

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

November 16, 2023

*Immediately following the Special Establishment and Project Review Committee meeting,
which is to begin immediately following the Committee on Codes, Regulations, and
Legislation meeting*

(Codes scheduled to begin at 9:15 a.m.)

90 Church Street, 4th Floor CR 4 A/B, New York, New York 10007

I. INTRODUCTION OF OBSERVERS

Jeffrey Kraut, Chair

II. APPROVAL OF MINUTES

September 7, 2023 PHHPC Meeting Minutes

III. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

James V. McDonald, M.D., M.P.H., Commissioner of Health

B. Report of the Office of Aging and Long Term Care

Adam Herbst, Deputy Commissioner, Office of Aging and Long Term Care

C. Report of the Office of Public Health

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

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

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

E. Report of the Office of Health Equity and Human Rights

Tina Kim, Deputy Director, Office of Health Equity and Human Rights

IV. PUBLIC HEALTH SERVICES

Report on the Activities of the Public Health Committee

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

V. REGULATION

Report of the Committee on Codes, Regulations and Legislation

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

For Emergency Adoption

23-07 Amendment of Section 405.45 of Title 10 NYCRR
(Trauma Centers – Resources for Optimal Care of the Injured Patient)

For Information

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

23-20 Addition of Section 405.46 to Title 10 NYCRR (Hospital Cybersecurity Requirements)

21-21 Amendment of Part 425 of Title 10 NYCRR (Adult Day Health Care)

VI. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

A. Report of the Committee on Establishment and Project Review

Peter Robinson, Chair of Establishment and Project Review Committee

APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

NO APPLICATIONS

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	231325 C	NYU Langone Hospitals (Nassau County) Dr. Kalkut – Recusal	Contingent Approval

Cardiac Services Construction – Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	231103 C	NYU Langone Hospital-Brooklyn (Kings County) Dr. Kalkut - Recusal	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 2: Applications Recommended for Approval with the Following:

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

Certificates

Restated Certificate of Incorporation

Applicant

Rochester General Hospital Association, Inc.
(Monroe County)
Mr. Thomas - Interest

E.P.R.C. Recommendation

Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

CON Application

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	231044 E	Sunset SNF Operations LLC d/b/a Sunset Lake Center for Rehabilitation and Nursing (Sullivan County) Dr. Berliner – Opposed at EPRC Ms. Monroe – Opposed at EPRC	No Recommendation

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

CON Applications

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	192204 E	Highland Nursing Home, Inc. d/b/a North Country Nursing & Rehabilitation Center (St. Lawrence County)	Contingent Approval
2.	231011 E	Fairport SNF LLC d/b/a Fairport Skilled Nursing & Rehab (Monroe County)	Contingent Approval
3.	231259 E	Tupper Lake Center LLC d/b/a Tupper Lake Center for Nursing and Rehabilitation (Franklin County)	Contingent Approval

Home Care Service Agency Licensures

New LHCSA's

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	231010 E	Vilas Home Care, LLC (Geographical Service Area: Clinton, Essex, and Franklin Counties)	Approval

Changes of Ownership

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	222238 E	Auburn Assisted Living LLC (Geographical Service Area: Cayuga County)	Contingent Approval
2.	222220 E	Kris Agency And Home Care, Inc. (Geographical Service Area: Bronx, Kings, Nassau, New York, and Queens Counties)	Contingent Approval
3.	222255 E	Riverside Select Services, LLC d/b/a Cottage Homecare Services (Geographical Service Area: Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk, and Westchester Counties)	Approval

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	231369 E	Westside ASC LLC d/b/a Westside Ambulatory Surgery Center (New York County)	Contingent Approval
2.	231380 B	Mohawk Valley Surgery Center (Oneida County)	Contingent Approval

Diagnostic and Treatment Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	221277 E	Medcare LLC (Kings County)	Approval

Certificates

Certificate of Incorporation

	<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
	The Foundation of Catholic Health (Erie County)	Approval

Certificate of Assumed Name

Applicant

E.P.R.C. Recommendation

VJJ Holding Company, LLC (Suffolk County)

Approval

Certificate of Dissolution

Applicant

E.P.R.C. Recommendation

DOJ Dialysis Center Corp.

Approval

Wartburg Nursing Home, Inc.

Approval

Greater Harlem Nursing Home and Rehabilitation
Center, Inc.

Approval

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

VII. NEXT MEETINGS

January 25, 2024 (NYC)
February 8, 2024 (NYC)

VIII. ADJOURNMENT

******Agenda items may be called in an order that differs from above******

State of New York
Public Health and Health Planning Council

Minutes
September 7, 2023

The meeting of the Public Health and Health Planning Council was held on Thursday, September 7, 2023 at the Empire State Plaza, Concourse Level, Meeting Room 6, Albany, New York. Mr. Jeffrey Kraut, Chair presided.

COUNCIL MEMBERS PRESENT

Dr. Howard Berliner Mr. Thomas Holt Dr. Gary Kalkut Mr. Jeffrey Kraut Mr. Scott LaRue Mr. Harvey Lawrence Dr. Sabina Lim Dr. John Ruge	Dr. Denise Soffel Ms. Nilda Soto Mr. Hugh Thomas Dr. Anderson Torres Dr. Kevin Watkins Dr. Patsy Yang Commissioner McDonald –Ex-Officio
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DEPARTMENT OF HEALTH STAFF PRESENT

- | | |
|---|---|
| Ms. Cadence Acquaviva – Zoom
Ms. Zahra Alaali – Zoom
Ms. Lynn Baniak – Zoom
Ms. Alana Belanger – Zoom
Dr. Ursula Bauer – Albany
Ms. Erin Clary – Zoom
Mr. Daniel Clayton – Albany
Mr. Jason Corvino – Zoom
Ms. Val Deetz – Zoom
Ms. Danielle DeSouza – Zoom
Mr. Vince DiCocco – Albany
Mr. Steven Dziura – Albany
Ms. Sue Edwards – Zoom
Mr. Kenneth Evans – Albany
Ms. Meghan Carman-Furcick – Zoom
Mr. Mark Furnish – Albany
Ms. Shelly Glock – Albany
Mr. Ryan Greenberg – Albany
Mr. Adam Herbst – Zoom
Dr Eugene Heslin – Albany
Ms. Tina Kim – Zoom | Ms. Geraldine Humbert - Zoom
Mr. Jonathan Karmel – Albany
Ms. Salman Khan - Zoom
Ms. Tina Kim - Zoom
Ms. Colleen Leonard- Albany
Ms. Karen Madden – Albany
Mr. George Macko – Albany
Ms. Marthe Ngwashi - Albany
Dr. John Morley - Albany
Ms. Johanne Morne - Zoom
Mr. Jason Riegert - Albany
Mr. Shane Roberts - Zoom
Mr. Cort Ruddy - Zoom
Ms. Jackie Sheltry – Zoom
Mr. Mark Schweitzer – Albany
Mr. Michael Stelluti -Albany
Ms. Jennifer Treacy - Zoom |
|---|---|

INTRODUCTION

Mr. Kraut called the meeting to order and welcomed Council members, Dr. McDonald, meeting participants and observers.

APPROVAL OF THE MINUTES OF JUNE 29, 2023

Mr. Kraut asked for a motion to approve the June 29, 2023 Minutes of the Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval which was seconded by Dr. Torres. The minutes were unanimously adopted. Please refer to pages 1 and 2 of the attached transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Report on the Activities of the Office of Aging and Long Term Care

Mr. Kraut introduced Mr. Herbst to give the Report on the activities of the Office of Aging and Long Term Care.

Mr. Herbst began his report by updating the Council on hospice and a regulation update. New York State has the lowest utilization of hospice services in all states. In addition to the length of stay as the Office of Aging in Long Term Care (OALTC) is actively pursuing options to increase awareness and expand the use of hospice care. It is clear from a review of the current hospice regulations and discussions with the various stakeholders that the current method of determining need is outdated. Currently, the need methodology is based on a complicated formula that considers, among other factors, terminal cancer rates in various geographical regions across the state. This leads to few applicants who can qualify for an article 40 hospice license, which has cascading ramifications for all of us in New York. OALTC has recently drafted new regulations and will present a regulation package to PHHPC for informational and discussion purposes with the goal of implementing a simplified, fair and efficient new hospice public needs methodology. This needed reform is only the first step in advancing effective ways to increase hospital utilization in New York State. Mr. Herbst noted that In the coming months the Department will partner with PHHPC and various stakeholders on ways that we can educate New Yorkers, including the medical professions on the benefits of hospice care in New York.

Mr. Herbst next highlighted that the Department is actively working on the certified home health agencies (CHHA's) and is actively addressing ways to further the availability and quality of home care services in New York. He stated that it is imperative that those entities which are qualified and willing to provide home health care services be given the opportunity to do so. CHHA's play an important role in New York home health care continuum. In many discussions on long term care issues the need to reform the Certificate of Need licensure process for CHHAs is a repeated theme. Mr. Herbst advised that in the coming months, OALTC will present draft regulations for PHHPC allowing for a request. It's temporary and short term when applications to be accepted for consideration with approval.

There were technical issues. Mr. Kraut then introduced the Commissioner to provide the report on Department of Health activities.

Report on the Department of Health

Mr. Kraut introduced Dr. McDonald to give the Report on the Activities of the Department.

Dr. McDonald began his report by stating that COVID is a treatable disease. It has been a long three and a half years, but it is a treatable disease. The Department's main messages right now is if you have symptoms of COVID to test yourself and go to your health care provider and be evaluated for treatment. The Commissioner's further stated that the message to health care providers is please do evaluate people for treatment. Like with other infectious diseases, examine people, evaluate them, and decide if treatment is the best option for them.

The Commissioner noted that the Department studies virus' and is vigilant. The staff at the Wadsworth are extremely vigilant when it comes to seeing what is happening with the BA.2.86 which has the Department's attention because it's different. It's not an Omicron sub variant. It was detected in wastewater in New York. He explained that he was not aware of any human cases in New York yet, but that does not mean that it is not here and the Department is doing surveillance. The Commissioner underscored that the dominant strains in New York are the Omicron variants, the one the vaccines designed for, the one the therapeutics we know work for. There is every reason to believe that therapeutics will work against any other variant like BA.2.86 that might come our way.

The Commissioner next spoke on the topic of influenza. He encouraged people to get their flu vaccine and stated that for most people, September and October is the best time of the year to get your flu vaccine. Preliminary estimates from CDC from last year show that people who are vaccinated against the flu are about 40 to 70% less likely to be hospitalized. Dr. McDonald noted that he is planning on getting his flu shot shortly.

Dr. McDonald pivoted to talk about respiratory syncytial virus. He explained that he has been a pediatrician for thirty-three and a half years. RSV has always been one of those diseases where you kind of just muddle through with it. As a pediatrician, you gave the kids oxygen, I.V. fluids, you muddle through. The ones who stayed home parents were miserable, suffering all night with their kids. It was tough. The Commissioner explained there are two vaccines for people 60 and older. It's generally designed for people who have co-morbidities. He gave an example of his mother who is 87 years old with Alzheimer's and diabetes, living in a nursing home. She is someone who should get the RSV vaccine, and that is going to happen. He further explained his father is almost 93 and has heart disease. He's walking and talking and living in independent living, he is also going to get the RSV vaccine. The Commissioner encouraged people to have a conversation with your health care provider and see if RSV vaccine is right for you. The Department worked with the State Education Department and you can now get RSV vaccine at pharmacies. There is a law passed that allowed us to do this. Dr. McDonald and his team worked with Commissioner Rosa and her team to make the vaccine accessible for folks so people can get this.

Commissioner McDonald stated that the RSV vaccine for babies is a little bit different, it is a monoclonal antibody. It is not being marketed as a vaccine, more so as a drug, but it's a 50 milligrams dose at the beginning of the season, called Beyfortus. The generic name is Nirsevimab. The thing about RSV for babies, the way you prevent it is you give a dose and then the good for 150 days. The Commissioner noted his excitement and underscored how frustrating it is when you are taking care of a patient you have literally nothing to offer them as far as therapeutics go. He has seen many normal babies just not do so well with RSV.

Dr. McDonald updated the Council on the progress the Department is making with workforce. Dr. McDonald receives a report every two weeks that shows how the Department is doing with our staffing and there is incremental progress. He said he has a very resilient group of people.

Next, the Commissioner talked about the Stateside Health Care Transformation and announced that applications for statewide health care transformation are expected to come out soon with more to come regarding this amount and how to apply, but do expect to see something coming in the coming weeks about statewide.

Commissioner McDonald also noted that the Department is aware of one of the biggest challenges for hospitals and to some extent nursing homes is staffing and paying outrageous labor costs and having unpredictable labor costs for hospitals. On August 1st, a new law took effect that marks an important step toward making the cost of traveling nurses and other temporary labor more transparent. The law requires these health care agencies to register with the Department of Health, provide financial reports and include nurses registry license under Article 11 General Business Laws. Regulating these temporary staffing entities is going to help us in the long run and help our hospitals and other licensed entities control or at least have some predictability of labor costs.

Dr. McDonald stated he is grateful to the Department team for what they are doing with Medicaid renewal. The Department has re enrolled 69% of people eligible, which is much better than the national average. The Department has a large array of assistance and people who are working on this to help people re-enroll as best they can, redetermine their eligibility. He expressed that he is very pleased with what the team is doing.

Lastly, the Commissioner commented on the overdose epidemic in New York State. New York has been challenged with this since before the pandemic, through the pandemic and it's going to be some are going to live with for a long time. Governor Hochul established the Interagency Overdose Task Force, the Department of Health is leading with the Office of Addiction Services and Support and they had their first meeting. State agencies come together and just look how can all of government work together on this to try to do some things that make a difference, policy ideas, and what can done collaboratively. A report will be generated in the Fall. In addition to the taskforce, there are some new funding opportunities through the Opioid Settlement Fun totaling \$8 million. One is going to expand harm reduction services for priority populations for people who use drugs with the applications due October 3rd for 7.5 million dollars over two years. Another is going to develop a comprehensive corner training program in New York with applications through October 5th, which has \$400,000 over two years.

Commissioner McDonald concluded his report. To view the complete report and comments from members please see pages 3 through 9 of the transcript.

Report on the Activities of the Office of Aging and Long Term Care

Mr. Kraut welcomed back Mr. Herbst to give the Report on the activities of the Office of Aging and Long Term Care.

Mr. Herbst began his report by stating that we are experiencing demographic shifts and increasing aging population. The Department will work to develop a new CHHA regulatory framework that includes a usable methodology that will remain relevant and flexible in the coming years. In addition to the hospice and the CHHA. There was a 90 minute educational webinar on the Nursing Home Safe Staffing Standards with all the nursing homes across the state. The training provided a comprehensive overview of nursing home minimum staffing requirements to all the administrators and operators and CEOs of all the nursing homes. A follow up webinar will be scheduled to review questions that are received from the original webinar and will provide additional guidance with any questions that come in on a quarterly basis going forward. In addition, the Department is finalizing the processes necessary to effectuate the review of the 70/40/5 staffing requirements in a webinar and a FAQ document are being developed.

Mr. Herbst noted that the federal proposed rules on nursing home staffing was released. Staff is reviewing the proposed federal nursing home staffing rules and will submit comments within the required timeframes.

Mr. Herbst said he was grateful to say that he was in Buffalo at a wonderful church to give public comments before 200 people and others joining online for the Master Plan for Aging, which staff is developing, is a multisector initiative called by the Governor to ensure that all New Yorkers, regardless of age or income or ability in age with dignity and independence.

Mr. Herbst briefly stated some recent milestones that were hit with respect to the MPA. Over 350 experts in the fields of aging and medicine and transportation and technology and housing, organized labor, home care, state, local, federal governments were conveyed. The Department has been holding hundreds of meetings with these experts to help craft a detailed and implementable set of policy recommendations. There has been a handful of public forums throughout the state in Plattsburgh, Buffalo, Rochester, Syracuse, New York City, Long Island, Westchester. The Department continues to engage directly with the public on issues that people would like to bring to our attention as part of the Master Plan for Aging and what is going to be considered recommendations that we will develop the process to present to the Governor later next year. The most significant milestone has been the delivery of our first formal report of the Master Plan for Aging, which was known as the preliminary report to the Governor on August 29th, which was publicly released on September 7th.

Mr. Herbst concluded his report. To see the complete report please see pages 9 through 11 of the transcript.

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

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

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Gary Kalkut, M.D., Vice Chair, Establishment and Project Review Committee

APPLICATION FOR CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services – Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	231240 C	Lenox Hill Hospital (New York County) Mr. Kraut – Recusal Dr. Lim - Interest	Contingent Approval

Dr. Kalkut first called application 231240 and noted for the record that Dr. Lim declared an interest and Mr. Kraut had a conflict and exited the room. Dr. Kalkut motioned for approval. Dr. Watkins seconded the motion. The motion carried with Mr. Kraut’s conflict. Please see page 11 of the attached transcript.

APPLICATION FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	231161 B	Queens Endovascular Center LLC (Queens County) Dr. Lim - Recusal	Contingent Approval

Dr. Kalkut called application 231161 and noted for the record that Dr Lim has a conflict and exited the room. Dr. Kalkut motions for approval, Dr. Berliner seconds the motion. The motion passes with Dr. Lim’s conflict. Please see pages 11 and 12 of the transcript.

APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services – Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	231049 C	Montefiore Nyack (Rockland County)	Contingent Approval
2.	231254 C	Rome Memorial Hospital, Inc (Oneida County)	Contingent Approval
3.	231273C	Flushing Hospital Medical Center (Queens County)	Contingent Approval

Ambulatory Surgery Centers – Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	231274 C	New Hyde Park Endoscopy (Nassau County)	Contingent Approval

Diagnostic and Treatment Centers – Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	231066 C	Open Door Family Medical Center, Inc. (Westchester County)	Contingent Approval

Certified Home Health Agencies - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	231104 C	Health Quest Home Care, Inc. (Certified) (Dutchess County)	Approval

Dr. Kalkut called applications 231049, 231254, 231273, 231274, 231066, and 231104. Dr. Kalkut motioned for approval, Dr. Berliner seconded the motion. The motion carries. Please see page 12 of the attached transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	231233 E	Buffalo Surgery Center, LLC (Erie County)	Contingent Approval

Diagnostic and Treatment Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	221185 E	City Wide Health Facility Inc. (Kings County)	Contingent Approval
2.	231113 E	WNY Medical Management (Erie County)	Approval
3.	231208 B	Bronx Community Health Network, Inc. (Bronx County)	Contingent Approval
4.	231218 B	Moses Health Center (Bronx County)	Contingent Approval

5.	231223 B	JAY Health, Inc. (Queens County)	Contingent Approval
6.	231265 B	GMZY Health Management (Orange County)	Contingent Approval

Dialysis Services – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	211108 E	Empress Dialysis, LLC d/b/a Brooklyn Community Dialysis (Kings County)	Contingent Approval
2.	211109 E	Latsch Dialysis, LLC d/b/a Westchester Home Training (Westchester County)	Contingent Approval

Dr. Kalkut called applications 231233, 221185, 231113, 231208, 231218, 231223, 231265, 211108, and 211109. Dr. Kalkut motioned for approval, Dr. Berliner seconded the motion. The motion passes. Please see pages 13 and 14 of the attached transcript.

Certified Home Health Agencies - Establishment

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	231234 E	Visiting Nurse Service of Ithaca & Tompkins County Inc (Tompkins County)	Approval

Home Care Service Agency Licensures

Changes of Ownership

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	222102 E	NAE Edison, LLC d/b/a Edison Home Health Care/Concierge Living (Geographical Service Area: Allegany, Bronx, Cattaraugus, Chautauqua, Dutchess, Erie, Genesee, Kings, Monroe, Nassau, New York, Niagara, Orange, Orleans, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, Westchester and Wyoming Counties)	Contingent Approval

- | | | | |
|----|----------|---|---------------------|
| 2. | 222195 E | Assistcare Home Health Services LLC
d/b/a Preferred Home Care of New
York/Preferred Gold
(Geographical Service Area: Bronx,
Dutchess, Kings, Nassau, New York,
Orange, Queens, Richmond, Rockland,
Suffolk, Sullivan, Ulster and
Westchester Counties) | Contingent Approval |
| 3. | 222263 E | Visiting Nurses Home Care
(Geographical Service Area: Albany,
Clinton, Columbia, Delaware, Essex,
Franklin, Fulton, Greene, Hamilton,
Montgomery, Otsego, Rensselaer,
Saratoga, Schenectady, Schoharie,
Warren and Washington Counties) | Approval |
| 4. | 231028 E | Cirrus Manor Residential Center, LLC
d/b/a Cirrus Manor Home Care
(Geographical Service Area: Monroe
County) | Approval |

Dr. Kalkut called applications 231234, 222102, 222195, 222263, and 231028. Dr. Kalkut motioned for approval, Dr. Berliner seconded the motion. The motion carries. Please see pages 14 and 15 of the attached transcript.

Certificates

Certificate of Dissolution

Applicant

Folts Home (Herkimer County)

E.P.R.C. Recommendation

Approval

Certificate of Amendment of the Certificate of Incorporation

Applicant

Faxton-St. Luke’s Healthcare (Oneida County)

Long Island FQHC, Inc. (Nassau County)

St. Elizabeth Medical Center (Oneida County)

E.P.R.C. Recommendation

Approval

Approval

Approval

Dr. Kalkut called the Certificate of Dissolution of Folts Home. Dr. Kalkut also called the Certificate of Amendment of the Certificate of Incorporation for Faxton-St. Luke’s Healthcare, Long Island FQHC, Inc., and St. Elizabeth Medical Center. Dr. Kalkut motioned for approval and Dr. Berliner seconded the motion. The motion passed. See page 15 of the attached transcript

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

Dr. Kalkut concluded his report. Mr. Kraut thanked Dr. Kalkut.

REGULATION

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

Report of the Committee on Codes, Regulation and Legislation

For Adoption

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

23-09 Repeal of Section 2.61 from Title 10, Amendment of Sections 405.3, 415.19, 751.6, 763.13,
766.11, 794.3 & 1001.11 of Title 10 & Sections 487.9, 488.9 and 490.9 of Title 18 NYCRR
(Removal of the COVID-19 Vaccine Requirement for Personnel in Covered Entities)

20-06 Amendment of Part 2 and Section 405.3 of Title 10 NYCRR
(Investigation of Communicable Disease)

For Emergency Adoption

20-06 Amendment of Part 2 and Section 405.3 of Title 10 NYCRR
(Investigation of Communicable Disease)

23-07 Amendment of Section 405.45 of Title 10 NYCRR
(Trauma Centers – Resources for Optimal Care of the Injured Patient)

For Information

23-07 Amendment of Section 405.45 of Title 10 NYCRR
(Trauma Centers – Resources for Optimal Care of the Injured Patient)

23-18 Amendment of Section 2.1 of Title 10 NYCRR
(Communicable Diseases Reporting and Control - Adding Respiratory Syncytial Virus (RSV) and Varicella)

Mr. Holt introduced 20-22 Amendment of Sections 405.11 and 415.19 of Title 10 NYCRR (Hospital and Nursing Home Personal Protective Equipment (PPE) Requirements) and motioned for adoption. Dr. Kalkut seconded the motion. The motion carried. Please see page 16 of the transcript.

Mr. Holt then introduced 23-09 Repeal of Section 2.61 from Title 10, Amendment of Sections 405.3, 415.19, 751.6, 763.13, 766.11, 794.3 & 1001.11 of Title 10 & Sections 487.9, 488.9 and 490.9 of Title 18 NYCRR (Removal of the COVID-19 Vaccine Requirement for Personnel in Covered Entities). Mr. Holt motioned for adoption. Dr. Berliner seconded the motion. The motion passed. Please see pages 16 and 17 of the transcript.

Mr. Holt introduced 20-06 Amendment of Part 2 and Section 405.3 of Title 10 NYCRR (Investigation of Communicable Disease) for emergency adoption and adoption. Mr. Holt motioned for adoption. Dr. Kalkut seconded the motion. The motion carried. Please see page 17 of the transcript.

Mr. Holt introduced 23-07 Amendment of Section 405.45 of Title 10 NYCRR (Trauma Centers – Resources for Optimal Care of the Injured Patient) for emergency adoption and for information. Mr. Holt motioned for emergency adoption. Dr. Torres seconded the motion. The motion passes. Please see pages 17 and 18 of the transcript.

Mr. Holt introduced 23-18 Amendment of Section 2.1 of Title 10 NYCRR (Communicable Diseases Reporting and Control - Adding Respiratory Syncytial Virus (RSV) and Varicella) and stated this is for information. Please see page 18 of the transcript.

HEALTH POLICY

Next, Dr. Ruge provided a report of the activities of the Health Planning Committee.

Dr. Ruge stated that a key part of the recent work of the Health Planning Committee is drafting with the help of the Council Chair a new statement of roles and responsibilities for the Planning Committee. The health care system under severe stress and is in need of help with many care providers facing possible collapse. At the same time, our perception is it's just impossible to imagine proceeding with system wide wholesale reform all at once. The idea was to try to find opportunities for beginning the reform and see where it takes us.

Dr. Ruge advised that the State Emergency Services Council came to PHHPC with a request for help with the very long delays in ambulance waiting times, offloading times. This seemed like kind of a poetic opportunity looking at starting a health care reform at the ambulance ramp to the ED. Dr. Ruge noted that with the help of Dr. Morley and his staff and Dr. Heslin, two special opportunities seem to be uncovered. One is taking a look at the use of the EDs for the treatment of mental health problems and oral health problems. Two sets of problems for which the staffing and the expertise was simply not available in the conventional ED setting. As a next, the committee held more committee meetings, workgroup meetings as educational sessions. The committee held three workgroups first on mental health with Commissioner Sullivan from OMH describing a comprehensive emergency program for mental health services involving identifying someone to call using a 988 number instead of 911 someone to come by way of mobile crisis center and somewhere to go both for crisis stabilization centers and for crisis residences. These programs were initiated in 2020 with grants support now being come available and new funding in the amount of \$3.5 million to begin to develop these programs and expand them around the state.

Dr. Ruge then moved onto the topic of dental care. That is that 17% of avoidable E.R. visits accounted for by dental pain. The Committee looked into what is being done elsewhere by way of averting emergency department use for dental trouble. One was the use of by licensing dental therapists providers who could be more available to those patients on referral. The other being a dentistry trio system where 911 calls are diverted to a special dental call number with a nurse doing an over the phone evaluation to decide is this really an emergency that needs to go to the hospital or make a referral phone call to a on call dentist? Does this person need antibiotics? What about a referral? Going beyond that to establish a referral places, mobile dental youth vans, FQHCs and other opportunities for dental care.

Dr. Ruge noted the third and most recent update since the last council meeting, we had a review of EMS thanks to Mr. Dziura and Mr. Greenberg. With eighteen regions not identified with any other regions. Some 5,000 vehicles, 33,000 active EMTs organized, in some cases professionally as careers and others as volunteers and also as hybrids. Very complex with its own system of councils and committees adjusting and readjusting and looking at how best to adapt to the local conditions. There have been several initiatives undertaken to try to improve or redirect services to the most appropriate setting. Starting with most notable being the ET3 program, a program using community personnel to do treatment, triage and transfer when necessary. A striking program has been taken up by twenty-five agencies in New York State, accounting for

50% of all the emergency calls. There's only one catch, and that is this is a CMMI funded program for Medicare and Medicaid. Far in advance of expectations, it is being terminated this December. There is this initiative that has been stopped. There have been a number of other parallel or corollary initiatives. Dr. Ruge stated that perhaps, the most notable being a 911 nurse navigation system where 911 calls are diverted to again, another phone system, another on call system, allowing a nurse to do an evaluation about what was really needed here, perhaps other than a trip by ambulance to the hospital. This has been developed by Global Medical Response, a venture corporation, a for profit corporation that has successfully identified or begun systems in twenty-five systems in thirteen states, including four systems in New York. The outcome mix is interesting. Of these calls to 911 23% result in self-care with the encouragement by the nurse. 34% mean refer to a FQHC or an existing urgent care center. 34% for basic transport BLS service. Only 1% by ambulance for ALS. Showing the need for redesigning our system. Dr. Ruge then stated in addition, there have been a number of other services, again, using EMTs in new ways in the hospital setting, doing prehospital care, or doing a post hospital care with follow up and coordination. Most all of which have been grant funded with grants disappearing or capital that has also disappeared due the problems with a certain silicon bank that have made financing no longer available.

Dr. Ruge said the committee has received background information in terms of what is out there, what is happening around the nation, what is happening in this state that we can build upon by way of new initiatives with two major thrusts. One being how to do E.R. diversion, how to be sure that a 911 call doesn't automatically lead to an ambulance at the doorstep of the home traveling to the hospital. Even though we have reimbursement issues where only hospitals are reimbursed only if they make that trip to the hospital and have a certificate of necessity. The second major thrust is what to suggest, what to recommend by way of service programs are available for those people now in the E.D., who could have better care, more appropriate care provided at a lower cost. Seems natural. Dr. Ruge noted that yet we know how difficult this is. Every aspect of the health care system seems to be balkanized, hyphenated, circular and around. The committee's charge working as a counsel with DOH to find opportunities for reform that will allow for better care, lower costs at a time when health care has changed over the course of a generation. He explained the generation that he has lived out in such significant ways. When he started practice, ambulances came to our very first center. We took care of the people there when we could. Sent the ambulance on. Any number of times he rode with that ambulance as a person to make a difference, provide the care. This was a time when there were two places to get health care. Go to your doctor in his office or go to the hospital. How health care has changed. We have telehealth. We have all kinds of other providers. We have home services. Yet we do have a regulatory or a reimbursement system that has addressed all these opportunities and found how they can work. Dr. Ruge stated that starting at the ambulance door, the ambulance ramp the hope is that working together, this council and DOH, we can find opportunities, make suggestions. Because we are a council for public health and health planning we have the opportunity to approach not only DOH, but also the other agencies. We can look for help wherever help can be found. That is our charge. I see this is a real test of what's possible by way of taking governmental initiative to make a difference with a system that needs help.

