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

***COMMITTEE DAY***

***AGENDA***

***July 14, 2022***
***10:15 a.m.***

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

# I. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Peter Robinson, Chair

## A. Applications for Construction of Health Care Facilities/Agencies

**Acute Care Services- Construction** **Exhibit # 1**

| | Number | Applicant/Facility |
|---|---|---|
| 1. | 212282 C | Auburn Community Hospital<br>(Cayuga County) |
| 2. | 221105 C | Strong Memorial Hospital<br>(Monroe County) |

**Ambulatory Surgery Centers - Construction** **Exhibit # 2**

| | Number | Applicant/Facility |
|---|---|---|
| 1. | 212271 C | Ambulatory Surgery Center of Niagara<br>(Niagara County) |

**Residential Health Care Facilities – Construction** **Exhibit # 3**

| | Number | Applicant/Facility |
|---|---|---|
| 1. | 212105 C | Rutland Nursing Home, Inc.<br>(Kings County) |

**B. <u>Applications for Establishment and Construction of Health Care Facilities/Agencies</u>**

**Ambulatory Surgery Centers- Establish and Construct** **Exhibit # 4**

| | Number | Applicant/Facility |
|---|---|---|
| 1. | 221115 E | Apex Surgical Center<br>(Oneida County) |

**Diagnostic and Treatment Centers - Establish/Construct** **Exhibit # 5**

| | Number | Applicant/Facility |
|---|---|---|
| 1. | 221070 B | Pinpoint Medical LLC<br>(Kings County) |

**Residential Health Care Facilities - Establish/Construct** **Exhibit # 6**

| | Number | Applicant/Facility |
|---|---|---|
| 1. | 192027 E | Crest Opco LLC d/b/a Crest Manor Living and Rehabilitation Center<br>(Monroe County) |
| 2. | 192332 E | EDRNC Operating, LLC d/b/a Eden Rehabilitation & Nursing Center<br>(Erie County) |
| 3. | 192333 E | HORNC Operating, LLC d/b/a Houghton Rehabilitation & Nursing Center<br>(Allegany County) |
| 4. | 192335 E | SARNC Operating, LLC d/b/a Salamanca Rehabilitation & Nursing Center<br>(Cattaraugus County) |
| 5. | 192336 E | DURNC Operating, LLC d/b/a Dunkirk Rehabilitation & Nursing Center<br>(Chautauqua County) |
| 6. | 221084 E | Hilaire Farm Skilled Living & Rehabilitation Center, LLC d/b/a Hilaire Rehab & Nursing<br>(Suffolk County) |
| 7. | 202122 E | Providence Rest, Inc.<br>(Bronx County) |

# Public Health and Health Planning Council

## Project # 212282-C
## Auburn Community Hospital

| | | | |
|---|---|---|---|
| ***Program:*** | **Hospital** | ***County:*** | **Cayuga** |
| ***Purpose:*** | **Construction** | ***Acknowledged:*** | **April 7, 2022** |

## Executive Summary

### Description
Auburn Community Hospital (ACH), a 99-bed, voluntary not-for-profit, Article 28 acute care hospital located at 17 Lansing St., Auburn (Cayuga County), requests approval to construct a Radiation Oncology center and certify Radiology-Therapeutic O/P, Linear Accelerator (LINAC), and Medical Services – Other Medical Specialty services. ACH will contract with Upstate University Radiation Oncology, Inc. (UURO), a New York State not-for-profit University Faculty Practice Corporation of SUNY Upstate Medical University, to provide clinical physicians, technologists, and medical directors services for the center. The new building located on the ACH campus will include exam rooms, infusion rooms, a PET/CT scanner, a LINAC, and all appropriate support spaces.

### OPCHSM Recommendation
Contingent Approval

### Need Summary
Currently, there are no Article 28 LINACs in Cayuga county. The project will allow patients to receive radiation oncology services in Cayuga county instead of traveling to other counties to receive treatment.

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

### Financial Summary
Total project costs of $14,127,057 will be funded via $329,263 in applicant's equity, $4,247,509 in seven-year equipment leases at 4.99%, and a landlord (Park Grove Acquisitions, LLC) financed loan of $9,550,285 for 10 years at 5.75% for the new building. ACH will have the option to purchase the building after five years. The budget projects a net income of $1,151,089 in the first year and $1,537,291 by the third year.

| Budget | Year One 2024 | Year Three 2026 |
|---|---|---|
| Revenues | $7,778,899 | $8,823,909 |
| Expenses | 6,627,810 | 7,286,618 |
| Net Income | $1,151,089 | $1,537,291 |

# Recommendations

### Health Systems Agency

There will be no HSA recommendation for this project.

### Office of Primary Care and Health Systems Management

### Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed equipment lease for Varian Mobius 3D with FX, acceptable to the Department of Health. [BFA]
3. Submission of an executed equipment lease for Varian TrueBeam Linac, acceptable to the Department of Health. [BFA]
4. Submission of an executed equipment lease for Siemens Somatom go. sim, acceptable to the Department of Health. [BFA]
5. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
6. Submission of an executed loan commitment for the real property development, acceptable to the Department of Health. [BFA]
7. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
8. 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. This project must be completed by **April 1, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and 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 **January 1, 2023,** and construction must be completed by **January 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

July 28, 2022

# Need and Program Analysis

**Project Proposal**

There are currently no linear accelerators in Article 28 facilities in Cayuga County and patients travel outside of the county to receive radiation oncology services. This is generally a two-hour round trip from Auburn creating a hardship for many patients and families. Radiation therapy is a series of treatments that can typically entail 12-18 visits per round of treatments.

ACH will contract with Upstate University Radiation Oncology, Inc. (UURO), a New York State not-for-profit University Faculty Practice Corporation of SUNY Upstate Medical University, to provide clinical physicians, technologists, and medical directors services for the center.

The applicant reports that adding the service will improve patient outcomes through a comprehensive approach to care delivery at all levels of the healthcare system. Providing this service will lower the cost of healthcare by coordinating healthcare services between providers to deliver the highest quality of patient care. ACH will collaborate on patient care to improve patient outcomes and the overall health of the communities they serve, and they will improve healthcare quality by reducing dependency on hospitalization, emergency care, and avoidable utilization of services through improved care coordination.

Staffing is expected to increase as a result of this construction/expansion project by 20.0.0 FTEs at Year One of the completed project with no additional increase at Year Three.

**Regulation**

10 NYCRR §709.16 (excerpted) Oct. 5, 2005

The factors for determining the public need for megavoltage (MEV) devices used in therapeutic radiology shall include, but not be limited to, the following:

(1) No equipment other than four or more MEV or cobalt teletherapy units with a source axis distance of 80 or more centimeters and rotational capabilities will be considered appropriate as the primary unit in a multi-unit radiotherapy service or as the sole unit in a smaller radiotherapeutic unit.
(2) Ninety-five percent of the total population of each health region is within a one-hour mean travel time, adjusted for weather conditions, of a facility providing therapeutic radiology services.
(3) The expected volume of utilization sufficient to support the need for an MEV machine shall be calculated as follows:
  (i) Each applicant and MEV machine shall provide a minimum of 5,000 treatments per year and have the capacity to provide 6,500 treatments per year. These volumes may be adjusted for the expected case mix of a specific facility.
  (ii) Sixty percent of the annual incidence of cancer cases in a service area will be candidates for radiation therapy.
  (iii) Fifty percent of radiation therapy patients will be treated for cure with an average course of treatment of 35 treatments and fifty percent of patients will be treated for palliation with an average course of treatment of 15 treatments. These estimates may be adjusted based on the case-mix of a specific facility.

Based on 10 NYCRR §709.16, the public need for linear accelerators in Cayuga County is:

| | | |
|---|---|---|
| 1 | Number of Cancer Cases per Year | 526.4 |
| 2 | 60% will be Candidates for Radiation Therapy | 330.96 |
| 3 | 50% of (2) will be Curative Patients | 165.48 |
| 4 | 50% of (2) will be Palliative Patients | 165.48 |
| 5 | Course of Treatment for Curative Patients is 35 Treatments | 5,791.80 |
| 6 | Course of Treatment for Palliative patients is 15 Treatments | 2,482.20 |
| 7 | The Total Number of Treatments [(5) + (6)] | 8,274.00 |
| 8 | Need for MEV Machines in Nassau | 1.27 |
| | (Each MEV Machine has Capacity for 6,500 Treatments) | |
| 9 | Existing/Approved Resources | 0 |
| 10 | Remaining Need for MEV Machines | 1.27 |

## Analysis

The applicant projects 170 radiation patients in the first year, and 190, and 210 patients in Years Two and Three. Each patient is expected to average 24 treatments. Per the need methodology set forth in 10 NYCRR §709.16, it is expected that each linear accelerator can accommodate between 5,000 and 6,500 treatments per year.

| Linear Accelerator | Year 1 | Year 3 |
|---|---|---|
| Treatments | 4,080 | 5,040 |

According to Data USA, in 2019 94.9% of the population in Cayuga County has health coverage as follows:

| | |
|---|---|
| Employer Plans | 48.6% |
| Medicaid | 18.4% |
| Medicare | 13.7% |
| Non-Group Plans | 12.6% |
| Military or VA | 1.57% |

## Prevention Agenda

The Prevention Agenda priorities selected for action in Cayuga County's most recent Community Health Improvement Plan include:

- Prevent Chronic Diseases
- Promote Healthy Women, Infants, and Children

The proposed project does not directly address these Prevention Agenda priorities; however, the project will improve access to important cancer treatment services for affected individuals within Cayuga county. Additionally, the project will serve to eliminate/attenuate transportation as a barrier for radiation oncology services and provide state-of-the-art cancer care services through collaboration with SUNY Upstate.

Auburn Community Hospital did not report spending in Community Health Improvement Services and Community Benefit Operations in their 2018 Form 990 Schedule H; however, they did report $282,883 in Financial Assistance at Cost, and $6.5 million in Medicaid.

## 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

The project will allow patients to receive radiation oncology services in Cayuga county instead of traveling to other counties to receive treatment. 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**

The total project cost for construction and equipment related to Article 28 is estimated at $14,127,057, broken down as follows:

| | |
|---|---|
| New Construction | $6,588,000 |
| Site Development | 250,000 |
| Design Contingency | 659,000 |
| Construction Contingency | 363,000 |
| Architect/Engineering Fees | 653,000 |
| Other Fees | 895,285 |
| Movable Equipment | 4,497,509 |
| Telecommunications | 142,000 |
| Application Fee | 2,000 |
| Processing Fee | 77,263 |
| Total Project Cost | $14,127,057 |

The applicant's financing plan is as follows:

| | |
|---|---|
| Applicant - Cash Equity | $329,263 |
| Applicant – Equipment Leases - Siemens Financial Services, Inc. (7 years at 4.99%) | 4,247,509 |
| Landlord – 10-year loan at 5.75% | 9,550,285 |
| Total | $14,127,057 |

ACH will fund the total project costs of $14,127,057 through $329,263 in equity ($250,000 used for moveable equipment and $79,263 in fees), $4,247,509 equipment lease and $9,550,285 building lease. Five Star Bank submitted a letter of interest to finance the construction of the building.

ACH can purchase the Cancer Center after the fifth (5th year) and has created a fundraising plan. Its goal is to raise $5 million by 2024. Senator Schumer and Representative Katko are sponsors of a $2 million FY 2023 Federal Budget appropriation, which will be used to purchase a PET-CT scanner. They have a history of raising funds through yearly events, capital campaign appeals, and grants.

**Operating Budget**

The current year's financial performance is for oncology only. Their first-year and third-year operating budgets include both (oncology & radiation) in 2023 dollars, as shown below:

| | Current Year 2021 | | Year One 2024 | | Year Three 2026 | |
|---|---|---|---|---|---|---|
| | **Per Visit** | **Total** | **Per Visit** | **Total** | **Per Visit** | **Total** |
| Revenues | | | | | | |
| Commercial FFS | $2,708 | $2,158,596 | $2,048 | $4,838,923 | $2,039 | $5,492,373 |
| Commercial MC | $212 | 5,713 | $292 | 23,353 | $311 | 28,345 |
| Medicare FFS | $1,206 | 651,025 | $875 | 1,401,384 | $866 | 1,580,510 |
| Medicare MC | $1,115 | 571,818 | $833 | 1,267,962 | $828 | 1,436,768 |
| Medicaid FFS | $46 | 2,493 | $86 | 13,733 | $93 | 17,008 |
| Medicaid MC | $166 | 71,812 | $141 | 180,292 | $142 | 208,006 |
| All Other | $238 | 22,589 | $190 | 53,252 | $192 | 60,899 |
| Total Revenue | | $3,484,046 | | $7,778,899 | | $8,823,909 |

| | Current Year 2021 | | Year One 2024 | | Year Three 2026 | |
|---|---|---|---|---|---|---|
| | Per Visit | Total | Per Visit | Total | Per Visit | Total |
| Expenses | | | | | | |
| Operating | $1,047 | $2,600,662 | $706 | $5,202,301 | $701 | $5,883,518 |
| Capital | 0 | $0 | $193 | 1,425,509 | $167 | 1,403,100 |
| Total | $1,047 | $2,600,662 | $899 | $6,627,810 | $868 | $7,286,618 |
| Net Income | | $883,384 | | $1,151,089 | | $1,537,291 |
| Patient Visits | | 2,485 | | 7,369 | | 8,399 |

The patient visits stated above include radiation visits of 0 in the current year, 4,080 by Year 1, and 5,040 by Year Three. The remainder of the visits are for Oncology.

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

| | Current Year 2021 | | Year One 2024 | | Year Three 2026 | |
|---|---|---|---|---|---|---|
| Payor | Visits | % | Visits | % | Visits | % |
| Commercial FFS | 797 | 32.07% | 2,363 | 32.07% | 2,694 | 32.08% |
| Commercial MC | 27 | 1.09% | 80 | 1.09% | 91 | 1.08% |
| Medicare FFS | 540 | 21.74% | 1,602 | 21.74% | 1,826 | 21.74% |
| Medicare MC | 513 | 20.64% | 1,522 | 20.64% | 1,735 | 20.66% |
| Medicaid FFS | 54 | 2.17% | 160 | 2.17% | 183 | 2.18% |
| Medicaid MC | 432 | 17.38% | 1,282 | 17.40% | 1,461 | 17.39% |
| Charity | 27 | 1.09% | 80 | 1.09% | 91 | 1.08% |
| Other | 95 | 3.82% | 280 | 3.80% | 318 | 3.79% |
| Total | 2,485 | 100% | 7,369 | 100% | 8,399 | 100% |

The following is noted concerning the submitted operating budget:

- The primary service area (PSA) includes the towns of Auburn, Moravia, Skaneateles, Weedsport, Port Byron, and Union Springs.
- Utilization and revenue projections by payor were based on the ACH's experience servicing its existing oncology patients, market study, and input from SUNY Upstate Medical University (SUNY Upstate).
- Payment rates for radiation therapy services were based on SUNY Upstate's experience. The averages by payor were based upon ACH's current payor mix for its existing oncology-hematology service.
- Payment rates for oncology were based on ACH's internal data.
- Staffing was developed in consultation with SUNY Upstate based on actual expenses for Oncology Services plus changes in volume and the addition of the Radiation Service Line.
- Expenses were developed in consultation with SUNY Upstate. The new building lease cost was calculated based on the construction costs multiplied by a lease factor plus estimated triple net costs.

### Radiation Oncologist Services Agreement

The applicant has submitted a draft Radiation Oncologist Services Agreement, as summarized below:

| | |
|---|---|
| Client: | Auburn Community Hospital (ACH) |
| Provider: | Upstate University Radiation Oncology, Inc. (UURO) |
| Billing Fees: | ACH shall have exclusive authority to determine the fees, and bill and receive payment. |
| Services: | Service Location and Time: UURO shall provide usual and customary full-time operation Monday through Friday.<br>Physician Services: UURO will be responsible for providing clinical professional services for radiation oncology and participating in clinical supervision. Services to be provided by currently approved methods and standards. |

| | |
|---|---|
| | Physician Management: In collaboration with ACH, UURO will help manage all aspects of the physicians assigned for coverage at the Cancer Center.<br>Administrative Services: Physician(s) shall also perform such other administrative duties as the Parties may be mutually agreed to from time to time. Administrative shall include, as required, participation in the credentialing, quality assurance, and utilization review activities as related to Cancer Center.<br>Medical Director Services: A UURO physician shall serve as the Medical Director for the Cancer Center. |
| Term: | Eight (8) years. Automatically renew for successive terms of five (5) years. |
| Fee: | $750,000 in year (3% annual increase) |

**Purchase and Sale Agreement**

The applicant has submitted an executed Purchase and Sale Agreement to sell for $100,000 a portion of the applicant's parking lot to the builder (landlord) of the new Cancer Center, as summarized below:

| | |
|---|---|
| Date: | November 4, 2021 |
| Seller: | Auburn Community Hospital a/k/a Auburn Memorial Hospital |
| Buyer: | Park Grove Acquisitions, LLC. |
| Premises Real Property: | Approximately 1.5 acres of land (part of tax map 16.21-1-35.13) |
| Payments by Buyer: | $100,000 less $5,000 previously deposited |

**Equipment Lease Agreement**

The applicant has submitted a draft equipment lease for Varian Truebeam Linac, Varian Mobius 3D with FX, and Service Package, as summarized below:

| | |
|---|---|
| Equipment: | Varian TrueBeam Linac and Varian Mobius 3D with FX |
| Lessor: | Siemens Financial Services, Inc. |
| Lessee: | Auburn Community Hospital |
| Price: | $3,570,934 (Purchase of equipment at the end of the lease is $1 each) |
| Term: | Seven years |
| Rent: | $602,946 annually or $50,245.52 monthly, including interest at 4.99% (There is a proposal with the enclosed terms) |

The applicant has submitted a draft equipment lease for Somatom Go. Sim, as summarized below:

| | |
|---|---|
| Equipment: | Siemens Somatom Go. Sim |
| Lessor: | Siemens Financial Services, Inc. |
| Lessee: | Auburn Community Hospital |
| Price: | $676,575 (The purchase of equipment at the end of the lease is $1) |
| Term: | Seven years |
| Rent: | $114,238 annually or $9,519.87 monthly interest, including interest at 4.99% (There is a proposal with the enclosed terms) |

**Lease Agreement**

The applicant submitted a letter of terms which is summarized below:

| | |
|---|---|
| Premises: | 11,471 square feet at 17 Lansing Street, Auburn, New York. |
| Landlord/Lessor: | Park Grove Acquisitions, LLC |
| Lessee: | Auburn Community Hospital |
| Term: | Twenty years with Two (2) five (5) renewal options |
| Rent: | $764,023 with 2% per year annual increase |
| Provisions: | Triple Net |
| Other: | Lessee has the right of the first offer to purchase the Premises after the fifth ($5^{th}$ year) |

The applicant attested that the lease arrangement is an arm's length agreement. The applicant has provided two letters from NYS licensed realtors attesting to the reasonableness of lease terms.

## Capability and Feasibility

The total project costs for this application are $14,127,057, funded through $329,263 in applicant's equity, $4,247,509 in equipment leases, and $9,550,285 for the new building constructed by the landlord (Park Grove Acquisitions, LLC). The equipment leases will be for seven years at 4.99%. Park Grove Acquisitions, LLC expects to finance the $9,550,285 with a 10-year loan at the stated terms above. Siemens Financial Services, Inc submitted a preliminary financing proposal for equipment leases. In addition, Five Star Bank submitted a letter of interest to finance the building's construction.

Working capital requirements are $1,214,436 based on two months of third-year expenses, including the existing oncology of $666,484 and the new radiation program of $547,952. BFA Attachment A shows the operations' first-year cash flow of $464,379. The applicant indicated they would utilize existing cash and ongoing operations to fund any additional working needs. In addition, the applicant stated there is $816,895 of restricted assets in Auburn Community Hospital Foundation, Inc. that could be released upon approval from the New York Attorney General. The submitted budget shows a first-year profit of $1,151,089 and a $1,537,291 profit in the third year. The budget appears reasonable.

BFA Attachment B is Auburn Community Hospital and Affiliate's 2020 - 2021 draft Certified Financial Statements and their March 31, 2022, Internals, which show negative working capital, positive assets, and loss from operations. BFA Attachment C is the September 2021 Board Financials with a year-to-date (YTD) loss of $5,424,750 and a September 2021 normalized income statement; without COVID-19 and labor shortages the loss would be $1,457,049. The applicant indicated the following steps are being implemented to improve operations, mitigate losses, and improve resources:

- Submitting FEMA reimbursement requests for COVID Costs. Applications for COVID relief for $2.2 and $9.2 million have already been submitted and are awaiting payments through 12/31/2021. The applicant intends to submit an application for COVID relief for the capital cost (computers/ air cleaners/ etc.) and any personal protective equipment along with continued expenses for the first two applications already submitted until the end of the federal emergency;
- The applicant has submitted a Transformation Capital Grant Requests for Cardiology Practice Acquisition and Provider-Based Physician Renovations within the hospital and the expansion of Operating Rooms for Interventional Radiology/Cath Procedures/Orthopedic Surgery to expand these services in conjunction with Upstate Physician support;
- Submitting a VAP application for $4.8 million to support cardiology and oncology services. $1.6 million per year for three years;
- This CON (a new service line of Radiation Services) is expected to provide a positive contribution margin of over $1 million per year;
- Senator Schumer has submitted a budget request for $2.365 million for Auburn to install a positron emission tomography (PET) scan and parking improvements to build upon the Cancer Center Plan. PET is a new modality that we do not currently offer. The nearest PET is in Syracuse;
- Continue to pursue grant opportunities such as the $396,501 grant application to Mother Cabrini Health Foundation;
- Working with SUNY Upstate on a rural resident training track in partnership with their Family Residency Program to continue the affiliation work. Resident applicants will be reviewed in October. The First year at SUNY Upstate/VA, Second and third years at Auburn;
- Mercer review of the human resources department, nurse retention, recruitment, and providing a road map;
- Working with Healthlinx on nurse leadership and manager retention and training;
- Through an NYS Transformation Grant, renovating existing hospital space including physician office space, and enhancing the 340B program;
- GPO Premier is providing purchasing leadership and identifying additional cost savings;
- Filling existing capacity with revenue opportunities (outpatient surgery, radiology, with continue grow in the physician practice);
- Improvements to the revenue cycle, verify billing is complete, payments are correct, outsource insurance follow-up after 90 days, enhance the systems to make them more patient-friendly, and renegotiate existing payor contracts where there is an opportunity;

- Expand the partnership with SUNY Upstate; and,
- Expand services such as cardiology.

### Conclusion

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

## Attachments

| | |
|---|---|
| BFA Attachment A | Auburn Community Hospital projected cash flow in the first year |
| BFA Attachment B | Auburn Community Hospital 2020 – 2021 Draft Audited Financial Statements and March 31, 2022, Internal Financial Statement |
| BFA Attachment C | Auburn Community Hospital September 30, 2021, Board Financial Statement and September 30, 2021, Normalized Financial Statement |

# Public Health and Health Planning Council

## Project # 221105-C
## Strong Memorial Hospital

| | | | |
|---|---|---|---|
| *Program:* | Hospital | *County:* | Monroe |
| *Purpose:* | Construction | *Acknowledged:* | April 5, 2022 |

## Executive Summary

### Description

Strong Memorial Hospital (SMH), an 886-bed, voluntary not-for-profit, Article 28 hospital at 601 Elmwood Avenue in Rochester (Monroe County), requests approval to construct a five-story inpatient bed tower, certify nine additional Intensive Care beds and 35 additional Medical/Surgical beds (44 net new, in total), and perform renovations to expand and modernize the Emergency Department (ED) and Comprehensive Psychiatric Emergency Program (CPEP).

Currently, the hospital operates over 100% of its licensed bed capacity with up to sixty patients boarding in the ED on any given day. The addition of the 44 beds will allow the census to be closer to an average of 95% occupancy rate and reduce boarding in the ED. The project will also increase SMH's complement of private beds from 75% to 95%, meeting community health care needs and expectations for patient and family privacy, improved infection control, and a more therapeutic and restful environment.

The existing ground and 1st floors of SMH will be renovated to expand and modernize the ED and CPEP. The new construction includes a southwest tower, which will house the westward expansion of the ED on the ground level, nearly tripling its footprint, and a new ED Observation Unit on the 3rd floor. The new tower will include shell space for future expansions.

### OPCHSM Recommendation

Contingent Approval

### Need Summary

The applicant expects the addition of 44 beds to reduce their utilization to 95% and reduce ED boarding. This expansion will also create 114 private treatment spaces and 112 private in-patient rooms, increasing the ability to isolate children and critical cases. In addition, the expansion of the ED will support SMH's state designations as a level 1 Adult and Pediatric Trauma Center through the addition of 3 bays for adult acute, 7 for critical care, 4 for trauma, and 20 for pediatric care.

### Program Summary

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

### Financial Summary

Total project costs of $557,250,894 will be met via $257,250,894 of accumulated funds from SMH's operations and $300,000,000 of tax-exempt bond proceeds. The bond issuance will be underwritten by BarClays at an interest rate of 3.25% for a 30-year term. In the event SMH is unable to obtain financing, the project will be funded by equity. The proposed budget, in thousands, is as follows:

| Budget (000's) | Current | Year One | Year Three |
|---|---|---|---|
| Revenues | $2,813,161 | $3,465,353 | $3,778,195 |
| Expenses | $2,482,482 | $3,243,135 | $3,520,903 |
| Gain | $330,679 | $222,218 | $257,292 |

# Recommendations

### Health Systems Agency

The Finger Lakes HSA recommends Approval.

### Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. Submission of the County Bond and Note Resolution acceptable to the Department of Health. Included with the submission must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
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 by **November 1, 2027**, 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 **April 1, 2023,** and construction must be completed by **August 1, 2027**, 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

July 28, 2022

# Need and Program Analysis

**Analysis**

| Bed Category | Current | Change | Proposed |
|---|---|---|---|
| Burns Care | 7 | | 7 |
| Coronary Care | 8 | | 8 |
| Intensive Care | 98 | 9 | 107 |
| Maternity | 45 | | 45 |
| Med/Surg | 467 | 35 | 502 |
| Neonatal Continuing Care | 14 | | 14 |
| Neonatal Intensive Care | 34 | | 34 |
| Neonatal Intermediate Care | 20 | | 20 |
| Pediatric | 56 | | 56 |
| Pediatric ICU | 24 | | 24 |
| Physical Medicine | 20 | | 20 |
| Psychiatric | 93 | | 93 |
| **Total** | **886** | **44** | **930** |

Through this project, Strong Memorial Hospital (SMH)hopes to address the following issues:

- Current census in medical-surgical beds of over 100% results in the inability to accept and place all patients referred to SMH from the surrounding region.
- The lack of inpatient beds has caused as many as 80 patients boarding in the ED until an inpatient bed becomes available.
- Lack of space in the current ED requires patients to be doubled in single rooms, cared for in hallways, or in waiting rooms.
- Current inability to place patients in private rooms as needed to accommodate privacy, optimal infection control, and a therapeutic and restful environment for patients and their families.
- Inability to meet the national standard for private beds for the majority of patients.

SMH is the largest employer and the largest, most specialized academic health care hospital in Upstate New York providing care to a population of over 2.6 million. SMH serves as the safety-net hospital for the most vulnerable citizens in both urban and rural communities and provides approximately $70 million annually in uncompensated and charity care to the most in-need community members. A table detailing SMH's hospital discharge service area can be found in BPNR Attachment A.

Staffing is expected to increase as a result of this construction/expansion project by 166.6 FTEs to a total of 2,965.6 FTEs in the first year of the completed project and increase by 124.6 FTEs for a total of 3,089.9 FTEs by the third.

Expected benefits of the new bed tower include:

- Providing fully code-compliant ICU-capable rooms.
- Reducing infection control risks due to the creation of private rooms.
- Enhancing patient privacy and experience through modern renovations.
- Pandemic and disaster readiness capable flex beds.
- Facilitating patient placement through the use of private rooms, improving throughput.

The bed tower layout will be as follows:

- 1st Floor: CPEP, Psych ED, shell space for ORs and special procedure rooms, and connection to existing Strong Memorial Hospital
- 2nd Floor: there is no 2nd floor in order to align with the existing hospital building
- 3rd Floor: 48-bed ED Observation Unit, Census Management offices, URMC Emergency Command Center, ED administrative offices, shell space for a future 30-bed unit, and connection to existing Strong Memorial Hospital

- 4th Floor: Mechanical infrastructure, building support services, and connection to existing Strong Memorial Hospital
- 5th Floor: shell space for future 28-bed unit
- 6th Floor: 28-bed medical/surgical unit
- 7th Floor: 28-bed cardiac ICU unit
- 8th Floor: 28-bed medical/surgical unit
- 9th Floor: 28-bed medical/surgical unit

| Average Daily Census (ADC), Average Length of Stay (ALOS), and Occupancy by Service | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| **Bed Category** | **Certified Beds** | **Measure** | **2019 Total** | **2020 Total** | **2021 1st Q** | **2021 2nd Q** | **2021 3rd Q** | **2021 Total** |
| Medical/Surgical | 600 | ADC | 553.2 | 550.0 | 609.9 | 606.0 | 563.6 | 595.2 |
| | | ALOS | 6.9 | 7.1 | 7.6 | 7.0 | 7.0 | 7.2 |
| | | Occupancy | 92.2 | 91.7 | 100.0 | 100.0 | 93.9 | 99.2 |
| Pediatric | 80 | ADC | 40.7 | 38.7 | 41.9 | 42.9 | 46.0 | 43.8 |
| | | ALOS | 4.1 | 4.5 | 4.6 | 4.1 | 3.8 | 4.1 |
| | | Occupancy | 50.9 | 48.4 | 52.3 | 53.6 | 57.5 | 54.7 |
| Obstetric | 45 | ADC | 31.3 | 24.1 | 22.5 | 26.9 | 27.1 | 25.6 |
| | | ALOS | 3.2 | 2.9 | 2.7 | 2.8 | 2.8 | 2.8 |
| | | Occupancy | 69.5 | 53.6 | 50.0 | 59.8 | 60.2 | 56.9 |
| Psychiatric | 93 | ADC | 76.5 | 74.6 | 75.2 | 85.2 | 56.1 | 72.4 |
| | | ALOS | 14.7 | 13.9 | 13.8 | 13.1 | 13.8 | 13.5 |
| | | Occupancy | 82.3 | 80.3 | 80.9 | 91.7 | 60.4 | 77.8 |
| High-Risk Neonates | 68 | ADC | 46.8 | 62.3 | 57.0 | 69.2 | 68.0 | 65.0 |
| | | ALOS | 24.7 | 28.5 | 28.0 | 26.3 | 22.3 | 25.2 |
| | | Occupancy | 68.9 | 91.6 | 83.8 | 100.0 | 100.0 | 95.6 |
| Total | 886 | ADC | 748.5 | 749.8 | 806.5 | 830.2 | 760.8 | 801.9 |
| | | ALOS | 7.0 | 7.4 | 7.7 | 7.2 | 6.9 | 7.3 |
| | | Occupancy | 84.5 | 84.6 | 91.0 | 93.7 | 85.9 | 90.5 |

***Data source**: SPARCS inpatient data (1/1/2019-9/30/2021)*
***Date of last update**: 02/17/2022; 4th Quarter of 2021 is not available for this facility*

As seen in the table above, over the last two years SMH has seen extremely high Medical-Surgical numbers averaging 99-100%.

| Emergency Department and Ambulatory Surgery Data | | | | |
|---|---|---|---|---|
| | **Total Visits per Study** | | **Visits per Treatment Bay / OR** | |
| **Period** | **SMH ED** | **Amb/Surg** | **SMH ED** | **Amb/Surg** |
| FY 2022 *(7/1/21 - 5/31/22)* | 101,493 | 25,067 | 814 | 516 |
| FY 2021 | 104,027 | 26,252 | 765 | 495 |
| FY 2020 | 106,862 | 24,324 | 786 | 459 |
| FY 2019 | 117,507 | 28,648 | 864 | 541 |
| FY 2018 | 116,976 | 26,567 | 860 | 501 |
| FY 2017 | 116,006 | 25,512 | 853 | 481 |
| FY 2016 | 113,536 | 24,780 | 835 | 468 |
| | | | | |
| Current ED Treatment Spaces | | | *136* | |
| Proposed ED Treatment Spaces | | | *157* | |
| Current ORs | | | | *53* |

***Source:** Applicant*
***Note**: FY runs July 1 through June 30*

| Emergency Department Treatment Spaces | | |
|---|---|---|
| **Treatment Area** | **Existing ED** | **Upon Completion** |
| Adult Acute | 60 | 63 |
| Bio/Decon. | 0 | 1 |
| Behavioral Health/Safe Sobering | 12 | 12 |
| Verticare | 25 | 17 |
| Fast Lane | 6 | 0 |
| Critical Care | 11 | 18 |
| Specialty Procedure | 1 | 1 |
| Trauma | 2 | 6 |
| Pediatric | 19 | 39 |
| **Total Main ED** | **136** | **157** |

***Source:*** *Applicant*

Strong Memorial Hospital has the following designations:
- AIDS Center.
- Burn Center.
- Comprehensive Stroke Center.
- Level 1 Adult Trauma Center.
- Level 1 Pediatric Trauma Center.
- Regional Perinatal Center.
- SAFE Designated Hospital.

According to Data USA, in 2019 95.5% of the population in Monroe County has health coverage as follows.

| | |
|---|---|
| Employer Plans | 50.3% |
| Medicaid | 19.8% |
| Medicare | 13.4% |
| Non-Group Plans | 13.4% |
| Military or VA | 0.47% |

## Prevention Agenda
The Prevention Agenda priorities selected for action in Monroe County's most recent Community Health Improvement Plan include:
- Promote Well-Being and Prevent Mental and Substance Use Disorders
- Promote Healthy Women, Infants, and Children

While the proposed project does not directly address these Prevention Agenda priorities, SMH's planned expansion of the CPEP will expand services and capacity for individuals living with mental and substance use disorders. Additionally, SMH reports the proposed addition of private beds will improve privacy, and infection control, and provide for a more therapeutic and restful environment for patients, including women, infants, and children.

