a
East Side Nursing & Rehab

Program:	**Residential Health Care Facility**	***County:***	**Wyoming**
Purpose:	**Establishment**	***Acknowledged:***	**August 2, 2019**

Executive Summary

Description

Eastside Opco LLC, d/b/a East Side Nursing and Rehab, a New York limited liability company, requests approval to be established as the new operator of East Side Nursing Home (East Side), an 80-bed, proprietary business corporation, Article 28 Residential Health Care Facility (RHCF) located at 62 Prospect Street, Warsaw (Wyoming County). East Side Nursing Home, Inc., whose sole member is A. John Bartholomew, Sr., is the current operator of the facility. The real property is owned by Eastside JM Propco LLC, which purchased the property on December 21, 2018. Upon approval of this application by the Public Health and Health Planning Council (PHHPC), the new facility operator will be Eastside Opco LLC, and the facility will be named East Side Nursing and Rehab.

On October 11, 2017, Eastside Opco LLC entered into the APA with East Side Nursing Home, Inc. for the sale and acquisition of the RHCF operating interests for a purchase price of $100,000.

The proposed operator is Eastside Opco, LLC, whose members are listed below:

CME JM OPCO Holdings, LLC	100%
Members	**%**
Jennifer Farkas	45%
Eli Gibber	15%
Avrohom (Josh) Brown *	30%
Michael Lebovics	10%
Total	**100%**

** Managing member*

Concurrently under review is CON 192027 in which the proposed members of this application are seeking approval to acquire the operating interests of Crest Manor Living and Rehabilitation Center (Crest Manor) an 80-bed RHCF located in Fairport (Monroe County).

On October 10, 2017, Milrose Nation Trust LLC (Milrose) negotiated an Agreement for Transaction Documents (ATD) and a Contract of Sale (COS) for the operating and realty interests in East Side and Crest Manor RCHFs. The interests in Eastside were subsequently transferred to Eastside OPCO, LLC and Eastside JM Propco LLC (operations and realty, respectively). Upon PHHPC approval the operations of East Side are being assigned to the proposed Operators who will then enter a non-arms-length lease for the real property.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this project.

Program Summary

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

Financial Summary

Eastside Opco LLC will acquire the RHCF operations for $100,000 funded by members' equity. There are no project costs associated with this application.

Budget	Year One	Year Three
Revenues	$7,814,900	$7,869,300
Expenses	7,443,200	7,444,400
Net Income	$371,700	$424,900

Recommendations

Long Term Care Ombudsman Program
The LTCOP recommends Contingent Approval (See LTCOP Attachment A).

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

Office of Primary Care and Health Systems Management
Approval contingent upon:
1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
3. Submission of a photocopy of the Certificate of Assumed Name, acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended and executed Articles of Organization, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed Operations Transfer Agreement, acceptable to the Department. [CSL]
7. Submission of a photocopy of an amended and executed Lease Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of an amended and executed Medicaid Affidavit, acceptable to the Department. [CSL]
9. Submission of a photocopy of an amended and executed Application for Authority for CME JM Opco Holdings LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of an amended and executed Operating Agreement for CME JM Opco Holdings LLC, acceptable to the Department. [CSL]

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

Council Action Date
June 2, 2022

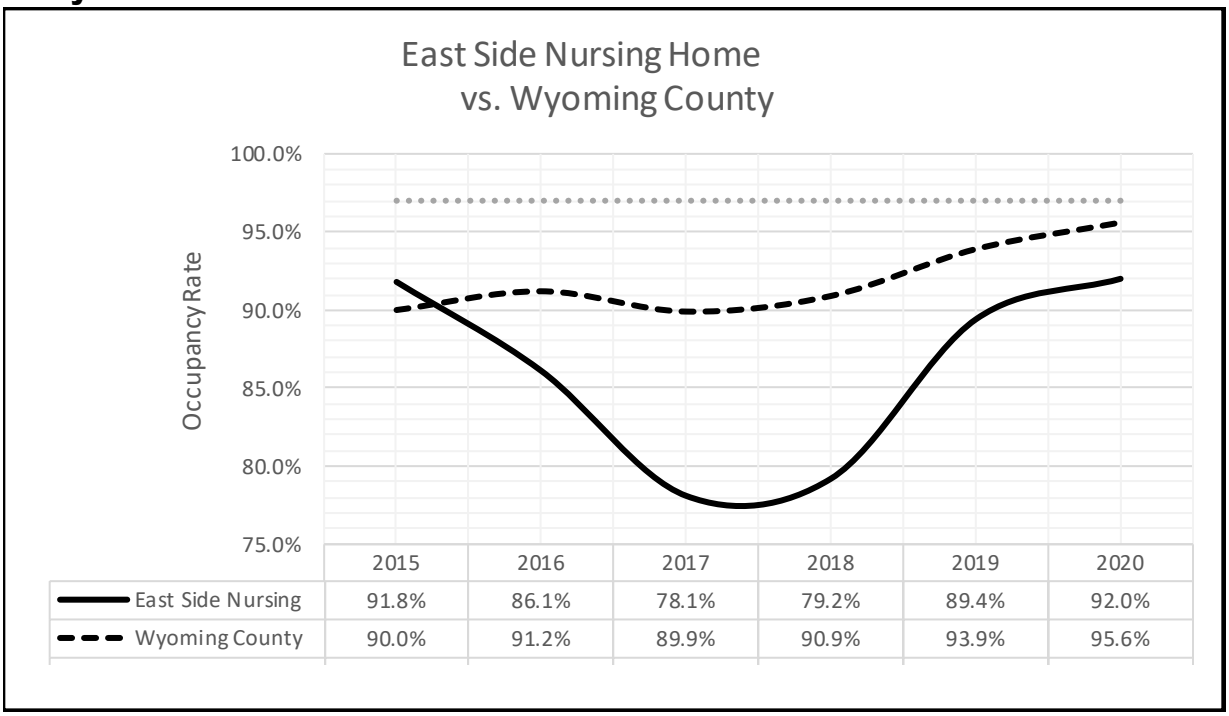
Need and Program Analysis

Facility Information

	Existing	Proposed
Facility Name	East Side Nursing Home	East Side Nursing and Rehab
Address	62 Prospect St. Warsaw, NY 14569 (Wyoming)	Same
RHCF Capacity	80 beds	Same
ADHCP Capacity	N/A	N/A
Type of Operator	Business Corporation	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	**East Side Nursing Home, Inc.** Shareholder A. John Batholomew, Sr. 100%	**Eastside Opco, LLC** Member CME JM OPCO Holdings LLC 100% Members Avrohom Josh Brown* 30% Jennifer Farkas 45% Eli Gibber 15% Michael Lebovics 10% **Managing Member*

This project seeks approval to certify Eastside OPCO LLC as the new operator of the 80-bed residential health care facility located at 62 Prospect Street, Warsaw, 14569 currently operated as Eastside Nursing Home Nursing and Rehabilitation at Westfield.

Analysis



The applicant reports that there are a variety of reasons for the decline in occupancy from 2016 through 2018, including the operator's intent to sell the facility and the resulting staff turnover. Since May 2019, Avrohom Josh Brown, one of the members of the proposed operator, has been involved in the day-to-day operations as Chief Operating Officer. As a result, the facility has seen improvement in the current occupancy. Based on weekly census data, current occupancy, as of March 16, 2022, was 93.8% for the facility and 94.5% for Wyoming County.

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long-term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay of 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department. An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

East Side Nursing Home's Medicaid admissions rate was above the threshold of 75% of the Wyoming County, as demonstrated in the table below.

Medicaid Access	2018	2019	2020
Wyoming County Total	34.4%	23.8%	25.0%
Wyoming Threshold Value	*25.8%*	*17.9%*	*18.8%*
Eastside Nursing Home	27.9%	26.1%	24.5%

Character and Competence

Avrohom Josh Brown is a licensed nursing home administrator in New York. He reports concurrent employment as the Chief Operating Officer at Crest Manor Living and Rehabilitation and East Side Nursing and Rehabilitation Center. He reports prior employment as the Licensed Nursing Home Administrator at Oakland Rehabilitation and Healthcare Center in Oakland, NJ, Administrator at Brentwood Rehabilitation and Healthcare Center located in Danvers, MA, Assistant Administrator at Oakland Rehabilitation and Healthcare in Oakland, NJ, and Administrator in Training at New Eastwood Rehabilitation and healthcare in Easton, PA. Avrohom Josh Brown holds a B.A. from Fairleigh Dickinson University and discloses ownership interests in the following health care facilities:

Massachusetts Nursing Home:
Park Ave Health Center (27.5%) 09/2021-Present

Jennifer Farkas reports employment as a real estate consultant at Ocean Miracle, which is a commercial real estate firm in Lakewood, NJ, and reports previous employment as a Real Estate Investor. She indicates that she has a high school diploma. Jennifer Farkas discloses no health facility ownership. She is concurrently being reviewed for CON 192027 Crest Manor Living and Rehabilitation Center and discloses a 15% interest in the real property of the subject facility, as well as a 15% interest in Crest Manor Living and Rehabilitation Center.

Eli Gibber reports self-employment as the owner of TG Realty located in Lakewood, NJ. He reports previous employment as an Asset Manager at FBE, a real estate business located in NY, NY, and a commercial mortgage broker at Eastern Union located in Howell, NJ. Eli Gibbler indicates that before this he studied at Beth Medrash Govoha. He discloses no health facility ownership.

Michael Lebovics reports employment as President of Innovative Supply Group, LLC a supplier of medical supplies to residents in nursing homes located in Lakewood, NJ., and concurrent employment in sales at Wound Care Concepts, a company located in Bristol, PA. Michael Lebovics holds a master's

degree from Beth Medrash Govoha and has taken business enrichment courses at Professional Career Services. He discloses no health facility ownership.

Avrohom Josh Brown, Jennifer Farkas, Eli Gibber, and Michael Lebovics are concurrently being reviewed for CON 192027 Crest Manor Living and Rehabilitation Center.

Quality Review

The Nursing Home Compare website now includes information to alert consumers about abuse or neglect in nursing homes. Facilities that have been recently cited for resident harm or potential harm for abuse or neglect are indicated with an icon of a red circle with a hand in it.

Avrohom Josh Brown has an ownership interest in Park Avenue Health Center. This facility has had two harm level enforcements since he began his ownership interest. The applicant states that the steps taken to address these issues include replacing the administrator and the director of nursing, increasing staff levels and that all staff have been trained in abuse education.

Facility	*Ownership Since*	*Overall*	*Health Inspection*	*Quality Measure*	*Staffing*
New York					
East Side Nursing Home	Subject Facility	*****	****	*****	**
Massachusetts					
Park Ave Health Center	Current	*	*	****	***
	09/2021	**	***	****	*

***Data date**: 04/2022*

Enforcement History

A review of the operations of **Park Ave Health Center** for the period indicated above indicates the following:

- The facility was assessed a federal CMP of $650 on September 27, 2021, for failure to report COVID data.
- A Federal CMP of $7,345 was assessed for September 20, 2021, survey findings relating to Freedom from Abuse, Neglect, and Exploitation Deficiencies
- A Federal CMP of $15,000 was assessed for November 23, 2021, survey findings relating to Freedom from Abuse, Neglect, and Exploitation Deficiencies

Avrohom Josh Brown is the Chief Operating Officer of East Side Nursing Home and Crest Manor Living and Rehabilitation since May 2019.

A review of the operations of **East Side Nursing Home** for the period indicated above indicates the following:

- The facility was assessed a federal CMP of $650 on 07/05/2021 for failure to report COVID data.
- The facility was fined $2,000 pursuant to Stipulation and Order NH-21-146 issued 7/7/2021 for surveillance findings on 12/31/2020. Deficiencies were found under 10 NYCRR 415.19(a)(1) – Infection Control - Screening.

A review of the operations of **Crest Manor Living and Rehabilitation** for the period indicated above indicates the following:

- The facility was assessed a federal CMP of $655 on 07/12/2021 for failure to report COVID data.

Conclusion

The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3)(b). There will not be any changes to beds, services, or utilization in the area resulting from this change in ownership.

Financial Analysis

Operating Budget

The applicant has provided the current year (2020) results and the first- and third-year operating budget, in 2022 dollars, after the change in ownership. The budget is summarized below:

	Current Year		Year One		Year Three	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Revenues						
Commercial FFS	$270.90	$273,338	$270.90	$273,340	$286.32	$288,900
Medicare FFS	$627.15	1,428,023	$561.08	1,907,100	$572.29	1,945,200
Medicare MC	$379.87	477,494	$380.00	477,660	$379.95	477,600
Medicaid FFS	$175.84	2,603,006	$207.55	3,163,946	$207.55	3,163,946
Medicaid MC	$185.27	849,476	$207.58	951,754	$207.58	951,754
Private Pay	$404.09	1,210,261	$356.97	1,011,300	$359.97	1,011,300
All Other		32,960		29,800		30,600
Total Op. Rev.		$6,874,558				
CARES Act Funds		$97,774				
Total Revenue		$6,972,332		$7,814,900		$7,869,300
Expenses						
Operating	$241.72	$6,508,532	$247.76	$7,018,200	$247.80	$7,019,400
Capital	$18.16	488,950	$15.00	$425,000	$15.00	425,000
Total Expenses	$259.88	$6,997,482	$262.76	$7,443,200	$262.80	$7,444,400
Net Income/(Loss)		($25,150)		$371,700		$424,900
Patient Days		26,926		28,327		28,327
Occupancy		92.21%		97.01%		97.01%
Breakeven		92.54%		92.40%		91.77%

* All Other revenue includes interest income and vendor rebates/refunds.

The following is noted for the submitted RHCF operating budget:

- Private Pay and Commercial rates are based on similar facilities in the same geographical area.
- Medicaid revenue is based on the facility's current 2020 Medicaid Regional Pricing rate plus assessments.
- The $32,960 variance between the 2020 operating revenue in the certified financial statements and the total Current Year revenue reported in the budget is All Other revenue listed above. In the financial statements, this amount is reported on a non-operating line labeled Other Income.
- The $25,150 net loss reported in the Current Year 2020 is due to revenue and expense fluctuations resulting from the COVID-19 pandemic. This net loss is inclusive of $97,774 in CARES Act funds recognized as revenue as of December 31, 2020. The remaining $481,552 of CARES Act funds was reported as deferred revenue on the 2020 Certified Financial Statements.
- Avrohom (Josh) Brown, one of the proposed members, has been employed at East Side as the Chief Operating Officer to help improve operations since May 1, 2019. He has positively impacted operations resulting in increased admissions with occupancy increasing from 79.2% in 2018 to 89.40% in 2019. Occupancy remained high at 92.21% during 2020 but declined to 82.12% in 2021 due to the impact of the COVID-19 pandemic, which adversely affected the facility. Once the facility was COVID-free, occupancy improved as evidenced by average occupancy of 86.28% between March and December of 2021 and an occupancy rate reaching 91.05% in December 2021. January 2022 occupancy level reached 97.06%. Wyoming County occupancy rates for December 2021 and January 2022 are 89.4% and 90.4%, respectively.
- The breakeven utilization is projected at 92.40% for the first year.
- In 2020, Medicaid admissions of 24.5% exceeded Wyoming County's 75% threshold rates of 18.8%.

- Initiatives to meet the projected occupancy rate of 97.01% in Years One and Three include:
    - Review of existing and potentially new programs to better meet community needs.
    - Additional outreach to upstream and downstream providers with emphasis on creating new marketing programs.
    - Periodic retraining of case managers who work with hospital discharge planners on hard-to-place patients and understanding how the skilled nursing facility can meet their needs.

Utilization by payor source for the first- and third-year after the change in ownership is summarized below:

Payor	Current Year	Years One & Three
Commercial	3.75%	3.56%
Medicare	13.13%	16.44%
Medicaid	72.00%	70.00%
Private Pay	11.12%	10.00%
Total	100.00%	100.00%

Agreement for Transaction Documents

The applicant submitted an executed ATD to hold all rights and obligations subject to terms of the ATD. The terms are summarized below:

Date:	October 10, 2017
Assignor (Seller):	Milrose National Trust LLC
Assignee (Buyer):	Eastside Opco LLC, Eastside Propco LLC, Crest Opco LLC and Crest Propco LLC
Transaction:	Milrose negotiated Asset Purchase Agreements and Contracts of Sale (collectively, the "Transaction Documents") for the sale of the operations and real property for East Side located at 62 Prospect Street, Warsaw, NY, and Crest Manor located at 6745 Pittsford Palmyra Rd, Fairport, NY. Milrose and Buyer agreed Buyer shall be entitled to enter into the Transaction Documents rather than Milrose and hold all rights and obligations subject to the terms of ATD.

Asset Purchase Agreement

The applicant has submitted an executed APA to acquire the RHCF's operating interests, which will become effective upon PHHPC approval. The terms are summarized below:

Date:	October 11, 2017
Seller:	Eastside Nursing Home Inc.
Buyer:	Eastside Opco LLC
Asset Acquired:	The business and operation of the facility; leasehold improvements, furniture, fixtures and equipment owned or leases by seller; inventory, supplies, and other articles of personal property; transferable contracts, agreements, leases and undertakings; resident funds in trust, security deposits and prepayments; manuals and computer software; resident/patient records; goodwill; all books and records relating to the facility; licenses and permits; Medicare and Medicaid provider numbers; rate increases and/or lump sum or other payments, resulting from rate appeals, audits or otherwise; patient claims, accounts receivable on and after closing date; leases and assets of seller relating to the facility.
Excluded Assets:	Amounts due from parties related to seller; seller's cash and cash equivalents; prepaid expenses; claims, causes of action and legal rights for periods prior to the closing date; receivables from any affiliated of seller; and payments made in connections with "Universal Appeal Settlement".
Purchase Price:	$100,000
Payment of Purchase Price:	$100,000 due at closing.

The purchase price of the operations is to be satisfied via proposed members' equity.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of April 15, 2020, the facility had no outstanding Medicaid liabilities.

Lease Agreement

The applicant submitted a draft lease agreement, the terms of which are summarized below:

Premises:	80-bed RHCF located at 62 Prospect Street, Warsaw, NY 14569
Landlord:	Eastside JM Propco LLC
Lessee:	Eastside Opco LLC
Term:	10 years from Commencement Date
Rent:	$405,000 ($33,750 per month) during the first 12-month period after Commencement Date; $441,000 ($36,750 per month) during the subsequent four 12-month periods through 2024; Base rent shall increase 1.5% over previous year from 2024 through remainder of the Term. The tenant shall provide a $67,500 security deposit to the landlord upon execution of the lease.
Provisions:	Taxes, insurance, repairs and maintenance, improvements, and alterations.

The applicant has submitted an affidavit stating the lease between the property owner and the lessee is a non-arm's length arrangement due to common ownership. The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square footage rental.

Capability and Feasibility

Eastside Opco LLC will acquire the RHCF's operations for $100,000 funded via members' equity. There are no project costs associated with this application.

The working capital requirement is estimated at $1,240,533 based on two months of first-year expenses. Working capital will be satisfied via equity from the proposed members. BFA Attachment A shows the proposed members' net worth summary, indicating sufficient resources overall to meet the acquisition and working capital equity requirements. Michael Lebovics has provided an affidavit confirming their willingness to contribute personal resources disproportionate to their membership interest in the operations to cover any other proposed member's equity shortfall. BFA Attachment E provides the Pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of $1,876,100. It is noted that assets include $400,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, members' equity would be $1,476,100. The submitted budget indicates that net income of $371,700 and $424,900 will be generated for the first- and the third year, respectively. The budget appears reasonable.

BFA Attachment B is the Financial Summary of East Side Nursing Home for 2019 through January 31, 2022. As shown, the RHCF maintained a positive working capital position and positive equity from 2019 through 2022. In 2019 and 2020 East Side reported operating losses of $576,725 and $58,110, respectively. The 2019 operating loss is attributable to lower utilization in the first four months of operation. With the oversight of Avrohom Brown as Chief Operating Officer since May 2019, occupancy rates have improved, and the applicant anticipates occupancy to continue to improve as the impacts from the pandemic stabilize. The 2019 operating loss was offset by $924,384 in other income, comprised of $110,292 in other income and $814,092 in income recognized for the forgiveness of debt attributable to a sale of property previously leased by East Side to an unrelated third party. In connection with the sale, the $814,092 note payable reported on East Side's financial statements was forgiven and recognized as income, resulting in a net income of $347,659.

The $58,110 operating loss reported in 2020 is attributable to revenue and expense fluctuations resulting from the COVID-19 pandemic and was offset by other income of $32,960, resulting in a net loss of $25,150 as presented in Attachment C. During 2020, East Side reported receipt of $579,296 in CARES Act funding of which $97,774 was recognized as revenue in 2020 with remaining $481,552 categorized as deferred revenue and were retained by the facility. During this period, East Side reported receipt of Paycheck Protection Program funds for $792,286, which met the expenditure criteria set forth by the U.S. Small Business Administration. The funds were fully retained by the applicant. The organization also took an Economic Injury Disaster Loan amounting to $150,000 with an interest rate of 3.75% for 30 years, with a monthly payment of $731 starting in July 2021.

For the period ending December 31, 2021, East Side reported positive working capital, positive equity, and a reported net income of $1,827,437. During this period, the East Side received $76,144 in CARES Act funding, which was retained by the facility. For the period ending January 31, 2022, the facility reported positive working capital, positive equity, and net income of $335,157. In 2022 the facility indicated receipt of additional CARES Act funding for $210,293.

Conclusion

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

Attachments

LTCOP Attachment A	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Net Worth of Proposed Members of Eastside Opco LLC
BFA Attachment B	Financial Summary of East Side Nursing Home
BFA Attachment C	East Side Nursing Home, Inc. 2020 Certified Financial Statements
BFA Attachment D	Transition Summary Organizational Chart of Operations and Realty
BFA Attachment E	Pro Forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of June 2022, 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 Eastside Opco LLC as the new operator of the 80-bed residential health care facility located at 62 Prospect Street, Warsaw currently operated as East Side Nursing Home, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
192026 E	Eastside Opco LLC d/b/a East Side Nursing & Rehab

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
3. Submission of a photocopy of the Certificate of Assumed Name, acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended and executed Articles of Organization, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed Operations Transfer Agreement, acceptable to the Department. [CSL]
7. Submission of a photocopy of an amended and executed Lease Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of an amended and executed Medicaid Affidavit, acceptable to the Department. [CSL]
9. Submission of a photocopy of an amended and executed Application for Authority for CME JM Opco Holdings LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of an amended and executed Operating Agreement for CME JM Opco Holdings LLC, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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

NEW YORK STATE OF OPPORTUNITY | Department of Health

MEMORANDUM

TO: Lisa Thomson
Division of Health Facility Planning

Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

FROM: Kerri Tily, Senior Attorney
Division of Legal Affairs, Bureau of Health Facility Planning and Development

DATE: March 1, 2022

SUBJECT: Certificate of Amendment of the Certificate of Incorporation of St. Barnabas Nursing Home, Inc.

This is to request that the above matter be included on the agendas for the next Establishment and Project Review Committee and Public Health and Health Planning Council meetings.

The attachments relating to this matter include the following:

1) Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
2) Letter from Garfunkel Wild, P.C., attorneys for St. Barnabas Nursing Home, Inc., dated September 28, 2021;
3) A copy of the executed Certificate of Amendment of the Certificate of Incorporation of St. Barnabas Nursing Home, Inc.;
4) A copy of the Certificate of Incorporation of St. Barnabas Nursing Home, Inc., dated March 26, 1991;
5) A copy of the Certificate of Amendment of the Certificate of Incorporation of St. Barnabas Nursing Home, Inc., dated July 25, 1991;
6) A copy of the Certificate of Amendment of the Certificate of Incorporation of St. Barnabas Nursing Home, Inc., dated May 13, 1992;
7) A copy of the Bylaws of St. Barnabas Nursing Home, Inc.;
8) A copy of the proposed Amended and Restated Bylaws of St. Barnabas Real Estate Holding, Inc.
9) A copy of the Resolution of the Board of Trustees of St. Barnabas Nursing Home, Inc., dated November 22, 2021, consenting to amending the Certificate of Incorporation; and
10) A copy of the Resolution of the Board of Trustees of St. Barnabas Community Enterprises, Inc., dated November 22, 2021, consenting as the sole shareholder of St. Barnabas Nursing Home, Inc., to amending the Certificate of Incorporation.

Attachments

cc: B. DelCogliano, M. Ngwashi

NEW YORK STATE OF OPPORTUNITY. | Department of Health

MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Kathy Marks KSM
General Counsel

Date: April 13, 2022

Subject: Certificate of Amendment of the Certificate of Incorporation of St. Barnabas Nursing Home, Inc.

St Barnabas Nursing Home, Inc. ("St. Barnabas") requests Public Health and Health Planning Council ("PHHPC") approval of a proposed Certificate of Amendment of its Certificate of Incorporation.

St Barnabas wishes to change its name to "St Barnabas Real Estate Holding, Inc." and to remove purpose language relating to the ownership and operation of a nursing home under Article 28 of the Public Health Law.

In 1990, St. Barnabas Nursing Home, Inc., became the established operator of an Article 28 residential health care facility formerly known as St. Barnabas Rehabilitation & Continuing Care Center. St. Barnabas sold all its interest in the facility on November 3, 2016 to SBNH Acquisitions, LLC, pursuant to a certificate of need application number 152167, issued final approval on August 5, 2016. Its exclusive purpose under the certificate of amendment will be to acquire, develop, construct, manage, sell, lease, and hold title to real estate.

The Board of Trustees of St. Barnabas approved the amendment on November 22, 2021. The Board of Trustees of St. Barnabas Community Enterprises, Inc., the sole member of St. Barnabas, also approved the amendment on November 22, 2021.

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

There is no legal objection to the Certificate of Amendment of the Certificate of Incorporation of St. Barnabas Nursing Home, Inc., and it is legally acceptable.

Attachments.

GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
111 GREAT NECK ROAD • GREAT NECK, NEW YORK 11021
TEL (516) 393-2200 • FAX (516) 466-5964
www.garfunkelwild.com

FILE NO.: 00113.0001

September 28, 2021

By FedEx

Ms. Colleen Frost
Executive Secretary, Department of Health
Empire State Plaza
Corning Towers, Room 1805
Albany, NY 12237

Re: Proposed Certificate of Amendment of St. Barnabas Nursing Home, Inc. ("SBNH")

Dear Ms. Frost:

I enclose a copy of the proposed Certificate of Amendment of SBNH. We request Public Health and Health Planning Council approval of this proposed Certificate of Amendment.

This amendment is being filed subsequent to a transaction in which SBNH sold all of its nursing home interests and will become a not-for-profit real estate holding company.

Also enclosed to aid you in your review is a copy of the Certificate of Incorporation of the Corporation and all filed amendments. There have been no subsequent amendments to the Certificate of Incorporation. As the underlying transaction has already occurred and received consent, we respectfully request an expedited review for this amendment. We appreciate your consideration of this matter.

Please contact me at (516) 393-2578 or via e-mail at mstringfellow@garfunkelwild.com, if there is any additional information that you require, or if you have any further questions.

Regards,

Michael Stringfellow
Paralegal

Enclosure
cc: Andrew Schulson, Esq.

EXHIBIT A

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

ST. BARNABAS NURSING HOME, INC.

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

The undersigned, being the Executive Vice President and Chief Financial Officer of ST. BARNABAS NURSING HOME, INC., hereby certifies:

The name of the corporation is ST. BARNABAS NURSING HOME, INC. (the "Corporation").

The Certificate of Incorporation of the Corporation was filed by the Department of State on March 26, 1991 pursuant to the Not-for-Profit Corporation Law of the State of New York. A Certificate of Amendment was filed by the Department of State on July 25, 1991. A Certificate of Amendment was filed by the Department of State on May 13, 1992.

The Corporation was formed under Section 402 of the Not-for-Profit Corporation Law (the "N-PCL").

The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the N-PCL.

The amendments effected by this Certificate of Amendment are as follows:

Article FIRST of the Certificate of Incorporation of the Corporation, setting forth the name of the Corporation, is deleted in its entirety and is hereby amended to read as follows:

"FIRST: The name of the Corporation is St. Barnabas Real Estate Holding, Inc."

Article SECOND of the Certificate of Incorporation regarding the type of Corporation is amended to delete the reference to the Corporation being a type B corporation as defined in Section 201 of the N-PCL and to add that the Corporation is charitable. Accordingly Article SECOND is deleted in its entirety and is hereby amended to read as follows:

"SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the N-PCL and is a charitable corporation under Section 201 of the N-PCL. The Corporation shall remain a charitable corporation after this Certificate of Amendment shall become effective.

Article THIRD of the Certificate of Incorporation of the Corporation regarding the purposes of the Corporation is deleted in its entirety and is hereby amended to read as follows:

"THIRD: The purposes for which the Corporation is formed are as follows:

exclusively charitable, educational and scientific in nature. To render voluntary support and assistance by means of contributions and grants to exempt organizations established to benefit the aged, sick, infirm, indigent, and destitute, to render support to the relief of humanity from hardship and privation caused by war, disaster, and acts of God; to render support by means of contributions and grants to established religious, charitable, scientific, medical, literary and educational endeavors of all kinds and descriptions; to contribute to community chests and social welfare funds and generally to support activities of a charitable nature; and

To solicit and receive money and property for the foregoing purposes and to receive and accept for charitable purposes gifts, donations, bequests and devises of money and property;

The Corporation is formed exclusively for the purposes of acquiring, developing, constructing, managing, financing, selling, leasing and holding title to, and collecting income from, such property, and remitting the entire amount of income from real property (less expenses) to its any organization, so long as the organization shall qualify as an organization described in Section 501(c)(25)(iii) of the Internal Revenue Code of 1986, as amended (the "Code"), or such other organization as shall qualify as an organization described in Section 501(c)(25)(C) of the Code.

Do anything and everything reasonably and lawfully necessary, proper, suitable or convenient for the achievement of the foregoing purposes or for the furtherance of said purposes.

Article THIRTEENTH of the Certificate of Incorporation regarding the disposition of real property is deleted in its entirety.

Article FOURTEENTH of the Certificate of Incorporation regarding the limitations on the decision-making authority of any member is deleted in its entirety.

Article FIFTEENTH of the Certificate of Incorporation regarding the duration of the Corporation is renumbered to read in its entirety as follows:

"THIRTEENTH: The duration of the Corporation shall be perpetual."

Article SIXTEENTH of the Certificate of Incorporation regarding the distribution of the Corporation of income for any taxable year is renumbered to read in its entirety as follows:

"FOURTEENTH: The Corporation shall distribute its income for each taxable year at such time and in such manner as not to subject it to tax under Section 4942 of the Code and the Corporation shall not (a) engage in any act of self-dealing as defined in Section 4941(d) of the code; (b) retain any excess business holdings as defined in Section 4943(c) of the Code; (c) make any investments in such manner as to subject the Corporation to such tax under Section 4944 of the Code' or (d) make any taxable expenditure as defined in Section 4945 of the Code."

Article SEVENTEENTH of the Certificate of Incorporation of the Corporation, regarding the designation of the Secretary of State as Agent of the Corporation and service of process address of the Corporation shall be deleted in its entirety and renumbered and amended to read as follows:

"FIFTEENTH: The secretary of state is designated as the agent of the Corporation upon whom process against the Corporation may be served, and the address to which the Secretary of State shall mail a copy of any process served against the corporation served upon him is:

St. Barnabas Real Estate Holding, Inc.
c/o St. Barnabas Hospital
4222 Third Avenue
Bronx, New York 10457
Attn: President"

This amendment to the Certificate of Incorporation of the Corporation was authorized by written consent of the Board of Directors of the Corporation on November 22, 2020.

IN WITNESS WHEREOF, this Certificate has been signed this 22nd day of November, 2021 by the undersigned who affirms that the statements made herein are true under the penalties of perjury.

By: _____
Name: Mary Grochowski
Title: Executive Vice President & Chief Financial Officer

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

ST. BARNABAS NURSING HOME, INC.

(Under Section 803 of the Not –for-Profit Corporation Law of the State of New York)

FILED BY:

MICHAEL STRINGFELLOW, PARALEGAL

GARFUNKEL WILD, P.C.

ATTORNEYS AT LAW

111 GREAT NECK ROAD

GREAT NECK, NEW YORK 11021

STATE OF NEW YORK

DEPARTMENT OF STATE

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

WITNESS my hand and official seal of the Department of State, at the City of Albany, on July 13, 2010.

Daniel E. Shapiro
First Deputy Secretary of State

Rev. 06/07

9174P/si/012249/RSD3/3

F91032600268

CERTIFICATE OF INCORPORATION OF
ST. BARNABAS NURSING HOME, INC.
Under Section 402 of the Not-for-Profit
Corporation Law

The undersigned, a natural person over the age of eighteen years, desiring to form a corporation pursuant to the provisions of the Not-for-Profit Corporation Law, does hereby certify:

FIRST: The name of the corporation is ST. BARNABAS NURSING HOME, INC. (the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law of the State of New York and is a Type B corporation under Section 201 of the said Law.

THIRD: The purposes for which the Corporation is formed are exclusively charitable, educational and scientific in nature, including the planning, constructing, erection, building, acquisition, alteration, reconstruction, rehabilitation, ownership, maintenance and operation, on a not-for-profit basis, of a nursing home project pursuant to Article 28-A of the Public Health Law of the State of New York (the "Public Health Law"). The Corporation has been organized exclusively to serve a public purpose and it shall be and remain

subject to the supervision and control of the Commissioner of Health of the State of New York (the "Commissioner") pursuant to the provisions of Article 28 of the Public Health Law.

FOURTH: In furtherance of the foregoing purposes, the Corporation shall have all of the general powers enumerated in Section 202 of the Not-for-Profit Corporation Law together with the power to solicit grants and contributions for any corporate purpose, the power to maintain a fund or funds of real or personal property for any corporate purposes, and all of the additional powers set forth in Section 2856 of the Public Health Law as amended from time to time. The Corporation shall have the right to exercise such other powers as now are, or hereafter may be, conferred by law upon a corporation organized for the purposes hereinabove set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the limitation and condition that, notwithstanding any other provision of this Article FOURTH, the Corporation shall not have the power to carry on any activity not permitted to be carried on by a corporation exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future United States Internal Revenue Law (hereinafter referred to as the "Code").

FIFTH: The Corporation shall be empowered to solicit funds from the public.

SIXTH: All income and earnings of the Corporation shall be used exclusively for its corporate purposes. The Corporation is not formed for pecuniary profit or for financial gain of its directors or officers or of its members, if any, and no part of its net income or net earnings shall be distributed to or inure to the benefit or profit of any private individual, firm or corporation. Reasonable compensation, however, may be paid for services rendered to or for the Corporation in furtherance of one or more of its purposes. No part of the net income or net earnings of the Corporation shall inure to the benefit or profit of any private individual, firm or corporation.

SEVENTH: Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Section 404(b-n), (p-s) and (u) of the Not-for-Profit Corporation Law.

EIGHTH: No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation, (except to the extent authorized by Section 501(h) of the Code during any fiscal year or years in which the Corporation has chosen to utilize the benefits authorized by that statutory provision) and the Corporation shall not participate in or intervene (including the publishing or distributing of statements) in any political campaign on behalf of any candidate for public office.

NINTH: The office of the Corporation shall be located in the County of Bronx, State of New York.

TENTH: The number of directors of the Corporation shall be not less than three (3) and not more than thirty-five (35). One additional director may be appointed by the Commissioner. In the absence of fraud or bad faith, the director appointed by the Commissioner shall not be personally liable for the debts, obligations and liabilities of the Corporation.

ELEVENTH: The names and addresses of the initial directors of the Corporation are as follows:

Name	Address
HALIBURTON FALES, II	1155 Avenue of the Americas New York, New York 10036
GROVER O'NEILL, JR.	Meriwether Capital 30 Rockefeller Plaza - Rm. 5432 New York, New York 10012-0248
MAXWELL PFEIFER, ESQ.	714 East 241st Street Bronx, New York 10470

TWELFTH: In the event of dissolution, the assets and property of the Corporation remaining after payment of expenses and the satisfaction of all liabilities shall be distributed by the Board of Directors to ST. BARNABAS HOSPITAL to be used for substantially similar purposes, subject to the

approval of a court of competent jurisdiction upon application of the Board of Directors, provided that no such distribution shall be made to the said ST. BARNABAS HOSPITAL unless the proposed distributee shall at that time qualify as an exempt organization under Section 501(c)(3) of the Code. Any of such assets not so distributed shall be distributed to such other organization or organizations as shall, at that time, qualify as an exempt organization or exempt organizations under Section 501(c)(3) of the Code, subject to the approval of a Justice of the Supreme Court of the State of New York or such other court having jurisdiction over the Corporation.

THIRTEENTH: The real property of the Corporation shall not be sold, transferred, encumbered or assigned except as permitted under Article 28-A of the Public Health Law.

FOURTEENTH: Notwithstanding anything in this Certificate to the contrary, the membership of the Corporation, if any, shall not have decision-making authority over any of the following:

a. Appointment or dismissal of Corporation management-level employees and medical staff, except the election or removal of corporate officers by the members, if so provided in the corporate bylaws;

b. Approval of Corporation operating and capital budgets;

c. Adoption or approval of Corporation operating policies and procedures;

d. Approval of Certificate of Need applications filed by or on behalf of the Corporation;

e. Approval of Corporation debt necessary to finance the cost of compliance with operational or physical plant standards required by law;

f. Approval of Corporation contracts for management or for clinical services; and

g. Approval of settlements of administrative proceedings or litigation to which the Corporation is a party, except approval by the members of settlements of litigation that exceed insurance coverage or any applicable self-insurance fund, to the extent such member approval is required by the corporate bylaws.

FIFTEENTH: The duration of the Corporation shall be to and including July 27, 1991.

SIXTEENTH: The Corporation shall distribute its income for each taxable year at such time and in such manner as not to subject it to tax under Section 4942 of the Code and the Corporation shall not (a) engage in any act of self-dealing as defined in Section 4941(d) of the Code; (b) retain any excess business holdings as defined in Section 4943(c) of the Code; (c) make any investments in such manner as to subject the Corporation to such tax under Section 4944 of the Code; or (d) make any taxable expenditure as defined in Section 4945(d) of the Code.

SEVENTEENTH: The Secretary of State is designated as the agent of the Corporation upon whom process against the Corporation may be served and the address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: St. Barnabas Nursing Home, Inc., c/o St. Barnabas Hospital, Third Avenue & 183rd Street, Bronx, New York, 10457 Attn: President

IN WITNESS WHEREOF, this Certificate has been signed and the statements made herein are affirmed as true under the penalties of perjury this 14th day of March 1990.

Halliburton Fales

HALIBURTON FALES, II
1155 Avenue of the Americas
New York, New York 10036

GROVER O'NEILL, JR.
Meriwether Capital
30 Rockefeller Plaza - Rm. 5432
New York, New York 10012-0248

MAXWELL PFEIFER, ESQ.
714 East 241st Street
Bronx, New York 10470

Attorney General

The undersigned has no objection to the granting of judicial approval hereon and waives statutory notice.

Dated:

Attorney General
State of New York

BY: _____
Assistant Attorney General

Supreme Court

I, HOWARD R. SILVER, a Justice of the Supreme Court of the State of New York, of the Twelfth Judicial District, in which the office of the Corporation is to be located, approve of the foregoing Certificate of Incorporation of St. Barnabas Nursing Home, Inc. and consent to its filing.

Dated:

MAR 18 1991

Howard R Silver
Justice of the Supreme Court
of the State of New York,
Twelfth Judicial District

THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON AND WAIVES STATUTORY NOTICE.

HOWARD R. SILVER

ROBERT ABRAMS, ATTORNEY GEN.
STATE OF NEW YORK

by Howard Holt
HOWARD HOLT
Associate Attorney

Feb 15, 1991

9

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N Y 12237

PUBLIC HEALTH COUNCIL

March 13, 1991

Mr. Richard A. Dennett
Garfunkel, Wild & Travis, P.C.
Attorneys at Law
175 Great Neck Road
Great Neck, New York 11021

Re: Certificate of Incorporation of St. Barnabas Nursing Home, Inc.

Dear Mr. Dennett:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 27th day of July, 1990; I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of St. Barnabas Nursing Home, Inc., dated November 14, 1990, for a limited duration of one year expiring on July 27, 1991.

Sincerely,

Karen S. Westervelt

Karen S. Westervelt
Executive Secretary

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F910326000368

CERTIFICATE OF INCORPORATION

OF

[illegible] HOUSING CORP., INC.

Under Section 402 of the
Not-for-Profit Corporation Law

CAMPUNZEL, WILD & TRAVIS, P.C.
Attorneys at Law
1776 GREAT NECK ROAD
GREAT NECK, N.Y. 11021

FILED
MAR 11 1991
COUNTY CLERK'S OFFICE
NASSAU COUNTY

RECEIVED
MAR 26 1991
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED

STATE OF NEW YORK

DEPARTMENT OF STATE

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

WITNESS my hand and official seal of the Department of State, at the City of Albany, on July 13, 2010.