Dr. Ruge advised that at the next Council meeting we will have had a committee meeting and begun to outline if at least an initial set of recommendations for changes in policy, change in the regulations, new reimbursement that may involve everything that DOH certainly does and we know about by passing of those motions, but also the DFS starts by creating expectations for our insurance companies and that OMH does by way of providing mental health services and on and on. The Council has the opportunity of taking a very broad look, making very specific suggestions in the hope that we can make a difference.

Dr. Ruge concluded his report. Please see pages 18 through 20 of the attached transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Report on the Activities of the Office of Health Equity and Human Rights

Mr. Kraut introduced Ms. Kim to give the Report on the Activities of the Office of Health Equity and Human Rights.

Ms. Kim gave some highlights of the AIDS Institute. The Department's eighth annual New York State Ending the Epidemic Summit and the 25th Annual World AIDS Day is scheduled for November 28th through November 30th. This is the first time these events will be happening in person since the pandemic. It is a really great opportunity. The Commissioner did highlight the procurements that have been recently issued by the AIDS Institute's Office of Drug User Health. Staff is working diligently with the New York State Office of Addiction Services and supports the New York State Office of Mental Health and other state agencies to make available funding opportunities from New York State's Opioid Settlement Fund. Ms. Kim noted that the Commissioner did mention two of the three requests for applications that have been put out. Altogether the Department has made available over \$28 million in the Opioid Settlement Funding to help develop programs across the state for opioid use disorder.

Ms. Kim stated that the mission of the Office of Diversity, Equity and Inclusion in the Office of Health Equity and Human Rights is to be a trusted source for promoting anti-racism, equity and just practices for the department through the collaboration of public policy, organizational strategy, workforce training, and supportive services, as well as community planning. There are several accomplishments that Ms. Kim noted, the Director of the Office of Diversity, Equity and Inclusion serves as a designated liaison for the Executive Chambers Boards and Counsels Pilot Program. The goal of that program is to increase diversity and inclusion of membership across boards, commissions and councils of select state agencies. The Office of Diversity, Equity and Inclusion has collaborated with other offices within the Department, namely the Office of Aging and Long-Term Care on DEI efforts specific to their committees and the Office of Public Health on workforce development efforts. The Office's Center for Workforce Training and Supportive Services has distributed a CDC COVID-19 Health Disparities grant to provide care through mobile health vehicles to support communities with the implementation of clinical and non-clinical services. The deadline for that RFA recently passed. These staff are actively reviewing and will be continuing with the next steps for that RFA.

Ms. Kim said the Center for Workforce Training and Supportive Services is finalizing a health equity survey for all DOH employees to assess staff's knowledge and awareness of health equity and its impact on public health and other health practices. From the Health Equity Impact Assessment Unit, the unit launched educational webinars to assist facilities and stakeholders across New York State with the Health Equity Impact Assessment Statute. The first educational webinar for the public was conducted on August 28th and the second educational webinar scheduled for September 14th. These are meant to be recurring regular public webinars

Ms. Kim gave an update on the Office of Minority Health and Health Disparities Prevention, funding was earmarked to serve the most vulnerable communities across New York State for long COVID. OMH, HDP initiatives are charged with bringing culturally competent, uniquely crafted health and wellness programs to legislatively identified minority areas as defined by Public Health Law. We have brief updates on local health department's use of that long COVID funding in your written report.

Lastly, Ms. Kim highlighted that the Office of Health Equity and Human Rights is the lead in compiling and consolidating comments for a federal Health and Human Services proposed rule affirming nondiscrimination protections for in HHS grants. These are the grants that are administered by the Federal Health and Human Services Agency. Those protections, particularly for LGBTQ plus individuals. The Department will be submitting those comments with the approval and the coordination of the executive chamber in advance of the federal government September 11th deadline. you.

Ms. Kim concluded her report. To view the complete report please see pages 21 through 23 of the transcript.

PUBLIC PORTION OF AGENDA ADJOURNED FOR EXECUTIVE SESSION

Mr. Kraut asked for a motion to suspend and adjourn the public portion of the Full Council meeting and to go into executive session to consider a report of the Committee on Health Personnel and Interprofessional Relations. Dr. Berliner motioned for adjournment and Dr. Kalkut seconded the motion. The motion carried. Please see page 24 of the transcript.

PUBLIC PORTION OF FULL COUNCIL RE-OPENED

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

Mr. Kraut introduced Dr. Morley to give the Report on the Activities of the Office of Primary Care and Health Systems Management

Dr. Morley stated that on August 18th the Bureau of Emergency Medical Service received a notification from the Beekman Fire District that effective midnight August 23rd they would no longer be available to respond to Green Haven Correctional Facility for medical related emergencies. The Department was notified by Beacon Fire District that they would not respond to 911 calls in the Beacon Fire District. Beacon, which is different than Beekman Fire District, is adjacent to Beekman. The information was communicated directly in a letter to the New York State Department of Corrections and Community Supervision.

Dr. Morley noted that the health care industry continues to be one of the top two targeted for cyber security crimes. Currently there are no regulations to stop to set a baseline standard for cybersecurity preparedness at hospitals. The Department is currently soliciting feedback and working on promulgating regulations to ensure all facilities keep patient data as safe and protected as possible. The Department has conducted several rounds of listening and feedback sessions across the state. Dr. Morley stated that the Emergency preparedness drill took place the first week of September in New York City. The drill was based upon a hurricane and required evacuation from Zone One facilities. The facility went particularly well. Over 95% of simulated transfers went very smoothly and timely.

Dr. Morley provided an update on the Narcotic Enforcement, DEA and Telemedicine. On August the 7th, the DEA announced that they are conducting public listening sessions to be held on September 12th and 13th to receive additional input concerning the practice of telemedicine with regards to controlled substances and potential safeguards. In addition, DOH is working to align state prescribing regulations with the federal DEA telemedicine flexibilities.

Dr. Morley advised that the New York State Physician Profile website has been updated. The purpose of the website is to enable the public to review information about all licensed Doctors of Medicine and doctors of osteopathy who are registered to practice in New York State. Updates and new enhancements to the website include the following: advanced search to make it easier to find a physician, a link that takes users directly to the New York State Department of Health where they can file a complaint, formatting improvements for better accessibility and improved reading experience, a login for physicians that directly connects them to the health commerce site where updates can be made.

Dr. Morley announced that the Center for Provider Oversight, a Catholic health system of Buffalo's new hospital in Lockport is scheduled to open in October. In the meantime, there remains an off-campus emergency department under the Mount Saint Mary license that opened on the 17th of June and continues to provide emergency care and transport for admissions. Wynn Hospital is on schedule to open in October. The number of medical surgical beds for the Wynn Hospital will be 147 beds lower than the number of beds currently certified by St Luke's Frankston and Saint Elizabeth's. There will also be three less certified maternity beds, four less neonatal ICU continuing care certified beds and fourteen less certified pediatric beds, six less psychiatric beds. The University of Vermont Alice Hyde preliminary approval has been received from CMS to convert to a critical access hospital. Conversion to the Critical Access Hospital will require and will result in decertification of thirty-nine medical surgical beds and all six of the intensive care units. The total count of beds will be reduced from seventy to twenty-five. Hospital Clinical Staffing Plan, Template and Webinar. The hospitals are required to submit a clinical staffing plan to the department by July 1 of each year. The Department received the clinical staffing plans from all hospitals. The Department also required a template to be submitted that summarized the plan for comparative analysis.

Dr. Morley explained that the request for closure of the Burdett Maternity Unit in Troy remains under review, and Wyoming County Community Hospital has submitted plans to close inpatient obstetric services and it remains under review.

Dr. Morley concluded his report. Please see pages 25 through 27 of the transcript.

Report on the Activities of the Office of Public Health

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

Dr. Bauer began her report by sharing with the

Dr. Bauer stated that the Public Health Committee met on August 24th. The committee would like to meet on a much more regular basis about five times a year to coincide with the Codes Committee. The Public Health Committee is eager to advance its leadership role in shaping the prevention agenda, especially as we plan for the next cycle and also is eager to help the department address key public health topics of interest that might benefit from the attention of the committee. The committees noted that their meetings are a forum to bring attention and kind of a bully pulpit to public health issues that may not be receiving adequate attention or resources. In the Department's consultation with the Public Health Committee at the August 24th meeting, we agreed that public health workforce was one such topic of interest to the Public Health Committee, an urgent issue of the Office of Public Health and local health departments and one that may not be getting sufficient attention. The committee noted that the public health workforce is distinct from the health care workforce, which of course is also in urgent need of attention. The Public Health Committee will focus on the public health workforce specifically. The August 24th meeting of the Public Health Committee focused on the prevention agenda. Deputy Commissioner Adam Herbst from the Office of Aging and Long-Term Care joined the meeting and provided a presentation on the Master Plan for Aging. The master plan is taking an age friendly and more public health approach focusing on housing and transportation, health and wellness, substance use, nutrition.

Dr. Bauer explained the National Association of County Health Officials also presented to the Public Health Committee sharing findings from a recent survey of local health departments regarding their experiences implementing the prevention agenda in the current 2019 to 2024 cycle. NYSACHO highlighted several takeaways, including that local health departments largely find value in the prevention agenda, especially as they noted, opportunities to engage the community and expand and strengthen partnerships throughout the community. Other findings from the survey were that local health departments are open to changes to the prevention agenda framework and are eager for more guidance on how the prevention agenda can be used to improve public health at the county level. This is an important observation, signaling that we really do need to work harder in terms of the making the prevention agenda deliver its public health value for the state and for our counties and local health departments. Local health departments also recommended a longer implementation period for the prevention agenda. We have two three-year cycles within a six year cycle. They would like one long six-year cycle so

that we're not stopping in the middle re-upping a plan, but we can work that plan over the full six years.

Dr. Bauer mentioned the Office of Public Health was asked to provide some priority topics to be taken up by the Public Health Committee and public health workforce was one that was chosen to be pursued. In terms of prevention agenda updates, just quickly, the Department of Health Steering Committee continues to develop a couple of state health improvement plan proposals that will present to the Public Health Committee in early November. Before that time in September 21st the Department and Public Health Committee will receive some additional feedback from the Ad Hoc Committee. Two proposals have been getting developed, one that kind of maintains but tightens up the status quo, the current proposal and another that tries to transform and modernize the approach. The Department will provide both of those to the Public Health Committee.

Dr. Bauer also gave a quick update on the CDC Public Health Infrastructure Grant, which supports strengthening of the public health workforce, public health infrastructure and public health data systems. The Department has hired a Workforce Director who is now busy hiring 80 plus additional positions supported by that grant. The Department also has our evaluation lead on staff. 40% of our workforce dollars, 40% of the \$133 million have been directed to local health departments, the fifty-seven local health departments outside of New York City, which received its own CDC award. Those fifty-seven contracts have been executed. Local health departments are working on their budgets and strategies. She noted that among the metrics that CDC is tracking closely with this grant are sort of HR metrics in terms of hiring. Vacancies, turnover, attrition, time to hire from posting to onboarding. Not just for the grant supported positions, but for the whole Department. This is really going to help us become a more efficient hiring operation within the Department of Health and within HRI and really help us double down on strengthening the public health workforce.

Dr. Bauer concluded her report. Please see pages 27 through 31 of the transcript.

ADJOURNMENT:

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

NEW YORK STATE DEPARTMENT OF HEALTH
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
FULL COUNCIL MEETING
SEPTEMBER 7, 2023 10:15 AM
EMPIRE STATE PLAZA, CONCOURSE LEVEL, MEETING ROOM 6, ALBANY
TRANSCRIPT

Mr. Kraut I'm Jeff Kraut. I'm Chair of the council. I have the privilege to call to order the September 7th, 2023, meeting of the Public Health and Health Planning Council. I welcome members, staff from the department, participants and observers. As a reminder for our audience viewing this meeting via the webcast. There's a form that we need everybody to fill out to record your attendance in the room here. It's required by the Commission on Ethics and Lobbying and in compliance with Executive law Section 166. We also provide this form for you to fill out on www.HealthCare.Gov under Certificate of Need and appreciate if you would email those completed forms to Colleen.Leonard@Health.NY.Gov. We thank you for helping us to do this. We are subject to the Open Meeting Law. We broadcast over the internet. Please keep your microphone on mute. I ask to avoid the rustling of papers and side conversations and not to talk over one another as we are also captioning here. The first time you speak, please identify yourself. This will help us in assistance to the broadcasting meeting. I want to encourage members of the public, staff to join the department Certificate of Need Listserv. We go to great lengths to publicize the agenda and to make information available to the public. The PHHPC unit regularly sends out important council information and notices such as our agenda, meeting dates and policy matters. There's printed instructions outside of the room to join the listserv, or just contact Coleen Leonard. I'm also very pleased and excited to announce that Dr. Patsy Yang has agreed to serve on the Health Planning Committee. Dr. Ruggie and I have appointed her to do so. We really appreciate your volunteering to serve and we know your years of experience and your wealth of knowledge is going to be a great asset to that committee. Thank you so much for agreeing to do that. Please note that in order to maintain a quorum, I'm going to have to rearrange today's agenda. What's our number? We need fourteen members to conduct business. We are at fourteen members. We're expecting the Commissioner to join us closely. That'll put us at fifteen, which means we are very close to just keeping it done. I'm going to try to move the meeting around depending on the time to maintain the quorum, particularly on projects where we may have one or two people in a conflict. We're going to hear today from the Commissioner who's going to give a report for the department. Mr. Herbst is in Buffalo on department business. I'm going to ask him to join us after the Commissioner, and then we're going to go into project review to open up on a number of applications. We'll go to regulation, we'll go to health policy, and then we'll come back to get the department reports so we maintain our quorum to do our business today. Just to remind people that members of the council, most of the guests, we have combined and batched Certificate Of Need applications. Members, take a look at how we've batched the applications. I think we've done it in the way we normally do it, but if you'd like any project that is included in a batch to be removed and moved into a different category or considered separately outside of the batch please just let Colleen know and I will do that before we move.

Mr. Kraut I'd like to have a motion to adopt the June 29th, 2023, PHHPC minutes. May I have a motion from Dr. Berliner, a second from Dr. Torres.

Mr. Kraut Is there any changes that need to be done?

Mr. Kraut Hearing none, I'll call for a vote to accept them.

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Mr. Kraut Dr. McDonald will be joining us shortly. Why don't I go to Mr. Herbst, who's on right now, who's going to join us from Buffalo and will allow him to give his report.

Mr. Kraut Mr. Herbst.

Mr. Herbst I'm here.

Mr. Kraut Okay.

Mr. Herbst One second.

Mr. Kraut Okay.

Mr. Herbst Good morning.

Mr. Kraut Good morning, Adam.

Mr. Herbst Let me know when I'm ready.

Mr. Kraut You're fine.

Mr. Kraut Maybe we can blow up Adam.

Mr. Kraut There you go.

Mr. Herbst Thank you.

Mr. Herbst Good morning. My name is Adam Herbst, Deputy Commissioner for the Office of Aging and Long-Term Care. I wish everyone a happy Thursday. I want to go through a handful of things that are in my report, starting with hospice and a regulation update. As I've indicated in my remarks at the June 29 PHHPC meeting, New York State has the lowest utilization of hospice services in all states. In addition to the length of stay, and I apologize. I'm in a public room right now, if there's a lot of background noise. As the Office of Aging in Long Term Care is actively pursuing options to increase awareness and expand the use of hospice care. It's clear from a review of the current hospice regulations and discussions with the various stakeholders that the current method of determining need is outdated. Currently, the need methodology is based on a complicated formula that considers, among other factors, terminal cancer rates in various geographical regions across the state. This leads to few applicants who can qualify for an article 40 hospice license, which has cascading ramifications for all of us in New York. My office has recently drafted new regulations and will present a regulation package to PHHPC for informational and discussion purposes with the goal of implementing a simplified, fair and efficient new hospice public needs methodology. This needed reform is only the first step in advancing

effective ways to increase hospital utilization in New York State. In the coming months we'll partner with this body, PHHPC and various stakeholders on ways that we can educate New Yorkers, including the medical professions on the benefits of hospice care in New York. We look forward to discussing hospice and palliative care issues with PHHPC in the coming months, and I welcome discussion on this and the other issues affecting long term care in the upcoming meetings. I just want to also highlight the certified home health agencies update in the same vein as the hospices were actively addressing ways to further the availability and quality of home care services in New York. It's imperative that those entities which are qualified and willing to provide home health care services be given the opportunity to do so. CHHAs or certified home health agencies play an important role in New York home health care continuum. In many discussions on long term care issues the need to reform the Certificate of Need licensure process for CHHAs is a repeated theme, and my office is committed to that goal. In the coming months OALTC will present draft regulations for PHHPC allowing for a request. It's temporary and short term when applications to be accepted for consideration with approval.

Mr. Kraut I don't know if you hear us. You froze.

Mr. Kraut Adam, we're going to pivot if you can hear us, and we'll see if we can correct the technical issues that are preventing you from communicating.

Mr. Kraut It's now my pleasure to hear from your boss, Commissioner McDonald. Thank you very much for joining us. He's going to update the council about the department's activities since our last meeting.

Commissioner McDonald Thank you, Jeff.

Commissioner McDonald It's really great to be with you here today in Albany. It's fun to actually see familiar faces at this point. I've actually been here around long enough I'm actually knowing more people in the room than I didn't. That's kind of a fun feeling for me too.

Commissioner McDonald I'm just going to start briefly talking about COVID. I do have to admit to you, I treasure the day when my comments will not begin with talking about COVID, but that day is not today. Part of what I want to just underscore is COVID is a treatable disease. I think it's just important for us to have that context around this. It's been a long three and a half years, but it really is a treatable disease. You know, one of our main messages right now is if you're somebody who has symptoms of COVID, and I think we all know what that is, is please test yourself and go to your health care provider and be evaluated for treatment. My message to health care providers is please do evaluate people for treatment. Like with other infectious diseases, we examine people, we evaluate them, we decide if treatment is the best option for them. I think that's really important. I'll just share with you I had COVID at the end of July. I went to an outside sporting event. It was a Met game. They won. I really don't get to Citi Field that often, but it is what it is. Part of what I'll say to you is it's interesting. I was tested. I tested myself at home. Four hours after symptoms, I was positive. I was like, oh, my goodness. Three and a half years of playing dodgeball and it finally got me, right? It is what it is. But of course, I'm up to date on my vaccines. No shock, right? You know, I think one of things about me that was like, I have a primary care provider, contacted my primary care provider. You know, within twenty-two hours of my diagnosis, I had taken my first dose of paxlovid, which was interesting. Within sixteen hours of my first dose of paxlovid I could tell I am heading in the right direction here. It bothered me I was ill. I was glad I was treated. I think, you know,

part of why I share my story with you is I think it's important we think back to this. Like, I can't think of any virus that's ever been in the planet's history that's been so well-studied as this one. We do study it a lot. Part of why we do this, we want to be vigilant. I want to talk a little bit about BA.2.86 at this point. The folks at Wadsworth extremely vigilant when it comes to seeing what we're doing with BA.2.86. It's got our attention because it's different. It's not an Omicron sub variant. It is different. You know, right now we've detected it in wastewater in New York. I'm not aware of any human cases in New York yet, but doesn't mean they're not here, but we're looking for it. What I mean by we're looking for is we're doing surveillance. We'll be doing some more in nursing homes in the coming weeks just to look for more specimens. We do a whole genomic sequencing and find it. One of things I want to underscore is right now the dominant strains in New York are the Omicron variants, the one the vaccines designed for, the one the therapeutics we know work for. There's every reason to believe that therapeutics will work against any other variant like BA.2.86 That might come our way. The preliminary stuff I'm seeing about immunizations look promising as well. Part of why I want to put that is... I think it's important to understand this is different. We're being vigilant. We're paying attention. We've never paid attention to a virus like we've done this one. When this stuff hits the news the way it does and it occupies the news cycle the way it does for some people this can really be stressful. I think we just need to have perspective. We're paying attention to this. Better the devil you know. We're being vigilant on top of this. I think to me, my message is if you're a member of the public, I would find some assurance in the fact that everybody's paying attention to this so we know what we're dealing with. I think that's just an important reminder for people. Let's just keep perspective on this. We're paying attention to it, but right now it's a treatable disease and I'm happy about that. I want to pivot a little bit to talk about influenza. We talk a little bit about the triple threat we experienced last year. It's that time of the year where when we talk about RSV and flu and COVID, we have to remember it's flu season, right? You can go get your flu vaccine now if you're interested. You know, for most people, September and October is the best time of the year to get your flu vaccine. You know, preliminary estimates I've seen from CDC from last year show that people who are vaccinated against the flu are about 40 to 70% less likely to be hospitalized. I plan on getting my flu vaccine in the coming week or two at a local pharmacy where I usually go. I'd like to pivot now to talk a little bit about respiratory syncytial virus. I've been a pediatrician for thirty-three and a half years. I'm a very old doctor. I know I don't look old, but I am. It's just interesting. To me, it's like I don't think I ever anticipated having a conversation with you about preventing RSV. I think this is really historic and significant that we could be doing this. RSV has always been one of those diseases where you kind of just muddle through with it. As a pediatrician, you gave the kids oxygen, I.V. fluids, you muddle through. The ones who stayed home parents were miserable, suffering all night with their kids. It was tough. We're in a very interesting time right now where we have two vaccines for people 60 and older. It's generally designed for people who have co-morbidities. I'll give you an example. We're going to give you the example of my Mom who's 87 in a nursing home. She's got Alzheimer's. She's got diabetes. My Mom is someone who should get the RSV vaccine, and that's going to happen. Mom's going to get the vaccine. Dad, on the other hand, is almost 93, three weeks from yesterday. He's going be 93, which I'm hoping to make that milestone someday in my life. Dad's got heart disease. He's 93. I mean, this is a guy who doesn't buy green bananas. He's walking and talking and living in independent living, but, you know, he's almost 93, right? My Dad's going to be someone who we're going to get the RSV vaccine for him as well. Part of what I'm encouraging people do is have a conversation with your health care provider and see if RSV vaccine is right for you. I'm not here trying to help any private company. What I'm trying to do is prevent New Yorkers from ending up in hospitals and quite frankly, not being sick. This is why my Mom and Dad are going to be

getting the RSV vaccine. One of the things I want to throw out to you too is we did some work with the State Education Department. You can get RSV vaccine at pharmacies. A lot of pharmacies have it now. You can get it with a non-specific patient order. I don't know that pharmacies have those non-specific patient orders yet, but it's one of those things where if someone wanted to go to a pharmacy, this is what we're planning for this year. We did this with the State Education Department. There's a law passed that allowed us to do this. I was able to work with Commissioner Rosa and her team with my team. I think we did a nice job of making it possible. Just trying to make the vaccine accessible for folks so people can get this. Other topics we want to talk about today here. RSV vaccine for babies is a little bit different. It's really a monoclonal antibody. It's not being marketed as a vaccine, more so as a drug, but it's a 50 milligrams dose at the beginning of the season. It's named Beyfortus. The generic name is Nirsevimab. The thing about RSV for babies, the way you prevent it is you give a dose and then the good for 150 days. I'm excited about this just because I can't underscore how frustrating it is when you're taking care of somebody and you've literally nothing to offer them as far as therapeutics go. I just can't tell you how often I've seen babies, just normal babies just not do so well with RSV. I mean, I think about one of the patients I had a couple of years ago, a beautiful two-month-old baby, and came in and saw one of my partners. You know, looked like for all the world, the little two-month-old had a cold. Checked and was RSV positive. Baby's drinking well. Doing well. Not a lot of moving parts here. Send the baby home. No one saw the baby being on a ventilator two days later and in the pediatric ICU at a hospital in Connecticut. The baby did recover and did well. My goodness, what a stressful time for Mom and Dad. Obviously, some babies are higher risk than others, but it's like, why would you take a chance when you have something out there that's interesting? I think it would be wonderful addition to what we have. To me, this is a very historic time when we look at what we can do with respiratory syncytial virus. I'm excited about this. I think it just speaks to the power of science and the power of what we're creating. It just really, to me is a great time to be in medicine. I think it's a great time to be in public health, quite frankly. I would love to see the day where doctors of tomorrow really don't know what RSV is because it was so effectively treated. You know, it's interesting, when I started medical school back in the eighties, there was this new vaccine called Haemophilus influenzae Type B or Hib. I can tell you in my career, I've seen less than a handful of cases of influenza Type B. Oh, they got my attention when they did. I just think it speaks to the power of vaccines and how they can take diseases that we're so used to and make them memories of the past. We have a lot to be excited about there. I always want to talk to you about the progress we're making at the Department of Health regarding workforce. I like what I'm seeing as far as recruiting and retention goes. Every two weeks I look at a report that shows how are we doing with our staffing at the Department of Health? You know, it's no secret the Department Health went through a very difficult time during the pandemic. Every two weeks I'm seeing incremental progress. It's slow, but we're seeing incremental progress at the New York State Department of Health. I'm very thankful to the team I have. I have a very resilient group of people. Don't get me wrong, I'm thankful for the service of those who have left, but I want to make sure it's really clear that I have a really good group of subject matter experts at the New York State Department Health. I never take them for granted. I wake up every morning thankful that I get to lead them, but I'm very pleased with the progress we're making this week and I think we're going to make more. I'm excited about what the rest of the year is going to bring. I want to take a little bit of time to talk about statewide for health care transformation. I'm pleased to announce that applications for statewide health care transformation are expected to come out soon. More to come regarding this amount and how to apply, but do expect to see something coming in the coming weeks about statewide. One of the things I'm also paying attention to is... I think it was no secret one of the biggest challenges for hospitals and to some extent nursing homes was just staffing

and quite frankly, paying outrageous labor costs and having unpredictable labor costs for hospitals. I'm glad that on August 1st, a new law took effect that marks an important step toward making the cost of traveling nurses and other temporary labor more transparent. The law requires these health care agencies to register with the Department of Health, give us financial reports and include nurses registry license under Article 11 general business laws. I'm excited about this. I think regulating these temporary staffing entities is going to help us in the long run and help our hospitals and other licensed entities control or at least have some predictability of labor costs. Just a little word about Medicaid renewal. Very grateful to our team for what we're doing of Medicaid renewal. We think about the public health emergency unwind. We certainly want to make sure that we're doing what we're supposed to be doing, but we're doing a very thoughtful job here. I'm very pleased that we have re enrolled 69% of people eligible, which is much better than the national average. It's not by accident. We have a large array of assistance and people who are working on this to help people re-enroll as best they can, redetermine their eligibility. I'm very pleased with what the team is doing. Just going to close with a comment about the overdose epidemic in New York State. We've been challenged with this since before the pandemic, through the pandemic and it's going to be some are going to live with for a long time. Some of you might have read that Governor Hochul established the Interagency Overdose Task Force, something the Department of Health is leading with the Office of Addiction Services and Support. We had our first meeting in this very room a couple of weeks ago, which I thought went off really well. It was great. Really it's about having state agencies come together and just look, how can all of government work together on this to try to do some things that make a difference? What are some policy ideas that we haven't implemented yet? What are some stones we haven't looked under? What are some things we can do? It's nice to see all of government working together in this. There'll be a report generated for this in the Fall. There's five more meetings planned coming up in the next two months. I'm going to be part of all those and look forward to that. I do want to talk a little bit too about...There's been some new funding opportunities through the Opioid Settlement Fun totaling \$8 million. One's going to expand harm reduction services for priority populations for people who use drugs with the applications due October 3rd. It's seven and a half million dollars over two years. Another one is going to develop a comprehensive corner training program in New York with applications through October 5th, which has got \$400,000 over two years. Some nice things rolling out in that regard. I'm glad to be with you today. Thank you so much for my comments and look forward. You'll hear what the deputy commissioners have in their report soon after that. Thank you.

Mr. Kraut Thanks, Commissioner.

Mr. Kraut Questions for the Commissioner?

Mr. Kraut Dr. Berliner.

Mr. Kraut Well, let's get him a mic, though.

Mr. Kraut Thank you.

Dr. Berliner Commissioner, this is a hypothetical. Are there any circumstances under which you could foresee re mandating masking or changes in school attendance where people go to school due to COVID or other conditions?

Commissioner McDonald Let me just answer the question in the context we're living in right now, like I'm going to look at the foreseeable future. I love that you asked under any

circumstances, but again, I'm going to reframe it in foreseeable future. Because the foreseeable future is what I see in front of me right now. I just don't see us moving towards mandates in any way, shape or form in that regard. The department knows we have authority to mandate people. I really think we need to just look at the public. One of the things about public health is it involves the public. I think the public has very little appetite for this right now. My communication strategy is to explain the why to people. If you explain the why to people, I think they're more likely to do what you recommend they do. When I look at what's going on, I think, you know, masks are widely available. When you think about the beginning of the pandemic that was a problem. Masks are widely available. If you're going to wear a mask, I'd grab an N95 or a K95, something the highest quality you can get. As far as vaccines go, there's just a lot of public thought on that and public opinion. A lot of it just isn't making sense to me right now. I feel like people are going to really more likely respond to asking nicely, recommendations, talking to your doctor. People are really interested in mandates at this time. I know I didn't answer any circumstance, but I'm giving you a foreseeable future, which is I just don't see us mandating things right now. I'm hoping we get where we need to get to by recommendations, answering questions and just quite frankly, being kind about all this.

Mr. Kraut Any other questions?

Mr. Kraut Dr. Soffel.

Dr. Soffel Good morning. I have three questions. Sorry. I guess the first is, is which you did not address is the status of negotiations around the 1115 waiver amendment and how that's going and when we might see a final approval on that amendment.

Commissioner McDonald Yes.

Commissioner McDonald That's still a work in progress. Amir Bashir and I talked about it yesterday. What I'm hearing is things are going well for the Center for Medicaid Medicare Services. I don't have a time to tell you. Soon isn't a time. Hope isn't a strategy. Right now, I have to say is I'm waiting like you are for that too.