Currently, SMH reports instances of up to 80 patients boarding in the emergency department while awaiting placement in an appropriate bed, this includes patients doubled in single rooms, and being treated in hallways and waiting areas.

SMH reported $1.34 million in Community Health Improvement Services and Community Benefit Operations spending in their 2019 Form 990 Schedule H.

## 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.

### Conclusion

The addition of 44 incremental beds will reduce SMH's occupancy to approximately 95% and reduce ED boarding. This expansion will also address private inpatient rooms and treatment spaces through the addition of 114 private treatment spaces and 112 private inpatient rooms, increasing the ability to isolate children and critical cases.

## Financial Analysis

### Total Project Cost and Financing

The total project cost for renovations and construction is estimated at $557,2250,894 and line-item detail is listed below:

| | Article 28 | Shell Space | Total |
|---|---:|---:|---:|
| New Construction | $278,325,816 | $71,172,771 | $349,498,587 |
| Renovation & Demolition | 23,635,263 | - | 23,635,263 |
| Temporary Utilities | 2,492,154 | 587,359 | 3,079,513 |
| Asbestos Abatement or Removal | 112,926 | 26,615 | 139,541 |
| Design Contingency | 10,615,699 | 1,152,483 | 11,768,182 |
| Construction Contingency | 16,420,272 | 3,589,337 | 20,009,609 |
| Planning Consultant Fees | 6,942,304 | 1,636,185 | 8,578,489 |
| Architect/Engineering Fees | 14,917,698 | 3,515,852 | 18,433,550 |
| Construction Manager Fees | 13,184,320 | 3,101,737 | 16,286,057 |
| Other Fees | 16,970,786 | 3,271,055 | 20,241,841 |
| Movable Equipment | 30,757,305 | - | 30,757,305 |
| Telecommunications | 23,384,571 | - | 23,384,571 |
| Financing Costs | 395,112 | 93,121 | 488,233 |
| Interim Interest Expense | 28,382,203 | - | 28,382,203 |
| Application Fee | $2,000 | - | $2,000 |
| Processing Fee | $2,565,950 | - | $2,565,950 |
| **Total Project Cost** | **$469,104,379** | **$88,146,515** | **$557,250,894** |

The application contains $469,104,379 of project costs that will be allowable for reimbursement purposes. The remainder of the costs are for 116,051 square feet of shell space. The applicant's financing plan appears as follows:

| | |
|---|---:|
| Equity | $257,250,894 |
| Tax Exempt Bond Proceeds<br>(3.25% interest rate/ 30-year term) | $300,000,000 |
| Total | $557,250,894 |

**Operating Budget**

The applicant has submitted an operating budget for SMH for the Current Year (2021), Year 0ne (2026), and Year Three (2028). The submitted budget, in thousands, that has been adjusted to account for inflation appears reasonable.

| | PD/PV | Current Year (2021) | PD/PV | Year One (2026) | PD/PV | Year Three (2028) |
|---|---|---|---|---|---|---|
| Inpt Revenues | | | | | | |
| Commercial FFS | 28,978 | $310,725,772 | 35,424 | $415,137,202 | 37,416 | $464,784,896 |
| Commercial MC | 19,343 | 24,255,682 | 23,654 | 32,406,182 | 24,987 | 36,281,749 |
| Medicare FFS | 25,846 | 188,675,122 | 31,592 | 252,074,560 | 33,371 | 282,221,029 |
| Medicare MC | 23,644 | 211,495,334 | 28,901 | 282,562,920 | 30,530 | 316,355,596 |
| Medicaid FFS | 21,725 | 31,935,798 | 26,551 | 42,667,004 | 28,050 | 47,769,699 |
| Medicaid MC | 16,886 | 174,198,363 | 20,642 | 232,733,258 | 21,803 | 260,566,633 |
| Private Pay | 929 | 192,303 | 1,132 | 256,923 | 1,199 | 287,647 |
| All Other | 23,756 | 47,915,207 | 29,032 | 64,015,884 | 30,669 | 71,671,765 |
| Total IP Rev | 23,428 | $989,393,581 | 28,637 | $1,321,853,933 | 30,250 | $1,479,939,014 |
| | | | | | | |
| Outpt Revenues | | | | | | |
| Commercial FFS | 474 | $572,280,504 | 51 | $704,491,789 | 533 | $755,537,688 |
| Commercial MC | 382 | 62,135,102 | 417 | 76,468,488 | 429 | 81,971,626 |
| Medicare FFS | 274 | 130,767,862 | 299 | 160,921,827 | 308 | 172,540,036 |
| Medicare MC | 298 | 253,219,096 | 326 | 311,560,195 | 335 | 333,890,416 |
| Medicaid FFS | 183 | 10,095,297 | 200 | 12,479,900 | 207 | 13,460,886 |
| Medicaid MC | 226 | 121,864,127 | 247 | 150,478,015 | 255 | 161,922,842 |
| Private Pay | 98 | 3,795,542 | 108 | 4,681,850 | 111 | 5,030,167 |
| All Other | 240 | 22,094,601 | 262 | 27,225,612 | 270 | 29,195,056 |
| Total OP Rev | 344 | $1,176,252,132 | 375 | $1,448,307,676 | 387 | $1,553,548,717 |
| | | | | | | |
| Total IP & OP Revenues | | $2,165,645,713 | | $2,770,161,609 | | $3,033,487,731 |
| Other Oper Rev | | $647,515,665 | | $695,191,810 | | $744,706,847 |
| Total Revenue | | $2,813,161,378 | | $3,465,353,419 | | $3,778,194,578 |
| | | | | | | |
| Inpt Expenses | | | | | | |
| Operating | 20,815 | $879,078,444 | 25,967 | $1,198,620,377 | 26,991 | $1,320,519,528 |
| Capital | | 0 | 865 | 39,917,472 | 807 | 39,469,841 |
| Total IP Expenses | 20,815 | $879,078,444 | 26,832 | $1,238,537,849 | 27,798 | $1,359,989,369 |
| | | | | | | |
| Outpt Expenses | | | | | | |
| Operating | 436 | $1,491,613,121 | 490 | $1,890,360,066 | 510 | $2,046,676,230 |
| Capital | 33 | 111,790,611 | 30 | 114,237,192 | 28 | 114,237,192 |
| Total OP Expense | 468 | 1,603,403,732 | 520 | 2,004,597,258 | 538 | 2,160,913,422 |
| Total Expenses | | $2,482,482,176 | | $3,243,135,107 | | $3,520,902,791 |
| | | | | | | |
| Net Income/(Loss) | | $330,679,202 | | $222,218,312 | | $257,291,787 |
| Inpt Discharges | | 42,232 | | 46,159 | | 48,924 |
| Outpt Visits | | 3,423,761 | | 3,858,134 | | 4,016,598 |

The following is noted for the submitted operating budget:

- Revenues are based on the facility's historical growth and the current reimbursement methodologies for inpatient and emergency department hospital utilization.
- Expense and utilization assumptions are based on the facility's historical experience in operating inpatient and emergency department services.
- The payor mix used was based on the historical volume of the payors for inpatient discharges and visits to the emergency department for outpatient services.

- The utilization reflects an increase from the ramp-up in years one and three from the addition of the 44 incremental beds and increased market availability to meet demand.
- The reduction in incremental revenue is due to the large portion of expenses related to the project's depreciation and interest expense.
- Operating expenses increase in years one and three from hiring additional staff to support operations, including the increase in utilization and larger footprint of the hospital.
- The 2021 financial results for SMH also include approximately $167 million in CARES Act Provider Relief funding

**Capability and Feasibility**
Total project costs of $557,250,894 will be met via $257,250,893 of accumulated funds from SMH's operations and $300,000,000 of tax-exempt bond issuance by the BarClays Corporation at a 3.25% interest rate for a 30-year term.

The June 30, 2021, Certified Financial Statements of Strong Memorial Hospital show the hospital has positive working capital, a positive net asset position, and operating excess of revenues over expenses of $330,679,202 (BFA Attachment A) with a cash balance of $659,080,349. The financial statement for this period indicates the availability of sufficient funds to meet the equity contribution and any working capital needs. The March 31, 2022, Internal Financial Statements of Strong Memorial Hospital (BFA Attachment B) indicate the entity had a positive working capital position, operating excess of revenues over expenses of $77,179,426 and a cash balance of $690,088,776. The operating results for SMH also include approximately $167 million in CARES Act Provider Relief funding. The CARES Act funds received between April 10, 2020, and November 23, 2021, relate to the fiscal period 2020 (7/1/19-6/30/20) of $76M, 2021 (7/1/20-6/30/21) of $82M, and 2021 (7/1/21-6/30/22) of $8.5M.

The submitted operating budget for the proposed project indicates a net gain of $222,218,312 and $257,291,787 in the first and third years, respectively. The submitted budget appears reasonable.

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

# Attachments

| | |
|---|---|
| HSA Attachment A | Finger Lakes Health Systems Agency Review |
| BPNR Attachment A | Strong Memorial Hospital Market Share |
| BFA Attachment A | June 30, 2021 and June 30, 2020 Certified Financial Statements of Strong Memorial Hospital. |
| BFA Attachment B | March 31, 2022 Internal Financial Statements of Strong Memorial Hospital. |

## Project # 212271-C
## Ambulatory Surgery Center of Niagara

| | | | |
|---|---|---|---|
| *Program:* | Diagnostic and Treatment Center | *County:* | Niagara |
| *Purpose:* | Construction | *Acknowledged:* | February 1, 2022 |

## Executive Summary

**Description**
Niagara ASC, LLC d/b/a Ambulatory Surgery Center of Niagara LLC (The Center), an existing Article 28 Ambulatory Surgery Center (ASC) located at 6500 Porter Road, Suite 2030, Niagara Falls, seeks approval to convert from a single-specialty ambulatory surgery center to a multi-specialty ambulatory surgery center and perform requisite renovations. The Center is currently certified for ophthalmology. Approval of this application will initially add orthopedic and pain management to become a multi-specialty ASC.

The Center was granted permanent life under CON 211011. Approval of this application will not result in any change to the leased space, membership structure, or the executed transfer agreement with Mount St. Mary's Hospital of Niagara Falls.

**OPCHSM Recommendation**
Contingent Approval

**Need Summary**
Approval of this project will increase access to multi-specialty surgery services for the residents of Niagara County.

**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 project costs of $158,468 will be met with equity from the existing operations. The budget projects a net income of $341,625 in year one and $1,400,842 by year three. The proposed budget is as follows:

| Budget | Year One | Year Three |
|---|---|---|
| Revenues | $2,874,680 | $3,975,193 |
| Expenses | 2,533,055 | 2,574,351 |
| Net Income | $341,625 | $1,400,842 |

# 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 **August 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]
2. Construction must start on or before **February 1, 2023,** and construction must be completed by
3. **May 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]
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
July 28, 2022

# Need and Program Analysis

### Program Description
Niagara ASC, LLC d/b/a Ambulatory Surgery Center of Niagara, an ambulatory surgery center that currently operates a single-specialty ophthalmology ambulatory surgery center, seeks approval to convert to a multi-specialty ambulatory surgery center and perform the requisite renovations. Two physicians, John P. Swinarski, D.O. and Franco E. Vigna, M.D., submitted letters of interest stating their intent to perform surgical procedures and pain injections at the ASC. Once the ASC has been certified as a multi-specialty surgery center, the two physicians estimate they will perform 566 surgical procedures/pain injections at the Center: Dr. Vigna plans to perform at least 86 surgeries and Dr. Swinarski plans to perform 480 epidural and facet pain injections.

As a result of this project, staffing is expected to increase to a total of 10.5 FTEs and remain at 10.5 FTEs in Year Three of the completed project.

### Analysis
The Center began operations in March 2016 providing ophthalmology surgery services. Currently, two ASCs are operating in Niagara Falls (Niagara County): Endoscopy Center of Niagara, which provides gastroenterology surgery, and the applicant, Ambulatory Surgery Center of Niagara, which is seeking to convert into a multi-specialty surgery center.

The service area consists of Niagara County. According to Data USA, 96.7% of the population of Niagara County has health coverage as follows:

| | |
|---|---|
| Employer Plans | 50% |
| Medicaid | 19.8% |
| Medicare | 13.1% |
| Non-Group Plans | 12.5% |
| Military or VA | 1.28% |

The center is current with its SPARCS reporting. The following table shows the center's utilization of Medicaid and total visits for the last three years:

| | 2018 | 2019 | 2020 |
|---|---|---|---|
| Visits | 2,162 | 2,211 | 1,868 |
| Medicaid | 4.4% | 3.7% | 4.3% |

The Center has Medicaid managed care contracts with the following: Amerigroup, Fidelis, Independent Health Medisource, Molina Health Plan, Univera MyHealth, United Healthcare Community Plan, American Indian Health.

The applicant projects 2,433 procedures in Year One and 3,222 in Year Three, based on the current practices of participating surgeons. The applicant is committed to serving all persons in need without regard to the ability to pay or a source of payment.

### 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 enhance access to multi-specialty surgery services for the residents of Niagara County.

# Financial Analysis

**Total Project Costs and Financing**
Total project costs for the renovations and acquisition of moveable equipment are $158,468, presented in 2022 dollars and distributed as follows:

| | |
|---|---|
| Renovation & Demolition | $20,000 |
| Construction Contingency | 2,000 |
| Architect/Engineering Fees | 7,500 |
| Moveable Equipment | 126,500 |
| Application Fee | 2,000 |
| Processing Fee | 468 |
| Total Project Costs | $158,468 |

**Operating Budget**
The applicant has submitted the 2020 current year budget and first and third years' operating projected budget, in 2022 dollars, as summarized below:

| | Current Year 2020 | | Year One 2023 | | Year Three 2025 | |
|---|---|---|---|---|---|---|
| Revenues | Per Visit | Total | Per Visit | Total | Per Visit | Total |
| Commercial FFS | $1,349 | $1,638,474 | $1,241 | $1,867,778 | $1,241 | $1,883,272 |
| Medicare FFS | $1,233 | 437,804 | $1,233 | 437,804 | $1,231 | 530,408 |
| Medicare MC | $1,287 | 279,185 | $1,139 | 345,246 | $1,331 | 1,317,952 |
| Medicaid MC | $1,011 | 80,856 | $956 | 91,730 | $1,084 | 91,028 |
| Private | N/A | 0 | N/A | 0 | $1,286 | 11,576 |
| Other* | N/A | 0 | $768 | 132,122 | $787 | 140,957 |
| Total Revenues | | $2,436,319 | | $2,874,680 | | $3,975,193 |
| | | | | | | |
| Expense | | | | | | |
| Operating | $1,244.32 | $1,974,235 | $885.34 | $2,162,897 | $684.10 | $2,204,193 |
| Capital | 187.45 | 350,158 | 151.51 | 370,158 | 114.88 | 370,158 |
| Total Expenses | $1,431.77 | $2,324,393 | $1036.85 | $2,533,055 | $798.98 | $2,574,351 |
| | | | | | | |
| Net Income | | $111,926 | | $341,625 | | $1,400,842 |
| | | | | | | |
| Procedures | | 1,868 | | 2,443 | | 3,222 |
| Cost Per Procedure | | $1,244.32 | | $1,036.86 | | $798.99 |

**Other includes Workers' Compensation, Disability, and No-Fault among others.*

The following is noted for the submitted budget:
- Revenue, expense, and utilization assumptions are based on the combined historical experience from member physicians' private practice and proposed physicians' experience.
- Revenues for the three specialties (orthopedic, ophthalmology, and pain management) were based on the 2022 Medicare Rates, Commercial rates were based on 110% of Medicare rates and Medicaid rates are based on 90% of the Medicare rate.
- Utilization and associated revenues are projected to increase because of new physicians performing procedures at the Center.

- The ASC covers areas with aging populations and with increased Medicare managed care penetration. The applicant expects that a large share of new orthopedics and pain management cases and ophthalmology cases will be performed on patients enrolled in Medicare-managed care plans.

Utilization by the payor for the current, first and third years is anticipated as follows:

| Payor | Current | Year One | Year Three |
|---|---|---|---|
| Commercial FFS | 65.04% | 61.60% | 47.08% |
| Medicare FFS | 19.00% | 14.53% | 13.38% |
| Medicare MC | 11.62% | 12.40% | 30.73% |
| Medicaid MC | 4.28% | 3.93% | 2.61% |
| Other | 0.00% | 7.04% | 5.83% |
| Charity | 0.05% | 0.49% | 0.37% |
| Total | 100% | 100% | 100% |

**Capability and Feasibility**

Project costs of $158,468 will be met with cash. The 2020 certified financial statements and the facility's latest internal financial statements dated October 31, 2021, show the facility has sufficient equity to fund this project (BFA Attachment A). The working capital requirements for this project are estimated at $422,176, representing two months of the first year's expenses to be covered through operations. The Center's 2020 certified financial statement and year-end 2021 internal financial statement show a positive working capital position and a negative members' deficit position of $522,122 and $199,517 respectively. The facility achieved a net income of $254,977 and $330,605 in 2020 and 2021 respectively. The latest internal financial statement from January 1, 2022, thru April 30, 2022, shows a positive working capital position and negative net asset position and achieved a net income of $30,392 year to date. It should be noted that due to the negative effects of COVID-19 the facility was closed for four months in 2020. The budget indicates a net income of $341,625 and 1,400,842 for the first and third years, which appears reasonable.

**Conclusion**

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

## Attachments

| | |
|---|---|
| BFA Attachment A | Certified Financials 2020 & Internal (January 1, 2021 - October 31, 2021) |

# Public Health and Health Planning Council

## Project # 212105-C
## Rutland Nursing Home, Inc.

| | | | |
|---|---|---|---|
| ***Program:*** | **Residential Health Care Facility** | ***County:*** | **Kings** |
| ***Purpose:*** | **Construction** | ***Acknowledged:*** | **November 9, 2021** |

## Executive Summary

### Description
Rutland Nursing Home, Inc. (Rutland), a 466-bed, voluntary not-for-profit Article 28 Residential Health Care Facility (RHCF) at 585 Schenectady Avenue, Brooklyn (Kings County) requests approval to renovate part of the facility to initiate an 80-bed Young Adult RHCF program.

The applicant is 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.

Rutland currently has 404 RHCF beds, 30 ventilator-dependent beds, and 32 pediatric beds. The proposed Young Adult unit will be on the ninth and tenth floors of the 11-story building Rutland Nursing Home occupies. The proposed space currently has 146 general RHCF beds. The 66 nursing home beds displaced from the ninth and tenth floors will be relocated to the fourth floor. There will be no change in the total number of licensed beds as a result of this application.

One Brooklyn Health System, Inc. (OBHS) is the active parent/co-operator of Rutland Nursing Home.

### OPCHSM Recommendation
Contingent Approval

### Need Summary
The new Young Adult program beds will create a continuity of care and programming for residents ages 18 and older who are aging out of existing pediatric nursing home beds.

### Program Summary
The Young Adult Demonstration Program is designed 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.

### Financial Summary
The total project cost of $43,039,119 will be met from the Kings County Health Care Facility Transformation Program (KCHCFTP) grant. The KCHCFTP is a $664M grant that provides capital funding to address the health care needs in Kings County served by the three hospitals and other OBHS facilities.

The submitted budget projects a Year One net loss of $2,024,740 and a Year Three net income of $374,193. The loss in Year One includes $2,516,371 in depreciation expense, without which the operations would generate $491,631 in net income.

| Budget | Year One | Year Three |
|---|---|---|
| Revenues | $102,607,350 | $105,534,424 |
| Expenses | 104,632,090 | 105,160,231 |
| Net Income/ (Loss) | ($2,024,740) | $374,193 |

# Recommendations

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

### Office of Primary Care and Health Systems Management
<u>Approval contingent upon</u>:
1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of documentation confirming final approval of the Kings County Health Care Facility Transformation Program executed grant contract for period four, acceptable to the Department of Health. [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]

<u>Approval conditional upon</u>:
1. This project must be completed by **October 1, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and 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 **February 1, 2023,** and construction must be completed by **July 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]
4. Approval for use of the fourth-floor Briger building as temporary space is time-limited for a period to expire upon completion of this project and not later than February 1, 2024. [LTC]
5. Acknowledgment of exception to 2018 FG1 3.1-2.2.2.2 is being provided under this demonstration project authorized by PHL §2808-e as a rigid application to the current space on the fourth floor of the DMRI building and fourth-floor Briger building would result in unreasonable hardship to the facility, any required structural changes are not feasible, and waiver of this provision will not impact resident health and safety. This determination is conditional upon the facility's immediate and ongoing implementation of policies and procedures and the provision of equipment and personnel as necessary to ensure a level of resident and staff safety and dignity of resident care services and care as required by regulation, the above-noted deficiency, and this determination notwithstanding. All policies and procedures must be acceptable to the Regional Office. [LTC]

### Council Action Date
July 28, 2022

# Need Analysis

### Analysis

There will be no change in the total number of licensed beds in this facility as a result of this application. Rutland Nursing Home currently has 404 non-specialty RHCF beds, 30 beds certified and dedicated to serving ventilator-dependent residents, and 32 pediatric program beds. The historical reported Year-End occupancy for this facility, by bed type, has been:

| | Rutland Occupancy | | | | |
|---|---|---|---|---|---|
| **Bed Type** | **2018** | **2019** | **2020** | **2021** | **Current*** |
| RHCF | 94.8% | 97.8% | 79.5% | 80.4% | 89.6% |
| Ventilator Dependent | 86.7% | 96.7% | 93.3% | 86.7% | 93.3% |
| Pediatric | 78.1% | 87.5% | 84.4% | 78.1% | 81.3% |
| Total | 93.1% | 97.0% | 80.7% | 80.7% | 89.3% |

*Source: Nursing Home Weekly Bed Census Survey.*
**Current is reported as of April 6, 2022.*

While the facility's occupancy rate in non-pediatric beds has declined during the pandemic, occupancy in their pediatric program has remained consistent. There have also been consistently high occupancy rates for pediatric skilled nursing beds in the NYC/Westchester County area, with most facilities operating near or at capacity:

| NYC/Westchester Pediatric Occupancy | | | | |
|---|---|---|---|---|
| **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.*
*Excludes pediatric beds that opened or closed during the reporting period shown.*

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.

Public Health §2808-E allows current pediatric nursing home residents age 18 and above, or residents recently aging out of pediatric nursing home beds, transitional opportunities to two newly created Young Adult Demonstration Programs. The chart below shows the trend for the aging of residents in pediatric nursing home beds in the NYC/Westchester County region, with over 100 residents age 16 and older close to 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, including Rutland Nursing Home.*

Rutland Nursing Home's own experience has demonstrated the need to establish Young Adult programs for pediatric nursing home bed eligible residents past the age of 18. In total, the facility has 44 residents who would be or would soon be eligible for such a program:

- 12 residents between the age of 16 and 21 who are expected to age out of the pediatric program beds,
- 12 young adult residents over 21 years of age in a geriatric unit because they have aged out of Rutland's pediatric program beds and appropriate alternative placement could not be found elsewhere, and
- 20 young adult residents over 21 years of age with medical fragility referred from acute care facilities in New York City.

The demand for the young adult services within the facility alone would result in significant initial occupancy of the Young Adult Demonstration Program proposed. To further support the immediate need for the proposed program, the applicant reported receiving over 1,000 referrals between January 2019 and June 2021 for eligibility into a skilled nursing program for young adults with medical fragility. The applicant claims that of the referrals received, 16% were determined to meet the criteria for admission into the proposed Young Adult Demonstration Program.

### Access

The proposed population to be served by the new Young Adult Demonstration Program beds will predominantly have a Medicaid payor source, and therefore increase the Medicaid access to services at the facility. Based on the facility's existing pediatric population and potential referrals reviewed, 60% of the population to be served by the new program will be from Brooklyn with the other 40% distributed throughout the greater NYC and outlying areas.

The proposed Young Adult Demonstration Program will also provide opportunities for residents currently receiving care in other states. New York State Medicaid claims data from August 2017 to August 2018 for nursing home residents aged 18-35 detailed 20 unique nursing home residents in Massachusetts and 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.

### Conclusion

The new Young Adult Demonstration Program beds will create a continuity of care and programming for residents ages 18 and older who are aging out of existing pediatric nursing home beds. The proposed Young Adult Demonstration Program beds will also increase the capacity for admission of medically fragile young adults from acute care settings into a residential long-term care environment. Approval of this application will result in providing access to necessary services for a population that has a predominantly Medicaid payor source and possibly prevent New York State residents from having to go out of state for care.

## Program Analysis

### Facility Information

| | |
|---|---|
| **Facility Name** | Rutland Nursing Home, Inc |
| **Address** | 585 Schenectady Avenue<br>Brooklyn, New York 11203<br>(Kings County) |
| **RHCF Capacity** | 466-beds |
| **ADHCP Capacity** | NA |
| **Type of Operator** | Voluntary |
| **Class of Operator** | Not for Profit Corporation |
| **Operator** | Rutland Nursing Home, Inc. |

Rutland Nursing Home is one of two providers in New York State awarded the opportunity to operate a Young Adult Demonstration Program. The program was created 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.

### Project Overview

Rutland will renovate the ninth and tenth floors of the David Minkin Rehabilitation Institute (DMRI) building to accommodate 40 beds on each floor as part of the project. The Young Adult Demonstration Project will have its own program space separate from the rest of the facility. At present, the ninth and tenth floors of the DMRI building consist of 146 beds.

The project proposes to permanently move 66 beds to the fourth floor of the DMRI building, temporarily use 40 beds in the adjacent Briger building to house residents, and voluntarily transfer 40 residents to the Schulman & Schachne Institute, a sister nursing home facility 1.4 miles away from Rutland Nursing Home. Residents who voluntarily transfer to Schulman & Schachne Institute will be given priority readmission rights to Rutland should they desire to return. The applicant states that they will work with the New York State Department of Health Division of Nursing Homes and ICF/IID Surveillance and the Metropolitan Area Regional Office to identify 40 residents willing to transfer to Schulman & Schachne Institute.

The certified 66 nursing home beds on the fourth floor of the DMRI building will be in space originally constructed as a nursing home floor with resident rooms, a dining room, and physical therapy spaces. As per Certificate of Need application (CON) 121205-L, 38 resident rooms were decertified on this floor, including rooms 1400 – 1418. The rooms were to be vacated and converted into administrative space. Construction notice 547 implemented the renovation of the decertified patient rooms into administrative offices. The fourth floor of the DMRI building is currently not occupied by any nursing home residents and has no certified nursing home rooms on the floor.

The fourth floor of the Briger building contains former medical-surgical inpatient beds which are not currently in use and the floor is unoccupied. These rooms are being proposed as a temporary location for nursing home residents for approximately one year while construction takes place on the fourth floor of the DMRI building.

### Physical Environment

The layout of the DMRI building is a symmetrical rectangular tower, with resident rooms and communal space lining the exterior walls and staff and support space centrally located in the interior on each floor. The fourth, ninth, and tenth floors of the facility will be renovated as part of this project. The number of beds on the ninth and tenth floors will be reduced from 146 total beds to 80 total beds, this will create larger resident rooms with increased accessibility on the ninth and tenth floors. The remaining 66 beds removed from the ninth and tenth floors will be relocated to the fourth floor of the DMRI building.

The ninth and tenth floors of the Young Adult program space will have a similar floorplan, with resident rooms lining the east and west exterior walls of the floors. Each floor will have 40 total beds, composed of 17 double-bedded rooms and six private rooms. One double-bedded room on the ninth and tenth floors will feature additional space and enhanced clearances to accommodate people of size. Resident dining/multipurpose rooms for the Young Adult Program will be able to seat 40 residents at a time on the floor, with the main dining room able to accommodate 36 residents and an adjacent dining space able to accommodate four residents. Additional resident amenities on each floor include a mediation room, technology lounge, and a family lounge for overnight family visits. Therapy spaces will be provided on both floors allowing for direct resident access. The therapy space on each floor consists of a large gym with six private individual treatment areas. Adjacent to the therapy gym is the speech therapy room. Resident and staff support spaces will be centrally located in the interior of each floor. The resident support space features a central shower room with one standard shower and two showers able to accommodate a stretcher, two resident nourishment rooms, equipment alcoves, a social worker's office, and resident clean and soiled utility rooms. Staff support service space will be provided on each floor and include a staff lounge, conference room, nurse manager's office, and both central and decentralized nursing stations.

The 66 beds that will be relocated to the fourth floor will be composed of 29 double-bedded resident rooms and eight private rooms. In 27 double-bedded resident rooms and one private resident room, the placement of a residential chair in those rooms would block access to the resident wardrobe requiring staff to assist residents in accessing clothing and belongings for residents on the unit regardless of the resident level of function and independence with dressing.

In five private resident rooms and two double-bedded resident rooms, the resident chair blocks access to the resident bathroom, requiring staff to assist residents in moving the chair and accessing the bathroom for residents on the unit regardless of the resident's level of function and independence with toileting.

These resident room space constraints currently exist throughout the entire building. Rooms on the ninth and tenth floors of the DMRI building are increasing in size by 50% as part of the renovation to construct the 80-bed Young Adult Unit. However, renovations to the fourth floor where 66 current residents will be relocated will not include structural changes, as those would not be feasible.

The fourth floor of the Briger building currently has 18 double-bedded rooms and five private resident rooms. The fourth floor of the Briger building contains former medical-surgical inpatient rooms, which are not currently in use, and the floor is currently unoccupied. In every resident room, the resident chair blocks access to the resident wardrobes, and the chair would be required to be moved every time a resident needed access to their belongings. In resident room 432, the resident bathroom door cannot be fully opened due to a bedside table being located behind it.

**Acknowledgment of Exception to 2018 FGI 3.1-2.2.2.2.**
42CFR 483.90 (e) 2 (iv) requires the facility to provide each resident with functional furniture appropriate to the resident's needs, and individual closet space in the resident's bedroom with clothes racks and shelves accessible to the resident.

The proposed resident room clearances on the fourth floor are not compliant with 2018 FGI 3.1-2.2.2.2, which states that resident rooms should be sized, arranged, and furnished to maximize safe resident mobility, mobilization, and ambulation potential while minimizing risk to caregivers.

To address the issue of promoting residents' highest practical well-being, while providing functional furniture appropriate to residents' needs, including providing a comfortable alternative to bed-stay, Rutland has policies and procedures in place to assess a resident’s needs and preferences and create a customized interdisciplinary care plan to meet their individualized alternate seating needs, while maintaining a safe environment.

Acknowledgment of exception to 2018 FG1 3.1-2.2.2.2 is being provided under this demonstration project authorized by PHL §2808-e as a rigid application to the current space on the fourth floor of the DMRI building and fourth-floor Briger building would result in unreasonable hardship to the facility, any required structural changes are not feasible, and waiver of this provision will not impact resident health and safety. This determination is conditional upon the facility's immediate and ongoing implementation of policies and procedures and the provision of equipment and personnel as necessary to ensure a level of resident and staff safety and dignity of resident care services and care as required by regulation, the above-noted deficiency, and this determination notwithstanding. All policies and procedures must be acceptable to the Regional Office.

Approval for use of the fourth-floor Briger building as temporary space is time-limited for a period to expire upon completion of this project and not later than February 1, 2024.

Rutland Nursing Home, Inc. currently has no outstanding civil monetary penalties or pending enforcement.

**Quality Review**

| *Facility* | *Ownership Since* | *Overall* | *Health Inspection* | *Quality Measure* | *Staffing* |
|---|---|---|---|---|---|
| Rutland Nursing Home, Inc. | Current | *** | ** | ***** | *** |
| | 07/1974<br>Data 01/2009 | **** | *** | *** | **** |

***Data date**: 03/2022*

**Conclusion**

Rutland Nursing Home, Inc. is one of two providers in New York State awarded the opportunity to operate a Young Adult Demonstration Program. The program was created 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. 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 cost to renovate and add moveable equipment is projected to be $43,039,119, which is distributed as follows:

| | |
|---|---|
| Renovation and Demolition | $29,669,400 |
| Asbestos Abatement/Removal | 540,600 |
| Design Contingency | 1,186,776 |
| Construction Contingency | 2,966,940 |
| Planning Consultant Fees | 367,820 |
| Architect / Engineer Fees | 2,830,200 |
| Other Fees (Consultant) | 302,100 |
| Movable Equipment | 3,379,674 |
| Telecommunications | 1,558,200 |
| CON Application Fee | 2,000 |
| CON Processing Fee | 235,409 |
| Total Project Cost | $43,039,119 |

The total project cost of $43,039,119 will be met from the Kings County Health Care Facility Transformation Program (KCHCFTP) grant. The KCHCFTP is a $664M grant that provides capital funding to address the health care needs in Kings County served by the three hospitals and other OBHS facilities.

**Enterprise Operating Budget**

The applicant has submitted their current year (2020) enterprise operating budget in 2022 dollars consisting of all services provided by Rutland Nursing Home, for the first and third years after completion of this project. The budget projects a Year One net loss of $2,024,740 and a Year Three net income of $374,193. The loss in Year One includes $2,516,371 in depreciation expense, without which the operations would generate $491,631 in net income. Between the Current Year and Year One, Rutland anticipates a post-COVID-19 recovery in volume and revenue across its current service lines amounting to $4,898,499. In the Current Year, Rutland Nursing Home operated as a hospital-based facility, with Kingsbrook Jewish Medical Center (KJMC) allocating shared services to the nursing home as indicated in the Institutional Cost Report. Due to downsizing at KJMC, Rutland now operates as a freestanding facility and provides certain administrative, fiscal, housekeeping, plant operation, and maintenance services on a direct basis resulting in projected savings for the nursing home between the Current and First Year.