Daniel E. Shapiro
First Deputy Secretary of State

Rev. 06/07

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

ST. BARNABAS NURSING HOME, INC.

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

E 910725000 E

The undersigned, the President and Secretary, respectively, of ST. BARNABAS NURSING HOME, INC., hereby certify:

1. The name of the corporation is ST. BARNABAS NURSING HOME, INC. (hereinafter sometimes referred to as the "Corporation").

2. The certificate of incorporation of the Corporation was filed by the Department of State on March 26, 1991 pursuant to the Section 402 of the Not-for-Profit Corporation Law.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of section 102 of the Not-for-Profit Corporation Law of the State of New York. The Corporation is a type B corporation under section 201 of said law and shall remain a type B corporation after this Amendment.

4. The certificate of incorporation of the Corporation is hereby amended to extend the duration of the Corporation from a duration expiring July 27, 1991 to a duration expiring

May 17, 1992. The following paragraph is substituted for paragraph THIRTEENTH of the Certificate of Incorporation:

THIRTEENTH: The duration of the Corporation shall be to and including May 17, 1992.

5. This Amendment to the certificate of incorporation was authorized by the affirmative vote of two thirds of the entire Board of Directors of the Corporation at a special meeting duly called and held, at which meeting a quorum was present and acting throughout.

6. The Secretary of State of the State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The Post Office address to which the Secretary of State of the State of New York shall mail a copy of such process against the Corporation is as follows: St. Barnabas Nursing Home, Inc., c/o St. Barnabas Hospital, 4422 Third Avenue, Bronx, New York 10457, Attn: President.

IN WITNESS WHEREOF, the undersigned have executed this certificate this 23rd day of July, 1991, and affirm that the statements contained herein are true under penalties of perjury.

Grover C. Wolf, Jr., Vice President

Maxwell B. Leigh, Esq., Secretary

0209p/kk/107239/RSD4/3

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

July 25, 1991

Mr. Richard A. Dennett
Garfunkel, Wild & Travis, P.C.
Attorneys at Law
175 Great Neck Road
Great Neck, NY 11021

Re: Certificate of Amendment of Certificate of Incorporation of St. Barnabas Nursing Home, Inc.

Dear Mr. Dennett:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 17th day of May, 1991, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment to the Certificate of Incorporation of St. Barnabas Nursing Home, Inc., dated July 23, 1991 for a limited life duration expiring on May 17, 1992.

Sincerely,

Karen S. Westervelt
Executive Secretary

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CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

ST. BARNABAS NURSING HOME, INC.

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

BILLED

GARFUNKEL WILD & TRAVIS, P.C.
ATTORNEYS AT LAW
175 GREAT NECK ROAD
GREAT NECK, N. Y. 11021
(516) 466-3080

STATE OF NEW YORK
DEPARTMENT OF STATE
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STATE OF NEW YORK

DEPARTMENT OF STATE

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

WITNESS my hand and official seal of the Department of State, at the City of Albany, on July 13, 2010.

Daniel E. Shapiro
First Deputy Secretary of State

Rev. 06/07

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CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

ST. BARNABAS NURSING HOME, INC.

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

The undersigned, the President and Secretary, respectivaly, of ST. BARNABAS NURSING HOME, INC., hereby certify:

1. The name of the corporation is ST. BARNABAS NURSING HOME, INC. (hereinafter sometimes referred to as the "Corporation").

2. The certificate of incorporation of the Corporation was filed by the Department of State on March 26, 1991 pursuant to the Section 402 of the Not-for-Profit Corporation Law.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of section 102 of the Not-for-Profit Corporation Law of the State of New York. The Corporation is a type B corporation under section 201 of said law and shall remain a type B corporation after this Amendment.

4. The certificate of incorporation of the Corporation is hereby amended to change the duration of the Corporation from a duration expiring May 17, 1992 to a perpetual duration. The following paragraph is substituted for paragraph THIRTEENTH of the Certificate of Incorporation:

THIRTEENTH: The duration of the Corporation shall be perpetual.

5. This Amendment to the certificate of incorporation was authorized by unanimous vote of the entire membership of the Corporation at a duly called and held meeting of the corporation at which meeting a quorum was present and acting throughout.

6. The Secretary of State of the State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The Post Office address to which the Secretary of State of the State of New York shall mail a copy of such process against the Corporation is as follows: St. Barnabas Nursing Home, Inc., c/o St. Barnabas Hospital, 4422 Third Avenue, Bronx, New York 10457, Attn: President.

IN WITNESS WHEREOF, the undersigned have executed this certificate this 2nd day of April, 1992, and affirm that the statements contained herein are true under penalties of perjury.

Halliburton Faler

Halliburton Faler II, President

Maxwell [illegible], Esq., Secretary

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CONSENT TO CERTIFICATE OF AMENDMENT
OF CERTIFICATE OF INCORPORATION

The undersigned, a Justice of the Supreme Court of the State of New York, Twelfth Judicial District, wherein is located the principal office of ST. BARNABAS NURSING HOME, INC., hereby approves the within Certificate of Amendment of the Certificate of Incorporation of ST. BARNABAS NURSING HOME, INC. and the filing hereof.

Dated: MAY 11 1992

JUSTICE OF THE SUPREME COURT
of the State of New York,
Twelfth Judicial District

Bertram Katz

The undersigned has no objection to the granting of judicial approval hereon and waives statutory notice.

Attorney General
State of New York

By: _____

Dated: _____

THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON AND WAIVES STATUTORY NOTICE.

ROBERT ABRAMS, ATTORNEY GEN.
STATE OF NEW YORK

Laura Gelner
April 14 1992
ASSISTANT ATTORNEY GENERAL

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BYLAWS

OF

ST. BARNABAS NURSING HOME, INC.

ARTICLE I

CORPORATE NAME AND PRINCIPAL OFFICE

CORPORATE NAME AND PRINCIPAL OFFICE.

Section 1.01. The name of this corporation (which is sometimes hereinafter referred to as the "Corporation" or the "Nursing Home") is St. Barnabas Nursing Home, Inc.

Section 1.02. The location of the principal office of the Corporation is Third Avenue and 183rd Street, Bronx, New York 10457.

Section 1.03. The Nursing Home's skilled nursing facilities and related facilities shall be constructed and operated in accordance with all applicable provisions of the laws, statutes, rules, regulations and codes governing the construction, maintenance and operation of skilled nursing facilities and related facilities in New York State.

ARTICLE II

MEMBERSHIP AND MANAGEMENT

MEMBERSHIP.

Section 2.01. The sole member of the Nursing Home shall be St. Barnabas Community Enterprises, a not-for-profit corporation organized and existing under the laws of the State of New York (hereinafter in such capacity referred to as the "Member").

Section 2.02. The Member shall take part in discussions of any subject that may properly come before it and shall have such other and additional rights and privileges and be subject to such other duties and restrictions as are set forth in the Not-for-Profit Corporation Law of the State of New York the Certificate of Incorporation of the Corporation or these Bylaws. Except as otherwise provided by law or by these Bylaws, any action to be taken by the Member of this Corporation pursuant to these Bylaws shall be a duly taken action of the Board of Trustees of the Member.

GOVERNING BOARD.

Section 2.03. The management of the Corporation shall be vested in the Board of Trustees (the "Board"). The Board shall be comprised of not less than three (3) nor more than thirty-five (35) Trustees, all of whom shall be voting members and more than fifty (50%) percent of whom must be members of the Board of Directors/Trustees of a not-for-profit corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or corresponding provision of future Internal Revenue Laws (the "Code") and which is supported, in whole or in part by the Corporation. The Commissioner of Health of the State of New York may appoint one additional Trustee, who in the absence of fraud or bad faith, shall not be personally liable for the debts, obligations and liabilities of the Corporation.

TRUSTEES - QUALIFICATION, TERM AND CLASSES.

Section 2.04. Trustees shall be at least eighteen years of age and shall be a citizen and resident of the United States of America. Except as otherwise prohibited by municipal law, ordinance or administrative rule or regulations, nothing in these Bylaws shall be construed to prohibit the appointment of physicians to the Board of Trustees. Trustees shall be selected on the basis of a demonstrated interest in the object of the Nursing Home as set forth in the Certificate of Incorporation, as well as the ability of the candidate to participate effectively in fulfilling the Board's responsibilities.

Section 2.05. Trustees shall hold office for five (5) years and until others are elected in their places or until their death, resignation or removal. They shall be divided into five classes, each to be as nearly equal as possible, and the terms of office of the several classes shall expire in successive years so that only one class of Trustees will be elected regularly in each year.

Section 2.06. Whenever the number of Trustees is increased into the future, new Trustees shall be divided among the five classes to the extent feasible in such manner as to keep the classes as nearly equal as possible, and such new Trustees shall be elected to hold office for a period of one year, two years, three years, four years or five years, depending on the class to which they have been assigned, so that the terms of the new Trustees shall expire coincidentally with the terms of these Trustees of the class to which such new Trustees have been assigned. Thereafter, the successors to the new Trustees shall

be elected to hold office for a period of five years. Such new Trustees shall be elected by a majority vote of the Trustees then in office at a regular or special meeting.

HONORARY TRUSTEES.

Section 2.07. In addition to the foregoing Trustees, the Board, in its discretion, may nominate and elect, individuals who are interested in furthering the well-being and usefulness of the Nursing Home as "Honorary Trustees" who shall serve unofficially in an advisory capacity and without the right to vote for such periods as the Board may determine. Reference to the Board of Trustees in the Bylaws shall not include the Honorary Trustees.

TRUSTEE EMERITUS.

Section 2.08. To honor retiring Trustees for meritorious service while in office, the rank of Trustee Emeritus may be conferred by vote of the Board of Trustees. Trustees Emeritus shall serve unofficially in an advisory capacity and without the right to vote. Reference to the Board of Trustees in the Bylaws shall not include the Trustees Emeritus.

ELECTION OF TRUSTEES.

Section 2.09. One class of Trustees shall be elected at the annual meeting of the Corporation each year by a majority of the votes cast at such election. Any individual nominated at the duly called meeting of the Corporation for which notice of such election has been duly given and at which a quorum is present, shall be elected, by a majority of the votes cast at such meeting.

VACANCIES IN TRUSTEES.

Section 2.10. Any vacancy in the Board of Trustees caused by death, resignation or removal of a Trustee shall be filled by a majority vote of the Trustees then in office, and any Trustee thus elected to fill the balance of an unexpired term shall hold office until his or her successor shall be elected and shall qualify.

POWERS OF BOARD OF TRUSTEES.

Section 2.11. The Board of Trustees shall have power to manage and conduct all the business and concerns of the

Corporation; to make all such Bylaws as may be necessary and not contrary to law relative to the management and disposition of the estate and concerns of the Corporation; and to appoint such agents and employees as they may deem necessary.

RESIGNATION.

Section 2.12. Any Trustee may resign by a notice in writing to the Chairman or Secretary, and such resignation shall be effective upon receipt, unless required by the terms thereof.

REMOVAL OF TRUSTEES.

Section 2.13. Any Trustee may be removed either with or without cause, at any time, by the Board of Trustees or the Member.

ARTICLE III

MEETINGS

ANNUAL MEETINGS.

Section 3.01. The annual meeting of the Corporation for the election of Trustees and the transaction of other business shall be held at the Nursing Home in the Borough of the Bronx, during the month of May at a date and time to be fixed by the Chairman of the Board of Trustees and may be followed by a meeting open to the public at which reports will be presented from the Chairman, Administrator and others. Special meetings of the Corporation may be held at the call of the Chairman or any officer of the Corporation. Such call shall be given in person or by mail not less than two (2) days in advance of the date for which the meeting is called and shall state the purpose for which the meeting is called. No business may be transacted at such special meeting except as is set forth in the call for the meeting.

Section 3.02. The annual meeting of the Board of Trustees shall be held at the Nursing Home in the Borough of the Bronx, during the month of May at a date and time to be fixed by the Chairman of the Board of Trustees and may be followed by a meeting open to the public at which reports will be presented from the Chairman, Administrator and others. Special meetings of the Board of Trustees may be held at the call of the Chairman or any officer of the Corporation. Such call shall be given in

person or by mail not less than two (2) days in advance of the date for which the meeting is called and shall state the purpose for which the meeting is called. No business may be transacted at such special meeting except as is set forth in the call for the meeting.

REGULAR MEETINGS.

Section 3.03. A regular meeting of the Board of Trustees shall be held on the fourth Monday of the following months: September, November, January, March and June, or on such other days and such hour and place as the Board may, from time to time, determine. The Governing Body acting as a committee-of-the-whole at regular meetings shall perform the Executive Committee function.

PLACE OF MEETING.

Section 3.04. All meetings shall be held within or without the State of New York as the Board of Trustees shall from time to time direct. In the absence of such direction, meetings shall be held at the office of the Corporation in the Borough of the Bronx.

NOTICE OF MEETINGS.

Section 3.05. Notice of each meeting of the Corporation and Board, regular or special, shall be given by the Secretary, or may be given by such other persons calling the special meeting, to each Member or Trustee, as applicable, by mailing the same no later than the second day before the meeting, or personally or by telephone or other electronic means of communication no later than the day before the meeting. Notice of a meeting need not be given to any Trustee who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her. A notice, or a waiver of notice, need not specify the purposes of any regular or special meeting of the Board, except as otherwise provided in these Bylaws. A majority of the Trustees present, whether or not a quorum is present, may adjourn any meeting to another time and place, and no notice of any such adjournment need be given.

QUORUM.

Section 3.06. A majority of Trustees, including the Chairman or Senior Vice Chairman, shall be a quorum for the

transaction of all business; except the alienation of any of the real or personal property of a Corporation, or the leasing of any of the real estate thereof for a longer time than one year, or for the suspending or discharging of an officer, or medical staff member, for which purposes the consent of a majority of all the members of the Board shall be necessary. A majority vote of Trustees present shall determine all questions, except as aforesaid and as otherwise provided in these Bylaws; and in case of a tie, the presiding officer shall decide.

ABSENCE OF TRUSTEES.

Section 3.07. Should any Trustee be absent from four consecutive regular meetings or committee meetings without having been excused therefrom, such absence may be construed as a resignation where a majority of the Board is present.

ACTION WITHOUT MEETING; CONFERENCE TELEPHONE.

Section 3.08. Any action required or permitted to be taken by the Board of Trustees or Executive Committee may be taken without a meeting if all members of the Board with power to vote or all members of the Executive Committee, as the case may be, consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the Board or Executive Committee shall be filed with the minutes of the proceedings of the Board or such Committee.

Section 3.09. Any one or more members of the Board of Trustees or Executive Committee may participate in a meeting of the Board or Executive Committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear such other at the same time. Participation by such means shall constitute presence in person at a meeting.

ARTICLE IV

OFFICERS, AGENTS AND EMPLOYEES

OFFICERS.

Section 4.01. The officers of the Corporation shall bear the same titles and be the same individuals as those who are elected or appointed as officers of the Board of Trustees. The

officers of the Board of Trustees shall be Chairman, a Senior Vice Chairman, one or more Vice Chairmen, a Secretary, and an Assistant Secretary, all of whom shall be elected by the Board of Trustees by ballot or voice vote from their own number at the first annual meeting of the Board of Trustees, to serve without compensation, until the next annual meeting of the Board of Trustees and until successors shall have been elected and shall have qualified. In addition, there shall be a President and a Vice President-Treasurer who shall be the individuals serving as President and Vice President-Treasurer of St. Barnabas Hospital. The President and the Vice President-Treasurer shall serve on the Board ex officio, with vote.

CHAIRMAN.

Section 4.02. The Chairman shall preside at all meetings of the Board of Trustees. The Chairman shall have general charge of the affairs of the Corporation but the execution of policy and administration shall be the primary responsibility of the Administrator. The Chairman shall have the responsibility to appoint Committee Chairmen and be an ex-officio member of all Board designated committees.

SENIOR VICE CHAIRMAN-VICE CHAIRMAN.

Section 4.03. The Senior Vice Chairman or, in his absence, any Vice Chairman shall, in the absence of the Chairman, perform the duties of the Chairman.

SECRETARY.

Section 4.04. The Secretary shall keep the minutes of the proceedings of the Board of Trustees. The Secretary shall supervise the custody of the minutes and of all filed documents except as provided in the following section. The Secretary shall notify the Trustees of all meetings of the Board. He shall have custody of a corporate seal and is authorized to execute and affix the seal of the Nursing Home to all instruments necessary in the administration of the Nursing Home.

ASSISTANT SECRETARY.

Section 4.05. In the absence or inability of the Secretary to act, any Assistant Secretary may perform all the duties and exercise all the powers of the Secretary. An

assistant Secretary shall also perform such other duties as the Secretary or the Board of Trustees may assign.

PRESIDENT.

Section 4.06. The President shall bring to the attention of the Board of Trustees from time to time such programs and projects for the benefit of the Corporation as the President may deem desirable, and shall coordinate the work of all committees of the Board. The President shall have such other duties and responsibilities as may be assigned or delegated by the Chairman or the Board. The President shall be an ex-officio member of all standing and special committees of the Board of Trustees.

VICE PRESIDENT AND TREASURER.

Section 4.07. The Vice President and Treasurer shall be responsible for financial procedures and controls, the preparation of financial statements, and together with Administration, preparation and submission of an annual budget.

ADMINISTRATOR/CHIEF OPERATING OFFICER.

Section 4.08. The Governing Board shall select, appoint and fix the compensation of a competent Chief Operating officer who shall be designated Administrator of the Nursing Home and who shall be the representative of the Governing Board in the management of the Nursing Home. The Administrator shall have the necessary authority and responsibility to operate the Nursing Home in all its activities and departments subject only to such policies as may be issued by the Governing Board or by any of the committees to which it has delegated power for such action. The Administrator shall provide liaison among the governing body, medical staff, nursing staff and other departments of the Nursing Home. The Administrator shall have custody of a corporate seal and is authorized to execute, and to affix the seal of the Corporation to all instruments convenient or necessary in his administration of the Nursing Home.

Section 4.09. The authority and responsibility of the Administrator shall include:

a. Carrying out all policies established by the Governing Board and advising on the formation of these policies.

b. Developing and submitting to the Governing Board for approval a plan of organization for the conduct of Nursing Home operation and recommended changes when necessary.

c. Participating in the preparation of an annual budget showing the expected revenue and expenditures as required by the Governing Board or its finance or executive committees.

d. Selecting, employing, controlling and discharging employees, including the official staff and developing and maintaining personnel policies and practices for the Nursing Home.

e. Developing and maintaining a Wage and Salary Program and fixing compensation for officers and staff excepting the compensation of the Administrator, subject to budget controls and guidelines as established by the Board of Trustees.

f. Maintaining physical properties in a good and safe state of repair and operating condition, and ensuring a maximum utilization of resources.

g. Supervising business affairs to ensure that funds are collected and expended to the best possible advantage.

h. Working continually with other health care professionals to the end that appropriate care may be rendered to the patients at all times.

i. Presenting to the Governing Board, or its authorized committees, periodic reports reflecting the professional services and financial activities of the Nursing Home and such special reports as may be required by the Governing Board.

j. Attending all meetings of the Governing Board providing periodic reports of Nursing Home operations and serving on committees thereof.

k. Serving as the liaison and channel of communications between the Governing Board and any of its committees and the Medical Staff and assisting the Medical Staff with the organization and medical administrative problems and responsibilities.

l. Ensuring that all credentials, files and delineation of privileges of individuals recommended for appointment or reappointment to the Medical Staff, are reviewed for completeness prior to presentation by the President of the Medical Staff to the Board of Trustees. Following action by the Board of Trustees, the Administrator of the Nursing Home will notify the candidate of the Board of Trustee recommendation.

m. Preparing a plan for the achievement of the Nursing Home's specific objectives and periodically reviewing and evaluating that plan.

n. Representing the Nursing Home in its relationships with other health agencies.

o. Performing other duties that may be necessary or in the interest of the Nursing Home.

p. Working with community groups to determine that operating procedure serve the community to the extent that financial resources and reimbursement permit.

Section 4.10. The Administrator's performance shall be reviewed annually to ascertain his/her compliance with the standards of performance.

Section 4.11. There shall be one or more Vice Presidents for specific administrative responsibilities, one of whom shall be designated to act in the absence of the Administrator.

INDEMNIFICATION OF TRUSTEES.

Section 4.12. (a) Any person made, or threatened to be made, a party to any action or proceeding, whether civil or criminal, by reason of the fact that such person, or such person's testator or intestate, is or was a Trustee or Officer of any other Corporation in any capacity at the request of the Corporation, shall be indemnified by the Corporation and the Corporation may advance his related expenses, to the full extent permitted by law. Such right of indemnification shall not be deemed exclusive of any other rights to which he may be entitled.

(b) The Corporation shall have the power to purchase and maintain insurance to indemnify the Corporation or directors or officers to the full extent such indemnification is permitted by law.

DISCLOSURE OF CONFLICT OF INTEREST.

Section 4.13. (a) The Board of Trustees shall make every effort to avoid entering into contracts or agreements between the Nursing Home and one or more of its Trustees or officers, or between the Nursing Home and any other corporation, firm, association or other entity in which one or more of its Trustees or officers are directors or officers, or have a substantial financial interest. Any Trustee of the Board having such an interest shall disclose in writing to the Board the material facts as to such Trustee's interest in such contract. The provisions of this section shall not apply to (i) contracts with other not-for-profit corporations for which any Trustee serves as an unsalaried officer, director or trustee, which corporations exist for the purpose of providing administrative, planning and support services or ancillary services to the Nursing Home; and (ii) contracts for the purchase of services in connection with operating the Nursing Home, entered into between the Nursing Home and St. Barnabas Hospital, a New York not-for-profit corporation.

(b) The material terms of any contract or transaction, direct or indirect, between the Nursing Home and any member of its Board of Trustees, or any partnership of which such Trustee is a member, or any Corporation in which such Trustee is a member, or any Corporation in which such Trustee holds ten percent (10%) or more of the outstanding stock shall be submitted to or disclosed to whatever agency of the City of New York is responsible for the administration of Charitable Institution's Budgets and approved by such agency.

(c) No member or officer of the Board of Trustees of the Nursing Home shall share, participate or benefit, directly or indirectly, in the proceeds of any contract or transaction entered into between the Nursing Home and any third party unless such participation or benefit has been approved in advance (1) by the agency of the City of New York responsible for the administration of Charitable Institution's Budgets, and (2) by a two-thirds (2/3) majority vote of the Board of Trustees, excluding the vote of the member to be benefited.

(d) Each member of the Board of Trustees shall submit to the Nursing Home for transmission by it to the Agency of the City of New York responsible for the administration of Charitable Institution's Budgets, at least each year a statement including his name, home address, principal occupation, and every business interest from which he or his spouse has received income equal to or greater than ten percent (10%) of his aggregate gross income during the previous year. Any Board

member who has not filed any such statement prior to July 1st in any year shall file such statement during the month of July in that year.

ARTICLE V

MEDICAL STAFF

ORGANIZATION.

Section 5.01. The Board of Trustees shall cause to be created a Medical Staff Organization, to be known as the "Medical Staff of St. Barnabas Nursing Home." Medical Staff membership shall be open to all physicians and dentists who are privileged to attend patients in the Nursing Home, in accordance with the Bylaws of the Medical Staff. Membership in the Medical Staff shall be a prerequisite to the exercise of clinical privileges in the Nursing Home, except as otherwise specifically provided in the Medical Staff Bylaws.

Section 5.02. The Board of Trustees, after having received and reviewed the recommendation of the Medical Staff Nominating Committee, shall appoint as President of the Medical Staff for the next Medical Staff year, the candidate recommended by the Nominating Committee or any other qualified person, regardless of the number of successive terms that person may already have served.

PROFESSIONAL STANDARDS TO BE MAINTAINED.

Section 5.03. All members of the Medical Staff shall maintain such standards and need such professional and ethical requirements as will, at all times, warrant:

(1) Full accreditation of the Nursing Home by the Joint Commission on Accreditation of Healthcare Organizations and the American Osteopathic Association;

(2) Continuance of the Nursing Home's Operating Certificate issued pursuant to the provisions of the Public Health Law of the State of New York; and

(3) Approval, accreditation and certification by applicable review or certifying boards and/or agencies in connection with intern or residency training programs and such other professional programs as are adopted by the Board of Trustees, if any.

BYLAWS, RULES AN REGULATIONS.

Section 5.04. The Bylaws most recently adopted by the Medical Staff, adopted and approved by the Board of Trustees, shall be the Bylaws of the Medical Staff. Such Bylaws, together with Rules and Regulations appended thereto, as so adopted, shall govern the Medical Staff and assist its members in the proper conduct of their work. They shall be reviewed periodically and amended as provided therein, but such Bylaws, Rules and Regulations shall not be inconsistent with the Bylaws of the Nursing Home. In case of conflict or inconsistency, the Nursing Home's Bylaws shall supersede and prevail over the Medical Staff Bylaws, Rules and Regulations.

MEDICAL STAFF MEMBERSHIP AND CLINICAL PRIVILEGES.

Section 5.05. All applications for appointment or reappointment to the Medical Staff shall be in writing and addressed to the Administrator of the Nursing Home. The application shall contain full information concerning the applicants' education, license, practice, previous hospital and nursing home experience and affiliations, medical malpractice history, and any unfavorable history regarding licensure and/or hospital/nursing home privileges. Applications for appointment and/or reappointment to the Medical Staff shall be reviewed in accordance with the procedures set forth in the Medical Staff Bylaws. The President of the Medical Staff will present to the Board of Trustees, for consideration, the candidates who have been recommended for appointment or reappointment, together with the proposed delineation of privileges, in accordance with the Medical Staff Bylaws as approved by the Board of Trustees. If the recommendation of the Board of Trustees is favorable, the Administrator of the Nursing Home will notify the candidate. In the event of an unfavorable recommendation rendered by the Board of Trustees, the candidate shall be so notified in writing and such notification shall state the reasons for such recommendation.

Section 5.06. A candidate who does not receive an appointment may have a non-appointment recommendation reviewed in accordance with the Medical Staff Bylaws as approved by the Board of Trustees.

HEARING AND APPELLATE REVIEW.

Section 5.07. When the recommendation of the Medical Board to the Board of Trustees which, if ratified by the Board of Trustees, would adversely affect a candidate's appointment or

status as a member of the Medical Staff or exercise of clinical privileges, the applicant shall have the right to Hearing and Appellate Review as set forth in the Medical Staff Bylaws as approved by the Board of Trustees.

Section 5.08. When the Board of Trustees' recommendation does not concur with the Medical Staff recommendation relative to Medical Staff appointment, reappointment or termination of appointment, and granting and/or curtailment of clinical privileges, the applicant shall have the right to Hearing and Appellate Review as set forth in the Medical Staff Bylaws as approved by the Board of Trustees.

Section 5.09. The process for Hearing and Appellate Review shall be as set forth in the Medical Staff Bylaws as approved by the Board of Trustees. In the event the Medical Staff Bylaws are modified and such modification is approved by the Board of Trustees, this section shall be deemed automatically amended to be consistent with such modification.

Section 5.10. Notwithstanding any other provisions of these Bylaws, no practitioner shall be entitled as a right to more than one hearing and one appeal on any matter which shall have been the subject of action by the Medical Board or by the Board of Trustees or by a duly authorized committee of the Board of Trustees, or by both.

ARTICLE VI

COMMITTEE

COMMITTEE APPOINTMENTS.

Section 6.01. Appointments to all Committees shall be for a period of one year or until such time as the objective of the Committee is accomplished.

EXECUTIVE COMMITTEE.

Section 6.02. The Board of Trustees, by resolution adopted by a majority of the entire Board may designate from among its members an Executive Committee of three or more Trustees. During the interval between the meetings of the Board, the Executive Committee may exercise all the powers of the Board except that neither the Executive Committee nor any other committee elected or appointed by the Board shall have any authority with respect to matters reserved to the Board by virtue of Section 712(a) of the Not-for-Profit Corporation Law.

Section 6.03. The Executive Committee function shall be performed by the Governing Body acting as a committee-of-the-whole at regular meetings of the Board of Trustees.

JOINT CONFERENCE COMMITTEE.

Section 6.04. The Board of Trustees shall create and refer to a Joint Conference Committee all medical matters affecting the interests of the Corporation. The Joint Conference Committee shall meet quarterly and report the minutes of all meetings and any recommendations on such matters and on any other medical matters to the Board of Trustees. The Board shall be represented on the Joint Conference Committee by the Chairman, Senior Vice Chairman, Vice Chairman and one other member at large. The Medical Staff shall be represented on the Joint Conference Committee by the President and the first, second and third Vice Presidents of the Medical Staff.

Section 6.05. The Nursing Home administration shall be represented on the Joint Conference Committee by the Administrator and Vice Presidents, as deemed appropriate by virtue of the agenda. In the event of inability to serve or to attend, any member so designated may be replaced by appropriate action of the respective Board. Board of Trustees and Medical Board representatives shall be of an equal number.

AUDIT COMMITTEE.

Section 6.06. The Board of Trustees shall appoint from its members an Audit Committee of three or more members to receive reports and recommendations from an independent firm of certified public accountants which shall be appointed annually by the Board of Trustees. This Committee may have such other duties and responsibilities as shall be specified by the Board of Trustees.

FINANCE COMMITTEE.

Section 6.07. The Board of Trustees shall appoint from its members a Finance Committee of at least three (3) Board Members. In the absence of the Chairman, a member of the Committee shall be appointed Chairman. The Administrator of the Nursing Home and Vice President-Treasurer will be members of the Committee.

Section 6.08. The Finance Committee shall be responsible for supervising the management of all the endowment

and trust funds of the Nursing Home. It shall arrange for all endowment and trust funds to be properly invested and the assets to be held for safekeeping with one or more trust companies or banks duly authorized to conduct such business in the State. It shall require prompt reports concerning such investments and the income therefrom.

Section 6.09. The Finance Committee shall cause to be prepared and shall submit to the Board of Trustees at the annual meeting of the Board, a budget showing the expected receipts, income and expenses for the ensuing year, in addition to a three year capital expenditure plan. It shall be the further duty of the Finance Committee to examine the monthly financial reports. Minutes of the Finance Committee meetings shall be submitted to the Board and its actions shall be subject to approval or disapproval at the next regular Board meeting. The Finance Committee shall review periodically personnel policies and the Wage and Salary Program and will recommend to the Board the compensation to be paid the Administrator.

NOMINATIONS COMMITTEE.

Section 6.10. At the Annual Meeting of the Board of Trustees, a Nomination Committee of not less than three (3) individuals selected by the Board of Trustees shall serve until the next annual meeting of the Board of Trustees. The nominations committee, upon consultation with the Chairman of the Board, when appropriate, shall present its recommendations for candidates for membership on the Board of Trustees at the Annual Meeting of the Corporation. The Nomination Committee, upon consultation with the Chairman of the Board, shall also present its recommendations for a slate of officers and committee memberships to the Board of Trustees for Board consideration and action.

PLANNING COMMITTEES.

Section 6.11. The Board of Trustees shall appoint a Planning Committee composed of several members of the Board of Trustees. The Chairman of the Board will be the Chairman of the Committee. The Administrator of the Nursing Home will be a member of the Committee. The Medical Staff will be represented on this Committee. Meetings will be held at least annually. The Committee will report to the Board of Trustees on institutional planning, short, intermediate and long range goals as well as the cost factors (budget) involved in the institutional planning process. The overall plan and budget shall be reviewed and updated at least annually.

OTHER COMMITTEES.

Section 6.12. The Board of Trustees may from time to time appoint such other Committees as it may deem advisable or appropriate to advise and assist the Board in the management, direction and supervision of the various activities of the Corporation, which committees shall have such authority and perform such duties as the Board shall determine.

ARTICLE VII

NURSING HOME RULES AND REGULATIONS

BOARD TO ESTABLISH RULES AND POLICY.

Section 7.01. The Board of Trustees shall prescribe Policies, Rules and Regulations respecting the administration of the Nursing Home and the conduct of the Nursing Home work not inconsistent with these Bylaws.

AMENDMENT.

Section 7.02. Such Policies, Rules and Regulations may be amended by any meeting of the Board by a majority vote of those present.

ARTICLE VIII

AMENDMENT OF BYLAWS

REVIEW.

Section 8.01. These Bylaws shall be reviewed on an annual basis and revised as necessary.

AMENDMENT.

Section 8.02. These Bylaws may be amended or repealed and new Bylaws may be adopted by the Board of Trustees at any meeting of the Board, provided that the purpose of taking such shall have been specified in a notice of the meeting given to, or shall be specified in a signed waiver of notice thereof by any absent Trustee.

ARTICLE IX

ANNUAL REPORT

Section 9.01. Annually a financial report certified by independent auditors selected by the Board shall be published showing in appropriate detail: (1) the assets and liabilities, including restricted funds of the Corporation as of the end of the preceding fiscal year; (2) the principal changes during said year; (3) the revenues or receipts of the Corporation, both unrestricted and restricted to particular purposes for said year; (4) the expenses or disbursements of the Corporation, for both general and restricted purposes, during said year, and such other information as the Board or the independent auditors may require.

ARTICLE X

FISCAL YEAR

Section 10.01. The fiscal year of the Corporation shall be the calendar year.

ARTICLE XI

SEAL

Section 11.01. The seal of the Corporation shall be circular in form and contain the name of the Corporation, the words "Corporate Seal" and "New York", and the year the Corporation was formed in the center. The Corporation may use the seal by causing it or a facsimile to be affixed or impressed or reproduced in any manner.

AMENDED AND RESTATED BYLAWS OF ST. BARNABAS REAL ESTATE HOLDING, INC.

ARTICLE I
NAME, PURPOSES AND OFFICES

Section 1.01 Name. The name of the Corporation shall be ST. BARNABAS REAL ESTATE HOLDING, INC. (fka St. Barnabas Nursing Home, Inc. hereinafter, the "Corporation").

Section 1.02 Purposes. The purposes and powers of the Corporation shall be as set forth in its Certificate of Incorporation, as amended from time to time. The objects and purposes of this Corporation shall be exclusively charitable within the meaning of Section 501(c)(3) of the Internal Revenue Code and shall be as set forth in the Corporation's certificate of Incorporation, as amended from time to time.

Section 1.03 Offices. The location of the principal office of the Corporation shall be in the City of New York, County of Bronx, State of New York, or at such other location within the State of New York as the Board of Directors (the "Board of Directors" or the "Board") may designate.

ARTICLE II
MEMBER

Section 2.01 Sole Member. St. Barnabas Community Enterprises, a NY Not-For Profit corporation shall be the sole member of the Corporation, acting through its officers (the "Member"). Any action taken by the Member shall be by written consent signed by the Chief Executive Officer of the Member.

Section 2.02 Member's Reserved Powers. In addition to those powers provided by the Not-for-Profit Corporation Law ("NPCL") and the common law of the State of New York, the Member shall have the following reserved powers as a member of the Corporation:

(a) To appoint and remove, with or without cause, the members of the Board of Directors of the Corporation and the Board officers of the Corporation (the "Board Officers");

(b) To appoint and remove the corporate officers of the Corporation, including without limitation, the President and Chief Financial Officer;

(c) To approve changes to the Certificate of Incorporation and Bylaws of the Corporation;

(d) To negotiate and approve all vendor and equipment contracts on behalf of the Corporation;

(e) To approve and oversee the operating and capital budgets of the Corporation;

(f) To approve any expenditures which are not included in an approved capital or operating budget, and which exceed a threshold amount per annum set by the Board of Directors of the Member from time to time;

(g) To approve the sale, lease, mortgage or encumbrance of any assets involving an amount in excess of $100,000;

(h) To approve the incurrence of any debt in excess of an amount established by the Board of Directors of the Member;

(i) To approve any change in accounting period or methods;

(j) To approve any auditor and annual audited financial statements;

(k) To approve any change in the philosophy, mission and values of the Corporation;

(l) To develop, approve and oversee the implementation of any strategic plan or initiative for the Corporation;

(m) To approve and initiate the addition, deletion or relocation of services at the Corporation;

(n) To approve any management services agreement to which the Corporation is a party;

(o) To approve overall marketing and advertising plans;

(p) To approve and initiate the commencement and settlement of any litigation;

(q) To approve any filing of a bankruptcy petition by the Corporation;

(r) To approve any new affiliation between the Corporation and any other entity;

(s) To develop integrated services and mandate the Corporation's participation in such services (including financial management, strategic planning, human resources, information technology, legal, quality assurance, risk management, contracting and recruitment);

(t) To allocate costs to and mandate payment of such costs by the Corporation in accordance with a cost allocation formula developed by the Member;

(u) To determine, on a continuing basis, the allocation of services provided by the Corporation, taking into account those actions that would be most appropriate to achieve access to services, quality assurance, cost savings, and optimum use of property, equipment and staff; and submit any

applications, including certificate of need and prior approval review applications, necessary to effect such allocation of services;

(v) To approve any merger, acquisition, consolidation, restructuring, change in governance, transfer of all or substantially all of the assets of the Corporation whether pursuant to a plan of dissolution or otherwise, any combination of any other person or entity with the Corporation or the dissolution or liquidation of the Corporation; and

(w) To approve the closure or establishment or the addition of a major service of the Corporation.

Section 2.03 In addition to the foregoing, the Member, as the sole corporate member of the Corporation, shall have any other powers reserved for a member under the NPCL. With respect to the Corporation, any powers not reserved to the Member in these Bylaws shall be exercised by the Board of Directors. The Member, in accordance with Section 517 of the NPCL, shall not be personally liable or responsible for the debts, liabilities or obligations of the Corporation.

ARTICLE III
BOARD OF DIRECTORS

Section 3.01 Powers and Authority. Subject to the reserved powers of the Member as set forth in Article II, the property, business and affairs of the Corporation shall be managed and controlled by the Board of Directors. The Board of Directors shall have, in addition to the powers and authority expressly conferred upon it by these Bylaws, the right, power and authority to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation as a corporation organized under the NPCL but subject, nevertheless, to the statutes of the State of New York, and to the provisions of the certificate of Incorporation and these Bylaws.

Section 3.02 Election; Number; Term. The Board of Directors shall be appointed by the Member annually, at the time of the annual meeting of the Board of Directors or at such other time or times as shall be determined by the Member. The Board of Directors shall consist of no more than fifteen (15) Directors who shall be appointed for a term of two (2) years, but are eligible for reappointment for an unlimited number of terms.

Section 3.03 Vacancies. Any vacancy on the Board of Directors occasioned by death, resignation or removal, shall be filled by the Member. A Director appointed to fill a vacancy shall serve for the unexpired term of his or her predecessor in office and until his or her successor shall have been appointed, qualified and assumed office.

Section 3.04 Removal. Any Director may at any time be removed, with or without cause, by the Member. Cause for removal shall include, but not be limited to, if a Director has missed three (3) consecutive regular Board meetings, or fails to participate in the work of an assigned Board Committee (except for cause accepted by the Member).

Section 3.05 Resignation. A Director may resign by providing written notice to the Chairperson. Such resignation shall be effective upon receipt, or upon any subsequent time set forth in the notice of resignation.

Section 3.06 Annual Meetings. The Board of Directors shall hold an annual meeting on the third Wednesday in the month of Mayor on such other date and time as determined by the Board from time to time for the transaction of such business as may properly come before the meeting. No notice of such annual meeting need be given unless the date and time is changed from that set forth above.

Section 3.07 Regular Meetings. Regular meetings of the Board of Directors shall be held quarterly at such time and place as shall be fixed by the Board of Directors. Meetings shall be held at the offices of the Corporation or at such other place as may be designated by the Chairperson pursuant to written notice to each Director. Notwithstanding the foregoing, regular meetings may be held without notice if done pursuant to a schedule of regular meetings established by the Board.

Section 3.08 Special Meetings. Special meetings of the Directors may be called by the Member, the Chairperson or by written demand signed by three (3) Directors. Notice of the time and place of such meeting shall be given at least twenty-four (24) hours prior to the meeting by a method determined by the Board. All notices shall set forth the place, the date, the time and the purpose of the meeting. No business other than that specified in the Notice of the special Meeting shall be transacted at such meeting.

Section 3.09 Waiver of Notice. No notice of any meeting of the Board of Directors need be given to any Director who attends such meeting without protesting prior to or at the commencement of the meeting the lack of notice of such meeting, or to any Director who submits, via paper form, email or facsimile, a signed waiver of notice whether before or after the meeting.

Section 3.10 Quorum and Vote. At any duly called meeting of the Board of Directors, a majority of the entire Board shall constitute a quorum. Any corporate action to be taken by vote of the Board of Directors shall be authorized by a majority of the votes cast at a duly held meeting at which a quorum is present, unless the law, the Certificate of Incorporation, or these Bylaws require a different number.