Mr. Kraut I have been in touch with Amir as well. He will come to the council as soon as he has something more definitive because they really just don't want to negotiate in the public for valid reasons.

Dr. Soffel My second question is around vaccines and both in terms of COVID, flu and RSV. Interested in what efforts the department is undertaking to address vaccine hesitancy and try to bring those vaccination rates as high as we can possibly get them. I was shocked to discover that the flu vaccine rates are as low as they are even pre-COVID. I'm interested in what the department is doing to sort of encourage people to step up.

Commissioner McDonald It's a great question. Social media campaign is going to start this Fall, part of what we're doing in that regard. A lot of it's working with existing partners, county health departments and others about trying. Vaccine hesitancy is really a ground game as opposed to an air game. In other words it's a one on one conversation with people. I don't think there's an easy answer to the world of vaccine hesitancy. We are standing up the Division of Vaccine Excellence. We're staffing up our vaccine department even stronger to address some of the concerns. Part of it, though, is just really getting to help people understand the science behind this. It's interesting. We have the safest vaccines the species has ever known by a long shot. It's interesting that we can't even give

them away free. To me, I'm really worried about vaccine hesitancy. I'm worried about the misinformation that's out there. You're going to see us mostly working with social media, working with local health departments, engaging our partners and working with our own staff to try to persuade people to see what's out there and see if we can recommend people get that. I'm hoping as the pandemic fades from people's memory, if we can actually hope that will happen, that people be less just quite frankly resistant to just having a conversation about this. Because so many times I think people have well-formed opinions on almost no information. This is the country I find us living in right now.

Dr. Soffel Have childhood vaccinations started to trickle back up since the pandemic?

Commissioner McDonald You know, we're seeing some progress in that space, but it's not what it needs to be. This is the thing that I think is fascinating is we're struggling to see childhood vaccinations increase, but it's like, again, safest vaccines we've ever had, ever known. Yet you have people who are adamantly refusing them. It's really best based on identity issues and other issues. It's not based on science why they're refusing.

Dr. Soffel I agree.

Dr. Soffel Thank you.

Dr. Soffel My final question has to do with the health care transformation. I'm curious about what efforts are being made to help those hospitals in the state that are sort of chronically financially distressed to use these transformation dollars should not only do physical infrastructure, but to actually transform.

Commissioner McDonald I don't want to get too far ahead of that. The request for applications is coming out soon. I'm not giving you a timeline on purpose. I'm not giving an amount and purpose because it's stuff that's being finalized right now. I think you touched on a larger issue though. Like in other words, chronically distressed hospitals aren't going to solve their problems with these onetime infusions of cash. I am hoping that some of the work we in budget last year, the Medicaid increase, the increase for primary care providers. I'm hoping some of those things make a difference the long run. I think one of the biggest things that's going to help people, though, is just getting their labor costs under control. One of the things I've really heard as I've gone around the state, whether it's Central New York, Western New York or Downstate is just how hard it was when you have unpredictable labor costs. Quite frankly, this is really one of the big threats here. We have to be able to have hospitals, nursing homes, at least can predict their labor costs. I'm not saying anyone shouldn't earn what they're worth. I hope they do. Quite frankly, you can't have health care workers being literally auctioning themselves. You just need to be able to control your health care costs in a way that makes sense to you. I appreciate your question.

Mr. Kraut Thank you.

Mr. Kraut Honestly, on the workforce, it's also an opportunity to work with the Department of Education to get signed on the Interstate Compact for Licensure for interstate movement of staff we can attract people and be competitive. Also taking a look at a more contemporary framework of licensure to use community powered medicine and to allow people to work in a more flexible way within the top of their license. There's a lot of opportunities here. You're right, there's no one dimension. I'll open it up again for question. Just, you know, you said you can't give it away even if it's free. With the end of the public

health emergency, we're now charging for vaccines. This may be a legislative issue. Appropriation that's going to be made to provide access to vaccines for the uninsured, immigrant, undocumented community? You have a large influx into New York City. I don't even know if we have a program for free vaccines.

Commissioner McDonald For COVID vaccine, that will be addressed through the bridging. There's a bridging strategy. For COVID vaccine, you know, it's supposed to roll out around the same time as everybody else. That's the intent of the federal government that approach. You'll see vaccine at federally qualified health centers and at pharmacies. The main pharmacy chains and independent pharmacies should be able to have that through the bridging program that the federal government is doing. As I've been talking to them over the last several months. They're trying to time that so it works out together. It requires contracts with large entities to move quickly. However, I'm told that can happen. I'm hoping everything rolls out around the same time. Obviously, we're trying to make it so everyone can get a vaccine at no cost.

Mr. Kraut You know, just knowing also not to get into the political issues, but just the functional issues, how we're cohorting of asylum seekers in New York State in these large group facilities at a time when that could be a vector of transmission. We have to kind of redouble efforts to get people informed so they can get vaccinated. I mean, just make that a public health concern. I'm sure I'm not the only one who thought of that.

Mr. Kraut Any other questions for the Commissioner?

Mr. Kraut Well, Commissioner, I thank you. We need you to stay here for a little while to do some voting.

Mr. Kraut Adam, if you'd like to continue with your report and hopefully we fix the technical concerns.

Mr. Herbst Sure.

Mr. Herbst I apologize. I think it's on my end. I'm in a public church right now about to give comments to the public on the Master Plan for Aging. Good morning once again. Thank you for the opportunity to address this esteemed committee today. What I was referencing before goes back to what's evident in our society is that we are experiencing demographic shifts and increasing aging population. I mentioned prior to the internet going down the hospice regulation. I was going through the certified home health agencies, the CHHA updates, and I mentioned that based on the knowledge gained from the RFA applications that we in the department will work to develop a new CHHA regulatory framework that includes a usable methodology that will remain relevant and flexible in the coming years. In addition to the hospice and the CHHA, I want to flag just two additional things. The Nursing Home Safe Staffing Program, which is part of our promise to keep PHHPC updated on the progress surrounding the safe staffing laws. Just last week a ninety-minute educational webinar on the Nursing Home Safe Staffing Standards was held with all the nursing homes across the state. The training provided a comprehensive overview of nursing home minimum staffing requirements to all the administrators and operators and CEOs of all the nursing homes. We believe that session really was helpful in helping with respect to understanding compliance as well as what to expect with regarding notifications and follow up activities that department will be taking. We're currently scheduling a follow up webinar to review questions that we're receiving from that original webinar and will provide additional guidance with any questions that come in on a quarterly basis going

forward. In addition, we're finalizing the processes necessary to effectuate the review of the 7045 staffing requirements in a webinar and a FAQ document are being developed now. We anticipate that we'll be rolling this out at the end of the month or early next month. I do also want to flag that the federal proposed rules on nursing home staffing did come out as well. I want to briefly mention that we're actively reviewing the proposed federal nursing home staffing rules and we'll be submitting comments within the required timeframes, and we'll keep this body apprised as that moves through the process. Finally, I'm grateful to say that I am in Buffalo at a wonderful church to give public comments before 200 people in the other room and many people joining online on the Master Plan for Aging, which we are developing, is a multisector initiative called by the Governor to ensure that all New Yorkers, regardless of age or income or ability in age with dignity and independence. I'll just mention some recent milestones that we have hit with respect to the MPA. We have conveyed over 350 experts in the fields of aging and medicine and transportation and technology and housing, organized labor, home care, state, local, federal governments. We have been holding hundreds of meetings with these experts to help craft a detailed and implementable set of policy recommendations. We've held a handful of public forums throughout the state in Plattsburgh, Buffalo, Rochester, Syracuse, New York City, Long Island, Westchester. We continue to engage directly with the public on issues that people would like to bring to our attention as part of the Master Plan for Aging and what's going to be considered recommendations that we will develop the process to present to the Governor later next year. The most significant milestone that I want to flag has been the delivery of our first formal report of the Master Plan for Aging, which was known as the preliminary report to the Governor on August 29th, which was publicly released today. You can go to our Master Plan for Aging website at NewYork.Gov/MPA. You can all see our preliminary report, which is now open to the public for review. That's all my comments.

Mr. Herbst I'll turn it back.

Mr. Herbst Thank you so much.

Mr. Kraut Thanks so much.

Mr. Kraut Let me open it up if there's any questions for Mr. Herbst.

Mr. Kraut Yes, Dr. Soffel.

Dr. Soffel Yeah.

Dr. Soffel Hi. Just a quick question on the new federal rules on nursing home staffing. Does it look like that will have an impact on New York that will require re visiting our brand new nursing home staffing rules?

Mr. Herbst It's a little early, because we're just reviewing this now for me to say with any definitive certainty yes or no. I assure you that once we do that review, I will bring that back to this body with a crosswalk between what the feds and what we have put in and discuss any perhaps discrepancies or anything that we might need to reevaluate, but I'm unsure as of right now.

Mr. Kraut Thank you.

Mr. Kraut Any more questions?

Mr. Kraut Adam, thank you so much for joining us and good luck with your meeting up there. We'll see you next time in November, hopefully.

Mr. Herbst Thank you.

Mr. Kraut As I mentioned earlier, we have literally the narrowest of quorum requirements to continue our work.

Mr. Kraut Turn it over to Dr. Kalkut.

Dr. Kalkut I'm Gary Kalkut, the Vice Chair of the Establishment and Project Review Committee. We're going to start with the CONs at the August 24th committee meeting.

Dr. Kalkut First 231240C, Lenox Hill Hospital. There's an interest declared by Dr. Lim in a conflict and recusal by Mr. Kraut who's leaving the room. This is to certify a new oncology extension clinic at 1345 3rd Avenue in New York. Both the department and the Establishment Project Review Committee recommend approval with condition and contingencies. I so move.

Mr. Holt Do I have a second?

Mr. Holt Dr. Watkins.

Mr. Holt Do we have the department to speak on this?

Mr. Holt Hearing none, I'll call the question.

Mr. Holt All in favor?

Mr. Holt Opposed?

Mr. Holt Motion carries.

Dr. Kalkut Thank you.

Dr. Kalkut You let Mr. Kraut know to come back into the room.

Dr. Kalkut 231161B, Queens Endovascular Center LLC in Queens County. There's a conflict or recusal by Dr. Lim who's leaving the room. This is to establish and construct a single specialty, ambulatory surgery, diagnostic and treatment center for vascular access at 3030 Northern Boulevard, 5th floor, Long Island City. The department recommends approval with conditions and contingencies, with expiration of the operating service at five years from the date of issuance, as does the Establishment Project Review Committee. I so move.

Mr. Kraut I have a motion. I have a second, Dr. Berliner.

Mr. Kraut Any questions from the counsel?

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

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Mr. Kraut No, we're fourteen people.

Mr. Kraut We have to wait for Mr. Thomas to return, and I will redo the vote. We lost the quorum. Thank you for keeping us honest.

Mr. Kraut Mr. Thomas has returned. We've established our quorum.

Mr. Kraut Are there any questions on this application?

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

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Mr. Kraut We have fourteen affirmative votes.

Mr. Kraut Could you ask Dr. Lim to return, please?

Dr. Kalkut Thank you.

Dr. Kalkut We're now going to move to batch two applications. Please bear with me.

Dr. Kalkut 231049C, Montefiore Nyack in Rockland County. Ms. Soto declares an interest. This is to certify a new dual single specialty ambulatory surgery extension clinic for Orthopedics and Pain Management at 3 Center Rock Road in West Nyack. Both the department and committee recommend approval with conditions and contingencies.

Dr. Kalkut 231254C, Rome Memorial Hospital Inc in Oneida County. This is to perform renovations to update and expand surgical space in Southwest 3. Both the department and committee recommend approval with conditions and contingencies.

Dr. Kalkut 231273C, Flushing Hospital Medical Center in Queens County to convert two medical surgical beds, four pediatric beds and six transitional care beds to twelve psychiatric beds and perform renovations to create an involuntary patient inpatient psychiatric unit and relocate and update a medical surgical unit at Southwest 3. Department and committee both recommend approval with conditions and contingencies.

Dr. Kalkut 231274C, New Hyde Park Endoscopy in Nassau County to convert a single specialty ambulatory surgery center to multi-specialty and perform renovations to add two

new operating rooms. The department and committee recommend approval with conditions and contingencies.

Dr. Kalkut 23106066C, Open Door Family Medical Center in Westchester County. Perform renovations and expand the facility. Notice a safety net facility. The department and committee recommend approval with contingencies.

Dr. Kalkut 231104C, Health Quest Homecare Inc, a certified home care agency in Dutchess County. This is to acquire the Hudson Valley Certified Home Health Agency currently operated by Hudson Valley Care Partners LLC, and add Ulster County to Health Quest Home Care's service area Department and committee recommend approval with a condition. I so move.

Mr. Kraut I have a motion to move this batch of applications. I have a second, Dr. Berliner.

Mr. Kraut Are there any questions on any one of the applications you are about to vote on?

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

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut Abstentions?

Mr. Kraut The motion carries.

Dr. Kalkut 2311233E, Buffalo Surgery Center LLC in Erie County to transfer 24% ownership interest from existing members to six new members. The department recommends approval with conditions with an expiration of the operating certificate three years from the date of its issuance. The committee recommends the same.

Dr. Kalkut 221185E, Citywide Health Facility Inc in Kings County to transfer 100% of shareholder interest from four withdrawing shareholders to two new shareholders. The department and committee recommends approval with conditions and contingencies.

Dr. Kalkut 231113E, this is WNY Medical Management in Erie County. This transfers 6.67% ownership interest from one withdrawing member to one new member. The department recommends approval with conditions with an expiration of the operating certificate three years from the date of issuance, as does the committee.

Dr. Kalkut 231208B, Bronx Community Health Network Inc in Bronx County. This is to establish to construct a new diagnostic and treatment center at 3763 White Plains Road in the Bronx and certify a mobile van extension clinic to be parked at 3676 White Plains Road in the Bronx. Of note this amends and supersedes CON 212219. Both the department and committee recommend approval with conditions and contingencies.

Dr. Kalkut 231218B, Moses Health Center in Bronx County to establish and construct a new diagnostic and treatment center at 871 Westchester Avenue in the Bronx. The department and committee recommend approval with conditions and contingencies.

Dr. Kalkut 231223B, Jay Health Inc. in Queens County is to establish and construct a new DNTC to be constructed at 107 15/71 Avenue in Forest Hills. Both the department and committee recommend approval with conditions and contingencies.

Dr. Kalkut 231265B, GMZY Health Management in Orange County. Establish and construct a new diagnostic and treatment center at 745 State Road 17M in Monroe. Both the department and committee recommend approval with conditions and contingencies.

Dr. Kalkut 211108E, Empress Dialysis LLC doing business as Brooklyn Community Dialysis in Kings County. This is to establish Empress Dialysis LLC as the new operator of Brooklyn Community Dialysis, a twenty-four-station dialysis center currently operating as an extension clinic of Bronx Dialysis Center. The department and committee recommend approval with conditions and contingencies.

Dr. Kalkut 211109E, Latch Dialysis LLC doing business as Westchester Home Training in Westchester County. Establishes Latch Dialysis LLC as the new operator of Westchester Home Training, a home training and support only dialysis center currently operating with an extension clinic as an extension clinic, Clinical Bronx Dialysis Center. The department of committee recommend approval with conditions and contingencies. I so move.

Mr. Kraut I have a motion. I have a second, Dr. Berliner.

Mr. Kraut Are there any questions on any applicants in these applications in this batch?

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

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut Abstentions?

Mr. Kraut The motion carries.

Dr. Kalkut 231234E, Visiting Nurse Service of Ithaca and Tompkins County Incorporated in Tompkins County. This transfer is 100% ownership of interest to a new, not for profit corporate member. The department and committee recommend approval with a condition.

Dr. Kalkut 222102E, NAE Edison LLC doing business as Edison Home Health Care Concierge Living. The counties served is listed in the agenda. This is transferring 100% ownership interest to a new member LLC. The department and committee recommend approval with contingencies.

Dr. Kalkut 222195E, Assist Care Home Health Services LLC doing business as Preferred Home Care of New York. Counties are also listed on the agenda. This transfer is 100%

membership interest to new Member LLC. Department and committee recommend approval with contingencies.

Dr. Kalkut 222263E, Visiting Nurse Home Care. Again, county shown on the agenda. This establishes Albany Visiting Nurse Home Care Services Group Inc as the parent and Albany Med Health System as the grandparent of Visiting Nurse Association of Albany, Home Care Corp. The department and committee recommend approval.

Dr. Kalkut 231028E, Cirrus Manor Residential Center LLC doing business as Cirrus Manor Home Care serving Monroe County to establish Cirrus Manor Residential Center LLC as the new operator of a licensed home care services agency currently operated by Senior Living LLC at 2515 Culver Road in Rochester. The department and committee recommend approval. I so move.

Mr. Kraut I have a motion.

Mr. Kraut May have a second?

Mr. Kraut Dr. Berliner.

Mr. Kraut Are there any questions on any of the applications in this batch?

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

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut Abstentions?

Mr. Kraut The motion carries.

Dr. Kalkut We have a series of certificates, First Folts Home in Herkimer County request consent for filing to dissolve. The department and committee recommend approval.

Dr. Kalkut A certificate of amendment of the Certificate of Incorporation. The department and committee recommend approval.

Dr. Kalkut Long Island FQHC Inc in Nassau County. This is a corporate name change. The department and committee recommend approval.

Dr. Kalkut St. Elizabeth Medical Center, Oneida County. This is to change purposes. The department and committee recommend approval. I so move.

Mr. Kraut I have a motion for the certificate changes. Dr. Berliner has seconded.

Mr. Kraut Any questions on the certificates?

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

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut Abstention?

Mr. Kraut The motion carries.

Mr. Kraut Thank you very much, Dr. Kalkut.

Mr. Kraut I'm going to now turn it over to Mr. Holt. We have some codes for adoption, emergency adoption and information.

Mr. Kraut Mr. Holt.

Mr. Holt Thank you, Mr. Kraut.

Mr. Holt At this morning's meeting for adoption Codes, Regulations and Legislation, the committee reviewed and voted on the following codes for approval. First was Hospital and Nursing Home PPE requirements. Jackie Sheltry and Jonathan Karmel from the department presented the Hospital and Nursing Home PPE requirements proposed regulation to the Committee on Codes for adoption. Mr. Karmel is available to the council should there be any additional questions at this point. I so move the acceptance of this regulation for adoption.

Mr. Kraut I have a motion for adoption. I have a second by Dr. Kalkut.

Mr. Kraut Any questions on this regulation?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut Abstention?

Mr. Kraut Motion carries.

Mr. Holt Next, we had the removal of COVID-19 vaccine requirements for personnel and covered entities. Dr. Heslin and Jason from the department presented the removal of COVID-19 vaccine requirements for personnel and covered entities. The proposed regulation is the Committee on Codes for adoption, and they are available to the council should there be any additional questions at this time. I move the acceptance of this regulation for adoption.

Mr. Kraut I have a motion from Mr. Holt. I have a second by Dr. Berliner.

Mr. Kraut Any questions?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut Motion carries.

Mr. Holt Next up, we had for emergency adoption and adoption. First, we had the investigation of communicable diseases. Jason and Dr. Lutterloh of the department presented the investigation of communicable diseases, proposed regulations to the Committee on Codes for emergency adoption, as well as adoption. They're available to the council should there be any additional questions at this time. I so move to accept this regulation for emergency adoption as well as adoption.

Mr. Kraut I have a motion from Mr. Holt.

Mr. Kraut May I have a second?

Mr. Kraut Second, Dr. Kalkut.

Mr. Kraut Any questions on this regulation?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut Abstentions.

Mr. Kraut Motion carries.

Mr. Holt Next up, we had for emergency adoption and information trauma centers, resources for optimal care of the injured patient. Mr. Ryan Greenberg and Dr. Kazmi of the department presented the trauma centers resources for optimal care of the injured patient proposed regulation to the Committee on Codes for emergency adoption, as well as for information. They're available to the council should there be any additional questions at this time. I so move the acceptance of this regulation for emergency adoption.

Mr. Kraut I have a motion for Mr. Holt.

Mr. Kraut May I have a second?

Mr. Kraut Dr. Torres.

Mr. Kraut Any questions?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut Abstention?

Mr. Kraut The motion carries.

Mr. Holt We had communicable disease reporting and control, adding RSV and varicella. The communicable disease reporting and control adding RSV and varicella proposed regulation was presented to the committee for information only and will be presented to the committee and the full council and Health Planning Council for adoption at a later date.

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

Mr. Kraut Thank you very much, Mr. Holt, and members of the committee who met earlier today.

Mr. Kraut I'm now going to turn to Dr. Ruge, who's going to give us a report on the activities of the Health Planning Committee.

Dr. Ruge Thank you very much.

Dr. Ruge It's my privilege and pleasure to give a brief summary of the work underway by the Planning Committee. As you heard at the last council meeting by Ann Monroe, the Planning committee is at least working at coming back to life after many years of inactivity. As a key part of that we've drafted with the help of our Council Chair and our council's new statement of roles and responsibilities for the Planning Committee is to be reviewed at the next meeting of the Planning Committee and then be presented to the council is an expression of what we're trying to do, how we're working in terms of health planning, part of the council's name. I think as we all know, we have a health care system under severe stress and in need of help with many care providers facing possible collapse. At the same time, our perception is it's just impossible to imagine proceeding with system wide wholesale reform all at once. The idea was to try to find opportunities for beginning the reform and see where it takes us. At just the right time the State Emergency Services Council came to us, came to Dr. Morley with a request for help with the very long delays in ambulance waiting times, offloading times. This seemed like kind of a poetic opportunity looking at starting a health care reform at the ambulance ramp to the ED. With the help of Dr. Morley and his staff and certainly with Dr. Heslin, two special opportunities seem to be uncovered. One is taking a look at the use of the EDs for the treatment of mental health problems and oral health problems. Two sets of problems for which the staffing and the expertise was simply not available in the conventional ED setting. As a next step, we used our imagination and proceeded instead of having more and more committee meetings, having workgroup meetings as educational sessions, so we would have the necessary background on each of these topics, which conveniently allowed us to meet by Zoom, ensuring better attendance and more convenient participation. With that, we have had three sessions, workgroups first on mental health with a prolonged and really excited presentation by Commissioner Anne Sullivan from OMH describing a comprehensive emergency program for mental health services involving identifying someone to call using a 988 number instead of 911 someone to come by way of mobile crisis center and somewhere to go both for crisis stabilization centers and for crisis residences. These programs were initiated in 2020 with grants support now being come available and new funding in the amount of \$3.5 million to begin to develop these programs and expand them

around the state. Moving on to dental, a surprising number turned up thanks to Heslin. That is that 17% of avoidable E.R. visits accounted for by dental pain. It seems strange. We looked. What's possible? What's being done elsewhere by way of averting emergency department use for dental trouble? One was the use of by licensing dental therapists, so-called mid-level providers who could be more available to those patients on referral. The other being a dentistry trio system where 911 calls are diverted to a special dental call number with a nurse doing an over the phone evaluation to decide is this really an emergency that needs to go to the hospital or make a referral phone call to a on call dentist? Does this person need antibiotics? What about a referral? Going beyond that to establish a referral places, mobile dental youth vans, FQHCs and other opportunities for dental care. The third and most recent update since the last council meeting, we had a review of EMS thanks to Steve and Ryan Greenberg. This turns out to be just as complicated and polluted a system as everything else in health care. With eighteen regions not identified with any other regions. Some 5,000 vehicles, 33,000 active EMTs organized, in some cases professionally as careers and others as volunteers and also as hybrids. Again, very complex with its own system of councils and committees adjusting and readjusting and looking at how best to adapt to the local conditions. There have been several initiatives undertaken to try to improve or redirect services to the most appropriate setting. Starting with or maybe not starting, but most notable being the ET3 program, a program using community personnel to do treatment, triage and transfer when necessary. A striking program has been taken up by twenty-five agencies in New York State, accounting for 50% of all the emergency calls. There's only one catch, and that is this is a CMMI funded program for Medicare and Medicaid. Far in advance of expectations, it is being terminated this December. We have an initiative that has been stopped. There have been a number of other parallel or corollary initiatives. Perhaps, the most notable being a 911 nurse navigation system where 911 calls are diverted to again, another phone system, another on call system, allowing a nurse to do an evaluation about what was really needed here, perhaps other than a trip by ambulance to the hospital. This has been developed by Global Medical Response, a venture corporation, a for profit corporation that has successfully identified or begun systems in twenty-five systems in thirteen states, including four systems in New York. The outcome mix is interesting. Of these calls to 911 23% result in self-care with the encouragement by the nurse. 34% mean refer to a FQHC or an existing urgent care center. 34% for basic transport BLS service. Only 1% by ambulance for ALS. Showing the need for redesigning our system. In addition, there have been a number of other services, again, using EMTs in new ways in the hospital setting, doing prehospital care, or doing a post hospital care with follow up and coordination. Most all of which have been grant funded with grants disappearing or capital that has also disappeared due the problems with a certain silicon bank that have made financing no longer available. We've, I think, received our background information in terms of what's out there, what is happening around the nation, what's happening in this state that we can build upon by way of new initiatives with two major thrusts. One being how to do E.R. diversion, how to be sure that a 911 call doesn't automatically lead to an ambulance at the doorstep of the home traveling to the hospital. Even though we have reimbursement issues where only hospitals are reimbursed only if they make that trip to the hospital and have a certificate of necessity. The second major thrust is what to suggest, what to recommend by way of service programs are available for those people now in the E.D., who could have better care, more appropriate care provided at a lower cost. Seems natural. Yet we know how difficult this is. Every aspect of the health care system seems to be balkanized, hyphenated, circular and around. Our charge working as a counsel with DOH to find opportunities for reform that will allow for better care, lower costs at a time when health care has changed over the course of a generation, the generation that I have lived out in such significant ways. When I started practice, ambulances came to our very

first center. We took care of the people there when we could. Sent the ambulance on. Any number of times I rode with that ambulance as a person to make a difference, provide the care. This was a time when there were two places to get health care. Go to your doctor in his office or go to the hospital. How health care has changed. We have telehealth. We have all kinds of other providers. We have home services. Yet we haven't had a regulatory or a reimbursement system that has addressed all these opportunities and found how they can work. Starting at the ambulance door, the ambulance ramp the hope is that working together, this council and DOH, we can find opportunities, make suggestions. Because we are a council for public health and health planning we have the opportunity to approach not only DOH, but also the other agencies. We can look for help wherever help can be found. That is our charge. I see this is a real test of what's possible by way of taking governmental initiative to make a difference with a system that needs help. At our next council meeting, hopefully we will have had a committee meeting and begun to outline if at least an initial set of recommendations for changes in policy, change in the regulations, new reimbursement that may involve everything that DOH certainly does and we know about by passing of those motions, but also the DFS starts by creating expectations for our insurance companies and that OMH does by way of providing mental health services and on and on. We have the opportunity of taking a very broad look, making very specific suggestions in the hope that we can make a difference. That's why we're sitting here. Thank you.

Mr. Kraut Dr. Rugge, thank you. I want to thank you and the staff from the department. If you hadn't had the opportunity to attend these meetings, they've been very well prepared. There's a lot of background. They've invited very informed speakers to participate in the conversation. Thank you for getting this forwardly moved with the activity. One of the other things that we spoke about after the Planning Committee meeting was these big issues and the need for us to spend the day not talking about council business but talking about major trends that are going to probably affect the industry, the involvement of technology, policy changes, and that we need to go on a retreat as we had a few years ago. I've asked the department to, one, find a location that can host us, and two, they'll be polling you to see what dates might work best for us. It might be hard to do it in 2023, but we are thinking in the first quarter of 2024 that should give us sufficient time to book something. We already have the calendar of meetings. We know what we're working around. I just want to let you know.

Mr. Kraut Are there questions for Dr. Rugge on anything he said Before I move on?

Dr. Soffel Could I make a comment?

Mr. Kraut Yes.

Dr. Soffel I have participated in all of the committee meetings and all of the work groups. It has been a very robust conversation and a lot of information to sort of digest. Dr. Rugge says thinking about tackling the entire system is overwhelming. We're going to try to fix a little piece of it and see how it goes. I think that as we looked at the emergency department and ambulance issues. They actually are a total microcosm of the bigger problems of the health care system. We're dealing with licensure issues and who's allowed to do what. We're dealing with the fact that certain parts of the system are unregulated, that urgent care centers don't have to accept ambulances and can turn people away based on their insurance coverage. We're dealing with the fact that reimbursement is illogical to the greater goals that we have in mind, that if an ambulance shows up and then doesn't take you to a hospital they don't get paid. A lot of the sort of challenges in this little world that

we are trying to understand. In fact, I don't know whether we can fix them there until we fix them in the greater world, but we're certainly going to take a really, really hard look. I think that a retreat would be a really wonderful place to sort of explore that and see to what extent can you address issues in a small piece of the system without thinking about the bigger context. I'm really quite excited about this.

Mr. Kraut You know, and the issues with the expiration of ET3, I'm hoping a policy initiative of the state will be encouraging expansion of community powered medicine. I mean, I think that to your points could be really helpful and I hope we see that at the next session. Just, you know, a restructuring of some of the ways that it works. I think that would be helpful.

Dr. Ruggie As Denise says, we're certainly not looking at taking one item as a standalone, but rather as the beginning of a take a look at what's possible. If health care change is going to be initiated anywhere why not start with us? Health Planning and Public Health two keep events with people around this table who've got the experience and the diversity of expertise to make meaningful contributions. Hopefully we won't be turned down.

Mr. Kraut Well, thank you again. Thank you for all members of the council who participate in those meetings as well.

Mr. Kraut I'm now going to turn to Ms. Kim to give us a report of the Office of Health Equity and Human Rights.

Mr. Kraut Ms. Kim.

Ms. Kim Thank you.