The budget is summarized as follows:

| | Current Year (2020) PD | Current Year (2020) Total | First Year (2025) PD | First Year (2025) Total | Third Year (2027) PD | Third Year (2027) Total |
|---|---|---|---|---|---|---|
| Revenue | | | | | | |
| Medicare FFS | $555.76 | $2,604,858 | $690.49 | $6,331,750 | $690.49 | $6,331,750 |
| Medicare MC | $554.76 | 2,619,585 | $504.91 | 2,673,000 | $504.91 | 2,673,000 |
| Medicaid FFS | $409.39 | 38,828,187 | $704.16 | 82,850,235 | $716.75 | 85,777,309 |
| Medicaid MC | $321.11 | 12,540,101 | $336.41 | 10,752,365 | $336.41 | 10,752,365 |
| Private Pay | $547.35 | 2,939,269 | $0 | 0 | $0 | 0 |
| All Other* | | 7,921,000 | $0 | 0 | $0 | 0 |
| Total | | $67,453,000 | | $102,607,350 | | $105,534,424 |
| | | | | | | |
| Expenses | | | | | | |
| Operating | $642.76 | $95,561,738 | $621.41 | $101,963,998 | $617.05 | $102,492,139 |
| Capital | 6.96 | 1,034,262 | 16.26 | 2,668,092 | 16.06 | 2,668,092 |
| Total | $649.72 | $96,596,000 | $637.67 | $104,632,090 | $633.11 | $105,160,231 |
| | | | | | | |
| Operating Gain/(Loss) | | $(29,143,000) | | $(2,024,740) | | $374,193 |
| Transfer from Related Party | | $30,791,000 | | | | |
| Net Income / (Loss) | | $1,649,000 | | | | |
| | | | | | | |
| Patient days | | 148,674 | | 164,084 | | 166,101 |
| Occupancy | | 87.41% | | 97.40% | | 97.65% |

** All Other revenue includes grant income and other income generated through operations.*

The following is noted for the Rutland Nursing Home operating budget:

- The Current Year reflects the facility's 2020 payor mix and 2020 audited financial statements. The historical occupancy rate for the base year 2020 was 87.41% for all service lines.
- The Medicaid Fee for Service (FFS) revenue increase between Current Year and Year One includes the addition of the Young Adult Program.
- The Medicare FFS revenue increase in Years One and Three is a combination of geriatric and ventilator-dependent rates based on Medicare FFS collections between October 2020 and September 2021, which averaged $630.00 per day inclusive of Medicare Parts A and B revenues and a market basket adjustment of 3.50%.
- Medicare Managed Care utilization in Years One and Three reflects an increase in the overall census at Rutland, which experienced reductions in census during 2020 as a result of the COVID-19 pandemic.
- Additional revenues include Medicaid reimbursement add-ons including supplemental payments, NHQI contributions, 1.5% ATB reduction, and historical cash receipt assessment data. The net impact of Medicaid reimbursement add-ons in Years One and Three amounts to $4,353,524, and $4,477,149, respectively.
- The applicant estimates approximately 16,425 patient days will be transitioned from Rutland's existing service lines to the Young Adult Program between the Current Year and Year One.
- Rutland's Skilled Nursing Facility (SNF) revenue, as shown in BFA Attachment F, is projected to decline in Years One and Three. The revenue decline is attributable to the conversion of 80 general RHCF beds to young adult beds.
- Census in the ventilator-dependent and pediatric service lines is expected to recover from pandemic-driven declines. Revenue increases, between Current Year and Year One, in BFA Attachment F, are based on the recovery of the census and an increase in average per diem rates.
- Expenses in the Current Year are based on actual stepdown/tracebacks from the 2020 RHCF-4 Cost Report. Expenses by service line are shown in BFA Attachment G.

- The applicant projects that during the First and Third years of the new bed complement the occupancy will be restored to reflect Rutland's overall historical levels of 93.48% and 96.24% in 2018 and 2019, respectively.

Utilization by payor source is projected as follows:

| Payor | Current Year | First Year | Third Year |
|---|---|---|---|
| Medicare FFS | 3.15% | 5.59% | 5.52% |
| Medicare MC | 3.18% | 3.22% | 3.19% |
| Medicaid FFS | 63.79% | 71.71% | 72.05% |
| Medicaid MC | 26.27% | 19.48% | 19.24% |
| Private Pay | 3.61% | 0.00% | 0.00% |
| Total | 100.00% | 100.00% | 100.00% |

Rutland's breakeven occupancy for the First- and Third-years beds is projected at 98.37% and 97.31%, respectively.

**Incremental Young Adult Program Operating Budget:**
The applicant has provided an incremental operating budget for the Young Adult Program at Rutland in 2022 dollars for Years One and Three, the incremental budget is summarized as follows:

| | Year One (2025) | | Year Three (2027) | |
|---|---|---|---|---|
| | Per Diem | Total | Per Diem | Total |
| Revenues | | | | |
| Medicaid | $1,451.20 | $38,176,851 | $1,451.20 | $41,103,925 |
| Total Revenue | | $38,176,851 | | $41,103,925 |
| | | | | |
| Expenses | | | | |
| Operating | $1,432.37 | $37,681,367 | $1,349.01 | $38,209,508 |
| Capital | $68.10 | 1,791,559 | $63.25 | 1,791,559 |
| Total Expense | $1,500.47 | $39,472,926 | $1,412.26 | $40,001,067 |
| | | | | |
| Net Income/(Loss) | | ($1,296,075) | | $1,102,858 |
| | | | | |
| Patient Days | | 26,307 | | 28,324 |
| Occupancy | | 90.09% | | 97.00% |

- For budget years One and Three, Medicaid revenues will be based on the operating component of pediatric residential health care facilities with an increase or decrease adjustment to account for any discrete expenses associated with caring for this population.
- Incremental young adult revenues include Medicaid reimbursement add-ons, including supplemental payments, NHQI contributions, 1.5% ATB reduction, and cash receipt assessments. The net impact of Medicaid reimbursement add-ons in Years One and Three amounts to $1,612,489, and $1,736,114, respectively. Based on the FY 2023 enacted budget, the applicant estimates Medicaid revenue projections to increase by approximately $2,214,000 and $2,284,000 in Years One and Three, respectively. Cash receipt assessment revenue is based on historical data and is based on revenues subject to the assessment.
- Year One and Three utilization is based on the applicant's current census and an assessment of 1,038 referrals for eligibility, of which the applicant identified 166 as eligible for potential admission to the Young Adult Program.
- Years One and Three reflect a reimbursement increase of $1,072 per day for patients eligible for young adult services that are currently in the geriatric population. The $1,072 per day is the difference between the estimated young adult rate and the current geriatric rate ($1,377 - $305 = $1,072). This equates to $28,201,104 more revenue for the young adult population as compared to the same utilization for geriatric patients.
- The young adult utilization in Year One is projected to be 26,307 days and will replace the baseline geriatric utilization at a higher reimbursement rate, with some reduced utilization in other areas.

- The staffing mix is based on standards of practice and experience with medically complex pediatric and young adult populations.
- Depreciation expense related to the Young Adult Unit construction is charged directly.

## Capability and Feasibility

Between 2019 and 2021, Rutland reported average negative working capital, net asset position, and net income of $9,930,333, $24,011,000, and $32,296,000, respectively, as shown in BFA Attachment B. In 2019 and 2020 Rutland reported an operating loss of $32,179,000 and $29,143,000, which was offset by $26,580,000 and 30,791,000 in transfer from related parties, respectively. In 2020, Rutland experienced negative impacts from the COVID-19 pandemic which continued into 2021. This is evident by the decline in occupancy during the 2020 and 2021 periods to 87.4% and 80.3% respectively as compared to the 2019 occupancy rate of 96.2%. Rutland's March 2022 internal financial statements indicate the facility maintained positive working capital, and negative net assets and reported an operating loss of $8,540,000 as shown in BFA Attachment C.

The total project cost of $43,039,119 will be met in full from the Kings County Health Care Facility Transformation Program grant. The working capital requirement for the Young Adult Program is $6,666,844 based on two months of the third-year expenses and will be satisfied from existing equity from the ongoing operations of OBHS. A review of financial statements for OBHS in BFA Attachments D and E indicates the entity has sufficient equity for the working capital requirements for this project. The submitted enterprise budget indicates a net loss of $2,024,740 and a net income of $374,193 will be generated for the first and third years, respectively. The loss in year one includes $2,516,371 in depreciation expense, without which the operations would generate $491,631 in net income. The budget appears reasonable.

As shown on BFA Attachment D, as of December 31, 2020, OBHS reported $13,791,000 in negative working capital, a $419,731,000 total net deficit, and an operating loss of $11,927,000 which was increased by $712,000 in non-operating losses and $11,049,000 in unfavorable impacts from pension-related changes resulting in a $23,670,000 net deficit. As shown in BFA Attachment E, for the period ending December 31, 2021, OBHS reported $46,849,000 in negative working capital, $386,509,000 total net asset deficit, and an operating loss of $351,136,000. The operating loss was reduced by $338,437,000 in non-operating revenues including VBP-QIP receipts of $221,779,000 and VAPAP receipts amounting to $114,878,000 resulting in a net deficit of $12,698,000. BFA Attachment F is OBHS's financial summary for period ending March 31, 2022, during which OBHS reported $86,027,000 in negative working capital, $383,525,000 total net asset deficit, and an operating loss of $116,137,000. The operating loss was offset by $139,994,000 in non-operating revenues, consisting of $55,445,000 in VBP-QIP and $84,105,000 in VAPAP receipts, resulting in excess of revenues over expenses of $23,857,000.

The projected system losses are expected to be offset through future system-wide transformation plan projects, including improvements to the post-acute care services, back-office and clinical service integration, proactive operating cash management strategies, or other corporate and clinical service line performance improvement initiatives planned but not yet implemented or quantified in the projection. The system's deficits are reflective of the challenges of financially distressed hospitals that serve communities with a high concentration of uninsured, under-insured, Medicaid, and Medicare enrollees, with complex medical and social, and economic needs, where the rate of growth of revenues does not keep pace with the rate of growth of expenses. The proposed Young Adult Program at Rutland is one of the post-acute care service initiatives and the capital component of the initiative is fully funded through the KCHCFTP grant.

## Conclusion

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

# Attachments

| | |
|---|---|
| BFA Attachment A | Organizational Chart |
| BFA Attachment B | Rutland Nursing Home, Inc. Financial Summary 2018-2021 |
| BFA Attachment C | Rutland Nursing Home, Inc. March 2022 Internal Financial Statements |
| BFA Attachment D | One Brooklyn Health System, Inc. 2020 Audited Financial Statements |
| BFA Attachment E | One Brooklyn Health System, Inc. December 2021 Internal Financial Statements |
| BFA Attachment F | One Brooklyn Health System, Inc. March 2022 Internal Financial Statements |
| BFA Attachment G | Rutland projected revenues by service line for Years 1 and 3 |
| BFA Attachment H | Rutland projected expenses by service line for Years 1 and 3 |

# Public Health and Health Planning Council

## Project # 221115-E
## Apex Surgical Center

| | | | |
|---|---|---|---|
| ***Program:*** | **Diagnostic and Treatment Center** | ***County:*** | **Oneida** |
| ***Purpose:*** | **Establishment** | ***Acknowledged:*** | **April 15, 2022** |

## Executive Summary

### Description
Westmoreland ASC, LLC d/b/a Apex Surgical Center, an existing multi-specialty Article 28 Ambulatory Surgery Center at 5325 State Route 233, Westmoreland (Oneida County), is seeking approval to transfer 48.87% of the membership interest in the Center from three withdrawing members and four existing members to two new individual members, one new member LLC comprised of multiple individual members, and two existing members, as depicted in the Program Review. Upon approval of this application, the Center will continue to be owned and operated by Westmoreland ASC, LLC, with no changes in location or services provided.

The Center has a transfer agreement with Oneida Health Hospital approximately 14.3 miles away. Greg Steven Orlando, M.D., will continue to serve as the Medical Center Director.

### OPCHSM Recommendation
Contingent Approval

### Need Summary
There will be no change to services as a result of this application.

### Program Summary
The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

### Financial Summary
There are no project costs associated with this application. The total purchase price for membership interests is $676,183, which will be met with equity from the proposed member's cash resources. The budget projects a net income of $200,349 in Year One and $91,719 by Year Three.

| | Year One (2023) | Year Three (2025) |
|---|---|---|
| Revenues | $9,257,076 | $9,257,707 |
| Expenses | $9,057,357 | $9,165,988 |
| Net Income | $200,349 | $91,718 |

## Recommendations

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

### Office of Primary Care and Health Systems Management
**Approval contingent upon:**
1. Submission of an executed building lease, acceptable to the Department. [BFA]
2. Submission of a photocopy of an executed an amended and executed Certificate of Amendment of the Articles of Organization of Westmoreland ASC, LLC, acceptable to the Department. [CSL]
3. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of SCD NY LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed Restated Operating Agreement of Westmoreland ASC, LLC, acceptable to the Department. [CSL]
5. Submission of an executed Operating Agreement of SCD NY LLC, acceptable to the Department. [CSL]
6. Submission of an executed Lease, 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 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]

### Council Action Date
July 28, 2022

# Need and Program Analysis

### Background

Apex Surgical Center is located at 5325 State Route 233, Westmoreland in Oneida County. There will be no change to services as a result of this application. The Center began operations in July 2015 providing orthopedic, plastic, and pain management surgery services.

### Character and Competence

The table below details the proposed change in ownership:

| Member | Current | Proposed |
|---|---|---|
| Rudolph Buckley, MD | 10.43% | 6.00% |
| Greg Orlando, MD | 10.43% | 8.00% |
| Russell LaFrance, MD | 10.43% | 11.50% |
| David Patalino, MD | 8.70% | 8.00% |
| James Dennison, MD | 8.70% | 7.00% |
| Andrew Wickline, MD | 8.70% | 11.50% |
| Denny Battista, MD | 4.35% | 3.00% |
| Oneida Health Systems, Inc | 17.40% | **0.00%** |
| Raymond Meeks, MD | 10.43% | **0.00%** |
| Michael Zahn, MD | 10.43% | **0.00%** |
| **John Sullivan, MD*** | **------** | **5.50%** |
| **Daniel Mendez, MD*** | **------** | **1.50%** |
| **SCD NY, LLC*** | **------** | **38.00%** |
| *Stacy Berner, MD (15.24%)* | | |
| *Nicole Facchina (1.32%)* | | |
| *Kelly Fox (15.24%)* | | |
| *Ian Friedman (2.63%)* | | |
| *Gregory George, MD (14.14%)* | | |
| *Emily Berend Grove (2.63%)* | | |
| *William Gueck, MD (5.26%)* | | |
| *Steven Hammerstrom (5.26%)* | | |
| *Christine Merryman (1.97%)* | | |
| *Sean O'Neal (10.53%)* | | |
| *Vivek Sood, MD (10.53%)* | | |
| *Ashley Urban (7.62%)* | | |
| *William Urban, Jr (7.62%)* | | |
| TOTAL | 100% | 100% |

****Subject to Character and Competence review*

**John Sullivan, MD** is an Orthopedic Surgeon at Slocum Dickson Medical Group, is a Chair of the Department of Orthopedics, and has been on the financial committee. He completed his medical degree at the New Jersey Medical School and his residency in Orthopedic Surgery at SUNY Downstate. He completed his Orthopedic Fellowship at Johns Hopkins University.

**Daniel Mendez, MD** is a Partner and Owner of CNY Spine and Pain Medicine, LLC. He was an Attending Physician at The Physical Medicine & Rehabilitation Center/Atlantic Health Care System. He was an Interventional Pain Physician at Advanced Surgery Center and at Patient Care Associates. He completed his medical degree at the Instituto Tecnologico de Santo Domingo and his residency in Internal Medicine and Physical Medicine and Rehabilitation at Nassau University Medical Center. He is board-certified in Physical Medicine and Rehabilitation.

**SCD NY, LLC**

SCD NY, LLC's members are principals of and children of principals of SurgCenter Development. SurgCenter Development has been involved in over 200 ASCs, including over 170 in the last ten years. It is SurgCenter Development's goal to create a generational business, whereby the children of the principals and employees of SurgCenter Development have the opportunity to learn the business and to eventually take over for their parents. As such, some of the children of principals of SurgCenter Development are being given the opportunity to participate as members of SCD NY, LLC. These lesser experienced members of SCD NY, LLC will be closely supervised by the SurgCenter Development team and by the more-experienced owners of SCD NY, LLC, including Dr. Stacey Berner, Dr. Gregory George, Dr. Vivek Sood, and Ian Friedman. See Program Attachment A for a listing of affiliated ASCs, with ownership percentages, for the proposed members of SCD NY, LLC.

**Stacey Berner, MD** is CEO, President, and Managing Principal of SurgCenter Development. She is responsible for day-to-day operations. She was previously an Orthopedic Hand Surgeon at Advanced Centers for Orthopedic Surgery and Sports Medicine. She practiced as an orthopedic hand surgeon, operated, and helped run the ASC. She received her medical degree from Tufts University School of Medicine and her residency in General Surgery and Orthopedics at Medical College of Virginia. She completed a fellowship in Hand and Microsurgery at the Hospital for Special Surgery.

**Nicole Facchina** is a full-time student at the University of Miami. She interned at an ASC in Miami for four months where her responsibilities included supporting various aspects of the business office including Human Resources and accounting roles. Nicole Facchina is the daughter of a principal of SurgCenter Development and will be able to rely on the SurgCenter Development team and by the more-experienced owners of SCD NY, LLC.

**Kelly Fox** is a Business Consultant for PricewaterhouseCoopers Advisory Services. Her responsibilities are driving day-to-day across ongoing salesforce applications as well as any strategic initiatives for the company using Agile methodology. She collaborates with stakeholders to define functional requirements for known or identified opportunities for improvement, provides technical demonstrations of enhancements to stakeholders, and develops documentation of the configuration specifications of the client's Salesforce instance. Kelly Fox is the daughter of a principal of SurgCenter Development and will be able to rely on the SurgCenter Development team and by the more-experienced owners of SCD NY, LLC.

**Ian Friedman** is an attorney and the Vice President and Principal of SurgCenter Development. He is responsible for managing and addressing any and all legal issues the ASCs may encounter. He also has significant involvement in the day-to-day operations of the ASCs and the healthcare businesses. He was previously employed as an Associate Attorney at Ober, Kaler, Grimes & Shriver and his focus was healthcare and healthcare practice.

**Gregory George, MD** is a retired Ophthalmologist. He is a Founding Principal of SurgCenter Development. He is responsible for key business making decisions and voting on items delineated in the bylaws. He received his medical degree from Duke University.

**Emily Ellis Berend Grove** is a Ministry Director at Wheaton Young Life. She has previous volunteer experience. Her father is a surgeon and Principal of SurgCenter Development, and she will be able to rely on the SurgCenter Development team and by the more-experienced owners of SCD NY, LLC.

**William Gueck, MD** is a retired Emergency Room Physician. He is a Principal of SurgCenter Development, LLC. Since joining SurgCenter, Dr. Gueck has participated in and helped operate over 100 ASCs. He received his medical degree from St. Louis University School of Medicine and completed his residency in Internal Medicine at Mercy Medical Center in Missouri and his Emergency Medical residency in the Air Force.

**Steven Hammerstrom, MD** is a Principal at SurgCenter Development. He was previously a Founding Partner of six Comprehensive Foot Centers. He received his medical degree from the University of Osteopathic Medicine and Health Sciences and completed his residency in Podiatric Surgery at J.L. Pettis Memorial Hospital.

**Christine Merryman** is retired and was previously an Owner and Partner of SurgCenter Development. She played an active role in the development and day-to-day management of the team of healthcare professionals. She was directly involved in supporting over 200 physician-owned ASCs.

**Sean O'Neal** is the founding CEO and President of SurgCenter Development. He was previously employed as a hospital CEO for 20 years.

**Vivek Sood, MD** is a Managing Principal of SurgCenter Development. He is responsible for serving as one of three managers, the COO, and the Secretary of the company. He will be actively involved in the business decisions and be SCD NY, LLC's representative on the board of managers. He is also an Attending Physician and Surgeon at Bay Area Orthopedics & Sports Medicine, at Anne Arundel Medical Center, and at University of Maryland Baltimore Washington Medical Center. He received his medical degree from SUNY Health Sciences at Brooklyn and completed his residency in Orthopedic Surgery at SUNY Health Sciences at Brooklyn. He received subspecialty training in foot and ankle surgery at Mount Sinai Medical Center. He is board-certified in Orthopedic Surgery.

**Ashley Urban** is an undergraduate student at Syracuse University. Her father is a spinal surgeon and Principal of SurgCenter Development, and she will be able to rely on the SurgCenter Development team and by the more-experienced owners of SCD NY, LLC.

**William Urban** graduated in May 2022 from the University of Notre Dame with a Bachelor of Business Administration, majoring in Finance. He held several summer internships, including an Investment Banking intern at M&T Bank, a Private Wealth Management intern at Royal Bank of Canada, and a Commercial Real Estate intern at Rosso Commercial Real Estate Services. His father is a spinal surgeon and Principal of SurgCenter Development, and she will be able to rely on the SurgCenter Development team and by the more-experienced owners of SCD NY, LLC.

## Legal Disclosures and Enforcements

- In November of 2019, two former Members of South Bend Specialty Surgery Center, LLC, a facility in which SurgCenter was an owner until April of 2018, filed a lawsuit against South Bend Specialty Surgery Center, SurgCenter Development, and other Members of South Bend Specialty Surgery Center alleging that their dissociation from the surgery center in early 2018 was improper. The litigation was promptly transferred to Arbitration. The arbitration is still pending, but to date, all but one of the plaintiffs' claims were dismissed via summary judgment and the remaining claim remains under consideration from the Arbitrator who will rule upon it after receiving additional briefings on that one issue.
- Advanced Surgical Care of Baton Rouge received Condition level citations from a survey ending on November 6, 2016, related to deficient practice regarding Surgical Services and Infection Control.
- Advanced Surgical Care of Bethesda received citations from a survey ending on August 30, 2018, related to deficient practices regarding Governing Body & Management and Infection Control. Specifically, the governing body failed to provide oversight of all the activities of the ASC and the administration failed to ensure that all measures to prevent infection control were practiced at the facility.
- Delaware River Surgical Suites, LLC received citations from a survey completed on August 6, 2020. Specifically, the facility failed to comply with an approved exception by not having documented post-surgery recovery plans, the facility failed to ensure patients were properly identified prior to a surgical procedure by the practitioner, and the facility failed to segregate their quality assurance and performance improvement data.
- In August 2015, SurgCenter of West Texas, LLC paid a $4,400 fine for survey deficiencies related to required info/medical records, personnel/equipment policies and procedures, anesthesia services, and reporting incidents.

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

### Program
The service area consists of Oneida County. According to Data USA, 96% of the population of Oneida County has health coverage as follows:

| | |
|---|---|
| Employer Plans | 46.0% |
| Medicaid | 23.5% |
| Medicare | 13.7% |
| Non-Group Plans | 11.4% |
| Military or VA | 1.4% |

The center has Medicaid managed care contacts with the following: BCBS Excellus, CDPHP, Fidelis, MVP, and United Healthcare. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment. The following table shows the center's historical utilization and Medicaid share.

| | **2018** | **2019** | **2020** |
|---|---|---|---|
| Visits | 4,194 | 4,462 | 3,367 |
| Medicaid | 15.2% | 12.5% | 13.5% |

The center is current with its SPARCS reporting.

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

## Financial Analysis

### Operating Budget
The applicant has submitted the 2020 current year budget and first and third years operating projected budget, in 2022 dollars, as summarized below:

| | **Current Year 2020** | | **Year One 2023** | | **Year Three 2025** | |
|---|---|---|---|---|---|---|
| | **Per Proc.** | **Total** | **Per Proc.** | **Total** | **Per Proc.** | **Total** |
| Revenues | | | | | | |
| Commercial FFS | $1,140.20 | $3,811,699 | $1,140.20 | $4,087,805 | $1,140.20 | $4,807,805 |
| Commercial MC | $1,271.58 | 490,828 | $1,271.58 | 526,382 | $1,271.58 | 526,382 |
| Medicare FFS | $827.87 | 1,106,033 | $827.87 | 1,186,150 | $827.87 | 1,186,150 |
| Medicare MC | $740.10 | 792,652 | $740.10 | 850,069 | $740.10 | 850,069 |
| Medicaid FFS | $705.62 | 825,449 | $705.62 | 885,242 | $705.62 | 885,242 |
| Medicaid MC | $609.03 | 22,035 | $609.03 | 23,631 | $609.03 | 23,631 |
| Other Rev. Sources | | 2,074,175 | | 10,000 | | 10,000 |
| Total Revenues | | $9,122,871 | | $9,257,706 | | $9,257,706 |

| | Current Year 2020 | | Year One 2023 | | Year Three 2025 | |
|---|---|---|---|---|---|---|
| | Per Proc. | Total | Per Proc. | Total | Per Proc. | Total |
| Expenses | | | | | | |
| Operating | $1,007.79 | $8,437,702 | $869.55 | $8,312,912 | $862.86 | $8,421,543 |
| Capital | $61.27 | 545,118 | $77.87 | 744,445 | $76.27 | 744,445 |
| Total Expenses | $1,069.05 | $8,982,240 | $947.42 | $9,057,357 | $939.14 | $9,165,988 |
| Net Income | | $140,451 | | $200,349 | | $91,718 |
| Utilization (Procedures) | | 8,914 | | 9,760 | | 9,760 |
| Cost Per Procedure | | $1,069.05 | | $947.42 | | $939.14 |

The following is noted with respect to the submitted budget:

- Revenues, expense, and utilization are based on historical experience from procedures being performed at this practice.
- Other Rev includes no-fault, workers' compensation, Small Business Administration Paycheck Protection Program grant ($436,836), and Provider Relief Fund grant ($54,580) in the current year. COVID-related other revenues are not projected to reoccur in years One and Three.
- Projected payor rates are based on the current year's rates for a conservative Year One and Three projection.
- Operating expenses are based on the current year's operating expenses, increasing to account for inflation in Years One and Three.
- Current year utilization and revenues are based on the facility 2020 Certified Financial Statements.
- Year One and Three utilization is based on the facility's forecasted growth and additional procedures new member, John P. Sullivan, M.D. will be performing at the Center.
- Utilization by the payor for the current, first and third years is anticipated as follows:

| Payor | Current-2020 | Year One-2023 | Year Three-2025 |
|---|---|---|---|
| Commercial FFS | 37.50% | 36.73% | 36.73% |
| Commercial MC | 4.33% | 4.24% | 4.24% |
| Medicare FFS | 14.99% | 14.68% | 14.68% |
| Medicare MC | 12.01% | 11.77% | 11.77% |
| Medicaid FFS | 13.13% | 12.86% | 12.86% |
| Medicaid MC | .40% | .40% | .40% |
| Other | 17.64% | 17.64% | 17.64% |
| Charity | 0 | 2.05% | 2.05% |
| Total | 100% | 100% | 100% |

### Membership Interest Purchase Agreement

The applicant submitted an executed membership interest purchase agreement exchanging the membership transfers which will be effectuated upon PHHPC approval as shown below.

| | |
|---|---|
| Date: | August 3, 2021 |
| Facility: | Westmoreland ASC, LLC d/b/a Apex Surgical Center |
| Sellers: | Raymond Meeks, M.D.; Michael Zahn, M.D.; Rudolph Patalino, M.D.; Greg Orlando, M.D.; Oneida Health Systems, Inc. |
| Buyers: | SCD NY, LLC; SDNY 38%; John Sullivan, M.D. 5.5%; Daniel Mendez, M.D. 1.5%. Current owners purchasing more membership interest; Russell Lafrance, M.D.; Andrew Wickline, M.D. |
| Purchase Price: | $676,183 |
| Payment: | At the closing, the purchase price will be paid proportionally by all members. |

### Lease Agreement

The applicant has submitted a draft new or amended lease agreement for the proposed site, the terms of which are summarized below:

| | |
|---|---|
| Premises: | 17,292 +/- Square Feet located at 5325 State Route 233, Westmoreland. |
| Landlord: | Westmoreland Development Company NY, LLC. |
| Lessee: | Westmoreland ASC, LLC |
| Term: | 2 successive five-year terms after the original totaling 10 years. |
| Rental: | Monthly base rent is $30,643.02 or $367,716.24 annually. |
| Provisions: | The lease is Triple Net where the tenant shall be responsible for gas, utilities, losses, damages, and any unforeseen costs associated with the property. |

The lease agreement is a non-arm's length agreement as Westmoreland Development Company indicated there is a relationship between the landlord and tenant as there is common ownership between the realty and operations. The applicant submitted two letters of rent reasonableness from two licensed New York Realtors.

### Capability and Feasibility

There are no project costs with this application. The purchase price for the transfer in membership cost is $676,183, to be paid at the closing proportional to each member's interest. Ian Friedman of SCD NY, LLC, submitted an executed disproportionate share affidavit stating he will contribute personal resources disproportionate to his interest to help any other member of SCD NY, LLC. The applicant has demonstrated sufficient funds to meet the equity requirements as shown in BFA Attachment A. The working capital requirement is $1,509,560 based on two months of Year One expenses. The applicant will fund working capital from operations.

The submitted budget projects a net income of $200,349 in Year One and $91,718 by Year Three of project implementation. The budget appears reasonable.

A review of BFA Attachment D, 2019-2020 certified financial statements, 2021 year-end financial statement, and 2022 first quarterly internal financial statement, show the entity maintained positive working capital and net asset positions for both years. The facility achieved a net income of $43,624 and $140,451 during 2019 and 2020, respectively. December 31, 2021, year-end internal financial statement shows a positive working capital and equity position and achieved a positive net income of $1,138,147. On March 31, 2022, the facility maintained a positive working capital and a positive equity position and achieved a net income of $489,678.

### Conclusion

Subject to the noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner.

## Attachments

| | |
|---|---|
| Program Attachment A | List of Affiliated ASCs and Ownership Interests |
| BFA Attachment A | Net Worth Statement Proposed Membership |
| BFA Attachment B | Current and Proposed Membership after PHHPC approval |
| BFA Attachment C | Pro forma Balance Sheet – Westmoreland ASC, LLC (Apex) |
| BFA Attachment D | Certified Financial Statement of Westmoreland ASC, LLC for 2019 and 2020<br>Internal year-end 2021 financial statement and 1/1/22 - 3/31/22 F/S |

# Public Health and Health Planning Council

## Project # 221070-B
## Pinpoint Medical, LLC

| | | | |
|---|---|---|---|
| ***Program:*** | **Diagnostic and Treatment Center** | ***County:*** | **Kings** |
| ***Purpose:*** | **Establishment and Construction** | ***Acknowledged:*** | **March 22, 2022** |

## Executive Summary

### Description
Pinpoint Medical, LLC (Center) requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) at 649 39th Street, Brooklyn (Kings County). Pinpoint Medical, LLC is a newly formed entity whose sole member is Ateres Mordechai, an existing not-for-profit corporation. The board of managers of Pinpoint Medical, LLC and the board of directors of Ateres Mordechai are identical and listed below:

| Pinpoint Medical, LLC | |
|---|---|
| Member | Interest |
| **Ateres Mordechai** | **100%** |
| Board Members | |
| *Benzoin Wachsman* | |
| *Chaim Vorst* | |
| *Yoel Wizel* | |

Ateres Mordechai (d/b/a Challenge Early Intervention Center) is an existing early intervention program that provides services for children from birth to three for those that are either suspected or are at risk of developmental delays/disabilities.

As part of this project, necessary renovations will be made for the space to meet the regulatory standards of an Article 28 D&TC. The Center will provide primary care and other medical specialties including infectious disease, pulmonology, endocrinology, and cardiology.

Mark Sonnenschine, D.O. will serve as Medical Director of the Center. Dr. Sonnenschine is board certified in hematology and oncology.

The Center expects to enter into a Transfer and Affiliation Agreement for backup and emergency services with Maimonides Medical Center, which is located one mile and 5 minutes driving time from Pinpoint Medical.

### OPCHSM Recommendation
Contingent Approval

### Need Summary
The center will be located in a HRSA designated Health Professional Shortage Area for Primary Care. The applicant projects 36,751 visits in Year One and 44,100 in Year Three, with Medicaid utilization projected at 40% and Charity Care at 2%.

### Program Summary
The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

### Financial Summary
Total project costs of $2,494,577 will be met with cash from Ateres Mordechai. The budget projects a net income of $518,152 in the first year of operations and increases to $858,239 by the third year.

| Budget | Year One | Year Three |
|---|---|---|
| Revenues | $4,876,445 | $5,943,132 |
| Expenses | 4,358,293 | 5,084,893 |
| Net Income | $518,152 | $858,239 |

# Recommendations

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

### Office of Primary Care and Health Systems Management
**Approval contingent upon:**
1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease acceptable to the Department of Health. [BFA]
3. 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]
5. Submission of an executed copy of the Articles of Organization that is acceptable to the Department. [CSL]
6. Submission of an executed copy of a Lease agreement that is acceptable to the Department. [CSL]
7. Submission of an executed copy of the Operating Agreement that is acceptable to the Department. [CSL]
8. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

**Approval conditional upon:**
1. This project must be completed by **July 1, 2023**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and 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 **January 1, 2023,** and construction must be completed by
3. **April 1, 2023**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: https://www.health.ny.gov/facilities/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
July 28, 2022

# Need and Program Analysis

**Program Description**

| | |
|---|---|
| **Proposed Operator** | Pinpoint Medical, LLC |
| **To Be Known As** | Pinpoint Medical |
| **Site Address** | 649 39th Street<br>Brooklyn, New York 11232 (Kings County) |
| **Services** | Medical Services-Primary Care<br>Medical Services-Other Medical Specialties<br>Infectious Disease<br>Pulmonology<br>Endocrinology<br>Cardiology |
| **Hours of Operation** | Monday through Friday 8:00 am to 6:00 pm<br>As volume dictates, Saturday 8:30 am to 6:00 pm |
| **Staffing (1st Year / 3rd Year)** | 23.75 FTEs / 29.25 FTEs |
| **Medical Director(s)** | Mark Sonnenschine, D.O. |
| **Emergency, In-Patient, and Backup Support Services Agreement and Distance** | Expected to be provided by<br>Maimonides Medical Center<br>0.9 miles / 5 minutes away |

**Background**

The primary service area is the Sunset Park neighborhood in Kings County. Sunset Park is a HRSA designated Health Professional Shortage Area for Primary Care and Kings County is a HRSA designated Medically Underserved Area/Population.