Section 3.11 Action by Unanimous Written Consent. Any action required or permitted to be taken by the Directors may be taken without a meeting if all the Directors shall individually or collectively consent to such action. Such consent may be written or electronic. Such consent or consents shall have the same force and effect as the unanimous vote of the Directors. Any certificate or other document filed under any provision of law which relates to action so taken shall state the action was taken by the unanimous written consent of the Directors without a meeting and that these Bylaws authorized the Directors to so act. Such statement shall be prima facie evidence of such authority.

Section 3.12 Participation by Telephonic or Video Conference. Any Director not physically present at a meeting of the Board or any committee thereof may participate by

means of a conference telephone, video conference, or similar communications equipment. Participation by such means shall constitute presence in person at the meeting as long as all persons participating in the meeting can hear each other at the same time and each Director can participate in all matters before the Board.

Section 3.13 Compensation. Directors shall serve without compensation for serving as Directors. Directors shall be allowed reimbursement for reasonable expenses, upon resolution of the Board.

ARTICLE IV
EXECUTIVE OFFICERS

Section 4.01 Officers of the Board of Directors and Corporate Officers. The officers of the Board are Chairperson, Vice-Chairperson, Secretary and Treasurer. The corporate officers shall include the President and Chief Executive Officer, and such other corporate officers as shall be determined from time to time by the Member. All officers shall be appointed by the Member annually, at the time of the annual meeting of the Board of Directors or at such other time or times as shall be determined by the Member.

Section 4.02 Terms of Office, Vacancies and Removal of Officers. The terms of office of the Officers of the Board and of the Corporation shall be one (1) year or until their successors are appointed and qualified and assume office. Any Officer may be removed, with or without cause, by the Member. The Member may fill any vacancy for the unexpired term of the specified vacancy, which occurs in any office of the Board or the Corporation.

Section 4.03 The Chairperson. The Chairperson shall preside at all meetings of the Board of Directors of the Corporation. The Chairperson shall have the authority, along with any other officers authorized by the Board of Directors, to sign on behalf of the Corporation, deeds, mortgages, bonds, contracts or other instruments approved by the Board and, if required under Article II, the Member, for execution. The Chairperson shall appoint the members of, and may alter the composition of, the Committees of the Board. In addition, the Chairperson shall perform such other duties as the Board of Directors shall require.

Section 4.04 The Vice-Chairperson. The Vice-Chairperson shall perform such duties as may be requested by the Chairperson and shall preside as Chairperson in the absence of the Chairperson. In the event of the Chairperson's death, resignation, removal, incapacity, or refusal to act, the Vice-Chairperson shall succeed him and shall serve for the remainder of the term of his immediate predecessor, until and unless the Member shall fill such vacancy pursuant to Sections 4.01 and 4.03 of these Bylaws.

Section 4.05 Secretary. The Secretary shall, with the assistance of appropriate Corporation staff, keep the minute books of meetings of the Board of Directors; shall give and serve all required notices of meetings; shall have custody of the records of the Corporation; and shall perform all other duties incident to the office of Secretary.

Section 4.06 Treasurer. The Treasurer shall, with the assistance of the Chief Financial Officer, be responsible for and coordinate all financial and related activities of the Corporation; shall render to the Board of Directors as the same may be required, an account of

all transactions of the Treasurer and the of the financial condition of the Corporation; shall present the annual budget to the Board of Directors; and shall perform all other duties incident to the office of Treasurer.

Section 4.07 President and Chief Executive Officer. The President shall be the Chief Executive Officer of the Corporation and as such, shall carry out the purposes of the Corporation pursuant to general and specific assignments given by the Board of Directors or the Executive Committee. The President shall be responsible for the daily conduct of all Corporation activities and programs as well as the supervision of all employees of the Corporation. The President shall be a full-time employee of the Corporation and shall be an ex-officio non-voting member of the Board of Directors.

Section 4.08 Compensation. Officers shall not receive compensation for serving as officers of the Board.

ARTICLE V
COMMITTEES OF THE BOARD OF DIRECTORS.

Section 5.01 Committees Generally.

(a) Committees of the Board. The Board, by resolution adopted by a majority of the entire Board, may designate from among its members such committee or committees, each consisting of three (3) or more Directors, as are necessary to fulfill its obligations under section 3.01 above ("Committees of the Board").

(b) Committees of the Corporation. Committees, other than Committees of the Board, shall be committees of the Corporation ("Committees of the Corporation"). Such Committees of the Corporation may be elected or appointed in the same manner as officers of the Corporation, but no such committee shall have the authority to bind the Board of Directors. Volunteers from the community may serve on these committees when appropriate.

Section 5.02 Committees:

(a) There shall be the following Board Committees:

(1) Executive Committee
(2) Finance and Audit Oversight Committee
(3) Quality Improvement Committee

(b) The designation of such Committees and the delegation thereto of authority as specified in these Bylaws shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed by law.

(c) The Board of Directors, by resolution of a majority of the Directors then in office, may prescribe the number, nature, organization, composition or function of the Committees. The Board of Directors may establish such committees of the Corporation or additional committees of the Board of Directors as it may from time to time determine.

Section 5.03 Appointment and Number of Committee Members. Except as otherwise stated in these Bylaws, the members and the chairpersons of all Committees, all of whom shall be members of the Board of Directors, shall be appointed by the Chairperson of the Board of Directors. The Chairperson shall announce the appointments, as soon as practicable, after the annual meeting of the Board of Directors. Members of such Committees and the chairpersons thereof shall, unless otherwise stated in the Bylaws, hold office for one (1) year or until death, resignation, or removal. Resignation or removal from the Board shall constitute resignation or removal from all Committees thereof. No Committee shall include less than three (3) Directors.

Section 5.04 Resignation or Removal.

(a) Any member of a Committee may resign at any time by giving written notice of such resignation to the chairperson of such Committee or to the Chairperson or Secretary of the Board of Directors. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by such Chairperson or such officer.

(b) Any member of any Committee may be removed at any time by the Board of Directors whenever, in the judgment of the Board of Directors, the best interests of the Corporation shall be served by such removal.

Section 5.05 Vacancies.

(a) Any vacancy on any Committee, or of the chairperson thereof, due to the resignation, removal or death of a member or of the chairperson of the Committee, shall be filled by appointment in the same manner as such member or chairperson was appointed.

(b) Whenever a member of any Committee, or the chairperson thereof, is unable to attend one (1) or more meetings of such Committee, or is otherwise temporarily unable to act as a member thereof, the Chairperson of the Board may appoint a Director to act as a member or chairperson of such Committee during the period of such inability.

Section 5.06 Duties.

(a) It shall be the duty of each Committee to make such reports as, from time to time, may be requested by the Board of Directors, or the Chairperson of the Board, or as required by these Bylaws.

(b) In addition to the respective duties specifically assigned to Committees by the Bylaws, each Committee shall perform such other duties in connection with the subject matter over which such Committee has jurisdiction as, from time to time, may be requested by the Board of Directors or the Chairperson of the Board.

Section 5.07 Procedures. Subject to the provisions of these Bylaws, and to such directives as may be issued by the Board of Directors, each Committee shall establish its own rules of procedure.

Section 5.08 Meetings.

(a) Except as otherwise provided in these Bylaws, each Committee shall meet upon the call of the chairperson thereof, or upon the request of the Chairperson of the Board.

(b) Except as otherwise provided in these Bylaws, notice of the time and place of meetings of all Committees shall be as directed by the chairperson thereof. Unless required by law, such notice need not state the purpose of the meeting. A written waiver of notice of any meeting, signed and filed with the records of the Committee either before or after such meeting, shall be deemed equivalent to notice, as shall attendance by a member at such meeting.

Section 5.09 Quorum and Voting Requirements.

(a) Except as otherwise provided in these Bylaws, the presence of a majority of the members of a Committee is necessary and sufficient to constitute a quorum for the transaction of business.

(b) The act of a majority of the members present at a meeting at which a quorum is present shall be the act of the Committee.

Section 5.10 Reports to Board of Directors. All Committees shall make reports to the Board of Directors pertaining to the proceedings, recommendations and actions of such Committee.

Section 5.11 Indemnification. The members of all Committees shall be entitled to the right of indemnification as set forth in these Bylaws and shall be deemed entitled to the same coverage as is, or may be, afforded to Directors under the Corporation's liability insurance policy for actions taken in their capacities as Committee members.

Section 5.12 Executive Committee.

(a) Membership. The Executive Committee shall consist of the Chairperson of the Board, who shall act as chairperson of the Committee; the Vice-Chairperson of the Corporation, who shall act as chairperson of the Committee in the absence of the Chairperson; the Secretary; and the Treasurer. The Chairperson of the Board shall have the power to appoint additional members to the Executive Committee, subject to the approval of the Board of Directors.

(b) Functions.

(i) In order to provide continuity of control, the Executive Committee shall have, and may exercise the authority of the Board of Directors in the supervision and control of the affairs of the Corporation in the interval between meetings of the Board, subject to any prior limitations which may be imposed by the Board. It shall also make such policy decisions during any interim period as it shall deem necessary to carry out the objectives of the Corporation, provided such policy decisions are not inconsistent with those adopted by the Board, and provided further that the Committee submits same to the Board of Directors for approval at its next meeting in accordance with subsection (c) hereof. The

Executive Committee shall annually review the compensation of the President and Chief Executive Officer.

(ii) Between Board meetings, the Executive Committee shall have and may exercise all of the authority of the Board of Directors, to the extent allowed by applicable law, but shall be required to notify the full Board of any actions it takes or decisions made, other than those in the ordinary course of operations, within a reasonable time thereafter. Notwithstanding the foregoing, actions taken by the Executive Committee shall not conflict with the Bylaws, or policies and expressed wishes of the Board and the Executive Committee shall not have the authority of the Board of Directors with respect to the following matters:

(1) the filling of vacancies on any Committee of the Board;

(2) the fixing of compensation of the Directors for serving on the Board or on any Committee thereof;

(3) the amendment or repeal of any resolution of the Board of Directors which by its terms shall not be so amendable or repealable;

(4) the authorization of indemnification for expenses incurred by Directors, Officers, or other personnel in defending civil or criminal actions; and

(5) power or authority in any matter that the Board may not delegate to a committee under Section 712 and other applicable sections of the New York State Not-For-Profit Corporation Law.

(c) Report of Action to the Board. All actions of the Executive Committee shall be reported to the Board at the first Regular Meeting of the Board held following any such action, and shall be subject to revision or modification by the Board.

(d) Meetings. The Executive Committee shall meet upon the call of the Chairperson or Vice-Chairperson.

Section 5.13 Finance and Audit Oversight Committee.

(a) Membership. The Finance and Audit Oversight Committee shall consist of not less than three (3) members of the Board of Directors, each of whom shall be independent Directors, as such term is defined in the Not-For-Profit Corporation Law. The Treasurer shall serve as Chairperson of the Committee.

(b) Functions. The Finance and Audit Oversight Committee shall have the following responsibilities:

(1) Concerning itself with all matters relating to the financial condition of the Corporation, including making recommendations concerning the financial feasibility of the Corporation projects, acts and undertakings referred to it by the Board of Directors;

(2) Assisting in the preparing and presenting to the Board of Directors and the Member, prior to the end of the fiscal year, capital and annual operating budgets showing the expected receipts, income and expenses for the ensuing year;

(3) Reviewing and generally surveilling the Corporation's financial planning, its system of accounting controls, its handling and disbursement of funds, the collection or other disposition of the Corporation's accounts receivable and the recommendation to the Board and the Member of an auditor;

(4) Overseeing financial audits and the accounting and financial reporting processes of the Corporation;

(5) Subject to the Member's approval, annually retaining or renewing the retention of an independent auditor to conduct the audit and, upon completion thereof, reviewing the results of the audit and any related management letter with the independent auditor;

(6) Reviewing with the independent auditor the scope and planning of the audit prior to the audit's commencement;

(7) Upon completion of the audit, reviewing and discussing with the independent auditor:

(i) any material risks and weaknesses in internal controls identified by the auditor,

(ii) any restrictions on the scope of the auditor's activities or access to requested information,

(iii) any significant disagreements between the auditor and management, and

(iv) the adequacy of the Corporation's accounting and financial reporting processes;

(8) Annually considering the performance and independence of the independent auditor;

(9) Overseeing the adoption, implementation of, and compliance with the Conflicts of Interest and Related Party

Transactions Policy and the Whistleblower, Non-Intimidation and Non-Retaliation Policy;

(10) Overseeing the implementation and operation of the compliance program to ensure the Corporation's compliance with all federal and state laws and regulations; and

(11) Reporting directly to the Board of Directors regarding the financial accounting and auditing practices of the Corporation.

Section 5.14 Quality Improvement Committee.

(a) Membership. The Quality Improvement Committee shall consist of not less than three (3) members of the Board of Directors. The Chairperson shall serve as Chairperson of the Committee. The Chairperson of the Board shall have the power to appoint additional members to the Quality Improvement Committee.

(b) Functions. The Quality Improvement Committee shall have the following responsibilities:

(1) Monitor program implementation and quality and assess possibilities for program enrichment and expansion;

(2) Monitor compliance with applicable regulations and funding source requirements;

(3) Review and make recommendations to the Board of Directors with respect to clinical matters including, but not limited to, strategies and programs regarding clinician adoption and meaningful use of health information technology, the scope and nature of the clinical data processed and utilized for clinical decision support, and quality reporting; and

(4) Shall have such other purposes, functions, duties and authority as the Board of Directors shall determine.

Section 5.15 Minutes. Each committee shall keep minutes of its proceedings.

ARTICLE VI
CONFLICT OF INTEREST/WHISTLEBLOWER POLICIES

The Corporation shall adopt a Conflict of Interest and Related Party Transactions Policy, which among its provisions shall include requirements regarding related party transactions, and a Whistleblower, Non-Intimidation and Non-Retaliation Policy. The Corporation shall review and amend such policies from time to time as appropriate and in accordance with applicable law.

ARTICLE VII
INDEMNIFICATION

Section 7.01 Indemnification. The Corporation shall indemnify, to the full extent such indemnification is permitted by law, any person made, or threatened to be made, a party to, subject of, or otherwise involved in any (formal or otherwise) action, proceeding and/or investigation, whether civil (including administrative and investigative proceedings) or criminal, by reason of the fact that such person or such person's testator or intestate is or was a Director or Officer of the Corporation or serves or served any other Corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity at the request of the Corporation. The Corporation shall have the power to purchase and maintain insurance to indemnify the Corporation and its Directors and Officers to the full extent such indemnification is permitted by law.

Section 7.02 Applicability and Non-Exclusivity. Every reference in this Article VII to Directors and Officers of the Corporation shall include every Director and Officer thereof or former Directors and Officers thereof. The right of indemnification herein provided shall be in addition to any and all rights to which the Director, Officer employee or agent of the Corporation otherwise might be entitled, and the provisions hereof shall neither impair nor adversely affect such rights.

ARTICLE VIII
FISCAL YEAR

Section 8.01 The fiscal year of the Corporation shall begin January 1st and end December 31st of each calendar year.

ARTICLE IX
AMENDMENTS

Section 9.01 Amendment of Bylaws. These Bylaws of the Corporation may be amended, repealed, or adopted by the Member in accordance with Article II.

Section 9.02 Conformity with Law. Any amendments, emendations, alterations, changes and additions to, or deletions from, these Bylaws shall be consistent with the laws of New York State which define, limit or regulate the powers of this Corporation or of its Directors.

ARTICLE X
LIMITATIONS

Section 10.01 Exempt Activities. Notwithstanding any other provision of these Bylaws, no member, Director, Officer, employee or representative of the Corporation shall take any action or carry on any activity by or on behalf of the Corporation not permitted to be taken or carried on by an organization exempt from Federal income taxation under Code Section 501(a), as an organization described in Code Section 501(c)(3).

Section 10.02 Prohibition Against Sharing in Corporate Earnings. No Director, Officer or employee of, or other person connected with, the Corporation, or any other private

individual, shall receive at any time any of the net earnings or pecuniary profit from the operations of the Corporation, provided that this shall not prevent either the payment to any such person of reasonable compensation for services rendered to or for the benefit of the Corporation or the reimbursement of expenses incurred by any such person on behalf of the Corporation, in connection with effecting any of the purposes of the Corporation, and no such person or persons shall be entitled to share in the distribution of any of the corporate assets upon the dissolution of the Corporation. All such persons shall be deemed to have expressly consented and agreed that upon such dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, the assets of the Corporation, after all debts have been satisfied, then remaining in the hands of the Board, shall be distributed in such amounts as the Board may determine, or as may be determined by a court of competent jurisdiction or the Attorney General in accordance with Not-for-Profit Corporation Law, upon the application of the Board, exclusively to charitable, religious, scientific, literary or educational organizations that then qualify for exemption from Federal income taxation under Code 501(c)(3) and provide health care services to patients in Westchester County, New York or as otherwise set forth in the Corporation's Certificate of Incorporation.

ACKNOWLEDGEMENT

THE FOREGOING BYLAWS, IN PRESENT FORM, were duly amended and adopted at a meeting on _____ and ratification of said amendments are reflected in the minutes of the _____ Board Meeting

Dated: January __, 2022.

_____

Secretary

Name: _____

RESOLUTION TO BE ADOPTED BY THE
BOARD OF TRUSTEES OF
ST. BARNABAS NURSING HOME

WHEREAS, St. Barnabas Nursing Home, Inc. (the "Nursing Home Corporation"), is a New York State Not-for-Profit Corporation, and

WHEREAS, the Nursing Home Corporation wishes to amend its Certificate of Incorporation to convert from a nursing home to a real estate holding corporation; and

WHEREAS, a form of Certificate of Amendment to the Certificate of Incorporation of the Nursing Home Corporation is attached hereto as Exhibit A (the "Certificate of Amendment"); and

NOW, THEREFORE, it is:

RESOLVED by the Board of Trustees of the Nursing Home Corporation that the Nursing Home Corporation hereby approves the execution and filing of an amendment to the Nursing Home Corporation's Certificate of Incorporation in the form of the Certificate of Amendment, annexed hereto as Exhibit A.

Dated: November 22, 2021

Richard Ketchum, Secretary, Board of Trustees, SBNH

RESOLUTION TO BE ADOPTED BY THE
BOARD OF TRUSTEES OF
ST. BARNABAS COMMUNITY ENTERPRISES

WHEREAS, St. Barnabas Community Enterprises, Inc. ("SBCE") is the sole shareholder and member of St. Barnabas Nursing Home, Inc. (the "Nursing Home Corporation"), a New York State Not-for-Profit Corporation, and

WHEREAS, the Nursing Home Corporation wishes to amend its Certificate of Incorporation to convert from a nursing home to a real estate holding corporation; and

WHEREAS, a form of Certificate of Amendment to the Certificate of Incorporation of the Nursing Home Corporation is attached hereto as Exhibit A (the "Certificate of Amendment"); and

WHEREAS, as the member of the Nursing Home Corporation, SBCE is authorized to approve the Certificate of Amendment.

NOW, THEREFORE, it is:

RESOLVED by the Board of Trustees of SBCE that SBCE hereby approves the execution and filing of an amendment to the Nursing Home Corporation's Certificate of Incorporation in the form of the Certificate of Amendment, annexed hereto as Exhibit A.

Dated: November 22, 2021

Elizabeth Sanchez, Secretary, Board of Trustees, SBCE

RESOLUTION TO BE ADOPTED BY THE
BOARD OF TRUSTEES OF
ST. BARNABAS COMMUNITY ENTERPRISES

WHEREAS, St. Barnabas Community Enterprises, Inc. ("SBCE") is the sole shareholder and member of St. Barnabas Nursing Home, Inc. (the "Corporation"), a New York State Not-for-Profit Corporation, and

WHEREAS, SBCE may remove Trustees of the Corporation without cause; and

WHEREAS, SBCE may appoint Trustees of the Corporation; and

WHEREAS, the Corporation is required to maintain at least three Trustees at all times;

NOW, THEREFORE, it is:

RESOLVED, that the Board of Trustees of SBCE hereby appoints Richard Ketchum and Laura Guerra to be Trustees of the Corporation; and,

IT IS FURTHER RESOLVED, that Helen Foster shall serve as President and Chairperson of the Corporation, Richard Ketchum shall serve as Senior Vice Chairperson, Vice President and Secretary of the Corporation and Laura Guerra shall serve as Vice Chairperson, Vice President and Assistant Secretary of the Corporation; and,

IT IS FURTHER RESOLVED, that except for Helen Foster, all prior Trustees of the Corporation be removed as Trustees and authorized signatories on the accounts of the Corporation, to the extent any had signatory authority, effective immediately; and,

IT IS FURTHER RESOLVED, that Mary Grochowski and William DiBitetto be added as signatories to the accounts of the Corporation.

Dated: November 22, 2021

Elizabeth Sanchez, Secretary, Board of Trustees, SBCE

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 2nd day of June 2022 approves the filing of the Certificate of Amendment of the Certificate of Incorporation of St. Barnabas Nursing Home, Inc., dated November 22, 2021.

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 211139-E
Village Acquisition I, LLC d/b/a Lower West Side Rehabilitation and Nursing Center

Program: **Residential Health Care Facility** ***County:*** **New York**
Purpose: **Establishment** ***Acknowledged:*** **April 13, 2021**

Executive Summary

Description
Village Acquisition I, LLC, d/b/a as Lower West Side Rehabilitation and Nursing Center, requests approval to be established as the new operator of Village Care Rehabilitation and Nursing Center, an existing not-for-profit, 105-bed residential health care facility, located at 214 West Houston Street, New York. Upon approval of this application, the site will be named Lower West Side Rehabilitation and Nursing Center.

The current operators, Village Center for Care, Inc., have entered into an Asset Purchase Agreement dated March 17, 2021, with Village Acquisition I, LLC for the sale and acquisition of the operating interests of the Village Care Rehabilitation and Nursing Center upon approval by the Public Health and Planning Council.

The proposed operator membership is as follows:

Members	%
Pasquaele DeBenedicitis	35%
Alex Solovey	35%
Soloman Rutenberg	15%
Joseph Carillo II	5%
Michael Schrieber	5%
Jimmy Solovey	5%
Total	**100%**

On March 17, 2021, Village Acquisition II, LLC entered into a Real Estate Purchase and Sale Agreement with Village Center for Care for the sale and acquisition, respectively, of the real property of the nursing facility. Village Acquisition II, LLC (Landlord) and Village Acquisition I, LLC (Tenant) have entered into a proposed lease agreement for the site. There is common ownership in both the operating and real estate entities.

OPCHSM Recommendation
Contingent Approval

Need Summary
There will not be any changes to beds, services, or utilization in the area as a result of this change in ownership.

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

Financial Summary
The purchase price of $1,500,000 for the operating interests will be met with equity from the proposed members' resources. The purchase price of $29,750,000 for the real estate interests will be fulfilled as follows: Equity of $4,537,500 from proposed members' resources and financing of $25,212,500 at an interest rate of 3.88% for a twenty-five-year term. The proposed budget is as follows:

Budget	Current	Year One	Year Three
Revenues	$24,893,083	$25,721,800	$26,026,900
Expenses	48,445,389	24,929,721	24,988,442
Net Income	($23,552,306)	$792,076	$1,218,458

Recommendations

Long Term Care Ombudsman Program
The LTCOP recommends Approval (See LTCOP Attachment A).

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

Office of Primary Care and Health Systems Management
Approval contingent upon:
1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will: Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program; Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility and inform them about the facility's Medicaid Access policy, and Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]
4. Submission of an executed lease rental agreement that is acceptable to the Department of Health. [BFA]
5. Submission of a photocopy of an amended and executed Certificate of Amendment of the Articles of Organization of Village Acquisition I, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed Operating agreement of Village Acquisition I, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed Certificate of Amendment of the Certificate of Incorporation of Village Center for Care, acceptable to the Department. [CSL]
8. Submission of photocopy of an amended and executed Lease between Village Acquisition II, LLC and Village Acquisition I, LLC, acceptable to the Department. [CSL]

Approval conditional upon:
1. This project must be completed by one year from the date of the recommendation 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

Council Action Date
June 2, 2022

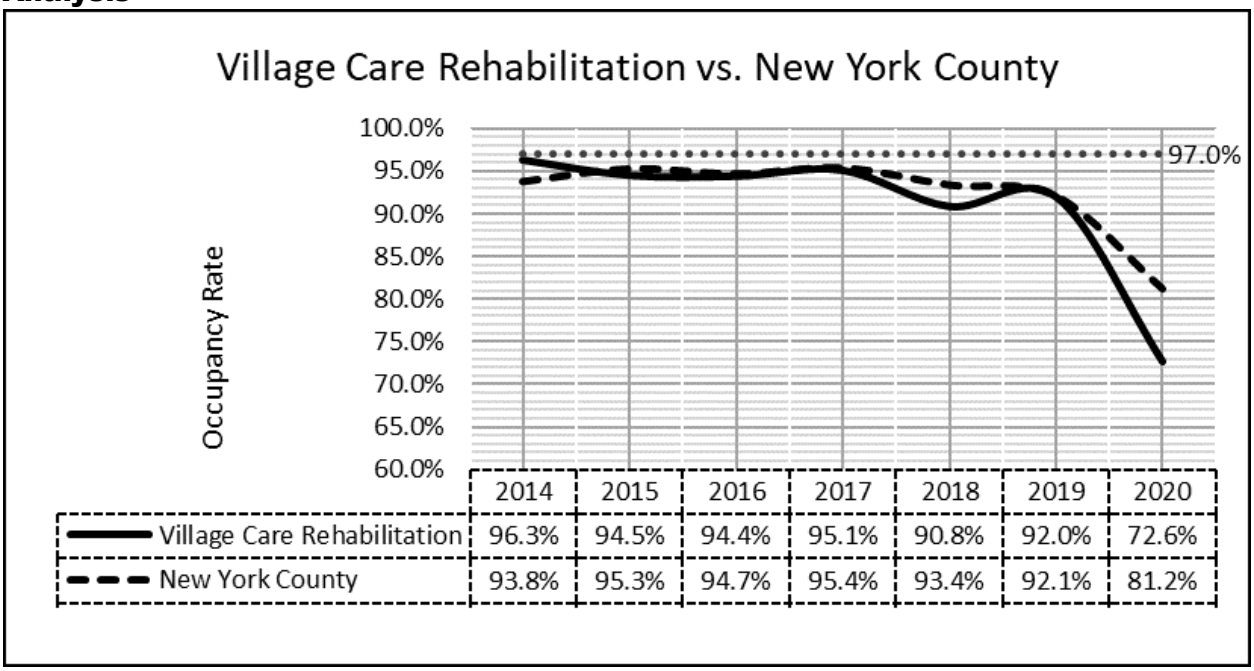
Need and Program Analysis

Program Description

	Existing	Proposed
Facility Name	VillageCare Rehabilitation and Nursing Center	Lower West Side Rehabilitation and Nursing Center
Address	214 West Houston Street New York, NY 10014	Same
RHCF Capacity	105 beds	Same
ADHCP Capacity	N/A	N/A
Type of Operator	Not For Profit Corporation	Limited Liability Corporation
Class of Operator	Voluntary	Proprietary
Operator	**Village Center for Care** Active Parent/Co-Operator: Village Care Of New York, Inc.	**Village Acquisition I, LLC** Pasquale DeBenedictis 35% Alex Solovey 35% Soloman Rutenberg 15% Joseph F. Carillo, II 5% Michael Schrieber 5% Jimmy Solovey 5%

This application is to establish Village Acquisition I, LLC as the new operator of VillageCare Rehabilitation and Nursing Center, a 105-bed residential health care facility located at 214 West Houston Street, New York. The facility will be known as Lower West Side Rehabilitation and Nursing Center post-approval. No changes in the program or physical environment are proposed in this application.

Analysis



The facility had utilization in the 90's until 2019. The substantial drop in 2020 is likely significantly attributable to the COVID-19 pandemic.

Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area.

The benchmark is 75% of the annual percentage of residential health care facility admissions that are Medicaid eligible individuals in their planning area.

An applicant will be required to make appropriate adjustments in its admission policies and practices to meet this benchmark.

The 75% of the annual percentage of residential health care facility admissions that are Medicaid eligible individuals in their planning area may be increased or decreased based on the following factors:

- the number of individuals within the planning area currently awaiting placement to a residential health care facility and the proportion of total individuals awaiting such placement that are Medicaid patients and/or alternate level of care patients in general hospitals;
- the proportion of the facility's total patient days that are Medicaid patient days and the length of time that the facility's patients who are admitted as private paying patients remain such before becoming Medicaid eligible;
- the proportion of the facility's admissions who are Medicare patients or patients whose services are paid for under provisions of the federal Veterans' Benefit Law;
- the facility's patient case-mix based on the intensity of care required by the facility's patients or the extent to which the facility provides services to patients with unique or specialized needs;
- the financial impact on the facility due to an increase in Medicaid patient admissions.

The facility's Medicaid admissions rate has been significantly below the threshold of 75% of the New York County rate for 2019 and 2020.

Medicaid Access	**2018**	**2019**	**2020**
New York County Total	**36.2%**	**33.0%**	**21.4%**
New York County Threshold Value	***27.2%***	***24.7%***	***16.1%***
Village Care Rehabilitation and Nursing	55.0%	2.0%	0.2%

Character and Competence

Pasquale DeBenedictis reports concurrent employment as the Chief Financial Officer at DeWitt Rehabilitation and Nursing Center and a managing member of Cassena Care LLC. Cassena Care is an organization that delivers rehabilitation and nursing services. He has previously worked as the Chief Financial Officer and Controller at numerous long-term care facilities since June 1997. Pasquale DeBenedictis has a bachelor's degree in accounting from SUNY Plattsburg and an inactive CPA license. The applicant discloses ownership interests in the following health care facilities:

New York Nursing Homes	
East Neck Nursing and Rehabilitation Center (15%)	02/2005 to present
Workmen's Circle Multicare Center (25%)	07/2013 to present
Shore View Nursing and Rehabilitation Center (32.50%)	06/2014 to present
Morningside Nursing and Rehabilitation Center (35%)	07/2014 to present
Peninsula Nursing and Rehabilitation Center (25.05%)	08/2014 to present
Upper East Side Rehabilitation and Nursing Center (34.50%)	06/2015 to present
Sea Crest Nursing and Rehab Center (32.50%)	07/2015 to present
Fordham Nursing and Rehab Center (28.25%)	08/2016 to present
Long Beach Nursing & Rehab Center (22.75%)	08/2016 to present
Downtown Brooklyn Nursing & Rehabilitation Ctr (27.34%)	06/2018 to present
Margaret Tietz Nursing & Rehabilitation Center (30.33%)	02/2019 to present

Connecticut Nursing Homes

Cassena Care at Norwalk (35%)	07/2013 to present
Cassena Care at Stamford (35%)	02/2016 to present

Assisted Living/Adult Home

Bay Vista Assisted Living (25%)	Pending
Morningside at Home Assisted Living Program (20%)	6/2018 to present

Diagnostic and Treatment Centers

Workmens Circle Dialysis Center (D&TC) (25%)	08/2015 to present
East Neck Dialysis Center (D&TC) (33.33%)	09/2015 to present
Cassena Care Dialysis at Peninsula (D&TC) (23.75%)	11/2016 to present
Cassena Care Dialysis at Morningside (D&TC) (23.75%)	07/2019 to present
Sea-Crest Dialysis Center (D&TC) (32.50%)	09/2017 to present
Beach Channel Diagnostic and Treatment Center (30%)	Pending**
Pelham Parkway Surgery Center (33.34%)	Pending**

**Contingent Approval by Public Health and Health Planning Council on 2/10/2022

Certified Home Health Agency

Hillside Manor Certified H.C.A. (CHHA) (30%)	10/2017 to present
Centerlight Certified Home Health Agency (30%)	12/2020 to present

Licensed Home Care Services Agency

Morningside at Home (35%)	06/2018 to present
Long Beach Home Care (25%)	05/2021 to present

Hospice

Hospice of New York (6%)	Pending**

**CON #211064 under review.

End-Dated Ownership

Barnwell Nursing and Rehabilitation Center (33.30%)	11/2003 to 03/2018
Mills Pond Nursing and Rehabilitation Center (29%)	10/2010 to 04/2018
Sayville Nursing and Rehabilitation Center (33.33%)	12/2012 to 04/2018
Cassena Care at New Britain (35%) (CT)	07/2013 to 12/2020

Alex Solovey is a New York State licensed physical therapist who reports concurrent employment as the Chief Executive Officer at DeWitt Rehabilitation and Nursing Center, Director of Rehabilitation at Theradynamics, and a managing member of Cassena Care LLC. Cassena Care delivers rehabilitation and nursing services. Since May 2021, Alex Solovey has been under an employment agreement with Village Center for Care to act as the Director of Operations of the Nursing Home. He has a Bachelor of Science from New York University and a degree in Health Care Administration from CW Post. The applicant discloses ownership interests in the following health care facilities:

New York Nursing Homes

East Neck Nursing and Rehabilitation Center (15%)	02/2005 to present
Workmen's Circle Multicare Center (25%)	07/2013 to present
Shore View Nursing and Rehabilitation Center (32.50%)	06/2014 to present
Morningside Nursing and Rehabilitation Center (35%)	07/2014 to present
Peninsula Nursing and Rehabilitation Center (25.05%)	08/2014 to present
Upper East Side Rehabilitation and Nursing Center (34.50%)	06/2015 to present
Sea Crest Nursing and Rehab Center (32.50%)	07/2015 to present
Fordham Nursing and Rehab Center (28.25%)	08/2016 to present
Long Beach Nursing & Rehab Center (22.75%)	08/2016 to present
Margaret Tietz Nursing & Rehabilitation Center (30.33%)	02/2019 to present
Downtown Brooklyn Nursing & Rehabilitation Ctr (27.34%)	06/2018 to present

Connecticut Nursing Homes

Cassena Care at Norwalk (35%)	11/2015 to present
Cassena Care at Stamford (35%)	11/2015 to present

Assisted Living/Adult Homes

Morningside at Home Assisted Living Program (20%)	06/2018 to present
Bay Vista Assisted Living (25%)	Pending

Diagnostic and Treatment Centers

Workmens Circle Dialysis Center (D&TC) (25%)	08/2015 to present
East Neck Dialysis Center (D&TC) (33.33%)	09/2015 to present
Cassena Care Dialysis at Peninsula (D&TC) (23.75%)	11/2016 to present
Cassena Care Dialysis at Morningside (D&TC) (23.75%)	07/2019 to present
Sea-Crest Dialysis Center (D&TC) (32.50%)	09/2017 to present
Morningside Dialysis Center, LLC (D&TC) (35%)	Pending
Beach Channel Diagnostic and Treatment Center (30%)	Pending**
Pelham Parkway Surgery Center (33.33%)	Pending**

**Contingent Approval by Public Health and Health Planning Council on 2/10/2022

Certified Home Health Agency

Hillside Manor Certified H.C.A. (CHHA) (30%)	10/2017 to present
Centerlight Certified Home Health Agency (30%)	12/2020 to present

Licensed Home Care Services Agency

Morningside at Home (LHCSA) (20%)	06/2018 to present
Long Beach Home Care	05/2021 to present

End-Dated Ownership

Barnwell Nursing and Rehabilitation Center (33.30%)	11/2003 to 12/2017
Mills Pond Nursing and Rehabilitation Center (29%)	10/2010 to 04/2018
Sayville Nursing and Rehabilitation Center (33.33%)	12/2012 to 04/2018
Cassena Care at New Britain (35%) (CT)	07/2013 to 12/2020

Hospice

Hospice of New York (6%)	Pending**

**CON # 211064 is under review.

Soloman Rutenberg reports employment as the CEO at Workmen's Circle Multicare Center, which is a skilled nursing facility. He has a master's degree in Engineering from Latvia Technical University and discloses ownership interest in the following health care facilities:

New York Nursing Homes

Workmen's Circle Multicare Center (25%)	08/2012 to present
Shore View Nursing and Rehabilitation Center (5.0%)	06/2014 to present
Morningside Nursing and Rehabilitation Center (20%)	07/2014 to present
Upper East Side Rehabilitation and Nursing Center (4.25%)	06/2015 to present
Sea Crest Nursing and Rehab Center (5.0%)	07/2015 to present
Fordham Nursing and Rehab Center (38.50%)	08/2016 to present
Long Beach Nursing & Rehab Center (9%)	08/2016 to present
Margaret Tietz Nursing & Rehabilitation Center (9.0%)	02/2019 to present
Downtown Brooklyn Nursing & Rehabilitation Ctr (8%)	06/2018 to present

Connecticut Nursing Homes

Cassena Care at Norwalk (35%)	11/2015 to present
Cassena Care at Stamford (35%)	11/2015 to present

Diagnostic and Treatment Centers

Workmens Circle Dialysis Center (D&TC) (25%)	08/2015 to present
Cassena Care Dialysis at Morningside (D&TC) (23.75%)	07/2019 to present
Sea-Crest Dialysis Center (D&TC) (32.50%)	09/2017 to present
Beach Channel Diagnostic and Treatment Center (10%)	Pending**
Pelham Parkway Surgery Center (33.33%)	Pending**

**Contingent Approval by Public Health and Health Planning Council on 2/10/2022

Certified Home Health Agency

Hillside Manor Certified H.C.A. (CHHA) (30%)	10/2017 to present
Centerlight Certified Home Health Agency (30%)	12/2020 to present

Licensed Home Care Services Agency

Morningside at Home (LHCSA) (20%)	06/2018 to present

Assisted Living/Adult Home

Morningside at Home Assisted Living Program (20%)	06/2018 to present

End-Dated Ownership

Mills Pond Nursing and Rehabilitation Center (29%)	05/2014 to 05/2018
Cassena Care at New Britain (35%)	07/2013 to 12/2020
Terrace Health Care Center	06/2015 to 08/2016

Joseph Carillo, II reports employment as the managing member/administrator/ and CEO of Carillon Nursing & Rehab Center. He is an NYS Nursing Home Administrator in good standing and discloses ownership interests in the following residential health care facilities:

New York Nursing Homes

Carillon Nursing & Rehabilitation Center (11.12%)	01/1999 to present
East Neck Nursing and Rehabilitation Center (26.68%)	02/2005 to present
Workmen's Circle Multicare Center (25%)	07/2013 to present
Morningside Nursing and Rehabilitation Center (10%)	07/2014 to present
Upper East Side Rehabilitation and Nursing Center (10%)	06/2015 to present
Downtown Brooklyn Nursing & Rehabilitation Ctr (10%)	06/2018 to present

Assisted Living/Adult Home

Morningside at Home Assisted Living Program (10%)	06/2018 to present

Diagnostic and Treatment Centers

Carillon Dialysis Center (D&TC) (11.11%)	10/2003 to present
Workmens Circle Dialysis Center (D&TC) (25%)	08/2015 to present
East Neck Dialysis Center (D&TC) (33.33%)	09/2015 to present
Cassena Care Dialysis at Morningside (D&TC) (23.75%)	07/2019 to present

Certified Home Health Agency

Hillside Manor Certified H.C.A. (CHHA) (30%)	10/2017 to present

Licensed Home Care Services Agency

Morningside at Home (LHCSA) (20%)	06/2018 to present

End-Dated Ownership

Barnwell Nursing and Rehabilitation Center (33.30%)	11/2003 to 12/2017
Mills Pond Nursing and Rehabilitation Center (29%)	10/2010 to 04/2018
Sayville Nursing and Rehabilitation Center (33.33%)	12/2012 to 04/2018

Michael Schrieber reports employment as a managing member and regional administrator for Cassena Care. He is a licensed NYS NH administrator in good standing and discloses ownership interests in the following residential health care facilities:

New York Nursing Homes

Shore view Nursing & Rehabilitation Center (30.0%)	06/2014 to present
Upper East Side Rehabilitation and Nursing Center (1.50%)	06/2015 to present
Sea Crest Nursing & Rehab Center (30.0%)	07/2015 to present
Fordham Nursing and Rehab Center (5%)	08/2016 to present

Diagnostic and Treatment Centers

Sea Crest Dialysis Center (D&TC) (30%)	09/2017 to present

Jimmy Solovey reports employment as the Senior Vice President of Business Development for Smartinx Solutions. He has a master's degree from Long Island University and discloses ownership interests in the following residential health care facilities:

Upper East Side Rehabilitation and Nursing Center (4.25%)	06/2015 to present

Quality Review

The proposed owners have been evaluated on the distribution of CMS Star ratings for their portfolios as per 10 NYCRR § 600.2(b)(5)(iv). For all proposed owners the distribution of CMS star ratings for their facilities meets the standard described in state regulations.