Ms. Kim Good morning and almost good afternoon. I just want to quickly highlight a few updates that were included in the written report for the Office of Health Equity and Human Rights. First up from the AIDS Institute, I just want to highlight that the department's eighth annual New York State Ending the Epidemic Summit and the 25th Annual World AIDS Day is scheduled for November 28th through November 30th. This is the first time these events will be happening in person since the pandemic. It's a really great opportunity. As soon as the registration announcement is available and distributed, we will make sure that the council has that information as well. The Commissioner did highlight the procurements that have been recently issued by the AIDS Institute's Office of Drug User Health. We are working diligently with the New York State Office of Addiction Services and supports the New York State Office of Mental Health and other state agencies to make available funding opportunities from New York State's Opioid Settlement Fund. The Commissioner did mention two of the three requests for applications that have been put out. Altogether the department has made available over \$28 million in the Opioid Settlement Funding to help develop programs across the state for opioid use disorder. Just want to highlight the updates from the Office of Diversity, Equity and Inclusion. The mission of the Office of Diversity, Equity and Inclusion in the Office of Health Equity and Human Rights is to be a trusted source for promoting anti-racism, equity and just practices for the department through the collaboration of public policy, organizational strategy, workforce training, and supportive services, as well as community planning. There are several accomplishments that I would like to quickly highlight. The Director of the Office of Diversity, Equity and Inclusion serves as a designated liaison for the Executive Chambers Boards and Counsels Pilot Program. The goal of that program is to increase diversity and inclusion of membership across boards, commissions and councils of select state agencies. The Office

of Diversity, Equity and Inclusion has collaborated with other offices within the department, namely the Office of Aging and Long-Term Care on DEI efforts specific to their committees and the Office of Public Health on workforce development efforts. The Office's Center for Workforce Training and Supportive Services has distributed a CDC COVID-19 Health Disparities grant to provide care through mobile health vehicles to support communities with the implementation of clinical and non-clinical services. The deadline for that RFA recently passed. These staff are actively reviewing and will be continuing with the next steps for that RFA. Lastly, the Centre for Workforce Training and Supportive Services is finalizing a health equity survey for all DOH employees to assess staff's knowledge and awareness of health equity and its impact on public health and other health practices. From the Health Equity Impact Assessment Unit, the unit launched educational webinars to assist facilities and stakeholders across New York State with the Health Equity Impact Assessment Statute. The first educational webinar for the public was conducted on August 28th and the second educational webinar scheduled for September 14th. These are meant to be recurring regular public webinars that we will continue to do. And then from the Office of Minority Health and Health Disparities Prevention, funding was earmarked to serve the most vulnerable communities across New York State for long COVID. OMH, HDP initiatives are charged with bringing culturally competent, uniquely crafted health and wellness programs to legislatively identified minority areas as defined by Public Health Law. We have brief updates on local health department's use of that long COVID funding in your written report. Lastly, Adam's report reminded me that I just want to quickly highlight that the Office of Health Equity and Human Rights is the lead in compiling and consolidating comments for a federal Health and Human Services proposed rule affirming nondiscrimination protections for in HHS grants. These are the grants that are administered by the Federal Health and Human Services Agency. Those protections, particularly for LGBTQ plus individuals. We will be submitting those comments with the approval and the coordination of the executive chamber in advance of the federal government September 11th deadline. That's it from the Office of Health Equity and Human Rights. Thank you.

Mr. Kraut Thank you.

Mr. Kraut Any questions from Ms. Kim?

Mr. Kraut Yes, Ms. Soto.

Ms. Soto Regarding your comment or information regarding an inclusion of diversity individuals on various boards and councils. My question is, how are you going to identify individuals to fill those positions? What efforts, what outreach is going to be planned or is launched?

Ms. Kim Thank you for that question. That is precisely what this pilot is intended to inform. The Chief Diversity Officer for the Governor and executive chamber is overseeing this pilot program. DOH is one of several agencies that have been selected to evaluate across the board how boards and councils can be more diverse. I do want to assure that there have been a number of things in place to ensure that diversity and equity, inclusion and representation is considered in the consideration of appointed nominees. That is already built into place. We also recognize that there could be more uniformly, not just across DOH, but across the state, to increase diversity, equity and inclusion. That is what this pilot program is intended to do. It's really to bolster the existing efforts of boards and commissions. The Office of Diversity, Equity and Inclusion is working very closely. Within DOH, we have a council operations team to review candidates, work with the program

areas on evaluating potential candidates. We also understand that in terms of some industries, diversity may be very challenging. There's regional diversity in addition to racial and ethnicity. There's a number of things that the Office of Diversity, Equity and Inclusion is able to advise with council operations as the entire department embarks and continues this pilot program under the executive chamber. We will be glad to circle back once there is more to report specifically from this pilot program.

Mr. Kraut Dr. Kalkut.

Dr. Kalkut Thank you.

Dr. Kalkut Thanks for your report, Ms. Kim.

Dr. Kalkut On the 828 webinar, which I thought was excellent, and the slide deck that accompanied it was really informative. There was a question about how you evaluated the assessments that are submitted with the applications. There was mention of an evidence-based system which allows you to evaluate the assessment. Can you make that available to the public? I think it'll be generally useful, but particularly sitting here in the council, which are going to use those to decide how they're going to consider their CONs. Can that be made available?

Ms. Kim Yes.

Ms. Kim Thank you for the question.

Ms. Kim To that specific point we did, I believe I forgot which date that meeting was. We did do a walkthrough with the council. When we say the evidence base, we're talking about the HIA template and the evidence that was used from the Health Equity Impact Assessment and health equity assessments that have been done in other jurisdictions, both domestically and internationally, to inform our work. I think to your point, you might be asking like kind of specifically like is there a scoring criterion or like a rubric? We are happy to recirculate what we did put out. As we have responded before, we work closely with the Office of Primary Care and Health Systems Management when it comes to the evaluation of the CON and how the health equity findings will be a part of that, much like public need and financial feasibility and character and competence, health equity will now be a component of that. That's really all I can say at a high level. I'm happy to share with you again the evidence that we used when we pulled together the template and as well as the instructions.

Dr. Kalkut I think the template is excellent. We're all new to this. I'd say it was comprehensive, but I'm not sure exactly what the evidence base is. It's really not about what the questions are, but how the answers are being viewed. I'll stop right there, but that's what I'm actually asking for.

Ms. Kim Thank you.

Mr. Kraut Just out of curiosity, do we receive any applications with the Health Equity Impact Assessment?

Ms. Kim We have received applications that contain the required checklist, but we have not received any applications containing or required Health Equity impact Assessment.

Mr. Kraut Ms. Kim, I would just also say that, yes, you may be using other templates. I would suggest before you go and use them that you share them with the industry. There's clarity about its applicability. It's used in the context as they prepare the applications. What we don't want to have happen is everybody do all this work, find an independent assessor, go through all the work and then come back and say, well, this doesn't meet this template or this idea we have. You need to do that beforehand in informing the industry so they're shaping it to address the concerns you have. That's one of the, I think, major things as we're going forward. We're very concerned about this slowing a process of innovation and change in our industry. I think given some of the things that Dr. Ruge's Committee is dealing with, these are going to require substance. If we make these changes it's going to be different. We shouldn't be holding those changes up that are going to require regulatory approval. The more communication that's had in these seminars and sharing not what you have, but what you're thinking. So you get feedback from the industry. There's a general concern it's not been totally bidirectional. I think you have to take those comments under consideration. That's all.

Ms. Kim We do.

Ms. Kim I want to reinforce our commitment as we have demonstrated to continue to have that regular engagement and communication out to the industry and to stakeholders as much as possible as evidenced by the educational webinars. I do want to clarify that in terms of templates, you know, the Health Equity Impact Assessment requirement in New York State being a part of the Certificate Of Need is very brand new. It was a template that we had to create specifically for the CON application process, which we did very closely with the staff and OPCHSM just to make sure that it's not out of step with what is asked and and evaluated within the Certificate Of need. Thank you for your remarks and we will continue to.

Mr. Kraut What we want to avoid is when an application is before us an applicant coming into this room feeling they were not treated fairly and then we would have to discount. We shouldn't be in that position to discount the impacts. Because it's up to us to make the final decision. I think just to be on the concern. But I think that'll happen when you have real applications coming through because right now it's all theoretical until we actually have an application to deal with. We'll see how it goes.

Mr. Kraut Yes, Mr. Lawrence.

Mr. Lawrence Harvey Lawrence, a member of the council. I think in line with Dr. Kalkut, it would be helpful if you could circulate the template again, because I do recall seeing something about it, but I don't recall the particular. If you could circulate again, that would be helpful.

Ms. Kim Absolutely.

Mr. Kraut Thank you so much.

Mr. Kraut Thank you.

Mr. Kraut A lot of work. A lot of good work.

Mr. Kraut I'm going to have to change the agenda. I beg the indulgence of Dr. Morley and Dr. Bauer. I'm afraid of losing the quorum. We do have the report on the Committee of

Health Personnel and Interprofessional Relations. We have two cases. I'm going to have to suspend the public meeting and go into an Executive Session, and I'm going to require the room to be cleared of the public. I believe the department's personnel can stay or not as they choose, but I have to go into that.

Mr. Kraut Could I have a motion to suspend the public meeting?

Mr. Kraut I have a motion, Dr. Berliner. A second, Dr. Kalkut.

Mr. Kraut All those approve?

Mr. Kraut A motion to go into an Executive Session.

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut We will now go into Executive Session. For those of us watching on the web, we will come back in about fifteen minutes or so to resume. You should check back periodically to see if we're up and running.

Mr. Kraut Could you just tell me when the webcast has been suspended?

Mr. Kraut I now call on Dr. Morley to give a report on the Office of Primary Care and Health Systems Management.

Mr. Kraut Dr. Morley.

Dr. Morley Thank you, Mr. Chairman and members of PHHPC, DOH staff, and all New Yorkers who are watching on the website. The Bureau of Emergency Medical Services, on Friday, August 18th, we received a notification from the Beekman Fire District that effective midnight the 23rd they would no longer be available to respond to Green Haven Correctional Facility for medical related emergencies. The letter indicated, quote, This service is no longer available for several reasons, and a resolution is not available. On the 28th, we were notified by Beacon Fire District that they would not respond to 911 calls in the Beacon Fire District. Beacon, which is different than Beekman Fire District, is adjacent to Beekman. The information was communicated directly in a letter to the New York State Department of Corrections and Community Supervision. Emergency Preparedness, the health care industry continues to be one of the top two targeted for cyber security crimes. In fact, there's been another one just in the last few days. However, at current, there are no regulations to stop to set a baseline standard for cybersecurity preparedness at hospitals. The department is currently soliciting feedback and working on promulgating regulations to ensure all facilities keep patient data as safe and protected as possible. The department has conducted several rounds of listening and feedback sessions across the state. Emergency preparedness drill took place last week in New York City. The drill was based upon a hurricane and required evacuation from Zone One facilities. The facility went particularly well. Over 95% of simulated transfers went very smoothly and timely. Narcotic Enforcement, DEA and Telemedicine, on August the 7th, the DEA announced that they are conducting public listening sessions to be held on September 12th and 13th to receive additional input concerning the practice of telemedicine with regards to controlled

substances and potential safeguards. In addition, DOH is working to align state prescribing regulations with the federal DEA telemedicine flexibilities. OPMC, the New York State Physician Profile website has been updated. The purpose of the website is to enable the public to review information about all licensed Doctors of Medicine and doctors of osteopathy who are registered to practice in New York State. Updates and new enhancements to the website include the following: advanced search to make it easier to find a physician, a link that takes users directly to the New York State Department of Health where they can file a complaint, formatting improvements for better accessibility and improved reading experience, a login for physicians that directly connects them to the health commerce site where updates can be made. The Center for Provider Oversight, a Catholic health system of Buffalo's new hospital in Lockport is scheduled to open in October. In the meantime, there remains an off-campus emergency department under the Mount Saint Mary license that opened on the 17th of June and continues to provide emergency care and transport for admissions. Wynn Hospital is on schedule to open in October. The number of medical surgical beds for the Wynn Hospital will be 147 beds lower than the number of beds currently certified by St Luke's Frankston and Saint Elizabeth's. There will also be three less certified maternity beds, four less neonatal ICU continuing care certified beds and fourteen less certified pediatric beds, six less psychiatric beds. The University of Vermont Alice Hyde preliminary approval has been received from CMS to convert to a critical access hospital. Conversion to the Critical Access Hospital will require and will result in decertification of thirty-nine medical surgical beds and all six of the intensive care units. The total count of beds will be reduced from seventy to twenty-five. Hospital Clinical Staffing Plan, Template and Webinar. The hospitals are required to submit a clinical staffing plan to the department by July 1 of each year. We did receive those clinical staffing plans from all hospitals. The department also required a template to be submitted that summarized the plan for comparative analysis. An announcement on training will be forthcoming. The request for closure of the Burdett Maternity Unit in Troy remains under review, and Wyoming County Community Hospital has submitted plans to close inpatient obstetric services and it remains under review.

Dr. Morley That's my report.

Dr. Morley If there are any questions, I'm happy to take them.

Mr. Kraut Any questions for Dr. Morley?

Dr. Soffel I've been reading in the press about the issues around the Burdett closing, that there's been a serious community opposition and that the hospital voluntarily went through an HEIA, that the community at least thinks was far from an adequate process. Do you have any observations about what's going on there?

Dr. Morley Lots of observations. As you point out, there's been a great deal of community response to the issue, including you can view a community forum that took place about two weeks ago on YouTube. The survey that was conducted by the vendor. We looked into that and the vendor identified that it was a mistake that it was taken down and it was reopened and put back up. It was initially expected that it would have continued for an additional twenty-four hours, I believe. It was cut short by twenty-four. Because of the error when they reopened it they opened it for approximately seventy-two or maybe even ninety-six hours. The survey time was extended considerably. That's just part of what they're doing. The complaint was specifically as it relates to a very short duration that the survey was open. Did that answer your question?

Dr. Soffel Watching this all from the viewpoint of the Albany Times Union, just it makes it hard to know what's really going on. I just would be interested from someone who's closer to it than I am, because I think that closing an obstetrical unit is going to create controversy regardless.

Mr. Kraut Well, yes, and it's just important for us not to get into the details until we're presented. It's a matter that's I suspect going to come before us.

Dr. Morley Yes.

Mr. Kraut We just have to do that and see what the issues are. There is also an announcement today from the Attorney General that's holding a hearing as well into that. Dr. Morley, on the ones that you said where there were going to be bed closures, are those essentially decisions made by the department or those going to come back to us in a CON?

Dr. Morley It's my understanding that they did come in the past.

Mr. Kraut Shelly.

Ms. Glock This is Shelly Glock from the department. Just a clarification. The Burdett application is a limited review application.

Mr. Kraut It's not coming to us.

Mr. Kraut Thank you.

Dr. Morley That's Burdett, but you were asking about a lot of bed closures.

Mr. Kraut The other ones, you talked about the bed changes.

Dr. Morley The Wynn Hospital---

Mr. Kraut The Wynn Hospital.

Dr. Morley You approved the Wynn Hospital.

Mr. Kraut This is just reporting on an action. I just want to be clear.

Ms. Glock Because those are construction projects.

Mr. Kraut That's an action that we already voted on and approved.

Dr. Morley A lengthy time ago.

Mr. Kraut Yeah, that was a long time ago.

Mr. Kraut Any other questions for Dr. Morley?

Mr. Kraut Dr. Morley, thank you so much. Again, beg our indulgence because we have to go out of order, and I'm going to give you the same apology, Dr. Bauer who will present report of the Office of Public Health.

Dr. Bauer Thanks so much.

Dr. Bauer I appreciate the opportunity to be with you this afternoon. Thanks to those of you who are still here. The Public Health Committee of PHHPC met on August 24th. As I think you know they would like to meet on a much more regular basis about five times a year to coincide with the Codes Committee. Dr. Rugge, you had mentioned that the Health Planning Committee had established roles and responsibilities, and I think that would be very helpful for the Public Health Committee as well to help us understand what our roles and responsibilities are and how we're engaging with each other. I appreciate that tip. The Public Health Committee is eager to advance its leadership role in shaping the prevention agenda, especially as we plan for the next cycle and also is eager to help the department address key public health topics of interest that might benefit from the attention of the committee. The committees noted that their meetings are a forum to bring attention and kind of a bully pulpit to public health issues that may not be receiving adequate attention or resources. In our consultation with the Public Health Committee at our meeting on the 24th, we agreed that public health workforce was one such topic of interest to the Public Health Committee, an urgent issue of the Office of Public Health and local health departments and one that may not be getting sufficient attention. The committee noted that the public health workforce is distinct from the health care workforce, which of course is also in urgent need of attention. The Public Health Committee will focus on the public health workforce specifically. The August 24th meeting of the Public Health Committee focused on the prevention agenda. Deputy Commissioner Adam Herbst from the Office of Aging and Long-Term Care joined the meeting and provided a presentation on the Master Plan for Aging. The master plan is taking an age friendly and more public health approach focusing on housing and transportation, health and wellness, substance use, nutrition and so on. As we plan for the next prevention agenda cycle, we're keen to align with the Master Plan on Aging and obtain some synergies with that work going forward. The National Association of County Health Officials also presented to the Public Health Committee sharing findings from a recent survey of local health departments regarding their experiences implementing the prevention agenda in the current 2019 to 2024 cycle. NYSACHO highlighted several takeaways, including that local health departments largely find value in the prevention agenda, especially as they noted, opportunities to engage the community and expand and strengthen partnerships throughout the community. Other findings from the survey were that local health departments are open to changes to the prevention agenda framework and are eager for more guidance on how the prevention agenda can be used to improve public health at the county level. To me, this was kind of an important observation, signaling that we really do need to work harder in terms of the making the prevention agenda deliver its public health value for the state and for our counties and local health departments. Local health departments also recommended a longer implementation period for the prevention agenda. We have two three-year cycles within a six year cycle. They would like one long six-year cycle so that we're not stopping in the middle re-upping a plan, but we can work that plan over the full six years. Lastly, as I mentioned at the start, the Office of Public Health was asked to provide some priority topics to be taken up by the Public Health Committee and public health workforce was one that was chosen to be pursued. In terms of prevention agenda updates, just quickly, the Department of Health Steering Committee continues to develop a couple of state health improvement plan proposals that will present to the Public Health Committee in early November. Before that time in September 21st we'll receive some additional feedback from the Ad Hoc Committee. We've been developing two proposals, one that kind of maintains but tightens up the status quo, the current proposal and another that tries to transform and modernize the approach. We'll provide both of those to the Public Health

Committee and see where we end up. Finally, switching topics, just a quick update on the CDC Public Health Infrastructure Grant, which supports strengthening of the public health workforce, public health infrastructure and public health data systems. I think I mentioned to the council previously, we have hired our Workforce Director who is now busy hiring 80 plus additional positions supported by that grant. We have our evaluation lead on staff. We're really excited about that. As you know, 40% of our workforce dollars, 40% of the \$133 million have been directed to local health departments, the fifty-seven local health departments outside of New York City, which received its own CDC award. Those fifty-seven contracts have been executed. Local health departments are working on their budgets and strategies. I will note that among the metrics that CDC is tracking closely with this grant are sort of HR metrics in terms of hiring. Vacancies, turnover, attrition, time to hire from posting to onboarding. Not just for the grant supported positions, but for the whole department. This is really going to help us become a more efficient hiring operation within the Department of Health and within HRI and really help us double down on strengthening the public health workforce.

Dr. Bauer Thank you.

Mr. Kraut Thanks so much, Dr. Bauer.

Mr. Kraut Any questions, comments?

Mr. Kraut Dr. Torres.

Dr. Torres It's wonderful to see some new initiatives taking place in the Bronx through local health department. They're planning this amazing event that's being inclusive of many of the community-based organizations at the end of the month of this month. It's just great to be involved in that and for other agencies to see the value of the impact.

Mr. Kraut Thank you.

Mr. Kraut We talk about health care workforce, but you're right, we don't talk enough about public health workforce. Within the department is there a division of public health workforce planning? Because it just struck me when you said that there is a need for that.

Dr. Bauer There is a need for that. We have been looking enviously at the Centre for Workforce in OBCHSM. With this CDC grant we are hiring quite a few staff and we are looking to build out our Office of Public Health Practice to support those workforce initiatives.

Mr. Kraut It's like we've done it with the unions in the city. Northwell does it. We have a workforce training center both now virtually not only real. Given advanced analytics, AI, all the richness of the tools that are available. You also have to, you know, with local departments, I'm thinking Dr. Watkins and others that it needs a centralized. You don't have to do this. Probably with schools of public health you could really develop New York as a net producer of public health professionals.

Dr. Heslin Dr. Heslin, Department of Health. I just want to say about the Center for Workforce Innovation it's a great idea, but that center actually is housed at the Department of Health but is truly a multi-agency. It works with OMH. As it gets staffed up, we'll work with all of the other agencies across the state. It's not just the health care that's housed in OPCHSM, but it is cross divisions and agencies.

Mr. Kraut Anybody?

Mr. Kraut Dr. Morley.

Dr. Morley Yes.

Dr. Morley The intent is to increase the workforce for New York State just be clear about that. It's not just nurses. It's everybody in health care across the state.

Mr. Kraut That's great.

Dr. Morley We're inviting not just... Well, we will be inviting not just other agencies, but representation from the associations from the health care associations, the unions, that it'll be well represented when we bring together the group.

Dr. Bauer Just one quick note. We are meeting tomorrow with the folks in the new office that Dr. Bauer mentioned. OPCHSM and OPH are getting together tomorrow.

Mr. Kraut Great. You got to innovate.

Mr. Kraut Any other questions?

Mr. Kraut Dr. Bauer.

Dr. Bauer I have a question for the Chair.

Mr. Kraut Sure.

Dr. Bauer Last meeting, we received a written report from all of the department offices before the meeting. I personally found it helpful to have that ahead of time to have a chance to digest the information and think about what questions might arise from that. I heard Tina Kim mention that she had submitted a written report. I'm just wondering what is the status?

Mr. Kraut That was the first question I asked when I entered the room today. How come we didn't receive those? There were some logistical holdups. They should be resolved. That won't happen again.

Mr. Kraut Yes, it is. That was the intent.

Mr. Kraut They just had a little logistical issue that I'll go into later.

Dr. Morley Just to clarify that you still will receive our written report.

Mr. Kraut We're going to send it out.

Dr. Morley In the future it will be before the meeting. This time the glitch is that it's unfortunately after the meeting.

Mr. Kraut I will attribute it to the end of Summer and some people not. They've got to get reviewed and stuff like that.

Mr. Kraut Thank you again, Dr. Bauer, and I apologize for taking you out of order. The Ad Hoc Committee to lead the state health improvement plan is going to convene on September 21st in Albany and in New York City. The next meeting of the council is going to be on Committee Day is going to be November 2nd, that's a Thursday and then again two weeks later, on Thursday, on November 16th, both of those meetings will be held in New York City.

Mr. Kraut May I have a motion to adjourn the public portion of the Public Health Planning meeting?

Mr. Kraut Thank you very much.

Mr. Kraut We are adjourned and enjoy the waning days of Summer.

Mr. Kraut Thank you.

**NYS Department of Health
Public Health and Health Planning Council (PHHPC)
Deputy Commissioner Executive Report**

I. Office of Aging & Long-Term Care

Hospice Regulations

- New York State currently has the lowest utilization of hospice services among all states, territories, and the District of Columbia. Furthermore, many individuals who do choose hospice often do so late in the course of their illness. To address this, the Office of Aging and Long-Term Care (OALTC) is pursuing options to increase awareness and expand the appropriate use of hospice care.
- Since our last report, OALTC has crafted new regulations and entered in discussions with external stakeholders to evaluate the merits of these regulations. OALTC intends to present a regulation package to PHHPC for informational and discussion purposes, with the aim of introducing a simplified, equitable, and efficient set of regulations for hospice public need methodology. We anticipate initiating this discussion in early 2024.
- OALTC eagerly looks forward to addressing hospice and palliative care matters in future PHHPC meetings.

Certified Home Health Agencies (CHHAs) Regulations

- Through numerous discussions on long-term care, reforming the Certificate of Need (CON) licensure process for CHHAs has consistently emerged as a key theme. OALTC is fully committed to achieving this goal.
- OALTC is currently in the process of drafting regulations to streamline and update the CHHA need methodology. This includes introducing a Request for Applications (RFA) to encourage providers to submit CHHA applications within a specified timeframe. It's worth noting that the last time PHHPC received an RFA for new CHHAs was in 2012. This new RFA will allow the Department to gauge interest within the home health care industry for new CHHA applications, which will then be individually reviewed and approved by PHHPC.

Nursing Home Need Methodology

- OALTC has initiated the process of reviewing and modernizing the existing need methodology for nursing homes. As mandated, the need methodology must be reviewed and updated every ten years. Unfortunately, due to the COVID pandemic, this ten-year review and update have been delayed. In the coming months, OALTC will draft a new need methodology and present our recommendations and regulations for updating the current methodology to reflect the current realities in the nursing home market at a future meeting in 2024.

Program of All-Inclusive Care for the Elderly (PACE)

- Earlier this year, the new Article 29-EE PACE licensure statute was enacted into law. OALTC staff have been diligently working on developing the necessary PACE licensure regulation, as mandated by the new statute. This regulation is in the final stages of internal review and will soon be submitted to the State Register to begin the public comment period. We will share the specific details of the new regulation in an upcoming PHHPC meeting and be available to address any questions.
- OALTC is also in the process of recruiting staff to establish a new licensure review unit called "Alternatives Models of Long-Term Care." This unit will be responsible for the PACE licensure review process and the processing of Continuing Care Retirement Community (CCRC) applications within the Department's CON processes.
- We anticipate accepting new PACE applications under the new statute and regulations in the first quarter of 2024. It's important to note that the new statute allows for the acceptance of PACE applications under the old structure until the regulations are adopted.

Nursing Home Safe Staffing Program

- In line with OALTC's commitment to keep PHHPC informed about the progress regarding safe staffing laws, we have the following updates:
- A 90-minute educational webinar for the nursing home industry was done on November 8th, which covered lessons learned from the initial nursing home minimum staffing standards quarterly assessment process. This follows a previous webinar held on July 6th and provided additional guidance on the assessment process, along with reviewing changes made by the Department to enhance efficiency and best practices for nursing home follow-up activities.
- We are also finalizing the processes and inter-departmental collaboration necessary to review the 70/40/5 spend requirements. Education and training, similar to the minimum staffing requirements, will be provided, including a webinar and FAQ document. We anticipate rolling out this component of the program in early December, which requires annual assessments of compliance. There was a slight delay in the initial rollout due to complexities encountered while operationalizing the statutory requirements.

NYS Master Plan for Aging (MPA)

- OALTC continues to make progress on the MPA, a multi-sectoral initiative called for by Governor Hochul to ensure that all New Yorkers, regardless of age, income, or ability, can age with dignity and independence.
- In August 2023, the Preliminary Report for the MPA was publicly released, highlighting the efforts of over 350 experts who sit on more than 30 subject-specific workgroups. Since then, the Master Plan's subcommittees and workgroups have been actively working to craft specific recommendations for the Governor. A significant milestone was achieved on October 20, 2023, when the workgroups submitted 36 initial recommendations to the MPA's Policy Team for review and development.
- Engagement with local community members and elected officials continues through Town Halls and Listening Sessions, held both in person and virtually. Two Town Halls were conducted in October, and additional sessions are scheduled for November in Broome County, Oneida County and Harlem in December.

- Additionally, a survey for aging residents and individuals with disabilities has been released, available in 17 languages electronically or by mail until December 31, 2023. Over a thousand responses have been received thus far, and we encourage you and your networks to participate in and widely distribute this survey, accessible at ny.gov/mpa or by requesting paper copies via email at mpa@health.ny.gov.

II. Office of Public Health

Wadsworth Center

- The Wadsworth Center is engaged in shaping state, regional and national initiatives to improve collaboration within the Department of Health and with other state and federal agencies, foster links with other states in the northeast region by leveraging our extensive experience in regulatory processes and provide recommendations to the federal government regarding sustainably strengthening public health laboratory systems.

Provided comments and recommendations on the new national “One Health” framework to improve public health preparedness - The Centers for Disease Control and Prevention (CDC) recently released a One Health preparedness “framework” for public comment (National One Health Framework to Address Zoonotic Diseases and Advance Public Health Preparedness in the United States: A Framework for One Health Coordination and Collaboration across Federal Agencies, Docket No. CDC–2023–0075; www.regulations.gov/document/CDC-2023-0075-0001). The Wadsworth Center drafted OPH comments and recommendations in collaboration with the Center for Environmental Health and the Center for Community Health. Main OPH recommendations to strengthen the proposed framework were:

- Substantial and sustained federal investment in vector surveillance and surveys of wildlife and livestock is needed to achieve the stated goals of the framework;
- Additional Centers of Excellence are needed to support and develop comprehensive genomic surveillance and accessible platforms for data dissemination;
- Increased emphasis on investigating and communicating the relationship between environmental change and zoonoses is required for an effective, proactive Framework;
- The Framework should be flexible to expand the program as additional factors beyond zoonoses are identified throughout this initiative.
- CDC should consider pilot programs at the state level to implement comprehensive One Health surveillance to explore the prediction and prevention of “one health” crises before they emerge as opposed the current model of “detect and react.”

Resumption of regular state-wide laboratory inspections

- Clinical laboratories in New York State, and laboratories conducting testing on specimens originating in New York State, must hold a New York State Department of Health clinical laboratory permit (Title V, Section 574 of the New York State Public Health Law). The standards encompassed by this law are equal to or more stringent than those of the federal government and as a result, New York State has long been granted exempt status by the federal government from national regulations and oversight.