The population of Kings County was 2,736,074 in 2020 and is expected to grow to 2,810,876 by 2025. According to Data USA, in 2019 93.7% of the population in Kings County has health coverage as follows:

| | |
|---|---|
| Employer Plans | 41.7% |
| Medicaid | 33.2% |
| Medicare | 8.05% |
| Non-Group Plans | 10.5% |
| Military or VA | 0.222 |

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 Kings County is slightly lower than the New York State rate.

| **Hospital Admissions per 100,000 Adults for Overall PQIs** | | |
|---|---|---|
| PQI Rates: 2017 | Kings | New York State |
| All PQIs | 1,358 | 1,431 |

The applicant projects 36,751 in Year One and 44,100 in Year Three. Medicaid utilization is projected at 40% and charity care at 2%. The applicant has committed to serving all persons in need without regard to the ability to pay or source of payment.

## Character and Competence

The sole member of Pinpoint Medical LLC is Ateres Mordechai, a not-for-profit corporation. The board of managers of Pinpoint Medical, LLC and the board of directors of Ateres Mordechai are identical and listed below:

| Pinpoint Medical, LLC | |
|---|---|
| Member | Interest |
| **Ateres Mordechai** | **100%** |
| Board Members | |
| *Benzoin Wachsman* | |
| *Chaim Vorst* | |
| *Yoel Wizel* | |

**Chaim Vorst** has been the President of Card Process Corp. since January 2022. He is the Owner of Fly with Sam, LLC, a travel agency, since January 2022. He was previously employed as the CFO of Universal Merchant Inc., a credit card processing company, for 10 years. He has been a member of the Board of Directors of Ateres Mordechai for over 17 years.

**Benzoin Wachsman** has been the Executive Director and on the board of Ateres Mordechai d/b/a Challenge Early Intervention Center for 32 years. He is responsible for supervising and directing all aspects of the administrative and clinical functions and the overall integrity of the agency. He is also responsible for service provisions, regulatory compliance, budgeting and finance, administrative policy and procedures, staff recruiting and hiring, community outreach, facility maintenance, ongoing internal quality assurance, implementing improvements in the agency operations, new facility design, and construction contracts.

**Yoel Wizel** has been a Project Manager and Estimator for six years at Congregation Yetev Lev and Supreme Construction. He oversaw the construction of Congregation Yetev Lev. He was previously employed as a Commercial Insurance Broker. He has been on the Board of Directors for Ateres Mordechai since September 2021.

**Mark Sonnenschine, DO** is the proposed Medical Director. He is a practicing Oncologist and Hematologist. He is currently in private practice at Progressive Hematology and Oncology PLLC. He is also an Attending Oncologist and Hematologist at Coney Island Hospital. He was previously employed at Hematology and Medical Oncology, PC, and was previously the Chief of Ambulatory Hematology and Medical Oncology and the Director of Infusion Services at Lutheran Medical Center. He received his medical degree from New York College of Osteopathic Medicine. He completed his residency in Internal Medicine and fellowship in Hematology/Oncology at Maimonides Medical Center. He is board-certified in Hematology and Medical Oncology.

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

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

### Conclusion

The center will be located in an area designated as a Health Professional Shortage Area for Primary Care. The number of projected visits is 36,751 in Year One and 44,100 in Year Three, with Medicaid utilization projected at 40% and Charity Care at 2%. Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

## Financial Analysis

### Total Project Cost and Financing

The total project cost of $2,494,577 are detailed as follows:

| | Total Project Costs |
|---|---|
| Renovation & Demolition | $1,801,752 |
| Design Contingency | 90,087 |
| Construction Contingency | 36,036 |
| Architect/Engineering Fees | 142,010 |
| Other Fees | 150,000 |
| Movable Equipment | 259,058 |
| Application Fee | 2,000 |
| Processing Fee | 13,634 |
| Total Project Cost | $2,494,577 |

The applicant's financing plan appears as follows:

| | |
|---|---|
| Equity from Ateres Mordechai | $2,494,577 |
| Total | $2,494,577 |

### Operating Budget

The applicant has submitted an operating budget, in 2022 dollars, for the first and third years, as follows:

| | First Year (2023) | | Third Year (2025) | |
|---|---|---|---|---|
| Revenues | Per Visit | Total | Per Visit | Total |
| Commercial FFS | $140 | $1,440,600 | $143 | $1,763,294 |
| Medicare FFS | $175 | 321,650 | $179 | 393,593 |
| Medicare MC | $140 | 1,029,000 | $143 | 1,259,496 |
| Medicaid FFS | $150 | 1,101,251 | $150 | 1,321,501 |
| Medicaid MC | $118 | 866,271 | $120 | 1,060,316 |
| Private Pay | $200 | 367,600 | $204 | 449,820 |
| Bad Debt | | (249,927) | | (304,888) |
| Total | | $4,876,445 | | $5,943,132 |
| | | | | |
| Expenses | | | | |
| Operating | | $3,897,739 | | $4,615,486 |
| Capital | | 460,554 | | 469,408 |
| Total Expenses | $119 | $4,358,293 | $115 | $5,084,894 |
| | | | | |
| Net Income/(Loss) | | $518,152 | | $858,238 |
| | | | | |
| Visits | 36,753 | | 44,100 | |

With respect to the budget:

- The Medicaid rate and revenue projections are based on the Freestanding APG Base Rates using Full APG Investment obtained from the New York State Department of Health's website. A previously approved rate of $169.02 was utilized in the budget projections. This rate has been utilized conservatively by excluding the per diem that would be allowed for the capital component of the rate.

- For other payors, the applicant identified the most prevalent services for each payor class and the related reimbursement that would be used for their Medicare recipients.
- Expenses and utilization are based on a review of cost reports for other Article 28 Diagnostic & Treatment Centers in the same service area, including an evaluation of staffing ratios, staffing costs, disposable items, medical supplies, etc.
- Utilization is based upon input from the proposed medical director and conversations with various medical providers who have expressed an interest in providing services at the Article 28 D&TC. These providers believe the growth assumptions to be achieved by year three of operation are reasonable.
- Utilization by payor source for the first and third year is summarized below:

| | Year One 2023 | | Year Three 2025 | |
|---|---|---|---|---|
| Payor | Visits | % | Visits | % |
| Commercial FFS | 10,290 | 28.00% | 12,348 | 28.00% |
| Commercial MC | 0 | 0.00% | 0 | 0.00% |
| Medicare FFS | 1,838 | 5.00% | 2,205 | 5.00% |
| Medicare MC | 7,350 | 20.00% | 8,820 | 20.00% |
| Medicaid FFS | 7,350 | 20.00% | 8,820 | 20.00% |
| Medicaid MC | 7,350 | 20.00% | 8,820 | 20.00% |
| Private Pay | 1,838 | 5.00% | 2,205 | 5.00% |
| Charity | 737 | 2.00% | 882 | 2.00% |
| Total by Payor | 36,753 | 100.00% | 44,100 | 100.00% |

## Lease Agreements

The applicant has submitted an executed assignment and assumption of lease agreement for the existing site, as summarized below. There is common ownership between Ateres Mordechai and Pinpoint Medical, LLC.

**Draft Prime Lease**

| | |
|---|---|
| Date: | November 1, 2021 |
| Premises: | 649 39th Street, Brooklyn, New York 11232 (Approximately 35,696 square feet) |
| Landlord: | Torah M'Sinai Inc |
| Tenant: | Ateres Mordechai d/b/a Challenge Early Intervention |
| Term: | 10 Year Term |
| Rent: | Fixed Annual Rent<br>Year 1 annual rent of $960,000.00 and increasing 3% annually afterward |
| Provisions: | Tenant is responsible for all utilities and furnishings. Tenant shall contract directly with the utility companies in connection with gas, electric, and communications. |

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

**Draft Sub-Lease**

| | |
|---|---|
| Date: | December 1, 2021 |
| Premises: | 649 39th Street, Brooklyn, New York 11232 (Approximately 6,300 square feet) |
| Tenant: | Ateres Mordechai d/b/a Challenge Early Intervention |
| Sub-Tenant: | Pinpoint Medical LLC |
| Term: | 5-year term shall commence upon approval and a renewal period of approximately 5 years. |
| Rent: | Fixed Annual Rent<br>Year 1 rent of $214,200.00 with annual increases of 2% afterward. |
| Provisions: | Subtenant is responsible for their proportionate share (30%) of the cost of all utilities and maintenance related to the leased premises. |

There is a relationship between the Tenant, Ateres Mordechai d/b/a Challenge Early Intervention, and sub-tenant Pinpoint Medical, LLC a/k/a applicant. Ateres Mordechai d/b/a Challenge Early Intervention is the sole member of Pinpoint Medical LLC. The applicant has submitted two letters of rent reasonableness.

### Capability and Feasibility

The total project cost of $2,494,577 will be met with equity from Ateres Mordechai. Working capital requirements are estimated at $847,482 based on two months of third-year expenses and will be funded from Ateres Mordechai operations. A review of BFA Attachment A, Internal Financial Statements ending June 30, 2021, for Arteres Mordechai, indicates the availability of sufficient resources to meet the equity contribution for the project cost and any working capital needs.

The submitted incremental budget indicates a net income of $518,152 in the first year and $858,238 in the third year. The budget is reasonable.

BFA Attachment A shows Ateres Mordechai recorded a Net Income of $722,401.55 and maintained a positive working capital and net asset position for the period. BFA Attachment B is the Pro Forma Balance Sheet for Pinpoint Medical, LLC and shows members' equity of $3,342,059.

### Conclusion

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

## Attachments

| | |
|---|---|
| BHFP Attachment | Map |
| BFA Attachment A | Unaudited Financial Statements for Ateres Mordechai |
| BFA Attachment B | Pinpoint Medical, LLC Pro-Forma Balance Sheet |

# Public Health and Health Planning Council

## Project # 192027-E
## Crest Opco LLC d/b/a
## Crest Manor Living and Rehabilitation Center

| | | | |
|---|---|---|---|
| *Program:* | Residential Health Care Facility | *County:* | Monroe |
| *Purpose:* | Establishment | *Acknowledged:* | August 5, 2019 |

## Executive Summary

### Description

Crest Opco LLC, d/b/a Crest Manor Living and Rehabilitation Center, a New York limited liability company, requests approval to be established as the new operator of Crest Manor Living and Rehabilitation Center (Crest Manor), an 80-bed, proprietary Article 28 Residential Health Care Facility (RHCF) at 6745 Pittsford-Palmyra Road, Fairport (Monroe County), currently operated by Crest Manor Living and Rehabilitation Center, Inc. The real property is owned by Crest 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 Crest Opco LLC, and the facility will be named Crest Manor Living and Rehabilitation Center.

On October 11, 2017, Crest Opco LLC entered into the Asset Purchase Agreement with Crest Manor Living and Rehabilitation Center, Inc. for the sale and acquisition of the RHCF operating interests for a purchase price of $100,000.

The proposed operator is Crest Opco, LLC, whose members are listed below:

| Crest Opco, LLC | |
|---|---|
| CME JM OPCO Holdings, LLC | 100% |
| *Jennifer Farkas (45%)* | |
| *Eli Gibber (15%)* | |
| *Avrohom (Josh) Brown (30%)* | |
| *Michael Lebovics (10%)* | |
| **Total** | **100%** |

CON 192026, in which the same proposed members of this application sought approval to acquire the operating interest of East Side Nursing Home, an 80-bed RHCF located in Warsaw (Wyoming County), was contingently approved by PHHPC on June 2, 2022.

On October 10, 2017, Milrose Nation Trust LLC (Milrose) negotiated an Agreement for Transaction Document (ATD) and a Contract of Sale (COS) for the operating and realty interests in Crest Manor and East Side RHCFs. The interests in Crest Manor were subsequently transferred to Crest Opco, LLC and Crest Manor Propco LLC (operations and realty, respectively).

### 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

Crest Opco LLC will acquire the RHCF's operations for $100,000 funded by members' equity. There are no project costs associated with this application. The submitted budget is as follows:

| Budget | Current Year | Year One | Year Three |
|---|---|---|---|
| Revenues | $8,585,364 | $8,190,800 | $8,235,900 |
| Expenses | $8,370,391 | $7,763,400 | $7,825,800 |
| Income | $214,973 | $427,900 | $410,100 |

# Recommendations

**Long Term Care Ombudsman Program**
The LTCOP recommends Approval. (See LTCOP Attachment A)

**Health Systems Agency**
The Finger Lakes HSA recommends Approval.

**Office of Primary Care and Health Systems Management**
**Approval contingent upon:**
1. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
2. 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].
3. 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: a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program; b. 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 c. 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]
4. Submission of a photocopy of an amended and executed Lease Agreement, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Operations Transfer Agreement or Asset Purchase Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed Application for Authority for CME JM Opco Holdings LLC, acceptable to the Department. [CSL]
7. 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. 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]

## Council Action Date
July 28, 2022

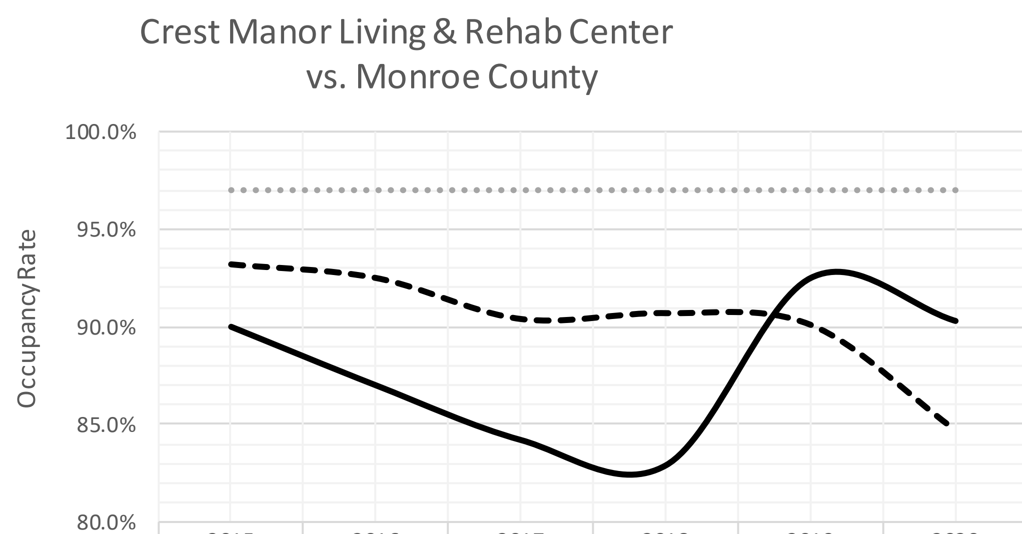
# Need and Program Analysis

**Program Information**

| | Existing | Proposed |
|---|---|---|
| **Facility Name** | Crest Manor Living and Rehabilitation Center | Crest Manor Living and Rehabilitation Center |
| **Address** | 6745 Pittsford-Palmyra Road Fairport, NY 14450 (Monroe) | 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** | Crest Manor Living and Rehabilitation Center, Inc | Crest OPCO LLC<br><br><u>Members</u><br>Avrohom Josh Brown* 30%<br>Jennifer Farkas 45%<br>Eli Gibber 15%<br>Michael Lebovics* 10%<br><br>**Managing Members* |

**Analysis**

The primary service area is Monroe County




| | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
|---|---|---|---|---|---|---|
| Facility | 90.0% | 87.0% | 84.2% | 82.9% | 92.5% | 90.3% |
| Monroe County | 93.2% | 92.5% | 90.4% | 90.7% | 90.1% | 84.7% |

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. The facility has recently seen improvement in occupancy.

## 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.

Crest Manor Living and Rehab's Medicaid admissions rate was below the threshold of 75% of Monroe County, as demonstrated below:

| Medicaid Access | 2018 | 2019 | 2020 |
|---|---|---|---|
| Monroe County Total | 17.1% | 15.0% | 17.6% |
| Monroe Threshold Value | 12.8% | 11.2% | 13.2% |
| Crest Manor Living & Rehab | 14.7% | 9.1% | 14.7% |

## 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:

<u>Massachusetts Nursing Home</u>:
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** were also recently reviewed for CON 192026 Eastside Nursing Home.

### Quality Review

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** | | | | | |
| Crest Manor Living and Rehabilitation Center | Subject Facility | *** | *** | **** | ** |
| **Massachusetts** | | | | | |
| Park Ave Health Center | Current | * | * | **** | *** |
| | 09/2021 | ** | *** | **** | * |

***Data date***: *06/2022*

### Enforcement History

Park Ave Health Center:

- 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 has been the Chief Operating Officer of East Side Nursing Home and Crest Manor Living and Rehabilitation since May 2019 and a review of the nursing homes since that date show:

East Side Nursing Home:

- 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.

Crest Manor Living and Rehabilitation:

- The facility was assessed a federal CMP of $655 on 07/12/2021 for failure to report COVID data.

### Conclusion

There will be no changes to beds or services as a result of this project 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 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 |
| Commercial FFS | $599.31 | $211,557 | $356.76 | $198,000 | $360.18 | $199,900 |
| Medicare FFS | $597.73 | 1,450,090 | $572.01 | 1,428,300 | $577.73 | 1,442,600 |
| Medicare MC | $512.07 | 1,012,873 | $500.00 | 668,000 | $500.00 | 668,000 |
| Medicaid FFS | $165.42 | 1,938,678 | $208.70 | 2,794,542 | $208.70 | 2,794,542 |
| Medicaid MC | $217.93 | 950,836 | $208.70 | 910,558 | $208.70 | 910,558 |
| Private Pay | $477.42 | 2,673,052 | $386.07 | 2,161,600 | $391.09 | 2,189,700 |
| Other Oper Revenue* | | 97,865 | | 29,800 | | 30,600 |
| Total Oper Revenue | | $8,334,951 | | $8,190,800 | | $8,235,900 |
| Non-Operating Revenue | | 250,413 | | 0 | | 0 |
| Total | | $8,585,364 | | $8,190,800 | | $8,235,900 |
| | | | | | | |
| Expenses | | | | | | |
| Operating | $284.18 | $7,513,318 | $254.81 | $7,068,400 | $257.06 | $7,130,800 |
| Capital | 32.42 | 857,073 | 25.05 | 695,000 | 25.05 | 695,000 |
| Total Expenses | $316.59 | $8,370,391 | $279.86 | $7,763,400 | $282.11 | $7,825,800 |
| | | | | | | |
| Net Income/(Loss) | | $214,973 | | $427,400 | | $410,100 |
| | | | | | | |
| Patient Days | | 26,439 | | 27,740 | | 27,740 |
| Utilization % | | 90.54% | | 95.00% | | 95.00% |
| Breakeven % | | 90.93% | | 90.03% | | 90.25% |

**Other Operating Revenue includes Cafeteria, Cash Discounts & Rebates, Barber & Beauty, Contributions, Other Income, ISNP Shared Savings, Rochester RHIO Revenue, COVID I-pad Grant, and Insurance Proceeds- Elevator*

The following is noted for the submitted budget:

- Private pay rates are based on the published rate of $385 plus the approximately 6.8% cash receipts assessment.
- Commercial rates are based on contractual agreements with third-party insurance providers. The facility used conservative assumptions with these rates for Years One and Three.
- Medicaid revenue is based on the facility's current 2020 Medicaid Regional Pricing rates plus assessments.
- The $348,278 variance between the 2020 operating revenue in the certified financial statements and the total current year revenue reported in the budget is other revenue listed above and non-operating revenue. In the financial statements, this amount is reported on a non-operating line labeled Cares Act Provider Relief funds of $250,413 and a line marked all other for $97,865.
- Avrohom (Josh) Brown, one of the proposed members, has been employed at Crest Manor as the Chief Operating Officer since May 1, 2019. Occupancy increased from 82.9% in 2018 to 92.5% in 2019. Occupancy remained high at 90.3% during 2020 but declined to 77.17% in 2021 due to the impact of the COVID-19 pandemic. Once Covid subsided, occupancy rose to 93.71% in December of 2021. As of June 1, 2022, the facility was at 100% occupancy while the average occupancy rate for all nursing homes in Monroe County was 77%
- Breakeven utilization is projected at approximately 90.03% for Year One and 90.25% for Year Three.

Utilization by payor source for the first and third year after the change in ownership is as follows:

| Payor | Current Year | Years One & Three |
|---|---|---|
| Commercial FFS | 1.34% | 2.00% |
| Medicare FFS | 9.18% | 9.00% |
| Medicare MC | 7.48% | 0% |
| Medicaid FFS | 44.33% | 48.27% |
| Medicaid MC | 16.50% | 15.73% |
| Private Pay | 21.18% | 25.00% |
| Total | 100.00% | 100.00% |

**Agreement for Transaction Documents**

The applicant submitted an executed ATD to hold all rights and obligations subject to the terms of ATD. The terms are summarized below:

| | |
|---|---|
| **Date:** | October 10, 2017 |
| **Assignor (Seller):** | Milrose National Trust |
| **Assignee (Buyer):** | Crest Opco LLC, Crest Propco LLC,<br>Eastside Opco LLC and Eastside 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 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 |
| **Purchaser:** | Crest Opco, LLC |
| **Seller:** | Crest Manor Living and Rehabilitation Center, Inc. |
| **Assets Transferred:** | The business and operation of the facility; leasehold improvements, furniture, fixtures, and equipment owned or leased 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 proposed to be satisfied with members' equity. 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 6/22/2022, the facility had no outstanding Medicaid liabilities.

### Lease Agreement

The applicant submitted a draft lease agreement, the terms of which are summarized below:

| | |
|---|---|
| **Premises:** | 80-bed RHCF located at 6745 Pittsford Palmyra Rd, Fairport, NY |
| **Landlord:** | Crest Propco, LLC |
| **Tenant:** | Crest Opco, LLC |
| **Term:** | 5 years with (2) extension terms of (5) years. |
| **Rent:** | $588,000 ($49,000 per month) for year one; With an annual increase of 5% for years two-five. |
| **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 foot rental.

### Capability and Feasibility

Crest 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 $1,293,900 based on two months of first-year expenses. Working capital will be satisfied via equity from proposed members. The proposed members' net worth summaries show sufficient assets overall to meet the acquisition and working capital equity requirements (BFA Attachment A). Michael Lebovics has provided an affidavit confirming his willingness to contribute personal resources disproportionate to his membership interest in the operations to cover any other proposed member's equity shortfall. BFA Attachment D is the pro forma balance sheet as of the first day of operation, which indicates a positive members' equity of $1,886,000. It is noted that operating assets include $392,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, the net asset position would be a positive members' equity of $1,494,000

The submitted budget indicates that net income of $427,900 and $410,100 will be generated for Years One and Three, respectively. The budget appears reasonable.

BFA Attachment B is the Financial Summary of Crest Manor Living and Rehabilitation Center, Inc. As shown, the 2019-2020 certified financial statements indicate that the facility had an average positive net asset position of $721,299, an average positive working capital position of $252,079, and generated an average operating loss of $223,868 for the period. The reported loss in 2019 ($662,709) was attributable to low utilization at the facility. In May of 2019, Avrohom Brown became the Chief Operating Officer at the facility and utilization increased, leading to a positive net income of $214,973. Based on Internal Financial Statements submitted for 2021 and the period 1/1/22-4/30/22, Crest Manor continues to maintain a strong financial position with a positive net asset position, positive working capital, and net income.

### Conclusion

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

## Attachments

| | |
|---|---|
| LTCOP Attachment A | Long Term Care Ombudsman Program Recommendation |
| HSA Attachment A | Finger Lakes Health Systems Agency Recommendation |
| BFA Attachment A | Net Worth and Equity Analysis of Proposed Members of Crest Opco LLC |
| BFA Attachment B | Financial Summary of Crest Manor Living and Rehabilitation Center, Inc. |
| BFA Attachment C | Transition Summary Organizational Chart of Operations and Realty |
| BFA Attachment D | Pro Forma Balance Sheet |

# Public Health and Health Planning Council

## Project # 192332-E
## EDRNC Operating, LLC d/b/a
## Eden Rehabilitation & Nursing Center

| | | | |
|---|---|---|---|
| ***Program:*** | **Residential Health Care Facility** | ***County:*** | **Erie** |
| ***Purpose:*** | **Establishment** | ***Acknowledged:*** | **January 9, 2020** |

## Executive Summary

### Description

EDRNC Operating, LLC d/b/a Eden Rehabilitation & Nursing Center (EDRNC), a New York limited liability company, requests approval to be established as the new operator of Eden Rehabilitation & Nursing Center, a 40-bed, proprietary Article 28 residential health care facility (RHCF) located at 2806 George Street, Eden (Erie County). Absolut Center for Nursing and Rehabilitation at Eden, LLC is the current operator of the facility, and EDRNC Realty, LLC is the real property owner. Upon approval of this application by the Public Health and Health Planning Council (PHHPC), EDRNC Realty, LLC will lease the premises to EDRNC Operating, LLC via a non-arm's length lease.

Ownership of the operations before and after the requested change is as follows:

| Current Operator<br>Absolut Center for Nursing and Rehabilitation at Eden, LLC | |
|---|---|
| Member | % |
| Absolut Facilities Management, LLC | 54% |
| *Israel Sherman (100%)* | |
| Israel Sherman | 45% |
| Samuel Sherman | 1% |

| Proposed Operator<br>EDRNC Operating, LLC | |
|---|---|
| Members | % |
| Esther Barth | 35% |
| Batia Zagelbaum | 40% |
| Chaya Walden | 15% |
| Teresa Creedon | 10% |

Ownership of the realty is as follows:

| Realty Owner<br>EDRNC Realty, LLC | |
|---|---|
| Members | % |
| Ephraim Zagelbaum | 47.5% |
| Alexander Barth | 37.5% |
| Yehudah Walden | 15.0% |

There is a familial relationship between the property owner and several of the proposed operating entity members. There will be no change in beds or services provided.

The Asset Purchase Agreement (APA) submitted for this application included the sale of the operating interests of four other Absolut RHCFs that are currently operated by the same members of Absolut Center for Nursing and Rehabilitation at Eden, LLC. Three of these facilities are being sold to the same proposed new members as identified for this application and are listed below:

- CON 192333 (Houghton Rehabilitation & Nursing Center p/k/a Absolut Center for Nursing and Rehabilitation at Houghton, LLC, 100 beds, Allegany County),
- CON 192335 (Salamanca Rehabilitation & Nursing Center p/k/a Absolut Center for Nursing and Rehabilitation at Salamanca, LLC, 120 beds, Cattaraugus County) and
- CON 192336 (Dunkirk Rehabilitation & Nursing Center p/k/a Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC, 40 beds, Chautauqua County).

These three applications are being reviewed concurrently with this application.
The fourth facility is being sold to different proposed new members as per an amendment to the original APA and is being reviewed under CON 192208 (Absolut Center for Nursing and Rehabilitation at Endicott, LLC, 160 beds, Broome County).

On July 6, 2017, Absolut Center for Nursing and Rehabilitation at Eden, LLC (as Seller, collectively with the operating entities of the other four RHCFs) and EDRNC Operating, LLC (Buyer, collectively with the proposed operating entities of the other four RHCFs) entered an APA for the sale and acquisition of the operating interests of the RHCF. The total purchase price of the five RHCF operations is $100,000, of which $10,000 is allocated to the Eden facility. Via an Assignment Agreement (AA) dated January 12, 2018, Ephraim Zagelbaum, Alexander Barth, and Yehudah Walden, the original proposed members of EDRNC Operating, LLC, assigned their membership interests in the operating entity to Esther Barth, Batia Zagelbaum, Chaya Walden and Teresa Creedon.

Except for Teresa Creedon, the proposed members have an ownership interest in other New York State nursing homes. BFA Attachment C presents their percentage ownership and a financial summary of the proposed members' affiliated RHCFs.

## OPCHSM Recommendation

Contingent Approval

## Need Summary

There will be no changes to beds or services as a result of this project. As of May 4, 2022, was 90.0% for the facility and 84.7% for Erie County.

## 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

EDRNC Operating, LLC will acquire the RHCF's operations for $10,000 funded by members' equity. There are no project costs associated with this application. The submitted budget projects a gain of $59,768 in years One and Three.

| Budget | Current Year (2020) | Years 1&3 (2023 & 2025) |
|---|---|---|
| Revenues | $2,756,717 | $3,571,892 |
| Expensed | $3,578,808 | $3,512,124 |
| Gain/(Loss) | ($822,091) | $59,768 |

# 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.

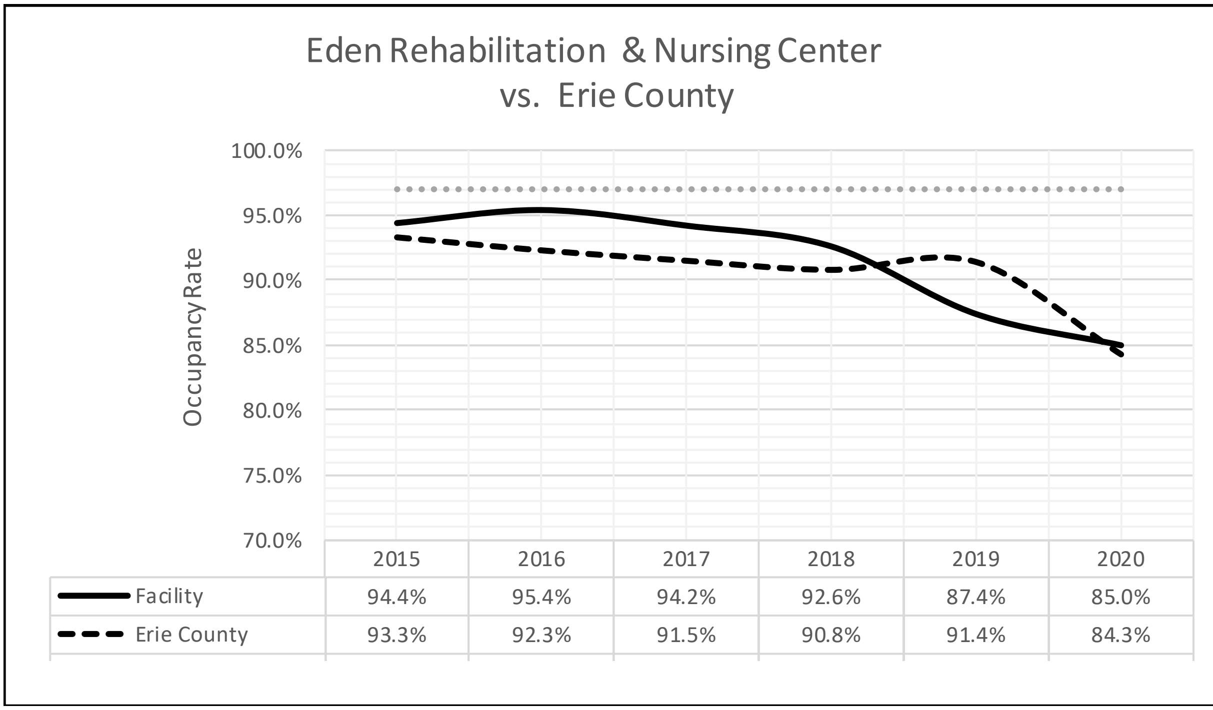
### Office of Primary Care and Health Systems Management
**Approval contingent upon:**
1. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
2. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council 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]
3. 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: a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program; b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and c. 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]
4. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed amendment to the applicant's Operating Agreement, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed Lease Agreement between EDRNC Realty, LLC and the applicant, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of a complete Asset Purchase Agreement between Absolut Center for Nursing and Rehabilitation at Eden, LLC and the applicant, which is acceptable to the Department. [CSL]
8. Submission of an executed assignment of membership interest, acceptable to the Department. [CSL]
9. Submission of an executed proposed Certificate of Amendment of the Articles of Organization or an Articles of Dissolution of Absolut Center for Nursing and Rehabilitation at Eden, LLC, which is 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
July 28, 2022

## Need Analysis

### Analysis
The primary service area is Erie County. As of May 4, 2022, occupancy was 90.0% for the facility and 84.7% for Erie County.