CMS Star Rating Criteria					
		Duration of Ownership*			
		< 48 Months		48 months or more	
Proposed Owner	**Total Nursing Homes**	**Number of Nursing Homes**	**Percent of Nursing Homes With a Below Average Rating**	**Number of Nursing Homes**	**Percent of Nursing Homes With a Below Average Rating**
Alex Solovey	13	2	0.0%	11	18.2%
Jimmy Solovey	1			1	0.0%
Joseph F. Carillo, II	6	1	0.0%	5	0.0%
Michael Schrieber	4			4	0.0%
Pasquale DeBenedictis	13	2	0.0%	11	18.2%
Soloman Rutenbeerg	9	2	0.0%	7	14.3%

**Duration of ownership as of 6/2/2022* *Data Date: 04/2022*

The Nursing Home Compare website now includes information to alert consumers about abuse or neglect in nursing homes. Facilities that have been recently cited for resident harm or potential harm for abuse or neglect are indicated with an icon of a red circle with a hand in it. This symbol is on the chart below to reflect the Nursing Home Compare website.

New York. The proposed owners' portfolio includes ownership in 12 New York facilities. Eleven facilities have a CMS overall quality rating of average or higher, while one facility has a CMS overall quality rating of below average or lower.

Connecticut. The proposed owners' portfolio includes ownership in two Connecticut facilities. One facility has a CMS overall quality rating of average or higher, the other facility has a CMS overall quality rating of below average or lower. Regarding the abuse tag at Cassena Care Norwalk, the applicant states: "This was the result of a patient-to-patient altercation on a dedicated behavioral unit. The

incident involved individuals who are noted to have dementia and it was a spontaneous incident between two individuals. When the altercation occurred, it was documented and was self-reported to the Connecticut Department of Health." The applicant also indicates that additional in-service training was provided to all staff on patient monitoring.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
VillageCare Rehabilitation and Nursing Center	Subject Facility	*****	*****	*****	***
Carillon Nursing Home	Current	*****	****	*****	**
	01/1999 Data as of 12/2009	****	*****	****	*
East Neck Nursing and Rehabilitation	Current	****	***	*****	**
	02/2005 **Data Date 01/2009**	**	***	****	*
Workmen's Circle Multicare Center	Current	****	****	****	**
	08/2012	*****	*****	*****	**
Shore View Nursing and Rehabilitation Center	Current	*****	*****	*****	***
	06/2014	*****	*****	*****	*
Morningside Nursing and Rehabilitation Center	Current	***	***	****	**
	07/2014	*****	****	*****	***
Peninsula Nursing and Rehabilitation Center	Current	***	***	****	***
	08/2014	*	*	****	*
Upper East Side Rehabilitation and Nursing Center	Current	*****	****	*****	***
	06/2015	*****	****	*****	**
Sea Crest Nursing and Rehab Center	Current	*****	*****	***	***
	07/2015	*****	****	*****	**

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Fordham Nursing and Rehab Center	Current	****	****	*****	*
	08/2016	***	****	***	*
Long Beach Nursing & Rehab Center	Current	**	**	****	***
	08/2016	****	**	*****	*****
Downtown Brooklyn Nursing & Rehabilitation Ctr	Current	***	***	***	**
	06/2018	*****	****	*****	N/A
Margaret Tietz Nursing & Rehabilitation Center	Current	*****	*****	*****	***
	02/2019	*****	*****	*****	**
Connecticut					
Cassena Care at Norwalk	Current	**	**	***	**
	07/2013 Data as of 09/2013	***	**	****	****
Cassena Care at Stamford	Current	****	***	*****	***
	11/2015	****	**	*****	****

End Dated Nursing Home Affiliations

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Cassena Care At New Britain	12/2020	***	***	****	***
	07/2013	***	***	****	***
Terrace Health Care Center	08/2016	***	****	***	*
	06/2015	***	****	****	*
Barnwell Nursing and Rehabilitation Center	12/2017	*	*	**	**
	11/2003	***	****	**	*

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Mills Pond Nursing and Rehabilitation Center	04/2018	**	**	****	N/A
	10/2010	**	**	****	***
Sayville Nursing and Rehabilitation Center	04/2018	***	**	*****	N/A
	12/2012	***	****	****	*

CMS Dialysis Quality Ratings

Facility	Ownership Since	Current Quality Rating	Current Patient Survey Rating
Carillon Dialysis Center	10/2003	*****	N/A
Workmens Circle Dialysis Center	08/2015	***	**
Sea Crest Dialysis Center	09/2017	**	N/A
East Neck Dialysis Center	09/2015	**	N/A
Cassena Care Dialysis at Peninsula	11/2016	*	N/A
Cassena Care Dialysis at Morningside	07/2019	*	N/A

Record of Legal Actions

East Neck Nursing and Rehabilitation is being investigated by the New York State Attorney General's Office for certain services provided from 01/2012-12/2014.

Alex Solovey disclosed professional liability, general liability, EPLI, and medical malpractice claims against nursing homes and a therapy company with which they were alleged to have had an interest. Four claims remain open, the other claims were discontinued or settled without admission of liability.

Pasquale DeBeneictis disclosed professional liability, general liability, and medical malpractice claims against nursing homes. Three claims remain open, the other claims were discontinued or settled without admission of liability.

Soloman Rutenberg disclosed professional liability and medical malpractice claims against nursing homes. Two claims remain open, the other claims were discontinued.

Joseph Carillo disclosed professional liability and medical malpractice claims against nursing homes. One claim remains open, the other claims were discontinued or settled without admission of liability.

Michael Schrieber did not disclose any pending or closed lawsuits against himself or any affiliated entities.

Enforcement History

A review of **Barnwell Nursing and Rehabilitation Center** for the period identified above reveals the following:

- The facility was fined $2,000 pursuant to Stipulation and Order NH-15-001 issued 1/12/2014 for surveillance findings on 3/13/2012. Deficiencies were found under 10 NYCRR 415.12(h)(1) – Quality of Care: Accidents/Supervision.
- A federal CMP of $3,250 was paid for the Immediate Jeopardy on 3/13/2012.
- The facility was fined $10,000 pursuant to Stipulation and Order NH-15-038 for surveillance findings on February 1, 2013. Deficiencies were found under 10NYCRR 415.12(m)(2) Quality of Care Significant Medication Errors; 10 NYCRR 415.26 Administration; and 10NYCRR 415.27 Quality Assurance.
- A federal CMP of $5,000 was paid for the Immediate Jeopardy on 2/1/2013.
- The facility was fined $8,000 pursuant to Stipulation and Order NH-15-038 for surveillance findings on September 26, 2013. Deficiencies were found under 10 NYCRR 415.4(b)(1)(2)(3) Free from Mistreatment Neglect and Misappropriation of Property; and 10 NYCRR 415.12 Quality of Care Highest Practicable Potential.
- A federal CMP of $8,000 was paid for Immediate Jeopardy on 9/26/13.

A review of **East Neck Nursing and Rehabilitation Center** for the period identified above reveals the following:

- The facility was fined $6000 pursuant to Stipulation and Order NH-15-039 issued 12/3/2015 for surveillance findings on 3/21/2014. Deficiencies were found under 10 NYCRR 415.3 (e)(1)(ii) Resident Rights: Right to Accept/Refuse Treatment; Right to Formulate Advance Directives; 10 NYCRR 415.26 Administration and 10 NYCRR 415.27(a-c) Administration: Quality Assessment and Assurance.
- The facility was assessed a federal CMP of $650 on July 12, 2021, for failure to report COVID data.

A review of operations of **Mills Pond Nursing and Rehabilitation Center** for the period identified above reveals the following:

- The facility was fined $10,000 pursuant to Stipulation and Order NH-17-050 issued 9/14/2017 for surveillance findings on 7/12/2017. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care Significant Medication Errors.

A review of operations of **Workmen's Circle Multicare Center** for the period identified above reveals the following:

- The facility was fined $10,000 pursuant to Stipulation and Order NH-21-220 issued 11/15/2021 for surveillance findings on 5/11/2021. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care, accidents, and the resident environment remains free of accident hazards.

A review of operations of **Margaret Tietz Nursing & Rehabilitation Center** for the period identified above reveals the following:

- The facility was assessed a federal CMP of $650 on February 22, 2021, for failure to report COVID data.

A review of operations of **Upper East Side Rehabilitation and Nursing Center** for the period identified above reveals the following:

- The facility was fined $12,000 pursuant to a Stipulation and Order issued for surveillance findings on 2/20/2018. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of No Significant Med Errors and 10 NYCRR 415.15(b)(2)(iii) Physician Services/Physicians Visits.

A review of operations for **Cassena Care at Stamford** for the period identified above reveals the following:

- The facility was fined $1,730 by the State of Connecticut for a survey on 9/15/2016 for F tag 309-Quality of Care.

- The facility incurred a Civil Money Penalty of $17,821.05 for survey findings on 9/15/2016 for F tag 309- Provide Care/Services for highest wellbeing, F tag 323- Free of Accident Hazards/Supervision/Devices, and F tag 327- Sufficient fluid to maintain hydration.
- The facility incurred a Civil Money Penalty of $11,000 for survey findings on 8/23/2018 for appropriate treatment and care according to orders, resident's preferences, and goals, each resident from all types of abuse such as physical, mental, sexual abuse, physical punishment, and neglect by anybody.

A review of operations for **Cassena Care at New Britain** for the period identified above reveals the following:

- The facility was fined $1,730 by the State of Connecticut for a survey on 9/15/2016 for F tag 309- Quality of Care.
- The facility incurred a Civil Money Penalty of $17,821.05 for survey findings on 9/15/2016 for F tag 309- Provide Care/Services for highest wellbeing, F tag 323- Free of Accident Hazards/Supervision/Devices, and F tag 327- Sufficient fluid to maintain hydration.

A review of operations for **Cassena Care at Norwalk** for the period identified above reveals that the facility was fined by the state of Connecticut for the following:

- The facility was fined $1,020 by the state for the survey on 9/5/2013 for F Tag 309- Provide necessary care and services to maintain the highest wellbeing of each resident and F Tag 323 - Free of Accidents: Hazards/supervision/devices. The facility incurred a federal CMP of $7,850 for survey findings on 9/5/2013.
- The facility was fined $360 by the state for the survey on 10/17/2013 for Tag F 323- Free from accident hazards and risks, supervision to prevent avoidable accidents.
- The facility was fined $1,160 by the state for the survey on 12/23/2013 for Tag F 323- Free from accident -Fall in shower.
- The facility was fined $1,370 by the state for the survey on 2/28/2014 for Tag F 309 G- Provide care/services for highest wellbeing, and Tag F 314 G- Treatment/services to prevent/heal pressure sores. The facility incurred a federal CMP of $13,650 for survey findings on 2/28/2014.
- The facility was fined $3,000 by the state for the survey on 1/26/2016 for Tag F 223- Protect the resident from all abuse, physical punishment, and being separated from others. The facility incurred a federal CMP of $6,500 for survey findings on 1/26/2016.
- The facility was fined $2,370 and $3,000 by the state for the survey on 3/31/2016 for Tag F 224 Prohibit mistreatment/neglect/misappropriation. The facility incurred a federal CMP of $8,750 for survey findings on 3/31/2016.
- The facility incurred a federal CMP of $2,315 for survey findings on 3/31/2016, Ensure that residents are safe from serious medication errors.
- The facility was fined $2,530 by the state for the survey on 7/13/2017 Free of Accident Hazards/Supervision/Devices. The facility incurred a federal CMP of $24,980 for survey findings on 7/13/2017.
- The facility incurred a federal CMP of $21,045 for survey findings on 11/28/2018, Ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents.

A review of operations for **Peninsula Continuum Services, LLC d/b/a Cassena Care Dialysis at Peninsula in Far Rockaway, NY,** for the period identified above reveals the following:

- The facility incurred a Federal Civil Money Penalty of $12,468 for survey findings from 12/28/2016 to 5/15/2017 for the Respiratory protection program (fit testing, documentation), hazards communication program, and sharps injury log.

Conclusion

The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3)(b). There will not be any changes to beds, services, or utilization in the area as a result of this change in ownership.

Financial Analysis

Operating Budget

The applicant has submitted an operating budget, in 2022 dollars, for the current year, first-year and year three, summarized as follows:

	Current		Year One		Year Three	
Revenues	Per Patient Day	Total	Per Patient Day	Total	Per Patient Day	Total
Commercial FFS	$863.37	$2,042,729	$976.18	$2,866,077	$1,021.15	$3,021,577
Medicare FFS	$672.53	9,774,501	$792.52	16,203,900	$808.43	$16,529,200
Medicare MC	$488.16	3,691,497	$488.16	$4,917,723	$488.16	$4,917,723
Medicaid FFS	$507.49	659,741	$460.06	868,133	$460.06	$868,133
Medicaid MC	$517.94	969,065	$460.29	671,567	$460.29	$671,567
Private Pay	$1,000.00	273,000	$519.35	193,200	$530.91	$197,500
Other		3,085,524		1,200		$1,200
Non-Operating Rev		4,397,026		0		0
Total Revenues		$24,893,083		$25,721,800		$26,026,900
Expenses						
Operating	$894.74	$24,970,469	$549.96	$20,444,800	$550.25	$20,455,500
Capital	$86.20	$2,825,221	$120.64	$4,484,924	$121.94	$4,532,942
Total Ordinary Expenses	$980.94	$27,795,690	$670.60	$24,929,724	$672.18	$24,988,442
Loss on impairment of property and Equipment		$20,649,699				
Total Expenses and Loss on Impairment		$48,445,389				
Net Income		($23,552,306)		$792,076		$1,218,458
Patient Days		27,908		37,175		37,175
Occupancy		72.82%		97.00%		97.00%

The following is noted concerning the submitted budget:

- Medicare and Private Pay rates are projected upon the current market rates.
- The current year Medicaid rate is based on the facility's Medicaid rate per 2020 cost report information.
- The increase in patient days is based on the assumption that the facility occupancy rate will recover to 2019 pre-pandemic levels. The self-reported weekly bed census data for March 3, 2022, indicates an occupancy rate of 91.4% at Village Care Rehabilitation and Nursing Center. This compares favorably with the 86.9% occupancy rate for all nursing homes in New York County for the period.
- The facility received CARES funding of $1,343,637 in 2020. The applicant did not receive any State support for debt relief.
- Expenses are projected to be lower than the current year due to a reduction in employee benefits going from a not-for-profit to a proprietary.
- The projected increase in patient days reflects the proposed operator's admissions program and their referral relationships with upstate and downstate providers.
- Non-operating revenues are related to the nonprofit endowment fund and are not going to repeat in the projections for years one and three.

- Impairment losses of $20,649,699 were recognized for building and building improvements for the year ended December 31, 2020, based on an independent valuation of property and equipment obtained by the Center in 2020. Impairment losses are based on the recognized reduction in the carrying value of a long-lived asset that is triggered by a decline in its fair value.
- The applicant has indicated that occupancy from January 1, 2022 through March 31, 2022 is 94.09%.

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

Payor	Current Year	Year One	Year Three
Commercial FFS	8.48%	8.10%	8.10%
Medicare FFS	52.08%	54.80%	54.80%
Medicare MC	27.10%	27.10%	27.10%
Medicaid FFS	4.66%	5.08%	5.08%
Medicaid MC	6.71%	3.92%	3.92%
Private Pay	.97%	1.00%	1.00%

Real Estate Purchase Agreement

The applicant has submitted an executed real estate purchase agreement, which is summarized below:

Date	March 17, 2021
Premises:	The premises are located at 214 West Houston Street, New York, New York 10014
Seller:	Village Center for Care
Purchaser:	Village Acquisition II, LLC
Purchase Price:	$29,750,000
Payment of Purchase Price:	$4,537,500 escrow deposit Balance of $25,212,500 due at Closing

The applicant will finance the balance of $25,212,500 at an interest rate of London Interbank Offered Rate (LIBOR) plus 2.50% (approximately 3.88% as of March 1, 2022) for a twenty-five-year term.

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement, which is summarized below:

Date:	March 17, 2021
Seller:	Village Center for Care
Purchaser:	Village Acquisition I, LLC
Assets Acquired:	Non-Fixed Equipment; all retroactive rate increases relating to services rendered by the Business during the Closing Adjustment Period; copies of all patient records, copies of all business records relating to and used solely by the Company in the operation of the Business; Medicare and Medicaid provider numbers, patient prepayments for services rendered during the Closing Adjustment Period, security deposits relating solely to the Business; all telephone numbers and facsimile numbers used solely in the conduct of the Business and all accounts receivable for date of service covering the Closing Adjustment Period.
Assumed Liabilities	All closing liabilities and obligations of any kind or nature incurred in the conduct of the Business or use of the Purchased Assets relating to or arising during the Closing Adjustment Period on and after the Closing Date; all liabilities of the Company under the Assigned Contracts during the Closing Adjustment period and on and after the Closing Date, all liabilities; the Company's obligations with respect to vacation time, personal days and sick time attributable to the Buyer Employees prior to the Effective Date and after the Closing Adjustment Period and any all liabilities under the Promissory Note during the Closing Adjustment Period.

Purchase Price	$1,500,000
Payment of Purchase Price	$150,000 shall be payable to the buyer upon execution of this Agreement. $1,350,000 payable at Closing.

The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of 2/25/2022, the facility had no outstanding audit liabilities.

Lease Rental Agreement

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

Premises	The site is located at 214 West Houston St., New York, New York 10014
Lessor	Village Acquisition II, LLC
Lessee	Village Acquisition I, LLC
Term	20 years
Rental	$3,115,000 annually
Provisions	The lessee shall be responsible for real estate taxes, property insurance, and reserve for replacement.

The applicant has submitted an affidavit indicating that the lease agreement will be a non-arm's length lease agreement as there is common ownership between the landlord and the tenant

Capability and Feasibility

The purchase price for the operation is $1,500,000 and will be met by equity from the proposed members' personal resources. The purchase price for the real estate is $29,750,000 and will be met as follows: Equity of $4,537,500 from the proposed members' personal resources and a bank loan of $25,212,500 at an interest rate of LIBOR plus 2.50% (approximately 3.88% as of March 1, 2022).

Working capital requirements are estimated at $4,154,954, which is equivalent to two months of first-year expenses. The applicant will meet the working capital requirement via equity from the proposed members' personal resources. The net worth statements of Village Acquisition I, LLC indicate the availability of sufficient funds for the equity contribution for the operation, real estate, and the working capital (refer to BFA Attachment A).

The submitted budget indicates a net income of $792,076 and $1,218,458 during the first and third years, respectively. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

Nine of the twelve other owned facilities had an average positive working capital position, average positive net asset position, and an average net income during the period 2019 through 2020 (refer to BFA Attachment B). The exceptions are as follows: Peninsula had a loss in 2020 due to COVID-19 issues, Downtown Brooklyn recorded a loss in 2019 due to a bad debt expense recognized at $1,941,584, which was deemed to be uncollectible at the end of 2019, Margaret Tietz had a negative net asset position due to related party liability, and, Carillon had losses through October 31, 2020, due to COVID-19.

The 2019 and 2020 Financial Summary of Village Care Center is in BFA Attachment C and shows the facility had a positive working capital position and a positive net asset position for the period. The facility incurred a loss of $422,902 and $27,426,681 in 2019 and 2020, respectively. The applicant has indicated that the 2019 losses were due to closing their adult day health care program in 2019 and costs incurred to close the program. The applicant has indicated that the reason for the 2020 loss was due to a

$20,649,699 loss on impairment, a recognized reduction in the carrying amount of an asset, of property and equipment, and reduced census and increased expenses resulting from the COVID-19 pandemic. The applicant anticipates occupancy returning to pre-pandemic levels and has reported a March 3rd, 2022 weekly census occupancy of 91.4% compared to the 2020 occupancy of 72.8%.

Conclusion

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

Attachments

LTCOP Attachment A	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Personal Net Worth Statement of Proposed Members
BFA Attachment B	Financial Summary of Other Owned Facilities
BFA Attachment C	Financial Summary of Village Center for Care

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 2nd day of June 2022, 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 Village Acquisition l, LLC as the new operator of VillageCare Rehabilitation and Nursing Center, a 105-bed residential health care facility located at 214 West Houston Street, New York, 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:
211139 E	Village Acquisition 1, LLC d/b/a Lower West Side Rehabilitation and Nursing Center

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will: Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program; Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility and inform them about the facility's Medicaid Access policy, and Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]
4. Submission of an executed lease rental agreement that is acceptable to the Department of Health. [BFA]
5. Submission of a photocopy of an amended and executed Certificate of Amendment of the Articles of Organization of Village Acquisition I, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed Operating agreement of Village Acquisition I, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed Certificate of Amendment of the Certificate of Incorporation of Village Center for Care, acceptable to the Department. [CSL]
8. Submission of photocopy of an amended and executed Lease between Village Acquisition II, LLC and Village Acquisition I, LLC, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by one year from the date of the recommendation 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

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

NEW YORK STATE OF OPPORTUNITY | Department of Health

MEMORANDUM

To: Lisa Thomson
Division of Health Facility Planning and Development

Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

From: Kerri Tily, Senior Attorney
Bureau of Health Facility Planning and Development, Division of Legal Affairs

Date: April 6, 2022

Subject: Proposed Dissolution of Kateri Residence

Please include this matter on the next Establishment and Project Review Public Health and Health Planning Council agenda.

The attachments relating to the matter include the following:

1) A Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;

2) Letters from applicant's consultant requesting approval of the proposed Certificate of Dissolution of Kateri Residence;

3) An executed, proposed Certificate of Dissolution and Plan of Dissolution of Kateri Residence.

4) The Resolution of the Board of Trustees of Kateri Residence, approving and authorizing the dissolution;

5) The Resolution of the Board of Trustees of Catholic Health Care System, the sole member of Kateri Residence., approving and authorizing the dissolution;

6) The Resolution of the Board of Trustees of Providence Health Services, the sole member of Catholic Health Care System, approving and authorizing the dissolution

7) The Restated Certificate of Incorporation of Kateri Residence, dated September 26, 2016.

8) The Amended and Restated Bylaws of Kateri Residence, adopted June 25, 2008.

9) A proposed verified petition seeking the Attorney General's approval of the filing of the Certificate of Dissolution of Kateri Residence.

Attachments.

cc: B. DelCogliano

NEW YORK STATE OF OPPORTUNITY. | Department of Health

MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy Marks, General Counsel KSM

Date: April 14, 2022

Subject: Proposed Dissolution of Kateri Residence

Kateri Residence requests Public Health and Health Planning Council ("PHHPC") approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law § 1002(c) and § 1003, as well as 10 NYCRR Part 650.

Kateri Residence is a New York not-for-profit corporation incorporated on September 25, 1981. Kateri Residence was the licensed operator of a Residential Health Care Facility located at 150 Riverside Drive, New York, NY 10024 September 28, 1981 to August 28, 2013, when it sold substantially all of its assets to 150 Riverside Op, LLC, d/b/a The Riverside as approved in Certificate of Need Application Number 121407. Because Kateri Residence has ceased operations and gone dormant, its Board of Trustees and the Board of Trustees of its members believe it is in the best interests of Kateri Residence to dissolve.

The Board of Trustees of Kateri Residence approved and authorized dissolution and authorized the filing of the Certificate of Dissolution on September 27, 2021. The Board of Trustees of Catholic Health Care System, as sole corporate member of Kateri Residence, approved and authorized the dissolution of Kateri Residence on September 27, 2021. The Board of Trustees of Providence Health Services, as sole corporate member of Catholic Health Care System, approved and authorized the dissolution of Kateri Residence on December 14, 2021.

Kateri Residence has no assets or liabilities.

The required documents: a proposed Verified Petition to the Attorney General, a Plan of Dissolution, and a proposed Certificate of Dissolution, with supporting organizational documents of Kateri Residence and resolutions of the board of trustees of Kateri Residence, the board of trustees of Catholic Health Care System, as the sole corporate member of Kateri Residence, and the board of trustees of Providence Health Services, as the sole corporate member of Catholic Health Care System, authorizing the dissolution, are included for PHHPC's review. A letter from the consultant for Kateri Residence advocating for dissolution, is also enclosed.

There is no legal objection to the proposed Verified Petition, Plan of Dissolution, and the Certificate of Dissolution.

Attachments.

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

Cicero Consulting Associates VCC, Inc.

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Mary Ann Anglin

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

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

January 24, 2022

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

RE: Dissolution of Kateri Residence

Dear Ms. Leonard:

On behalf of our client, Kateri Residence, we are writing to seek approval from the Public Health and Health Planning Council (PHHPC) for the dissolution of Kateri Residence, which is a New York State not-for-profit corporation whose Restated Certificate of Incorporation was approved by PHHPC on August 25, 2006. In 2013, the assets of Kateri Residence, until that time a certified nursing home, were transferred to a new owner/operator. Kateri Residence has no assets or liabilities and has been financially dormant for a number of years. Kateri Residence hopes to formally dissolve as soon as possible.

In furtherance of this request, enclosed please find the following documents:

1. Proposed Certificate of Dissolution;
2. Restated Certificate of Incorporation;
3. Amended and Restated Bylaws; and
4. Board Resolutions authorizing the dissolution.

Please feel free to call me if you require other information. Thank you for your consideration in this matter.

Sincerely,

Frank M. Cicero

Frank M. Cicero

cc: Sarah D. Strum, Esq., Senior Vice President of Compliance, ArchCare

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of the Archdiocese of New York

CERTIFICATE OF DISSOLUTION

OF

KATERI RESIDENCE

Under Section 1003 of the Not-for-Profit Corporation Law

1) The name of this corporation is Kateri Residence.

2) The Certificate of Incorporation of Kateri Residence was filed by the Department of State of the State of New York on September 25, 1981.

3) The names and addresses of each of the officers and directors of the corporation are as follows:

Francis J. Serbaroli, Chairman- One Vanderbilt Avenue, New York, NY 10017
Thomas E. Alberto- 35 Prospect Park West Apt. 13A Brooklyn, NY 11215
Steve Bujno – 246 West End Avenue, Apt 4A, New York, NY 10023
John Cahill- 1011 First Avenue 20th Floor New York, NY 10022
Dr. Tara A. Cortes- 433 First Avenue, 5th Floor New York, NY 10016
John T. Dunlap- 230 Park Avenue 21st Floor New York, NY 10177
Monsignor Charles J. Fahey- Nottingham, 1301 Nottingham Rd, Jamesville, NY 13078
Thomas J. Fahey, Jr., M.D.- 300 East 66th Street New York, NY 10065
Eric P. Feldmann- 16 Hampshire Road Rockville Centre, NY 11570
Sister Seline Flores, Providence Rest, 3304 Waterbury Avenue, Bronx, NY 10465
John Gleason, 250 Park Avenue, New York, NY 10017
Karen Gray- 235 East 45th Street New York, New York 10017
George Irish- 300 West 57th Street, 26th Floor New York, NY 10019
Clarion E. Johnson, MD- 5504 Dorset Avenue Chevy Chase, Maryland 20815
Rory Kelleher- 1165 Fifth Avenue New York, NY 10029
Monsignor Joseph LaMorte- 1011 First Avenue, 19th Floor New York, NY 10022
Scott LaRue, ex-officio- 205 Lexington Avenue New York, NY 10016
Thomas M. O'Brien, Vice-Chair- PO Box 2326 Bonita Springs FL. 34133
Kathryn Rooney- 1475 Hylan Boulevard Staten Island, NY 10305
Joseph Saporito, 43 Somerset Place, Matawan, NJ 07747
G.T. Sweeney- 100 Church Street New York, NY 10007
Gennaro (Jerry) Vasile, Ph.D., 21908 Masters Circle Estero, FL 33928-6949
Bishop Gerald Walsh- 1011 First Avenue New York, NY 10022

4) The corporation is a charitable corporation.

5) At the time of authorization of the corporation's Plan of Dissolution as provided in Not-for-Profit Corporation Law §1002, the corporation holds no assets which are legally required to be used for a particular purpose.

6) The corporation elects to dissolve.

7) Dissolution of the corporation was authorized by the majority vote of the board of directors, followed by two-thirds vote of the members.

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8) Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution was approved by the Attorney General. A copy of the approval of the Attorney General is attached.

X Frank Serbaroli
5B87D899CB31C2DE11E9FC57F917FEAC contractworks.
(Signature)

Frank Serbaroli
(Print or Type Name of Signer)

Chairman of the Board of Directors
(Capacity of Signer)

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CERTIFICATE OF DISSOLUTION

OF

KATERI RESIDENCE

Under Section 1003 of the Not-for-Profit corporation Law

Filed by: XXXXXXX
205 Lexington Avenue, 3rd FL
New York, NY 10016
(347) 899-7765

NOTES:

1. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at www.dos.ny.gov.
2. This Certificate of Dissolution must be signed by an officer, director or duly authorized person.
3. Attach the consent of the New York State Department of Taxation and Finance.
4. Attach the consent of the New York City Department of Finance, if required.
5. Attach a copy of the approval of the Attorney General or Order of the Supreme Court, if required.
6. The Certificate of Dissolution must include the approval of the Attorney General if the corporation is a charitable corporation or if the corporation is a non-charitable corporation and holds assets at the time of dissolution legally required to be used for a particular purpose.
7. Attach any other consent or approval required by law.
8. The fee for filing this certificate is **$30**, made payable to the Department of State.

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Plan of Dissolution

Of

Kateri Residence

The Board of Trustees of Kateri Residence, The Board of Trustees of Catholic Health Care System and Providence Health Services have all considered the advisability of voluntarily dissolving the corporation and have determined that dissolution is in the best interest of the corporation.

1. The Corporation has no assets or liabilities.

2. In addition to Attorney General approval, the following governmental approvals of the Plan are required and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General.

   New York State Public Health and Health Planning Council

3. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.

Francis J. Serbaroli
Chair

September 27, 2021
(Date)

RESOLUTION OF THE
BOARD OF TRUSTEES
OF
KATERI RESIDENCE

(Dissolution of Kateri Residence)

WHEREAS, Kateri Residence (the "Corporation" or "Nursing Home") is a not-for-profit corporation organized and existing under the Not-for-Profit Corporation Law and Article 28 of the Public Health Law of the State of New York.

WHEREAS, Kateri Residence previously operated a Nursing Home located at 150 Riverside Drive New York, NY 10024. Kateri Residence last operated on or about August 27, 2013, when it was transferred to The Riverside Premier Rehabilitation & Healing Center and currently has no assets or liabilities.

WHEREAS, the Board of Trustees of Kateri Residence have considered the advisability of voluntarily dissolving the corporation.

WHEREAS, pursuant to Article III of Kateri Residence's bylaws, Kateri Residence shall make a recommendation to Catholic Health Care System and to Providence Health Services with respect to any dissolution for the Nursing Home.

WHEREAS, the Board of Trustees of Kateri Residence after due consideration, have deemed it advisable and in the best interests of the Corporation to approve and recommend for approval to the Catholic Health Care System Board of Trustees and Providence Health Services a Plan of Dissolution and authorize the filing of a Certificate of Dissolution with the New York State Department of State subject to the approval of the Attorney General of the State of New York, and any other necessary governmental authority, to dissolve.

NOW THEREFORE, BE IT:

RESOLVED, that the Corporation shall dissolve voluntarily; and it is further

RESOLVED, that the Board of Trustees of Kateri Residence hereby approves and recommends for approval to the Catholic Health Care System Board of Trustees and Providence Health Services the dissolution of Kateri Residence; and it is further

RESOLVED, that the Board of Trustees of Kateri Residence hereby approves and recommends for approval to the Catholic Health Care System Board of Trustees and Providence Health Services the Plan of Dissolution in the form attached hereto and the authorizing of the filing of a Certificate of Dissolution with the New York State Department of State subject to the approval of the Attorney General of the State of New York, and any other necessary governmental authority, to dissolve.

Adopted at a duly noticed meeting of the Kateri Residence Board of Trustees on September 27, 2021.

Francis J. Serbaroli
Chair

RESOLUTION OF THE
BOARD OF TRUSTEES
OF
CATHOLIC HEALTH CARE SYSTEM

(Dissolution of Kateri Residence)

WHEREAS, Kateri Residence (the "Corporation" or "Nursing Home") is a not-for-profit corporation organized and existing under the Not-for-Profit Corporation Law and Article 28 of the Public Health Law of the State of New York.

WHEREAS, Kateri Residence previously operated a Nursing Home located at 150 Riverside Drive New York, NY 10024. Kateri Residence last operated on or about August 27, 2013, when it was transferred to The Riverside Premier Rehabilitation & Healing Center and currently has no assets or liabilities.

WHEREAS, the Board of Trustees of Kateri Residence has approved and recommended for approval to the Catholic Health Care System Board of Trustees for the voluntarily dissolution of the corporation and have determined that dissolution is in the best interest of the corporation.

WHEREAS, pursuant to Kateri Residence's bylaws, Catholic Health Care System is the sole member of the Nursing Home, and shall make a recommendation to Providence Health Services with respect to any dissolution for the Nursing Home.

WHEREAS, the Board of Trustees of Catholic Health Care System have considered the advisability of voluntarily dissolving the corporation.

WHEREAS, the Board of Trustees of Catholic Health Care System after due consideration, have deemed it advisable and in the best interests of the Corporation to adopt and approve a Plan of Dissolution and authorize the filing of a Certificate of Dissolution with the New York State Department of State subject to the approval of the Attorney General of the State of New York, and any other necessary governmental authority, to dissolve.

NOW THEREFORE, BE IT:

RESOLVED that the Corporation shall dissolve voluntarily; and it is further

RESOLVED, that the Board of Trustees of Catholic Health Care System herby approves and recommends for approval to Providence Health Services the dissolution of Kateri Residence; and it is further

RESOLVED that the Board of Trustees of Catholic Health Care System hereby approves and recommends for approval to Providence Health Services the Plan of Dissolution in the form attached hereto and the authorizing of the filing of a Certificate of Dissolution with the New York State Department of State subject to the approval of the Attorney General of the State of New York, and any other necessary governmental authority, to dissolve.

Adopted at a duly noticed meeting of the Catholic Health Care System Board of Trustees on September 27, 2021.

Francis J. Serbaroli
Chair

RESOLUTION
OF THE MEMBERS OF
PROVIDENCE HEALTH SERVICES

(Dissolution of Kateri Residence)

WHEREAS, Providence Health Services ("Providence") is the sole corporate member of the Catholic Health Care System ("CHCS") and as such has certain reserved powers; and

WHEREAS, Kateri Residence (the "Nursing Home") is a not-for-profit corporation organized and existing under the Not-for-Profit Corporation Law and Article 28 of the Public Health Law of the State of New York; and

WHEREAS, CHCS is the sole corporate member of the Nursing Home and as such has certain reserved powers to approve the plan of dissolution of the Nursing Home; and

WHEREAS, the Nursing Home previously operated an Article 28 residential health care facility at 150 Riverside Drive, New York, NY 10024, which ceased operations on or about August 27, 2013 following an asset purchase by The Riverside Premier Rehabilitation & Healing Center, and currently has no assets or liabilities; and

WHEREAS, the Board of Directors of the Nursing Home has approved and recommended for approval to Providence Health Services for the voluntarily dissolution of the Nursing Home and have determined that dissolution is in the best interest of the Nursing Home; and

WHEREAS, the CHCS Board of Trustees has approved and recommended for approval to Providence Health Services the voluntarily dissolution of the Nursing Home and have determined that dissolution is in the best interest of the Nursing Home; and

WHEREAS, the bylaws of the Nursing Home grant the authority to Providence Health Services as the Sponsor of the Nursing Home sole authority to approve any dissolution of the Nursing Home; and

WHEREAS, the Providence Health Services has considered the advisability of voluntarily dissolving the Nursing Home; and

WHEREAS, the Providence Health Services, after due consideration, have deemed it advisable and in the best interests of the Nursing Home to adopt and approve a Plan of Dissolution and authorize the filing of a Certificate of Dissolution with the New York State Department of State subject to the approval of the Attorney General of the State of New York, and any other necessary governmental authority, to dissolve.

NOW THEREFORE, it is

RESOLVED, that the Nursing Home shall dissolve voluntarily; and it is further

RESOLVED, that the Providence Health Services does hereby adopt and approve the Plan of Dissolution in the form attached hereto; and it is further

RESOLVED, that the Providence Health Services hereby authorizes the filing of a Certificate of Dissolution with the New York State Department of State, subject to the consent of the Attorney General of the State of New York; and it is further

RESOLVED, that the officers of the Corporation are hereby authorized and empowered to execute such documents, to make any necessary, nonmaterial amendments to such documents and to do any and all acts necessary to effectuate the foregoing resolutions.

Adopted at a duly constituted meeting of the Providence Health Services Board of Trustees on December 14, 2021.

Msgr. Joseph LaMorte
Vice President

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: [redacted]RESIDENCE

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP) COUNTY: NEWY
PURPOSES PROCESS PROVISIONS RESTATED

SERVICE COMPANY: LIBERTY CORPORATE SERVICES, INC. SERVICE CODE: AL

FILED:09/26/2006 DURATION:********* CASH#:060926000299 FILM #:060926000261

ADDRESS FOR PROCESS

THE CORPORATION
ATTN: EXECUTIVE DIRECTOR 150 RIVERSIDE DRIVE
NEW YORK, NY 10021

REGISTERED AGENT

FILER	FEES	65.00	PAYMENTS	65.00
	FILING	30.00	CASH	0.00
	TAX	0.00	CHECK	0.00
CATHOLIC HEALTH CARE SYSTEM	CERT	0.00	CHARGE	0.00
LEGAL DEPARTMENT	COPIES	10.00	DRAWDOWN	65.00
1011 FIRST AVENUE - 11TH FLOOR	HANDLING	25.00	OPAL	0.00
NEW YORK, NY 10022			REFUND	0.00

12391 DOS-1025 (11/89)

State of New York }
Department of State } *ss:*

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

Witness my hand and seal of the Department of State on October 13, 2006

Special Deputy Secretary of State

DOS-1266 (Rev. 11/05)

F060926000 26
060926000

RESTATED

CERTIFICATE OF INCORPORATION

OF

KATERI RESIDENCE

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

The undersigned, being the President and Secretary of Kateri Residence (the "Corporation"), hereby certify:

1. The name of the corporation is KATERI RESIDENCE.

2. The Certificate of Incorporation of the Corporation was filed by the New York Department of State on September 25, 1981, under the New York Not-for-Profit Corporation Law ("NPCL").

3. The Corporation is a corporation as defined in Section 102(a)(5) of the NPCL and is a Type B corporation under Section 201 of the NPCL. The Corporation shall continue to be a Type B corporation.

4. The Corporation's Certificate of Incorporation is hereby amended to:

   (a) amend Article I thereof, setting forth the name of the Corporation, to delete the word "proposed".

   (b) amend Article II thereof (such Article II renumbered as Article THIRD in this Restated Certificate of Incorporation), relating to the purposes of the Corporation, to:

      (i) delete the introductory phrase "The purposes for which this corporation is to be formed are:", and insert a new clause (a) in new Article THIRD to include an introductory statement that the Corporation is formed exclusively for charitable, educational, religious, and scientific purposes within the meaning of Sections 170(c)(2)(B) and 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code");

      (ii) insert a new subclause (i) in clause (a) of Article THIRD which restates the Corporation's existing purposes clause, but which updates such purposes clause by (x) deleting the following phrase "provided that before such facility is established, operated or maintained, the approval of the New York State Public Health Council is obtained"; and (y) adding the following phrase in lieu thereof "or nursing home pursuant to Article 28 of the Public Health Law", to reflect the fact that the Corporation is licensed as a residential health care facility under Article 28 of the Public Health Law;

(h) delete Article VIII, stating the perpetual duration of the Corporation, as such statement is no longer required by law;

(i) delete Articles IX and X in their entirety and insert in lieu thereof new Articles SIXTH through TENTH to add updated provisions to the Certificate of Incorporation to expressly state certain limitations related to the Corporation's activities required in order to maintain its status as a corporation which is exempt from federal income tax under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code.

(j) in accordance with Section 805(c) of the NPCL, omit Article XI, relating to the subscribers of the Corporation.

(k) amend Article XII (such Article XII renumbered as Article ELEVENTH in this Restated Certificate of Incorporation) to update the Corporation's address for service of process.

5. This Restated Certificate of Incorporation was authorized by the unanimous written consent of the Board of Trustees of Catholic Health Care System, in its capacity as the sole member of the Corporation, pursuant to Section 802(a)(1) and 614 of the NPCL.

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

"FIRST: The name of the corporation is "Kateri Residence" (herein referred to as the "Corporation").

SECOND: The Corporation is a corporation as defined in Subparagraph (a)(5) of Section 102 of the New York Not-For-Profit Corporation Law. The Corporation is a Type B corporation under Section 201 of the New York Not-For-Profit Corporation Law.