- The Clinical Laboratory Evaluation Program (CLEP) of the Wadsworth Center provides the oversight of over 1,000 clinical laboratories and blood banks, including out-of-state facilities that accept clinical specimens collected in New York State (www.wadsworth.org/regulatory/clep). Due to emergency operations during the Covid-19 pandemic, many of the regular activities to safeguard the health and well-being of New York State residents were suspended, including regular onsite inspections of clinical laboratory operations. In August, CLEP resumed regular, in-depth inspections state-wide as part of the post-pandemic transition to regular public health operations.
- Of note, the laboratories of the Wadsworth Center that provide clinical testing are also subject to these same, strict standards and recently underwent a comprehensive, onsite review by an external inspection team. All clinical laboratories at the Wadsworth Center passed inspection with only four minor and non-essential issues identified across all programs.

Advising New Jersey on state regulatory processes for tissue banks and breast milk donations

Wadsworth's Tissue Resources Program oversees all tissue banking activities and services provided in New York State, from donor solicitation to clinical use, under Public Health Law Article 43-B (1990). One aspect of this oversight involves donated breast milk. New York is a pioneer in providing babies with safely pasteurized donor human milk when their mothers' own milk is unavailable or insufficient. The Wadsworth Center provides regulatory review and inspections to ensure the safety and quality of donated breast milk.

- Other states are developing tissue bank oversight programs, including for donated breast milk. Beginning in October 2023, the Wadsworth Center was requested by the New Jersey Department of Health to provide advice and guidance on the regulation of tissue banks and breast milk donations and distribution centers to assist New Jersey with developing their own regulatory systems. Through a process of discussions, virtual meetings and exchange of documents and regulatory materials, the Wadsworth Center has been collaborating with New Jersey to assist them in the development and implementation of guidance on standardization of testing of breast milk, the development and implementation of the inspection process, the training and accreditation of inspectors, and associated regulatory frameworks to govern both the non-profit and for-profit institutions that are involved with collection and distribution of donated breast milk.

Center for Environmental Health

The Center for Environmental Health (CEH) is advancing several initiatives involving legislative or regulatory changes that will better safeguard NYS residents from contaminants in their water, homes, and environment. The following is a summary of four of our current priorities:

- **Addressing Emerging Contaminants in Drinking Water**
CEH is administering important new federal funding from the Bipartisan Infrastructure Law (BIL) that enhances the existing Drinking Water State Revolving Loan Fund, targets the replacement of Lead Service Lines, the removal of emerging contaminants from drinking water, and the upgrading of aging and inadequate water supply infrastructure. The final Intended Use

Plan for DWSRF base and Year 2 of BIL supplemental projects to upgrade infrastructure and for BIL-Emerging Contaminants has been posted to the NYSDOH website. Applications for BIL Lead Service Line funding are still being scored and processed. The draft Intended Use Plan for these projects will be announced by the end of 2023, or early in 2024.

Public Health Law (PHL) §1112 was revised in December 2021 requiring the Department of Health (DOH) to regulate additional per- and polyfluorinated (PFAS) compounds. After the Department proposed revisions to Part 5 Drinking Water Regulations in Fall 2022, more than 1,500 comments were submitted. Then, in March 2023, the United States Environmental Protection Agency (EPA) proposed maximum contaminant levels (MCLs) for six PFAS. The public comment period closed on EPA's proposed drinking water standards in May 2023 at which time EPA had received nearly 100,000 comments. CEH continues to evaluate necessary regulatory changes to Part 5 Drinking Water Regulations regarding MCLs for specific PFAS contaminants amidst this very dynamic, ever-changing regulatory landscape. We expect final EPA regulations by the end of 2023 at which point NYS can draft new revisions to Part 5 to incorporate federal MCLs.

In addition, amendments to PHL §1112 established requirements for all NYS public water systems to monitor for emerging contaminants to identify contaminants in drinking water that are not currently regulated through a chemical-specific standard (i.e., maximum contaminant level). Currently, there are 23 PFAS contaminants listed as emerging contaminants. The amendments require that substances listed as emerging contaminants be monitored by all public water supplies and that any exceedance of a notification level must be reported to water customers within 90 days. We intend to set the notification level for all PFAS at the method detection limit (MDL). The MDL means the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero. This achieves maximum transparency for water customers and avoids debate over what level needs to be found for notification to occur. Additional details will be in the proposed regulations, which we expect to release for public comment in early 2024.

PHL §1112 also required DOH to list 16 additional chemicals as emerging contaminants that would require new monitoring by NYS public water supplies. However, DOH, in consultation with the Drinking Water Quality Council (DWQC), can decide not to retain any of the 16 if that determination is made before the end of 2023. In June 2023, DOH provided the DWQC with a summary of occurrence and toxicology information on these 16 chemicals. At the November 2023 DWQC Meeting, DOH highlighted why some of these contaminants should be prioritized over others. DOH proposed that seven of these chemicals be prioritized for the emerging contaminant list based upon the occurrence and toxicology information provided. A future regulatory package (targeting late-2024) will address this new set of chemicals identified as emerging contaminants. These draft regulations are required to go before PHHPC and reflect important work ongoing in CEH.

- **Addressing Lead in School Drinking Water**

Other revisions to Public Health Law §1110 lowered the action level for lead in school drinking water from 15 parts per billion (ppb) to 5 ppb and increased the frequency of lead testing from being determined by the department (every 5 years) to every 3 years, effective in December 2022. The Department has been working with partners in the State Education Department to operationalize these changes and provide guidance to schools across the state. Draft regulations

for Title 10 Part 67-4 were posted in the NYS Register September 13, 2023; public comment just closed (~November 13). As of November 1, one public comment was received.

- **Addressing Childhood Lead Poisoning through Proactive Rental Inspections**

Creation of Public Health Law §1377, set the stage for CEH to implement a proactive rental registry in identified communities of concern to combat childhood lead poisoning. CEH is currently drafting regulations to administer, coordinate, and enforce lead safety inspections and remediation of conditions conducive to lead poisoning. Eligible properties include residential dwellings built prior to nineteen eighty (1980) with two or more units located in communities of concern. Properties will be issued and will be required to maintain a Lead Safety Certification on a 3-year rolling basis. Local Health Departments (LHDs) will receive funding to implement the program and work with landlords, inspectors, and contractors to ensure children are protected from lead-based paint hazards in rental housing. CEH is working to engage partners in the creation of these regulations through Listening Sessions with LHDs, monthly meetings with the Conference of Environmental Health Directors Lead Rental Registry Workgroup, meetings with key municipal and advocacy partners as well as the Lead Advisory Council which met on November 8, 2023. We expect these regulations will be released for public comment in early 2024. These draft regulations are not required to go before PHHPC but reflect important work in CEH.

- **Addressing Potential Radiological Exposure in Medical Settings**

CEH is working to redesign and modernize Title 10 Part 16 focused on Ionizing Radiation. This Part applies to all radiation equipment and radioactive material within the jurisdiction of the NYSDOH. Sections of this part contain provisions applicable to radiation equipment operators and persons in possession of radioactive materials, including general radiation protection requirements. This Part applies to any person who transfers, receives, possesses, or uses any radiation source in this State.

Updates to this section are required to incorporate and reference changes to multiple sections of the Federal Code of Regulations, including 10 CFR 37, Physical Protection of Category 1, and Category 2 Quantities of Radioactive Material. The proposed regulations also:

- I. Modernize regulations to reflect changes in medical practice, i.e., moving from film to digital imaging.
- II. Add quality assurance (QA) requirements for dental cone-beam CT units to bring them in line with QA requirements for other medical units.
- III. Raise fees for the first time to cover operation costs. Average fee increases will be around 40-45%, below the level of inflation in the same time frame.

We expect these regulations will be released for public comment in early 2024. These draft regulations are required to go before PHHPC and reflect important work ongoing in CEH.

Center for Community Health

- **Launch of Five Initiatives with Health Equity Focus to Provide Cancer Prevention and Control in NYS Communities:** The Department released five funding opportunities this year, prioritizing limited funding to address cancer prevention, early detection, and survivorship among communities that experience cancer-related disparities. Two of the funding opportunities resulted in grant awards for five-year contracts that began October 1, 2023, they are:

1. The long-standing Breast, Cervical, and Colorectal Cancer Screening Services Program (CSP) funds 21 healthcare and community organizations and local health departments to conduct education, outreach and recruitment and assist eligible persons to receive free breast, cervical, and colorectal cancer screening and diagnostic services, and referrals to treatment. The CSPs prioritize outreach activities to reach person from populations disproportionately affected by cancer and experiencing health care inequities, with a focus on persons who are Black, persons who identify as lesbian, gay, bisexual, transgender, queer, intersex, asexual persons, and rural populations.

2. The Peer Education, Outreach, and Shared Decision Making for Persons at High Risk for Prostate Cancer grants were awarded to four organizations that will offer peer education and outreach, personalized coaching, linkage to community services to address barriers to healthcare, and referrals to health care providers for prostate cancer screening for Black men who experience a disproportionately higher burden of prostate cancer. There is one award each in Kings, Bronx, Monroe, and Erie County, counties with the highest prostate cancer mortality rates and percent of population who are Black males.

Three other funding opportunities released this year, with awards anticipated in 2024 include:

1. Post-treatment Support Services for Breast Cancer Survivors who are Black, directing funds to grass roots, community organizations to provide support groups and one-on-one peer mentoring to offer a culturally responsive environment to address the varied personal and cancer survivorship needs of breast cancer survivors who are Black;

2. The Increasing Colorectal Cancer Screening in Federally Qualified Health Centers will fund up to six primary care clinics to implement evidence-based interventions to improve their patient screening rates, with a focus on those clinics with low screening rates; and

3. Community Outreach to Promote Colorectal Cancer Screening will award up to 12 contracts to provide peer education and outreach and connect persons to cancer screening services, with a focus on persons who are Black, Hispanic/Latino, LGBTQ+, and/or reside in rural communities. In addition to focusing services on those populations that experience the greatest cancer disparities, the latter funding is directed to smaller, nontraditional organizations that represent those communities and uses a simplified on-line application familiar to such organizations.

- **CCH's Division of Family Health received a \$10 million, five-year grant award from the U.S. Health Resources & Services Administration (HRSA)** to decrease maternal and infant morbidity and mortality and improve outcomes for birthing people and infants in NYS. The funding will be used for three components and will include staff infrastructure:

1. Convene a **Maternal Health Task Force** to assess maternal care and coverage, identify gaps that impact maternal health outcomes, and assist in the development of a strategic plan aligned with the Title V MCHSBG Needs Assessment.

2. Improve **state-level maternal health data and surveillance** by assessing severe maternal morbidity and associated disparities, examining low risk cesarean births, and improving data linkage between the Pregnancy Risk Assessment Monitoring System (PRAMS) and other maternal data sources.

3. **Establish innovative initiatives:**

- **Perinatal Project ECHO** (Extension for Community Healthcare Outcomes), a tele-mentoring model of clinical provider education, to expand and enhance capacity with diverse hospital and community-based providers that serve in and around areas that are medically underserved and/or maternity care deserts. This will be established at two existing Project ECHO hubs with experience implementing the ECHO model. These facilities are also regional perinatal centers, serving the Finger Lakes (*University of Rochester Medical Center*) and Lower Hudson Valley (*Westchester Medical Center*) regions.

- **Universal Postpartum Virtual Home Visiting Initiative** (UPV-HVI) in St. Lawrence and Cortland counties. The initiative will involve collaborating with a pair of birthing hospitals and established perinatal home visiting programs in each county: *Canton-Potsdam Hospital* and *North Country Prenatal Perinatal Council* for St. Lawrence County, and *Guthrie Cortland Medical Center* and *Mothers and Babies Perinatal Network* for Cortland County. All people who give birth at these hospitals will receive education about the UPV-HVI services and will be offered up to three virtual home visits, the first starting within 48-72 hours post-discharge and continuing through 30 days post-discharge.

Additionally, the Division of Family Health received a \$800,000, four-year grant from HRSA to continue participation in the national Alliance for Innovation on Maternal Health (AIM). DFH will use funds to implement a Perinatal Quality Collaborative (NYSPQC) Primary Cesarean Birth Reduction Project (PCRPP), centered on the AIM maternal safety bundle, *Safe Reduction of Primary Cesarean Birth (SRPCB)*. Through this project, the NYSPQC will: expand the reach, depth, and quality of identifying, developing, and disseminating best practices to improve maternal health care quality and outcomes; improve maternal and infant health; and reduce preventable maternal mortality and morbidity. This funding would allow NYS to increase the number of facilities implementing patient safety bundles and the number of patient safety bundles implemented in NYS; support consistency of bundle delivery; and promote effective data collection and reporting.

Office of Science

- The Office of Science completed a major improvement of five public health data dashboards that provide Department of Health programs, stakeholders, and the public with access to several hundred health indicators and analysis tools addressing many prevention and disease areas. The main improvements include redesign and development on the Tableau platform, which allows more user-friendly analyses and display of results across a variety of visualization formats, including line graphs, maps, and bar charts, and more interactive functionality. These dashboards also provide measures of health indicators across socio-demographic categories, such as age, race and ethnicity, income, education, and geographic region, and allow assessments of disparities and inequities in health behaviors and outcomes across these and other categories.

- [Prevention Agenda Dashboard](#) provides nearly 100 key performance indicators for tracking progress on the implementation of the State Health Improvement Plan - the Prevention Agenda. Data are available at the state, regional, and county levels, and even at sub-county levels, in some instances.
- [Community Health Indicator Reports \(CHIRS\) Dashboard](#) tracks about 350 indicators organized by 15 health topics. In addition to a statewide dashboard, each of NY's 62 counties has its own dashboard, facilitating comparison of county data across counties, regions and with the state. This is one of the major data sources to support state and local community health needs assessments and health improvement plans.
- [Asthma Dashboard](#), including 44 asthma-related indicators, provides a comprehensive view of asthma in the state and serves as a resource for policymakers, healthcare providers, and other stakeholders. The Dashboard is leveraged to guide strategic actions, target interventions to serve the highest risk individuals with asthma, support populations facing a disproportionate burden of asthma, and drive the expansion of evidence-based asthma interventions and policies supportive of asthma control.
- [Maternal and Child Health Dashboard](#) comprises of 43 National and State selected performance measures to support the assessment of needs and to monitor progress towards improving the health of New York State residents and reducing health disparities, specifically for the following populations: women, infants, children, and adolescents including children and youth with special health care needs. It serves as an interactive visual presentation of the state and county data.
- [Opioid Data Dashboard](#) provides comprehensive and useful data on opioid prescriptions, misuse, opioid use disorder treatment, and non-fatal and overdoses. The dashboard includes data for 98 opioid-related indicators at the state level and 77 opioid-related indicators at county level. Each county has its own dashboard with several indicators, which ZIP Code level data are available.

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Workforce Development

The Office of Public Health was awarded the [Centers for Disease Control and Prevention Public Health Infrastructure Grant](#) in December of 2022. This 5-year grant is a groundbreaking investment that supports critical public health infrastructure needs of health departments across the United States. This grant has three pillars that lead to accelerated prevention, preparedness, and response to emerging health threats, and improved outcomes for other public health areas: Workforce, Public Health Foundational Capabilities and Data Modernization (CDC, 2023).

1. Local Health Department Engagement

Fifty-seven of the NYS Local Health Departments (LHDs) were collectively awarded 40% of the Public Health Infrastructure Grant to strengthen their public health infrastructure. Local Health Departments have creatively identified ways to use their investments for workspace improvements, professional development, recruitment and retainment, employee wellness, and community engagement. Dr. Bauer, and Keshana Owens-Cody, OPH Workforce Director, attended the NYSACHO Summit in October 2023 to share New York's vision of the Public Health Infrastructure grant and the importance of our partnership together to bolster the public health workforce. Grants administration and the workforce team are working collaboratively with NYSACHO to host office hours to support LHDs with budget modification approvals.

2. Recruitment and Hiring

Over 80 positions across the Office of Public Health will be hired through the grant to strengthen our public health infrastructure. The Workforce Director, Program Evaluation Lead, and Grants Administration have been working collaboratively with Health Research Inc. Human Resources Department to post positions through new resources made available in Workday ©, evaluate hiring timeliness, and retention. This team has also worked collaboratively with NYSDOH Human Resource Group to develop new job titles that will support the grants implementation. By working together at the implementation phase, the team will reduce duplication of effort, align Department goals, and with grant investments identify opportunities to strengthen recruitment and retention for the public health workforce, build public health subject matter training and development, and increase programs and services to improve employee well-being.

The New York State Prevention Agenda

The Office of Public Health Practice completed review of the over 120 CHA-CHIP/CSP submissions it received for 2022 and provided individualized feedback to 58 Local Health Departments and 165 hospitals. Furthermore, the annual required update to the 2022 CHIP/CSP plans was waived for LHDs and hospitals for 2023 to allow for more complete implementation of plans as submitted, and for review of the Department's feedback. Proposals to change the frequency of these updates is under review in the current planning process for the 2025-2030 Prevention Agenda Cycle.

Coordination of planning for the 2025-2030 Prevention Agenda cycle has continued at a steady pace. The stakeholder engagement phase of the planning process has completed, and the NYSDOH steering committee and its workgroups have produced two draft proposals that are currently under review internally, and that are being shared with state-government partners to ensure they accurately reflect input gathered during the engagement phase. The State Health Assessment has been completed, and the initial presentation is being planned for a Public Health Committee meeting being scheduled in December 2023. The SHA is informing the priorities, focus areas, and goals for both the Holistic and Integrated framework proposals.

III. Office of Primary Care and Health Systems Management

BEMS

The Dept. of Corrections and Community Supervision has identified EMS services to meet the emergency needs of Green Haven Correctional Facility. The lack of coverage of the prison by the local EMS crew has led to discussions on how best to address the growing concern of EMS coverage.

Emergency Preparedness

Two NY hospitals were recent targets of cyber-attacks. Both hospitals were negatively impacted. As examples, the Health Alliance had to engage in patient transfers. Claxton Hepburn and the Health Alliance both experienced a significant impact on their billing capacity. When a cyber-attack is reported to the DOH, the DOH works in partnership with the impacted provider and appropriate principals.

Bureau of Narcotic Enforcement

- **Prescription Monitoring Program Registry Integration with Electronic Health Record-** On August 31, 2023, the Bureau of Narcotic Enforcement, in collaboration with the Office of Quality and Patient Safety and the Health Information Exchange (HIE) Qualified Entity, Hixny established integration of Prescription Monitoring Program (PMP) data into the Hixny Electronic Health Record (EHR) interface. Initial integration includes two pilot sites, Hudson Headwaters Health Network and Ellis Medicine. Hudson Headwaters includes 22 facilities, and the Ellis Medicine health system has four facilities. By week of September 11, 2023, the remainder of healthcare entities using Hixny's HIE interface will be able to access PMP data through EHR system. This includes 128 healthcare partners within the Capital Area Region of New York State. The Bureau of Narcotic Enforcement is also currently working with several health systems in the New York City area to continue to expand PMP-EHR integration coverage

Center for Health Care Policy and Resource Development

- **Temporary Staff Agency Statute** – Frequently Asked Questions have been uploaded to the DOH website on 11/02/23. New questions continue to be collected and added. 160 agencies have submitted data and fees. Registration date has been extended to Nov. 15. First quarterly report due date is Nov. 30

Office of Professional Medical Conduct

- **NYS Physician Profile** - A reminder that the NYS Physician Profile website has been updated and recommend that all members of the Council take it for a test run – i.e. look up your favorite physicians just to see how it is working. The purpose of the website is to enable the public to review information about all NYS licensed physicians. The website also offers [search tips](#) to help consumers get the best results when researching a physician and a page to answer [frequently asked questions](#). Information registered physicians are required to provide includes information about the doctor's medical education, information about translation services at the doctor's office, and information about legal actions taken against the doctor.

Center for Provider Oversight

- **Wynn Hospital** - Faxon-St. Luke's / St. Elizabeth's (MVHS Healthcare) – The Wynn Hospital opened Sunday, October 29th. There were a few issues that required additional support. The air filtration system test failed and a delay of a week in opening of the operating rooms and cardiac catheterization suites was require. The Dept. provided additional EMS resources to the county to be able to transport longer distances for higher level trauma and cardiac care. Four additional ambulances were contracted and available for transport to Syracuse or Albany.
- **Catholic Health of Western NY** - The Catholic Health System of Buffalo opened its new hospital in Lockport and the off-campus Emergency Dept., under the Mt. St. Mary license has been closed. **Critical Access Hospitals** - Alice Hyde has been approved to become a CAH which will result in the loss of 45 beds (not being utilized) and their Acute Dialysis program. Requests have been received from other hospitals including Claxton Hepburn, Massena and Wyoming hospitals and the Department continues to review the CON applications for conversion to a CAH.

- **Burdette Maternity Unit** - The request for closure of the Burdette Maternity unit in Troy remains under review. The HEI Assessment has been released by St. Peter’s Health Program and is in the public domain.
- **Hospital Clinical Staffing Plans** - Hospitals are required to submit a clinical staffing plan to the Department by July 1 of each year. A standardized template was developed, and hospitals uploaded information on staffing, unit by unit, back in July. Feedback was received indicating information provided in this format would lose data present in the actual original schedules approved by the hospital staffing Committees. In October hospitals were notified that they should also send the scheduling information in the formats they each use, and it would be uploaded ‘*as is*’ as was done July ‘22.

PHHPC’s Planning Committee

- A report is being drafted based on the information that was provided to the committee through the work groups. Recommendations that will be coming back to this Committee.

IV. Office of Health Equity and Human Rights

AIDS Institute:

- **Ending The Epidemic Summit and World AIDS Day:**
The AIDS Institute within the New York State Department of Health is hosting the 8th Annual NYS Ending the Epidemic (ETE) Summit and the 25th Annual World AIDS Day events from Tuesday, November 28th through Thursday, November 30th. These are in-person events, the first-time partners are safely able to reunite after three years of virtual celebrations.

This year’s theme is: “Family Reunion: Together We Adapt and Thrive”. Events will highlight efforts to help those living with and impacted by HIV, STIs, HCV. Registration is currently open, and we are happy to share this year’s registration link [here](#).

- **Congenital Syphilis Elimination Strategic Planning Group**
On Friday, October 13th, 2023, the members of the Congenital Syphilis Elimination Strategic Planning Group met for the fourth time. Members finalized recommendations and solicited support and feedback from subcommittees to synthesize their recommendations list, including ensuring the recommendations addressed health equity. Members identified key stakeholders needed to continue discussions and established future monitoring/evaluation progress plans.

- **Bicillin Shortage:**
Bicillin is a syphilis treatment that continues to remain in short supply. The bicillin shortage has resulted in the recommendation from the Centers for Disease Control and Prevention (CDC) that the existing supply be reserved for the treatment of pregnant persons and infants born with congenital syphilis. For others, doxycycline should be the prescribed medication. A Clinical Recommendation Letter was shared by CDC with providers in July 2023, found [here](#). The CDC and FDA both state that the shortage is expected to continue into mid to late 2024 and will pose a challenge to syphilis control. The AIDS Institute has shared guidance and resources with providers throughout the summer and continue to monitor the situation nationally while updating provider networks.

- EPT Practice-based Name Change:

Formerly known as Expedited Partner Therapy, the practice-based name change to Expedited Partner Treatment was recently made by the AIDS Institute based on recommendations from a community focus group.

EPT strategies remain the same, focusing on treating the sex partners of those diagnosed with various STIs. However, the focus group noted that “therapy” is misleading and unclear compared to the goal of EPT. EPT aims to promote an “every partner treated” framework with simple messaging for the community. Messaging and educational materials are being updated to reflect this community-recommended name change in NYS.

Note that nationally, the strategy is still known as Expedited Partner Therapy.

Office of Gun Violence Prevention (OGVP)

- Recent State Legislative Action

On October 17th, Governor Hochul signed legislation S.580A/A.2893A permitting Medicaid Reimbursement for Violence Prevention programs. The bill allows low-income New Yorkers impacted by community violence to receive violence prevention services from qualified specialists. The Department’s OGVP is working closely with the Office of Health Insurance Programs to coordinate implementation and create guidance documents for stakeholders.

National Partnership Building

On September 22nd, President Biden announced the establishment of the first-ever White House OGVP which is overseen by Vice President Harris. OGVP participated in the first Special OVP Network Meeting with the new White House Office with leaders across the nation working to understand and inform the office priorities:

- Expedite Implementation of Bipartisan Safer Communities Act & Previous Executive Actions
- Identify New Executive Actions to Address Gun Violence
- Expand State and Local Partnerships to Advance Efforts to Address Violence
- Improve Support for Survivors and Communities Impacted by Surges of Gun Violence and Mass Shootings

OGVP joined the National Institute for Criminal Justice Reform (NICJR) newly launched National Offices of Violence Prevention Network (NOVPM) which serves as a learning community with the goal of significantly increasing the expertise and effectiveness of city agencies leading gun violence prevention initiatives across the country.

Gun Violence Prevention through Community-led Youth-based Programs Request for Application

On September 19th, the OGVP issued Request for Applications (RFA #20450/ Grants Gateway # DOH01-GVPCL-2023). Titled “Gun Violence Prevention through Community-led Youth-based Programs”, the goal of this RFA is to engage a qualified applicant that can help advance the mission of OGVP by serving as a fiscal, contractual, and project management conduit that facilitates place-based investments in grassroots community-based organizations that operate gun violence prevention programs in areas across NYS disproportionately impacted by gun violence. Up to \$2.5 million in State funding is available annually to support one (1) statewide award through this RFA. The multi-year amount available for this RFA is \$5 million.

OGVP held an applicant conference on October 10th which was well attended with over 50 participants. The Governor highlighted this funding opportunity with a press release on October 27th. Applications close on November 8th.

Recent Conferences and Presentations

The OGVP participated in the following conferences and presentations:

September 26th-28th, 2023: the Health Alliance for Violence Intervention Annual Conference convenes a national group of stakeholders from government, healthcare, philanthropy, and frontline violence prevention to share innovative and best practices, lessons from the field, and research on violence intervention, healing equity, and community partnerships to bring this powerful work to scale.

November 1st-3rd, 2023: the National Research Conference for the Prevention of Firearm-Related Harms is focused on highlighting the current state of the science and research for the prevention of firearm-related harms across the lifespan. OGVP Deputy Director, Jessica Sunshine, presented Trends in New York State Utilization of Extreme Risk Protection Orders: Examining Initial Uptake and Implementation

Health Equity Impact Assessment Unit

The Health Equity Impact Assessment (HEIA) Unit within the Office of Health Equity and Human Rights continues to provide technical assistance to stakeholders that are completing HEIAs. The HEIA Unit is developing new webinars to provide additional guidance for independent entities. The FAQ document is moving through the final stages of review and will be posted on the Department's website.

Office of Minority Health and Health Disparities Prevention

Celebrating Health Literacy Month in New York: Health literacy is a critical aspect of the provision of health care services. The Department's initiatives reflect a multilevel approach to improve effective communication and health literacy across the Department's internal and external partners, strengthen the case to address health equity, support innovative programs and policies as well as posit research efforts for future DOH and statewide initiatives. In addition, the health literacy initiatives promote collaborative efforts across organizations and communities and identify successful strategies to identify disparities among New York's racial and ethnic minority populations.

The New York State Department of Health is the first health department at the state level in the United States to execute an organization-wide health literacy survey, hold in person health literacy summits statewide, invite the HHS Agency for Health Care Research and Quality in partnership with the Office of Disease Prevention and Health Promotion to discuss the Health People 2030 definition of Health Literacy, and pre-pandemic, received a proclamation from the governor declaring October as Health Literacy Month.

This month's theme is "Advancing Health Equity through Health Literacy: The importance of effective communication during the pandemic."

- This year, OMH-HDP will highlight the work of the organizations funded by the Center for Disease Control and Prevention Health Disparities (CDC HD) grant that implemented the use of health literacy when providing education about COVID-19 to our communities and an awardee from the Office of Minority Health and Health Disparities Prevention under our State Operations funding. NYS DOH OMH-HDP is working with the CDC to confirm that we are the only CDC OT21-2103 awardees highlighting grantees and their work during Health Literacy Month.
- 1.5 hour long virtual events have included six awardees that have presented information regarding the importance of health literacy and effective communication within the communities providing services to deaf and hard of hearing, LGBTQI+, Nations and urban underserved.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Section 2803 of the Public Health Law, section 405.45 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) is amended, to be effective upon filing with the Secretary of State, to read as follows:

405.45 Trauma Centers

(a) *Definitions.* The following terms when used in this section shall have the following meanings:

* * *

(3) “Level I trauma center” means a facility verified by the American College of Surgeons Committee on Trauma (ACS-COT), or other entity determined by the Department, and designated by the Department as a facility that is capable of providing the full range of services required of trauma patients; conducts trauma research; and provides training to surgical residents that comports with the ACS-COT’s publication entitled *Resources for Optimal Care of the Injured Patient* [(2014)] (2022). The standards set forth in the ACS-COT’s publication entitled *Resources for Optimal Care of the Injured Patient* [(2014)] (2022) are hereby incorporated by reference with the same force and effect as if fully set forth herein. A copy of *Resources for Optimal Care of the Injured Patient* [(2014)] (2022) is available for inspection and copying at the Regulatory Affairs Unit, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, New York 12237. Copies are also available from the American College of Surgeons Committee on Trauma, 633 North Saint Clair Street, Chicago,

Illinois 60611. A Level I trauma center shall have a transfer agreement with at least one pediatric trauma center for trauma patients whose needs exceed the clinical capabilities of the facility.

* * *

(c) Trauma Center Designation

(1) A hospital seeking designation as a trauma center must receive verification by the American College of Surgeons, Committee on Trauma (ACS-COT), or other entity determined by the Department. To receive verification, the hospital must undergo a consultation site visit and verification site visit by the ACS-COT, or other entity determined by the Department. During the verification site visit, the hospital must exhibit that it is capable of providing Level I, Level II, Level III, Level IV or pediatric trauma care in accordance with the trauma care standards set forth in ACS-COT's publication entitled *Resources for Optimal Care of the Injured Patient* [(2014)] (2022).

* * *

(ii) Verification site visit.