### 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 specific 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 below the threshold of 75% of the Erie County rate from 2018 through 2020.

| Medicaid Access | 2018 | 2019 | 2020 |
|---|---|---|---|
| Erie County Total | 29.8% | 32.0% | 24.2% |
| Erie Threshold Value | 22.3% | 24.0% | 18.2% |
| Eden Rehabilitation & Nursing Center | 13.3% | 19.6% | 17.9% |

**Conclusion**
There will be no changes to beds or services as a result of this project.

# Program Analysis

**Facility Information**

| | Existing | Proposed |
|---|---|---|
| Facility Name | Eden Rehabilitation & Nursing Center | Same |
| Address | 2806 George St<br>Eden, NY 14057 | Same |
| RHCF Capacity | 40 | Same |
| ADHC Capacity | N/A | Same |
| Type of Operator | Limited Liability Company | Same |
| Class of Operator | Proprietary | Same |
| Operator | Absolut Center for Nursing and Rehabilitation at Eden, LLC<br><br><u>Members</u><br>Israel Sherman 45%<br>Samuel Sherman 1%<br>Absolut Facilities Management, LLC 54%<br>*Israel Sherman (100%)* | EDRNC Operating, LLC<br><br><u>Members</u><br>Esther R. Barth 35%<br>Batia Zagelbaum 40%<br>Chaya Walden 15%<br>Teresa Creedon* 10%<br><br>**Managing Member* |

**Character and Competence – Assessment**
**Batia Zagelbaum** discloses previous employment as a Midwife for Maternal Resources OB, PC. She holds a Master's degree in nursing from Columbia University Graduate School of Nurse-Midwifery and holds a Certified Nurse-Midwife License in both NY and NJ, a Nurse Practitioner Obstetrics/Gynecology in NY, and an RN license in NY and NJ. Batia Zagelbaum discloses the following ownership interests:

<u>Nursing Homes</u>

| | |
|---|---|
| Orchard Rehab & Nursing Center (17.5%) | 03/2017 to present |
| Gowanda Rehab & Nursing Center (17.5%) | 06/2018 to present |
| Massena Rehab & Nursing Center (37.5%) | 04/2019 to present |

**Esther Barth** has no employment history for the past 10 years, and she holds no professional licenses. She discloses a high school diploma from Bais Yaakov High School. Esther Barth discloses the following ownership interest:

<u>Nursing Homes</u>

| | |
|---|---|
| Orchard Rehab & Nursing Center (37.5%) | 03/2017 to present |
| Gowanda Rehab & Nursing Center (37.5%) | 06/2018 to present |
| Massena Rehab & Nursing Center (37.5%) | 04/2019 to present |

**Chaya Walden** discloses previous employment in the Accounts Payable office at Windsor Healthcare Management. She holds no professional licenses. Chaya Walden discloses the following ownership interests:

<u>Nursing Homes</u>

| | |
|---|---|
| Orchard Rehab & Nursing Center (15.0%) | 03/2017 to present |
| Gowanda Rehab & Nursing Center (15.0%) | 06/2018 to present |

Massena Rehab & Nursing Center (15.0%) 04/2019 to present

**Teresa Creedon** is currently employed as the Corporate Administrator at Personal Healthcare, LLC since 2015, and she is a New York State licensed nursing home administrator in good standing. She holds a degree in Healthcare Administration from SUNY College of Technology. Teresa Creedon discloses no health care facility ownership.

## Quality Review

The proposed owners have been evaluated, in part, on the distribution of CMS Star ratings for their portfolios. For all proposed owners the distribution of CMS star ratings for their facilities meets the standard described in state regulations.

| | CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv) | | | | |
|---|---|---|---|---|---|
| | | Duration of Ownership (as of 7/28/2022) | | | |
| | | < 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** |
| Esther R. Barth | 3 | 1 | 100% | 2 | 0% |
| Batia Zagelbaum | 3 | 1 | 100% | 2 | 0% |
| Chaya Walden | 3 | 1 | 100% | 2 | 0% |
| Teresa Creedon | 0 | n/a | n/a | n/a | n/a |

***Data as of:*** *06/2022*

The proposed owner's portfolio includes ownership in three New York state facilities. Two of the New York facilities Gowanda Rehab & Nursing Center and Orchard Rehabilitation & Nursing Center have a CMS overall quality rating of average or higher. The other facility Massena Rehabilitation & Nursing Center has a CMS overall quality rating of below average. The applicant states that outside staffing agencies had to be used to supplement direct staff due to difficulty in staffing, and a regional clinical director was recently hired. Massena Rehabilitation & Nursing Center is expecting to be surveyed again soon and is optimistic that the results will also be good, but it will take some time for those results to be reflected in the star ratings.

| Facility | Ownership Since | Overall | Health Inspection | Quality Measure | Staffing |
|---|---|---|---|---|---|
| **New York** | | | | | |
| Eden Rehabilitation & Nursing Center | Subject Facility | **** | **** | *** | *** |
| Massena Rehabilitation & Nursing Center | Current | ** | ** | **** | ** |
| | 04/2019 | * | * | * | **** |
| Gowanda Rehabilitation & Nursing Center | Current | *** | *** | **** | ** |
| | 06/2018 | * | ** | **** | * |
| Orchard Rehabilitation & Nursing Center | Current | *** | ** | ***** | ** |
| | 03/2017 | * | * | ** | * |

***Data date:*** *06/2022*

## Enforcement History

Massena Rehab & Nursing Center:

- The facility was assessed federal CMPs of $650.00 on 7/13/2020 and $986.70 on 03/28/2022 for failure to report COVID data.

Gowanda Rehab & Nursing Center:

- The facility was assessed a federal CMP of $7036.00 on 6/26/2020 for failure to timely report a crime against a resident and failing to ensure in response to abuse, all alleged violations were thoroughly investigated. The facility was also fined $10,000 pursuant to Stipulation and Order NH-19-044 issued on October 15, 2019, for surveillance findings on June 26, 2019.
- The facility was fined $6,000 pursuant to Stipulation and Order NH-21-152 issued on August 23, 2021, for surveillance findings on December 4, 2020. Deficiencies were found under 10 NYCRR 415.19(a)(1) and 400.2, Failure to obtain Covid-19 specimen results within 48 hours for three staff members; failure to document facility efforts to obtain the delayed Covid-19 specimen results.

## Program

No changes in the program or physical environment are proposed in this application.

## Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

# Financial Analysis

## 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 (2020) | | Years One & Three (2023 & 2025) | |
|---|---|---|---|---|
| | Per Diem | Total | Per Diem | Total |
| Revenues | | | | |
| Medicare FFS | $837.88 | $156,683 | $538.87 | $195,610 |
| Medicare MC | $320.61 | 254,885 | $324.92 | 337,596 |
| Medicaid FFS | $177.03 | 1,314,478 | $205.60 | 1,181,766 |
| Medicaid MC | $157.17 | 435,689 | $238.36 | 1,225,868 |
| Private Pay | $232.16 | 292,054 | $291.97 | 435,621 |
| Commercial FFS | $346.54 | 4,505 | $291.45 | 25,065 |
| Other Revenue* | | 298,423 | | $170.365 |
| Total | | $2,756,717 | | $3,571,892 |
| | | | | |
| Expenses | | | | |
| Operating | $270.16 | $3,363,458 | $231.97 | $3,217,365 |
| Capital | $17.30 | $215,350 | $21.25 | $294,759 |
| Total Expenses | $287.46 | $3,578,808 | $253.22 | $3,512,124 |
| | | | | |
| Net Income (Loss) | | ($822,091) | | $59,768 |
| | | | | |
| Patient Days | | 12,450 | | 13,870 |
| Utilization % | | 85.27% | | 95.00% |
| Breakeven % | | 113.79% | | 93.34% |

**Other revenue consists of Assessment revenue*

The following is noted with respect to the submitted budget:

- The applicant held Year Three to Year One revenue and expense levels as a conservative measure in their projections. The facility is currently operating at over 90% occupancy and the applicant believes 95% occupancy for Years One and Three is achievable and sustainable. As of June 8, 2022, the facility was operating at 92.5% occupancy.
- Medicaid revenue is based on the facility's current July 1, 2022, Medicaid Regional Pricing rate. The Medicare, Private Pay, and Commercial rates are based on the current (August 2020) rates being received by the facility.
- The applicant indicated that the increase in projected utilization is the result of the facility hiring a person experienced in the operation of skilled nursing facilities to assist in improving performance. Upon approval of this application, the new members will build on these improvements by implementing measures to make the nursing home more attractive to those in need of sub-acute rehabilitation as well as traditional residential health care services. The new members plan to add clinical specialties and make physical improvements to the facility.
- Breakeven utilization is projected at 93.34% or 13,627 patient days for Years One and Three.
- Utilization by payor source before and after the change in ownership is as follows:

| Payor | Current Year (2020) | Years One & Three (2023 & 2025) |
|---|---|---|
| Medicare FFS | 1.50% | 2.62% |
| Medicare MC | 6.39% | 7.49% |
| Medicaid FFS | 59.64% | 41.44% |
| Medicaid MC | 22.27% | 37.08% |
| Private Pay | 10.10% | 10.76% |
| Commercial FFS | 0.10% | 0.62% |
| Total | 100.00% | 100.00% |

**Asset Purchase Agreement**

The applicant submitted an executed APA to acquire certain assets related to the RHCF to be effectuated upon approval by the PHHPC. The terms are summarized below:

| | |
|---|---|
| Date: | July 6, 2017 |
| Seller: | Absolut Center for Nursing and Rehabilitation at Eden, LLC |
| Purchaser: | EDRNC Operating, LLC |
| Assets Transferred: | All furniture, fixtures, furnishings, equipment, etc.; All inventory and supplies located at the facility; All policies/procedures, manuals, intellectual property, etc.; Telephone and fax numbers; Administrative and financial books and records; Permits; Goodwill; Trust Property; Medicare/Medicaid/Third Party Payor provider numbers and provider reimbursement agreements. |
| Excluded Assets: | Cash/Cash Equivalents; All Accounts Receivable and other rights to payment from third parties; Licenses and permits not assignable or transferable; marketable securities; Any grant awarded by a Governmental Authority; All sums received from DOH related to the Universal Settlement of Medicaid rate appeals and connected lawsuits against NYS; Funds from all rate adjustments and appeals. |
| Purchase Price: | The total price for the five facilities included in the APA is $100,000.<br>$10,000 is allocated to this application. |
| Payment of Purchase Price: | $50,000 deposit paid by the original proposed members (held in escrow) toward the total purchase price, with a balance of $50,000 due at closing. The proposed members will pay $5,000 to the current operator of this facility at closing. |

The purchase price of the operations is proposed to be satisfied with members' equity.

### Assignment Agreement

The applicant submitted an executed AA to acquire the membership interests in EDRNC Operating, LLC. The terms are summarized below:

| | |
|---|---|
| Date: | January 12, 2018 |
| Assignors: | Ephraim Zagelbaum, Alexander Barth, and Yehudah Walden |
| Assignees: | Batia Zagelbaum, Teresa Creedon, Esther Barth and Chaya Walden |
| Assignment: | Membership Interests in EDRNC Operating, LLC |
| Purchase Price: | $5,000 was paid to the assignors upon execution of this agreement |

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 June 7, 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: | 40-bed RHCF located at 2806 George St., Eden, NY (Erie County) |
| Landlord: | EDRNC Realty, LLC |
| Tenant: | EDRNC Operating, LLC |
| Term: | 10 years with up to twenty (20) 1-year extension terms. |
| Rent: | $161,371 Annually or $13,455.92 Monthly |
| 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 familial relationship between landlord and tenant.

### Employment Agreement

Ephraim Zagelbaum was hired by the facility to provide administrative support services until CON approval of the change in ownership. The applicant has submitted the executed employment agreement, the terms of which are summarized below:

| | |
|---|---|
| Date: | January 12, 2019 |
| Operator: | EDRNC Operating, LLC |
| Employee/CEO | Ephraim Zagelbaum |
| Term | Until the earlier of either termination of the APA or CON approval by PHHPC. |
| Salary | $50,000 annually (evenly apportioned for services provided at the four Absolut facilities being acquired by the proposed members of EDRNC Operating, LLC). |
| Job Duties | • Make recommendations and proposals to the operators/administrators with respect to resident care and facility operations.<br>• At the request of the operators/administrators, undertake projects relating to resident care or operations.<br>• Prepare financial statements for the facilities within 120 days after fiscal year closing.<br>• Prepare quarterly financial statements within 120 days after the quarter's closing.<br>• Prepare internal financial statements within 120 days after monthly closing.<br>• Maintain office records, books, and accounts in connection with management and operation of the facilities; and<br>• Prepare all required notices/reports necessary to own and operate the facilities. |

### Capability and Feasibility

EDRNC Operating, LLC will acquire the RHCF's operations for $10,000 funded via members' equity. The applicant has paid $5,000 toward the purchase price leaving a balance due of $5,000 at closing. There are no project costs associated with this application

The working capital requirement is $585,354 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. Esther Barth has provided an affidavit confirming her willingness to contribute personal resources disproportionate to her membership interest in the operations to cover any other proposed member's equity shortfall. BFA Attachment D is the proforma balance sheet of EDRNC Operating, LLC as of the first day of operation, which indicates a positive members' equity of $577,443. It is noted that operating assets include $10,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, the net asset position would be a positive members' equity of $567,443.

The submitted budget indicates a net income of $59,768 for the first and third years. BFA Attachment E shows that the proposed members of EDRNC, SARNC, HORNC, and DURNC have enough equity overall to fund all four CON applications. However, two of the members (Batia Zagelbaum and Chaya Walden) have insufficient liquid resources to cover their share. As previously noted, a disproportionate share affidavit was provided by Esther Barth to cover any member's equity shortfall. The budget appears reasonable.

BFA Attachment B is a financial summary of Eden Rehabilitation & Nursing Center for the period 2019-2020. As shown, the 2019-2020 certified financial statements indicate the facility had an average negative net asset position of $1,006,164, an average positive working capital position of $327,638, and generated an average operating loss of $430,967. The applicant indicated that the reported losses for 2019 and 2020 were due to the facility being in a state of disrepair for years and the RHCF's outdated bed configuration. In 2018, a person experienced in nursing home operations was hired to assist in improving facility operations. While the 2021 internal financial statements continue to show a negative net asset position of $779,933, the facility continued to maintain positive working capital of $270,083 and showed an overall improvement by generating a positive net income of $198,875. For the period 1/1/22-3/31/22, the facility had a negative net asset position of $888,868, positive working capital of $221,711, and a small net loss of $89,349.

BFA Attachment C is the percent ownership and financial summary of the proposed members' affiliated nursing homes. As shown, Gowanda Rehabilitation & Nursing Center, Massena Rehabilitation and Nursing Center, and Orchard Rehabilitation and Nursing Center had average positive working capital and an average positive net asset position between 2019 and 2021. All three nursing homes experienced net losses in 2020 due to the impact of COVID-19 but rebounded in 2021 with average positive net incomes of $2,461,520.

### 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 summary, members of EDRNC Operating, LLC |
| BFA Attachment B | Certified 2019-2020 and the 12/31/21 and the 1/1-3/31/22 Internal Financial Summary of EDRNC Operating, LLC |
| BFA Attachment C | Financial Summary of Proposed Member's Affiliated RHCFs |
| BFA Attachment D | Pro Forma Balance Sheet, EDRNC Operating, LLC |
| BFA Attachment E | EDRNC, DURNC, HORNC, and SARNC-Equity Requirement for Operations |

# Public Health and Health Planning Council

## Project # 192333-E
## HORNC Operating, LLC d/b/a
## Houghton Rehabilitation & Nursing Center

| | | | |
|---|---|---|---|
| *Program:* | Residential Health Care Facility | *County:* | Allegany |
| *Purpose:* | Establishment | *Acknowledged:* | January 10, 2020 |

## Executive Summary

**Description**

HORNC Operating, LLC d/b/a Houghton Rehabilitation & Nursing Center (HORNC), a New York limited liability company, requests approval to be established as the operator of Houghton Rehabilitation & Nursing Center, a 100-bed, proprietary Article 28 residential health care facility (RHCF) located at 9876 Luckey Drive, Houghton (Allegany County). Absolut Center for Nursing and Rehabilitation at Houghton, LLC is the current operator of the facility and HORNC Realty, LLC is the real property owner. Upon approval by the Public Health and Health Planning Council, HORNC Realty, LLC will lease the premises to HORNC Operating, LLC via a non-arm's length lease.

Ownership of the operations before and after the requested change is as follows:

| Current Operator<br>Absolut Center for Nursing and Rehabilitation at Houghton, LLC | |
|---|---|
| Member | % |
| Absolut Facilities Management, LLC | 54% |
| *Israel Sherman (100%)* | |
| Israel Sherman | 45% |
| Samuel Sherman | 1% |

| Proposed Operator<br>HORNC Operating, LLC | |
|---|---|
| Members | % |
| Esther Barth | 35% |
| Batia Zagelbaum | 40% |
| Chaya Walden | 15% |
| Teresa Creedon | 10% |

Ownership of the realty is as follows:

| Realty Owner<br>HHORNC Realty, LLC | |
|---|---|
| Members | % |
| Ephraim Zagelbaum | 47.5% |
| Alexander Barth | 37.5% |
| Yehudah Walden | 15.0% |

There is a familial relationship between the property owner and the proposed operating entity. There will be no change in beds or services provided.

The Asset Purchase Agreement (APA) for this application included the sale of the operating interests of four other Absolut RHCFs currently operated by the same members of Absolut Center for Nursing and Rehabilitation at Houghton, LLC. Three of these facilities are being sold to the same proposed new members as identified for this application and are listed here.

- CON 192332 (Eden Rehabilitation and Nursing Center p/k/a Absolut Center for Nursing and Rehabilitation at Eden, LLC, 40 beds, Allegany County)
- CON 192335 (Salamanca Rehabilitation and Nursing Center p/k/a Absolut Center for Nursing and Rehabilitation at Salamanca, LLC, 120 beds, Cattaraugus County)
- CON 192336 (Dunkirk Rehabilitation and Nursing Center p/k/a Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC, 40 beds, Chautauqua County)

These three applications are being reviewed concurrently with this application.
The fourth facility is being sold to different proposed new members as per an amendment to the original APA and is being reviewed under CON 192208 (Absolut Center for Nursing and Rehabilitation at Endicott, LLC, 160 beds, Broome County).

On July 6, 2017, Absolut Center for Nursing and Rehabilitation at Houghton, LLC (Seller, collectively with the operating entities of the other four RHCFs) and HORNC Operating, LLC (Buyer, collectively with the proposed operating entities of the other four RHCFs) entered an APA for the sale and acquisition of the operating interests of the RHCF. The total purchase price of the five RHCF operations is $100,000, of which $25,000 is allocated to the Houghton facility. Via an Assignment Agreement (AA) dated January 12, 2018, Ephraim Zagelbaum, Alexander Barth, and Yehudah Walden, the original proposed members of HORNC Operating, LLC, assigned their membership interests in the operating entity to Esther Barth, Batia Zagelbaum, Chaya Walden and Teresa Creedon.

Except for Ms. Creedon, the proposed members have ownership interest in other New York State nursing homes. BFA Attachment C presents their percentage ownership and a financial summary of the proposed members' affiliated RHCFs.

**OPCHSM Recommendation**
Contingent Approval

**Need Summary**
There will be no As of May 18, 2022, was 95.0% for the facility and 90.9% for Allegany County.

**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**
HORNC Operating, LLC will acquire the RHCF's operations for $25,000 funded by members' equity. There are no project costs associated with this application. The submitted budget projects a gain of $527,030 and $777,512, respectively, in Year One and Year Three. The projections are based on a breakeven occupancy rate of 83.59% for Year One and 85.54% for Year Three. As of June 8, 2022, the facility was operating at 94% and it appears that HORNC's occupancy assumptions are achievable in Years One and Three.

| Budget | Year One (2023) | Year Three (2025) |
|---|---|---|
| Revenues | $7,801,974 | $8,235,418 |
| Expensed | $7,274,944 | $7,457,906 |
| Gain/(Loss) | $527,030 | $777,512 |

# 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.

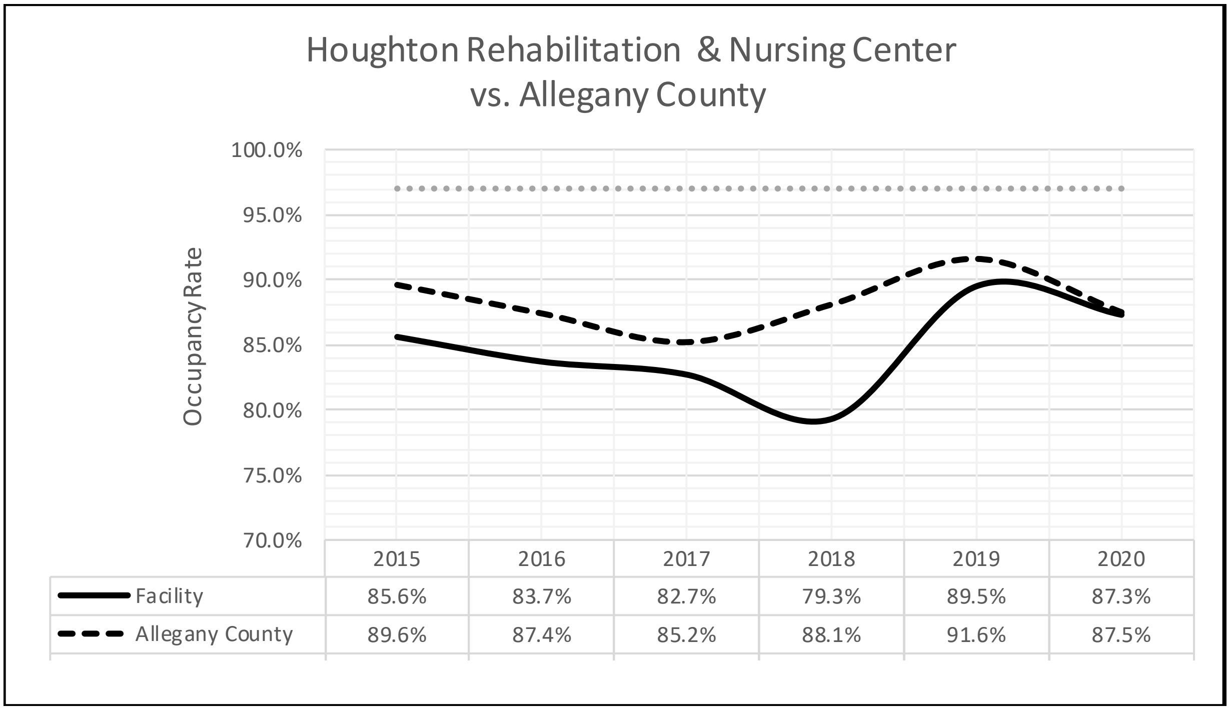
### Office of Primary Care and Health Systems Management
**Approval contingent upon:**
1. Submission of an executed lease agreement, acceptable to the Department of Health. (BFA)
2. Submission of a photocopy of an executed Lease Agreement between HORNC Realty, LLC and the applicant, which is acceptable to the Department. (CSL)
3. Submission of a photocopy of a complete Asset Purchase Agreement between Absolut Center for Nursing and Rehabilitation at Houghton, LLC and the applicant, which is acceptable to the Department. (CSL)
4. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, which is acceptable to the Department. (CSL)
5. Submission of a photocopy of an executed amendment to applicant's Operating Agreement, which is acceptable to the Department. (CSL)
6. Submission of an executed Certificate of Amendment of the Articles of Organization or the Articles of Dissolution of Absolut Center for Nursing and Rehabilitation at Houghton, LLC, which is acceptable to the Department. (CSL)
7. Submission of an executed assignment of membership interest, acceptable to the Department. (CSL)
8. 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).
9. 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: a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program; b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and c. 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)

**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
July 28, 2022

# Need Analysis

**Analysis**
The primary service area is Allegany County. As of May 18, 2022, current occupancy was 95.0% for the facility and 90.9% for Allegany County.




**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.

| Medicaid Access | 2018 | 2019 | 2020 |
|---|---|---|---|
| Allegany County Total | 37.7% | 37.0% | 41.0% |
| Allegany Threshold Value | 28.3% | 27.8% | 30.7% |
| Houghton Rehabilitation & Nursing Center | 26.0% | 32.6% | 43.8% |

**Conclusion**
There will be no changes to beds or services as a result of this project.

# Program Analysis

**Facility Information**

| | Existing | Proposed |
|---|---|---|
| Facility Name | Houghton Rehabilitation & Nursing Center | Same |
| Address | 9876 Luckey Drive<br>Houghton, NY 14744 | Same |
| RHCF Capacity | 100 | Same |
| ADHC Capacity | N/A | Same |
| Type of Operator | Limited Liability Company | Same |
| Class of Operator | Proprietary | Same |
| Operator | Absolut Center for Nursing and Rehabilitation at Houghton, LLC<br><br><u>Members</u><br>Israel Sherman 45%<br>Samuel Sherman 1%<br>Absolut Facilities Management, LLC 54%<br>*Israel Sherman (100%)* | HORNC Operating, LLC<br><br><u>Members</u><br>Esther R. Barth 35%<br>Batia Zagelbaum 40%<br>Chaya Walden 15%<br>Teresa Creedon* 10%<br><br>**Managing Member* |

**Character and Competence – Assessment**
**Batia Zagelbaum** discloses previous employment as a Midwife for Maternal Resources OB, PC. She holds a Certified Nurse-Midwife License in both NY and NJ, a Nurse Practioner Obstetrics/Gynecology in NY, and an RN license in NY and NJ. Ms. Zagelbaum discloses the following ownership interests:

<u>Nursing Homes</u>

| | |
|---|---|
| Orchard Rehab & Nursing Center (17.5%) | 03/2017 to present |
| Gowanda Rehab & Nursing Center (17.5%) | 06/2018 to present |
| Massena Rehab & Nursing Center (37.5%) | 04/2019 to present |

**Esther Barth** has no employment history for the past 10 years, and she holds no professional licenses. Mrs. Barth discloses a high school diploma from Bais Yaakov High School. Ms. Barth discloses the following ownership interest:

<u>Nursing Homes</u>

| | |
|---|---|
| Orchard Rehab & Nursing Center (37.5%) | 03/2017 to present |
| Gowanda Rehab & Nursing Center (37.5%) | 06/2018 to present |
| Massena Rehab & Nursing Center (37.5%) | 04/2019 to present |

**Chaya Walden** discloses previous employment in the Accounts Payable office at Windsor Healthcare Management. She holds no professional licenses. Ms. Walden discloses the following ownership interests:

<u>Nursing Homes</u>

| | |
|---|---|
| Orchard Rehab & Nursing Center (15.0%) | 03/2017 to present |
| Gowanda Rehab & Nursing Center (15.0%) | 06/2018 to present |
| Massena Rehab & Nursing Center (15.0%) | 04/2019 to present |

**Teresa Creedon** discloses current employment as the Corporate Administrator at Personal Healthcare, LLC since 2015. Mrs. Creedon is a New York State licensed nursing home administrator in good standing. Mrs. Creedon holds a degree in Healthcare Administration from SUNY College of Technology. Mrs. Creedon discloses no health care facility ownership.

**Quality Review**

The proposed owners have been evaluated, in part, on the distribution of CMS Star ratings for their portfolios. For all proposed owners the distribution of CMS star ratings for their facilities meets the standard described in state regulations.

| | CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv) | | | | |
|---|---|---|---|---|---|
| | | Duration of Ownership (as of 7/28/2022) | | | |
| | | < 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 |
| Esther R. Barth | 3 | 1 | 100% | 2 | 0% |
| Batia Zagelbaum | 3 | 1 | 100% | 2 | 0% |
| Chaya Walden | 3 | 1 | 100% | 2 | 0% |
| Teresa Creedon | 0 | n/a | n/a | n/a | n/a |

***Data as of:** 06/2022*

The proposed owner's portfolio includes ownership in three New York state facilities. Two of the New York facilities Gowanda Rehab & Nursing Center and Orchard Rehabilitation & Nursing Center have a CMS overall quality rating of average or higher. The other facility Massena Rehabilitation & Nursing Center has a CMS overall quality rating of below average. The applicant states that outside staffing agencies had to be used to supplement direct staff due to difficulty in staffing, and a regional clinical director was recently hired. Massena Rehabilitation & Nursing Center is expecting to be surveyed again soon and is optimistic that the results will also be good, but it will take some time for those results to be reflected in the star ratings.

| Facility | Ownership Since | Overall | Health Inspection | Quality Measure | Staffing |
|---|---|---|---|---|---|
| **New York** | | | | | |
| Houghton Rehabilitation & Nursing Center | Subject Facility | *** | *** | ** | ** |
| Massena Rehabilitation & Nursing Center | Current | ** | ** | **** | ** |
| | 04/2019 | * | * | * | **** |
| Gowanda Rehabilitation & Nursing Center | Current | *** | *** | **** | ** |
| | 06/2018 | * | ** | **** | * |
| Orchard Rehabilitation & Nursing Center | Current | *** | ** | ***** | ** |
| | 03/2017 | * | * | ** | * |

***Data date:** 06/2022*

**Enforcement History**

Massena Rehab & Nursing Center:

- The facility was assessed federal CMPs of $650.00 on 7/13/2020 and $986.70 on 03/28/2022 for failure to report COVID data.

Gowanda Rehab & Nursing Center:

- The facility was assessed a federal CMP of $7036.00 on 6/26/2020 for failure to timely report a crime against a resident and failing to ensure in response to abuse, all alleged violations were thoroughly investigated. The facility was also fined $10,000 pursuant to Stipulation and Order NH-19-044 issued on October 15, 2019, for surveillance findings on June 26, 2019.
- The facility was fined $6,000 pursuant to Stipulation and Order NH-21-152 issued on August 23, 2021, for surveillance findings on December 4, 2020. Deficiencies were found under 10 NYCRR 415.19(a)(1) and 400.2, Failure to obtain Covid-19 specimen results within 48 hours for three staff members; failure to document facility efforts to obtain the delayed Covid 19 specimen results.

### Program

No changes in the program or physical environment are proposed in this application.

### Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

## Financial Analysis

### 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 (2020) | | Year One (2023) | | Year Three (2025) | |
|---|---|---|---|---|---|---|
| | Per Diem | Total | Per Diem | Total | Per Diem | Total |
| Revenues | | | | | | |
| Commercial FFS | $138.25 | $1,659 | $291.46 | $78,987 | $291.52 | $83,375 |
| Medicare FFS | $610.03 | 1,187,119 | $463.16 | 622,024 | $463.03 | 656,581 |
| Medicare MC | $329.89 | 317,350 | $444.96 | 394,235 | $445.07 | 416,137 |
| Medicaid FFS | $180.59 | 3,560,785 | $195.55 | 3,149,493 | $195.55 | 3,324,465 |
| Medicaid MC | $144.07 | 1,105,483 | $210.79 | 2,610,805 | $210.79 | 2,755,850 |
| Private Pay | $264.59 | 434,726 | $292.05 | 542,631 | $291.94 | 572,777 |
| Other Revenue* | | $535,868 | | $403,800 | | $426,233 |
| Total | | $7,142,990 | | $7,801,974 | | $8,235,418 |
| Expenses | | | | | | |
| Operating | $195.19 | $6,236,948 | $195.26 | $6,414,493 | $190.26 | $6,597,455 |
| Capital | 21.95 | 701,451 | 26.19 | 860,451 | 24.81 | 860,451 |
| Total Expenses | $217.14 | $6,938,399 | $221.45 | $7,274,944 | $215.07 | $7,457,906 |
| Net Income | | $204,591 | | $527,030 | | $777,512 |
| Utilization % | | 87.54% | | 90.00% | | 95.00% |
| Breakeven % | | 84.83% | | 83.59% | | 85.54% |

**Other revenue is comprised of Assessment revenue.*

The following is noted with respect to the submitted budget:

- The facility is currently operating at over 90% occupancy and the applicant believes a 90% and a 95% occupancy for Years One and Three respectively is achievable and sustainable.

- Medicaid revenue is based on the facility's current July 1, 2022, Medicaid Regional Pricing rate. The Medicare, Private Pay, and Commercial rates are based on the current (August 2020) rates being received by the facility.
- The increase in operating costs is associated with an increase in professional fees and purchased services.
- The applicant indicated that the increase in projected utilization is the result of the facility hiring a person experienced in the operations of skilled nursing facilities to assist in improving performance. Upon approval of this application, the new members will build on these improvements by implementing measures to make the nursing home more attractive to those in need of sub-acute rehabilitation as well as traditional residential health care services. The new members plan to add clinical specialties and make physical improvements to the facility.
- Breakeven utilization is projected at 83.59% or 30,510 patient days for Year One and 85.54% or 31,223 patient days for Year Three.
- Utilization by payor source for the current year and the first and third year after the change in ownership is as follows:

| Payor | Current Year (2020) | Years One & Three (2023 and 2025) |
|---|---|---|
| Medicare FFS | 6.09% | 4.09% |
| Medicare MC | 3.01% | 2.70% |
| Medicaid FFS | 61.71% | 49.03% |
| Medicaid MC | 24.01% | 37.70% |
| Private Pay | 5.14% | 5.66% |
| Commercial | 0.04% | 0.82% |
| Total | 100% | 100% |

**Asset Purchase Agreement**

The applicant submitted an executed APA to acquire certain assets related to the RHCF to be effectuated upon approval by the PHHPC. The terms are summarized below:

| | |
|---|---|
| Date: | July 6, 2017 |
| Seller: | Absolut Center for Nursing and Rehabilitation at Houghton, LLC, |
| Purchaser: | HORNC Operating, LLC |
| Assets Transferred: | All furniture, fixtures, furnishings, equipment, etc.; All inventory and supplies located at the facility; All policies/procedures, manuals, intellectual property, etc.; Telephone and fax numbers; Administrative and financial books and records; Permits; Goodwill; Trust Property; Medicare/Medicaid/Third Party Payor provider numbers and provider reimbursement agreements. |
| Excluded Assets: | Cash/Cash Equivalents; All Accounts Receivable and other rights to payment from third parties; Licenses and permits not assignable or transferable; marketable securities; Any grant awarded by a Governmental Authority; All sums received from DOH related to the Universal Settlement of Medicaid rate appeals and connected lawsuits against NYS; Funds from all rate adjustments and appeals. |
| Purchase Price: | The total price for the five facilities included in the APA is $100,000. $25,000 allocated to this application. |
| Payment of Purchase Price: | $50,000 deposit paid by the original proposed members (held in escrow) toward the total purchase price, with a balance of $50,000 due at closing. The proposed members will pay $12,500 to the current operator of this facility at closing. |

The purchase price of the operations is proposed to be satisfied with members' equity.

### Assignment Agreement

The applicant submitted an executed AA to acquire the membership interests in HORNC Operating, LLC. The terms are summarized below:

| | |
|---|---|
| Date: | January 12, 2018 |
| Assignors: | Ephraim Zagelbaum, Alexander Barth, and Yehudah Walden |
| Assignees: | Batia Zagelbaum, Teresa Creedon, Esther Barth and Chaya Walden |
| Assignment: | Membership Interests in HORNC Operating, LLC |
| Purchase Price: | $12,500 was paid to the assignors upon execution of this agreement |

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 June 21, 2022, the facility had no outstanding Medicaid overpayment liability.