THIRD: (a) The Corporation is organized and shall be operated exclusively for charitable, educational, religious, and scientific purposes within the meaning of Sections 170(c)(2)(B) and 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") for the following purposes:

(i) to establish, operate and maintain a residential health care facility or nursing home pursuant to Article 28 of the Public Health Law;

(ii) to advance the purpose and mission of the Catholic Health Care System so as to further Catholic Health Care System's ability to promote high quality care, to enhance its services to best meet the needs of the community, and to operate effectively as a health care system; and

(iii) to do any other lawful thing incidental to, connected with, or useful, suitable or proper for the furtherance or accomplishment of the foregoing purposes, but not for the pecuniary profit or financial gain of its members, directors, or officers except as permitted under Article 5 of the Not-For-Profit Corporation Law.

(b) In furtherance of its corporate purposes, the Corporation shall have all the general powers enumerated in Section 202 of the NPCL, together with the power to solicit and receive grants, bequests and contributions for the purposes of the Corporation and the power to maintain a fund or funds of real or personal property in furtherance of the Corporation's purposes. The Corporation shall have the right to exercise all other powers which are, or hereafter may be, conferred by law upon a corporation organized for the above purposes or incidental to the conferred powers. Notwithstanding the foregoing, the Corporation shall not have the power to engage in any activities which are not in furtherance of its purposes as set forth in Article THIRD hereof.

(c) The objects and purposes provided for herein shall be subject to the approvals or consents of such regulatory authority as may be required by law. The Corporation is not being formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained.

(d) Nothing contained herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Section 404(a)-(v) of the NPCL, without the Corporation first having obtained the consent or approval from the appropriate governmental authority with respect thereto.

FOURTH: With respect to the Corporation, Catholic Health Care System shall have the power and authority to:

(i) amend the Certificate of Incorporation and the Bylaws of the Corporation;

(ii) appoint and remove the members of the board of directors and the chairman of the board of directors of the Corporation;

(iii) approve any real estate transaction involving the sale, pledge or transfer of real property with a value below $400,000 and above $30,000 or any capital project involving the sale, pledge or transfer of fixed assets with a value below $400,000 and above $30,000;

(iv) approve management contracts or contracts above $1 million in remuneration;

(v) approve program or services changes by the Corporation or a Related Entity (as defined in Article III of the Bylaws of the Corporation) that result in: (a) closure or establishment of a licensed service or program; or (b) change in location of a licensed service or licensed program outside the service area of the Corporation, or Related Entity, as applicable;

(vi) approve any merger, consolidation, purchase, joint operating agreement or other affiliation (each an "Affiliation") by the Corporation, or a Related Entity, as applicable, with a third party, or withdrawal from, disposition of an interest in or dissolution of any such Affiliation;

(vii) approve formation or purchase of any new Related Entity of the Corporation;

(viii) approve adoption or amendment of the business plan and strategic plan of the Corporation or Related Entity;

(ix) approve adoption of the operating and capital budgets by the board of the Corporation or Related Entity;

(x) approve changes to the Corporation's IT infrastructure, platform, operating systems, or applications so that the Corporation can participate in the IT operating platform, infrastructure and/or system and shared applications of the Catholic Health Care System;

(xi) approve adoption of system-wide measures, standards and initiatives to improve health care quality;

(xii) approve adoption of criteria or guidelines for managed care contracting; and

(xiii) approve system-wide benefit programs or plans, including but not limited to health, dental and other medical benefits, severance and pension.

FIFTH: The office of the Corporation is to be located in the County of New York.

SIXTH: Notwithstanding anything to the contrary in this Certificate, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status as: (A) a corporation which is exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code, or (B) a corporation contributions to which are deductible under Sections 170(c)(2), 2055(a) or 2522(a) of the Code.

SEVENTH: No part of the net earnings of the Corporation shall inure to the benefit of any trustee, director, or officer of the Corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation), and no trustee, director, or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

EIGHTH: No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Section 501(h) of the Code) and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements in connection with), any political campaign activity on behalf of or in opposition to any candidate for public office.

NINTH: Upon the dissolution of the Corporation, the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the Corporation, distribute all of the remaining assets of the Corporation exclusively for the purposes of the Corporation or for a similar public use or purpose, to such organization or organizations organized and operated exclusively for charitable purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code, or to the United States of America, the State of New York, or a local government within the State of New York, as the Board of Directors shall determine, or in the absence of such determination by the Board of Directors such assets shall be distributed by the Supreme Court of the State of New York to such other qualified exempt organization or organizations as in the judgment of the court will best accomplish the general purposes or a similar public use or purpose of this Corporation. In no event shall the assets of this Corporation upon dissolution be distributed to a director, officer or employee of this Corporation.

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

TENTH: In any taxable year in which the Corporation is a private foundation as described in Section 509(a) of the Code, the Corporation shall distribute its income for said period at such time and manner as not to subject it to tax under Section 4942 of the Code, and the Corporation shall not: (a) engage in any act of self-dealing as defined in Section 4941(d) of the Code; (b) retain any excess business holdings as defined in Section 4943(c) of the Code; (c) make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; or (d) make any taxable expenditures as defined in Section 4945(d) of the Code.

ELEVENTH: The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of such process against the Corporation served upon the Secretary of State is:

Kateri Residence
Attn: Executive Director
150 Riverside Drive
New York, NY 10021

TWELFTH: That prior to delivery to the Department of State for filing all approvals or consents required by the Not-For-Profit Corporation Law or any other statute will be endorsed upon or annexed to this Certificate of Incorporation."

[Intentionally left blank]

IN WITNESS WHEREOF, the undersigned have signed this Restated Certificate of Incorporation this 21st day of July, 2006, and affirm that the statements made herein are true under penalties of perjury.

Name: James D. Cameron
Title: President

Name: Howard A. Gootkin
Title: Secretary

I, the undersigned Justice of the Supreme Court of the State of New York FIRST Judicial District, do hereby approve the foregoing Restated Certificate of Incorporation of KATERI RESIDENCE and consent that the same be filed.

Dated:

MARTIN SCHOENFELD
JSC

THE ATTORNEY GENERAL HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE AND DEMANDS SERVICE OF THE FILED CERTIFICATE. SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.

ASSISTANT ATTORNEY GENERAL

9-25-06
DATE

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

August 25, 2006

Ms. Kimberly Nohilly, Esq.
Catholic Health Care System
1011 First Avenue
New York, New York 10022

Re: Restated Certificate of Incorporation of Kateri Residence

Dear Ms. Nohilly:

AFTER INQUIRY and INVESTIGATION, and in accordance with action taken at a meeting of the Public Health Council held on the 12th day of May, 2006, I hereby certify that the Public Health Council consents to the filing of the Restated Certificate of Incorporation of Kateri Residence, dated July 25, 2006.

Sincerely,

Donna W. Peterson
Executive Secretary

/cf

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FILED
2006 SEP 26 AM 10:06

RESTATED CERTIFICATE OF INCORPORATION OF

KATERI RESIDENCE

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

lcc

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED SEP 26 2006
TAX $ D
BY: pac

newYork

LCS
DRAWDOWN - #AL

Filed by

CATHOLIC HEALTH CARE SYSTEM
Legal Department
1011 First Avenue – 11th Floor
New York, NY 10022

Customer Ref.# 12391

RECEIVED
2006 SEP 25 PM 4:01

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----------X

In the Matter of the Application of :

KATERI RESIDENCE : VERIFIED PETITION

For Approval of Certificate of Dissolution :

pursuant to Section 1002 of the :

Not-for -Profit Corporation Law :

----------X

TO:

THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
Charities Bureau, Transactions Section
28 Liberty Street
New York, New York 10004

Petitioner, KATERI RESIDENCE by Francis J. Serbaroli, Chairman, Board of Directors of the corporation, for its Verified Petition alleges:

1. KATERI RESIDENCE, whose principal address is located in the county of New York, was incorporated pursuant to New York's Not-for-Profit Corporation Law on September 25, 1981. A copy of the Certificate of Incorporation (and all amendments) and the complete and current By-laws are attached as Exhibit A.

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

Francis J. Serbaroli, Chairman- One Vanderbilt Avenue, New York, NY 10017
Thomas E. Alberto- 35 Prospect Park West Apt. 13A Brooklyn, NY 11215
Steve Bujno – 246 West End Avenue, Apt 4A, New York, NY 10023
John Cahill- 1011 First Avenue 20th Floor New York, NY 10022
Dr. Tara A. Cortes- 433 First Avenue, 5th Floor New York, NY 10016
John T. Dunlap- 230 Park Avenue 21st Floor New York, NY 10177
Monsignor Charles J. Fahey- Nottingham, 1301 Nottingham Rd, Jamesville, NY 13078
Thomas J. Fahey, Jr., M.D.- 300 East 66th Street New York, NY 10065
Eric P. Feldmann- 16 Hampshire Road Rockville Centre, NY 11570
Sister Seline Flores, Providence Rest, 3304 Waterbury Avenue, Bronx, NY 10465
John Gleason, 250 Park Avenue, New York, NY 10017
Karen Gray- 235 East 45th Street New York, New York 10017
George Irish- 300 West 57th Street, 26th Floor New York, NY 10019
Clarion E. Johnson, MD- 5504 Dorset Avenue Chevy Chase, Maryland 20815
Rory Kelleher- 1165 Fifth Avenue New York, NY 10029

Monsignor Joseph LaMorte- 1011 First Avenue, 19th Floor New York, NY 10022
Scott LaRue, ex-officio- 205 Lexington Avenue New York, NY 10016
Thomas M. O'Brien, Vice-Chair- PO Box 2326 Bonita Springs FL. 34133
Kathryn Rooney- 1475 Hylan Boulevard Staten Island, NY 10305
Joseph Saporito, 43 Somerset Place, Matawan, NJ 07747
G.T. Sweeney- 100 Church Street New York, NY 10007
Gennaro (Jerry) Vasile, Ph.D., 21908 Masters Circle Estero, FL 33928-6949
Bishop Gerald Walsh- 1011 First Avenue New York, NY 10022

3. The purposes for which the corporation was organized are set forth in its Certificate of Incorporation at paragraph three thereof and are as follows:

(a)(i) to establish, operate and maintain a residential health care facility or nursing home pursuant to article 28 of the Public Health Law;

(ii) to advance the purposes and mission of the Catholic Health Care System so as to further Catholic Health Care System's ability to promote high quality care to enhance its services to best meet the needs of the community, and to operate effectively as a health care system; and

(iii) to do any other lawful thing incidental to, connected with, or useful, suitable or proper for the furtherance of accomplishment of the foregoing purposes, but not for the pecuniary profit or financial gain of its members, directors, or officers except as permitted under Article 5 of the Not-For-Profit Corporation Law.

4. The corporation is a charitable corporation.

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

6. The corporation is dissolving because the corporation, which owned and operated a skilled nursing facility in New York County, sold its assets at 150 Riverside Drive, New York, New York 10024 and its operating certificate which transaction closed on or about August 28, 2013. The corporation is not aware of any ongoing or completed audit or inquiry by the Internal Revenue Service ("IRS") in the past three years or if the corporation paid any excise taxes or disclosed an excess benefit transaction or diversion of assets on its information returns to the IRS.

7. The Board of Trustees of Kateri met at a duly called meeting on proper notice on September 27, 2021 at which a quorum of 19 trustees out of 23 total trustees was present, and unanimously approved resolutions adopting the Plan, and authorizing the filing of a Certificate of Dissolution. Such resolution, certified by the Secretary or other duly authorized officer is attached hereto as Exhibit C.

8. After the Board of Trustees of Kateri approved the Plan, the Board of Trustees of Catholic Health Care System, at a duly called meeting on proper notice on September 27, 2021 at

which a quorum of 19 trustees out of 23 total trustees was present, and unanimously approved resolutions adopting the Plan, and authorizing the filing of a Certificate of Dissolution. Such resolution, certified by the Secretary or other duly authorized officer is attached hereto as Exhibit D.

9. After the Board of Trustees of both Kateri and Catholic Health Care System approved the Plan, the sole member, Providence Health Services, received and reviewed it and at a duly called meeting on proper notice on December 14, 2021 at which a quorum of 4 trustees out of 4 total trustees was present, and unanimously approved resolutions adopting the Plan, and authorizing the filing of a Certificate of Dissolution. Such resolution, certified by the Secretary or other duly authorized officer is attached hereto as Exhibit E.

10. The corporation has no assets or liabilities as of the date hereof.

11. The corporation is not required to file a final financial report with the Charities Bureau because the organization is exempt from registration with the Charities Bureau.

12. A copy of the Public Health and Health Planning Council approval to the Plan is attached to the Certificate of Dissolution.

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

WHEREFORE, Petitioner requests that the Attorney General approve the Certificate of Dissolution of KATERI RESIDENCE, a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed this ___ day of April, 2022.

Frank Serbaroli

5B87D899CB31C2DE11E9FC57F917EEAC contractworks.

Signature

_____

Francis J. Serbaroli, Chairman

VERIFICATION AND CERTIFICATION

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

Francis J. Serbaroli, being duly sworn, deposes and says:

I am the Chairman of the Board of Directors of KATERI RESIDENCE, the corporation named in the above Petition, and make this verification and certification at the direction of its Board of Directors. I have read the foregoing Petition and (i) I know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief, and as to those matters I believe them to be true and (ii) I hereby certify under penalties of perjury that the Plan was duly authorized and adopted by the Board of Directors and by the corporation's sole member.

_____

Signature

Sworn to before me this

____day of _____, 20__.

_____

Notary Public

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 2nd day of June 2022, approves the filing of the Certificate of Dissolution of Kateri Residence as attached.

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 201222-E
True North III DC, LLC d/b/a Grand Boulevard Dialysis

Program: **Diagnostic and Treatment Center** ***County:*** **Suffolk**
Purpose: **Establishment** ***Acknowledged:*** **June 30, 2020**

Executive Summary

Description
True North DC III, LLC, an existing New York limited liability company, requests approval to be established as the new operator of Grand Boulevard Dialysis (Grand Boulevard). Grand Boulevard is a 20-station, Article 28 chronic renal dialysis center located at 860 Grand Boulevard, Deer Park, NY (Suffolk County). After the change of ownership True North III DC, LLC will continue to operate the facility under the name Grand Boulevard Dialysis.

The membership of True North III DC, LLC is shown below:

Members	%
True North DC Holding, LLC	**80%**
Knickerbocker Dialysis Inc. (51%)	
North Shore-LIJ Renal Ventures, LLC (49%)	
Long Island Hemodialysis, LLC	**10%**
Sushil Sagar, M.D. (100%)	
Comprehensive Dialysis Care,LLC	**10%**
Victor Chang, M.D. (100%)	
Total	**100%**

Sushil Sagar, M.D. will serve as the Medical Director. The transfer and backup hospital remains Southside Hospital, which is approximately 5.1 miles and 14 minutes away.

Northwell Health, Inc. is the parent and sole member of North Shore-LIJ Renal Ventures, LLC, and DaVita Inc. is the parent of Knickerbocker. True North III DC, LLC will enter into a Consulting and Administrative Service Agreement with DaVita Inc. to provide accounting, billing, funds management, and other consulting and administrative services. True North III will assume the lease for the facility's site. Otherwise, operations at the facility are expected to continue generally as they have.

OPCHSM Recommendation
Contingent Approval

Need Summary
After the change of ownership, True North III will continue to operate the facility under the name Grand Boulevard Dialysis with no change in stations or services.

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)(b).

Financial Summary
There are no project costs associated with this application. True North III DC, LLC will purchase the operating interests of Grand Boulevard via a Contribution and Purchase Agreement (CAPA) for $5,360,000 to be funded by the proposed members' contribution of $1,608,000 (contributed in proportion to the members' percent ownership interest) and BOKF National Bank for a loan of $3,752,000. Executed on October 25, 2019, the loan is classified as a revolving installment loan structured to cover a drawdown period until November 1, 2022, and

has a maturity date of August 1, 2024. Once the drawdown expires, the loan then becomes a fixed-rate loan described in the CAPA agreement. The proposed budget is as follows:

Budget	Year One	Year Three
Revenues	$1,261,174	$4,055,121
Expenses	1,666,875	3,257,181
Net Income	($405,811)	$ 797,940

Recommendations

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

Office of Primary Care and Health Systems Management
Approval contingent upon:

1. Submission of a photocopy of an Administrative Services Agreement, acceptable to the Department. [CSL]
2. Submission of a photocopy of an amended and executed Articles of Organization for True North DC Holding, LLC, acceptable to the Department. [CSL]
3. Submission of a photocopy of an amended and executed Articles of Organization for Long Island Hemodialysis, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended and executed Operating Agreement for Long Island Hemodialysis, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Articles of Organization for Comprehensive Dialysis Care, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed Operating Agreement for Comprehensive Dialysis Care, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of the amended and restated Certificate of Incorporation for Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
8. Submission of a photocopy of the Bylaws of Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
9. Submission of a photocopy of a list of the Board of Directors of Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of the Certificate of Incorporation for DaVita of New York, Inc., acceptable to the Department. [CSL]
11. Submission of a photocopy of the Bylaws for DaVita of New York, Inc., acceptable to the Department. [CSL]
12. Submission of a photocopy of the Certificate of Incorporation for DaVita, Inc., acceptable to the Department. [CSL]
13. Submission of a photocopy of the Bylaws for DaVita, Inc., acceptable to the Department. [CSL]
14. Submission of a photocopy of an amended and executed Articles of Organization for North Shore–LIJ Renal Ventures, LLC, acceptable to the Department. [CSL]
15. Submission of a photocopy of an amended and executed Operating Agreement for North Shore–LIJ Renal Ventures, LLC, acceptable to the Department. [CSL]
16. Submission of a photocopy of the Certificate of Incorporation for North Shore University Hospital, acceptable to the Department. [CSL]
17. Submission of a photocopy of the Bylaws for North Shore University Hospital, acceptable to the Department. [CSL]
18. Submission of a photocopy of the Certificate of Incorporation for Northwell Healthcare, Inc., acceptable to the Department. [CSL]
19. Submission of a photocopy of the Bylaws for Northwell Healthcare, Inc., acceptable to the Department. [CSL]
20. Submission of a photocopy of the Certificate of Incorporation for Northwell Health, Inc., acceptable to the Department. [CSL]
21. Submission of a photocopy of the Bylaws for Northwell Health, Inc., acceptable to the Department. [CSL]

Approval conditional upon:

1. This project must be completed by one year from the date of the Public Health and Health Planning Council Recommendation 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

expiration of the approval. It is the responsibility of the applicant to request prior approval for an 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/facilites/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

June 2, 2022

Need and Program Analysis

Program Description

Proposed Operator	True North III DC, LLC
Doing Business As	Grand Boulevard Dialysis
Site Address	860 Grand Boulevard Deer Park, NY 11729 (Suffolk County)
Shift/Hours/Schedule	Initially, Monday-Wednesday-Friday 7:30 AM to 4 PM then Monday through Saturday 5 AM to 3 PM
Approved Services	Renal Dialysis-Chronic O/P
Staffing (1st Year/3rd Year)	6.1 FTES/12.9 FTEs
Medical Director(s)	Sushil Sagar, MD
Emergency, In-Patient, and Backup Support Services Agreement andDistance	Southside Hospital 5.1 mile/14 minutes

There will be no programmatic changes or changes in stations or services as a result of this proposed change in ownership.

The membership of True North III DC, LLC is listed below.

Member Name/Title	**Membership Interest**
True North DC Holding, LLC	80%
Knickerbocker Dialysis, Inc (51%) *Marcus Catsouphus, Treasurer* *Nicholas Gossman, Secretary* *Caroline Pierce, Assistant Secretary* *John Winslet, Vice President*	
North Shore-LIJ Renal Ventures (49%) *Michele Cusack, Treasurer & CFO*	
Long Island Hemodialysis, LLC	**10%**
Sushil Sagar, M.D. (100%)	
Comprehensive Dialysis, LLC	**10%**
Victor Chang, M.D. (100%)	
Total	**100.0%**

Knickerbocker is the licensed operator of 61 chronic renal dialysis facilities in New York State. DaVita of New York, Inc. (DVANY), which is owned by DaVita Inc., is the sole owner of the shares of stock of Knickerbocker Dialysis, Inc. DVANY is also the owner of Huntington Artificial Kidney Center, Ltd, Empire State DC, Inc. and Liberty RC, Inc., which are also operators of chronic renal dialysis facilities in New York State.

Knickerbocker Dialysis, Inc. is also a member of:

- Enchanted Dialysis, LLC, the operator of Newark Wayne Dialysis Center.
- True North Dialysis Center, LLC, the operator of Port Washington Dialysis Center (PFI 9926).
- True North DC Holding, LLC, which is one of the members of True North VI DC, LLC, the proposed operator of Peconic Bay Dialysis (pending approval and completion of Project No. 211244-E).
- Bandelier Dialysis, LLC, the proposed operator of Bronxchester Home Training (pending approval and completion of Project No. 202170-E).
- Empress Dialysis, LLC, the proposed operator of Brooklyn Community Dialysis (pending approval and completion of Project No. 211108-E).
- Latsch Dialysis, LLC, the proposed operator of Westchester Home Training (pending approval and completion of Project No. 211109-E).

DaVita is the operator of more than 2,600 dialysis facilities in the United States.

Character and Competence

True North III DC, LLC is managed by its members, through a Board of Members comprised of managers appointed by the members of True North III. The officers of True North III are as follows:

Name	Title
Luann D. Regensburg	President
Matt H. Henn	Vice President
Steven N. Fishbane M.D.	Chief Medical Officer
John D. Winslet	Treasurer
Laurence A. Kraemer	Secretary
Samuel Wey	Assistant Secretary
Adam Boll	Manager
John McGovern	Manager
Victor Chang, M.D.	Manager
Sushil Sagar, M.D.	Manager

Sushil Sagar, M.D. received his medical degree from H.P. Medical College in Shimla and completed his residency at Nassau University Medical Center. He completed a Nephrology Fellowship at Long Island Jewish Medical Center and is board-certified in Internal Medicine and a sub-specialty in Nephrology. Dr. Sagar will continue to serve as the facility's Medical Director.

Roger Blumencranz is a licensed Insurance Broker and has been the Managing Director of BWD Group, LLC for approximately 61 years, where he spearheaded the formation of the Commerce and Industry Council, devoted to raising funds for then North Shore-LIJ Health System. He is a member of the Northwell Health Inc, Board of Trustees since 1980 where he chairs the Education and Insurance Committees and serves on the Finance Committee and the Joint Board of Overseers for the Donald and Barbara Zucker School of Medicine at Hofstra/Northwell. Roger Blumencranz is also a member of the John T. Mather Board of Directors.

Adam Boll is the Vice President of Northwell Health Operations where he is responsible for the office held and tenure in the health care industry contributing to the competency for management for the subject facility. In addition to this role, he is also a Physician's Assistant. Adam Boll discloses ownership interest/office held in the following health care facilities:

Port Washington Dialysis Center	*03/2016-present*
Floral Park Home Dialysis	*03/2016-present*
Oyster Bay Dialysis Center	*11/2016-present*
Julia and Israel Waldbaum Dialysis	*11/2016-present*
Huntington on Broadway Dialysis	*11/2016-present*
East Islip Dialysis	*07/2017-present*
Digestive Health Center of Huntington	*03/2017-present*
Endoscopy Center of Long Island	*03/2013-present*
Garden City Surgi Center	*12/2014-present*

Greenwich Village Ambulatory Surgery Center	*12/2017-present*
Melville ASC	*10/2017-present*
South Shore Surgery Center	*02/2016-present*
Suffolk Surgery Center	*10/2016-present*
Surgical Specialty Center of Westchester	*09/2017-present*

Marcus Catsouphes is the Division Vice President of DaVita Inc where he led more than 35 outpatient dialysis centers across multiple states to generate $300M in revenue and $60M EBITDA; executed turnaround and improved divisional performance to the top 25% within one year, improved and sustained a ranking of fifth or better; hired/promoted new team leadership; improved relative competitive growth from losing to outperforming competitive and industry benchmarks. He was the previous Regional Operations Director where he managed a $125M revenue outpatient dialysis business with responsibility for financial, operational, and clinical performance of 200 person team across more than 10 locations; led quality improvement initiatives that reversed declining clinical metrics to the top 25% of the company; mapped the business process for the new center development, leading to the development of a national project management system, and; identified opportunities to expand the business, negotiated multiparty joint venture partnerships, led acquisition diligence and post-merger integration.

Michael Caridi is the President of VG Enterprises Management Group. He is a member of the Northwell Health Inc. Board of Trustees and is the chairman of the Staten Island regional Executive Council, tasked with ensuring Staten Island University Hospital meets the healthcare needs of the borough. He previously served as vice-chair of the council.

Victor Chang M.D. is a Nephrologist currently employed at Long Island Kidney Associates PC. He received his medical degree from St. George's University School of Medicine in Grenanda and completed his residency in Internal Medicine and Nephrology at the State University of New York Stony Brook. He is board-certified in Internal Medicine with a sub-certification in Nephrology.

Mark Claster has been the President of Carl Marks & Co., Inc. for 40 years. He currently has an advisory role in the firm's investment businesses and previously served as General Partner of the firm's two small business investment companies. He also serves as the President of Carl Marks Securities LLC and Co-manager of Carl Marks Advisors and is the Director of the Board of Staten Island University Hospital. Previously, he was the Chairman of the Board of Trustees of Northwell Health where he still serves on various health system committees and is Chair of the nominating and Governance Committee. Mark Claster is also a Member of the Joint Board of Overseers for the Donald and Barbara Zucker School of Medicine at Hofstra/Northwell.

Gary A. Cohen retired in 2014, and before that he was employed at IBM for over 35 years as a General Manager in the Global Communications Sector. In that role, he was responsible for the company's business with telecommunications, media, entertainment, energy, and utilities clients around the world. He led the strategic direction of the company's growth and the global alliance organization. Later, he was the Vice President of Strategy, developing the pervasive computing division.

Margaret Crotty is the President and CEO of John Snow, Inc., and JSI Research and Training Institute, a global public health consulting firm. Previously, she served as the CEO of Partnership with Children and previously ran Save the Children. She was President and CEO of AFS-USA Intercultural Programs and served as Executive Director of a workforce development agency. She is a member of the Northwell Health Inc, Board of Trustees, the Open Medical Institute, the Inner-City Scholarship Fund, Access Health, the Human Services Council, and Seachange Capital. Margaret Crotty is also a member of the Young Presidents Organization and the Council on Foreign Relations and serves as the Program Leader for Princeton AlumniCorps' Emerging Leader Program.

Michele Cusack is the Senior Vice President and Chief Financial Officer for Northwell Health, Inc where her responsibilities include managing the system's day to financial operations. She discloses offices held in the following healthcare facilities:

Glen Cove Hospital	*10/10/2017-present*
Greenwich Village Ambulatory Surgery Center	*12/29/2017-present*
Hospice Care Network	*10/10/2017-present*
Huntington Hospital	*01/23/2018-present*
Lenox Hill Hospital	*10/10/2017-present*
Long Island Jewish Medical Center	*10/10/2017-present*
North Shore University Hospital	*10/10/2017-present*
Plainview Hospital	*10/10/2017-present*
Southside Hospital	*10/10/2017-present*
Staten Island University Hospital	*10/10/2017-present*
The Long Island Home	*10/10/2017-present*

Michael Dowling is the President and CEO of Northwell Health, Inc. Prior to becoming President and CEO, he was the health system's Executive Vice President and Chief Operating Officer. He leads a clinical, academic, and research enterprise with a workforce of more than 75,000 and annual revenue of $14 billion.

Michael Epstein is a licensed Attorney and is a Partner at Weil Gotshal & Manges, LLP where he practices intellectual property law as a leading attorney in the field. He has been a Board Member of Northwell's Feinstein Institute for Medical Research since 2002 and was elected as the Chair of Northwell's Board of Trustees in 2019.

Michael Feldman is a retired Attorney. He was a Faculty Member of the New York University Tisch Center, teaching courses in legal issues. He was a former chair of the Advisory Board of the NYU Tisch Center. He is a member of the Board of Trustees and Executive Committee, Chair of the Audit and Corporate Compliance Committee, and a member of the Legal Affairs Committee of Northwell Health Inc. He is also a co-chair and a member of the Board of Directors of the New York Hospitality Council, Inc.

Michael Fisch is the Managing Director and CEO of American Securities, LLC and the Managing Member of the general partners of the American Securities Partners' series of private equity funds. He serves as an investment committee member of the funds managed by Ascribe Capital, an affiliate of American securities. Michael Fisch is a member of the Northwell Health Inc. Board of Trustees.

Steven Fishbane, M.D. is a licensed Nephrologist who is employed at Northwell Health. He is the Director of Clinical Trials and is a Professor of Medicine at Donald and Barbara Zucker School of Medicine at Hofstra/Northwell. He was previously employed at Winthrop University Hospital. He received his medical degree from Albert Einstein College of Medicine, completed his residency in Internal Medicine at Montefiore Medical Center, and his Fellowship in Nephrology at Montefiore Medical Center. He is board-certified in Internal Medicine with a sub-certification in Nephrology. Dr. Fishbane is a member of the Northwell Health Inc, Board of Trustees.

Loyd Friedlander is a licensed Attorney and Insurance Agent. He is the Managing Director of Acrisure, LLC and was previously employed at Loyd Keith Friedlander, LLC as the Owner and Shareholder. He is Chairman of the Board of Hunting Hospital and is a member of the Northwell Health Inc, Board of Trustees.

Clifford H. Friedman is the Chairman and CEO of ShareNett, a private/closed co-investment platform bringing curated investment opportunities across multiple asset classes, geographies, and industries. He has a demonstrated history in private equity venture capital, investment management, financial, and various senior operational roles with a focus on media, communication, technology, and fintech. He is also the Founder and CIO of Cold Springs Ventures. He is skilled in value creation through a systematic process of working with management teams, board members, and customers, and creating and negotiating strategic partnerships globally to drive revenue and profitability.

Catherine Foster is a Faculty Employee at Columbia University. She is a member of the Northwell Health, Inc Board of Trustees and is vice-chair of the quality and credentials committee. She was previously employed as a Senior Executive at American Express where she led marketing, business development, and strategic planning for various divisions.

Lloyd Goldman is the President of BLDG Management Co. He serves on many boards and committees, including being elected president of the American Associates Ben-Gurion University of the Negev, trustee of the Joyce and Irving Goldman Family Foundation. He is also involved in the Conservation International, The Education Alliance, and We Are a Family Foundation. Lloyd Goldman serves as a trustee on the North Shore-LIJ Health System and is a member of the Northwell Health Inc, Board of Trustees.

Richard Goldstein is a licensed Attorney. He is the Chairman and CEO of AEP Capital, LLC, a specialized investment and merchant banking firm. He was previously an attorney at the firm of Paul, Weiss, Rifkind, Wharton, and Garrison, specializing in mergers and acquisitions. He served as Chairman of North Shore-LIJ Health System and its constituent hospitals, including North Shore Hospital, Long Island Jewish Hospital, Lenox Hill Hospital, and Staten Island Hospital. Richard Goldstein is a Trustee Emeritus of the Queens College Foundation.

Nicholas Gossman is the Group Finance Director for DaVita, Inc., where he is a key contributor to monthly financial reviews with senior leadership, provides root cause analysis and recommendations on action plans; coordinates the budget process; does joint venture reporting, and communicates with joint venture partners on financial performance. He builds models and assesses new projects; partners with Division Vice Presidents to analyze, review, and recommend overall divisional growth strategy; directly supervises five Finance Managers and one Financial Analyst, and has active roles in national projects for DaVita, including DeNovo Labor benchmarking, Report Rationalization, and Field Reporting Initiatives.

Alan Greene is the Managing Director of Neuberger Berman, LLC where he is a portfolio manager for mid and all-cap strategies. He has experience in investment research, account analysis, and portfolio management. He is currently on the Board of Trustees of Northwell Health, Inc. and also serves as Trustee of Eisenhower Medical Center and Trustee Emeritus of Colgate University.

Paul Guenther is retired since April 1995. He is a member of the Northwell Health, Inc Board of Trustees and joined the Campaign Executive Committee. He endorses physician recruitment to enhance the faculty and has many longstanding relationships with physicians in the community. He co-established the Paul and Diane Guenther Chair in Cardiology to support the future of teaching, healing, and research at Lenox Hill Hospital.

Elizabeth M. Hammack is the CEO of Goldman Sachs Bank where she is responsible for overseeing the global activities of the bank, the day-to-day management, developing strategy, and ensuring the bank is operated in a safe and sound manner. She has additional reporting oversight to the executive officers and is a member of the Goldman Sachs Bank USA Board of Directors. She is also a Chairperson of the GS Bank Management Committee and is also Global Treasurer of Group Inc. where she provides global management of Group Inc.'s liquidity, funding, balance sheet, and capital, including liability planning, execution, financial resource allocation, asset-liability management, and liquidity portfolio management. Previously, she was the Global Head of Short-Term Macro trading and Global Repo Trading at Goldman Sachs and Global Head of Short-Term Interest Rate Products at Goldman Sachs.

Douglas Hammond is the Chairman and CEO of NFP Corp., where he has held multiple roles including President, COO, Head of Strategy, Executive Vice President, General Counsel, Senior Vice President, and Deputy General Counsel. Previously, he was the Manager and CEO of NFP Ventures, LLC. He is a licensed attorney who was employed at Leboeuf, Lamb, Green & MacRae, a Corporate Insurance, Regulatory, and Mergers and Acquisitions attorney, and at the Gulf Group in various legal and business positions. He is a member of Northwell Health, Inc., an Advisor on the Madison Dearborn

Capital Partners Financial Services Industry Group; a Trustee on the Fairfield University Board of Trustees; a Board Member of the Nassau County Police Department Foundation; a former Board Member of the Kestra Financial Board of Directors, and a Trustee of the Committee for Economic Development.

Matt Henn is the Division Vice President of DaVita, Inc where his responsibilities include leading DaVita's largest division and 1800 staff members; driving treatment growth rates at three times the market average; designing, piloting, and scaling a new method of staff selection, hiring, and on-boarding that is the enterprise standard; increasing staff retention and satisfaction; and partnering with corporate teams to drive field implementation of new initiatives for growth, HR, finance, and compliance.

Saul Katz is a Certified Public Accountant and Real Estate Broker. He is the President and COO of Sterling Equities for over 48 years and is a member of the Northwell Health Inc. Board of Trustees. He played a role in the 1993 merging of Glen Cove Hospital, where he served as a trustee for 12 years, to North Shore Health System. He became the Chairman of the North Shore Health System and precipitated the 1997 merger with Long Island Jewish Medical Center. He worked with both entities to create the system originally known as North Shore-Long Island Jewish Health System and became the first Chairman of the combined board.

Laurence Kraemer is a licensed Attorney. He is the Senior Vice President, Chief General Counsel, and Assistant Secretary of Northwell Health Inc where he supervises a team of more than 40 lawyers and 50 compliance professionals who provide legal services and compliance oversight to all Northwell hospitals, clinical entities, and joint ventures. He is the vice-chair of strategic planning of the AHLA Tax and Finance Group and is a member of Northwell Health Inc, Board of Trustees.

Cary Kravet is a retired licensed Attorney. He is the President of Kravet, Inc, a decorative home furnishing business. He has been an active trustee of the North Shore-LIJ Health System for approximately 21 years where he served on the Executive Committee and chaired the Committee on Quality. He also serves on the Board of Directors of Hunting Hospital and is a member of the Northwell Health Inc., Board of Trustees.

Jeffrey Lane is a partner at York Bridge Wealth Partners where he offers investment advisory services, financial planning, and portfolio and investment management services. Previously, he was the Chairman of the Board at Lebenthal Holdings, LLC, the Chairman of Casa Columbia, and Chief Executive of Modern Bank. He is a member of the Northwell Health Inc, Board of Trustees.

Seth Lipsay is a licensed Attorney. He is the CEO of Galaxy Realty Capital, LLC and was previously employed as the Executive Managing Director of New World Realty Advisors LLC, where he continues to serve as an Officer for the company. He was previously a Member of the Board of Overseers for the Donald and Barbara Zucker School of Medicine at Hofstra/Northwell Health. Seth Lipsay is a Trustee of the Board of Directors at the Feinstein Institute for Medical Research.

Richard Mack is the CEO and Co-founder of Mack Real Estate Group where he is responsible for raising capital, decisions involving business management, and investment decisions. He was the previous CEO-North America of Area Property Partners. He is a board member of Northwell Health, Inc.

William Mack is a licensed Real Estate Broker. He is the Chairman and Founder of Mack Real Estate Group where he manages institutional, high net worth, and Mack family capital by making debt and equity investments in real estate and real estate-related securities through several business lines. He specializes in domestic and international real estate investment, development, and financing opportunities with a view toward long-term performance and hands-on management. He serves as Chairman of the Board of Directors of Mack-Cali Realty Corporation and is Chairman of the Board of the Solomon R. Guggenheim Foundation. William Mack is Vice-Chair of Northwell Health, Inc., where he serves on the Executive Committee and is also a Trustee and Member of the Executive Committee of Lenox Hill Hospital.

F.J. McCarthy is a licensed Real Estate Broker. He is the President of Site Selection Advisory Group, Inc., a real estate development and investment company. He is a trustee of Catholic Charities for the Diocese of Rockville Center, where he served on the Executive Committee, Governance and Leadership Committee, and was the Chairman of the Development Committee. F.J. McCarthy is a Trustee of Northwell Health Inc., where he serves on the Executive Committee, Governance Committee, and Quality Committee, and is Co-Chair of the Committee on Community and Public Health. He is also Chairman of the Southside Hospital of the Northwell Health System.

John McGovern is the Senior Vice President of Finance of Northwell Health, Inc where he is responsible for the office held and tenure in the health care industry contributing to the competency for management for the subject facility. John McGovern discloses the following membership interest/offices held in the following healthcare facilities:

Port Washington Dialysis Center	*03/2016-present*
Floral Park Home Dialysis	*03/2016-present*
Oyster Bay Dialysis Center	*11/2016-present*
Julia and Israel Waldbaum Dialysis	*11/2016-present*
Huntington on Broadway Dialysis	*11/2016-present*
East Islip Dialysis	*07/2017-present*
Digestive Health Center of Huntington	*03/2017-present*
Endoscopy Center of Long Island	*03/2013-present*
Garden City Surgi Center	*12/2014-present*
Greenwich Village Ambulatory Surgery Center	*12/2017-present*
Melville ASC	*10/2017-present*
South Shore Surgery Center	*02/2016-present*
Suffolk Surgery Center	*10/2016-present*
Surgical Specialty Center of Westchester	*09/2017-present*

Ralph Nappi is the Executive Vice Chairman of Northwell Health, Inc. Previously, he was the President of North Shore LIJ Health System where he worked to cultivate private charitable support for programs, endowments, and facilities. He was also responsible for establishing charitable partnerships with the region's leading individuals, corporations, and foundations.

Sharon Patterson is a Broker and Office Manager at Tuccio Real Estate where she deals in residential and commercial real estate with knowledge in TDR and Pine Barrens Credit transfers. She has experience as a former member of the Riverhead Zoning Board of Appeals and was the previous Vice-Chair for the Peconic Bay Medical Center. Sharon Patterson is Board Chair for the Peconic Bay Medical Center and also serves on the Board of Trustees of the East End Health Alliance.

Caroline Pierce is the Division Vice President of DaVita, Inc. and was the previous Regional Operations Director there. She is responsible for the general management and oversight of operations within the assigned division and provides strategic and tactical leadership, along with counsel, directing field management personnel to ensure safe, efficient, therapeutic, and ethical patient care. Additionally, she is responsible for identifying and developing strategic growth opportunities, monitoring division performance, and working with the Senior Vice President to develop competitive strategies consistent with DaVita's mission and values. She was the previous Facility Administrator of DaVita, Inc., a Math Teacher, and the Director of Growth in the Phoenix Charter Academy Network.

Lewis Ranieri is the Chairman and Senior Managing Partner of Ranieri Partners Management LLC where he is an investment manager focused on financial services opportunities. He has served on the Board of Directors of Computer Associates, overseeing the restructuring and turnaround during that period, and has served on the National Association of Home Builders Mortgage Roundtable. He is the Chair of the Feinstein Institute for Medical Research for Northwell Health.

Scott Rechler is the Chairman and CEO of RXR Realty LLC. He is an owner, manager, and developer of real estate in the New York Tri-State area. In 2011, he was appointed by the Governor to the Board of Commissioners of the Port Authority of New York and New Jersey. In 2017, the Governor nominated him

to the Metropolitan Transportation Authority. Scott Rechler is the Chairman of the Regional Plan Association and on the Board of Governors of the Real Estate Board of New York and serves as a Board Member of the Feinstein Institute for Medical Research for Northwell Health.