A hospital seeking designation as a trauma center shall request an official verification site visit by the ACS-COT, or other entity determined by the Department, no later than two years following a hospital's receipt of its consultation site visit report. The hospital must receive confirmation from the ACS-COT, or other entity determined by the Department, that the hospital meets the criteria for trauma center verification in accordance with the criteria outlined in the ACS-COT's publication entitled *Resources for Optimal Care of the Injured Patient* [(2014)] (2022).

* * *

(d) *Requirements for Operating a Trauma Center.*

(1) Upon designation, a hospital operating a trauma center shall:

* * *

(ii) comply with the trauma care standards set forth in ACS-COT's publication entitled *Resources for Optimal Care of the Injured Patient* [(2014)] (2022);

* * *

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of these regulations is contained in Public Health Law (PHL) section 2803. Pursuant to PHL § 2803(2), the Public Health and Health Planning Council (PHHPC) is authorized to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection and promotion of the health of the residents of the State by requiring the efficient provision and proper utilization of health services.

Needs and Benefits:

The criteria and standards in the *Resources for the Optimal Care of the Injured Patient* are used to ensure that trauma center applications are compliant with the most current standards and the ACS uses these standards to issue the verification of trauma center status. The current edition of the *Resources for Optimal Care of the Sick and Injured Patient* (2014) is out-of-date and the proposed rule change would update the edition of *Resources for Optimal Care of the Sick and Injured Patient* to the most current version dated 2022. This change is necessary because the American College of Surgeons (ACS) began using the updated edition to perform hospital trauma center verifications and re-verifications on September 1, 2023.

COSTS:**Costs to Regulated Parties:**

The proposed rule change may impose additional costs on trauma center hospitals due to new education requirements, expansion of available surgical and medical experts, the addition of a performance improvement coordinator, and the number of trauma registrars required in the updated 2022 standards set forth in *Resources for Optimal Care of the Sick and Injured* compared to the 2014 standards. The Department cannot provide an accurate estimate of these costs because they will vary significantly depending on what actions each trauma center hospital will need to take, or may have already taken, to meet the updated 2022 standards.

Costs to State and Local Governments:

This regulation imposes no new costs or fees to state and local governments. General hospitals operated by local governments may be affected as regulated entities if they are also designated as trauma centers pursuant to 10 NYCRR section 405.45.

Costs to the Department of Health:

This regulation imposes no new costs or fees to the Department of Health.

Local Government Mandates:

This regulation imposes no new government mandates.

Paperwork:

This regulation imposes no additional paperwork.

Duplication:

This regulation does not duplicate any State or federal rules.

Alternatives:

No alternatives to the proposed rule change were considered viable. The regulation needs to be updated since the ACS began using the updated edition of *Resources for Optimal Care of the Injured Patient* to perform hospital trauma center verifications and re-verifications on September 1, 2023.

Federal Standards:

There are no federal standards.

Compliance Schedule:

As of September 1, 2023, designated trauma center hospitals need to use the new 2022 edition of *Resources for Optimal Care of the Sick and Injured*.

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**STATEMENT IN LIEU OF
REGULATORY FLEXIBILITY ANALYSIS**

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

**STATEMENT IN LIEU OF
RURAL AREA FLEXIBILITY ANALYSIS**

A Rural Area Flexibility Analysis for these amendments is not being submitted because amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

**STATEMENT IN LIEU OF
JOB IMPACT STATEMENT**

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

EMERGENCY JUSTIFICATION

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

The proposed regulatory changes to Title 10 NYCRR section 405.45 will update the publication date of *Resources for Optimal Care of the Injured Patient* from 2014 to 2022. This change is immediately needed because the American College of Surgeons (ACS) began using the updated edition to perform hospital trauma center verifications and re-verifications on September 1, 2023. The Bureau of Emergency Medical Services and Trauma Systems (the Bureau) works in concert with the ACS to issue preliminary verification to hospitals seeking trauma center verification. The Bureau uses the criteria and standards in the *Resources for the Optimal Care of the Injured Patient* to ensure that trauma center applications are compliant with the most current standards. The ACS uses these standards to issue the verification of trauma center status and once received, the Bureau issues the trauma center designation.

Failure to adopt the emergency regulation will result in a delay of verification and designation of new and existing trauma centers in New York State (NYS). It may also negatively affect trauma centers that have received notices of deficiencies in their ability to timely correct those deficiencies. The Bureau uses the standards set forth by ACS to re-inspect and assist trauma centers in resolving any deficiencies found with re-verification by

the ACS. Any delays in trauma center designation may cause delays in appropriate patient care because of traumatic injury, especially in rural areas, because trauma center designation provides the guideline for emergency medical services for transport to the appropriate facility.

As such, an emergency rule is necessary to ensure that the most current standards for trauma centers are employed in preliminary and permanent trauma center designation. Updating this rule prior to September 1, 2023, was not feasible because the ACS was still conducting verifications and re-verifications of trauma centers using the 2014 version of the standards and was not prepared to incorporate the new version until now. Accordingly, current circumstances necessitate immediate action, and pursuant to SAPA § 202(6), a delay in the issuance of these emergency regulations would be contrary to public interest.

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

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

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

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

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

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

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

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

(3) A hospital shall be considered to possess and maintain the required PPE if:

(i) it maintains all PPE on-site; or

(ii) it maintains PPE off-site, provided that the off-site storage location is within New York State, can be accessed by the hospital within at least 24 hours, and the hospital maintains at least a 10-day supply of all required PPE on-site, as determined by the calculations set forth in paragraph (2) of this subdivision. A hospital may enter into an agreement with a vendor to store off-site PPE, provided that such agreement requires the vendor to maintain unduplicated, facility-specific stockpiles; the vendor agrees to maintain at least a 60-day supply of all required PPE, or a 90-day supply in the event the Commissioner increases the required stockpile amount pursuant to this subdivision (less the amount that is stored on site at the facility); and the PPE is accessible by the facility 24 hours a day, 7 days a week, year round. In the event the Department finds a hospital has not maintained the required PPE stockpile, it shall not be a defense that the vendor failed to maintain the supply.

(iii) Any PPE stored outside of New York State shall not count toward the facility's required 60-day stockpile.

(4) The Commissioner shall have discretion to increase the stockpile requirement set forth in paragraph (1) of this subdivision from 60 days to 90 days where there is a State or local public health emergency declared pursuant to Section 24 or 28 of the Executive Law. Hospitals shall possess and maintain the necessary 90-day stockpile of PPE by the deadline set forth by the Commissioner.

(5) The Department shall periodically determine the number of staffed beds in each hospital. Hospitals shall have 90 days to come into compliance with the new PPE stockpile requirements, as set forth in paragraph (2) of this subdivision, following such determination by the Department. Provided further that the Commissioner shall have discretion to determine an applicable bed

calculation for a hospital which is different than the number of staffed beds, if circumstances so require.

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

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

(8) In the event a new methodology relating to PPE in hospitals is developed, including but not limited to a methodology by the U.S. Department of Health & Human Services, and the Commissioner determines that such alternative methodology is appropriate for New York hospitals and will adequately protect hospital staff and patients, the Commissioner shall amend this subdivision to reflect such new methodology.

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

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

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

(i) for single gloves, the applicable positivity rate, multiplied by the nursing home's average census as determined annually by the Department, multiplied by 24;

(ii) for gowns, the applicable positivity rate, multiplied by the nursing home's average census as determined annually by the Department, multiplied by 3;

(iii) for surgical masks, the applicable positivity rate, multiplied by the nursing home's average census as determined annually by the Department, multiplied by 1.5; and

(iv) for N95 respirator masks, the applicable positivity rate, multiplied by the nursing home's average census as determined annually by the Department, multiplied by 1.4.

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

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

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

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

(d) In the case of nursing homes previously designated by the Department as a COVID-positive only facility, the term “applicable positivity rate” shall be as defined in clause (c) of this subparagraph.

(3) A nursing home shall be considered to possess and maintain the required PPE if:

(i) it maintains all PPE on-site; or

(ii) it maintains PPE off-site, provided that the off-site storage location is within New York State, can be accessed by the nursing home within at least 24 hours, and the nursing home maintains at least a 10-day supply of all required PPE on-site, as determined by the calculations set forth in paragraph (2) of this subdivision. A nursing home may enter into an agreement with a vendor to store off-site PPE, provided that such agreement requires the vendor to maintain unduplicated, facility-specific stockpiles, the vendor agrees to maintain at least a 60-day supply of all required PPE (less the amount that is stored on-site at the facility), and the PPE is accessible by the facility 24 hours a day, 7 days a week, year round. In the event the Department finds a nursing home has not maintained the required PPE stockpile, it shall not be a defense that the vendor failed to maintain the supply.

(iii) Any PPE stored outside of New York State shall not count toward the facility’s required 60-day stockpile.

(4) The Department shall determine the nursing home’s average census annually, by January 1st of each year, and shall communicate such determination to each facility. Nursing homes shall

have 90 days to come into compliance with the new PPE stockpile requirements, as set forth in paragraph (2) of this subdivision, following such determination by the Department.

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

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

(7) In the event a new methodology relating to PPE in Residential Health Care Facilities is developed, including but not limited to a methodology by the U.S. Department of Health & Human Services, and the Commissioner determines that such alternative methodology is appropriate for New York nursing homes and will adequately protect facility staff and patients, the Commissioner shall amend this subdivision to reflect such new methodology.

REGULATORY IMPACT STATEMENT

Statutory Authority:

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

Legislative Objectives:

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

Needs and Benefits:

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

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

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

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

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

COSTS:

Costs to Regulated Parties:

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

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

Costs to Local and State Governments:

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

Costs to the Department of Health:

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

Paperwork:

This regulation imposes no additional paperwork.

Local Government Mandates:

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

Duplication:

These regulations do not duplicate any State or federal rules.

Alternatives:

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

Federal Standards:

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

Compliance Schedule:

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

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

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

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

The Department anticipates that any adverse impacts will be minimal, as both hospitals and nursing homes have already mobilized their stockpiling efforts since early 2020, when the spread of the COVID-19 virus was first recognized in New York State, including through two surges of the COVID-19 pandemic. As such, the continuance of these stockpiling requirements is not expected to create any additional adverse impact on hospitals or nursing homes.

Moreover, for nursing homes, these PPE regulations are consistent with the existing directive in Public Health Law section 2803(12) to maintain a two-month PPE supply.

Small Business and Local Government Participation:

The Department contacted hospital and nursing home associations, individual hospitals and health systems, and health care labor unions for input regarding these regulations and the

underlying methodology. Input from these stakeholders has been incorporated into the regulations.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 44 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2020 (<https://www.census.gov/quickfacts/>).

Approximately 17% of small health care facilities are located in rural areas.

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

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2020.

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

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

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

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

Compliance Costs:

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

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

The Department anticipates that any adverse impacts will be minimal, as both hospitals and nursing homes have already mobilized their stockpiling efforts since early 2020, when the spread of the COVID-19 virus was first recognized in New York State, including through two surges of the COVID-19 pandemic. As such, the continuance of these stockpiling requirements is not expected to create any additional adverse impact on hospitals or nursing homes.

Moreover, for nursing homes, these PPE regulations are consistent with the existing directive in Public Health Law section 2803(12) to maintain a two-month PPE supply.

Rural Area Participation:

The Department contacted hospital and nursing home associations, individual hospitals and health systems, and health care labor unions for input regarding these regulations and the

underlying methodology, including associations representing facilities in rural areas of the State.
Input from these stakeholders has been incorporated into the regulations.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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

SUMMARY OF EXPRESS TERMS

The proposed regulation would create a new section 405.46 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, to create cybersecurity requirements for all hospital facilities.

Section 405.46 (a) identifies all general hospitals in New York State as subject to the regulations.

Section 405.46 (b) defines certain terms and language for purposes of the section.

Section 405.46 (c) establishes the requirements for hospitals to have a cybersecurity program and defines protocols, procedures, and core functions of such program.

Section 405.46 (d) defines the cybersecurity policies that general hospitals will need to create and the topics that should be considered after a risk assessment has been performed.

Section 405.46 (e) requires general hospitals to designate a Chief Information Security Officer who will be responsible for cybersecurity program creation, implementation, and oversight.

Section 405.46 (f) sets forth the requirements for testing and vulnerability of a general hospital's cybersecurity program.

Section 405.46 (g) outlines the audit trails and records maintenance and retention requirements of a general hospital's cybersecurity program.

Section 405.46 (h) sets forth the requirements for cybersecurity risk assessments and the considerations for policies and procedures relative to those risk assessments.

Section 405.46 (i) sets forth the requirements for cybersecurity personnel general hospitals must utilize.

Section 405.46 (j) sets forth the policies for third-party service providers of cybersecurity programs.

Section 405.46 (k) sets forth the requirements for multi-factor authentication procedures.

Section 405.46 (l) sets forth the requirements for training and monitoring of the cybersecurity program.

Section 405.46 (m) defines the requirements for an incident response plan in the event of a cybersecurity incident.

Section 405.46 (n) defines the reporting requirements for a general hospital during a cybersecurity incident.

Section 405.46 (o) refers to confidentiality and the applicability of State and federal statutes.

Section 405.46 (p) provides general hospitals one (1) year from the date of adoption to comply with the new regulatory requirements, except that general hospitals must immediately begin reporting to the Department as required by subdivision (n) of this section.

Section 405.46 (q) states that if any provisions of the section are found to be invalid, it shall not affect or impair the validity of other provisions of the section.

Pursuant to the authority vested in the Commissioner of Health by section 2803 of the Public Health Law, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding a new section 405.46, to be effective upon publication of the Notice of Adoption in the State Register, to read as follows:

405.46 Hospital Cybersecurity Requirements

(a) Applicability. This section shall apply to all general hospitals licensed pursuant to article 28 of the Public Health Law, referred to throughout this section as “hospitals.”

(b) Definitions. For the purposes of this section the following terms shall have the following meaning:

(1) “Authorized user” means any employee, contractor, agent or other person that participates in or operates on behalf of the operations of a hospital and is authorized to access and use any information systems and data of such hospital.

(2) “Control” means any mechanism, safeguard, policy or security measure that is put into place pursuant to implementation specification, to satisfy the requirement for a security measure.

(3) “Compensating Control” means any alternative measure that is put into place to satisfy the requirement for a security measure, where the implementation specification for that requirement is deemed not reasonable or appropriate to implement. The hospital must document why it would not be reasonable and appropriate to implement the implementation specification; and implement an equivalent alternative measure if reasonable and appropriate.

(4) “Cybersecurity event” means any act or attempt, successful or unsuccessful, to gain unauthorized access to, disrupt or misuse the hospital’s information system or information stored on such information system, including but not limited to health records.

(5) “Cybersecurity incident” means a cybersecurity event that:

(i) has a material adverse impact on the normal operations of the hospital, or;

(ii) has a reasonable likelihood of materially harming any material part of the normal operation(s) of the covered entity; or

(iii) results in the deployment of ransomware within a material part of the hospital’s information systems.

(6) “Information system” means a discrete set of electronic information resources organized for the collection, processing, storage, maintenance, use, sharing, dissemination or disposition of electronic information, as well as any specialized system such as industrial/process controls systems, telephone switching and private branch exchange systems, and environmental control systems. One such example is an electronic health records system.

(7) “Multi-factor authentication” means authentication through verification of at least two of the following types of authentication factors:

(i) knowledge factors such as a password

(ii) possession factors such as a token

(iii) inherence factors, such as a biometric characteristic

(8) “Nonpublic information” means all electronic information that is not publicly available information and is:

(i) a hospital's business-related information, the tampering with which, or unauthorized disclosure, access or use of which, would cause a material adverse impact to the business, operations or security of such hospital;

(ii) any information concerning a natural person which because of name, number, personal mark, or other identifier can be used to identify such natural person. This includes any information in combination with any one or more of the following data elements, when either the data element or the combination of personal information plus the data element is not encrypted, or is encrypted with an encryption key that has also been accessed or acquired, in combination with any one or more of the following data elements:

(a) social security number;

(b) drivers' license number or non-driver identification card number;

(c) account number, credit or debit card number in combination with any required security code or access code;

(d) password or other information that would permit access to an individual's financial account;

(e) account number, credit or debit card number, if circumstances exist wherein such number could be used to access an individual's financial account without additional identifying information, security code, access code or password;

(f) biometric information, meaning data generated by electronic measures of an individual's unique physical characteristics, such as a fingerprint, voice print, retina or iris image, or other unique physical representation or digital representation of biometric data which are used to authenticate or ascertain the individual's identity; or a username or email address in combination with a password or security question and answer that would permit access to an online account;

or

(g) any information or data, in any form or medium created by, held by, transmitted by, or derived from a health care provider or an individual and that relates to:

(1) the past, present or future physical, mental or behavioral health, or condition of any individual or a member of the individual's family;

(2) the provision of health care to any individual; or

(3) payment for the provision of health care to any individual.

(9) "Penetration testing" is a test methodology in which assessors attempt to circumvent or defeat the security features of an information system from outside or inside the hospital's information systems.

(10) "Publicly available information" means any information that a hospital has a reasonable basis to believe is lawfully made available to the general public from widely distributed media; or disclosures to the general public that are required to be made by Federal, State or local law.

For the purposes of this paragraph, a hospital has a reasonable basis to believe that information is lawfully made available to the general public if the hospital has taken steps to determine that:

(i) the information is of the type that is available to the general public;

(ii) no individual who could have lawfully objected to the information being disclosed to the general public, has made such a request; and

(iii) disclosure to the general public would not violate other Federal, State, or local government laws, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA).

(11) "Risk assessment" means the risk assessment that each hospital must conduct under subdivision (h) of this section.

(c) Cybersecurity Program Requirements.

(1) Each hospital shall establish within its policies and procedures a cybersecurity program based on the hospital's risk assessment.

(2) The cybersecurity program shall be designed to supplement HIPAA and shall not replace any provisions of the HIPAA Security Rule (45 CFR part 160 and subparts A and C of part 164), or any existing patient protections afforded and mandated under HIPAA. Hospitals are expected to comply with this section and HIPAA.

(3) The cybersecurity program shall be designed to perform the following core functions:

(i) identify and assess internal and external cybersecurity risks that may threaten the security or integrity of nonpublic information stored on the hospital's information systems;

(ii) use defensive infrastructure and the implementation of policies and procedures to protect the hospital's information systems, and the nonpublic information stored on those information systems, from unauthorized access, use or other malicious acts;

(iii) detect cybersecurity events;

(iv) respond to identified or detected cybersecurity events to mitigate any negative effects;

(v) recover from cybersecurity events and incidents and restore normal operations and services;
and

(vi) fulfill applicable statutory and regulatory reporting obligations.

(4) Each hospital's cybersecurity program shall include policies and protocols to limit user access privileges to information systems that provide access to nonpublic information. Each hospital shall periodically review such access privileges, and such access privileges shall be based on the hospital's risk assessment, and other State and Federal laws, including but not limited to the administrative, physical and technical safeguards under HIPAA.

(5) Each hospital's cybersecurity program shall include written procedures, guidelines and standards designed to ensure the use of secure development practices for in-house developed applications utilized by the hospital, and procedures for evaluating, assessing and testing the security of externally developed applications utilized by the hospital. All such procedures, guidelines and standards shall be annually reviewed, assessed, updated and attested as such by the chief information security officer (CISO) (or a qualified designee) of the hospital.

(6) Each hospital's cybersecurity program shall include policies and procedures for the secure disposal, on a periodic basis, of any nonpublic information identified that is no longer necessary for business operations or for other legitimate business purposes of the hospital, except where such information is otherwise required to be retained by law or regulation, or where targeted disposal is not reasonably feasible due to the manner in which the information is maintained.

(7) Each hospital's cybersecurity program shall implement security measures and controls, including encryption, to protect nonpublic information held or transmitted by the hospital, both in transit over external networks and at rest, which takes into account necessary controls identified in the hospital's risk assessment.

(i) To the extent a hospital determines that encryption of nonpublic information in transit over external networks is infeasible, the hospital shall instead secure such nonpublic information using effective compensating controls reviewed and approved by the hospital's CISO.

(ii) To the extent a hospital determines that encryption of nonpublic information at rest is infeasible, the hospital shall instead secure such nonpublic information using effective alternative compensating controls reviewed and approved by the hospital's CISO.

(iii) To the extent that a hospital is utilizing compensating controls under this paragraph, the feasibility of encryption and effectiveness of the compensating controls shall be reviewed and

documented by the CISO as needed to continue securing nonpublic information. Such reviews and associated documentation shall be completed at minimum on an annual basis.

(d) Cybersecurity policy.

(1) Each hospital shall maintain and implement policies and procedures for the protection of its information systems and nonpublic information stored on those information systems, in accordance with State and Federal law. These policies shall be developed by the CISO and hospital information security/information technology staff.

(2) The hospital's cybersecurity policy, upon recommendation by the CISO shall be approved by the hospital's governing body, established pursuant to section 405.2 of this Part. If a committee is established for the specific purpose of supervising the hospital's cybersecurity measures, the committee shall present the cybersecurity policy to the governing body for full approval and implementation.

(3) The cybersecurity policies shall be based on the hospital's risk assessment and address, at a minimum, the following topics:

(i) information security;

(ii) data governance and classification;

(iii) asset inventory and device management;

(iv) access controls and identity management;

(v) business continuity and disaster recovery planning and resources;

(vi) systems operations and availability concerns;

(vii) systems and network security;

(viii) systems and network monitoring;

(ix) systems and application development and quality assurance;

- (x) physical security and environmental controls;
 - (xi) patient data privacy;
 - (xii) vendor and third-party service provider management;
 - (xiii) risk assessment as defined in subdivision (h) of this section;
 - (xiv) training and monitoring as defined in subdivision (l) of this section; and
 - (xv) overall incident response as defined in subdivision (m) of this section;
- (e) Chief Information Security Officer.

(1) Each hospital shall designate an individual from senior- or executive-level staff, qualified in training, experience, and expertise, to serve as the hospital's Chief Information Security Officer, or "CISO."

(2) Notwithstanding the provisions set forth in subdivision (i) of this section, the hospital's CISO may be an employee of the facility, or an employee of a third-party or contract vendor. If the CISO is an employee of a third-party or contract vendor, the governing body, as defined under section 405.2 of this Part, shall approve the contract on an annual basis.

(3) The hospital's CISO shall be responsible for developing and enforcing the hospital's cybersecurity policy, established pursuant to subdivision (d) of this section, and overseeing and implementing the hospital's cybersecurity program, established pursuant to subdivision (c) of this section.

(4) The CISO of each hospital shall report in writing, at least annually to the hospital's governing body, on the hospital's cybersecurity program and material cybersecurity risks. Such report shall, at minimum include:

- (i) the confidentiality of nonpublic information and the integrity and security of the hospital's information systems;

(ii) the hospital's cybersecurity policies and procedures, including their implementation status and any recommendations for revisions;

(iii) material cybersecurity risks to the hospital;

(iv) overall effectiveness of the hospital's cybersecurity program; and

(v) any cybersecurity incidents as defined herein involving the hospital during the time period addressed by the report, as well as steps taken to mitigate future events.

(f) Testing and vulnerability assessments.

(1) The cybersecurity program for each hospital shall include monitoring and testing, developed in accordance with the hospital's risk assessment, designed to assess the effectiveness of the hospital's cybersecurity program and assess changes in information systems that may create or indicate vulnerabilities.

(2) The monitoring and testing shall include at a minimum:

(i) penetration testing of the hospital's information systems by a qualified internal or external party at least annually; and

(ii) automated scans or manual or automated reviews of information systems reasonably designed to identify publicly known cybersecurity vulnerabilities in the hospital's information systems based on the risk assessment.

(g) Audit Trails and Records Maintenance.

(1) Each hospital shall securely maintain systems that are designed to support normal operations and obligations of the hospital. Records pertaining to systems design, security, and maintenance supporting such normal operations shall be maintained for a minimum of six years.

(2) Each hospital shall also securely maintain systems to include audit trails designed to detect and respond to cybersecurity events that have a reasonable likelihood of materially harming any

material part of the normal operations of the hospital, and cybersecurity incidents as defined herein. Records pertaining to such audit trail systems shall be maintained for a minimum of six years.

(3) Designs for the security systems and audit trails required pursuant to paragraphs (1) and (2) of this subdivision shall be based on the hospital's risk assessment.

(h) Risk assessment.

(1) Each hospital shall conduct an accurate and thorough annual risk assessment of the hospital's potential risks and vulnerabilities to the confidentiality, integrity, and availability of nonpublic information, such as electronic protected health information, held by the hospital, as well as information systems sufficient to inform the design of the cybersecurity program as required by this section. Such risk assessment shall be updated as reasonably necessary, and no less than annually, and address changes to the hospital's information systems, nonpublic information or business operations. The risk assessment shall allow for revision of controls to respond to technological developments and evolving threats and shall consider the particular risks of the hospital's business operations, nonpublic information collected or stored, information systems utilized and the availability and effectiveness of controls to protect nonpublic information and information systems. Risk assessments performed for other regulatory purposes, such as HIPAA, shall be acceptable under this provision provided they comport with the requirements herein. Other risk assessments performed for other regulatory purposes, such as HIPAA, may be extended to comply this section and incorporate other risk assessments performed by qualified internal or external parties.

(2) The risk assessment shall be carried out in accordance with written policies and procedures and shall be documented. Such policies and procedures shall, at a minimum include:

(i) criteria for the evaluation and categorization of identified cybersecurity risks, vulnerabilities, and threats facing the hospital;

(ii) criteria for the assessment of the confidentiality, integrity, security and availability of the hospital's information systems and nonpublic information, including the identification and adequacy of existing controls in the context of identified risks, the determination of the likelihood of threat occurrence and the determination of the potential impact on threat occurrence, and the determination of the level of risk; and

(iii) requirements describing how identified risks and threats will be mitigated or accepted based on the risk assessment and how the cybersecurity policies and programs will address the risks.

(i) Cybersecurity personnel.

(1) Each hospital shall:

(i) utilize qualified cybersecurity personnel of the hospital, an affiliate or a third-party service provider sufficient to manage the hospital's cybersecurity risks and to perform or oversee the performance of the core cybersecurity functions specified in subdivision (c) of this section and in accordance with the hospital's risk assessment;

(2) Each hospital may utilize an affiliate or qualified third-party service provider to assist in complying with the requirements set forth in this section.

(j) Security policies for third-party service providers.

(1) Each hospital shall implement written policies and procedures designed to ensure the security of information systems and nonpublic information that are accessible to, or held by, third-party service providers. Such policies and procedures shall be based upon the hospital's risk assessment and shall, at a minimum, address the following:

(i) the identification and baseline assessment (if applicable) of third-party service providers; and

(ii) minimum cybersecurity practices required to be met by such third-party service providers in order for them to do business with the hospital.

(2) Such policies and procedures shall include relevant guidelines for due diligence and contractual protections relating to third-party service providers, including, at a minimum, guidelines addressing:

(i) ensuring third-party service provider's policies and procedures for access controls are consistent with industry standards;

(ii) the third-party service provider's policies and procedures for use of encryption or another method to protect nonpublic information in transit and at rest;

(iii) notice to be provided to the hospital in the event of a cybersecurity incident directly impacting the hospital's information systems or the hospital's nonpublic information being held by the third-party service provider; and

(iv) representations and warranties addressing the third-party service provider's cybersecurity policies and procedures that relate to the security of the hospital's information systems or nonpublic information.

(k) Risk-Based authentication.

(1) Each hospital shall use multi-factor authentication, risk-based authentication, or other compensating control to protect against unauthorized access to nonpublic information or information systems.

(2) Multi-factor authentication shall be utilized for any individual accessing the hospital's internal networks from an external network, unless the hospital's CISO has approved in writing the use of compensating controls.

(l) Training and monitoring.

As part of its cybersecurity program, each hospital shall, at a minimum:

(1) Implement risk-based policies, procedures and controls designed to monitor the activity of authorized users and detect unauthorized access or use of, or tampering with, nonpublic information by such authorized users.

(2) Provide regular cybersecurity awareness training for all personnel that is updated to reflect risks identified by the hospital in its risk assessment, which may include annual phishing exercises and training/remediation for employees.

(m) Incident response plan.

(1) As part of its cybersecurity program, each hospital shall establish a written incident response plan designed to promptly respond to, and recover from, any cybersecurity incident materially affecting the confidentiality, integrity or availability of the hospital's information systems or the continuing functionality of any aspect of the hospital's business or operations.

(2) Such incident response plan shall, at a minimum, address the following areas:

(i) the goals of the incident response plan;

(ii) the definition of clear roles and responsibilities, a list of actual personnel and both business hour and off-business hour contact information with levels of decision-making authority;

(iii) external and internal communications and information sharing about any incidents;

(iv) identification of requirements for the remediation of any identified weaknesses in information systems and associated controls;

(v) the internal processes for responding to a cybersecurity event including, at a minimum, mitigation, downtime procedures and contingency plan, and process for determining if a cybersecurity event becomes a cybersecurity incident, and processes for determining if a cybersecurity incident has a material adverse impact on the hospital;

(vi) documentation and reporting regarding cybersecurity events and related incident response activities; and

(vii) the evaluation and revision as necessary of the incident response plan following a cybersecurity event.

(n) Department Reporting.

(1) The hospital CISO or their designee shall notify the department within two hours of a determination that a cybersecurity incident, as defined herein, has occurred and has had a material adverse impact on the hospital, in a manner prescribed by the department. All notifications to the department under this section does not replace any other notifications required under State or Federal law.

(2) Each hospital shall maintain and submit for examination, in such time and manner and containing such information, as the department determines to be necessary, including but not limited to any and all documentation, such as records, schedules, reports, and data required and supporting the required documentation by this section. All such documentation must be maintained for a minimum of six years.

(3) To the extent a hospital has identified areas, systems or processes that require material improvement, updating or redesign, the hospital shall document the identification and the remedial efforts planned, and underway, to address such areas, systems or processes. Such documentation must be available for inspection by the department, in such time and manner as prescribed by the department, and must be maintained for a minimum of six years.