### Lease Agreement

The applicant submitted a draft lease agreement, the terms of which are summarized below:

| | |
|---|---|
| Premises: | 100-bed RHCF located at 9876 Luckey Drive, Houghton, NY (Allegany County) |
| Landlord: | HORNC Realty, LLC |
| Tenant: | HORNC Operating, LLC |
| Term: | 10 years with up to (20) 1-year extension terms. |
| Rent: | $672,373 annually years 1-10 ($56,031.08 monthly) |
| 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 familial relationship between landlord and tenant.

### Employment Agreement

Ephraim Zagelbaum was hired by the facility to provide administrative support services until CON approval of the change in ownership. The applicant has submitted the executed employment agreement, the terms of which are summarized below:

| | |
|---|---|
| Date: | January 12, 2019 |
| Operator | HORNC Operating, LLC |
| Employee/CEO | Ephraim Zagelbaum |
| Term | Until the earlier of either termination of the APA or CON approval by PHHPC. |
| Salary | $50,000 annually (evenly apportioned for services provided at the four Absolut facilities being acquired by the proposed members HORNC Operating, LLC). |
| Job Duties | • Make recommendations and proposals to the operators/administrators with respect to resident care and facility operations.<br>• At the request of the operators/administrators, undertake projects relating to resident care or operations.<br>• Prepare financial statements for the facilities within 120 days after fiscal year closing.<br>• Prepare quarterly financial statements within 120 days after the quarter's closing.<br>• Prepare internal financial statements within 120 days after monthly closing.<br>• Maintain office records, books, and accounts in connection with management and operation of the facilities; and<br>• Prepare all required notices/reports necessary to own and operate the facilities. |

### Capability and Feasibility

HORNC Operating will acquire the RHCF's operations for $25,000 funded via members' equity. The applicant has paid $12,500 toward the purchase price leaving a balance due of $12,500 at closing. There are no project costs associated with this application. The working capital requirement is $1,212,491 based on two months of first-year expenses. Working capital will be satisfied via equity from proposed members. BFA Attachment A, the proposed members' net worth summaries, shows sufficient assets overall to meet the acquisition and working capital equity requirements. Esther Barth has provided an affidavit confirming her willingness to contribute personal resources disproportionate to her membership interest in the operations to cover any other proposed member's equity shortfall. BFA Attachment D is the pro forma balance sheet as of the first day of operation, which indicates a positive members' equity of $1,242,457. It is noted that operating assets include $25,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, the net asset position would be a positive members' equity of $1,217,457.

The submitted budget indicates a net income of $527,030 and $777,512 for the first and third year, respectively. BFA Attachment E shows that the proposed members of HORNC, SARNC, EDRNC, and DURNC have enough equity overall to fund all four CONs. However, two of the members (Batia Zagelbaum and Chaya Walden) have insufficient liquid resources to cover their share. As previously noted, disproportionate share affidavits were provided by other proposed members to cover any member's equity shortfall. The budget appears reasonable.

BFA Attachment B is a financial summary of HORNC Operating, LLC for the period 2019-2020. As shown, the 2019-2020 certified financial statements indicate that the facility had an average negative net asset position of $1,630,879, an average positive working capital position of $169,941, and generated an average operating income of $664,728. The 2021 Internal Financial Statements show that the facility has managed to achieve a positive net asset position of $1,713,090, which is a turnaround from 2019-2020. They continued to generate positive working capital of $3,448,445 and a net income of $2,433,666. As of March 31, 2022, the facility had a positive net asset position of $200,237, positive working capital of $1,065,386, and a net loss of $179,954.

BFA Attachment C is the percent ownership and financial summary of the proposed members' affiliated nursing homes. As shown, Gowanda Rehabilitation & Nursing Center, Massena Rehabilitation and Nursing Center, and Orchard Rehabilitation and Nursing Center had average positive working capital and an average positive net asset position between 2019 and 2021. All three nursing homes experienced net losses in 2020 due to the impact of COVID-19 but rebounded in 2021 with average positive net incomes of $2,461,520.

### 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 Summary, Members of HORNC Operating, LLC |
| BFA Attachment B | Certified 2019-2020 and the 2021 and the 2022 Internal Financial Summary of HORNC Operating, LLC |
| BFA Attachment C | Financial Summary of Proposed Member's Affiliated RHCFs |
| BFA Attachment D | Pro Forma Balance Sheet, HORNC Operating, LLC |
| BFA Attachment E | HORNC, DURNC, EDRNC, and SARNC-Equity Requirement for Operations |

# Public Health and Health Planning Council

## Project # 192335-E
## SARNC Operating, LLC d/b/a
## Salamanca Rehabilitation & Nursing Center

| | | | |
|---|---|---|---|
| *Program:* | Residential Health Care Facility | *County:* | Cattaraugus |
| *Purpose:* | Establishment | *Acknowledged:* | January 10, 2020 |

## Executive Summary

**Description**

SARNC Operating, LLC d/b/a Salamanca Rehabilitation & Nursing Center (SARNC), a New York limited liability company, requests approval to be established as the new operator of Salamanca Rehabilitation & Nursing Center, a 120-bed, proprietary, Article 28 residential health care facility (RHCF) located at 451 Broad Street, Salamanca (Cattaraugus County). Absolut Center for Nursing and Rehabilitation at Salamanca, LLC is the current operator of the RHCF and SARNC Realty, LLC is the real property owner. Upon approval by the Public Health and Health Planning Council, SARNC Realty, LLC will lease the premises to SARNC Operating, LLC via a non-arm's length lease.

Ownership of the operations before and after the requested change is as follows:

| Current Operator<br>Absolut Center for Nursing and Rehabilitation at Salamanca, LLC | |
|---|---|
| Member | % |
| Absolut Facilities Management, LLC | 54% |
| *Israel Sherman (100%)* | |
| Israel Sherman | 45% |
| Samuel Sherman | 1% |

| Proposed Operator<br>SARNC Operating, LLC | |
|---|---|
| Members | % |
| Esther Barth | 35% |
| Batia Zagelbaum | 40% |
| Chaya Walden | 15% |
| Teresa Creedon | 10% |

Ownership of the realty is as follows:

| Realty Owner<br>SARNC Realty, LLC | |
|---|---|
| Members | % |
| Ephraim Zagelbaum | 47.5% |
| Alexander Barth | 37.5% |
| Yehudah Walden | 15.0% |

There is a familial relationship between the property owner and several of the proposed operating entity members. There will be no change in beds or services provided.

The Asset Purchase Agreement (APA) for this application included the sale of the operating interests of four other Absolut RHCFs currently operated by the same members of Absolut Center for Nursing and Rehabilitation at Salamanca, LLC. Three of these facilities are being sold to the same proposed new members as identified for this application and are listed here.

- CON 192332 (Eden Rehabilitation & Nursing Center p/k/a Absolut Center for Nursing and Rehabilitation at Eden, LLC, 40 beds, Erie County),
- CON 192333 (Houghton Rehabilitation & Nursing Center p/k/a Absolut Center for Nursing and Rehabilitation at Houghton, LLC, 100 beds, Allegany County),
- CON 192336 (Dunkirk Rehabilitation & Nursing Center p/k/a Absolut Center for Nursing and Rehabilitation at Dunkirk, 40 beds, Chautauqua County).

These three applications are being reviewed concurrently with this application.
The fourth facility is being sold to different proposed new members as per an amendment to the original APA and is being reviewed under CON 192208 (Absolut Center for Nursing and Rehabilitation at Endicott, LLC, 160 beds, Broome County).

On July 6, 2017, Absolut Center for Nursing and Rehabilitation at Salamanca, LLC (as Seller, collectively with the operating entities of the other four RHCFs) and SARNC Operating, LLC (Buyer, collectively with the proposed operating entities of the other four RHCFs) entered into an APA for the sale and acquisition of the operating interests of the RHCF. The total purchase price of the five RHCF operations is $100,000, of which $30,000 is allocated to the Salamanca facility. Via an Assignment Agreement (AA) dated January 12, 2018, Ephraim Zagelbaum, Alexander Barth, and Yehudah Walden, the original proposed members of SARNC, assigned their membership interests in the operating entity to Esther Barth, Batia Zagelbaum, Chaya Walden, and Teresa Creedon.

Except for Teresa Creedon, the proposed members have an ownership interest in other New York State nursing homes. BFA Attachment C presents their percentage ownership and a financial summary of the proposed members' affiliated RHCFs.

**OPCHSM Recommendation**
Contingent Approval

**Need Summary**
There will be no changes to beds or services as a result of this project. As of May 11, 2022, was 88.3% for the facility and 83.9% for Cattaraugus County.

**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**
SARNC Operating, LLC will acquire the RHCF's operations for $30,000 funded by members' equity. There are no project costs associated with this application. The budget projects year one net income of $1,633,575 and $2,027,664 by year three.

| Budget: | Year One (2023) | Year Three (2025) |
|---|---|---|
| Revenues | $11,696,978 | $12,346,811 |
| Expensed | 10,063,403 | $10,319,147 |
| Gain | $1,633,575 | $2,027,664 |

# 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.

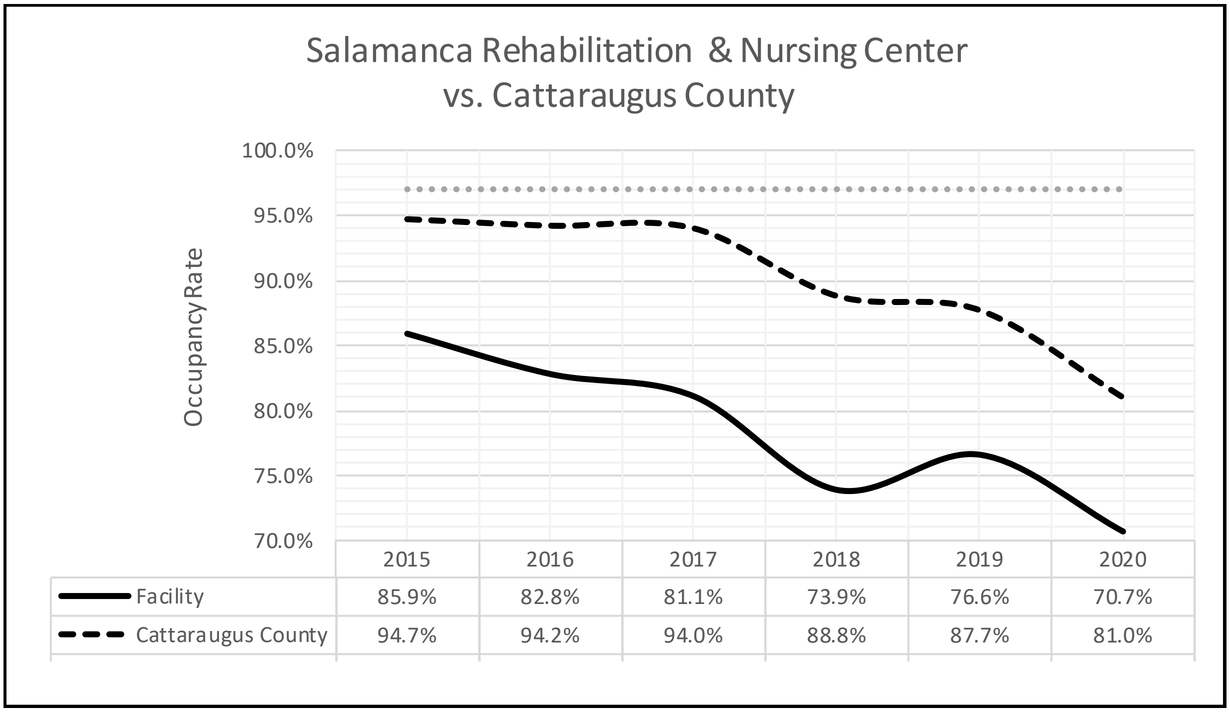
### Office of Primary Care and Health Systems Management
**Approval contingent upon:**
1. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, acceptable to the Department. [CSL]
3. Submission of a photocopy of an executed amendment to applicant's Operating Agreement, which is acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed Lease Agreement between SARNC Realty, LLC and the applicant, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of a complete Asset Purchase Agreement between Absolut Center for Nursing and Rehabilitation at Salamanca, LLC and the applicant, which is acceptable to the Department. [CSL]
6. Submission of an executed proposed Certificate of Amendment of the Articles of Organization or an Articles of Dissolution of Absolut Center for Nursing and Rehabilitation at Salamanca, LLC, which is acceptable to the Department. [CSL]
7. Submission of an executed assignment of membership interest, acceptable to the Department. [CSL]
8. 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].

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

### Council Action Date
July 28, 2022

# Need Analysis

### Analysis
The primary service area is Cattaraugus County. As of May 11, 2022, occupancy was 88.3% for the facility and 83.9% for Cattaraugus County.




### 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 above the threshold of 75% of the Cattaraugus County rate from 2018 through 2020.

| Medicaid Access | 2018 | 2019 | 2020 |
|---|---|---|---|
| Cattaraugus County Total | 26.9% | 25.4% | 30.8% |
| Cattaraugus Threshold Value | 20.2% | 19.0% | 23.1% |
| Salamanca Rehabilitation & Nursing Center | 30.6% | 31.3% | 42.3% |

**Conclusion**

There will be no changes to beds or services as a result of this project.

# Program Analysis

**Facility Information**

| | Existing | Proposed |
|---|---|---|
| Facility Name | Salamanca Rehabilitation & Nursing Center | Same |
| Address | 451 Broad Street<br>Salamanca, NY 14779 | Same |
| RHCF Capacity | 120 | Same |
| ADHC Capacity | N/A | Same |
| Type of Operator | Limited Liability Company | Same |
| Class of Operator | Proprietary | Same |
| Operator | Absolut Center for Nursing and Rehabilitation at Salamanca, LLC<br><br>Members<br>Israel Sherman 45%<br>Samuel Sherman 1%<br>Absolut Facilities Management, LLC 54%<br>*Israel Sherman (100%)* | SARNC Operating, LLC<br><br>Members<br>Esther R. Barth 35%<br>Batia Zagelbaum 40%<br>Chaya Walden 15%<br>Teresa Creedon* 10%<br><br>**Managing Member* |

**Character and Competence – Assessment**

**Batia Zagelbaum** discloses previous employment as a Midwife for Maternal Resources OB, PC. She holds a Master's degree in nursing from Columbia University Graduate School of Nurse-Midwifery and holds a Certified Nurse-Midwife License in both NY and NJ, a Nurse Practitioner Obstetrics/Gynecology in NY, and an RN license in NY and NJ. Batia Zagelbaum discloses the following ownership interests:

Nursing Homes
Orchard Rehab & Nursing Center (17.5%) 03/2017 to present
Gowanda Rehab & Nursing Center (17.5%) 06/2018 to present
Massena Rehab & Nursing Center (37.5%) 04/2019 to present

**Esther Barth** has no employment history for the past 10 years, and she holds no professional licenses. She discloses a high school diploma from Bais Yaakov High School. Esther Barth discloses the following ownership interest:

Nursing Homes
Orchard Rehab & Nursing Center (37.5%) 03/2017 to present
Gowanda Rehab & Nursing Center (37.5%) 06/2018 to present
Massena Rehab & Nursing Center (37.5%) 04/2019 to present

**Chaya Walden** discloses previous employment in the Accounts Payable office at Windsor Healthcare Management. She holds no professional licenses. Chaya Walden discloses the following ownerships:

Nursing Homes

| | |
|---|---|
| Orchard Rehab & Nursing Center (15.0%) | 03/2017 to present |
| Gowanda Rehab & Nursing Center (15.0%) | 06/2018 to present |
| Massena Rehab & Nursing Center (15.0%) | 04/2019 to present |

**Teresa Creedon** is currently employed as the Corporate Administrator at Personal Healthcare, LLC since 2015, and she is a New York State licensed nursing home administrator in good standing. She holds a degree in Healthcare Administration from SUNY College of Technology. Teresa Creedon discloses no health care facility ownership.

## Quality Review

The proposed owners have been evaluated, in part, on the distribution of CMS Star ratings for their portfolios. For all proposed owners the distribution of CMS star ratings for their facilities meet the standard described in state regulations.

| | CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv) | | | | |
|---|---|---|---|---|---|
| | | Duration of Ownership (as of 7/28/2022) | | | |
| | | < 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** |
| Esther R. Barth | 3 | 1 | 100% | 2 | 0% |
| Batia Zagelbaum | 3 | 1 | 100% | 2 | 0% |
| Chaya Walden | 3 | 1 | 100% | 2 | 0% |
| Teresa Creedon | 0 | n/a | n/a | n/a | n/a |

***Data as of:*** *06/2022*

The proposed owner's portfolio includes ownership in three New York state facilities. Two of the New York facilities Gowanda Rehab & Nursing Center and Orchard Rehabilitation & Nursing Center have a CMS overall quality rating of average or higher. The other facility Massena Rehabilitation & Nursing Center has a CMS overall quality rating of below average. The applicant states that outside staffing agencies had to be used to supplement direct staff due to difficulty in staffing, and a regional clinical director was recently hired. Massena Rehabilitation & Nursing Center is expecting to be surveyed again soon and is optimistic that the results will also be good, but it will take some time for those results to be reflected in the star ratings.

| *Facility* | *Ownership Since* | *Overall* | *Health Inspection* | *Quality Measure* | *Staffing* |
|---|---|---|---|---|---|
| **New York** | | | | | |
| Salamanca Rehabilitation & Nursing Center | Subject Facility | * | * | *** | * |
| Massena Rehabilitation & Nursing Center | Current | ** | ** | **** | ** |
| | 04/2019 | * | * | * | **** |
| Gowanda Rehabilitation & Nursing Center | Current | *** | *** | **** | ** |
| | 06/2018 | * | ** | **** | * |

| Facility | Ownership Since | Overall | Health Inspection | Quality Measure | Staffing |
|---|---|---|---|---|---|
| Orchard Rehabilitation & Nursing Center | Current | *** | ** | ***** | ** |
| | 03/2017 | * | * | ** | * |

***Data date:*** *06/2022*

### Enforcement History

Massena Rehab & Nursing Center:

- The facility was assessed federal CMPs of $650.00 on 7/13/2020 and $986.70 on 03/28/2022 for failure to report COVID data.

Gowanda Rehab & Nursing Center:

- The facility was assessed a federal CMP of $7036.00 on 6/26/2020 for failure to timely report a crime against a resident and failing to ensure in response to abuse, all alleged violations were thoroughly investigated. The facility was also fined $10,000 pursuant to Stipulation and Order NH-19-044 issued on October 15, 2019, for surveillance findings on June 26, 2019.
- The facility was fined $6,000 pursuant to Stipulation and Order NH-21-152 issued on August 23, 2021, for surveillance findings on December 4, 2020. Deficiencies were found under 10 NYCRR 415.19(a)(1) and 400.2, Failure to obtain Covid-19 specimen results within 48 hours for three staff members; failure to document facility efforts to obtain the delayed Covid 19 specimen results.

### Program

No changes in the program or physical environment are proposed in this application.

### Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

## Financial Analysis

### Operating Budget

The applicant has provided the current year (2020) results, and the first- and third-year operating budget, in 2020 dollars, subsequent to the change in ownership. The budget is summarized below:

| | Current Year (2020) | | Year One (2023) | | Year Three (2025) | |
|---|---|---|---|---|---|---|
| | Per Diem | Total | Per Diem | Total | Per Diem | Total |
| Revenues | | | | | | |
| Commercial | $338.28 | $430,296 | $200.02 | $406,239 | $200.00 | $428,808 |
| Medicare FFS | $554.25 | 807,544 | $519.90 | 1,295,079 | $519.98 | $1,367,028 |
| Medicare MC | $337.60 | 450,365 | $440.01 | 638,893 | $439.91 | 674,387 |
| Medicaid FFS | $195.74 | 3,080,376 | $274.66 | 3,867,433 | $274.66 | 4,082,290 |
| Medicaid MC | $189.28 | 1,818,774 | $260.92 | 4,541,539 | $260.92 | 4,793,847 |
| Private Pay | $240.98 | 394,485 | $199.97 | 392,142 | $199.97 | 413,928 |
| Other Revenue* | | 1,748,655 | | 555,653 | | 586,523 |
| Total Revenues | | $8,730,495 | | $11,696,978 | | $12,346,811 |

| | Current Year (2020) | | Year One (2023) | | Year Three (2025) | |
|---|---|---|---|---|---|---|
| | **Per Diem** | **Total** | **Per Diem** | **Total** | **Per Diem** | **Total** |
| Expenses | | | | | | |
| Operating | $239.78 | $7,444,085 | $207.35 | $8,174,182 | $202.58 | $8,429,926 |
| Capital | 21.24 | 659,306 | 47.92 | 1,889,221 | 45.40 | 1,889,221 |
| Total Expenses | $261.01 | $8,103,391 | $255.27 | $10,063,403 | $247.98 | $10,319,147 |
| Net Income/(Loss) | | $627,104 | | $1,633,575 | | $2,027,664 |
| Patient Days | | 31,046 | | 39,422 | | 41,612 |
| Utilization % | | 70.88% | | 90.00% | | 95.00% |
| Breakeven % | | 65.79% | | 77.43% | | 79.40% |

**Other Revenue consists of the Assessment revenue, prior period adjustments, H&HS Services Stimulus, cafeteria, vending machines, TV rentals, investment income, Nursing Home Quality Initiative, and barber and beauty.*

The following is noted with respect to the submitted budget:

- The Medicaid reimbursement rate is projected based on the facility's current July 2022 Medicaid Regional Pricing rate and is higher than the Medicaid rates the facility received in 2020. The Medicare, Private Pay, and Commercial rates are based on the current (August 2020) rates being received by the facility.
- The Medicaid MC rates are based on the anticipated rates resulting from negotiations with the Managed Care companies.
- The operating cost per procedure is declining from the current year to year three because there is sufficient volume projected to warrant the increase in staffing whereas the capital cost per procedure is increasing from the current year to year three as a result of planned investments per the third bullet. The applicant intends to hire 29.6 incremental FTEs in the first year and an additional 9.2 FTEs by Year three.
- The applicant indicated that the increase in projected utilization is the result of census recovery after the COVID-19 pandemic and improved operations are driven by a new leader with experience in skilled nursing facility operations. Upon approval of this application, the new members will build on the improvements to date by implementing measures to make the nursing home more attractive to those in need of sub-acute rehabilitation as well as traditional residential health care services. The new members plan to add clinical specialties and make physical improvements to the facility to increase census.
- Breakeven utilization is projected at approximately 79.40% for the third year. The applicant indicated that occupancy in 2021 was 81.6%. Department statistics as self-reported by the facility indicate this positive trend above the projected year three breakeven utilization has continued as the occupancy rate was 88.3% as of June 6, 2022,
- Utilization by payor source for the first and third year after the change in ownership is as follows:

| Payor | Current Year (2020) | Year One (2023) | Year Three (2025) |
|---|---|---|---|
| Commercial FFS | 4.10% | 5.15% | 5.15% |
| Medicare FFS | 4.69% | 6.32% | 6.32% |
| Medicare MC | 4.30% | 3.68% | 3.68% |
| Medicaid FFS | 50.69% | 35.72% | 35.72% |
| Medicaid MC | 30.95% | 44.15% | 44.15% |
| Private Pay | 5.27% | 4.97% | 4.97% |
| Total | 100.00% | 100.00% | 100.00% |

### Asset Purchase Agreement

The applicant submitted an executed APA to acquire the RHCF's operating interests, which will become effective upon PHHPC approval. The terms are summarized below:

| | |
|---|---|
| Date: | July 6, 2017 |
| Seller: | Absolut Center for Nursing and Rehabilitation at Salamanca, LLC |
| Purchaser: | SARNC Operating, LLC |
| Assets Transferred: | All furniture, fixtures, furnishings, equipment, etc.; All inventory and supplies located at the facility; All policies/procedures, manuals, intellectual property, etc.; Telephone and fax numbers; Administrative and financial books and records; Permits; Goodwill; Trust Property; Medicare/Medicaid/Third Party Payor provider numbers and provider reimbursement agreements. |
| Excluded Assets: | Cash/Cash Equivalents; All Accounts Receivable and other rights to payment from third parties; Licenses and permits not assignable or transferable; marketable securities; Any grant awarded by a Governmental Authority; All sums received from DOH related to the Universal Settlement of Medicaid rate appeals and connected lawsuits against NYS; Funds from all rate adjustments and appeals. |
| Purchase Price: | The total price for the five facilities included in the APA is $100,000. $30,000 is allocated to this application. |
| Payment of Purchase Price: | $50,000 deposit paid by the original proposed members (held in escrow) toward the total purchase price, with a balance of $50,000 due at closing. The proposed members will pay $15,000 to the current operator of this facility at closing. |

The purchase price of the operations is proposed to be satisfied with members' equity. 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 May 20, 2022, the facility had no outstanding Medicaid liabilities.

### Assignment Agreement

The applicant submitted an executed AA to acquire the membership interests in SARNC Operating, LLC. The terms are summarized below:

| | |
|---|---|
| Date: | January 12, 2018 |
| Assignors: | Ephraim Zagelbaum, Alexander Barth, and Yehudah Walden |
| Assignees: | Batia Zagelbaum, Teresa Creedon, Esther Barth and Chaya Walden |
| Assignment: | Membership Interests in SARNC Operating, LLC |
| Purchase Price: | $15,000 was paid to the assignors upon execution of this agreement |

### Lease Agreement

The applicant submitted a draft lease agreement, the terms of which are summarized below:

| | |
|---|---|
| Premises: | 120-bed RHCF located at 451 Broad Street, Salamanca, NY (Cattaraugus County) |
| Landlord: | SARNC Realty, LLC |
| Tenant: | SARNC Operating, LLC |
| Term: | 10 years with up to twenty (20) 1-year extension terms. |
| Rent: | $573,813 annual rental |
| 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 familial relationship between landlord and tenant.

## Capability and Feasibility
SARNC Operating, LLC will acquire the RHCF's operations for $30,000 funded via members' equity. The applicant has paid $15,000 toward the purchase price leaving a balance due of $15,000 at closing. There are no project costs associated with this application.

The working capital requirement is $1,677,234 based on two months of first-year expenses. Working capital will be satisfied via equity from proposed members. The proposed members' net worth summaries show sufficient assets overall to meet the acquisition and working capital equity requirements as shown in BFA Attachment A. Esther Barth has provided an affidavit confirming her willingness to contribute personal resources disproportionate to her membership interest in the operations to cover any other proposed member's equity shortfall. BFA Attachment D is the pro forma balance sheet as of the first day of operation, which indicates a positive members' equity of $1,707,234. It is noted that operating assets include $30,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, the net asset position would be a positive members' equity of $1,677,234.

The submitted budget indicates that net income of $1,633,575 and $2,027,664 will be generated for the first and third years, respectively. BFA Attachment E shows that the proposed members of SARNC, EDRNC, HORNC, and DURNC have enough equity overall to fund all four CON applications. However, two of the members (Batia Zagelbaum and Chaya Walden) have insufficient liquid resources to cover their share. As previously noted, a disproportionate share affidavit was provided by Esther Barth to cover any member's equity shortfall. The budget appears reasonable.

BFA Attachment B is the financial summary of Salamanca Rehabilitation for the period 2019 through March 31, 2022. As shown, the entity had a positive working capital position, a positive net asset position, and a net income of $640,399 as of March 31, 2022. As of December 31, 2021, the entity had a positive working capital position, a positive net asset position, and a net income of $3,386,462. In 2019 and 2020, the entity had an average negative net asset position of ($2,203,409) and incurred an average loss of ($400,417). The applicant indicated that the loss and negative net asset positions were due to difficulty in securing admissions, which impacted the facility's overall financial position. In 2018, the facility brought a person experienced in the operations of skilled nursing facilities to assist in improving facility operations. While measures being taken to improve finances were impacted by the effects of the pandemic in 2020, the facility was back on track in 2021 and experienced positive working capital, net assets, and operations.

BFA Attachment C is the percent ownership and financial summary of the proposed members' affiliated nursing homes. As shown, Gowanda, Massena, and Orchard had average positive working capital, an average positive net asset position, and an average net income of $2,461,520 in 2021. The losses in 2020 for the three facilities are due to the impact of COVID.

## 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 summary, members of SARNC Operating, LLC |
| BFA Attachment B | Certified 2019-2020 and the 2021-2022 Internal Financial Summary of Salamanca Rehabilitation |
| BFA Attachment C | Percentage Ownership and Financial Summary of Proposed Member's Affiliated RHCFs |
| BFA Attachment D | Pro Forma Balance Sheet, SARNC Operating, LLC |
| BFA Attachment E | SARNC, DURNC, HORNC, and EDRNC-Equity Requirement for Operations |

# Public Health and Health Planning Council

## Project # 192336-E
## DURNC Operating, LLC d/b/a
## Dunkirk Rehabilitation & Nursing Center

| | | | |
|---|---|---|---|
| *Program:* | **Residential Health Care Facility** | *County:* | **Chautauqua** |
| *Purpose:* | **Establishment** | *Acknowledged:* | **January 8, 2020** |

## Executive Summary

**Description**

DURNC Operating, LLC d/b/a Dunkirk Rehabilitation & Nursing Center (DURNC), a New York limited liability company, requests approval to be established as the new operator of Dunkirk Rehabilitation & Nursing Center, a 40-bed, proprietary Article 28 residential health care facility (RHCF) at 447 Lake Shore Drive West, Dunkirk (Chautauqua County). Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC is the current operator of the facility, and DURNC Realty, LLC is the real property owner. Upon approval of this application by the Public Health and Health Planning Council (PHHPC), DURNC Realty, LLC will lease the premises to DURNC Operating, LLC via a non-arm's length lease.

Ownership of the operations before and after the requested change is as follows:

| Current Operator | |
|---|---|
| Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC | |
| Member | % |
| Absolut Facilities Management, LLC | 54% |
| *Israel Sherman (100%)* | |
| Israel Sherman | 45% |
| Samuel Sherman | 1% |

| Proposed Operator | |
|---|---|
| DURNC Operating, LLC | |
| Members | % |
| Esther Barth | 35% |
| Batia Zagelbaum | 40% |
| Chaya Walden | 15% |
| Teresa Creedon | 10% |

Ownership of the realty is as follows:

| Realty Owner | |
|---|---|
| DURNC Realty, LLC | |
| Members | % |
| Ephraim Zagelbaum | 47.5% |
| Alexander Barth | 37.5% |
| Yehudah Walden | 15.0% |

There is a familial relationship between the property owner and several of the proposed operating entity members. There will be no change in beds or services provided.

The Asset Purchase Agreement (APA) for this application included the sale of the operating interests of four other Absolut RHCFs currently operated by the same members of Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC. Three of these facilities are being sold to the same proposed new members as identified for this application and are listed here.

- CON 192332 (Eden Rehabilitation and Nursing Center (EDRNC) p/k/a Absolut Center for Nursing and Rehabilitation at Eden, LLC, 40 beds, Allegany County),
- CON 192333 (Houghton Rehabilitation and Nursing Center (HORNC) p/k/a Absolut Center for Nursing and Rehabilitation at Houghton, LLC, 100 beds, Allegany County),
- CON 192335 (Salamanca Rehabilitation and Nursing Center (SARNC) p/k/a Absolut Center for Nursing and Rehabilitation at Salamanca, LLC, 120 beds, Cattaraugus County).

These three applications are being reviewed concurrently with this application. The fourth facility is being sold to different proposed new members as per an amendment to the original APA and is being reviewed under CON 192208 (Absolut Center for Nursing and Rehabilitation at Endicott, LLC, 160 beds, Broome County).

On July 6, 2017, Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC (Seller, collectively with the operating entities of the other four RHCFs) and DURNC Operating, LLC (Buyer, collectively with the proposed operating entities of the other four RHCFs) entered an APA for the sale and acquisition of the operating interests of the RHCF. The total purchase price of the five RHCF operations is $100,000, of which $10,000 is allocated to the Dunkirk facility. Via an Assignment Agreement (AA) dated January 12, 2018, Ephraim Zagelbaum, Alexander Barth, and Yehudah Walden, the original proposed members of DURNC Operating, LLC, assigned their membership interests in the operating entity to Esther Barth, Batia Zagelbaum, Chaya Walden, and Teresa Creedon.

Except for Ms. Creedon, the proposed members have ownership interest in other New York State nursing homes. BFA Attachment C shows their shares of ownership and a financial summary of the proposed members' affiliated RHCFs.

**OPCHSM Recommendation**
Contingent Approval

**Need Summary**
There will be no changes to beds or services as a result of this project. As of May 11, 2022, occupancy was 82.5% for the facility and 77.6% for Chautauqua County.