Luann Regensburg is the Divisional Vice President of DaVita Health Care Partners where she is responsible for all dialysis operations, clinical outcomes, hospital and physician partnerships, strategy, and growth for the division. She is the previous Regional Operations Director where she oversaw the overall management of 11 facilities serving 1,400 patients on Long Island, Queens, and Manhattan, providing leadership and direction to assure safe, efficient, therapeutic, and ethical patient care. She led a team of 11 direct reports and 300 plus teammates across multiple disciplines. She oversaw project management, planning, design, and construction of new clinics, including clinic expansion/renovation and participation in due diligence on a potential acquisition. She is the previous Director of Clinical Support Services of Mercy Medical Center for over 20 years.

Robert Rosenthal is the Chairman and CEO of First Long Island Investors, LLC, a boutique wealth management firm, where he takes a long-term view to preserving and growing the wealth of clients. He employs a prudent asset allocation approach and develops customized plans for each client after understanding their individual goals, needs, and risk tolerance. He was named a Trustee of the Board of Directors of Northwell Health Inc. and serves as Treasurer and a member of the Executive Committee. He is also Co-Chairman of the Investment Committee and Chairman of the Advisory Board for North Shore University Hospital.

Barry Rubenstein is the Managing Partner of Wheatley Partners, a venture capital firm. He has been active on the Northwell Health Inc., Board of Trustees' Finance, Compensation, and Executive Committees. He was a leader in the New Century Campaign Committee and sits on the Strategic Planning Committee. He was previously a Board Member of the Feinstein Institutes for Medical Research.

Michael Schwartz is a licensed Attorney. He is the Founder and Managing Member of the SoCali Partners investment firm and was the Co-founder and Co-managing Partner of Trilynx Partners, LLC. He is an investment professional with financial acumen and an investing skill set. He was previously employed as a Partner and Portfolio Manager at Taconic Capital Advisor as an investment professional. He is a member of the Northwell Health Inc, Board of Trustees, and the Board of Trustees for Northern Westchester Hospital.

Michael Smith is the Chairman and CEO of Freeport LNG Development, L.P., which is one of four liquification and export terminals in the U.S. Previously, he was a Trustee for the National Jewish Health and a member of the Board of Directors. He is a member of the Northwell Health Inc., Board of Trustees.

Leo Sternlicht is the President of Riverhead Motors, Inc. where his responsibilities include all the financial, managerial, and legal aspects of the company. Previously, he was the Director of John T. Mather Memorial Hospital and is the current Board Chair.

Kenneth Tabar is a licensed Attorney. He is a Partner in the Pillsbury, Winthrop, Shaw, Pittman, LLP where his areas of practice in Litigation, Employment Law, Products Liability and Mass Torts Defense, Trade Secrets Counseling and Litigation, and Financial Services Litigation. He is the Chairman of the Board of Phelps Hospital and is a Member of Northwell Health Inc, Board of Trustees on the Legal Affairs Committee, and Committee on Quality.

Benjamin B. Tucker is the former First Deputy Commissioner of the New York City Police Department where he was directly responsible for training, support services, and risk management. He was also responsible for prosecuting misconduct and adjudicating alleged misconduct and made recommendations to the Police Commissioner for review relative to the efficacy of officer conduct and/or ancillary action pertaining to tactics, training, policy, and community relations. Previously, he was the liaison at the Office of the New York State Attorney General and Deputy Commissioner of Training. He was responsible for developing and shaping the vision for progressive and innovative, research-based education and training for the members of the NYPD. He directed the development of recruit training, field training, firearms and

tactics, in-service, specialized, and leadership training for the members of the department. He was also the former Deputy Director of the Office of State, Local, & Tribal Affairs where he was responsible for overseeing a $500 million budget. He directed and leveraged programs that advanced the President's National Drug Control Strategy, and coordinated domestic federal, state, local, and tribal law enforcement agencies in their efforts to dismantle and disrupt drug trafficking and money laundering organizations.

Emmett Walker, Jr. is the CEO of Walker SCM LLC where he is involved in global transportation, logistics optimization, and supply chain integration. He is a Member of the Board of Southside Hospital and Northwell's Community Outreach and Health Education Council

Samuel T. Wey is the Senior Director of Licensure and Certification at DaVita Inc. where he is responsible for overseeing all operational lanes of licensure and certification to ensure timely submission of initial and revalidation applications. He maintains oversight of and developed process excellence initiatives, developing, and leveraging. He collaborates with multiple Medicaid agencies, resulting in $3.5M of Accounts Receivable dollars that had been deemed uncollectable and revamped processes across the licensure and certification department to bring uniformity to the processes, while also mitigating risk. He is the former Director of Licensure and Certification where he determined and set target goals for the Maintenance Lane and developed and implemented new processes to achieve key metrics set forth by CMS. He served as a high-level expert in all regulatory matters related to ESR licensure and certification. Previously, he was also the Manager of Acquisitions & Integrations where he participated in setting appropriate target goals for the acquisitions department and monitored results, tracked metrics, and performed a cost-benefit analysis to drive decision making. He developed, coordinated, and implemented successful integration plans with regional and divisional teams. In addition, he was also previously the Facility Administrator where he managed the second largest clinic in middle Tennessee with an annual budget of $26M.

John Winstel is the current Chief Accounting Officer of DaVita, Inc. and was the previous Group Vice President. His responsibilities include all accounting and financial reporting to ensure timely and accurate reporting of accounting and financial information, in compliance with U.S. reporting requirements. He interfaces directly with senior management team members, board of directors, and advisors to ensure the integrity of all financial information. He was previously employed as the Vice President/Corporate Controller of Cooper Tire & Rubber Company.

Donald Zucker is a licensed Real Estate Broker. He is the Chairman of the Board of Donald Zucker Company, where he oversees the company that builds, buys, and manages apartment and retail properties. He is a member of the Northwell Health Inc., Board of Trustees and the Campaign Executive Committee.

Roy Zuckerberg retired as the Senior Director of the Goldman Sachs Group, Inc in 2000. He is a member of the Northwell Health Inc, Board of Trustees and was a former Chairman of the North Shore-LIJ Board. He played an integral role in the merger of Long Island Jewish Medical Center with North Shore University Hospital.

Staff from the Department's Division of Hospitals and Diagnostic & Treatment Centers (DHDTC) 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, Office of Professional Medical Conduct, and Education Department databases, as well as, the U.S. Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

A Character and Competence Review was conducted on the members of True North DC Holding, LLC, Long Island Hemodialysis, North Shore-LIJ Renal Ventures, LLC, Knickerbocker Dialysis, Inc, and Comprehensive Dialysis, LLC.

Compliance with Applicable Codes, Rules, and Regulations

Staff from the DHDTC 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.

This Record of Legal Actions is submitted by DaVita Inc., as consultant for the applicant, True North III DC, LLC d/b/a Grand Boulevard Dialysis, and sets forth: (i) ongoing inquiries, investigations, and administrative actions by federal and state government agencies and certain civil proceedings, (ii) ongoing shareholder and derivative actions, and (iii) investigations and proceedings, including settlements and licensure actions, which have been resolved over the last ten years. Note: References to the "Company" or "DaVita" mean DaVita Inc. and its subsidiaries. References to "DMG" mean DaVita Medical Group, formerly known as HealthCare Partners (HCP), a former subsidiary of DaVita.

Ongoing Inquiries, Investigations and Administrative Actions, and Certain Civil Proceedings

2016 U.S. Attorney Texas Investigation: In February 2016, DaVita Rx, LLC (DaVita Rx), a wholly-owned subsidiary of the Company, received a Civil Investigative Demand (CID) from the U.S. Attorney's Office, Northern District of Texas. The government is conducting a federal False Claims Act (FCA) investigation concerning allegations that DaVita Rx presented or caused to be presented false claims for payment to the government for prescription medications, as well as an investigation into the Company's relationships with pharmaceutical manufacturers. The CID covers the period from January 1, 2006 through the present. In connection with the Company's ongoing efforts working with the government, the Company learned that a qui tam complaint had been filed covering some of the issues in the CID and practices that had been identified by the Company in a self-disclosure that it filed with the Office of Inspector General (OIG) for the U.S. Department of Health and Human Services (HHS) on February 20 I 6. In December 2017, the Company finalized and executed a settlement agreement with the government and relators in the qui tam matter that included total monetary consideration of $63,700,000, of which $41,500,000 was an incremental cash payment and $22,200,000 was for amounts previously refunded, and all of which was previously accrued. The government's investigation into certain of the Company's relationships with pharmaceutical manufacturers is ongoing, and in July 2018, the OIG served the Company with a subpoena seeking additional documents and information relating to those relationships. The Company is continuing to cooperate with the government in this investigation.

Jeff Kent v. St. Elizabeth Medical Center et al.: In January 2017, a putative class action lawsuit was filed in Kentucky Commonwealth court against the Company, a local medical center, a nephrology group, and an individual physician, alleging that the defendants conspired to provide medically unnecessary dialysis services to the plaintiff and other putative class members. In February and March 2017, the defendants filed a motion to dismiss the class action claims. The court subsequently denied the motion. In January 2019, the defendants filed a motion to dismiss most of Kent's claims on the ground that after his death, his estate failed to "revive" the claims under Kentucky law. The court granted that motion on May 17, 2019. On July 17, 2019, the Company filed a motion to dismiss Kent's class action claims. On September 17, 2019, the court granted that motion, dismissing all of Kent's class action claims except for wrongful death claims. The Company disputes these allegations and continues to defend it accordingly.

2017 U.S. Attorney Massachusetts Investigation: In January 2017, the Company was served with an administrative subpoena for records by the U.S. Attorney's Office, District of Massachusetts, relating to an investigation into possible health care offenses. The subpoena covered the period from January 1, 2007 to the present and sought documents relevant to charitable patient assistance organizations, particularly the American Kidney Fund (AKF), including documents related to efforts to provide patients with information concerning the availability of charitable assistance. On July 23, 2019, the Department of Justice notified the court of its decision not to intervene in the matter of US. ex rel. David Gonzalez v. DaVita Healthcare Partners, et al. The Court unsealed the complaint by order entered on August 1, 2019. The Department of Justice has confirmed that the complaint, which alleges violations of the federal False Claims Act and various state false claims acts, was the basis of its investigation initiated in January 2017. The Company has not been served with the complaint.

2017 U.S. Attorney Colorado Investigation: In November 2017, the U.S. Attorney's Office, District of Colorado informed the Company of an investigation it was conducting into possible federal healthcare offenses involving DaVita Kidney Care, as well as several of the Company's wholly-owned subsidiaries. In addition to DaVita Kidney Care, the matter currently includes an investigation into DaVita Rx, DaVita Laboratory Services, Inc. (DaVita Labs), and RMS Lifeline, Inc. (Lifeline). In each of August 2018 and May 2019, the Company received Civil Investigative Demands from the U.S. Attorney's Office relating to this investigation, which were issued pursuant to the FCA. The Company is continuing to cooperate with the government in this investigation.

2018 U.S. Attorney Florida Investigation: In March 2018, DaVita Labs received two CIDs from the U.S. Attorney's Office, Middle District of Florida that suggest it is investigating whether DaVita Labs submitted false claims for blood, urine, and fecal testing when there was insufficient test validation or stability studies to ensure accurate results, in violation of the FCA. In October 2018, DaVita Labs received a subpoena from the OIG in connection with this matter requesting certain patient records linked to clinical laboratory tests. On September 30, 2019, the U.S. Attorney's Office notified the U.S. District Court, Middle District of Florida, of its decision not to elect to intervene at this time in the matter of US. ex rel. Lorne Holland, et al. v. DaVita Healthcare Partners, Inc., et al. The court then unsealed the complaint, which alleges violations of the FCA, by order dated the same day. In January 2020, the private party relators served the Company and DaVita Labs with an amended complaint. On February 24, 2020, the Company and DaVita Labs filed a motion to dismiss the amended complaint. The Company and DaVita Labs dispute these allegations and intend to defend this action accordingly.

20I9 Blue Cross & Blue Shield of Florida, Inc. and Health Options, Inc. v. DaVita Inc. In May of 2019, Blue Cross of Florida filed suit against DaVita in Federal Court alleging a variety of claims, including breach of contract, tortious interference with contract, fraud, negligent misrepresentation, civil conspiracy, violation of Florida's Unfair and Deceptive Trade Practices Act, and unjust enrichment. The claims primarily concern charitable premium assistance. On November 7, 2019, the Company moved for summary judgment on all claims. The Company disputes the allegations and continues to defend the case accordingly.

2019 Keystone Health Plan East, Inc. et. al v. DaVita Inc. In November 2019 several subsidiaries of Independence Blue Cross filed suit against DaVita in Federal Court in Pennsylvania alleging a variety of claims, including breach of contract, fraud, negligent misrepresentation, tortious interference with contract, and unjust enrichment. These claims primarily concern charitable premium assistance. The Company disputes the allegations and intends to defend the case accordingly.

2020 U.S. Attorney New Jersey Investigation: In March 2020, the U.S. Attorney's Office, District of New Jersey served the Company with a subpoena and a CID relating to an investigation being conducted by that office and the U.S. Attorney's Office, Eastern District of Pennsylvania. The subpoena and CID request information on several topics, including certain of the Company's joint venture arrangements with physicians and physician groups, medical director agreements, and compliance with the Corporate Integrity Agreement. The Company is cooperating with the government in this investigation.

2020 California Department of Insurance Investigation: In April 2020, the California Department of Insurance sent the Company an Investigative Subpoena relating to an investigation being conducted by that office. The subpoena requests information on a number of topics, including but not limited to the Company's communications with patients about insurance plans and financial assistance from the AKF, analyses of the potential impact of patients' decisions to change insurance providers, and documents relating to donations or contributions to the AKF. The Company is cooperating with the California Department of Insurance in this investigation.

Shareholder and Derivative Claims

Peace Officers' Annuity and Benefit Fund of Georgia Securities Class Action Civil Suit: In February 2017, the Peace Officers' Annuity and Benefit Fund of Georgia filed a putative federal securities class action complaint in the U.S. District Court for the District of Colorado against the Company and certain executives generally alleging that they violated federal securities laws concerning the Company's financial results and revenue derived from patients who received charitable premium assistance from an industry-

funded non-profit organization. The complaint further alleges that the process by which patients obtained commercial insurance and received charitable premium assistance was improper and "created a false impression of DaVita's business and operational status and future growth prospects." In March 2018, the Company and various individual defendants filed a motion to dismiss. On March 28, 2019, the U.S. District Court for the District of Colorado denied the motion to dismiss. The Company answered on May 28, 2019. On January 31, 2020, the plaintiffs filed a motion for class certification that the Company intends to oppose. The Company disputes these allegations and intends to defend it accordingly.
In re DaVita Inc. Stockholder Derivative Litigation: In August 2017, the U.S. District Court for the District of Delaware consolidated three previously disclosed shareholder derivative lawsuits: the Blackburn Shareholder action, the Gabilondo Shareholder action, and the City of Warren Police and Fire Retirement System Shareholder action. The complaint generally alleges breach of fiduciary duty, unjust enrichment, abuse of control, gross mismanagement, corporate waste, and misrepresentations and/or failures to disclose certain information in violation of the federal securities laws in connection with an alleged practice to direct patients with government-subsidized health insurance into private health insurance plans to maximize the Company's profits. In December 2017, the Company filed a motion to dismiss and a motion to stay the proceedings in the alternative. On April 25, 2019, the court denied the Company's motion to dismiss. The Company answered the complaint on May 28, 2019. The Company disputes these allegations and intends to defend it accordingly.

Resolved Matters

2011 U.S. Attorney Medicaid Investigation: In 2011, the Company received an administrative subpoena from the OIG and a request for documents from the U.S. Attorney's Office for the Eastern District of New York related to payments for infusion drugs covered by Medicaid composite payments for dialysis. The Company cooperated with the government, produced the requested documents, and in March 2016, finalized and executed settlement agreements with the State of New York and the U.S. Department of Justice (DOJ), including a settlement payment of an immaterial amount.

2014 OIG Medicaid Program Integrity Audit: Following a review of claims for Medicaid reimbursement at 19 DaVita dialysis facilities, the Agency for Health Care Administration, through its OIG Medicaid Program Integrity office, made a preliminary determination that the Company was overpaid for claims that in whole or in part should have been billed to the Nursing Home Division Waiver Program rather than Medicaid Fee-For-Service. Without waiving its right to contest future requests for repayment, the Company refunded the Agency $267,287.93.

Settlement and Corporate Integrity Agreement. In October 2014, DaVita entered into a Settlement Agreement with the U.S. Department of Justice and a CIA with the OIG to resolve all allegations arising under the complaint United States ex rel. David Barbetta v. DaVita, Inc. et al., No. 09-cv- 02175-WJM KMT (D. Colo.). 2014 Indiana Attorney General Medicaid Fraud Control Unit Demand Letter: In July 2014, the Indiana Attorney General's Medicaid Fraud Control Unit requested, and in October 2014 DaVita refunded $712.66 to the Indiana Medicaid program in relation to dialysis services provided by a DaVita nurse to a Medicaid recipient for three days while the nurse was temporarily unlicensed

Vainer Private Civil Suit: In 2008, the OIG issued a subpoena for documents relating to the pharmaceutical products Zemplar, Hectorol, Venofer, Ferrlecit, and erythropoietin, as well as other related matters, as a result of a civil complaint filed by relators Daniel Barbir and Dr. Alon Vainer pursuant to the qui tam provisions of the federal FCA. The relators alleged that the Company's drug administration practices for the Company's dialysis operations for Vitamin D and iron agents fraudulently created unnecessary waste, which was billed to and paid for by the government. In June 2015, the Company finalized the terms of a settlement with plaintiffs, including a settlement amount of $450 million and attorney fees and other costs of $45 million.

2015 U.S. Attorney Transportation Investigation: Between 2015 and 2016, the Company received ten administrative subpoenas (each for one set of patient medical records) at ten different dialysis centers in southern California. In 2017, a qui tam complaint was served on the Company in the U.S. District Court for the Central District of California related to an investigation concerning the medical necessity of patient transportation, which was the basis for the subpoenas. The DOJ declined to intervene, and the court

ultimately granted the Company's motion to dismiss both the original Complaint and the plaintiff's Amended Complaint. In July 2017, the plaintiff declined to proceed further and filed a notice of dismissal.

2015 OIG Medicare Advantage Civil Investigation: In March 2015, JSA HealthCare Corporation (JSA), a subsidiary of DMG, received a subpoena from the OIG requesting documents and information related to certain MA plans for which JSA provided services, and seeking information regarding JSA's communications about patient diagnoses as they related to certain MA plans generally, and more specifically as related to two Florida physicians with whom JSA previously contracted. In addition, in June 2015, the Company received a civil subpoena from the OIG seeking production of a wide range of documents relating to the Company's and its subsidiaries (including DMG and its subsidiary JSA) provision of services to MA plans and related patient diagnosis coding and risk adjustment submissions and payments, including information relating to patient diagnosis coding practices for a number of conditions, including potentially improper historical coding for a particular condition. With respect to that condition, the guidance related to that coding issue was discontinued following the Company's November 1, 2012 acquisition of HCP, and the Company notified CMS in April 2015 of the coding practice that may have been problematic, some of which were the subject of the Swoben Private Civil Suit, discussed below. On September 28, 2018, the Company reached a settlement with the DOJ and agreed to pay $270 million. In connection with the Company's acquisition of HCP, the Company had escrowed a portion of the purchase price to secure its indemnification rights, and the $270 million settlement was paid with these escrowed funds.

2015 U.S. Department of Justice Vascular Access Investigation and Related Qui Tam Litigation: In 2015, Lifeline, a wholly-owned subsidiary of the Company, received a CID from the DOJ related to two Florida vascular access centers that the Company acquired in 2012. The DOJ investigation was initiated pursuant to a qui tam complaint that alleged violations of the FCA as a result of claims submitted to the government for allegedly medically unnecessary angiograms and angiography procedures performed at the two vascular access centers as well as employment-related claims. The DOJ declined to intervene and in January 2017, the Company finalized and executed a settlement agreement with the relator and the government for an immaterial amount. In April 2017, the court dismissed the case with prejudice. Swoben Private Civil Suit: In April 2013, HCP was one of several defendants served with a civil complaint filed by a former employee of SCAN Health Plan alleging violations of the federal False Claim Act (FCA) and the California FCA. In October 2017, James M. Swoben, the relator, filed a Notice of Dismissal of the action as to HCP, and the government consented to the dismissal of the suit without prejudice.

Solari Post-Acquisition Matter: In 2016, HCP Nevada disclosed to the OIG that proper procedures for clinical and eligibility determinations may not have been followed by Las Vegas Solari Hospice (Solari), which HCP Nevada acquired in March 2013 and sold in September 2016. In June 2016, the Company was notified by the OIG that the disclosure submission had been accepted into the OIG's Self Disclosure Protocol. In October 2017, the Company finalized and executed a settlement agreement with the OIG including payment of an immaterial amount.

White, Kathleen, et al. v. DaVita Healthcare Partners, Inc. Civil Action No. 15-cv-2106, U.S. District Court for the District of Colorado: In three consolidated actions (Menchaca v. DaVita Healthcare Partners, Inc., Saldana v. DaVita Healthcare Partners, Inc. and Hardin v. DaVita Healthcare Partners, Inc.), the plaintiffs alleged wrongful death based on allegations related to Granuflo®, a product used as a component of the dialysis process. The Menchaca and Saldana actions arose out of the treatment of patients in California, while the Hardin action arose out of the treatment of a patient in Illinois. In June 2018, the jury returned a verdict in favor of the plaintiffs, collectively awarding $85 million in compensatory damages and $375 million in punitive damages. Judgment on this verdict was not entered, and in November 2018, the parties settled all three actions collectively for $25.5 million, and all three cases were dismissed with prejudice.

DaVita -- Cielo Vista Dialysis. Sun City Dialysis Center, and Loma Vista Dialysis Center: In August 2018, Medicare revoked the certification of three Texas dialysis centers owned in whole or in part by DaVita (Cielo Vista Dialysis, Sun City Dialysis Center, and Loma Vista Dialysis Center). The owners of the facilities appealed the revocations and on November 28, 2018, Medicare reinstated their certification with no gap in coverage.

DaVita- Southside Dialysis: In September 2018, DaVita, as the majority owner of Southside Dialysis (Texas), received notification that the facility's initial Medicare certification was denied. The denial is under appeal. The clinic was re-surveyed on February 13, 2018, and was certified effective March 29, 2019.

Davita - Brighton Park Dialysis: In September 2018, DaVita, as the majority owner of Brighton Park Dialysis (Illinois), received notification that the facility's initial Medicare certification application was denied. The denial was appealed and following receipt of a final denial determination, a new 855A application was submitted and approved. Brighton Park was certified effective July 17, 2019.

Davita-Estabrook Park Dialysis: In February 2019, DaVita, as the indirect owner of Estabrook Park Dialysis (Wisconsin), received notification that the facility's initial Medicare certification application was denied due to the fact that the clinic's sole patient was hospitalized on the date of the initial survey, making it impossible for a survey to be conducted. A new 855A application was submitted and approved. Estabrook Park was certified effective September 10, 2019.

2017 U.S. Attorney Florida Investigation: In November 2017, the U.S. Attorney's Office, Southern District of Florida informed the Company of an investigation it was conducting into possible federal healthcare offenses involving Lifeline. The U.S. Attorney's Office, Southern District of Florida notified the court on April 4, 2019, of its decision to not intervene in the matter of Gabriel Valle, MD., et al, v. RMS Lifeline, Inc., et al. The complaint then was unsealed in the U.S. District Court, Southern District of Florida by order dated April 5, 2019. The U.S. Attorney's Office confirmed that the complaint, which alleges violations of the FCA, was the basis of its investigation initiated in November 2017. On July 16, 2019, the private party relators filed a Notice of Voluntary Dismissal of the matter, and the court dismissed the lawsuit without prejudice and closed the case.

2020 Medicaid Denial: In February 2020, North Carolina Medicaid issued a not-for-cause denial for an out-of-state enrollment submitted by a wholly-owned subsidiary of DaVita and the owner of Myrtle Beach Dialysis (South Carolina). DaVita re-submitted the application for enrollment, which was approved.
Ohio Department of Health Settlement. On March 5, 2020, DaVita reached a settlement with the Ohio Department of Health in connection with a potential licensure revocation of National Trail Dialysis Center, a DaVita facility located in Springfield, OH. As part of the settlement, DaVita made a payment of $130,000 to the state and agreed to pay for an independent surveyor to monitor the facility over a three-month period.

Northwell Health Legal Disclosures

Northwell Health Care, Inc. ("Northwell") (formerly known as "North Shore-Long Island Jewish Health Care, Inc.") and/or its affiliates and/or its employees, like other large employers in the heavily regulated health care field, has received inquiries from governmental agencies concerning various federal and/or state laws regarding issues involving, among other things, claim submissions to government insurance plans such as Medicare or Medicaid. In many instances, Northwell has been informed that it is viewed by the government as a witness in these investigations. In other instances, the investigations were concluded without any findings against Northwell, its affiliates, and/or its employees. Any remaining closed investigations would have been resolved through settlement, consent decree, or similar mechanisms. With respect to any open investigations, Northwell, its affiliates, and/or their managerial employees have either denied wrongdoing or are in the process of reviewing the relevant issues, and when warranted, submitting a response. Below are examples of such matters.

On or about November 18, 2010, North Shore University Hospital ("NSUH"), the Health System, and certain of their current and former employees received Civil Investigative Demands ("CIDs") issued by the United States Attorney for the Southern District of New York ("USAO/SDNY"). The CIDs sought documents, interviews, and other information relating to a clinical documentation improvement program undertaken by NSUH and certain other Health System hospitals. The matter is now closed.
On or about December 1, 2010, the Health System received a letter from the Civil Division of the United States Department of Justice ("DOJ") alleging that, since 2003, certain Health System hospitals may have submitted claims to Medicare for payment for the implantation of implantable cardioverter defibrillators

("ICD") and related services for which Medicare does not provide coverage, and further alleging potential liability under the federal False Claims Act.

Numerous other hospitals throughout the country received similar inquiries. This matter was resolved in 2016 by a settlement agreement with DOJ, and the matter is now closed. In a press release, DOJ announced that it resolved allegations concerning ICDs with approximately 500 hospitals throughout the country. In or about October 2011, Southside Hospital ("SH") learned that the U.S. Attorney's Office for the Western District of New York ("USAO/WDNY") was conducting a review of inpatient admissions for atherectomy procedures, a minimally invasive surgical method used to treat the peripheral arterial disease of the lower extremities. It is our understanding that similar requests were made of other hospitals at the time. The USAO/WDNY initially requested that SH provide information concerning such procedures (but did not issue a subpoena for such information), and SH cooperated with the request. Since the initial request for information, SH has had no further contact from the USAO/WDNY, and at no time has the USAO/WDNY indicated that it believes SH has any potential liability in this matter.

In June 2012, Staten Island University Hospital ("SIUH") received a subpoena from the OIG and the U.S. Attorney's Office for the Eastern District of New York ("USAO/EDNY") requesting documentation relating to services rendered at SIUH's inpatient specialized burn unit since 2005. The requested documentation was provided in the summer of 2012. In June 2013, the USAO/EDNY contacted SIUH with follow-up questions regarding the material provided, and SIUH provided the requested information. SIUH has had no further contact from the USAO/EDNY regarding this matter, and at no time has the USAO/EDNY indicated that it believes SIUH has any potential liability in this matter.

In July 2012, NSUH received a letter from the Office for Civil Rights ("OCR") of the United States Department of Health and Human Services indicating that it had opened a compliance review of certain incidents of identity theft that were alleged to have occurred at NSUH. In 2016, OCR closed its review by issuing a technical assistance letter and did not impose penalties or other sanctions.
In September 2012, a laptop computer containing research data was stolen from the car of an employee of The Feinstein Institute for Medical Research ("The Feinstein Institute"). The Feinstein Institute investigated the theft and reported it to law enforcement authorities. The research participants whose personal information may have been contained on the laptop were notified, and The Feinstein Institute cooperated with authorities concerning the matter. In 2016, this investigation was resolved by agreement with OCR.

In or about August 2015, Northwell received requests for documents from two law enforcement agencies and a court-appointed examiner focusing on gifts made to it by a Long Island-based charitable foundation and its court-appointed receiver. In particular, Northwell received document requests from (1) the New York Attorney General's Office; (2) the USAO/EDNY (issued to an employee); and (3) an examiner appointed by the Surrogate's Court to investigate the receiver's conduct. Northwell cooperated fully in these inquiries and produced documents in response to the requests. Northwell has not received any communication from either of the law enforcement agencies or the court-appointed examiner since 2016.

In November 2015 and in months thereafter, the Northwell responded to various grand jury subpoenas and other information requests issued by the U.S. Attorney's Office for the Southern District of New York seeking, among other records and information, documents relating to cardiac catheterization procedures performed by a non-employed physician who held medical staff privileges at two Northwell Health hospitals. It is our understanding that Northwell and its employees were witnesses in this investigation, and the investigation is now closed.

In September 2015, Staten Island University Hospital ("SIUH") made a voluntary self-disclosure to OIG-HHS and the New York State Office of the Medicaid Inspector General ("OMIG") in which it identified potential overpayments to Medicare and Medicaid relating to a certain type of documentation issues at one of its laboratory patient service centers. SIUH entered into a settlement agreement with OIG-HHS in January 2017 that resolved the OIG-HHS self-disclosure

In April 2017, Northwell made a voluntary self-disclosure to OIG-HHS relating to overpayments that it determined had been received by ten Northwell hospitals relating to certain inpatient percutaneous

vertebral augmentation procedures performed at those hospitals. Northwell entered into a settlement agreement with OIG-HHS in February 2018 that settled the self-disclosure.

The requested documentation was provided in the summer of 2012. In June 2013, the USAO/EDNY contacted SIUH with follow-up questions regarding the material provided, and SIUH provided the requested information. SIUH has had no further contact from the USAO/EDNY regarding this matter, and at no time has the USAO/EDNY indicated that it believes SIUH has any potential liability in this matter.

In July 2012, NSUH received a letter from the Office for Civil Rights ("OCR") of the United States Department of Health and Human Services indicating that it had opened a compliance review of certain incidents of identity theft that were alleged to have occurred at NSUH. In 2016, OCR closed its review by issuing a technical assistance letter and did not impose penalties or other sanctions.
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In September 2015, Staten Island University Hospital ("SIUH") made a voluntary self-disclosure to OIG-HHS and the New York State Office of the Medicaid Inspector General ("OMIG") in which it identified potential overpayments to Medicare and Medicaid relating to a certain type of documentation issues at one of its laboratory patient service centers. SIUH entered into a settlement agreement with OIG-HHS in January 2017 that resolved the OIG-HHS self-disclosure.

In April 2017, Northwell made a voluntary self-disclosure to OIG-HHS relating to overpayments that it determined had been received by ten Northwell hospitals relating to certain inpatient percutaneous vertebral augmentation procedures performed at those hospitals. Northwell entered into a settlement agreement with OIG-HHS in February 2018 that settled the self-disclosure.

In a Stipulation and Order (S&O) dated November 21, 2016, Long Island Jewish Medical Center was fined $4,000 based on an infection control investigation. The facility had 21 ORs running. It was observed that in 12 of the ORs a total of 24 staff members were not following accepted standards of practice for Infection Control in the Surgical Area.

In a Stipulation and Order (S&O) dated December 18, 2020; December 31, 2020; January 11, 2021, and February 18, 2021, Lenox Hill Hospital/Northwell Health received notification they did not have adequate stores of PPE required by the Governor's Executive Order.

In a Stipulation and Order (S&O) dated December 18, 2020; December 29, 2020; January 11, 2021, and February 18, 2021, South Shore Hospital/Northwell Health received notification they did not have adequate stores of PPE required by the Governor's Executive Order.

Star Ratings - Dialysis Facility Compare (DFC)

The Centers for Medicare and Medicaid Services (CMS) and the University of Michigan Kidney Epidemiology and Cost Center have developed a methodology for rating each dialysis facility, which may be found on the Dialysis Facility Compare website as a "Star Rating." The method produces a final score that is based on quality measures currently reported on the DFC website and ranges from 1 to 5 stars. A facility with a 5-star rating has a quality of care that is considered 'much above average' compared to other dialysis facilities. A 1- or 2- star rating does not mean that a facility provides poor care. It indicates only that measured outcomes were below average compared to other facilities. Star ratings on DFC are updated annually to align with the annual updates of the standardized measures.

The DFC website currently reports on 9 measures of quality of care for facilities. The measures used in the star rating are grouped into three domains by using a statistical method known as Factor Analysis. Each domain contains measures that are most correlated. This allows CMS to weigh the domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.

Knickerbocker Dialysis, Inc. operates 61 dialysis centers in New York State. The star ratings for these facilities are shown below:

Facility Name	Address	Star Rating
South Bronx Dialysis Center	1940 Webster Avenue Bronx, NY 10457	***
Richmond Kidney Center	1366 Victory Boulevard Staten Island, NY 10301	***
Catskill Dialysis Center	139 Forestburgh Road Monticello, NY 12701	***
Sheepshead Bay Renal Care Center	26 Brighton 11th Street Brooklyn, NY 11235	*****
Garden City Dialysis Center	1100 Stewart Ave GardenCity, NY 11530	***
Orchard Park Dialysis Center	3801 Taylor Road OrchardPark, NY 14127	****
Central New York Dialysis Center	910 Erie Boulevard East Syracuse, NY 13210	***
Millennium Dialysis	1408 Ocean Drive Brooklyn, NY 11230	****
Bronx Dialysis Center	615-1617 Eastchester Road Bronx, NY 10461	****
Riverdale Dialysis Center	170 West 233rd Street Bronx, NY 10463	****
Bronx River Dialysis	1616 Bronxdale Avenue Bronx, NY 10462	***
Queens Dialysis Center	118-01,05,07A Guy Brewer Blvd Jamaica, NY 11434	***
Boston Post Road Dialysis Center	4000-4026 Boston Road Bronx, NY 10475	***

Soundview Dialysis Center	1622-24 Bruckner Blvd. Bronx, NY10473	****
Lynbrook Dialysis Center	147 Scranton Road Lynbrook, NY 11563	****
Long Island Renal Care	3460 Great Neck Road Amityville, NY 11701	***
Queens Village Dialysis Center	222-02 Hempstead Avenue Queens Village, NY 11429	****
Suburban Dialysis Center	705 Maple Road Williamsville, NY 14221	***
Atlas Park Dialysis	80-00 Cooper Avenue Glendale, NY 11385	***
Allerton Dialysis	2554 White Plains Road Bronx, NY 10467	N/A
Oyster Bay Dialysis	17 East Old Country Road Hicksville, NY 11801	****
Long Island City Dialysis	30-46 Northern Boulevard Long Island City, NY 11101	N/A
East Islip Dialysis	200 Carlton Avenue EastIslip, NY 11730	****
Crossways Park Dialysis	113 Crossways Park Drive, Suite 100 Woodbury, NY 11797	*****
Julia and Israel Waldbaum Dialysis	100 Community Drive Great Neck, NY 11021	*****
Port Washington Dialysis Center	50 Seaview Boulevard Port Washington, NY 11050	*****
Huntington on Broadway Dialysis	256 Broadway Huntington Station, NY11746	****
Deer Park Dialysis	860 Grand Boulevard Deer Park, NY 11729	N/A
Flatlands Dialysis	1641 East 16th Street, 5thFloor Brooklyn, NY 11129	N/A
Longwood Dialysis	931 Bruckner Boulevard Bronx, NY 10459	N/A
Rockland County Dialysis	203 West Route 59 Nanuet, NY 10954	N/A
Downtown Brooklyn Dialysis	133 Mill Street Brooklyn, NY 11231	N/A
Staten Island South Dialysis	30 Sneden Avenue Staten Island, NY 10312	N/A
Wingate Dialysis	550 Kingston Avenue Brooklyn, NY 11203	N/A

Mount Eden Dialysis	1490 Macombs Road Bronx, NY 10452	N/A
Clearview Dialysis	45-60 Francis-Lewis Blvd Bayside, NY 11361	****
Laconia Dialysis	3440 Boston Road Bronx, NY 10469	N/A
Sandford Boulevard Dialysis	120 East Sanford Blvd. Mount Vernon, NY 10550	*
Greenpoint Dialysis	146 Meserole Street Brooklyn, NY 11206	N/A
Hutchinson River Dialysis	2331 Eastchester Road Bronx, NY 10469	N/A
Ozone Park Dialysis	100-02 Rockaway Blvd. Ozone Park, NY 11417	**
Westchester Home Training	955 Yonkers Avenue Yonkers, NY 10704	N/A
Brooklyn Community Dialysis	730 64th Street Brooklyn, NY 11220	*****
Buffalo Downtown Dialysis	520 Ellicott Street Buffalo, NY 14203	***
Seaway Dialysis	999 East Ridge Road, Suite 11 Rochester, NY14621	***
Melrose Dialysis	459 East 148th Street Bronx, NY 10455	**
Jamaica Hillside Dialysis	171-19 Hillside Avenue Jamaica, NY 11423	***
Clinton Hill Dialysis	1275 Bedford Avenue Jamaica, NY 11216	***
Williamsbridge Dialysis Center	3525 White Plains Road,Suite A Bronx, NY 10467	****
Schuyler Dialysis	220 Steuben Street Montour Falls, NY 14865	***
Corning Dialysis	8 W Pulteney Street, Suite101 Corning, NY 14830	*****
Ivy Dialysis	602 Ivy Street Elmira, NY14905	****
Staten Island Dialysis Center	1139 Hyland Boulevard Staten Island, NY 10305	****
Waters Place Dialysis Center	1733 Eastchester Road Bronx, NY 10461	****
Orange Dialysis Center	100 Crystal Run Road Middletown, NY 10941	****
Jamestown Dialysis Center	207 Foote Avenue Jamestown, NY 14701	*****

Borough Park Dialysis	4102 13th Avenue Brooklyn, NY 11219	****
NEOMY Dialysis Center	1122 Coney Island Avenue Brooklyn, NY 11230	***
Yonkers Dialysis Center	575 Yonkers Avenue Yonkers, NY 10704	****
Northtowns Dialysis Center	4041 Delaware Avenue Tonawanda, NY 14150	***
Peekskill Cortland Dialysis Center	Pike Place Suite 15 Cortland Manor, NY 10566	****

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3). After the change of ownership, True North III will continue to operate the facility under the name Grand Boulevard Dialysis with no change in stations, services, or access.

Financial Analysis

Operating Budget

The applicant has submitted the years one and three operating budget, in 2022 dollars, shown below:

	Year One		Year Three	
Revenues				
Commercial FFS	$1,057.81	$518,328	$1,099.96	$1,552,040
Commercial MC	$ 314.71	$211,168	$ 304.98	$ 665,471
Medicare MC	$ 295.59	$535,019	$ 303.29	$ 1,806,376
Medicaid MC	$ 255.21	$ 63,037	$ 305.06	$ 244,661
Less Bad Debt	-	($66,378)		($213,427)
Total Revenue		$1,261,174		$4,055,121
Expenses				
Operating	$ 333.64	$1,073,665	$ 255.97	$2,649,581
Capital	$ 184.34	$ 593,210	$ 58.70	$607,600
Total Expenses	$ 518.02	$1,666,985	$ 314.67	$3,257,181
Net Income:		($405,811)		$797,940
Visits:		3,218		10,351

The following is noted concerning the submitted budget:

- Revenues in the first and third-year budgets are based on the actual rates by the payor currently received by the existing facility with Medicaid based on current reimbursement methodologies, the experience of the proposed provider, and the Medicaid APG rate for renal dialysis.
- Revenues are forecasted based on an increased need for dialysis procedures, physician relationships, and outreach programs that will significantly increase volume. Northwell has also a referral program where they can utilize this facility to absorb some of their patients needing this treatment.
- Expense and utilization assumptions are based on the current experience of the existing dialysis center that started late in November 2019. Utilization growth from years one to three is primarily driven by the Hemodialysis for Medicare and Medicaid payor sources. This facility is relatively new,

so the applicant is expecting a start-up period until the intake of patients builds over time. The applicant expects to experience a year one projection for Hemodialysis Medicare of 1,810 and growing to 5,956 by year three. The Hemodialysis Medicaid payor source is expected to grow from 671 in year one to 2,182 by year three. This high level of utilization is expected after implementing an outreach program to reach underserved residents.

Utilization by payor source for years one and three after the ownership change is summarized below:

Payor	Year One	Year Three
Commercial FFS	15.22%	13.63%
Commercial MC	20.85%	21.08%
Medicare MC	56.25%	57.54%
Medicaid MC	7.68%	7.75%
Total	100%	100%

Contribution and Asset Purchase Agreement (CAPA)

The applicant has submitted an executed CAPA to acquire the operating interests of Grand Boulevard, to be effectuated upon PHHPC approval as shown below.