(o) Confidentiality.

Information provided by a hospital pursuant to this Part shall be subject to the applicable provisions of the Public Health Law, Mental Hygiene Law, Education Law, and the Public Officers Law or any other applicable State or Federal law in relation to disclosure.

(p) Compliance period.

(1) Covered entities shall have one year from the effective date of this section to comply with the requirements set forth herein, provided, however, subdivision (n) of this section shall be effective immediately upon adoption.

(q) Severability.

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

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (PHL) § 2803(2)(a) authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner of Health (Commissioner), to implement PHL Article 28 and establish minimum standards for health care facilities, including general hospitals.

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection of the health of the residents of the State by promoting the efficient provision and proper utilization of high-quality health services at a reasonable cost.

These regulations fulfill this legislative objective by ensuring that general hospitals within New York State implement minimum cybersecurity controls to safeguard protected health information (PHI) and personally identifying information (PII) from being publicly disclosed or used for identity theft.

Needs and Benefits:

The healthcare industry is one of the most targeted communities for cybersecurity scams and breaches due to the significant amount of sensitive and financially lucrative information healthcare facilities collect. Currently in New York State there are no cybersecurity requirements for the safeguarding and security of patients' protected health information (PHI) and personally identifying information (PII). As a result, New Yorkers seeking medical care

have no guaranteed minimum levels of protection of their information. As a result of this, there have been several high-profile cybersecurity breaches at facilities across the state which have resulted in not only a loss of patient financial and health data, but in some cases has also delayed care.

Additionally, cybersecurity events at hospitals can have significant, far-reaching, and long-term impacts to the provision of patient care and operation of the facility. Governor Hochul has been focusing on cybersecurity and ensuring that New Yorkers data stays safe no matter where they go. The promulgation and implementation of cybersecurity focused regulations supports this initiative. These regulations will ensure all hospitals develop, implement, and maintain minimum cybersecurity standards, including cybersecurity staffing, network monitoring and testing, policy and program development, employee training and remediation, incident response, appropriate reporting protocols and records retention.

There will be multiple benefits to the adoption of these regulations. Given the significant differences in preparedness statewide against cybersecurity attacks, these regulations will ensure hospitals are required to maintain a minimum level of readiness to prepare for, respond to, and quickly recover from cybersecurity incidents.

Costs:

Costs to Regulated Parties:

The costs associated with the implementation by regulated facilities will vary significantly due to the varying levels of cybersecurity programs and policies hospitals currently have in place. Some facilities may have mature monitoring, training and response programs, whereas others may not. Therefore, the costs could vary from tens of thousands to tens of millions. Hospitals will be allowed to sub-contract for cybersecurity services and this may reduce

the overall cost of program implementation. It is estimated that effective cybersecurity programs can cost between \$250,000 and \$10 Million to develop and implement initially and anywhere from \$50,000 - \$2 Million or more to maintain on a yearly basis depending on the facility size. For small hospitals (of which there are 15 and are defined as less than 10 acute care or ICU beds), ongoing annual costs are estimated to be \$50,000-\$200,000. For medium sized hospitals (of which there are 62 and are defined as those with between 10 and 100 beds), ongoing costs are estimated to be \$200,000-\$500,000. For large hospitals (of which there are 114 and are defined as those with more than 100 beds), ongoing annual costs are estimated to be \$2 million.

Costs to Local and State Governments:

There are currently fifteen facilities which would be subject to these proposed regulations which are operated by local municipalities. As such, they would be subject to the same regulations as those operated by private entities. The estimated costs they would incur would depend on their size, as noted above.

Local Government Mandates:

These regulations do impose a program, service, duty or other responsibility upon 4 separate city, county and State governments to the extent they do not already comply with the proposed regulations.

Paperwork:

These regulations impose additional paperwork in the form of procedures, policies, guidelines, and reporting documents. These requirements are necessary to ensure the efficacy of a cybersecurity program and also provide accountability and transparency for hospitals.

Duplication:

There is no duplication of this initiative in existing State law. The Health Insurance Portability and Accountability Act (HIPAA) Security Rule does provide broad requirements for safeguarding PHI, but the regulations contained herein are intended to supplement HIPAA.

Alternatives:

The alternative to the proposed regulation would be not enacting the cybersecurity requirements. This option is not appropriate due to the demonstrated need to protect PHI and PII at hospitals within the State. The Department in 2023 has responded to more than 1 cybersecurity incident per month, several of which have forced hospitals to go on diversion, stopped their billing procedures, and required facilities to operate on downtime procedures which can severely hamper the care delivery process. Over 225,000 patients had data possibly compromised in one breach alone.

In order to respond to comments received by facilities, the proposed regulations were modified to lengthen and simplify the compliance period in order to maximize the ability for facilities to come into compliance. Furthermore, the Department removed the requirement for a Chief Information Security Officer to be employed directly by the facility, and instead allow them to be a virtual or 3rd party vendor upon approval by the facilities' governing body.

Federal Standards:

Federal regulations governing protection of PHI and PII are contained within HIPAA, however they are overly vague and provide limited guidance on cybersecurity and the protection of PHI and PII.

Compliance Schedule:

General hospitals will have one year from the effective date of the regulation to comply with the requirements set forth herein. However, subdivision (n) of the regulation, requiring general hospitals to notify the department within two hours of a determination that a cybersecurity incident has occurred, will be effective upon adoption in the State Register. The schedule as proposed was modified as a direct result of outreach to facilities by the Department who provided feedback on the difficulty in developing cybersecurity programs.

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**REGULATORY FLEXIBILITY ANALYSIS FOR
SMALL BUSINESSES AND LOCAL GOVERNMENTS**

Effect of Rule:

The proposed regulations will affect all general hospitals licensed pursuant to Article 28 of the Public Health Law, regardless of size or location. There are currently 226 hospitals in New York State, including Veteran’s Affairs facilities (which would not be affected by these proposed regulations). These regulations will not affect local governments unless they operate a general hospital. In NYS, there are 15 hospitals operated by municipalities; Lewis County Hospital in Lewis County, NY, Wyoming County Hospital in Wyoming County, 12 facilities operated by New York City Health and Hospitals Corporation, and Helen Hayes hospital operated by the State of New York.

Currently in New York State there are no cybersecurity requirements for the safeguarding and security of patients’ protected health information (PHI) and personally identifying information (PII). As a result, New Yorkers seeking medical care have no guaranteed minimum levels of protection of their information. As a result of this, there have been several high-profile cybersecurity breaches at facilities across the state which have resulted in not only a loss of patient financial and health data, but in some cases has also delayed care. Additionally, cybersecurity events at hospitals can have significant, far-reaching, and long-term impacts to the provision of patient care and operation of the facility. These regulations will ensure all hospitals develop, implement, and maintain minimum cybersecurity standards, including cybersecurity staffing, network monitoring and testing, policy and program development, employee training and remediation, incident response and appropriate reporting protocols and records retention.

Compliance Requirements:

The proposed regulations require that hospitals develop, implement and maintain minimum cybersecurity standards and programs, including information technology (IT) staffing, network monitoring and testing, policy and program development, employee training and remediation, incident response, appropriate reporting protocols and records retention.

Professional Services:

Depending on the current state of an existing cybersecurity program, a facility or system may need to contract with a third-party service provider for anything from staffing, network monitoring, incident response, or staff training. Facilities will be required to hire or appoint a Chief Information Security Officer (CISO) to design and implement their cybersecurity program. The draft regulations currently allow for the CISO to be a direct employee of the facility, or an employee of a virtual or third-party contractor upon consent and approval of the governing body. Facilities may also need to hire or contract additional information technology staff to ensure compliance with the new regulations. Additionally, the facilities may need to purchase information security programs or contract with third-party vendors to monitor for malicious network traffic, perform compliance testing with authorized users and ensure protected health information and personally identifying information is kept secure.

Compliance Costs:

Given the variability in cybersecurity preparedness and current programs at facilities, the initial startup and ongoing costs could vary significantly. After initial conversations with facilities to gain a basic understanding of costs, it is estimated that effective cybersecurity

programs can cost millions to develop and implement initially, and anywhere from \$50,000-\$2 million or more to maintain on a yearly basis depending on the facility size. For small hospitals (of which there are 15 and are defined as less than 10 acute care or ICU beds), ongoing annual costs are estimated to be \$50,000-\$200,000. For medium sized hospitals (of which there are 62 and are defined as those with between 10 and 100 beds), ongoing costs are estimated to be \$200,000-\$500,000. For large hospitals (of which there are 114 and are defined as those with more than 100 beds), ongoing annual costs are estimated to be \$2 million.

Economic and Technological Feasibility:

It is both economically and technologically feasible for hospitals to become compliant with the proposed regulations. There currently exists a significant amount of technology and software which can be licensed or purchased to provide network monitoring, notification, staff training and exercises and multifactor or risk-based authentication, among others. Economically, it will be easier for hospitals which are part of large healthcare systems or located in more urban areas to comply with these regulations than it may be for smaller or more rural facilities. This is due to the fact that the larger facilities and systems may already have aspects of the regulations already functioning as part of a mature cybersecurity program, or may have access to more capital and resources than smaller, more rural or standalone facilities. While several facilities voiced concerns related to the cost of implementation, the consequences of what can occur as a result of a cyber-attack far outweigh those costs. Days or weeks of downtime with an inability to bill for services can cost tens of millions of dollars (at a minimum), as well as the unknown cost of lost productivity, cancellation of elective surgeries, purchase of new computers, etc, can well exceed the yearly maintenance program costs.

Minimizing Adverse Impact:

The Department of Health conducted several rounds of outreach to affected healthcare facilities and healthcare associations as part of the regulatory drafting process, to understand what makes a successful cybersecurity program, what things should be avoided or be flexible, and how the Department can work with them to enhance preparedness in New York State. As a result of those discussions, the Department took significant steps to ensure that no specific references to technology, programs or software were included into the regulations. In this way, it allows for facilities to become compliant with the regulations however they may be able to, without the regulation becoming too prescriptive, or requiring use of overly expensive or specific software. These regulations establish truly baseline, general requirements that allow maximum flexibility to healthcare facilities to comply based on their operations. While other approaches to cybersecurity programs were considered, as required under SAPA § 202-b(1), there are unfortunately no alternatives to cybersecurity, as the health and welfare of patients both current and former at a facility can be adversely affected by a network breach. Facilities will have one year from implementation to come into compliance with the regulations except for event reporting. The compliance period as proposed will not only maximize the ability for facilities to come into compliance, but was modified as a result of feedback received from those facilities. While these regulation will result in some cost to facilities, the Department will be taking action to mitigate these impacts. The Department will soon be issuing a request for application for a new \$500M Health Care Technology Capital program. Funding for this program was appropriated in the FY24 budget, with the intention of supporting facilities' technological needs, including for cybersecurity purposes. This funding will help facilities to come into compliance with these regulations.

Small Business and Local Government Participation:

During the drafting process, the Department conducted several rounds of outreach to over 25 different hospitals and hospital/healthcare associations to understand the current state of the industry, cybersecurity program best practices and areas to avoid.

Parties the Department reached out to:
University of Rochester MC
Kaleida Health
Northwell Health
NY Presbyterian
Elizabethtown Hospital
Arnot Ogden MC
Geneva General Hospital
Soldiers and Sailors Memorial Hospital
Rochester General Hospital
Unity Hospital
Wyoming County Hospital
Richmond University Medical Center
Healthcare Association of NYS
Iroquois Healthcare Association
Healthcare Association of Central and Western NY
Suburban Hospital Alliance of NYS
Greater NY Healthcare Association

As there are facilities run by city, county and state municipalities, a cross section of them was invited to participate in the roundtable discussion related to cybersecurity programs and proposed regulations. The Department has some direct communication methods through the

Health Commerce system which will be utilized to reach out to C Suite executives at each facility after the regulations are publicly posted and available for comment.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

Rural areas as defined by Executive Law § 418(7) are counties with a population less than 200,000 and towns with a population density less than 150 people per square mile. For the purposes of this regulation, there are 44 counties with a population of less than 200,000, which have a total of 76 regulated facilities. The proposed rule will apply statewide to all general hospitals regulated under Article 28 of the Public Health Law.

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

1. Recordkeeping- Article 28 facilities will be required to develop cybersecurity policies, protocols and procedures within one year of the adoption of the proposed regulations. Facilities will be required to maintain records of program compliance by employees, security breaches by outside entities (both successful and unsuccessful), and other program documentation for at least 6 years.
2. Reporting: Article 28 facilities will be required to report any cybersecurity incidents as defined in the proposed regulation within 2 hours of discovery. Facilities will also be required to provide a report to the Department upon request of all cybersecurity incidents within the previous reporting period.
3. Professional services- Facilities will be required to hire or appoint a Chief Information Security Officer (CISO) to design and implement their cybersecurity program. The draft regulations currently allow for the CISO to be a direct employee of the facility, or an employee of a virtual or third-party contractor upon consent and approval of the

governing body. Facilities may also need to hire or contract additional information technology staff to ensure compliance with the new regulations. Additionally, the facilities may need to purchase information security programs or contract with third-party vendors to monitor for malicious network traffic, perform compliance testing with authorized users and ensure protected health information and personally identifying information is kept secure.

Costs:

The costs for this program will vary depending on the level of preparedness of each facility. For less mature programs which require significant development, the initial funding required could range from \$250,000 to \$10 million. For small hospitals (of which there are 15 and are defined as less than 10 acute care or ICU beds), ongoing annual costs are estimated to be \$50,000-\$200,000. For medium sized hospitals (of which there are 62 and are defined as those with between 10 and 100 beds), ongoing costs are estimated to be \$200,000-\$500,000. For large hospitals (of which there are 114 and are defined as those with more than 100 beds), ongoing annual costs are estimated to be \$2 million. Facilities may be able to purchase equipment or services from State Contract lists where appropriate and applicable. Facilities will also be able to contract with appropriate third-party vendors or contractors to help ensure compliance with the proposed regulations.

Minimizing Adverse Impact:

The Department has included flexibility within the regulations for facilities to ensure they are compliant with the requirements, including allowing for third-party or vendor contractors to

complete compliance reporting and measures on behalf of them. Additionally, facilities will have one year from the adoption of the proposed regulations to implement the requirements and ensure compliance. While these regulations will result in some cost to facilities, the Department will be taking action to mitigate these impacts. The Department will soon be issuing a request for application for a new \$500M Health Care Technology Capital program. Funding for this program was appropriated in the FY24 budget, with the intention of supporting facilities' technological needs, including for cybersecurity purposes. This funding will help facilities to come into compliance with these regulations.

Rural Area Participation:

In consideration of SAPA § 202-bb(7), the Department conducted multiple rounds of outreach with facilities of a diversity of sizes, including those located in rural areas such as Ellenville Regional Hospital and Arnot Ogden Medical Center. This outreach consisted of one-on-one conference calls with specific facilities, which occurred June 12-22, 2023, as well as a roundtable in August 2023 where over 25 facilities, healthcare associations and Department of Health staff were invited to discuss the current state of cybersecurity programs, best practices and required elements of a good cybersecurity program. While many facilities agreed about the need for mature cybersecurity program amid increasing cybersecurity threats, many voiced concerns about the costs of these programs. The Department listened to all of the feedback provided and modified some of the language in the proposed regulations. For example, the Department simplified and lengthened the compliance period to allow facilities the maximum amount of time to be in compliance.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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

Summary of Express Terms

The proposed amendments concern sections of 10 NYCRR Part 425, that apply to adult day health care services for registrants in a non-residential health care facility with medical needs. The purpose of the amendments is to come into compliance with the Centers for Medicare and Medicaid Services (CMS) home and community-based services (HCBS) Final Rule.

The amendments also ensure Medicaid's HCBS program in a non-residential setting, provide full access to the benefits of community living and offer services in the most integrated settings. This also establishes requirements that are eligible for reimbursement for the Medicaid home and community-based services (HCBS) provided under sections 1915 of the Medicaid statute.

The amendments are made to the setting requirements, where in the setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life and events, control personal resources, and receive desired services in the community, to the same degree of access as individuals not receiving Medicaid.

Amendments are in the following areas:

The setting should be selected by the individual from among setting options including non-disability specific settings.

The settings options must be identified and documented in the person-centered plan and are based on the individual's needs, preferences.

The setting should ensure an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint.

The setting should optimize, but does not regiment, individual initiative, autonomy, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact

The setting should facilitate individual choice regarding services and supports, and who provides them.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Section 363-a(2) of the Social Services Law and Section 2803(2) of the Public Health Law, Part 425 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows: Part 425 Adult Day Health Care (Statutory Authority: Public Health Law, section 2803(2); Social Services Law, section 363-a(2))

Section 425.1 - Definitions

425.1 Definitions. As used in this Part:

(a) *Adult day health care* is a community-based model. It is defined as the health care services and activities provided in a non-residential group setting to a group of registrants with functional impairments to maintain their health status and enable them to remain in the community.

(b) *Registrant* is defined as a person:

(1) who is not a resident of a residential health care facility, is functionally impaired and not homebound, and requires supervision, monitoring, preventive, diagnostic, therapeutic, rehabilitative services or palliative care [or services] but does not require continuous 24-hour-a-day inpatient care and services, except that where reference is made to the requirements of Part 415 of this Subchapter, the term resident as used in Part 415 shall mean registrant;

(2) whose assessed social and health care needs can satisfactorily be met in whole or in part by the delivery of appropriate services in the community setting; and

(3) who has been accepted by an adult day health care program based on an authorized practitioner's order or a referral from a managed [long term]care plan [or care coordination model] and a comprehensive assessment conducted by the adult day health care program or by the managed [long term] care plan [or care coordination model].

(c) *Program* is defined as an approved adult day health care program listed on the operating certificate [located at] of a licensed residential health care facility or an approved extension site.

(d) *Operating hours for an adult day health care program* are defined as the period of time that the program must be open, operational, and providing services to registrants in accordance with the approval granted by the Department. Each approved adult day health care session must operate for a minimum of five hours duration, not including time spent in transportation, and must provide, at a minimum, nutritional services in the form of at least one meal and necessary supplemental nourishment in the form of snacks and hydration of choice, and [planned]activities at planned and at registrant desired times(s). In addition, an ongoing assessment must be made of each registrant's health status by the adult day health care program, or by the managed [long term] care plan [or care coordination model] that referred the registrant to the adult day health care program, in order to provide coordinated person-centered care planning, case management and other health care services as determined by the registrant's needs.

(e) *Visit* is defined as an individual episode of attendance by a registrant at an adult day health care program during which the registrant receives adult day health care services in accordance with his/her person-centered care plan. A registrant's individual visit may be fewer than five hours or longer than five hours depending on the assessed needs of the

registrant. Registrants referred by an agency, physician or a managed [long term] care plan [or care coordination model] will receive services as ordered by those entities in conformance with those entities' comprehensive assessment after discussion and consultation with the adult day health care program.

(f) *Registrant capacity* is defined as the total number of registrants approved by the Department for each session in a 24 hour day.

(g) *Operator of an adult day health care program* is defined as the operator of the [a residential] health care facility that is approved by the Department to be responsible for all aspects of the adult day health care program.

(h) *Practitioner* is defined as a physician, nurse practitioner or a physician's assistant with physician oversight.

(i) *Department* means the New York State Department of Health.

(j) *Commissioner* means the Commissioner of the New York State Department of Health.

[(k) *Care coordination model* means a program model that meets guidelines specified by the Commissioner that supports coordination and integration of services pursuant to Section 4403-f of the Public Health Law.]

(k) [(l)] *Comprehensive assessment* means an interdisciplinary comprehensive assessment of a registrant completed in accordance with Section 425.[6]7 of this Part by the adult day health care program, or an interdisciplinary comprehensive assessment, approved by the Department, completed by the managed [long term] care plan [or care coordination model] that referred the registrant to the adult day health care program.

(l) [(m)] *Person-centered [C]care plan* means identifying goals and developing care plans [the care plan developed] in accordance with section 425.[7]8 of this Part by the

adult day health care program. Person-centered care planning is a process driven by the registrant that reflects the services and supports that are important to the registrant to meet their needs identified through an assessment of functional need, as well as what is important to the registrant with regard to the preference for the delivery of such services and supports 42 CFR 441.301(c)(2). Assists registrants in achieving their personally defined outcomes by integrating the registrant in, and supporting full access to, the community while providing registrant dignity and privacy.

(m [n]) *Unbundled Services/Payment Option* means the ability of an adult day health care program to provide less than the full range of adult day health care services to a functionally impaired individual [referred by a managed long term care plan or care coordination model] based on the registrant's comprehensive assessment. The full range of adult day health care services as described in Part 425 will be available to all registrants enrolled in the adult day health care program.

Section 425.2 - Application

425.2 Application. (a) Prior to operation of an adult day health care program, the proposed operator must apply for and receive Department approval in accordance with Part 710 of this Chapter. Such application must include a description of the proposed program, including but not limited to:

- (1) the need for the program, including a statement on the philosophy and objectives of the program;
- (2) the range of services to be provided;
- (3) the method(s) of delivery of services;

- (4) physical space to be utilized and planned use thereof;
 - (5) number and expected characteristics of registrants to be served;
 - (6) a description of a typical registrant's program;
 - (7) personnel to be employed in the program, including qualifications;
 - (8) intended use of and coordination with existing community resources;
 - (9) financial policies and procedures;
 - (10) program budget;
 - (11) methods for program evaluation; and
 - (12) proximity to an identified number of potential registrants.
- (b) A residential health care facility operator that has been approved by the Department to operate an adult day health care program at its primary site may provide adult day health care services at an extension site only when such use of an extension site has first been approved by the Department under the provisions of Part 710 of this Chapter.
- [(c) A residential health care facility operator that does not operate an adult day health care program at its primary site may provide such a program at an extension site approved by the Department for such use in accordance with section 710.1 of this Chapter if there is not sufficient suitable space within the residential health care facility to accommodate a full range of adult day health care program activities and services. The Department may conduct an on-site survey of the residential health care facility to determine whether the facility lacks suitable space for an adult day health care program.]

Section 425.3 - Changes in existing program

425.3 Changes in existing program.

(a) Applications for approval of changes in the program, including but not limited to substantial changes in the physical plant, space and utilization thereof, the extent and type of services provided, and the program's registrant capacity, must be submitted to the Department in writing and must conform with the provisions of Part 710 of this Chapter.

(b) Written requests for additional program sessions must be based on the number and needs of registrants and be approved by the Department.

(c) An operator may not discontinue operation of services to registrants without:

(1) notifying each registrant and making suitable plans for alternate services for each registrant; and

(2) receiving written approval from the commissioner in accordance with Part 710 of this Chapter. The application to discontinue services must set forth the specific intended date of discontinuance and the intended plans for alternate services to registrants.

(d) The operator of an approved adult day health care program must notify the Department of the program's election of the Unbundled Services/Payment Option in writing thirty days before commencement of this option.

Section 425.4 - General requirements for operation

425.4 General requirements for operation.

(a) An operator must:

(1) provide services to registrants consistent with the requirements of this Title and Part and other applicable statutes and regulations;

(2) provide appropriate staff, equipment, supplies and space as needed for the administration of the adult day health care program in accordance with the requirements

of this Part; and

(3) provide each registrant with a copy of a Bill of Rights specific to operation of the adult day health care program.

These rights include, but are not limited to:

(i) rights of privacy, dignity, respect, and confidentiality, including confidential treatment of all registrant records;

(ii) freedom to voice grievances about care or treatment without discrimination or reprisal;

(iii) protection and freedom from physical and psychological abuse, coercion and restraint;

(iv) participation in developing the person-centered care plan;

(v) written notification by the program to the registrant at admission and following the continued-stay evaluation of the services the registrant shall receive while attending the adult day health care program; and

(vi) right to individual initiative, autonomy, and independence in making life choices, including freedom to decide whether or not to participate in any given activity.

(4) be selected from among options by the individual and be physically accessible to the individuals supported;

(5) be integrated in and support full access to the greater community;

(6) facilitate an individual's informed choice about their services and who provides them;

(7) provide freedom and support for individuals to control their own schedules and activities;

(8) provide individuals access to food (meals and/or snacks) and visitors at any time;

(9) offer individuals participation in developing the person-centered care plan; and
(10) provide written notification by the program to the registrant at admission and
following the continued-stay evaluation of the services the registrant shall receive while
attending the adult day health care program.

(b) Administration. Without limiting its responsibility for the operation and management of the program, the operator must designate a person responsible for:

(1) coordinating services for registrants with services provided by community or other agency programs, including but not limited to certified home health agencies, social services agencies, clinics and hospital outpatient departments and services; provided, however, with respect to registrants referred to the adult day health care program by a managed [long term] care plan [or care coordination model,] the coordination of such services shall be the responsibility of the managed [long term] care plan [or care coordination model]; and

(2) day-to-day direction, management and administration of the adult day health care services, including but not limited to:

(i) assigning adequate, consistent and appropriately licensed personnel to be on-duty at all times when the program is in operation to ensure safe care of the registrants;

(ii) assigning and supervising activities of all personnel to ensure that registrants receive assistance in accordance with their [plans of care] person-centered care plan;

(iii) ensuring supervision of direct care staff in accordance with state rules and regulation;

(iv) arranging for in-service orientation, training and staff development; and assuring that staff possess the competencies and skill sets necessary to meet the needs safely and in a manner that promotes each registrant's rights, and physical, mental and psychosocial

well-being; and

(v) maintaining records in accordance with provisions of sections 400.2 and 415.3(d)(1) of this Subchapter.

(c) Policies and procedures for service delivery. The operator must:

(1) establish and implement written policies and procedures, consistent with the approved application for operation of the adult day health care program, concerning the rights and responsibilities of registrants, the program of services provided to registrants, use of physical structures and equipment, and the number and qualifications of staff members and their job classifications and descriptions;

(2) ensure that written policies and procedures, consistent with current professional standards of practice, are developed and implemented for each service and are reviewed annually and revised as necessary;

(3) develop protocols for each involved professional discipline to indicate when the service of such discipline should be included in the registrant assessment;

(4) ensure that professional personnel are fully informed of, and encouraged to refer registrants to, other health and social community resources that may be needed to maintain the registrant in the community; provided, however, with respect to registrants referred to the adult day health care program by a managed [long term] care plan [or care coordination model], such referrals shall be the responsibility of the managed long term care plan [or care coordination model];

(5) establish and implement written policies for the storage, cleaning and disinfection of medical supplies, equipment and appliances;

(6) establish and implement written policies and procedures concerning refunds and

prepayment for basic services in accordance with existing rules and regulations;

(7) establish and implement written policies and procedures concerning transfer and affiliation agreements covering registrants that are consistent with the standards specified in section 400.9 of this Subchapter; and

(8) provide in such agreement(s) reasonable assurance of assistance to each registrant in transferring to inpatient or resident status in a residential health care facility whenever the registrant is deemed by a practitioner to be medically appropriate for such care.

Section 425.5 – General requirements for Adult day health care settings

425.5 General requirements for Adult day health care settings.

(a) the operator must assure that the adult day health care program has all the qualities of a Home and Community-Based Service (HCBS) setting:

(1) The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.

(2) The setting is selected by the individual from among setting options including non-disability specific settings. The setting options are identified and documented in the person-centered care plan and are based on the individual's needs and preferences.

(3) The setting ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.

(4) The setting optimizes, but does not regiment, individual initiative, autonomy and independence in making life choices, including but not limited to, daily activities, physical environment, access to meals and snacks as desired at any time, and decisions concerning individuals with whom to interact. Visitors are not restricted.

(5) The setting facilitates individual choice regarding services and supports, and who provides them.

Section 425.6 - Adult day health care services

425.6 Adult day health care services.

(a) The operator must provide or arrange for services appropriate to each registrant in accordance with the comprehensive assessment conducted and person-centered care plan developed by the adult day health care program, or by the managed [long term] care plan [or care coordination model] that referred the registrant to the adult day health care program. At least the following program components must be available:

- (1) case management;
- (2) health education;
- (3) interdisciplinary care planning;
- (4) nursing services;
- (5) nutrition;
- (6) social services;
- (7) assistance and supervision with the activities of daily living, such as toileting, feeding,

ambulation, bathing including routine skin care, care of hair and nails; oral hygiene; and supervision and monitoring of personal safety[.];

(8) restorative rehabilitative and maintenance therapy services;

[(8)] (9) planned therapeutic or recreational activities that reflect the interests, cultural backgrounds and the communities of the registrants and provide the registrants with choices, including access to offsite activities;

[(9)] (10) pharmaceutical services; and

[(10)] (11) referrals for necessary dental services and sub-specialty care.

(b) The following services may also be provided:

(1) specialized services for registrants with HIV or AIDS and other high-need populations; and

(2) religious services and pastoral counseling.

Section 425.[6]7 - Admission, continued stay and registrant assessment

425.[6]7 Admission, continued stay and registrant assessment.

(a) The operator must:

(1) select, admit and retain in the adult day health care program only those persons for whom adequate care and needed services can be provided and who, according to the comprehensive assessment conducted by the operator or by the managed [long term] care plan [or care coordination model] that referred the applicant to the adult day health care program, can benefit from the services and require a minimum of at least one (1) visit per week to the program;

(2) assess each applicant, unless the assessment was conducted by a managed [long term]

care plan [or care coordination model] that referred the applicant to the adult day health care program, utilizing an assessment instrument designated by the Department, with such assessment addressing, at a minimum:

(i) medical needs, including the determination of whether the applicant is expected to need continued services for a period of 30 or more days from the date of the assessment.

An operator may request approval by the appropriate Department regional office for an exemption, based on special circumstances, to the requirement for determining whether there is a need for continued services for 30 days or more.