**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**
DURNC Operating, LLC will acquire the RHCF's operations for $10,000 funded by members' equity. There are no project costs associated with this application. The budget projects a net income of $35,185 in year one and $146,417 by year three.

| Budget | Year One (2023) | Year Three (2025) |
|---|---|---|
| Revenues | $3,533,537 | $3,729,844 |
| Expensed | 3,495,352 | 3,583,427 |
| Net Income | $35,185 | $146,417 |

# 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.

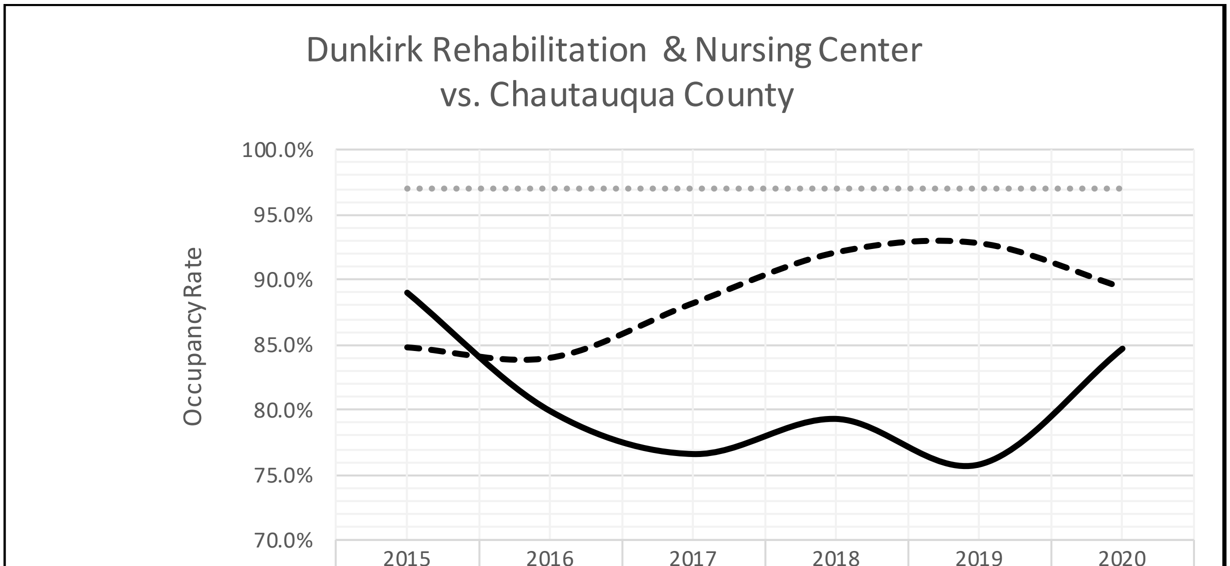
### Office of Primary Care and Health Systems Management
**Approval contingent upon:**
1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at 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: a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program; b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and c. 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 an executed lease agreement, acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of an executed amendment to applicant's Operating Agreement, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed Lease Agreement between DUNRC Realty, LLC and the applicant, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of a complete Asset Purchase Agreement between Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC and the applicant, which is acceptable to the Department. [CSL]
7. Submission of an executed proposed Certificate of Amendment of the Articles of Organization or Articles of Dissolution of Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Certificate of Assumed Name, acceptable to the Department. [CSL]
9. Submission of an executed assignment of membership interest, 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
July 28, 2022

# Need Analysis

### Analysis
The primary service area is Chautauqua County. The self-reported occupancy provided to the Department was 87.5% as of June 1, 2022.




| | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
|---|---|---|---|---|---|---|
| Facility | 89.0% | 79.9% | 76.6% | 79.3% | 75.8% | 84.7% |
| Chautauqua County | 84.8% | 84.0% | 88.2% | 92.1% | 92.8% | 89.4% |

### 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 was below the threshold of 75% of the Chautauqua County rate for 2018 but has exceeded the rate in 2019 and 2020.

| Medicaid Access | 2018 | 2019 | 2020 |
|---|---|---|---|
| Chautauqua County Total | 26.7% | 19.8% | 14.7% |
| Chautauqua Threshold Value | 20.2% | 14.9% | 11.0% |
| Dunkirk Rehabilitation & Nursing Center | 15.4% | 23.6% | 19.2% |

**Conclusion**
There will be no changes to beds or services as a result of this project.

# Program Analysis

**Facility Information**

| | Existing | Proposed |
|---|---|---|
| Facility Name | Dunkirk Rehabilitation & Nursing Center | Same |
| Address | 447-449 Lake Shore Drive<br>West Dunkirk, NY 14048 | Same |
| RHCF Capacity | 40 | Same |
| ADHC Capacity | N/A | Same |
| Type of Operator | Limited Liability Company | Same |
| Class of Operator | Proprietary | Same |
| Operator | Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC<br><br><u>Members</u><br>Israel Sherman 45%<br>Samuel Sherman 1%<br>Absolut Facilities Management, LLC 54%<br>*Israel Sherman (100%)* | DURNC Operating, LLC<br><br><u>Members</u><br>Esther R. Barth 35%<br>Batia Zagelbaum 40%<br>Chaya Walden 15%<br>Teresa Creedon* 10%<br><br>**Managing Member* |

**Character and Competence – Assessment**
**Batia Zagelbaum** discloses previous employment as a Midwife for Maternal Resources OB, PC. She holds a Master's degree in nursing from Columbia University Graduate School of Nurse-Midwifery and holds a Certified Nurse-Midwife License in both NY and NJ, a Nurse Practitioner Obstetrics/Gynecology in NY, and an RN license in NY and NJ. Batia Zagelbaum discloses the following ownership interests:

<u>Nursing Homes</u>
Orchard Rehab & Nursing Center (17.5%) 03/2017 to present
Gowanda Rehab & Nursing Center (17.5%) 06/2018 to present
Massena Rehab & Nursing Center (37.5%) 04/2019 to present

**Esther Barth** has no employment history for the past 10 years, and she holds no professional licenses. She discloses a high school diploma from Bais Yaakov High School. Esther Barth discloses the following ownership interest:

<u>Nursing Homes</u>
Orchard Rehab & Nursing Center (37.5%) 03/2017 to present
Gowanda Rehab & Nursing Center (37.5%) 06/2018 to present
Massena Rehab & Nursing Center (37.5%) 04/2019 to present

**Chaya Walden** discloses previous employment in the Accounts Payable office at Windsor Healthcare Management. She holds no professional licenses. Chaya Walden discloses the following ownership interests:

| | |
|---|---|
| Nursing Homes | |
| Orchard Rehab & Nursing Center (15.0%) | 03/2017 to present |
| Gowanda Rehab & Nursing Center (15.0%) | 06/2018 to present |
| Massena Rehab & Nursing Center (15.0%) | 04/2019 to present |

**Teresa Creedon** is currently employed as the Corporate Administrator at Personal Healthcare, LLC since 2015, and she is a New York State licensed nursing home administrator in good standing. She holds a degree in Healthcare Administration from SUNY College of Technology. Teresa Creedon discloses no health care facility ownership.

## Quality Review

The proposed owners have been evaluated, in part, on the distribution of CMS Star ratings for their portfolios. For all proposed owners the distribution of CMS star ratings for their facilities meets the standard described in state regulations.

| | CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv) | | | | |
|---|---|---|---|---|---|
| | | Duration of Ownership (as of 7/28/2022) | | | |
| | | < 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** |
| Esther R. Barth | 3 | 1 | 100% | 2 | 0% |
| Batia Zagelbaum | 3 | 1 | 100% | 2 | 0% |
| Chaya Walden | 3 | 1 | 100% | 2 | 0% |
| Teresa Creedon | 0 | n/a | n/a | n/a | n/a |

***Data as of:*** *06/2022*

The proposed owner's portfolio includes ownership in three New York state facilities. Two of the New York facilities Gowanda Rehab & Nursing Center and Orchard Rehabilitation & Nursing Center have a CMS overall quality rating of average or higher. The other facility Massena Rehabilitation & Nursing Center has a CMS overall quality rating of below average. The applicant states that outside staffing agencies had to be used to supplement direct staff due to difficulty in staffing, and a regional clinical director was recently hired. Massena Rehabilitation & Nursing Center is expecting to be surveyed again soon and is optimistic that the results will also be good, but it will take some time for those results to be reflected in the star ratings.

| ***Facility*** | ***Ownership Since*** | ***Overall*** | ***Health Inspection*** | ***Quality Measure*** | ***Staffing*** |
|---|---|---|---|---|---|
| **New York** | | | | | |
| Dunkirk Rehabilitation & Nursing Center | Subject Facility | ** | * | ***** | * |
| Massena Rehabilitation & Nursing Center | Current | ** | ** | **** | ** |
| | 04/2019 | * | * | * | **** |

| Facility | Ownership Since | Overall | Health Inspection | Quality Measure | Staffing |
|---|---|---|---|---|---|
| Gowanda Rehabilitation & Nursing Center | Current | *** | *** | **** | ** |
| | 06/2018 | * | ** | **** | * |
| Orchard Rehabilitation & Nursing Center | Current | *** | ** | ***** | ** |
| | 03/2017 | * | * | ** | * |

***Data date:*** *06/2022*

### Enforcement History

Massena Rehab & Nursing Center:

- The facility was assessed federal CMPs of $650.00 on 7/13/2020 and $986.70 on 03/28/2022 for failure to report COVID data.

Gowanda Rehab & Nursing Center:

- The facility was assessed a federal CMP of $7036.00 on 6/26/2020 for failure to timely report a crime against a resident and failing to ensure in response to abuse, all alleged violations were thoroughly investigated. The facility was also fined $10,000 pursuant to Stipulation and Order NH-19-044 issued on October 15, 2019, for surveillance findings on June 26, 2019.
- The facility was fined $6,000 pursuant to Stipulation and Order NH-21-152 issued on August 23, 2021, for surveillance findings on December 4, 2020. Deficiencies were found under 10 NYCRR 415.19(a)(1) and 400.2, Failure to obtain Covid-19 specimen results within 48 hours for three staff members; failure to document facility efforts to obtain the delayed Covid 19 specimen results.

### Project Review

No changes in the program or physical environment are proposed in this application.

### Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

## Financial Analysis

**Operating Budget**

The applicant has provided the current year (2020) results, and the first- and third-year operating budget, in 2022 dollars, subsequent to the change in ownership. The new operator anticipates a gradual increase in utilization in years one and three, thus mitigating the losses previously incurred in 2020 due to the lower occupancy rates experienced as a result of the COVID-19 pandemic. The projected positive operating margins in years one and three are a result of the combination of the increase in utilization, cost efficiencies due to such volume, and the increases in revenues that the facility is currently experiencing. The budget is summarized below:

| | Current Year 2020 | | Year One 2023 | | Year Three 2025 | |
|---|---|---|---|---|---|---|
| | Per PD | Total | Per PD | Total | Per PD | Total |
| Revenues | | | | | | |
| Commercial FFS | $357.18 | $382,180 | $290.17 | $112,295 | $289.81 | $118,534 |
| Medicare FFS | $568.41 | 496,220 | $474.12 | 468,432 | $474.07 | 494,456 |
| Medicare MC | $342.41 | 283,855 | $279.98 | 302,653 | $279.99 | 319,467 |
| Medicaid FFS | $193.15 | 1,121,208 | $206.67 | 960,625 | $206.68 | 1,013,993 |
| Medicaid MC | $182.12 | 563,671 | $243.27 | 1,077,922 | $243.28 | 1,137,806 |
| Private Pay | $310.99 | 226,711 | $289.98 | 465,715 | $290.02 | 491,588 |
| Other Revenue* | | $288,612 | | $145,895 | | $154,000 |
| Total Revenues | | $3,362,457 | | $3,533,537 | | $3,729,844 |
| | | | | | | |
| Expenses | | | | | | |
| Operating | $248.25 | $3,078,582 | $239.87 | $3,152,072 | $233.59 | $3,240,147 |
| Capital | $25.82 | 320,178 | $26.12 | 343,280 | $24.75 | 343,280 |
| Total Expenses | $274.07 | $3,398,760 | $265.99 | $3,495,352 | $258.34 | $3,583,427 |
| | | | | | | |
| Net Income/Loss | | ($36,303) | | $35,185 | | $146,417 |
| | | | | | | |
| Utilization (Days) | | 12,401 | | 13,141 | | 13,871 |
| Occupancy | | 84.94% | | 90.00% | | 95.00% |

**Other revenue consists of Assessment revenue, H&HS Services Stimulus, vending machine, prior period expenses, Nursing Home Quality Initiative and barber and beauty.*

The following is noted with respect to the submitted budget:

- Medicaid reimbursement rate is projected based on the facility's current July 2022 Medicaid Regional Pricing rate and is higher than the Medicaid rates the facility received in 2020. The Medicare, Private Pay, and Commercial rates are based on the current (August 2020) rates of the facility.
- All payor rates but Medicaid are declining from the current year to years one and three because per the applicant, the rates are not contractually set so it is difficult to project.
- The increase in operating cost is attributable to an increase in supplies and labor costs, although the operating expense per patient day declines based on a projected increase in utilization. The applicant intends to hire an additional 1.6 FTEs and 3.8 FTEs in the first and third years, mostly related to additional LPN and Aides/Orderlies staff.
- The applicant indicated that the increase in projected utilization is the result of the following: the facility has brought in a person experienced in the operations of skilled nursing facilities to assist in improving facility operations. Upon approval of this application, the new members will build on these improvements by implementing measures to make the nursing home more attractive to those in need of sub-acute rehabilitation as well as traditional residential health care services. The new members plan to add clinical specialties and make physical improvements to the facility to increase census.
- Breakeven utilization is projected at approximately 91.26% for the third year. The facility occupancy based on self-reported statistics provided to the Department as of June 1, 2022, was 87.5%, which compares favorably with the Chautauqua County average for all nursing homes combined of 78.7%.

- The applicant has indicated that the facility received $509,000 in CARES Funding.
- Utilization broken down by payor source during the current year, year, and year three are as follows:

| Payor | Current Year (2020) | Year One (2023) | Year Three (2025) |
|---|---|---|---|
| Commercial FFS | 8.63% | 2.95% | 2.95% |
| Medicare FFS | 7.04% | 7.52% | 7.52% |
| Medicare MC | 6.68% | 8.23% | 8.23% |
| Medicaid FFS | 46.81% | 35.37% | 35.37% |
| Medicaid MC | 24.96% | 33.72% | 33.72% |
| Private Pay | 5.88% | 12.21% | 12.21% |

**Asset Purchase Agreement**

The applicant submitted an executed APA to acquire certain assets related to the RHCF to be effectuated upon approval by the PHHPC. The terms are summarized below:

| | |
|---|---|
| Date: | July 6, 2017 |
| Seller: | Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC |
| Purchaser: | DURNC Operating, LLC, |
| Assets Transferred: | All furniture, fixtures, furnishings, equipment, etc.; All inventory and supplies located at the facility; All policies/procedures, manuals, intellectual property, etc.; Telephone and fax numbers; Administrative and financial books and records; Permits; Goodwill; Trust Property; Medicare/Medicaid/Third Party Payor provider numbers and provider reimbursement agreements. |
| Excluded Assets: | Cash/Cash Equivalents; All Accounts Receivable and other rights to payment from third parties; Licenses and permits not assignable or transferable; marketable securities; Any grant awarded by a Governmental Authority; All sums received from DOH related to the Universal Settlement of Medicaid rate appeals and connected lawsuits against NYS; Funds from all rate adjustments and appeals. |
| Purchase Price: | The total price for the five facilities included in the APA is $100,000. $10,000 is allocated to this application. |
| Payment of Purchase Price: | $50,000 deposit paid by the original proposed members (held in escrow) toward the total purchase price, with a balance of $50,000 due at closing. The proposed members will pay $5,000 to the current operator of this facility at closing. |

The purchase price of the operations is proposed to be satisfied with members' equity.

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 May 20, 2022, the facility had no outstanding Medicaid liabilities.

**Assignment Agreement**

The applicant submitted an executed AA to acquire the membership interests in DURNC Operating, LLC. The terms are summarized below:

| | |
|---|---|
| Date: | January 12, 2018 |
| Assignors: | Ephraim Zagelbaum, Alexander Barth, and Yehudah Walden |
| Assignees: | Batia Zagelbaum, Teresa Creedo, Esther Barth and Chaya Walden |
| Assignment: | Membership Interests in DURNC Operating, LLC |
| Purchase Price: | $5,000 was paid to the assignors upon execution of this agreement |

### Lease Agreement

The applicant submitted a draft lease agreement, the terms of which are summarized below:

| | |
|---|---|
| Premises: | 40-bed RHCF located at 447 Lake Shore Drive West, Dunkirk, NY (Chautauqua County) |
| Landlord: | DURNC Realty, LLC |
| Tenant: | DURNC Operating, LLC |
| Term: | 10 years with up to twenty (20) 1-year extension terms. |
| Rent: | $218,346 annual rent |
| 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 the landlord and the operating entity

### Capability and Feasibility

DURNC Operating, LLC will acquire the RHCF's operations for $10,000 funded via members' equity. The applicant has paid $5,000 toward the purchase price leaving a balance due of $5,000 at closing. There are no project costs associated with this application.

The working capital requirement is $582,559 based on two months of first-year expenses. Working capital will be satisfied via equity from proposed members. BFA Attachment A, the proposed members' net worth summaries, shows sufficient assets overall to meet the acquisition and working capital equity requirements. Esther Barth has provided an affidavit confirming her willingness to contribute personal resources disproportionate to her membership interest in the operations to cover any other proposed member's equity shortfall. BFA Attachment D is the pro forma balance sheet as of the first day of operation, which indicates a positive members' equity of $592,559. It is noted that operating assets include $10,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, the net asset position would be a positive members' equity of $582,559.

The submitted budget indicates that net income of $35,185 and $146,417 will be generated for years one and three, respectively. BFA Attachment E shows that the proposed members of DURNC, EDRNC, HORNC, and SARNC have enough equity overall to fund all four CON applications. However, two of the members (Batia Zagelbaum and Chaya Walden) have insufficient liquid resources to cover their share. As previously noted, disproportionate share affidavits were provided by other proposed members to cover any member's equity shortfall. The budget appears reasonable.

BFA Attachment B is the financial summary of Dunkirk Rehabilitation for the period 2019 through March 31, 2022. As shown, the entity had a positive working capital position, a positive net asset position, and a net income of $17,776 as of March 31, 2022. As of December 31, 2021, the entity had a positive working capital position, positive net asset position, and a net income of $984,379. In 2019 and 2020, the entity had an average negative net asset position of ($1,361,401) and incurred an average loss of ($152,121). The applicant indicated that the loss and negative net asset positions were due to difficulty in securing admissions which impacted the facility's overall financial position. In 2018, the facility brought a person experienced in the operations of skilled nursing facilities to assist in improving facility operations. While measures being taken to improve finances were impacted by the effects of the pandemic in 2020, the facility was back on track in 2021 and experienced positive working capital, net assets, and operations.

BFA Attachment C is the percent ownership and financial summary of the proposed members' affiliated nursing homes. As shown, Gowanda, Massena, and Orchard had an average positive working capital, an average positive net asset position, and an average net income of $2,461,520 in 2021. The losses in 2020 for the three facilities are due to the impact of COVID

### 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 summary, members of DURNC Operating, LLC |
| BFA Attachment B | Certified 2019-2021 and the 2022 Internal Financial Summary of Dunkirk Rehabilitation |
| BFA Attachment C | Percentage Ownership and Financial Summary of Proposed Member's Affiliated RHCFs |
| BFA Attachment D | Pro Forma Balance Sheet, DURNC Operating, LLC. |
| BFA Attachment E | DURNC, EDRNC, HORNC, and SARNC-Equity Requirement for Operations |

# Public Health and Health Planning Council

## Project # 221084-E
## Hilaire Farm Skilled Living & Rehabilitation Center, LLC d/b/a Hilaire Rehab & Nursing

| | | | |
|---|---|---|---|
| *Program:* | Residential Health Care Facility | *County:* | Suffolk |
| *Purpose:* | Establishment | *Acknowledged:* | April 28, 2022 |

## Executive Summary

### Description
Hilaire Farm Skilled Living & Rehabilitation Center, LLC, d/b/a Hilaire Rehab & Nursing, is an existing 76-bed residential health care facility (RHCF) located at 9 Hilaire Drive, Huntington (Suffolk County). This applicant is requesting approval to transfer the membership interests of a deceased member to a new member.

The current and proposed membership of Hillaire Farm Skilled Living & Rehabilitation Center, LLC are as follows:

| Members | Current | Proposed |
|---|---|---|
| Robert Heppenheimer | 33.33% | 33.33% |
| Anupadevi Lamba | 33.33% | 33.33% |
| Ajay Lodha, MD* | 33.33% | 0.00% |
| Smita Lodha, MD | 0.00% | 33.33% |

**deceased*

There will be no change in services or beds as a result of this CON

### OPCHSM Recommendation
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
There are no project costs associated with this application. The proposed budget is as follows:

| Budget | Current Year | Year One | Year Three |
|---|---|---|---|
| Revenues | $9,671,686 | $9,540,617 | $9,540,617 |
| Expenses | $10,016,928 | $9,533,669 | $9,470,804 |
| Net Income | ($345,242) | $6,948 | $69,813 |

# 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 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]

### Council Action Date
July 28, 2022

# Program Analysis

### Program Description

| | Existing | Proposed |
|---|---|---|
| **Facility Name** | Hilaire Rehab & Nursing | Same |
| **Address** | 9 Hilaire Drive, Huntington, NY 11743 (Suffolk County) | Same |
| **RHCF Capacity** | 76-bed | Same |
| **ADHCP Capacity** | N/A | Same |
| **Type of Operator** | Limited Liability Company | Same |
| **Class of Operator** | Proprietary | Same |
| **Operator** | Hilaire Farm Skilled Living & Rehabilitation Center, LLC<br><br>**Members**<br>Robert Heppenheimer 33.3%<br>Anupadevi Lamba 33.3%<br>Ajay Lodha, MD 33.3% | Hilaire Farm Skilled Living & Rehabilitation Center, LLC<br><br>**Members**<br>Robert Heppenheimer 33.3%<br>Anupadevi Lamba 33.3%<br>Smita Lodha, MD 33.3% |

### Character and Competence

**Smita Lodha, MD** is a physician licensed to practice in New York State who is co-owner of Queens Medical Services PLLC. She graduated from RNT Medical College in Udaipur, India and completed a Family Practice Residency at North Shore University Hospital.

### Quality Review

Dr. Smita Ladho discloses no ownership of licensed health care facilities.

| Facility | Ownership Since | Overall | Health Inspection | Quality Measure | Staffing |
|---|---|---|---|---|---|
| **New York** | | | | | |
| Hilaire Rehab & Nursing | Subject Facility | ** | * | ***** | ** |
| | 03/2006<br>*Data Date: 1/2009* | ***** | **** | ***** | *** |

*Data as of: 04/2022*

The facility entered into an Employment Agreement engaging Ari Silberstein as Chief Executive Officer in July 2018 to assist in the operation of the facility. With Mr. Silberstein's guidance, the facility has implemented measures to improve the overall clinical care and is working on bringing occupancy back to the historically strong pre-pandemic levels, in turn improving the facility's financial position. The agreement was entered into July 2018 and is still in place.

### 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) budget and their operating budget, in 2022 dollars, for the first (2023) and third-year (2025) of operation after the change in ownership. The budget is summarized below:

| | Current Year 2020 | | Year One 2023 | | Year Three 2025 | |
|---|---|---|---|---|---|---|
| Revenues | Per Diem | Total | Per Diem | Total | Per Diem | Total |
| Medicaid FFS | $262.48 | $2,841,648 | $264.84 | $4,042,783 | $264.84 | $4,042,783 |
| Medicaid MC | $363.86 | 250,336 | $363.86 | 316,558 | $363.86 | 316,558 |
| Medicare FFS | $795.13 | 2,712,984 | $597.11 | 2,759,842 | $597.11 | 2,759,842 |
| Medicare MC | $379.24 | 166,865 | $328.95 | 160,857 | $328.95 | 160,857 |
| Private Pay | $300.00 | 675,600 | $526.00 | 1,243,990 | $526.00 | 1,243,990 |
| All Other | $284.36 | 1,958,669 | $284.36 | 1,016,587 | $284.36 | 1,016,587 |
| Other | | 1,065,584 | | 0 | | 0 |
| Total Revenue | | $9,671,686 | | $9,540,617 | | $9,540,617 |
| | | | | | | |
| Expenses | | | | | | |
| Operating | $372.18 | $9,120,597 | $310.07 | $8,429,597 | $308.31 | $8,381,786 |
| Capital | $36.58 | $896,331 | $40.61 | $1,104,072 | $40.06 | $1,089,018 |
| Total | $408.75 | $10,016,928 | $350.68 | $9,533,669 | $348.37 | $9,470,804 |
| | | | | | | |
| Net Income/(Loss) | | ($345,242) | | $6,948 | | $69,813 |
| | | | | | | |
| Utilization (days) | | 24,506 | | 27,186 | | 27,186 |
| Occupancy | | 88.34% | | 98.00% | | 98.00% |

The following is noted for the submitted budget:

- Medicaid revenue is based on the facility's current 2022 Nursing Home Medicaid rate sheet.
- The Medicare rate is the actual average daily rate experienced by the facility during 2021. Private Pay and Other payment rates are based on the facility's actual average 2021 rates.
- Current Year Other Revenue includes $563,142 in CARES Act Provider Relief Funds, $501,361 in Miscellaneous Income, and $1,081 in Interest Income.
- Expense assumptions are based on the current experience of the facility in 2020, adjusted to the projected census in the first and third years. Lease rental expense per the executed lease has been included.
- The facility had an occupancy rate of 84.7% in 2016, 87.4% in 2017, 95.3% in 2018, 93.0% in 2019 and 84.6% through May 2020. While the facility's occupancy improved and remained strong through March 2020 at 91.3% the impact of the COVID-19 pandemic curtailed the facility's occupancy in the last couple of months of 2020 and into the first quarter of 2021. Occupancy at the facility started to recover in the second quarter of 2021 and continues to improve. As of June 1, 2022, their occupancy rate is 93.4%. The applicant anticipates that the historically strong occupancy will be achieved upon full recovery from the pandemic impact. Accordingly, utilization is projected to increase to 98% in Years One and Three. In 2021, Suffolk County had an 82.9% overall occupancy rate and as of 6/1/2022, the County is at 83.8%.

Utilization by payor for the current and first year after the ownership change is summarized below:

| | Current Year | | Years One & Three | |
|---|---|---|---|---|
| Payor | Patient Days | % | Patient Days | % |
| Medicare FFS | 3,412 | 13.92% | 4,622 | 17.00% |
| Medicare MC | 440 | 1.80% | 489 | 1.80% |
| Medicaid FFS | 10,826 | 44.18% | 15,265 | 56.15% |
| Medicaid MC | 688 | 2.81% | 870 | 3.20% |
| Private Pay | 2,252 | 9.19% | 2,365 | 8.7% |
| All Other | 6,888 | 28.10% | 3,575 | 13.15% |
| Total | 24,506 | 100.00% | 27,186 | 100.00% |

Breakeven utilization is projected at 97.93% or 27,166 patient days for Year One and 97.33% or 27,000 patient days for Year Three.

**Membership Transfer Agreement**

The applicant submitted an executed agreement from a deceased member's widow to acquire 33.33% membership interest in the RHCF's operations. The agreement will become effectuated upon PHHPC approval of this CON. The terms are summarized below.

| | |
|---|---|
| Date: | May 26, 2022 |
| Transferor: | The Estate of Dr. Ajay Lodha |
| Transferee: | Dr. Smita Lodha |
| Assets Transferred: | 33.33% ownership interest in Hilaire Farm Skilled Living & Rehabilitation Center, LLC, d/b/a Hilaire Rehab & Nursing |

As of June 21, /2022, the facility has an outstanding Medicaid Liability of $31,800.11.

**Capability and Feasibility**

There are no project costs associated with this application. The submitted budget projects a net income of $6,948 in Year One and $69,813 in Year Three after the 33.33% change in ownership. The budget appears reasonable.

BFA Attachment C is the 2019 - 2020 Certified Financial Statements of Hilaire Farm Skilled Living & Rehabilitation Center, LLC, and their Internal Financial Statement for the period ending December 31, 2021. As shown, the RHCF had an average negative working capital position of $194,096, average negative net assets of $3,769,957, and an average net loss of $266,575 for the period 2019-2020. For the period ending December 31, 2021, the facility had positive working capital of $1,366,029 and a negative net asset position of $3,743,016. They also generated a positive net income of $718,839 for the period.

**Conclusion**

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

# Attachments

| | |
|---|---|
| LTCOP Attachment A | LTC Ombudsman Program Recommendation |
| BFA Attachment A | Net Worth of Proposed Members of Hilaire Farm Skilled Living & Rehabilitation Center, LLC |
| BFA Attachment B | 2019-2020 Certified Financial Statements and 1/1/21-12/31/21 Internal Financial Statement of Hilaire Farm Skilled Living & Rehabilitation Center, LLC |

# Public Health and Health Planning Council

## Project # 202122-E
## Providence Rest, Inc.

| | | | |
|---|---|---|---|
| *Program:* | **Residential Health Care Facility** | *County:* | **Bronx** |
| *Purpose:* | **Establishment** | *Acknowledged:* | **October 15, 2020** |

## Executive Summary

### Description

Providence Rest, an existing voluntary, not-for-profit, Article 28 residential health care facility (RHCF) at 3304 Waterbury Avenue, Bronx (Bronx County), requests approval to establish Catholic Health Care System (CHCS) as the active parent/co-operator of the RHCF.

CHCS, a not-for-profit corporation at 205 Lexington Avenue, 3rd Floor, New York (New York County), is a health care delivery system comprised of a long-term acute care hospital, nursing homes, and community support services including supportive housing, pastoral care, and community engagement. As of December 23, 2020, CHCS d/b/a Archcare is the sole member and passive parent of Providence Rest. The sole member of CHCS is Providence Health Services (PHS), a not-for-profit corporation.

Upon approval of this application by PHHPC, Providence Rest will use the assumed name ArchCare at Providence Rest.

As an active parent and co-operator, CHCS will have the following rights, powers, and authorities for Providence Rest:

- Approval of operating and capital budgets;
- Appointing board members;
- Authority to hire and fire the administration or key management employees;
- Adopt and enforce policies with regard to the operation of the facility;
- Authority over the disposition of assets;
- Maintenance and control of the books and records; and
- Approval of settlements of administrative proceedings or litigations.

PHS, the sole member of CHCS, will have no operational powers over Providence Rest.

### OPCHSM Recommendation

Contingent Approval

### Need Summary

There will be no changes to beds or services as a result of this application.

### Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

### Financial Summary

There are no project costs. The submitted budget projects a deficit ($967,336) in Year One and an excess of revenue over expenses of $91,080 in Year Three following completion of the CON, as summarized below. The applicant has provided a letter indicating that first-year net operating losses will be offset via ongoing operations of CHCS.

| Budget | Year One | Year Three |
|---|---|---|
| Revenue | $27,953,987 | $31,920,216 |
| Expense | $28,921,323 | $31,829,136 |
| Gain/Loss | ($967,336) | $91,080 |

# 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
<u>**Approval contingent upon**</u>:

1. Submission of a photocopy of an amended and executed Amended Certificate of Incorporation, acceptable to the Department. [CSL]
2. Submission of a photocopy of an amended and executed Amended Amendment No. 1 to the Amended and Restated Bylaws of Providence Rest, acceptable to the Department. [CSL]
3. Submission of a photocopy of a list of the Board of Directors of Providence Rest, acceptable to the Department. [CSL]
4. Submission of a photocopy of amended and executed Administrative Services Agreements, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Amended and Restated Certificate of Incorporation for Catholic Health Care System (CHCS), acceptable to the Department. [CSL]
6. 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]
7. 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: a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program; b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and c. 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]

<u>**Approval conditional upon**</u>:

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]

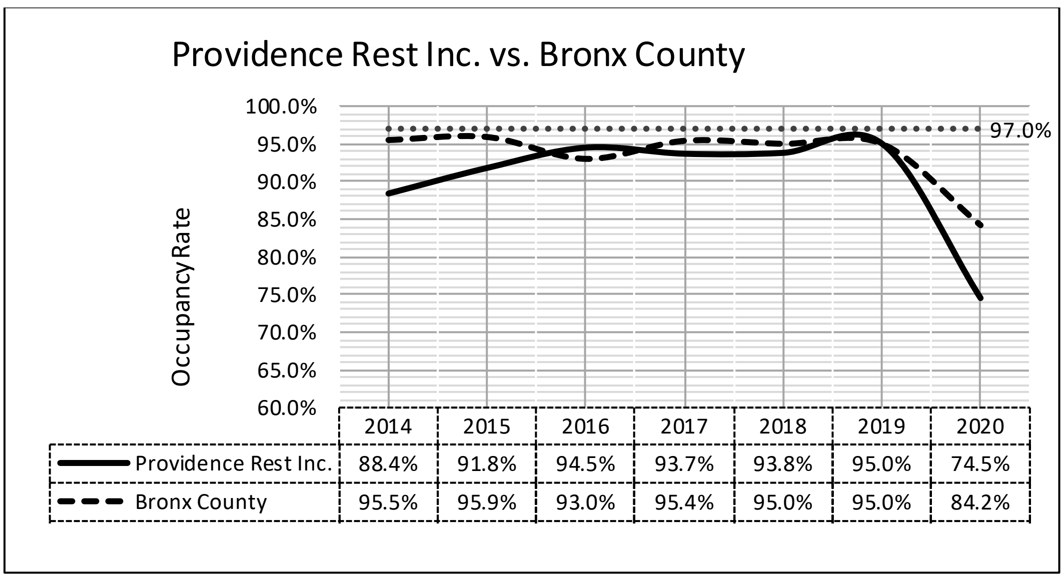
### Council Action Date
July 28, 2022

# Need and Program Analysis

**Program Description**

| | Existing | Proposed |
|---|---|---|
| **Facility Name** | Providence Rest | Archcare at Providence Rest |
| **Address** | 3304 Waterbury Avenue<br>Bronx, NY 10465<br>(Bronx County) | Same |
| **RHCF Capacity** | 200 | Same |
| **ADHCP Capacity** | N/A | Same |
| **Type of Operator** | Voluntary | Same |
| **Class of Operator** | Not-for-profit Corporation | Same |
| **Operator** | Providence Rest, Inc. | Providence Rest, Inc.<br><br>**<u>Co-Operator</u>**<br>Catholic Health System (CHCS) d/b/a Archcare |

**Utilization**




The facility consistently had occupancy greater than 91% in the five years preceding the COVID-19 pandemic.

## 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 specific 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 below the threshold of 75% of the Bronx County rate from 2018 through 2020.

| Medicaid Access | 2018 | 2019 | 2020 |
|---|---|---|---|
| **Bronx County Total** | **38.50%** | **41.90%** | **41.60%** |
| Bronx Threshold Value | 28.90% | 31.40% | 31.20% |
| Provident Rest, Inc. | 17.60% | 15.70% | 9.50% |

### Character and Competence

The board members of Catholic Health System were reviewed as follows:

**Timothy Dolan** is the Archbishop of the Archdiocese of New York and he holds a doctoral degree from Catholic University. He discloses the following board memberships: ArchCare Senior Life since 2009, ArchCare Advantage since 2009, ArchCare Community Life since 2012, ArchCare at Home from 5/1/2014 to 1/2018, Dominican Sisters Family Health Service, Inc. since 2016, Ulster Home Health Services, Inc. from 1/1/2019 to 4/7/2020, Family Home Health Services, Inc. since 2016, and ArchCare since 2009.