Date:	October 25, 2019
Seller:	Knickerbocker Dialysis, Inc.
Buyer:	True North DC III, LLC
Asset Acquired:	All assets are free and used in the business without limitation.
Assumption ofLiabilities:	All liabilities include past debts and obligations of the past business, lease agreements, capital investments and benefits, and salary expenses.
Purchase Price:	$5,360,000 Start-up capital expenditures are $4,075,700 and start-up working capital is $1,120,758 plus development fees (Professional fees, Legal fees, etc.) of $163,542 assuming 5% for development fees.
Payment of Purchase Price:	Credit facility from BOKF (Bank) for $3,752,000 and proposed members' contribution of $1,608,000 deposited and held in escrow until closing by DaVita, Inc.

Members	Loan*	Equity	Estimated Initial Capital Requirements
True North DC Holdings, LLC	$3,001,600	$1,286,400	$4,288,000
Long Island Hemodialysis, LLC	$ 375,200	$ 160,800	$ 536,000
Comprehensive Dialysis, LLC	$ 375,200	$ 160,800	$ 536,000

*BOKF National Bank's total revolving loan is $3,752,000. The loan, executed on October 25, 2019, is classified as a revolving to installment loan structured to cover the initial funds needed in the start-up phase with a term limit. The loan term will begin immediately once approved by PHHPC, which will be the drawdown start date and the loan has a drawdown maturity date until November 1, 2022. After this date, no additional drawdowns are permitted and the paydown of the principal begins (installment phase). Interest on the outstanding principal amount for the loan is equal to the greater of LIBOR plus 3%; however, the CAPA agreement does have a provision that an alternative agreed upon rate may be negotiated. The executed agreement shows the loan Swap Obligation maturity date of October 25, 2026, and the payout over 48 months following the conversion. The payout and interest rate will be estimated at that time.

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

Lease Agreement

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

Premises:	Approximately 7,567 rentable square feet of floor area in a building located at 860 Grand Boulevard Dialysis, Deer Park (Suffolk County).
Lessor:	Stewart Avenue Associates, LLC
Lessee:	Knickerbocker Dialysis, Inc
Term:	180 months renewable (3 additional periods-each period is 5 years)
Rent:	Year 1 ($0), Year 2 through 5 is $168,000, Year 6 through 10 is $184,000, Year 11 through 15 is $203,280 annually. First Renewal for the next 5 years is $223,600 annually. The second Renewal for the next 5 years is $246,000 annually. The third Renewal for the next 5 years is $270,640 annually.
Provisions:	Tenant's share of real estate taxes, other taxes, assessments, and public charges, insurance, gas, water, and electricity

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

Assignment and Assumption of Lease Agreement

The applicant has submitted an executed assignment and assumption of the lease agreement for site control of the center dated October 25, 2019. The terms are summarized below.

Assignor:	Knickerbocker Dialysis, Inc.
Assignee:	True North III DC, LLC

Consulting and Administrative Services Agreement (CASA)

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

Consultant:	DaVita, Inc.
Licensed Operator:	True North DC Holdings, LLC & North Shore-LIJ Renal Ventures, LLC
Services Provided:	Insurance monitoring, bookkeeping, accounting, taxes, compliance, regulations, and legal actions, government compliance, and other administrative duties.
Term:	5-years with renewal if both parties agree.
Fee:	$10,000 per annual to be adjusted accordingly and at renewal time.

While DaVita, Inc. will provide all the above services, the licensed operator retains ultimate authority, responsibility, and control for the operations. There is common ownership between the applicant and the CASA provider as shown in BFA Attachment B's post-closing organization chart. The applicant has submitted an executed attestation acknowledging understanding of the statutory and regulatory required reserve powers that cannot be delegated, and that they will not willfully engage in any such illegal delegations of authority.

Capability and Feasibility

There are no project costs associated with this application. True North III DC, LLC will purchase the operating interest through a Contribution and Purchase Agreement (CAPA) for $5,360,000 to be funded via a $3,752,000 loan and the proposed members' contribution of $1,608,000. BOKF National Bank provided a revolving installment loan that was executed on October 25, 2019. The loan is classified as a revolving installment loan the loan term will begin immediately after PHHPC approval, (drawdown start date) and has a drawdown maturity date of November 1, 2022, after which the paydown of the principal

begins. Interest on the outstanding principal amount is equal to the greater of LIBOR plus 3%. The loan Swap Obligation according to the executed agreement shows the maturity date of October 25, 2026, and the payout over 48 months following the conversion. The payout and interest rate will be estimated at that time.

The working capital requirement is estimated at $1,628,591 based on two months of third-year expenses. Working capital will be funded through the capital contributions via an escrow account held by Davita Inc. BFA Attachment A is the Net Worth Statement for Long Island Hemodialysis, LLC and Comprehensive Dialysis, LLC that indicate sufficient funds available for estimated working capital.

The submitted budget projects a net loss of $405,811 for year one and a net income of $797,490 during year three. The first-year projected loss will be funded by the ongoing operations of DaVita Inc., the ultimate parent of Knickerbocker Dialysis, Inc.

BFA Attachment C presents the 10-Q Financial Summary of DaVita Inc. for 2020, indicating that the publicly traded corporation has a positive working capital and net asset position and achieved a net income of $773,642,000 for the period shown. The Internal Balance sheet and Income Statement dated January 1, 2021, through September 30, 2021, indicates a positive working capital and net asset position and net income of $790,977,000.

BFA Attachment D is Northwell Health, Inc. is the 2019 and 2020 Certified Financial Statements, which show a positive working capital position and positive net asset position for both years. Also, the entity had positive excess of revenues over expenses of $809,881,000 and $671,760,000 respectively. The Internal Financial Statement from (January 1, 2021, through June 30, 2021) indicates a positive working capital and net-asset position and Net Income of $647,204,000.

BFA Attachment E presents the Pro Forma Balance Sheet of True North DC III, LLC. The pro forma indicates a positive members' equity of $1,608,000 on the first day of operation.

Conclusion

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

Attachments

BFA Attachment A	Net Worth Statement for Long Island Hemodialysis, LLC, and Comprehensive Dialysis
BFA Attachment B	Pre and Post Organizational Chart of True North III DC, LLC
BFA Attachment C	Financial Summary DaVita, Inc. (1/1/2020 Audited - Internal 1/1/2021-9/30/2021)
BFA Attachment D	Northwell Health, Inc. Certified F/S 2019-2020, and Internal 1/1/2021-6/30/2021 F/S
BFA Attachment E	Pro Forma Balance Sheet for True North DC III, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of June 2022, 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 True North III DC, LLC as the new operator of the 20-station chronic renal dialysis center located at 860 Grand Boulevard, Deer Park that is currently operated as an extension clinic of Bronx Dialysis Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
201222 E	True North III DC, LLC d/b/a Grand Boulevard Dialysis

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of an Administrative Services Agreement, acceptable to the Department. [CSL]
2. Submission of a photocopy of an amended and executed Articles of Organization for True North DC Holding, LLC, acceptable to the Department. [CSL]
3. Submission of a photocopy of an amended and executed Articles of Organization for Long Island Hemodialysis, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended and executed Operating Agreement for Long Island Hemodialysis, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Articles of Organization for Comprehensive Dialysis Care, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed Operating Agreement for Comprehensive Dialysis Care, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of the amended and restated Certificate of Incorporation for Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
8. Submission of a photocopy of the Bylaws of Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
9. Submission of a photocopy of a list of the Board of Directors of Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of the Certificate of Incorporation for DaVita of New York, Inc., acceptable to the Department. [CSL]
11. Submission of a photocopy of the Bylaws for DaVita of New York, Inc., acceptable to the Department. [CSL]
12. Submission of a photocopy of the Certificate of Incorporation for DaVita, Inc., acceptable to the Department. [CSL]
13. Submission of a photocopy of the Bylaws for DaVita, Inc., acceptable to the Department. [CSL]
14. Submission of a photocopy of an amended and executed Articles of Organization for North Shore–LIJ Renal Ventures, LLC, acceptable to the Department. [CSL]
15. Submission of a photocopy of an amended and executed Operating Agreement for North Shore–LIJ Renal Ventures, LLC, acceptable to the Department. [CSL]
16. Submission of a photocopy of the Certificate of Incorporation for North Shore University Hospital, acceptable to the Department. [CSL]
17. Submission of a photocopy of the Bylaws for North Shore University Hospital, acceptable to the Department. [CSL]
18. Submission of a photocopy of the Certificate of Incorporation for Northwell Healthcare, Inc., acceptable to the Department. [CSL]
19. Submission of a photocopy of the Bylaws for Northwell Healthcare, Inc., acceptable to the Department. [CSL]
20. Submission of a photocopy of the Certificate of Incorporation for Northwell Health, Inc., acceptable to the Department. [CSL]
21. Submission of a photocopy of the Bylaws for Northwell Health, Inc., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by one year from the date of the Public Health and Health Planning Council Recommendation 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 expiration of the approval. It is the responsibility of the applicant to request prior approval for an 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/facilites/hospitals/docs/hcs_access_forms_new_clinics.pdf.
   Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

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

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 211244-E
True North VI DC, LLC d/b/a Peconic Bay Dialysis

Program: **Diagnostic and Treatment Center** ***County:*** **Suffolk**
Purpose: **Establishment** ***Acknowledged:*** **July 21, 2021**

Executive Summary

Description

True North VI DC, LLC, an existing New York limited liability company, requests approval to be established as the new operator of Peconic Bay Dialysis Center (Peconic Bay). Peconic Bay is a 13-station, Article 28 chronic renal dialysis diagnostic and treatment center (D&TC) located at 700 Old Country Road, Suite 4, Riverhead, (Suffolk County). True North VI intends to continue operating the facility under the name Peconic Bay Dialysis after the change in ownership.

The membership of True North VI DC, LLC, is shown below:

Members	%
True North DC Holding, LLC	**90%**
Knickerbocker Dialysis Inc. (51%)	
North Shore-LIJ Renal Ventures, LLC (49%)	
Fox Run Holding Company, LLC	**10%**
Neeru Kumar, M.D. (100%)	
Total	100%

Neeru Kumar M.D., who is board-certified in Nephrology and Internal Medicine, will serve as the Medical Director. The backup hospital for Peconic Bay Dialysis is and will continue to be Peconic Bay Medical Center, which is located 0.5 miles from the dialysis facility.

Northwell Health, Inc. is the parent and sole member of North Shore-LIJ Renal Ventures, LLC. DaVita Inc. is the parent of Knickerbocker Dialysis, Inc. True North VI DC, LLC will enter into a Consulting and Administrative Agreement with DaVita Inc. to provide accounting, billing, funds management, and other consulting and administrative services. True North VI will assume the lease for the facility's site. Otherwise, operations at the facility are expected to continue generally as they have.

OPCHSM Recommendation

Contingent Approval.

Need Summary

After the change of ownership, True North VI will continue to operate the facility under the name Peconic Bay Dialysis with no change in stations or services.

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)(b).

Financial Summary

There are no project costs associated with this application. True North VI DC, LLC will purchase the operating interest via a Contribution and Purchase Agreement (CAPA) for $4,000,000 to be funded by the proposed members' equity in proportion to the members' percent ownership interest. True North DC Holding, LLC will fund $3,600,000 and Fox Run Holding Company, LLC will fund $400,000. The proposed budget is as follows:

Budget	Year One	Year Three
Revenues	$422,830	$2,075,197
Expenses	1,087,920	2,015,892
Net Income(Loss)	($665,090)	$59,305

Recommendations

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

Office of Primary Care and Health Systems Management
Approval contingent upon:

1. Submission of a photocopy of an amended and executed Articles of Organization, acceptable to the Department of Health (Department). [CSL]
2. Submission of a photocopy of a Consulting and Administrative Services Agreement, acceptable to the Department. [CSL]
3. Submission of a photocopy of an amended and executed Articles of Organization for True North DC Holding, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended and executed Operating Agreement for True North DC Holding, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Operating Agreement for Fox Run Holding Company, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of the amended and restated Certificate of Incorporation for Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
7. Submission of a photocopy of a list of the Board of Directors of Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
8. Submission of a photocopy of the Certificate of Incorporation for DaVita of New York, Inc., acceptable to the Department. [CSL]
9. Submission of a photocopy of the Bylaws for DaVita of New York, Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of the Certificate of Incorporation for DaVita, Inc., acceptable to the Department. [CSL]
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13. Submission of a photocopy of an amended and executed Operating Agreement for North Shore–LIJ Renal Ventures, LLC, acceptable to the Department. [CSL]
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18. Submission of a photocopy of the Certificate of Incorporation for Northwell Health, Inc., acceptable to the Department. [CSL]
19. Submission of a photocopy of the Bylaws for Northwell Health, Inc., acceptable to the Department. [CSL]

Approval conditional upon:

1. This project must be completed by one year from the date of the recommendation 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/facilites/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

June 2, 2022

Need and Program Analysis

Program Description

Proposed Operator	True North VI DC, LLC
Doing Business As	Peconic Bay Dialysis
Site Address	700 Old Country Road Suite 4 Riverhead, NY 11901 (Suffolk County)
Shift/Hours/Schedule	Initially, Monday-Wednesday-Friday 8 AM to 4 PM Then Monday-Saturday 8 AM to 4 PM
Approved Services	Renal Dialysis-Chronic O/P
Staffing (1st Year/3rd Year)	2.8 FTEs/6.6 FTEs
Medical Director(s)	Neeru Kumar, MD
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Peconic Bay Medical Center 0.4 mile/1 minutes

There will be no programmatic changes or changes in stations or services as a result of this proposed change in ownership.

The membership of True North VI DC, LLC is listed below.

Member Name/Title	**Membership Interest**
True North DC Holding *Knickerbocker (51.00%)* *Caroline Pierce, Asst. Secretary* *Nicholas Gossman, Secretary* *John Winslet, Vice President* *North Shore-LIJ Renal Ventures(49.00%)* *Michele Cusack, CFO, Treasurer*	90%
Fox Run Holding Company, LLC *Neeru Kumar, M.D. (100.00%)*	10%
Total	**100.0%**

Knickerbocker is the licensed operator of 761 chronic renal dialysis facilities in New York State. DaVita of New York, Inc. (DVANY), which is owned by DaVita Inc., is the sole owner of the shares of stock of Knickerbocker Dialysis, Inc. DVANY is also the owner of Huntington Artificial Kidney Center, Ltd, Empire State DC, Inc., and Liberty RC, Inc., which are also operators of chronic renal dialysis facilities in New York State.

Knickerbocker Dialysis, Inc. is also a member of:

- Enchanted Dialysis, LLC, the operator of Newark Wayne Dialysis Center.
- True North Dialysis Center, LLC, the operator of Port Washington Dialysis Center (PFI 9926).
- True North DC Holding, LLC, which is one of the members of True North III DC, LLC, the proposed operator of Grand Boulevard Dialysis (pending approval and completion of Project No. 201222-E).
- Bandelier Dialysis, LLC, the proposed operator of Bronxchester Home Training (pending approval and completion of Project No. 202170-E).
- Empress Dialysis, LLC, the proposed operator of Brooklyn Community Dialysis (pending approval and completion of Project No. 211108-E).
- Latsch Dialysis, LLC, the proposed operator of Westchester Home Training (pending approval and completion of Project No. 211109-E).

DaVita is the operator of more than 2,600 dialysis facilities in the United States.

Character and Competence

True North VI DC, LLC is managed by its members, through a Board of Members comprised of managers appointed by the members of True North VI. The officers of True North VI DC, LLC are as follows:

Name	Title
Luann D. Regensburg	President
Matt H. Henn	Vice President
Steven Fishbane, M.D.	Chief Medical Officer
John Winstel	Treasurer
Laurence Kraemer	Secretary

Neeru Kumar, M.D., is a Nephrologist at Long Island Community Hospital, Brookhaven Healthcare Rehab Facility, and Bellhaven Nursing & Rehab. Dr. Kumar received his medical degree from the Medical University of Americas in the West Indies, and he completed his residency in Internal Medicine and Nephrology Fellowship at Nassau University Medical Center. He is board-certified in Internal Medicine and board eligible in Nephrology. Dr. Kumar will continue to serve as the facility's Medical Director.

Roger Blumencranz is a licensed Insurance Broker and has been the Managing Director of BWD Group, LLC for approximately 61 years, where he spearheaded the formation of the Commerce and Industry Council, devoted to raising funds for then North Shore-LIJ Health System. He is a member of the Northwell Health Inc, Board of Trustees since 1980 where he chairs the Education and Insurance Committees and serves on the Finance Committee and the Joint Board of Overseers for the Donald and Barbara Zucker School of Medicine at Hofstra/Northwell. Roger Blumencranz is also a member of the John T. Mather Board of Directors.

Adam Boll is the Vice President of Northwell Health Operations where he is responsible for the office held and tenure in the health care industry contributing to the competency for management for the subject facility. In addition to this role, he is also a Physician's Assistant. Adam Boll discloses ownership interest/office held in the following health care facilities:

Port Washington Dialysis Center	*03/2016-present*
Floral Park Home Dialysis	*03/2016-present*
Oyster Bay Dialysis Center	*11/2016-present*
Julia and Israel Waldbaum Dialysis	*11/2016-present*
Huntington on Broadway Dialysis	*11/2016-present*
East Islip Dialysis	*07/2017-present*
Digestive Health Center of Huntington	*03/2017-present*
Endoscopy Center of Long Island	*03/2013-present*
Garden City Surgi Center	*12/2014-present*
Greenwich Village Ambulatory Surgery Center	*12/2017-present*
Melville ASC	*10/2017-present*
South Shore Surgery Center	*02/2016-present*
Suffolk Surgery Center	*10/2016-present*
Surgical Specialty Center of Westchester	*09/2017-present*

Michael Caridi is the President of VG Enterprises Management Group. He is a member of the Northwell Health Inc. Board of Trustees and is the chairman of the Staten Island regional Executive Council, tasked with ensuring Staten Island University Hospital meets the healthcare needs of the borough. He previously served as vice-chair of the council.

Mark Claster has been the President of Carl Marks & Co., Inc. for 40 years. He currently has an advisory role in the firm's investment businesses and previously served as General Partner of the firm's two small business investment companies. He also serves as the President of Carl Marks Securities LLC and Co-manager of Carl Marks Advisors and is the Director of the Board of Staten Island University Hospital.

Previously, he was the Chairman of the Board of Trustees of Northwell Health where he still serves on various health system committees and is Chair of the nominating and Governance Committee. Mark Claster is also a Member of the Joint Board of Overseers for the Donald and Barbara Zucker School of Medicine at Hofstra/Northwell.

Gary A. Cohen retired in 2014, and before that he was employed at IBM for over 35 years as a General Manager in the Global Communications Sector. In that role, he was responsible for the company's business with telecommunications, media, entertainment, energy, and utilities clients around the world. He led the strategic direction of the company's growth and the global alliance organization. Later, he was the Vice President of Strategy, developing the pervasive computing division.

Margaret Crotty is the President and CEO of John Snow, Inc., and JSI Research and Training Institute, a global public health consulting firm. Previously, she served as the CEO of Partnership with Children and previously ran Save the Children. She was President and CEO of AFS-USA Intercultural Programs and served as Executive Director of a workforce development agency. She is a member of the Northwell Health Inc, Board of Trustees, the Open Medical Institute, the Inner-City Scholarship Fund, Access Health, the Human Services Council, and Seachange Capital. Margaret Crotty is also a member of the Young Presidents Organization and the Council on Foreign Relations and serves as the Program Leader for Princeton AlumniCorps' Emerging Leader Program.

Michele Cusack is the Senior Vice President and Chief Financial Officer for Northwell Health, Inc where her responsibilities include managing the system's day to financial operations. She discloses offices held in the following healthcare facilities:

Glen Cove Hospital	*10/10/2017-present*
Greenwich Village Ambulatory Surgery Center	*12/29/2017-present*
Hospice Care Network	*10/10/2017-present*
Huntington Hospital	*01/23/2018-present*
Lenox Hill Hospital	*10/10/2017-present*
Long Island Jewish Medical Center	*10/10/2017-present*
North Shore University Hospital	*10/10/2017-present*
Plainview Hospital	*10/10/2017-present*
Southside Hospital	*10/10/2017-present*
Staten Island University Hospital	*10/10/2017-present*
The Long Island Home	*10/10/2017-present*

Michael Dowling is the President and CEO of Northwell Health, Inc. Prior to becoming President and CEO, he was the health system's Executive Vice President and Chief Operating Officer. He leads a clinical, academic, and research enterprise with a workforce of more than 75,000 and annual revenue of $14 billion.

Michael Epstein is a licensed Attorney and is a Partner at Weil Gotshal & Manges, LLP where he practices intellectual property law as a leading attorney in the field. He has been a Board Member of Northwell's Feinstein Institute for Medical Research since 2002 and was elected as the Chair of Northwell's Board of Trustees in 2019.

Michael Feldman is a retired Attorney. He was a Faculty Member of the New York University Tisch Center, teaching courses in legal issues. He was a former chair of the Advisory Board of the NYU Tisch Center. He is a member of the Board of Trustees and Executive Committee, Chair of the Audit and Corporate Compliance Committee, and a member of the Legal Affairs Committee of Northwell Health Inc. He is also a co-chair and a member of the Board of Directors of the New York Hospitality Council, Inc.

Michael Fisch is the Managing Director and CEO of American Securities, LLC and the Managing Member of the general partners of the American Securities Partners' series of private equity funds. He serves as an investment committee member of the funds managed by Ascribe Capital, an affiliate of American securities. Michael Fisch is a member of the Northwell Health Inc. Board of Trustees.

Steven Fishbane, M.D. is a licensed Nephrologist who is employed at Northwell Health. He is the Director of Clinical Trials and is a Professor of Medicine at Donald and Barbara Zucker School of

Medicine at Hofstra/Northwell. He was previously employed at Winthrop University Hospital. He received his medical degree from Albert Einstein College of Medicine, completed his residency in Internal Medicine at Montefiore Medical Center, and his Fellowship in Nephrology at Montefiore Medical Center. He is board-certified in Internal Medicine with a sub-certification in Nephrology. Dr. Fishbane is a member of the Northwell Health Inc, Board of Trustees.

Loyd Friedlander is a licensed Attorney and Insurance Agent. He is the Managing Director of Acrisure, LLC and was previously employed at Loyd Keith Friedlander, LLC as the Owner and Shareholder. He is Chairman of the Board of Hunting Hospital and is a member of the Northwell Health Inc, Board of Trustees.

Clifford H. Friedman is the Chairman and CEO of ShareNett, a private/closed co-investment platform bringing curated investment opportunities across multiple asset classes, geographies, and industries. He has a demonstrated history in private equity venture capital, investment management, financial, and various senior operational roles with a focus on media, communication, technology, and fintech. He is also the Founder and CIO of Cold Springs Ventures. He is skilled in value creation through a systematic process of working with management teams, board members, and customers, and creating and negotiating strategic partnerships globally to drive revenue and profitability.

Catherine Foster is a Faculty Employee at Columbia University. She is a member of the Northwell Health, Inc Board of Trustees and is vice-chair of the quality and credentials committee. She was previously employed as a Senior Executive at American Express where she led marketing, business development, and strategic planning for various divisions.

Lloyd Goldman is the President of BLDG Management Co. He serves on many boards and committees, including being elected president of the American Associates Ben-Gurion University of the Negev, trustee of the Joyce and Irving Goldman Family Foundation. He is also involved in the Conservation International, The Education Alliance, and We Are a Family Foundation. Lloyd Goldman serves as a trustee on the North Shore-LIJ Health System and is a member of the Northwell Health Inc, Board of Trustees.

Richard Goldstein is a licensed Attorney. He is the Chairman and CEO of AEP Capital, LLC, a specialized investment and merchant banking firm. He was previously an attorney at the firm of Paul, Weiss, Rifkind, Wharton, and Garrison, specializing in mergers and acquisitions. He served as Chairman of North Shore-LIJ Health System and its constituent hospitals, including North Shore Hospital, Long Island Jewish Hospital, Lenox Hill Hospital, and Staten Island Hospital. Richard Goldstein is a Trustee Emeritus of the Queens College Foundation.

Nicholas Gossman is the Group Finance Director for DaVita, Inc., where he is a key contributor to monthly financial reviews with senior leadership, provides root cause analysis and recommendations on action plans; coordinates the budget process; does joint venture reporting, and communicates with joint venture partners on financial performance. He builds models and assesses new projects; partners with Division Vice Presidents to analyze, review, and recommend overall divisional growth strategy; directly supervises five Finance Managers and one Financial Analyst, and has active roles in national projects for DaVita, including DeNovo Labor benchmarking, Report Rationalization, and Field Reporting Initiatives.

Alan Greene is the Managing Director of Neuberger Berman, LLC where he is a portfolio manager for mid and all-cap strategies. He has experience in investment research, account analysis, and portfolio management. He is currently on the Board of Trustees of Northwell Health, Inc. and also serves as Trustee of Eisenhower Medical Center and Trustee Emeritus of Colgate University.

Paul Guenther is retired since April 1995. He is a member of the Northwell Health, Inc Board of Trustees and joined the Campaign Executive Committee. He endorses physician recruitment to enhance the faculty and has many longstanding relationships with physicians in the community. He co-established the Paul and Diane Guenther Chair in Cardiology to support the future of teaching, healing, and research at Lenox Hill Hospital.

Elizabeth M. Hammack is the CEO of Goldman Sachs Bank where she is responsible for overseeing the global activities of the bank, the day-to-day management, developing strategy, and ensuring the bank is

operated in a safe and sound manner. She has additional reporting oversight to the executive officers and is a member of the Goldman Sachs Bank USA Board of Directors. She is also a Chairperson of the GS Bank Management Committee and is also Global Treasurer of Group Inc. where she provides global management of Group Inc.'s liquidity, funding, balance sheet, and capital, including liability planning, execution, financial resource allocation, asset-liability management, and liquidity portfolio management. Previously, she was the Global Head of Short-Term Macro trading and Global Repo Trading at Goldman Sachs and Global Head of Short-Term Interest Rate Products at Goldman Sachs.

Douglas Hammond is the Chairman and CEO of NFP Corp., where he has held multiple roles including President, COO, Head of Strategy, Executive Vice President, General Counsel, Senior Vice President, and Deputy General Counsel. Previously, he was the Manager and CEO of NFP Ventures, LLC. He is a licensed attorney who was employed at Leboeuf, Lamb, Green & MacRae, a Corporate Insurance, Regulatory, and Mergers and Acquisitions attorney, and at the Gulf Group in various legal and business positions. He is a member of Northwell Health, Inc., an Advisor on the Madison Dearborn Capital Partners Financial Services Industry Group; a Trustee on the Fairfield University Board of Trustees; a Board Member of the Nassau County Police Department Foundation; a former Board Member of the Kestra Financial Board of Directors, and a Trustee of the Committee for Economic Development.

Matt Henn is the Division Vice President of DaVita, Inc where his responsibilities include leading DaVita's largest division and 1800 staff members; driving treatment growth rates at three times the market average; designing, piloting, and scaling a new method of staff selection, hiring, and on-boarding that is the enterprise standard; increasing staff retention and satisfaction; and partnering with corporate teams to drive field implementation of new initiatives for growth, HR, finance, and compliance.

Saul Katz is a Certified Public Accountant and Real Estate Broker. He is the President and COO of Sterling Equities for over 48 years and is a member of the Northwell Health Inc. Board of Trustees. He played a role in the 1993 merging of Glen Cove Hospital, where he served as a trustee for 12 years, to North Shore Health System. He became the Chairman of the North Shore Health System and precipitated the 1997 merger with Long Island Jewish Medical Center. He worked with both entities to create the system originally known as North Shore-Long Island Jewish Health System and became the first Chairman of the combined board.

Laurence Kraemer is a licensed Attorney. He is the Senior Vice President, Chief General Counsel, and Assistant Secretary of Northwell Health Inc where he supervises a team of more than 40 lawyers and 50 compliance professionals who provide legal services and compliance oversight to all Northwell hospitals, clinical entities, and joint ventures. He is the vice-chair of strategic planning of the AHLA Tax and Finance Group and is a member of Northwell Health Inc, Board of Trustees.

Cary Kravet is a retired licensed Attorney. He is the President of Kravet, Inc, a decorative home furnishing business. He has been an active trustee of the North Shore-LIJ Health System for approximately 21 years where he served on the Executive Committee and chaired the Committee on Quality. He also serves on the Board of Directors of Hunting Hospital and is a member of the Northwell Health Inc., Board of Trustees.

Jeffrey Lane is a partner at York Bridge Wealth Partners where he offers investment advisory services, financial planning, and portfolio and investment management services. Previously, he was the Chairman of the Board at Lebenthal Holdings, LLC, the Chairman of Casa Columbia, and Chief Executive of Modern Bank. He is a member of the Northwell Health Inc, Board of Trustees.

Seth Lipsay is a licensed Attorney. He is the CEO of Galaxy Realty Capital, LLC and was previously employed as the Executive Managing Director of New World Realty Advisors LLC, where he continues to serve as an Officer for the company. He was previously a Member of the Board of Overseers for the Donald and Barbara Zucker School of Medicine at Hofstra/Northwell Health. Seth Lipsay is a Trustee of the Board of Directors at the Feinstein Institute for Medical Research.

Richard Mack is the CEO and Co-founder of Mack Real Estate Group where he is responsible for raising capital, decisions involving business management, and investment decisions. He was the previous CEO-North America of Area Property Partners. He is a board member of Northwell Health, Inc.

William Mack is a licensed Real Estate Broker. He is the Chairman and Founder of Mack Real Estate Group where he manages institutional, high net worth, and Mack family capital by making debt and equity investments in real estate and real estate-related securities through several business lines. He specializes in domestic and international real estate investment, development, and financing opportunities with a view toward long-term performance and hands-on management. He serves as Chairman of the Board of Directors of Mack-Cali Realty Corporation and is Chairman of the Board of the Solomon R. Guggenheim Foundation. William Mack is Vice-Chair of Northwell Health, Inc., where he serves on the Executive Committee and is also a Trustee and Member of the Executive Committee of Lenox Hill Hospital.

F.J. McCarthy is a licensed Real Estate Broker. He is the President of Site Selection Advisory Group, Inc., a real estate development and investment company. He is a trustee of Catholic Charities for the Diocese of Rockville Center, where he served on the Executive Committee, Governance and Leadership Committee, and was the Chairman of the Development Committee. F.J. McCarthy is a Trustee of Northwell Health Inc., where he serves on the Executive Committee, Governance Committee, and Quality Committee, and is Co-Chair of the Committee on Community and Public Health. He is also Chairman of the Southside Hospital of the Northwell Health System.

John McGovern is the Senior Vice President of Finance of Northwell Health, Inc where he is responsible for the office held and tenure in the health care industry contributing to the competency for management for the subject facility. John McGovern discloses the following membership interest/offices held in the following healthcare facilities:

Port Washington Dialysis Center	*03/2016-present*
Floral Park Home Dialysis	*03/2016-present*
Oyster Bay Dialysis Center	*11/2016-present*
Julia and Israel Waldbaum Dialysis	*11/2016-present*
Huntington on Broadway Dialysis	*11/2016-present*
East Islip Dialysis	*07/2017-present*
Digestive Health Center of Huntington	*03/2017-present*
Endoscopy Center of Long Island	*03/2013-present*
Garden City Surgi Center	*12/2014-present*
Greenwich Village Ambulatory Surgery Center	*12/2017-present*
Melville ASC	*10/2017-present*
South Shore Surgery Center	*02/2016-present*
Suffolk Surgery Center	*10/2016-present*
Surgical Specialty Center of Westchester	*09/2017-present*

Ralph Nappi is the Executive Vice Chairman of Northwell Health, Inc. Previously, he was the President of North Shore LIJ Health System where he worked to cultivate private charitable support for programs, endowments, and facilities. He was also responsible for establishing charitable partnerships with the region's leading individuals, corporations, and foundations.

Sharon Patterson is a Broker and Office Manager at Tuccio Real Estate where she deals in residential and commercial real estate with knowledge in TDR and Pine Barrens Credit transfers. She has experience as a former member of the Riverhead Zoning Board of Appeals and was the previous Vice-Chair for the Peconic Bay Medical Center. Sharon Patterson is Board Chair for the Peconic Bay Medical Center and also serves on the Board of Trustees of the East End Health Alliance.

Caroline Pierce is the Division Vice President of DaVita, Inc. and was the previous Regional Operations Director there. She is responsible for the general management and oversight of operations within the assigned division and provides strategic and tactical leadership, along with counsel, directing field management personnel to ensure safe, efficient, therapeutic, and ethical patient care. Additionally, she is responsible for identifying and developing strategic growth opportunities, monitoring division performance, and working with the Senior Vice President to develop competitive strategies consistent with DaVita's mission and values. She was the previous Facility Administrator of DaVita, Inc., a Math Teacher, and the Director of Growth in the Phoenix Charter Academy Network.

Lewis Ranieri is the Chairman and Senior Managing Partner of Ranieri Partners Management LLC where he is an investment manager focused on financial services opportunities. He has served on the Board of Directors of Computer Associates, overseeing the restructuring and turnaround during that period, and has served on the National Association of Home Builders Mortgage Roundtable. He is the Chair of the Feinstein Institute for Medical Research for Northwell Health.

Scott Rechler is the Chairman and CEO of RXR Realty LLC. He is an owner, manager, and developer of real estate in the New York Tri-State area. In 2011, he was appointed by the Governor to the Board of Commissioners of the Port Authority of New York and New Jersey. In 2017, the Governor nominated him to the Metropolitan Transportation Authority. Scott Rechler is the Chairman of the Regional Plan Association and on the Board of Governors of the Real Estate Board of New York and serves as a Board Member of the Feinstein Institute for Medical Research for Northwell Health.

Luann Regensburg is the Divisional Vice President of DaVita Health Care Partners where she is responsible for all dialysis operations, clinical outcomes, hospital and physician partnerships, strategy, and growth for the division. She is the previous Regional Operations Director where she oversaw the overall management of 11 facilities serving 1,400 patients on Long Island, Queens, and Manhattan, providing leadership and direction to assure safe, efficient, therapeutic, and ethical patient care. She led a team of 11 direct reports and 300 plus teammates across multiple disciplines. She oversaw project management, planning, design, and construction of new clinics, including clinic expansion/renovation and participation in due diligence on a potential acquisition. She is the previous Director of Clinical Support Services of Mercy Medical Center for over 20 years.

Robert Rosenthal is the Chairman and CEO of First Long Island Investors, LLC, a boutique wealth management firm, where he takes a long-term view to preserving and growing the wealth of clients. He employs a prudent asset allocation approach and develops customized plans for each client after understanding their individual goals, needs, and risk tolerance. He was named a Trustee of the Board of Directors of Northwell Health Inc. and serves as Treasurer and a member of the Executive Committee. He is also Co-Chairman of the Investment Committee and Chairman of the Advisory Board for North Shore University Hospital.

Barry Rubenstein is the Managing Partner of Wheatley Partners, a venture capital firm. He has been active on the Northwell Health Inc., Board of Trustees' Finance, Compensation, and Executive Committees. He was a leader in the New Century Campaign Committee and sits on the Strategic Planning Committee. He was previously a Board Member of the Feinstein Institutes for Medical Research.

Michael Schwartz is a licensed Attorney. He is the Founder and Managing Member of the SoCali Partners investment firm and was the Co-founder and Co-managing Partner of Trilynx Partners, LLC. He is an investment professional with financial acumen and an investing skill set. He was previously employed as a Partner and Portfolio Manager at Taconic Capital Advisor as an investment professional. He is a member of the Northwell Health Inc, Board of Trustees and the Board of Trustees for Northern Westchester Hospital.

Michael Smith is the Chairman and CEO of Freeport LNG Development, L.P., which is one of four liquification and export terminals in the U.S. Previously, he was a Trustee for the National Jewish Health and a member of the Board of Directors. He is a member of the Northwell Health Inc., Board of Trustees.

Leo Sternlicht is the President of Riverhead Motors, Inc. where his responsibilities include all the financial, managerial, and legal aspects of the company. Previously, he was the Director of John T. Mather Memorial Hospital and is the current Board Chair.

Kenneth Tabar is a licensed Attorney. He is a Partner in the Pillsbury, Winthrop, Shaw, Pittman, LLP where his areas of practice in Litigation, Employment Law, Products Liability and Mass Torts Defense, Trade Secrets Counseling and Litigation, and Financial Services Litigation. He is the Chairman of the Board of Phelps Hospital and is a Member of Northwell Health Inc, Board of Trustees on the Legal Affairs Committee, and Committee on Quality.

Benjamin B. Tucker is the former First Deputy Commissioner of the New York City Police Department where he was directly responsible for training, support services, and risk management. He was also responsible for prosecuting misconduct and adjudicating alleged misconduct and made recommendations to the Police Commissioner for review relative to the efficacy of officer conduct and/or ancillary action pertaining to tactics, training, policy, and community relations. Previously, he was the liaison at the Office of the New York State Attorney General and Deputy Commissioner of Training. He was responsible for developing and shaping the vision for progressive and innovative, research-based education and training for the members of the NYPD. He directed the development of recruit training, field training, firearms and tactics, in-service, specialized, and leadership training for the members of the department. He was also the former Deputy Director of the Office of State, Local, & Tribal Affairs where he was responsible for overseeing a $500 million budget. He directed and leveraged programs that advanced the President's National Drug Control Strategy, and coordinated domestic federal, state, local, and tribal law enforcement agencies in their efforts to dismantle and disrupt drug trafficking and money laundering organizations.

Emmett Walker, Jr. is the CEO of Walker SCM LLC where he is involved in global transportation, logistics optimization, and supply chain integration. He is a Member of the Board of Southside Hospital and Northwell's Community Outreach and Health Education Council

Samuel T. Wey is the Senior Director of Licensure and Certification at DaVita Inc. where he is responsible for overseeing all operational lanes of licensure and certification to ensure timely submission of initial and revalidation applications. He maintains oversight of and developed process excellence initiatives, developing, and leveraging. He collaborates with multiple Medicaid agencies, resulting in $3.5M of Accounts Receivable dollars that had been deemed uncollectable and revamped processes across the licensure and certification department to bring uniformity to the processes, while also mitigating risk. He is the former Director of Licensure and Certification where he determined and set target goals for the Maintenance Lane and developed and implemented new processes to achieve key metrics set forth by CMS. He served as a high-level expert in all regulatory matters related to ESR licensure and certification. Previously, he was also the Manager of Acquisitions & Integrations where he participated in setting appropriate target goals for the acquisitions department and monitored results, tracked metrics, and performed a cost-benefit analysis to drive decision making. He developed, coordinated, and implemented successful integration plans with regional and divisional teams. In addition, he was also previously the Facility Administrator where he managed the second largest clinic in middle Tennessee with an annual budget of $26M.

John Winstel is the current Chief Accounting Officer of DaVita, Inc. and was the previous Group Vice President. His responsibilities include all accounting and financial reporting to ensure timely and accurate reporting of accounting and financial information, in compliance with U.S. reporting requirements. He interfaces directly with senior management team members, board of directors, and advisors to ensure the integrity of all financial information. He was previously employed as the Vice President/Corporate Controller of Cooper Tire & Rubber Company.

Donald Zucker is a licensed Real Estate Broker. He is the Chairman of the Board of Donald Zucker Company, where he oversees the company that builds, buys, and manages apartment and retail properties. He is a member of the Northwell Health Inc., Board of Trustees and the Campaign Executive Committee.

Roy Zuckerberg retired as the Senior Director of the Goldman Sachs Group, Inc in 2000. He is a member of the Northwell Health Inc, Board of Trustees and was a former Chairman of the North Shore-LIJ Board. He played an integral role in the merger of Long Island Jewish Medical Center with North Shore University Hospital.

Staff from the Department's Division of Hospitals and Diagnostic & Treatment Centers (DHDTC) 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, Office of Professional Medical Conduct, and Education Department databases, as well as, the U.S. Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Compliance with Applicable Codes, Rules, and Regulations

Staff from the DHDTC 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.

This Record of Legal Actions is submitted by DaVita Inc., as consultant for the applicant, True North VI, LLC d/b/a Peconic Bay Dialysis, and sets forth: (i) ongoing inquiries, investigations, and administrative actions by federal and state government agencies and certain civil proceedings, (ii) ongoing shareholder and derivative actions, and (iii) investigations and proceedings, including settlements and licensure actions, which have been resolved over the last ten years. Note: References to the "Company" or "DaVita" mean DaVita Inc. and its subsidiaries. References to "DMG" mean DaVita Medical Group, formerly known as HealthCare Partners (HCP), a former subsidiary of DaVita.