**Whiston William** is employed with the Archdiocese of New York as the CFO. He holds an MBA from New York University and discloses the following board memberships: ArchCare Senior Life since 2008, ArchCare Community Life since 2012, ArchCare at Home from 5/1/2014 to 1/2018, Dominican Sisters Family Health Service, Inc. since 8/2016, New York State Catholic Health Plan, Inc. since 8/2/2018, Ulster Home Health Services, Inc. from 1/1/2019 to 4/7/2020, Family Home Health Service, Inc. since 2016, and ArchCare since 2008.

**Karen Gray** is employed with A+E Networks as the EVP of Human Resources and before that at Christie's Inc. as the Human Resources Director. She received a Juris Doctorate from Harvard Law School and holds an attorney's license in New York state that is currently in good standing. Karen Gray discloses the following board memberships: ArchCare since 2017, Carmel Richmond Healthcare and Rehabilitation Center since 2017, Ferncliff Nursing Home since 2017, Mary Manning Walsh Home since 2017, San Vicente de Paul Skilled Nursing & Rehabilitation Center since 2017, Terence Cardinal Cooke Health Care Center since 2017, ArchCare at Home from 2017 to 2018, Dominican Sisters Family Health Service, Inc. since 2017, ArchCare Senior Life since 2017, ArchCare Advantage since 2017, Archcare Community Life since 2017, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 8/2016, and Calvary Hospital since 2017.

**Eric Feldmann** has been retired since April 2013. Before that he worked for Sisters of Charity Housing Development Corp. as the Executive Director and CEO. Eric Feldmann received a degree in administrative management from Carnegie Institute of Technology, and he holds a Real Estate Broker license in New York that is currently in good standing and a Filling Representative license in New York State that is currently expired. He discloses the following board memberships: ArchCare since 2009, Carmel Richmond Healthcare and Rehabilitation Center since 2005, Ferncliff Nursing Home since 2009, Kateri Residence from 2009 to 2013, Mary Manning Walsh Home since 2009, St. Teresa's Nursing Home from 2009 to 2013, San Vicente de Paul Skilled Nursing & Rehabilitation Center since 2009, Terence Cardinal Cooke Health Care Center since 2009, ArchCare at Home from 5/2014 to 1/2018, Dominican

Sisters Family Health Service, Inc. since 2016, ArchCare Senior Life since 2009, ArchCare Advantage since 2009, ArchCare Community Life since 2012, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 8/2016, and Calvary Hospital since 2009.

**Gennaro Vasile** has been retired since 2015, and before that, he worked concurrently for Freed-Maxick Healthcare Consulting as a Senior Advisor and at Integrated Management Solutions as an Owner and Principal. He holds a doctoral degree from the University of Iowa and discloses the following board memberships: ArchCare since 2013, Carmel Richmond Healthcare and Rehabilitation Center since 2013, Kateri Residence from 1/2013 to 8/2013, Ferncliff Nursing Home since 2013, Mary Manning Walsh Home since 2013, St. Teresa's Nursing Home from 1/2013 to 2/2013, St. Teresa's Nursing Home from 1/2013 to 2/2013, San Vicente de Paul Skilled Nursing & Rehabilitation Center since 2013, Terence Cardinal Cooke Health Care Center since 2013, Empire State Home Care Services, Inc. from 5/1/2014 to 1/2018, Dominican Sisters Family Health Services, Inc. since 2016, ArchCare Senior Life since 2013, ArchCare Advantage since 2013, ArchCare Community Life since 2013, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 8/2016 and Calvary Hospital since 2013.

**Gerald Sweeney** is employed with Healthfirst a health insurance business as the CIO, and before that he worked for Cigna Health Care a health insurance company as the VP of Information Technology. He holds a bachelor's degree in computer science from SUNY Albany and discloses the following board memberships: Archcare since 2012, Carmel Richmond Healthcare and Rehabilitation Center since 2012, Ferncliff Nursing Home since 2012, Kateri Residence from 2012 to 8/2013, Mary Manning Walsh Home since 2012, St. Teresa's Nursing Home from 2012 to 2/2013, San Vicente de Paul Skilled Nursing & Rehabilitation Center since 2012, Terence Cardinal Cooke Health Care Center since 2012, Dominican Sisters Family Health Services since 2016, ArchCare Senior Life since 2012, ArchCare Community Life since 2012, Empire State Home Care Services, Inc. from 5/2014 to 2018, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2016, and Calvary Hospital since 2012.

**Gerald Walsh** is employed with the Archdiocese of New York as the Vicar for clergy. He holds a master's degree in social work from Fordham University and discloses the following board memberships: Archcare since 2013, Carmel Richmond Healthcare and Rehabilitation Center since 2013, Ferncliff Nursing Home since 2013, Kateri Residence from 2013 to 8/2013, Mary Manning Walsh Home since 2013, St. Teresa's Nursing Home from 2013 to 2/2013, San Vicente de Paul Skilled Nursing & Rehabilitation Center since 2013, Terence Cardinal Cooke Health Care Center since 2013, Dominican Sisters Family Health Services, Inc. since 2016, Empire State Home Care Services, Inc. from 5/2014 to 1/2018, Isabella Geriatric Center since 1999, ArchCare Senior Life since 2013, Archcare Advantage since 2013, Archcare Community Life since 2013, Ulster Home Health Service, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2016, and Calvary Hospital since 2013.

**Telma Flores** is employed with Providence Rest Nursing Home as the CEO and holds a master's degree in public administration from Hunter College of the City of New York. She is a licensed Nursing Home Administrator in the state of New York with a license currently in voluntary inactive status.

**George Irish** is employed with the Hearst Foundation a private charitable foundation as the Eastern Director. He holds a bachelor's degree from Millikin University and discloses the following board memberships: ArchCare since 2017, Carmel Richmond Healthcare and Rehabilitation Center since 2017, Ferncliff Nursing Home since 2017, Mary Manning Walsh Home since 2017, San Vicente de Paul Skilled Nursing & Rehabilitation Center since 2017, Terence Cardinal Cooke Health Care Center since 2017, Archcare at Home from 2017 to 2018, Dominican Sisters Family Health Service, Inc. since 2017, Archcare Senior Life since 2017, Archcare Advantage since 2017, Archcare Community Life since 2017, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2017, and Calvary Hospital since 2017.

**Thomas O'Brien** is employed with Sterling Bancorp, Inc. as the President and CEO, and concurrently as the Vice Chairman at Emigrant Bank. Before that he worked for Sun National Bank as the President and CEO. Thomas O'Brien holds a bachelor's degree from Niagara University and discloses the following board memberships: ArchCare since 2005, Carmel Richmond Healthcare and Rehabilitation Center since 2005, Ferncliff Nursing Home since 2005, Kateri Residence from 2005 to 8/2013, Mary Manning Walsh

Home since 2005, St. Teresa's Nursing Home from 2005 to 2/2013, San Vicente de Paul Residence since 2005, Terence Cardinal Cooke Health Care Center from 2005, Empire State Home Care Services, Inc. from 5/2014 to 1/2018, Dominican Sisters Family Health Services, Inc. since 2016, Archcare Senior Life since 2008, Archcare Advantage since 2008, Archcare Community Life since 2012, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2016, and Calvary Hospital since 2005.

**Francis Serbaroli** is employed with Greenberg Traurig, LLP, a law firm, as a Shareholder. Francis Serbaroli received a Juris Doctorate from Fordham Law School, is a licensed attorney in New York State with a license currently in good standing, and discloses the following board memberships: ArchCare since 2001, Carmel Richmond Healthcare and Rehabilitation Center since 2008, Ferncliff Nursing Home since 2008, Kateri Residence from 2008 to 2013, Mary Manning Walsh Home since 2008, St. Teresa's Nursing Home from 2008 to 2013, San Vicente de Paul Skilled Nursing & Rehabilitation Center since 2008, Terence Cardinal Cooke Health Care Center since 2008, Archcare Senior Life since 2008, Archcare Advantage since 2008, ArchCare Community Life since 2012, Empire State Home Care Services, Inc. from 5/2014 to 1/2018, Dominican Sisters Family Health Service, Inc. since 2016, Ulster Home Health Service, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2016, and Calvary Hospital since 2005.

**John Cahill** is employed with the Archdiocese of New York as a Chancellor, and before that was employed at Norton Rose Fulbright LLP, a law firm. He holds a Master of Law degree from Pace University Law, is a licensed New York State attorney with a license currently in good standing, and discloses the following board memberships: Archcare since 2019, Carmel Richmond Healthcare and Rehabilitation Center since 2019, Ferncliff Nursing Home since 2019, Mary Manning Walsh since 2019, San Vicente de Paul Skilled Nursing & Recreation Center since 2019, Terence Cardinal Cooke Health Care Center since 2019, Dominican Sisters Family Health Services since 2019, ArchCare Senior Life since 2019, ArchCare Advantage since 2019, Archcare Community Life since 2019, Ulster Home Health Services, Inc. from 2019 to 4/2020, Family Home Health Services, Inc. since 2019, and Calvary Hospital since 2019.

**John Dunlap** is employed with Dunnington, Bartholow, & Miller, a law firm, as an Attorney. He holds a degree as a Barrister-at-Law from the Law Society of Upper Canada, a Solicitor license in Ontario Canada that is currently in good standing, and a New York State attorney's license currently in good standing. John Dunlap discloses the following board memberships: ArchCare since 2006, Carmel Richmond Nursing Home since 2006, Ferncliff Nursing Home since 2006, Kateri Residence from 2006 to 8/2013, Mary Manning Walsh Home since 2006, St. Teresa's Nursing Home from 2006 to 2/2013, San Vicente de Paul Skilled Nursing & Rehabilitation Center since 2006, Terence Cardinal Cooke Health Care Center since 2006, Empire State Home Care Services, Inc. from 5/2014 to 1/2018, Dominican Sisters Family Health Services, Inc. since 2016, ArchCare Senior Life since 2008, ArchCare Advantage since 2008, ArchCare Community Life since 2012, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2016, and Calvary Hospital since 2006.

**Clarion Johnson** has been retired since 2013, and before that worked for Exxon Mobil Corporation a multinational oil and gas corporation as the Medical Director, Medicine & Occupational Health. Clarion Johnson holds a Doctor of Medicine degree from Yale University School of Medicine, holds a physician and surgeon license in Maryland that is currently active, and previously held a physician and surgeon license in Virginia and Texas that are currently not active. Clarion Johnson discloses the following board memberships: ArchCare since 2016, Carmel Richmond Healthcare and Rehabilitation Center since 2016, Ferncliff Nursing Home since 2016, Mary Manning Walsh Home since 2016, St. Vincent de Paul Residence since 2016, Terence Cardinal Cooke Health Care Center since 2016, ArchCare at Home since 2016, Empire State Home Care Services, Inc. from 2016 to 1/2018, ArchCare Senior Life since 2016, ArchCare Advantage since 2016, ArchCare Community Life since 2016, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2016, and Calvary Hospital since 2016.

**Joseph Saporito** lists employment with Richmond University Medical Center as the CFO, Baruch College as an adjunct professor, and NYU Langone Medical Center as the VP of finance. He holds a bachelor's degree in accounting from Iona College, is a licensed CPA in New York with a license currently in good standing, and discloses the following board memberships: Richmond University Medical Center since 2015, and Providence Rest Nursing Home since 2014.

**Rory Kelleher** is employed by Sidley Austin LLP, a law firm, as Counsel, holds a Juris Doctorate from Columbia University School of Law, and is a New York State attorney with a license currently in good standing. Rory Kelleher discloses the following board memberships: ArchCare from 2008 to 2012 and 2013 to present, Carmel Richmond Healthcare and Rehabilitation Center from 2008 to 2012 and 2013 to present, Ferncliff Nursing Home from 2008 to 2012 and 2013 to present, Kateri Residence from 2005 to 2012 and from 2013 to 8/2013, Mary Manning Walsh Home from 2008 to 2012 and 2013 to present, St. Teresa's Nursing Home from 2008 to 2012 and 2012 to 2/2013, San Vicente de Paul Skilled Nursing & Rehabilitation Center from 2008 to 2012 and 2013 to present, Terence Cardinal Cooke Health Care Center from 2008 to 2012 and 2013 to present, Empire State Home Care Services, Inc. from 5/2014 to 1/2018, Dominican Sisters Family Health Service, Inc. since 2016, ArchCare Senior Life since 2008, ArchCare Advantage since 2008, ArchCare Community Life since 2008, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2016, and Calvary Hospital since 2008.

**Kathryn Rooney** is employed with the Law Offices of Kathryn K. Rooney as an Attorney. She received a Juris Doctorate from Albany Law School, holds a New York State attorney license currently in good standing, and discloses the following board memberships: Richmond University Medical Center since 2007, ArchCare since 2009, Carmel Richmond Healthcare and Rehabilitation Center since 2001, Ferncliff Nursing Home since 2009, Kateri Residence from 2009 to 8/2013, Mary Manning Walsh Home since 2009, St. Teresa's Nursing Home from 2009 to 2/2013, St. Vincent de Paul Residence since 2009, Terence Cardinal Cooke Health Care Center since 2009, Empire State Home Care Services, Inc. from 5/2014 to 1/2018, Dominican Sisters Family Health Services, Inc. since 2016, ArchCare Senior Life since 2009, ArchCare Advantage since 2009, ArchCare Community Life since 2012, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2016, and Calvary Hospital since 2009. Kathryn Rooney also discloses ownership in Homemakers of S.I., a home health agency, since 1950.

**Thomas Alberto** has been retired since 2013, and before that worked for Deloitte & Touche, LLP, a CPA firm, as Managing Director. He holds an MBA degree from St. John's University and has a CPA license in New York that was put on hold in 2013. Thomas Alberto discloses the following board memberships: ArchCare since 2013, Carmel Richmond Nursing Home since 2013, Ferncliff Nursing Home since 2013, Kateri Residence from 2013 to 8/2013, Mary Manning Walsh Home since 2013, St. Teresa's Nursing Home from 2013 to 2/2013, San Vicente de Paul Skilled Nursing & Rehabilitation Center since 2013, Terence Cardinal Cooke Health Care Center since 2013, Empire State Home Care Services, Inc. since 2013, Visiting Nurse Regional Home Health System from 1990 to 5/2014, Dominican Sisters Family Health Services, Inc. since 2016, ArchCare Senior Life since 2013, ArchCare Advantage since 2013, ArchCare Community Life since 2013, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2016, Calvary Hospital since 2013, and Visiting Nurse Association of Brooklyn from 1990 to 5/2014.

**John Gleason** is employed with Epstein Becker & Green, P.C., a law firm, as a Shareholder. He holds a Juris Doctorate from St. John's University and discloses the following board memberships Providence Rest Nursing Home since 1999 and Calvary Hospital from 2000 to 2007.

**Charles Fahey** retired in 2001, holds a master's degree in social work from Catholic University, and discloses the following board memberships: ArchCare since 2006, Carmel Richmond Healthcare and Rehabilitation Center since 2006, Ferncliff Nursing Home since 2006, Kateri Residence from 2006 to 8/2013, Mary Manning Walsh Home since 2006, St. Teresa's Nursing Home from 2006 to 2/2013, San Vicente de Paul Skilled Nursing & Rehabilitation Center since 2006, Terence Cardinal Cooke Health Care Center since 2006, ArchCare Senior Life since 2008, ArchCare Advantage since 2008, ArchCare Community Life since 2012, ArchCare at Home from 5/2014 to 1/2018, Dominican Sisters Family Health Services, Inc. since 2016, Isabella Geriatric Center from 1998 to 2010, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2016, and Calvary Hospital since 2006.

**Tara Cortes** is employed with the Hartford Institute for Geriatric Nursing a university as an Executive Director and Professor. She holds a doctorate degree from New York University, a Registered Nursing license in New York that is currently in good standing, and discloses the following board memberships: ArchCare since 2013, Carmel Richmond Healthcare and Rehabilitation Center since 2013, Ferncliff Nursing Home since 2013, Kateri Residence from 2013 to 8/2013, Mary Manning Walsh Home since 2013, St. Teresa's Nursing Home from 2013 to 2/2013, San Vicente de Paul Skilled Nursing & Rehabilitation Center since 2013, Terence Cardinal Cooke Health Care Center since 2013, Empire State Home Care Services, Inc. from 2009 to 1/2018, Visiting Nurse Regional Home Health System from 9/2009 to 5/2014, Visiting Nurse Association of Brooklyn from 9/2009 to 5/2014, ArchCare Senior Life since 2013, ArchCare Advantage since 2013, ArchCare Community Life since 2013, Ulster Home Health Services, Inc. from 1/2019 to 4/2020, Family Home Health Services, Inc. since 2016, Calvary Hospital since 2013, and Dominican Sisters Family Health Service, Inc. since 2016.

**Thomas Fahey** has been retired since 2011, and before that worked for Memorial Sloan Kettering as a Senior Vice President. He holds a Doctor of Medicine degree from Cornell University Medical College, a New York state license in medicine that is currently in good standing, and discloses the following board memberships: ArchCare since 2009, Carmel Richmond Healthcare and Rehabilitation Center since 2009, Ferncliff Nursing Home since 2009, Kateri Residence since 2009, Mary Manning Walsh Home since 2009, St. Teresa's Nursing Home since 2009, San Vincent de Paul Skilled Nursing & Rehabilitation Center since 2009, Terence Cardinal Cooke Health Care Center since 2009, ArchCare at Home since 5/2014, Dominican Sisters Family Health Service, Inc. since 8/2016, Memorial Sloan Kettering Cancer Center since 1996, Calvary Hospital since 2000, ArchCare Senior Life since 2009, Archcare Advantage since 2009, ArchCare Community Life since 2012, Ulster Home Health Services, Inc. since 1/2019, and Family Home Health Services, Inc. since 8/2016.

**Joseph LaMorte** is employed with the Archdiocese of New York, a religious organization, as Vicar and Chancellor, and before that was the Seventh Pastor of Saint Gregory Barbarigo. He holds a Master of Science degree from Iona College and discloses the following board memberships: ArchCare Senior Life since 2019, ArchCare Advantage since 2019, Archcare Community Life since 2019, Dominican Sisters Family Health Services, Inc. since 1/2019, Ulster Home Health Services, Inc. since 1/2019, Family Home Health Services, Inc. since 2019, and Archcare since 2019.

### Quality Review

The board members of the proposed co-operator have been evaluated, in part, on the distribution of CMS Star ratings for their affiliated facilities. For all board members, the distribution of CMS star ratings for their affiliated facilities meets the standard described in state regulations.

| | CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv) | | | | |
|---|---|---|---|---|---|
| | | Duration of Affiliation | | | |
| | | < 48 Months | | 48 months or more | |
| Board Member | 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 |
| Alberto, Thomas | 5 | | | 5 | 0% |
| Cahill, John | 5 | 5 | 0% | | |
| Cortes, Tara | 5 | | | 5 | 0% |
| Dunlap, John | 5 | | | 5 | 0% |
| Fahey, Charles | 5 | | | 5 | 0% |
| Fahey, Thomas | 5 | | | 5 | 0% |
| Feldman, Eric | 5 | | | 5 | 0% |
| Flores, Telma | 1 | | | 1 | 0% |
| Gleason, John | 1 | | | 1 | 0% |
| Gray, Karen | 5 | | | 5 | 0% |
| Irish, George | 5 | | | 5 | 0% |
| Johnson, Clarion | 5 | | | 5 | 0% |
| Kelleher, Rory | 5 | | | 5 | 0% |

| | CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv) | | | | |
|---|---|---|---|---|---|
| | | Duration of Affiliation | | | |
| | | < 48 Months | | 48 months or more | |
| Board Member | 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 |
| O'Brien, Thomas | 5 | | | 5 | 0% |
| Rooney, Kathryn | 5 | | | 5 | 0% |
| Saporito, Joseph | 1 | | | 1 | 0% |
| Serbaroli, Francis | 5 | | | 5 | 0% |
| Sweeney, Gerald | 5 | | | 5 | 0% |
| Vasile, Gennaro | 5 | | | 5 | 0% |
| Walsh, Gerald | 6 | | | 6 | 0% |
| Dolan, Timothy | 0 | | | | |
| Whiston, William | 0 | | | | |
| Lamorte, Joseph | 0 | | | | |

The portfolios include board affiliations in seven New York nursing homes. All seven of the nursing homes have a CMS overall quality rating of average or above.

**CMS Nursing Home Quality Data**

| *Facility* | *Ownership Since* | *Overall* | *Health Inspection* | *Quality Measure* | *Staffing* |
|---|---|---|---|---|---|
| **New York** | | | | | |
| Providence Rest | Subject Facility | ***** | **** | ***** | ** |
| | 02/1967* | **** | **** | ** | *** |
| Carmel Richmond Healthcare and Rehabilitation Center | Current | ***** | **** | ***** | ** |
| | 10/1973* | **** | **** | *** | *** |
| Ferncliff Nursing Home | Current | *** | *** | **** | ** |
| | 03/1973* | * | * | ** | ** |
| Mary Manning Walsh Home | Current | *** | ** | ***** | ** |
| | 02/1967* | **** | **** | **** | *** |
| St. Vincent de Paul Residence | Current | **** | **** | **** | *** |
| | 09/1992* | *** | *** | **** | *** |
| Isabella Geriatric Center | Current | *** | ** | ***** | ** |
| | 02/1969* | **** | **** | **** | **** |
| Terence Cardinal Cooke Health Care Center | Current | *** | ** | ***** | *** |
| | 08/1983* | ** | * | *** | **** |

| Facility | Ownership Since | Overall | Health Inspection | Quality Measure | Staffing |
|---|---|---|---|---|---|
| **End Dated Nursing Home Affiliations** | | | | | |
| Kateri Residence | 08/2013 | *** | ** | * | * |
| | 09/1981* | ** | ** | **** | ** |
| St. Teresa's Nursing Home | 02/2013 | * | ** | *** | * |
| | 02/1967* | * | ** | * | * |

***Data as of:** 06/2022*
**Earliest Data Available 1/2009*

**Enforcement History**

St. Vincent de Paul Residence:

- The facility was fined $2,000 pursuant to Stipulation and Order NH-22-098 for surveillance findings on January 15, 2022. Deficiencies were found under 10 NYCRR 415.3(f)(1)(ii) The facility failed to ensure personnel provided basic life support, including Cardiopulmonary Resuscitation (CPR), to a resident.

Carmel Richmond Healthcare and Rehabilitation Center:

- The facility was fined $6,000 pursuant to Stipulation and Order NH-21-049 issued on March 4, 2021, for surveillance findings on January 19, 2021. Deficiencies were found under 10 NYCRR 415.19(a)(1-2) and 400.2, infection control PPE.
- The facility was assessed a CMP of $650 on July 5, 2021, for failure to report COVID information.

Ferncliff Nursing Home Co., Inc:

- The facility was fined $20,000 pursuant to Stipulation and Order NH-13-006 issued on February 27, 2013, for surveillance findings on April 27, 2011. Deficiencies were found under 10 NYCRR 415.11(c)(3)(i), 415.12, 415.15(b)(2)(ii), 415.18(c)(2), 415.15(a), 415.26, services meet professional standards, quality of care highest practicable potential, physician visits review notes, drug regimen review, medical director, administration.

Mary Manning Walsh Nursing Home Co Inc:

- The facility was fined $6,000 pursuant to Stipulation and Order NH-15-012 issued on June 24, 2015, for surveillance findings on January 25, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(1), accidents, the resident environment remains as free of accident hazards as is possible.

Isabella Geriatric Center, Inc:

- The facility was fined $24,000 pursuant to Stipulation and Order NH-20-065 issued on November 3, 2020, for surveillance findings on May 18, 2020. Deficiencies were found under 10 NYCRR 415.19(a)(1), 415.19(a)(2), 415.19(b)(1), infection control, cohorting, and PPE.
- The facility was assessed a CMP of $15,000 based on survey findings from November 19, 2020. Deficiencies were noted relating to infection control practices.

Terence Cardinal Cooke Health Care Center:

- The facility was fined $2,000 pursuant to Stipulation and Order NH-21-128 issued on June 28, 2021 for surveillance findings on March 15, 2021. Deficiencies were found under 10 NYCRR 415.19(a)(1), 415.19(a)(2), infection control, investigation of infections, isolation, and universal precautions.
- The facility was assessed a CMP of $5,000 based on survey findings from March 15, 2021. Deficiencies were noted relating to infection control practices.

### 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 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 submitted their current year (2020) operating budget, and the first- and third-year budgets after approval of Catholic Health Care System as the active parent/co-operator of the RHCF, summarized below:

| | Current Year (2020) | | Year One (2023) | | Year Three (2025) | |
|---|---|---|---|---|---|---|
| | PD/Visit | Total | PD/Visit | Total | PD/Visit | Total |
| Inpt. Revenue | | | | | | |
| Comm MC | $1,295 | $663,136 | $1,461 | $657,332 | $1,320 | $780,330 |
| Medicare FFS | $659 | 4,230,167 | $747 | 4,888,305 | $780 | 8,116,680 |
| Medicare MC | $536 | 1,586,992 | $486 | 1,299,580 | $608 | 2,316,134 |
| Medicaid FFS | $273 | 8,442,406 | $281 | 10,496,586 | $283 | 13,243,553 |
| Medicaid MC | $275 | 2,615,224 | $321 | 1,283,408 | $308 | 879,548 |
| Private Pay | $1,048 | 4,461,664 | $1,089 | 4,261,065 | $1,067 | 5,178,200 |
| Bad Debt | | (287,400) | | (1,209,629) | | (305,100) |
| Total Inpt. Rev. | | $21,712,189 | | $21,676,647 | | $30,209,345 |
| | | | | | | |
| Outpt. Revenue | | | | | | |
| Comm FFS | | | | | | |
| Comm MC | | | | | | |
| Medicare FFS | $97 | $26,498 | $96 | $2,991 | $0 | $0 |
| Medicare MC | $0 | 0 | $0 | 0 | $0 | 0 |
| Medicaid FFS | $97 | 581 | $0 | 0 | $0 | 0 |
| Medicaid MC | $0 | 0 | $0 | 0 | $0 | 0 |
| Private Pay | $100 | 44,116 | $0 | 0 | $0 | 0 |
| Total Outpt. Rev. | | $71,195 | | $2,991 | | $0 |
| | | | | | | |
| Other Op Revenue | | $2,860,863 | | $1,450,158 | | $1,399,583 |
| Non-Oper. Rev | | 1,647,351 | | 4,824,191 | | 311,288 |
| | | | | | | |
| Total Revenue | | $26,291,598 | | $27,953,987 | | $31,920,216 |
| | | | | | | |
| Inpt. Expenses | | | | | | |
| Operating | $493 | $26,890,685 | $459 | $25,244,226 | $415 | $28,813,363 |
| Capital | $70 | 3,797,104 | $67 | 3,677,097 | $43 | 3,015,773 |
| Total Inpt. Expenses | $563 | $30,687,789 | $526 | $28,921,323 | $459 | $31,829,136 |
| | | | | | | |
| Outpt. Expenses | | | | | | |
| Operating | $7 | $5,331 | $0 | $0 | 0 | $0 |
| Capital | $0 | 0 | 0 | $0 | 0 | 0 |
| Total Outpt. Expenses | $7 | $5,331 | $0 | 0 | $0 | 0 |
| | | | | | | |
| Total Expenses | | $30,693,120 | | $28,921,323 | | $31,829,136 |
| | | | | | | |
| Excess Rev over Exp. | | ($4,401,522) | | ($967,336) | | $91,080 |
| | | | | | | |
| Patient Days | | 54,556 | | 54,948 | | 69,350 |
| Visits | | 718 | | 31 | | 0 |

The following is noted concerning the submitted operating budget:

- Medicare and Medicare Managed Care are increasing due to CHCS's involvement; allowing the facility to share CHCS's resources and greater involvement directly in the hospitals, and also allowing the facility to have access to residents with higher acuities. Additionally, Managed Care contracts will be renegotiated to increase the rates while new contracts will be added with insurance companies helping both the revenues and resident days.
- Year Three uses the trajectory of how the facility will be able to swing its utilization and increase its occupancy based on its corroboration with CHCS, given CHCS's experience and outreach in the hospitals and the community.
- Expenses and utilization are based on the current data available.
- The applicant indicated that the outpatient visits and revenues for the outpatient rehabilitation program have been significantly impacted by COVID-19. Due to the uncertainty around the future of this program, the applicant has taken a conservative approach by projecting nearly zero or zero revenues and expenses going forward.

Utilization by payor source during the current year, first year, and third year are as follows:

| | Current Year (2020) | | Year One (2023) | | Year Three (2025) | |
|---|---|---|---|---|---|---|
| | Patent Days | % | Patent Days | % | Patent Days | % |
| Inpatient | | | | | | |
| Comm MC | 512 | 0.94% | 450 | 0.82% | 591 | 0.85% |
| Medicare FFS | 6,420 | 11.77% | 6,543 | 11.91% | 10,406 | 15.01% |
| Medicare MC | 2,960 | 5.43% | 2,674 | 4.87% | 3,812 | 5.50% |
| Medicaid FFS | 30,898 | 56.64% | 37,370 | 68.01% | 46,829 | 67.53% |
| Medicaid MC | 9,508 | 17.43% | 3,998 | 7.28% | 2,860 | 4.12% |
| Private Pay | 4,258 | 7.80% | 3,913 | 7.12% | 4,852 | 7.00% |
| Total | 54,556 | 100.00% | 54,948 | 100.00% | 69,350 | 100.00% |

| | Current Year (2020) | | Year One (2023) | | Year Three (2025) | |
|---|---|---|---|---|---|---|
| | Visits | % | Visits | % | Visits | % |
| Outpatient | | | | | | |
| Medicare FFS | 272 | 37.88% | 31 | 100.00% | 0 | N/A |
| Medicaid FFS | 6 | 0.84% | 0 | 0.00% | 0 | N/A |
| Private Pay | 440 | 61.28% | 0 | 0.00% | 0 | N/A |
| Total | 718 | 100.00% | 31 | 100.00% | 0 | N/A |

As noted above, the applicant indicated that the outpatient visits and revenues for the outpatient rehabilitation program have been significantly impacted by COVID-19. Due to the uncertainty around the future of this program, the applicant has taken a conservative approach by projecting nearly zero or zero revenues and expenses going forward.

### Capability and Feasibility

There are no project costs or budgets associated with this application. The submitted budget projects a deficiency of revenue over expenses of $967,336 and an excess of revenue over expenses of $91,080 will be generated for the first and third years, respectively. The applicant has submitted a letter indicating that the net operating loss in year one will be offset via ongoing operations of CHCS. Revenues are based on current reimbursement methodologies and CHCS's industry experience. The budget appears reasonable.

BFA Attachment A is the December 31, 2020 and 2021 certified financial statements for Providence Rest. During this period, the entity had an average positive working capital position and an average positive net asset position, Providence Rest had a deficiency of revenue over expenses of $5,845,273 and $5,999,482 in the years 2020 and 2021, respectively. The applicant has indicated that the losses in 2020 and 2021 were primarily the result of a decline in the facility's census due to the Covid-19 pandemic and the cost of Covid-19 testing. The 2020 monthly census declined from a high of 95% in February to a low of 66% in August and ended the year at 69% in December. Commensurate with the decline in the census were fewer Medicare and Private payor days and lower than anticipated revenue.

Providence Rest is working to increase the census, which has improved from 80% as of November 2021 to 89% as of May 2022. The overall county rate for Bronx County was 89.5% as of May 2022. The RHCF expects to gain efficiencies through greater engagement with CHCS to bring Providence Rest to a positive monthly cash flow position. Efficiencies and actions to improve financial performance include placing an executive director from CHCS's other facilities to help set Providence Rest on the path to greater success and providing HR, finance, legal, and purchasing efficiencies that will help reduce overhead costs. Furthermore, the organizations are obtaining grants, including, but not limited to a grant from the Mother Cabrini Foundation for $250,000 for a hospital liaison to assist in increasing the census.

BFA Attachment B is the December 31, 2020 and 2021 certified financial statements for Catholic Health Care System. During this period, the entity had an average negative working capital position, an average positive net asset position, and an operating deficit of $4,555,056 and $3,572,609 in 2020 and 2021 respectively. The applicant has indicated that the financial statements of CHCS include programs provided to ArchCare Community Services given the large operating deficits for CHCS. These programs are also supported by grants and fundraising done by the Catholic Health Care Foundation of the Archdiocese of New York (CHCFA) and through grants received as part of its participation as a Workforce Improvement Organization. The non-operating revenues of CHCS were $6.4M and $8.8M in 2021 and 2020, respectively.

BFA Attachment C is December 31, 2020, and 2021 certified financial statements for CHCFA. The entity had an average positive working capital position and an average positive net asset position during this period. CHCFA had an operating deficit of $746,185 in 2020 and an operating gain of $239,105 in 2021. The applicant has indicated that grants to the various CHCS programs and other support that furthers their mission are an operating expense of CHCF and are often supported by its non-operating revenues. Non-operating revenues were $4.4M and $2.8M in 2021 and 2020 respectively. CHCFA also had $33.4M in net assets without donor restrictions at year-end December 31, 2020, and had $39M at year-end December 31, 2021. Approximately $32.7M of this amount is made up of cash and investments, and all of the net assets are for funding health care initiatives.

**Conclusion**

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

# Attachments

| | |
|---|---|
| LTCOP Attachment A | Long Term Care Ombudsman Program Recommendations |
| BFA Attachment A | Providence Rest December 31, 2020 & 2021 Certified Financial Statements |
| BFA Attachment B | Catholic Health Care System-December 31, 2020 & 2021 Certified Financial Statements |
| BFA Attachment C | Catholic Health Care Foundation of the Archdiocese New York-December 31, 2020 & 2021 Certified Financial Statements |