Ongoing Inquiries, Investigations and Administrative Actions, and Certain Civil Proceedings

2016 U.S. Attorney Texas Investigation: In February 2016, DaVita Rx, LLC (DaVita Rx), a wholly-owned subsidiary of the Company, received a Civil Investigative Demand (CID) from the U.S. Attorney's Office, Northern District of Texas. The government is conducting a federal False Claims Act (FCA) investigation concerning allegations that DaVita Rx presented or caused to be presented false claims for payment to the government for prescription medications, as well as an investigation into the Company's relationships with pharmaceutical manufacturers. The CID covers the period from January 1, 2006 through the present. In connection with the Company's ongoing efforts working with the government, the Company learned that a qui tam complaint had been filed covering some of the issues in the CID and practices that had been identified by the Company in a self-disclosure that it filed with the Office of Inspector General (OIG) for the U.S. Department of Health and Human Services (HHS) on February 20 I 6. In December 2017, the Company finalized and executed a settlement agreement with the government and relators in the qui tam matter that included total monetary consideration of $63,700,000, of which $41,500,000 was an incremental cash payment and $22,200,000 was for amounts previously refunded, and all of which was previously accrued. The government's investigation into certain of the Company's relationships with pharmaceutical manufacturers is ongoing, and in July 2018, the OIG served the Company with a subpoena seeking additional documents and information relating to those relationships. The Company is continuing to cooperate with the government in this investigation.

Jeff Kent v. St. Elizabeth Medical Center et al.: In January 2017, a putative class action lawsuit was filed in Kentucky Commonwealth court against the Company, a local medical center, a nephrology group, and an individual physician, alleging that the defendants conspired to provide medically unnecessary dialysis services to the plaintiff and other putative class members. In February and March 2017, the defendants filed a motion to dismiss the class action claims. The court subsequently denied the motion. In January 2019, the defendants filed a motion to dismiss most of Kent's claims on the ground that after his death, his estate failed to "revive" the claims under Kentucky law. The court granted that motion on May 17, 2019. On July 17, 2019, the Company filed a motion to dismiss Kent's class action claims. On September 17, 2019, the court granted that motion, dismissing all of Kent's class action claims except for wrongful death claims. The Company disputes these allegations and continues to defend it accordingly.

2017 U.S. Attorney Massachusetts Investigation: In January 2017, the Company was served with an administrative subpoena for records by the U.S. Attorney's Office, District of Massachusetts, relating to an investigation into possible health care offenses. The subpoena covered the period from January 1, 2007 to the present and sought documents relevant to charitable patient assistance organizations, particularly the American Kidney Fund (AKF), including documents related to efforts to provide patients with information concerning the availability of charitable assistance. On July 23, 2019, the Department of Justice notified the court of its decision not to intervene in the matter of US. ex rel. David Gonzalez v. DaVita Healthcare Partners, et al. The Court unsealed the complaint by order entered on August 1, 2019. The Department of Justice has confirmed that the complaint, which alleges violations of the federal False

Claims Act and various state false claims acts, was the basis of its investigation initiated in January 2017. The Company has not been served with the complaint.

2017 U.S. Attorney Colorado Investigation: In November 2017, the U.S. Attorney's Office, District of Colorado informed the Company of an investigation it was conducting into possible federal healthcare offenses involving DaVita Kidney Care, as well as several of the Company's wholly-owned subsidiaries. In addition to DaVita Kidney Care, the matter currently includes an investigation into DaVita Rx, DaVita Laboratory Services, Inc. (DaVita Labs), and RMS Lifeline, Inc. (Lifeline). In each August 2018 and May 2019, the Company received Civil Investigative Demands from the U.S. Attorney's Office relating to this investigation, which were issued pursuant to the FCA. The Company is continuing to cooperate with the government in this investigation.

2018 U.S. Attorney Florida Investigation: In March 2018, DaVita Labs received two CIDs from the U.S. Attorney's Office, Middle District of Florida that suggest it is investigating whether DaVita Labs submitted false claims for blood, urine, and fecal testing when there was insufficient test validation or stability studies to ensure accurate results, in violation of the FCA. In October 2018, DaVita Labs received a subpoena from the OIG in connection with this matter requesting certain patient records linked to clinical laboratory tests. On September 30, 2019, the U.S. Attorney's Office notified the U.S. District Court, Middle District of Florida, of its decision not to elect to intervene at this time in the matter of US. ex rel. Lorne Holland, et al. v. DaVita Healthcare Partners, Inc., et al. The court then unsealed the complaint, which alleges violations of the FCA, by order dated the same day. In January 2020, the private party relators served the Company and DaVita Labs with an amended complaint. On February 24, 2020, the Company and DaVita Labs filed a motion to dismiss the amended complaint. The Company and DaVita Labs dispute these allegations and intend to defend this action accordingly.

20I9 Blue Cross & Blue Shield of Florida, Inc. and Health Options, Inc. v. DaVita Inc. In May of 2019, Blue Cross of Florida filed suit against DaVita in Federal Court alleging a variety of claims, including breach of contract, tortious interference with contract, fraud, negligent misrepresentation, civil conspiracy, violation of Florida's Unfair and Deceptive Trade Practices Act, and unjust enrichment. The claims primarily concern charitable premium assistance. On November 7, 2019, the Company moved for summary judgment on all claims. The Company disputes the allegations and continues to defend the case accordingly.

2019 Keystone Health Plan East, Inc. et. al v. DaVita Inc. In November 2019 several subsidiaries of Independence Blue Cross filed suit against DaVita in Federal Court in Pennsylvania alleging a variety of claims, including breach of contract, fraud, negligent misrepresentation, tortious interference with contract, and unjust enrichment. These claims primarily concern charitable premium assistance. The Company disputes the allegations and intends to defend the case accordingly.

2020 U.S. Attorney New Jersey Investigation: In March 2020, the U.S. Attorney's Office, District of New Jersey served the Company with a subpoena and a CID relating to an investigation being conducted by that office and the U.S. Attorney's Office, Eastern District of Pennsylvania. The subpoena and CID request information on several topics, including certain of the Company's joint venture arrangements with physicians and physician groups, medical director agreements, and compliance with the Corporate Integrity Agreement. The Company is cooperating with the government in this investigation.

2020 California Department of Insurance Investigation: In April 2020, the California Department of Insurance sent the Company an Investigative Subpoena relating to an investigation being conducted by that office. The subpoena requests information on a number of topics, including but not limited to the Company's communications with patients about insurance plans and financial assistance from the AKF, analyses of the potential impact of patients' decisions to change insurance providers, and documents relating to donations or contributions to the AKF. The Company is cooperating with the California Department of Insurance in this investigation.

Shareholder and Derivative Claims

Peace Officers' Annuity and Benefit Fund of Georgia Securities Class Action Civil Suit: In February 2017, the Peace Officers' Annuity and Benefit Fund of Georgia filed a putative federal securities class action complaint in the U.S. District Court for the District of Colorado against the Company and certain

executives generally alleging that they violated federal securities laws concerning the Company's financial results and revenue derived from patients who received charitable premium assistance from an industry-funded non-profit organization. The complaint further alleges that the process by which patients obtained commercial insurance and received charitable premium assistance was improper and "created a false impression of DaVita's business and operational status and future growth prospects." In March 2018, the Company and various individual defendants filed a motion to dismiss. On March 28, 2019, the U.S. District Court for the District of Colorado denied the motion to dismiss. The Company answered on May 28, 2019. On January 31, 2020, the plaintiffs filed a motion for class certification that the Company intends to oppose. The Company disputes these allegations and intends to defend it accordingly.
In re DaVita Inc. Stockholder Derivative Litigation: In August 2017, the U.S. District Court for the District of Delaware consolidated three previously disclosed shareholder derivative lawsuits: the Blackburn Shareholder action, the Gabilondo Shareholder action, and the City of Warren Police and Fire Retirement System Shareholder action. The complaint generally alleges breach of fiduciary duty, unjust enrichment, abuse of control, gross mismanagement, corporate waste, and misrepresentations and/or failures to disclose certain information in violation of the federal securities laws in connection with an alleged practice to direct patients with government-subsidized health insurance into private health insurance plans to maximize the Company's profits. In December 2017, the Company filed a motion to dismiss and a motion to stay the proceedings in the alternative. On April 25, 2019, the court denied the Company's motion to dismiss. The Company answered the complaint on May 28, 2019. The Company disputes these allegations and intends to defend it accordingly.

Resolved Matters
2011 U.S. Attorney Medicaid Investigation: In 2011, the Company received an administrative subpoena from the OIG and a request for documents from the U.S. Attorney's Office for the Eastern District of New York related to payments for infusion drugs covered by Medicaid composite payments for dialysis. The Company cooperated with the government, produced the requested documents, and in March 2016, finalized and executed settlement agreements with the State of New York and the U.S. Department of Justice (DOJ), including a settlement payment of an immaterial amount.

2014 OIG Medicaid Program Integrity Audit: Following a review of claims for Medicaid reimbursement at 19 DaVita dialysis facilities, the Agency for Health Care Administration, through its OIG Medicaid Program Integrity office, made a preliminary determination that the Company was overpaid for claims that in whole or in part should have been billed to the Nursing Home Division Waiver Program rather than Medicaid Fee-For-Service. Without waiving its right to contest future requests for repayment, the Company refunded the Agency $267,287.93.

Settlement and Corporate Integrity Agreement. In October 2014, DaVita entered into a Settlement Agreement with the U.S. Department of Justice and a CIA with the OIG to resolve all allegations arising under the complaint United States ex rel. David Barbetta v. DaVita, Inc. et al., No. 09-cv- 02175-WJM KMT (D. Colo.).

2014 Indiana Attorney General Medicaid Fraud Control Unit Demand Letter: In July 2014, the Indiana Attorney General's Medicaid Fraud Control Unit requested, and in October 2014 DaVita refunded $712.66 to the Indiana Medicaid program in relation to dialysis services provided by a DaVita nurse to a Medicaid recipient for three days while the nurse was temporarily unlicensed.

Vainer Private Civil Suit: In 2008, the OIG issued a subpoena for documents relating to the pharmaceutical products Zemplar, Hectorol, Venofer, Ferrlecit, and erythropoietin, as well as other related matters, as a result of a civil complaint filed by relators Daniel Barbir and Dr. Alon Vainer pursuant to the qui tam provisions of the federal FCA. The relators alleged that the Company's drug administration practices for the Company's dialysis operations for Vitamin D and iron agents fraudulently created unnecessary waste, which was billed to and paid for by the government. In June 2015, the Company finalized the terms of a settlement with plaintiffs, including a settlement amount of $450 million and attorney fees and other costs of $45 million.

2015 U.S. Attorney Transportation Investigation: Between 2015 and 2016, the Company received ten administrative subpoenas (each for one set of patient medical records) at ten different dialysis centers in southern California. In 2017, a qui tam complaint was served on the Company in the U.S. District Court

for the Central District of California related to an investigation concerning the medical necessity of patient transportation, which was the basis for the subpoenas. The DOJ declined to intervene, and the court ultimately granted the Company's motion to dismiss both the original Complaint and the plaintiff's Amended Complaint. In July 2017, the plaintiff declined to proceed further and filed a notice of dismissal.

2015 OIG Medicare Advantage Civil Investigation: In March 2015, JSA HealthCare Corporation (JSA), a subsidiary of DMG, received a subpoena from the OIG requesting documents and information related to certain MA plans for which JSA provided services, and seeking information regarding JSA's communications about patient diagnoses as they related to certain MA plans generally, and more specifically as related to two Florida physicians with whom JSA previously contracted. In addition, in June 2015, the Company received a civil subpoena from the OIG seeking the production of a wide range of documents relating to the Company's and its subsidiaries' (including DMG and its subsidiary JSA) provision of services to MA plans and related patient diagnosis coding and risk adjustment submissions and payments, including information relating to patient diagnosis coding practices for a number of conditions, including potentially improper historical coding for a particular condition. With respect to that condition, the guidance related to that coding issue was discontinued following the Company's November 1, 2012 acquisition of HCP, and the Company notified CMS in April 2015 of the coding practice that may have been problematic, some of which were the subject of the Swoben Private Civil Suit, discussed below. On September 28, 2018, the Company reached a settlement with the DOJ and agreed to pay $270 million. In connection with the Company's acquisition of HCP, the Company had escrowed a portion of the purchase price to secure its indemnification rights, and the $270 million settlement was paid with these escrowed funds.

2015 U.S. Department of Justice Vascular Access Investigation and Related Qui Tam Litigation: In 2015, Lifeline, a wholly-owned subsidiary of the Company, received a CID from the DOJ related to two Florida vascular access centers that the Company acquired in 2012. The DOJ investigation was initiated pursuant to a qui tam complaint that alleged violations of the FCA as a result of claims submitted to the government for allegedly medically unnecessary angiograms and angiography procedures performed at the two vascular access centers as well as employment-related claims. The DOJ declined to intervene and in

January 2017, the Company finalized and executed a settlement agreement with the relator and the government for an immaterial amount. In April 2017, the court dismissed the case with prejudice. Swoben Private Civil Suit: In April 2013, HCP was one of several defendants served with a civil complaint filed by a former employee of SCAN Health Plan alleging violations of the federal False Claim Act (FCA) and the California FCA. In October 2017, James M. Swoben, the relator, filed a Notice of Dismissal of the action as to HCP, and the government consented to the dismissal of the suit without prejudice.

Solari Post-Acquisition Matter: In 2016, HCP Nevada disclosed to the OIG that proper procedures for clinical and eligibility determinations may not have been followed by Las Vegas Solari Hospice (Solari), which HCP Nevada acquired in March 2013 and sold in September 2016. In June 2016, the Company was notified by the OIG that the disclosure submission had been accepted into the OIG's Self Disclosure Protocol. In October 2017, the Company finalized and executed a settlement agreement with the OIG including payment of an immaterial amount.

White, Kathleen, et al. v. DaVita Healthcare Partners, Inc .. Civil Action No. 15-cv-2106, U.S. District Court for the District of Colorado: In three consolidated actions (Menchaca v. DaVita Healthcare Partners, Inc., Saldana v. DaVita Healthcare Partners, Inc. and Hardin v. DaVita Healthcare Partners, Inc.), the plaintiffs alleged wrongful death based on allegations related to Granuflo®, a product used as a component of the dialysis process. The Menchaca and Saldana actions arose out of the treatment of patients in California, while the Hardin action arose out of the treatment of a patient in Illinois. In June 2018, the jury returned a verdict in favor of the plaintiffs, collectively awarding $85 million in compensatory damages and $375 million in punitive damages. Judgment on this verdict was not entered, and in November 2018, the parties settled all three actions collectively for $25.5 million, and all three cases were dismissed with prejudice.

DaVita -- Cielo Vista Dialysis. Sun City Dialysis Center, and Loma Vista Dialysis Center: In August 2018, Medicare revoked the certification of three Texas dialysis centers owned in whole or in part by DaVita

(Cielo Vista Dialysis, Sun City Dialysis Center, and Loma Vista Dialysis Center). The owners of the facilities appealed the revocations and on November 28, 2018, Medicare reinstated their certification with no gap in coverage.

DaVita- Southside Dialysis: In September 2018, DaVita, as the majority owner of Southside Dialysis (Texas), received notification that the facility's initial Medicare certification was denied. The denial is under appeal. The clinic was re-surveyed on February 13, 2018, and was certified effective March 29, 2019.

Davita - Brighton Park Dialysis: In September 2018, DaVita, as the majority owner of Brighton Park Dialysis (Illinois), received notification that the facility's initial Medicare certification application was denied. The denial was appealed and following receipt of a final denial determination, a new 855A application was submitted and approved. Brighton Park was certified effective July 17, 2019.

Davita-Estabrook Park Dialysis: In February 2019, DaVita, as the indirect owner of Estabrook Park Dialysis (Wisconsin), received notification that the facility's initial Medicare certification application was denied due to the fact that the clinic's sole patient was hospitalized on the date of the initial survey, making it impossible for a survey to be conducted. A new 855A application was submitted and approved. Estabrook Park was certified effective September 10, 2019.

2017 U.S. Attorney Florida Investigation: In November 2017, the U.S. Attorney's Office, Southern District of Florida informed the Company of an investigation it was conducting into possible federal healthcare offenses involving Lifeline. The U.S. Attorney's Office, Southern District of Florida notified the court on April 4, 2019 of its decision to not intervene in the matter of Gabriel Valle, MD., et al, v. RMS Lifeline, Inc., et al. The complaint then was unsealed in the U.S. District Court, Southern District of Florida by order dated April 5, 2019. The U.S. Attorney's Office confirmed that the complaint, which alleges violations of the FCA, was the basis of its investigation initiated in November 2017. On July 16, 2019, the private party relators filed a Notice of Voluntary Dismissal of the matter, and the court dismissed the lawsuit without prejudice and closed the case.

2020 Medicaid Denial: In February 2020, North Carolina Medicaid issued a not-for-cause denial for an out-of-state enrollment submitted by a wholly-owned subsidiary of DaVita and the owner of Myrtle Beach Dialysis (South Carolina). DaVita re-submitted the application for enrollment, which was approved.
Ohio Department of Health Settlement. On March 5, 2020, DaVita reached a settlement with the Ohio Department of Health in connection with a potential licensure revocation of National Trail Dialysis Center, a DaVita facility located in Springfield, OH. As part of the settlement, DaVita made a payment of $130,000 to the state and agreed to pay for an independent surveyor to monitor the facility over a three-month period.

Northwell Health Legal Disclosures
Northwell Health Care, Inc. ("Northwell") (formerly known as "North Shore-Long Island Jewish Health Care, Inc.") and/or its affiliates and/or its employees, like other large employers in the heavily regulated health care field, has received inquiries from governmental agencies concerning various federal and/or state laws regarding issues involving, among other things, claim submissions to government insurance plans such as Medicare or Medicaid. In many instances, Northwell has been informed that it is viewed by the government as a witness in these investigations. In other instances, the investigations were concluded without any findings against Northwell, its affiliates, and/or its employees. Any remaining closed investigations would have been resolved through settlement, consent decree, or similar mechanisms. With respect to any open investigations, Northwell, its affiliates, and/or their managerial employees have either denied wrongdoing or are in the process of reviewing the relevant issues, and when warranted, submitting a response. Below are examples of such matters.

On or about November 18, 2010, North Shore University Hospital ("NSUH"), the Health System, and certain of their current and former employees received Civil Investigative Demands ("CIDs") issued by the United States Attorney for the Southern District of New York ("USAO/SDNY"). The CIDs sought documents, interviews, and other information relating to a clinical documentation improvement program undertaken by NSUH and certain other Health System hospitals. The matter is now closed.

On or about December 1, 2010, the Health System received a letter from the Civil Division of the United States Department of Justice ("DOJ") alleging that, since 2003, certain Health System hospitals may have submitted claims to Medicare for payment for the implantation of implantable cardioverter defibrillators ("ICD") and related services for which Medicare does not provide coverage, and further alleging potential liability under the federal False Claims Act.

Numerous other hospitals throughout the country received similar inquiries. This matter was resolved in 2016 by a settlement agreement with DOJ, and the matter is now closed. In a press release, DOJ announced that it resolved allegations concerning ICDs with approximately 500 hospitals throughout the country.

In or about October 2011, Southside Hospital ("SH") learned that the U.S. Attorney's Office for the Western District of New York ("USAO/WDNY") was conducting a review of inpatient admissions for atherectomy procedures, a minimally invasive surgical method used to treat the peripheral arterial disease of the lower extremities. It is our understanding that similar requests were made of other hospitals at the time. The USAO/WDNY initially requested that SH provide information concerning such procedures (but did not issue a subpoena for such information), and SH cooperated with the request. Since the initial request for information, SH has had no further contact from the USAO/WDNY, and at no time has the USAO/WDNY indicated that it believes SH has any potential liability in this matter.

In June 2012, Staten Island University Hospital ("SIUH") received a subpoena from the OIG and the U.S. Attorney's Office for the Eastern District of New York ("USAO/EDNY") requesting documentation relating to services rendered at SIUH's inpatient specialized burn unit since 2005.

The requested documentation was provided in the summer of 2012. In June 2013, the USAO/EDNY contacted SIUH with follow-up questions regarding the material provided, and SIUH provided the requested information. SIUH has had no further contact from the USAO/EDNY regarding this matter, and at no time has the USAO/EDNY indicated that it believes SIUH has any potential liability in this matter.

In July 2012, NSUH received a letter from the Office for Civil Rights ("OCR") of the United States Department of Health and Human Services indicating that it had opened a compliance review of certain incidents of identity theft that were alleged to have occurred at NSUH. In 2016, OCR closed its review by issuing a technical assistance letter and did not impose penalties or other sanctions.

In September 2012, a laptop computer containing research data was stolen from the car of an employee of The Feinstein Institute for Medical Research ("The Feinstein Institute"). The Feinstein Institute investigated the theft and reported it to law enforcement authorities. The research participants whose personal information may have been contained on the laptop were notified, and The Feinstein Institute cooperated with authorities concerning the matter. In 2016, this investigation was resolved by agreement with OCR.

In or about August 2015, Northwell received requests for documents from two law enforcement agencies and a court-appointed examiner focusing on gifts made to it by a Long Island-based charitable foundation and its court-appointed receiver. In particular, Northwell received document requests from (1) the New York Attorney General's Office; (2) the USAO/EDNY (issued to an employee); and (3) an examiner appointed by the Surrogate's Court to investigate the receiver's conduct. Northwell cooperated fully in these inquiries and produced documents in response to the requests. Northwell has not received any communication from either of the law enforcement agencies or the court-appointed examiner since 2016.

In November 2015 and in months thereafter, the Northwell responded to various grand jury subpoenas and other information requests issued by the U.S. Attorney's Office for the Southern District of New York seeking, among other records and information, documents relating to cardiac catheterization procedures performed by a non-employed physician who held medical staff privileges at two Northwell Health hospitals. It is our understanding that Northwell and its employees were witnesses in this investigation, and the investigation is now closed.

In September 2015, Staten Island University Hospital ("SIUH") made a voluntary self-disclosure to OIG-HHS and the New York State Office of the Medicaid Inspector General ("OMIG") in which it identified

potential overpayments to Medicare and Medicaid relating to a certain type of documentation issues at one of its laboratory patient service centers. SIUH entered into a settlement agreement with OIG-HHS in January 2017 that resolved the OIG-HHS self- disclosure.

In April 2017, Northwell made a voluntary self-disclosure to OIG-HHS relating to overpayments that it determined had been received by ten Northwell hospitals relating to certain inpatient percutaneous vertebral augmentation procedures performed at those hospitals. Northwell entered into a settlement agreement with OIG-HHS in February 2018 that settled the self-disclosure.

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In September 2015, Staten Island University Hospital ("SIUH") made a voluntary self-disclosure to OIG-HHS and the New York State Office of the Medicaid Inspector General ("OMIG") in which it identified potential overpayments to Medicare and Medicaid relating to a certain type of documentation issues at one of its laboratory patient service centers. SIUH entered into a settlement agreement with OIG-HHS in January 2017 that resolved the OIG-HHS self- disclosure.

In April 2017, Northwell made a voluntary self-disclosure to OIG-HHS relating to overpayments that it determined had been received by ten Northwell hospitals relating to certain inpatient percutaneous vertebral augmentation procedures performed at those hospitals. Northwell entered into a settlement agreement with OIG-HHS in February 2018 that settled the self-disclosure.

In a Stipulation and Order (S&O) dated November 21, 2016, Long Island Jewish Medical Center was fined $4,000 based on an infection control investigation. The facility had 21 ORs running. It was observed that in 12 of the ORs a total of 24 staff members were not following acceptable standards of practice for Infection Control in the Surgical Area.

Star Ratings - Dialysis Facility Compare (DFC)
The Centers for Medicare and Medicaid Services (CMS) and the University of Michigan Kidney Epidemiology and Cost Center have developed a methodology for rating each dialysis facility, which may be found on the Dialysis Facility Compare website as a "Star Rating." The method produces a final score that is based on quality measures currently reported on the DFC website and ranges from 1 to 5 stars. A facility with a 5-star rating has a quality of care that is considered 'much above average' compared to other dialysis facilities. A 1- or 2- star rating does not mean that a facility provides poor care. It indicates only that measured outcomes were below average compared to other facilities. Star ratings on DFC are updated annually to align with the annual updates of the standardized measures.

The DFC website currently reports on nine measures of quality of care for facilities. The measures used in the star rating are grouped into three domains by using a statistical method known as Factor Analysis. Each domain contains measures that are most correlated. This allows CMS to weigh the domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.

Knickerbocker Dialysis, Inc. operates 61 dialysis centers in New York State. The star ratings for these facilities are shown below:

Facility Name	Address	Star Rating
South Bronx Dialysis Center	1940 Webster Avenue Bronx, NY 10457	***
Richmond Kidney Center	1366 Victory Boulevard Staten Island, NY 10301	***
Catskill Dialysis Center	139 Forestburgh Road Monticello, NY 12701	***
Sheepshead Bay Renal Care Center	26 Brighton 11th Street Brooklyn, NY 11235	*****
Garden City Dialysis Center	1100 Stewart Ave Garden City, NY 11530	***
Orchard Park Dialysis Center	3801 Taylor Road Orchard Park, NY 14127	****
Central New York Dialysis Center	910 Erie Boulevard East Syracuse, NY 13210	***
Millennium Dialysis	1408 Ocean Drive Brooklyn, NY 11230	****
Bronx Dialysis Center	1615-1617 Eastchester Road Bronx, NY 10461	****
Riverdale Dialysis Center	170 West 233rd Street Bronx, NY 10463	****
Bronx River Dialysis	1616 Bronxdale Avenue Bronx, NY 10462	***
Queens Dialysis Center	118-01,05,07A Guy Brewer Blvd Jamaica, NY 11434	***
Boston Post Road Dialysis Center	4000-4026 Boston Road Bronx, NY 10475	***
Soundview Dialysis Center	1622-24 Bruckner Boulevard Bronx, NY 10473	****
Lynbrook Dialysis Center	147 Scranton Road Lynbrook, NY 11563	****
Long Island Renal Care	3460 Great Neck Road Amityville, NY 11701	***

Queens Village Dialysis Center	222-02 Hempstead Avenue Queens Village, NY 11429	****
Suburban Dialysis Center	705 Maple Road Williamsville, NY 14221	***
Atlas Park Dialysis	80-00 Cooper Avenue Glendale, NY 11385	***
Allerton Dialysis	2554 White Plains Road Bronx, NY 10467	N/A
Oyster Bay Dialysis	17 East Old Country Road Hicksville, NY 11801	****
Long Island City Dialysis	30-46 Northern Boulevard Long Island City, NY 11101	N/A
East Islip Dialysis	200 Carlton Avenue East Islip, NY 11730	****
Crossways Park Dialysis	113 Crossways Park Drive, Woodbury, NY 11797	*****
Julia and Israel Waldbaum Dialysis	100 Community Drive Great Neck, NY 11021	*****
Port Washington Dialysis Center	50 Seaview Boulevard Port Washington, NY 11050	*****
Huntington on Broadway Dialysis	256 Broadway Huntington Station, NY 11746	****
Deer Park Dialysis	860 Grand Boulevard Deer Park, NY 11729	N/A
Flatlands Dialysis	1641 East 16th Street, 5th Floor Brooklyn, NY 11129	N/A
Longwood Dialysis	931 Bruckner Boulevard Bronx, NY 10459	N/A
Rockland County Dialysis	203 West Route 59 Nanuet, NY 10954	N/A
Downtown Brooklyn Dialysis	133 Mill Street Brooklyn, NY 11231	N/A
Staten Island South Dialysis	30 Sneden Avenue Staten Island, NY 10312	****
Wingate Dialysis	550 Kingston Avenue Brooklyn, NY 11203	N/A
Mount Eden Dialysis	1490 Macombs Road Bronx, NY 10452	N/A
Clearview Dialysis	45-60 Francis-Lewis Boulevard Bayside, NY 11361	****
Laconia Dialysis	3440 Boston Road Bronx, NY 10469	N/A
Sandford Boulevard Dialysis	120 East Sanford Boulevard Mount Vernon, NY 10550	*
Greenpoint Dialysis	146 Meserole Street Brooklyn, NY 11206	N/A
Hutchinson River Dialysis	2331 Eastchester Road Bronx, NY 10469	N/A
Ozone Park Dialysis	100-02 Rockaway Boulevard Ozone Park, NY 11417	**
Westchester Home Training	955 Yonkers Avenue Yonkers, NY 10704	N/A

Brooklyn Community Dialysis	730 64th Street Brooklyn, NY 11220	N/A
Buffalo Downtown Dialysis	520 Ellicott Street Buffalo, NY 14203	***
Seaway Dialysis	999 East Ridge Road, Suite 11 Rochester, NY 14621	***
Melrose Dialysis	459 East 148th Street Bronx, NY 10455	**
Jamaica Hillside Dialysis	171-19 Hillside Avenue Jamaica, NY 11423	***
Clinton Hill Dialysis	1275 Bedford Avenue Jamaica, NY 11216	*
Williamsbridge Dialysis Center	3525 White Plains Road, Suite A Bronx, NY 10467	****
Schuyler Dialysis	220 Steuben Street Montour Falls, NY 14865	***
Corning Dialysis	8 W Pulteney Street Suite 101 Corning, NY 14830	*****
Ivy Dialysis	602 Ivy Street Elmira, NY 14905	****
Staten Island Dialysis Center	1139 Hyland Boulevard Staten Island, NY 10305	****
Waters Place Dialysis Center	1733 Eastchester Road Bronx, NY 10461	****
Orange Dialysis Center	100 Crystal Run Road Middletown, NY 10941	****
Jamestown Dialysis Center	207 Foote Avenue Jamestown, NY 14701	*****
Borough Park Dialysis	4102 13th Avenue Brooklyn, NY 11219	**
NEOMY Dialysis Center	1122 Coney Island Avenue Brooklyn, NY 11230	***
Yonkers Dialysis Center	575 Yonkers Avenue Yonkers, NY 10704	****
Northtowns Dialysis Center	4041 Delaware Avenue Tonawanda, NY 14150	***
Peekskill Cortland Dialysis Center	Pike Place Suite 15 Cortland Manor, NY 10566	****

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3). After the change of ownership, True North VI will continue to operate the facility under the name Peconic Bay Dialysis with no change in stations, services, or access.

Financial Analysis

Operating Budget

The applicant has submitted the facility's year one and three operating budgets, in 2022 dollars, shown below:

	Year One		Year Three	
Revenues	Per Proc.	Total	Per Proc.	Total
Commercial FFS	$1,029.54	$239,883	$1,069.37	$922,863
Medicare FFS	$297.70	144,089	$304.59	902,505
Medicaid FFS	$255.33	7,660	$253.15	44,555
Other Revenues	$310.35	49,966	$317.04	297,385
(Bad Debt)		(18,768)		(92,111)
Total Revenues		$422,830		$2,075,197
Expenses				
Operating	$577.74	$524,595	$292.49	$1,444,914
Capital	$620.40	563,325	$115.58	570,978
Total Expenses	$1,198.14	$1,087,920	$408.07	$2,015,892
Net Income (Loss)		($665,090)		$59,305
Procedures		908		4,940

The following is noted concerning the submitted budget:

- Revenues are reflective of the extension clinic beginning operations on 4/12/2021 and represent the current owner's reimbursement rates adjusted for Years One and Three.
- Utilization increases are based on the current facility's ramp-up period and therefore reflect a conservative approach to the projected increase in procedures in the initial years of operation.
- Utilization is expected to increase with referrals from Northwell Health and community physicians as they are added to the ownership of the facility.

Utilization by payor source for years one and three after the ownership change are summarized below:

Payor	Year One	Year Three
Commercial FFS	25.66%	17.47%
Medicare FFS	53.30%	59.98%
Medicaid FFS	3.30%	3.56%
Other Revenues	17.73%	18.99%
Total	100%	100%

Contribution and Asset Purchase Agreement (CAPA)

The applicant has submitted an executed CAPA for the change in ownership of the operations related to True North VI DC. LLC. The agreement will become effectuated upon PHHPC's approval of this CON. The terms of the agreement are summarized below:

Date:	November 10, 2020		
Seller:	Knickerbocker Dialysis, Inc.		
Buyer:	True North VI DC		
Assets Acquired:	All assets are free and used in business without limitation.		
Assumed Liabilities:	All liabilities include past debts and obligations of the past business, lease agreements, capital investments and benefits, and salary expenses.		
Purchase Price:	Purchase Price is $4,000,000 to include Start-up capital expenditures are $2,600,054 and start-up working capital $1,303,950 plus development fees of $95,996 assuming 5% for development fees.		
Payment of Purchase Price:	The purchase price will be paid from True North DC Holding, LLC for $3,600,000 and Fox Run Holding Company, LLC for $400,000 in equity contribution. The amount is only an estimate and remains subject to change. Assets and assumed liabilities are subject to agreement by both parties after approval and held in escrow until closing by DaVita, Inc.		
Members	Estimated Initial Capital Requirements (1)	Subscription Capital	Deposited Capital (2)
True North DC Holding, LLC	$3,600,000	$27,000	$1,737,000
Fox Run Holdings, LLC	$400,000	$3,000	$397,000
Total	$4,000,000	$30,000	$2,134,000

(1) True North Holding, LLC's Capital Contribution is based upon estimated start-up costs, including construction costs, development fees, and working capital costs.
(2) The Members' deposited capital is being held by DaVita and will be reconciled at closing.

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding, any agreement, arrangement, or understanding between the applicant and transferor to the contrary, to be liable for any Medicaid overpayments, made to the facility and/or surcharges, assessments, or fees due from the Seller under Article 28 of the Public Health Law concerning the period before the applicant acquiring its interest, without releasing the Seller of its ability and responsibility.

Lease Rental Agreement

The applicant has submitted an executed Lease Rental Agreement for the proposed site, the terms of which are summarized below:

Date:	November 8, 2018
Premises:	Approximately 9,000 sq. ft. Premises located 700 Old Country Road, Riverhead Commons, Riverhead. (Suffolk County)
Landlord:	Richmond Realty Corp. Agent (Riverhead Commons, LLC & Theo Associates, LLC)
Lessee:	Knickerbocker Dialysis, Inc.
Term:	10 Years, Option to renew for additional (2) 5-year terms.
Rental:	Year 1 through 5 is $228,294.50 annum. Year 6 through ten is 256,857.06 per annum. First 5 years there is a flat 15% increase and for the second 5-year renewal and another flat 15% increase.
Provisions:	The tenant is responsible for taxes, insurance, maintenance, and utilities.

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

Assignment and Assumption of Lease Agreement

The applicant has submitted an executed Assignment and Assumption Agreement for the assignment of the lease associated with this project to the proposed new operator, as shown below:

Date:	November 10, 2020
Assignor:	Knickerbocker Dialysis, Inc.
Assignee:	True North VI DC, LLC

Consulting and Administrative Service Agreement (CASA)

The applicant has submitted an executed CASA, between DaVita Inc. and True North VI DC which was executed and signed on November 10, 2020, and will effectuate upon PHHPC approval as summarized below.

Consultant:	DaVita Inc.
Licensed Operator:	Knickerbocker Dialysis, Inc.
Services:	Development of Center, Assets, Equipment and Center Maintenance, Computer Hardware & Software, Budget, Insurance, Supplies & Prescription Drugs, Accounting & Financial Support, Funds Management, staff scheduling, negotiating contracts with suppliers for purchasing & making recommendations to the operator, staffing & recruitment, assist in the development of a utilization & quality assurance program under Quality Oversight Agreement, billing & collections.
Term:	The Agreement Commence on the Execution date and continue the initial term until the 10th anniversary or until the date of the transactions contemplated by the Contribution and Asset purchase agreement or one of the parties, Consultant or Licensed Operator exercised their rights/options to terminate the agreement or renew the option to continue.
Compensation:	$56,916 annually to be adjusted accordingly and at renewal time.

Assignment, Assumption, and Restatement of Consulting and Administrative Service Agreement:

The applicant has submitted an executed Assignment, Assumption, and Restatement of Consulting & Administrative Service Agreement, which is summarized as follows:

Date:	October 20, 2020
Assignor:	Knickerbocker Dialysis Inc.
Established Operator:	True North VI DC, LLC

While DaVita, Inc. will provide all the above services, the licensed operator retains ultimate authority, responsibility, and control for the operations. There is common ownership between the applicant and the CASA provider as shown in BFA Attachment B's post-closing organization chart. The applicant has submitted an executed attestation acknowledging understanding of the statutory and regulatory required reserve powers that cannot be delegated, and that they will not willfully engage in any such illegal delegations of authority.

Capability and Feasibility

There are no project costs associated with this application. True North VI DC, LLC will purchase the operating interest through a Contribution and Purchase Agreement (CAPA) for $4,000,000, funded with members' equity. The $4,000,000 of members' equity for the CAPA Agreement is being held by DaVita in escrow until closing. Estimated costs include start-up capital expenditures, working capital fees, and development fees as described in the CAPA Agreement above. This $4,000,000 is funded through $3,600,000 by True North Holding, LLC and $400,000 by Fox Run Holding, LLC.

The submitted budget projects a net loss of $665,090 for year one and a net income of $59,305 by year three. Year one projected losses will be funded by the ongoing operations of DaVita Inc. Estimated working capital requirements of $335,982, will be funded by the capital contributions held in escrow by

DaVita Inc. The pro forma balance sheet of True North VI DC, LLC on the first day of operations (BFA Attachment E) indicates that the facility has members' equity of $4,000,000. The amount designated for working capital on the pro forma balance sheet is $1,303,950.

BFA Attachment C is the SEC Form10-Q Financial Summary of DaVita Inc. for 2020, indicating that the publicly traded corporation has a positive working capital and net asset position and achieved a net income of $773,642,000 for the period shown. The Internal Balance sheet and Income Statement dated January 1, 2021, through September 30, 2021, indicates a positive working capital and net asset position and net income of $790,977,000.

BFA Attachment D is Northwell Health, Inc. 2019 and 2020 Certified Financial Statements, which show a positive working capital position and favorable net asset position for both years. Also, the facility had positive excess of revenues over losses of $809,881,000 and $671,760,000, respectively. The Internal Financial Statement from (January 1, 2021, through June 30, 2021) indicates a positive working capital and net-asset position and Net Income of $647,204,000.

BFA Attachment E is the Pro Forma Balance Sheet of True North DC VI, LLC and it indicates a positive members' equity of $4,000,000 on the first day of operation.

Conclusion

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

Attachments

BFA Attachment A	Net worth Statement of Sole Member of Fox Run Holding Company, LLC
BFA Attachment B	Pre and Post-Closing Organizational Chart
BFA Attachment C	Financial Summary DaVita, Inc. 1/1/2020 Audited Internal 1/1/2021- 9/30/2021
BFA Attachment D	Northwell Health, Inc. Certified F/S 2019-2020 Internal 1/1/2021-6/30/2021
BFA Attachment E	Pro-Forma Balance Sheet for True North DC VI, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 2nd day of June 2022, 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 True North VI DC, LLC d/b/a Peconic Bay Dialysis as the new operator of Peconic Bay Dialysis, a 13-station chronic renal dialysis facility at 700 Old Country Road, Suite 4, Riverhead, currently operated by Knickerbocker Dialysis, Inc., 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:
211244 E	True North VI DC, LLC d/b/a Peconic Bay Dialysis

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of an amended and executed Articles of Organization, acceptable to the Department of Health (Department). [CSL]
2. Submission of a photocopy of a Consulting and Administrative Services Agreement, acceptable to the Department. [CSL]
3. Submission of a photocopy of an amended and executed Articles of Organization for True North DC Holding, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended and executed Operating Agreement for True North DC Holding, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Operating Agreement for Fox Run Holding Company, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of the amended and restated Certificate of Incorporation for Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
7. Submission of a photocopy of a list of the Board of Directors of Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
8. Submission of a photocopy of the Certificate of Incorporation for DaVita of New York, Inc., acceptable to the Department. [CSL]
9. Submission of a photocopy of the Bylaws for DaVita of New York, Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of the Certificate of Incorporation for DaVita, Inc., acceptable to the Department. [CSL]
11. Submission of a photocopy of the Bylaws for DaVita, Inc., acceptable to the Department. [CSL]
12. Submission of a photocopy of an amended and executed Articles of Organization for North Shore–LIJ Renal Ventures, LLC, acceptable to the Department. [CSL]
13. Submission of a photocopy of an amended and executed Operating Agreement for North Shore–LIJ Renal Ventures, LLC, acceptable to the Department. [CSL]
14. Submission of a photocopy of the Certificate of Incorporation for North Shore University Hospital, acceptable to the Department. [CSL]
15. Submission of a photocopy of the Bylaws for North Shore University Hospital, acceptable to the Department. [CSL]
16. Submission of a photocopy of the Certificate of Incorporation for Northwell Healthcare, Inc., acceptable to the Department. [CSL]
17. Submission of a photocopy of the Bylaws for Northwell Healthcare, Inc., acceptable to the Department. [CSL]
18. Submission of a photocopy of the Certificate of Incorporation for Northwell Health, Inc., acceptable to the Department. [CSL]
19. Submission of a photocopy of the Bylaws for Northwell Health, Inc., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by one year from the date of the recommendation 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/facilites/hospitals/docs/hcs_access_forms_new_clinics.pdf.
   Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

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