(ii) use of medication and required treatment;

(iii) nursing care needs;

(iv) functional status;

(v) mental/behavioral status;

(vi) sensory impairments;

(vii) rehabilitation therapy needs, including a determination of the specific need for physical therapy, occupational therapy, speech language pathology services, and rehabilitative, restorative or maintenance care;

(viii) family and other informal supports;

(ix) home environment;

(x) psycho-social needs, social history, preferences and interests;

(xi) nutritional status;

(xii) ability to tolerate the duration and method of transportation to the program; and

(xiii) evidence of any substance abuse problem.

(3) register an applicant only upon appropriate recommendation from the applicant's

practitioner or operator's medical director after completion of a personal interview by appropriate program personnel;

(4) register an applicant only after determining that the applicant is not [receiving the same services from another facility or agency.] enrolled in another adult day health care program.

(b) An individual may be registered in an adult day health care program only if his/her comprehensive assessment indicates that the program can adequately and appropriately care for the physical and emotional health needs of the individual.

(c) No individual suffering from a communicable disease that constitutes a danger to other registrants or staff may be registered or retained for services on the premises of the program.

(d) The operator may admit, on any given day, up to 10% over the approved capacity for that program. The average annual capacity, however, may not exceed the approved capacity of the operator's program.

Section 425.[7]8 - Registrant person-centered care plan

425.[7]8 Registrant person-centered care plan.

The operator must ensure that: (a) [An adult day health care program] A person-centered care plan based on the comprehensive assessment required by this Part, and, when applicable, a transfer or discharge plan, is developed for each registrant and is in place within five visits or within 30 days after registration, whichever is earlier. The adult day health care program and the referring managed [long term] care plan [or care coordination model] must be sure to coordinate with each other regarding the

development of a registrant's person-centered care plan.

(b) Each registrant's person-centered care plan process must be commensurate with the level of need of the registrant, and the scope of services and supports available and must[include]:

(1) [designation of a professional person to be responsible for coordinating the care plan]include registrant led input and include people chosen by the registrant;

(2) provide necessary information and support to ensure the registrant directs the process to the maximum extent possible and is enabled to make informed choices and decisions, with the registrant's representative having a participatory role, as needed and as defined by the registrant, unless State law confers decision-making authority to the legal representative;

(3) be timely and occur at times and locations of convenience to the registrant;

(4) reflect cultural considerations of the registrant and be conducted by providing information in plain language and in a manner that is accessible to individuals with disabilities and persons who are limited English proficient;

(5) include strategies for solving conflict or disagreement within the process, including clear conflict of interest guidelines for all planning participants;

(6) offer choices to the registrant regarding the services and supports the registrant receives and from whom;

(7) include a method for the registrant to request updates to the care plan, as needed;

and

(8) record the alternative home and community-based settings that were considered by the registrant.

(c) The person-centered care plan must reflect the services and supports that are important for the registrant to meet the clinical and support needs as identified through an assessment of functional need, as well as what is important to the registrant with regard to preferences for the delivery of such services and supports. The written plan must also:

(1) reflect [2] the registrant's pertinent diagnoses, including mental status, types of equipment and services required, case management, frequency of planned visits, prognosis, rehabilitation potential, functional limitations, planned activities, nutritional requirements, medications and treatments, necessary measures to protect against injury, instructions for discharge or referral if applicable, orders for therapy services, including the specific procedures and modalities to be used and the amount, frequency and duration of such services, and any other appropriate item.

[3](2) reflect the registrant's strengths and preferences, the medical and nursing goals and limitations anticipated for the registrant and, as appropriate, the nutritional, social, rehabilitative and leisure time goals and limitations;

[4](3) set forth the registrant's potential for remaining in the community; [and]

[5](4) include a description of all services to be provided to the registrant by the program, informal supports and other community resources pursuant to the person-centered care plan, and how such services will be coordinated;

(5) reflect that the setting in which the registrant receives services is chosen by the registrant;

(6) reflect risk factors and measures in place to minimize them, including individualized backup plans and strategies when needed;

(7) be understandable to the individual receiving services and supports, and the individuals important in supporting them. At a minimum, for the written plan to be understandable, it must be written in plain language and in a manner that is accessible to individuals with disabilities or with limited proficiency in English;

(8) identify the individual and/or entity responsible for monitoring the plan;

(9) be finalized and agreed to, with the informed consent of the registrant (and/or persons identified by the registrant) in writing and signed by all individuals and providers responsible for its implementation;

(10) be distributed to the registrant and other people involved in the plan;

(11) include those services, the purchase or control of which the registrant elects to self-direct; and

(12) prevent the provision of unnecessary or inappropriate services.

([c]d) Development and modification of the person-centered care plan is coordinated with other health care providers outside the program who are involved in the registrant's care.

([d]e) The responsible persons, with the appropriate participation of consultants in the medical, social, paramedical and related fields involved in the registrant's care, must:

(1) record in the clinical record changes in the registrant's status which require alterations in the registrant person-centered care plan;

(2) modify the person-centered care plan to reflect registrant physical and social changes accordingly;

(3) review the person-centered care plan at least once every six months and whenever the registrant's condition warrants and document each such review in the clinical record; and

(4) promptly alert the registrant's authorized practitioner of any significant changes in the registrant's condition which indicate a need to revise the person-centered care plan.

Section 425.[8]9 - Registrant continued-stay evaluation

425.[8]9 Registrant continued-stay evaluation. The operator, directly or through the managed [long term] care plan [or care coordination model] that referred the registrant to the adult day health care program, must ensure that a written comprehensive assessment and evaluation is completed pursuant to section 425.[6]7 of this Part at least once every six months for each registrant, addressing the appropriateness of the registrant's continued stay in the program, such assessment and evaluation to address, at a minimum:

- (a) a reassessment of the registrant's needs, including an interdisciplinary evaluation of the resident's need for continued services;
- (b) the appropriateness of the registrant's continued stay in the program;
- (c) the necessity and suitability of services provided; and
- (d) the potential for transferring responsibility for or the care of the registrant to other more appropriate agencies or service providers.

Section 425.[9]10 - Medical services

425.[9]10 Medical services. The operator must, without limiting its responsibility for the operation and management of the program:

- (a) assign to the operator's medical board, medical advisory committee, medical director or consulting practitioner the following responsibilities regarding registrants of the program:

- (1) developing and amending clinical policies;
 - (2) supervising medical services;
 - (3) advising the operator regarding medical and medically related problems;
 - (4) establishing procedures for emergency practitioner coverage, records and consultants;
- and
- (5) establishing professional relationships with other institutions and agencies, such as general hospitals, rehabilitation centers, residential health care facilities, home health agencies, hospital outpatient departments, clinics and laboratories;
- (b) ensure that medical services, including arranging for necessary consultation services, are provided to registrants of the program in accordance with sections 415.15(b)(1), (2)(ix), (3) and (4) of this Subchapter;
 - (c) provide or arrange for the personal, staff or other designated practitioner to obtain a medical history and a physical examination of each registrant, including diagnostic laboratory and x-ray services, as medically indicated, within six weeks before or seven days after admission to the program;
 - (d) ensure that the practitioner record, date and authenticate significant findings of the medical history, physical examination, diagnostic services, diagnoses and orders for treatment in the registrant's clinical records; and
 - (e) ensure that orders for treatment include orders for medication, diet, permitted level of physical activity and, when indicated, special orders or recommendations for rehabilitative therapy services and other adult day health care services.

Section 425.[10]11 - Nursing services

425.[10]11 Nursing services. The operator, directly or through the managed [long term] care plan [or care coordination model] that referred the registrant to the adult day health care program, must:

- (a) evaluate the need of each registrant for nursing care on a periodic and continuing basis, but not less often than quarterly, and, when appropriate, provide or authorize such care;
- (b) ensure that a registered professional nurse is on-site and performs a nursing evaluation of each registrant at the time of admission to the program, unless such nursing evaluation has been performed by the managed [long term] care plan [or care coordination model] prior to referring the registrant to the adult day health care program;
- (c) ensure that for each registrant the findings of the nursing evaluation, the nursing care plan, and recommendations for nursing follow-up are documented, dated and signed in the registrant's clinical record;
- (d) ensure that nursing services are provided to registrants under the direction of a registered professional nurse who is on-site in the adult day health care program during all hours of the program operation. Based on the care needs of the registrants, a licensed practical nurse may provide the on-site services under the supervision of a registered nurse;

[Based on the care needs of the registrants, for a program located at the sponsoring licensed residential health care facility, a licensed practical nurse may provide the on-site services when a registered professional nurse is available in the nursing home or on the campus to provide immediate direction or consultation;] and

(e) ensure that appropriate health education is provided to registrants, [and] family members and people chosen by the registrant to provide support [for the registrant and family] in understanding and dealing with the registrant's health condition as it relates to his/her continued ability to reside in the community. With respect to registrants referred to the adult day health care program by a managed [long term] care plan [or care coordination model,] the managed [long term] care plan [or care coordination mode] shall be responsible for compliance with the requirements of this section.

Section 425.[11]12 - Food and nutrition services

425.[11]12 Food and nutrition services. The operator must:

- (a) provide nutritional services for each registrant;
- (b) provide meals and nutritional supplements, including modified diets when medically prescribed, to registrants who are on the premises at scheduled and registrant desired meal/snack times and, where appropriate, to registrants in their homes in accordance with the identified needs included in registrant person-centered care plans;
- (c) ensure that the quality and quantity of food and nutrition services provided to registrants are in conformance with section 415.14 of this Subchapter, exclusive of the requirements specified in section 415.14(f);
- (d) ensure that nutrition services are under the direction of a qualified dietitian, as defined in section 415.14 of this Subchapter; and
- (e) ensure that dietary service records for the adult day health care service are maintained in conformance with sections 415.14(c)(1) and (2) of this Subchapter.
- (f) Provide individuals with access to snacks and meals at any time and obtain registrant

feedback on foods of preference.

Section 425.[12]13 - Social services

425.[12]13 Social services. The operator must:

- (a) provide social services in conformance with section 415.5(g) of this Subchapter except that the use of a full or part time social worker in an adult day health care program must be in conformance with the approved application for operation and, with respect to section 415.5(g)(2)(ii) and (iii), regular access may be directly with a master's prepared or certified social worker or through a contract which meets the provisions of section 415.26(e);
- (b) either directly or through the managed [long term] care plan [or care coordination model] that referred the registrant to the adult day health care program, ensure that psycho-social needs are assessed, evaluated and recorded, and that services are provided to meet the identified needs as part of the coordinated care plan; and
- (c) ensure that staff members arrange for the use of and/or access to other community resources as needed and coordinate the needs of the registrants with services provided by the adult day health care program and other health care providers, community social agencies and other resources provided, however, with respect to registrants referred to the adult day health care program by a managed [long term] care plan [or care coordination model], this shall be the responsibility of the managed [long term] care plan [or care coordination model].

Section 425.[13]14 - Rehabilitation therapy services

425.[13]14 Rehabilitation therapy services. The operator, either directly or through the managed [long term] care plan [or care coordination model] that referred the registrant to the adult day health care program, must:

- (a) provide or arrange for rehabilitation therapy services to registrants determined through the comprehensive assessment to need such services; and
- (b) ensure that the rehabilitation therapy services provided are in conformance with section 415.16 of this Subchapter.

Section 425.[14]15 - Activities

425.[14]15 Activities. The operator, directly or through the managed [long term] care plan [or care coordination model] that referred the registrant to the adult day health care program, must:

- (a) ensure that activities are an integral part of the program, are age appropriate, and reflect the registrants' individual interests and cultural backgrounds in coordination with the registrant's person-centered care plan;
- (b) ensure that activities involve integration in and full access of individuals to the greater community, control personal resources and ability to engage in community life to the same degree of access as individuals not receiving home and community-based services;
- (c) ensure that activities are designed to enhance registrant participation in the program, home life and community;
- ([c]d) involve appropriate volunteers and volunteer groups in the program, unless prohibited by law;

([d]e) provide sufficient equipment and supplies for the operation of the activity program;

([e]f) provide or arrange for transportation to and from community events and outings;

and

([f]g) ensure that activities are included as part of each person-centered care plan.

Section 425.[15]16 - Religious services and counseling

425.[15]16 Religious services and counseling.

If provided, religious services and counseling must be included in the registrant's person-centered care plan.

Section 425.[16]17 - Dental services

425.[16]17 Dental services. The operator, directly or through the managed [long term] care plan [or care coordination model] that referred the registrant to the adult day health care program, must, as appropriate:

- (a) provide or refer registrants for dental services; and
- (b) ensure that dental services provided to registrants or for which they are referred are in conformance with the needs identified during the comprehensive assessment.

Section 425.[17]18 - Pharmaceutical services

425.[17]18 Pharmaceutical services. The operator must:

- (a) develop and implement written policies and procedures governing medications brought to the program site by registrants;
- (b) ensure that pharmaceutical services, when provided for registrants, are in

conformance with section 415.18 of this Subchapter, exclusive of the requirements of section 415.18(c);

- (c) ensure that each registrant's drug regimen is reviewed at least once every six months by a registered pharmacist in accordance with the registrant's person-centered care plan and otherwise modified as needed following consultation with the registrant's attending practitioner. Any modification to the drug regimen must be documented in the registrant's clinical record and included as a revision to the registrant's person-centered care plan; and
- (d) ensure that written policies and procedures require the pharmacist to report any irregularity in a registrant's drug regimen and recommendations to the registrant's attending practitioner and to the program coordinator, with appropriate documentation in the registrant's clinical record and person-centered care plan.

Section 425.[18]19 - Services for registrants with Acquired Immune Deficiency Syndrome (AIDS) and other high-need populations

[425.18] 425.19 Services for registrants with Acquired Immune Deficiency Syndrome (AIDS) and other high-need populations.

(a) Applicability.

(1) This section applies to an adult day health care program approved by the commissioner pursuant to Part 710 of this Chapter as a provider of specialized services for registrants with AIDS and other high-need populations that in the discretion of the Commissioner would benefit from receiving adult day health care services.

(2) For purposes of these regulations, AIDS means acquired immune deficiency syndrome and other human immunodeficiency virus (HIV) related illness.

(b) General requirements. The program shall provide comprehensive and coordinated health services in accordance with this Article and requirements set forth in Part 759 of this Title and shall receive payment for such services in accordance with section 759.14 of this Title.

Section 425.[19]20 - General records

425.[19]20 General records. The operator must:

(a) maintain on the premises of the program or facility the following registrant written records including the person-centered care plan, which must be easily retrievable and must include, but not be limited to, the following:

(1) a chronological admission register consisting of a daily chronological listing of registrants admitted by name with relevant clinical and social information about each, including as a minimum, name, address, next of kin, attending practitioner, principal diagnosis, and the place from which each registrant was admitted;

(2) a chronological discharge register consisting of a daily chronological listing of registrants discharged by name, the reason for discharge and the place to which the registrant was discharged;

(3) a daily census record consisting of a summary report of the daily registrant census with cumulative figures for each month and each year; and

(4) general records in conformance with sections 415.30(e) - (o) of this Subchapter.

(b) ensure that each record includes non-medical information consisting of:

(1) all details of the referral and registration;

(2) identification of next of kin, family and sponsor;

- (3) the person or persons to be contacted in the event of emergency;
 - (4) accident and incident reports;
 - (5) non-medical correspondence and papers pertinent to the registrant's participation in the program; and
 - (6) a fiscal record including copies of all agreements or contracts.
- (c) Maintain as public information, available for public inspection, records containing copies of all financial and inspection reports pertaining to the adult day health care services that have been filed with or issued by any governmental agency for six years from the date such reports are filed or issued.

Section 425.~~20~~21 - Clinical records

425.~~20~~21 Clinical records. The operator must:

- (a) provide a clinical record for each registrant in accordance with the clinical records requirements of section 415.22 of this Subchapter;
- (b) ensure that all reports and information pertaining to registrant care and planning are entered promptly;
- (c) ensure that all entries are dated and authenticated by the person making the entry or ordering the services;
- (d) ensure that all clinical records for registrants referred by a managed [long term] care plan [or care coordination model] are made available to the referring managed [long term] care plan [or care coordination model];
- (e) ensure that the record is kept in a place convenient for use by authorized staff; and
- (f) retain intact clinical records and all other records of registrants and keep them readily

accessible in a safe and secure place. Such records shall be retained safely and securely for a period of six years following discharge or cessation of operation of services. In the case of a minor, retention shall be for three years after reaching majority (18 years of age).

Section 425.~~21~~22 - Confidentiality of records

425.~~21~~22 Confidentiality of records. The operator shall keep confidential and make available only to authorized persons all medical, social, personal and financial information relating to each registrant.

Section 425.~~22~~23 - Program evaluation

425.~~22~~23 Program evaluation.

(a) Quality improvement. The operator must develop and implement a quality improvement process that provides for an annual or more frequent review of the operator's program. Such evaluation must include a profile of the characteristics of the registrants admitted to the program, the services and degree of services most utilized, the length of stay and use rate, registrant need for care and services, and disposition upon discharge. The process must:

(1) include an evaluation of all services in order to enhance the quality of care and to identify actual or potential problems concerning service coordination and clinical performance;

(2) review accident and incident reports, registrant complaints and grievances and the actions taken to address problems identified by the process;

- (3) develop and implement revised policies and practices to address problems found and the immediate and systematic causes of those problems; and
 - (4) assess the impact of the revisions implemented to determine if they were successful in preventing recurrence of past problems.
- (b) The results of the quality improvement process must be reported to the chief executive officer, nursing home administrator or governing body.

Section 425.[23]24 - Payment

425.[23]24 Payment

- (a) Payments to adult day health care program by State government agencies.
- (1) A program may only bill for one visit per registrant per day.
 - (2) The majority of registrants for whom the program receives a payment made by a government agency must be in attendance for at least five hours.
- (b) Payments to adult day health care programs by managed[long term]-care plans, [or care coordination models:]
- (1) Payments shall be made in accordance with the negotiated agreement between the adult day health care program and the managed [long term] care plan [or care coordination model].
 - (2) The full range of adult day health care services shall be available to registrants with a medical need for such services. Based on a registrant's individual medical needs, as determined in the comprehensive assessment, the managed [long term] care plan [or care coordination model] may order less than the full range of adult day health care services. Nothing shall prohibit adult day health care programs and managed [long term] care

plans [or care coordination models] from agreeing to reimbursement terms that reflect a registrant's receipt of less than the full range of adult day health care services.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Section 2803(2) of the Public Health Law authorizes the Public Health and Health Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, that define standards and procedures relating to medical facilities. Section 201(1)(v) of the Public Health Law and section 363-a of the Social Services Law provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program.

Legislative Objective:

To implement programs beneficial to Medicaid recipients, including those persons who require health care services and activities in a non-residential group setting.

Needs and Benefits:

The legislature has determined that oversight of adult care facilities is in the interests of the state, as Adult Day Health Care (ADHC) programs provide medically supervised services, as well as personal care and socialization to individuals with physical and mental impairments or chronic illnesses who otherwise would require nursing home admission.

The proposed rule provides clear guidance to the operators of ADHC facilities, reflecting Centers for Medicare & Medicaid Services' (CMS) intent to ensure that individuals receiving services and supports through Medicaid's home and community-based services

(HCBS) programs have full access to the benefits of community living and are able to receive services in the most integrated setting.

With these proposed regulations, the Department seeks to assure the continued viability of these valued programs by permitting them to offer their services to elderly and disabled populations with functional impairments to maintain their health status and enable these persons to remain in the community.

CMS announced new rules that will potentially have a far-reaching and positive impact on the nature of day service settings funded through Medicaid as part of HCBS. The proposed regulations are needed as they can contribute to better quality services and more opportunities for individuals with disabilities who require less than institutional level of care, but still have a significant need to have access to greater number of services in the community which they might not otherwise qualify. The purpose of the amendments is to come into compliance with CMS' HCBS Final Rule. The proposed amendments provided will refer an enrollee to an ADHC program who will be responsible for meeting Part 425 Adult day health care requirements. It is the responsibility of the ADHC program operator to manage and coordinate the enrollee's health care needs and be guided by the requirements outlined in the HCBS rule.

The proposed amendments will ensure that all ADHC programs in a non-residential setting provide full access to the benefits of community living and offer services in the most integrated settings.

Lastly the proposed amendments aim to ensure that enrollees have a free choice of setting options, who provides services to them, and that individual rights and freedoms are not restricted, among other provisions.

Costs:

Costs to Regulated Entities:

There will be no costs incurred by regulated entities.

Costs to State Government:

There will be no costs incurred by state government.

Costs to Local Governments:

There will be no costs incurred by local governments.

Local Government Mandates:

There is no local government program, service, duty or responsibility imposed by the rule.

Paperwork:

There are no new reporting requirements imposed by the rule.

Duplication:

There are no other rules or other legal requirements of the state and federal governments that may duplicate, overlap or conflict with the rule.

Alternatives:

This rule is a necessary update to maintain the Department's oversight of the adult care facility program in compliance with federal Medicaid HCBS requirements. There were no significant alternatives to this rule.

Federal Standards:

CMS published a final rule that established new standards for approved settings for the provision of Medicaid-funded home and community-based services. Also established were new person-centered planning and conflict-of-interest requirements. The proposed change is to align with the Medicaid HCBS under Section 1915(c), 1915(i), and 1915(k) of the Social Security Act.

Small Business Guide:

A small business guide as required by section 102-a of the State Administrative Procedure Act is unnecessary at this time. The Department will provide educational webinars for all adult care facilities prior to promulgation.

Compliance Schedule:

Adult care facilities will be able to comply with this regulation upon publication of the Notice of Adoption in the State Register.

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**STATEMENT IN LIEU OF
REGULATORY FLEXIBILITY ANALYSIS**

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment that applies to adult day health care services for registrants does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

**STATEMENT IN LIEU OF
RURAL AREA FLEXIBILITY ANALYSIS**

No rural area flexibility analysis is required pursuant to section 202 bb(4)(a), of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

**STATEMENT IN LIEU OF
JOB IMPACT STATEMENT**

A job impact statement is not being submitted with this rule because it is evident from the nature and purpose of these amendments that the regulation will not have a substantial adverse impact on jobs and/or employment opportunities.



Project # 231325-C
NYU Langone Hospitals

Program: Hospital
Purpose: Construction

County: Nassau
Acknowledged: July 24, 2023

Executive Summary

Description

NYU Langone Hospitals, an 813-bed not-for-profit hospital with four divisions, requests approval for an Ambulatory Radiation Oncology extension clinic at 210 Crossways Park Drive, Woodbury, NY (Nassau County). The new clinic will be housed in leased space and accommodate one New TrueBeam Linear Accelerator, one CT scanner, six exam rooms, and associated support spaces. The space will be built out with two vaults and control rooms for linear accelerators.

Currently, NYU provides radiation oncology services at two offices in Mineola, one on the NYU Langone Hospital-Long Island campus and the other at 264 Old County Rd.

This project will increase capacity, reducing wait times while treating more patients.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 2,772 visits in the first year and 3,346 by the third, with 16% Medicaid and 0.5% Charity Care in both years.

Program Summary

A favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Summary

The total project cost of \$30,167,000 will be met with equity from hospital operations.

Table with 3 columns: Budget, Year One (2024), Year Three (2026). Rows include Revenues, Expenses, and Net Income.

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project pursuant to Public Health Law §2802-b, as it was received by the Department on June 16, 2023.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in NYSDOH BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 3.38 LSC Chapter 38 Business Occupancies Public Use, for review and approval. [DAS]
3. Satisfactory response to SD review comment ID 20245 regarding clarification of proposed Soiled Workroom, intended on-site sterilization program as (2) room or (1), and requisite review document revisions. [DAS]

Approval conditional upon:

1. This project must be completed by **May 1, 2025**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **February 1, 2024**, and construction must be completed by **February 1, 2025**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

November 16, 2023

Need Analysis

Background and Analysis

The primary service area for this project is Nassau County, with some patients traveling from Suffolk and Queens Counties. The population of Nassau County is estimated to increase to 1,424,878 by 2028 per projection data from the Cornell Program on Applied Demographics (PAD), an increase of 2.4%. The 65+ population was 255,773 in 2021 and is expected to increase by 25.8% to 321,782 by 2028, according to PAD. The demographics for the service area are noted below, including a comparison with New York State:

Demographics	Nassau County	Suffolk County	Queens County	New York State
Total Population – 2021 Estimate	1,391,678	1,522,998	2,393,104	20,114,745
Hispanic or Latino (of any race)	17.2%	19.9%	27.9%	19.2%
White (non-Hispanic)	58.3%	66.4%	24.6%	54.7%
Black or African American (non-Hispanic)	11.0%	6.9%	16.8%	13.9%
Asian (non-Hispanic)	10.5%	4.0%	25.6%	8.6%
Other (non-Hispanic)	3.0%	2.7%	5.1%	3.6%

Source: 2021 American Community Survey (5-Year Estimates Data Profiles)

According to Data USA, the population of the Nassau, Suffolk, and Queens Counties had health coverage as follows:

	Nassau County (2020)	Suffolk County (2020)	Queens County (2018)
With Health Insurance	95.9%	95.82%	89.5%
Employer Plans	59.5%	58.3%	43.2%
Medicaid	10.1%	11.6%	25.9%
Medicare	13.5%	13%	9.8%
Non-Group Plans	12.6%	12.4%	10.3%
Military or VA	0.238%	0.501%	0.302%

The projected payor mix includes:

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	26.8%	24.8%
Medicare	56.6%	58.2%
Medicaid	16%	16.4%
Private Pay	0%	0%
Charity Care	0.5%	0.5%
Other	0%	0%

The hospital is in the Long Island region, which currently has 26 approved or existing LINACs and has a determined need for 18 LINACs. The table below shows a need for 18 LINAC machines in the health planning region:

	LINAC Need In the Long Island Region	Total
1	Number of Cancer Cases per Year	18,931.20
2	60% will be Candidates for Radiation Therapy	11,358.72
3	50% of (2) will be Curative Patients	5,679.36
4	50% of (2) will be Palliative Patients	5,679.36
5	Course of Treatment for Curative Patients is 35 Treatments	198,777.60
6	Course of Treatment for Palliative Patients is 15 Treatments	85,190.40
7	The Total Number of Treatments [(5)+(6)]	283,968.00
8	Need for LINAC Machines ¹ [(7)/6,500]	43.69
9	Existing/Approved Resources	26
10	Remaining Need for LINAC Machines [(8) -(9)]	17.69

¹ Each LINAC Machine has capacity for 6,500 Treatments

NYU Langone Hospital Long Island has also applied to create a new Ambulatory Radiation Oncology, including LINAC machines, 10 miles away at 101 Mineola Boulevard, Mineola, New York 11501 (Nassau County), through submission of CON 231108.

Conclusion

Approval of this project will allow for expanded access to Ambulatory Radiation Oncology services for those who reside in and around Nassau County.

Program Analysis

Program Description

NYU Langone Hospitals, an existing 813-bed medical center located at 550 First Avenue in New York (New York County), seeks approval to certify and construct a new extension clinic to be located at 210 Crossways Park Drive in Woodbury (Nassau County). The extension clinic will be certified for Radiologic Therapeutic O/P and Medical Services-Other Medical Specialties. The extension clinic will provide one CT Scanner, two vaults and control rooms for linear accelerators, one new TrueBeam Linear Accelerator with the other vault built for future equipment needs, six exam rooms, and all associated support spaces.

The Applicant reports that they currently have two offices in Long Island, one on the main hospital campus and one in an extension clinic. The hospital location has one Cyberknife, one Linac, and one TrueBeam. The extension clinic has one Cyberknife and one 21EX. The current wait time for cancer patients needing services at these locations averages one or more weeks. Additionally, many of the patients requiring treatment are elderly and receive suboptimal times for treatment, very early in the morning or late in the evening, which adds further inconvenience with transportation and additional stress to their lives. Adding the additional outpatient capacity will facilitate decreased wait times.

Staffing is expected to grow by 11.0 FTEs in Year One and 16.0 FTEs in Year Three of the completed project.

Prevention Agenda

NYU Langone Hospital seeks approval to certify and construct a new extension clinic to be located at 210 Crossways Park Drive in Woodbury (Nassau County). The extension clinic will be certified for Radiologic Therapeutic O/P and Medical Services-Other Medical Specialties. The extension clinic will provide a one (1) CT Scanner, two (2) vaults and control rooms for linear accelerators, one (1) new Truebeam Linear Accelerator with the other vault built for future equipment needs, five (5) exam rooms, and all associated support spaces.

The NYU Langone Hospital is implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

- Preventing Chronic Diseases
- Promote a Healthy and Safe Environment

The proposed project, however, does not explicitly advance the local Prevention Agenda priorities that were identified in the most recently completed Community Service Plan (CSP), but it does improve access to care for patients that require radiation oncology services by decreasing waiting time.

In 2020, the NYU Langone Health spent \$ 32,245,843 on community health improvement services, representing 0.51% of total operating expenses

Compliance with Applicable Codes, Rules, and Regulations

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

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total project cost for renovations, moveable equipment, and fees is estimated at \$30,167,000, broken down as follows:

Renovation and Demolition	\$18,000,000
Construction Contingency	\$700,000
Architect/Engineering Fees	\$1,400,000
Other Fees	\$2,012,796
Moveable Equipment	\$4,887,204
Telecommunications	\$3,000,000
CON Fee	\$2,000
Additional Processing Fee	<u>\$165,000</u>
Total Project Cost	\$30,167,000

The total project cost of \$30,167,000 will be met with equity from hospital operations. A review of BFA Attachment A, the Certified Financial Statements of NYU Langone Hospitals for the year ending August 31, 2022, indicates the availability of sufficient funds for the equity contribution.

Operating Budget

The applicant submitted an operating budget, in 2023 dollars, for the first and third years (2024 and 2026) for the extension clinic, summarized below:

Revenues:	<u>Per</u> <u>Proc.</u>	<u>Year One</u> <u>2024</u>	<u>Per</u> <u>Proc.</u>	<u>Year Three</u> <u>2026</u>
Commercial Fee for Service	\$5,364	\$3,987,729	\$6,870	\$5,712,181
Medicare Fee for Service	\$480	\$338,904	\$534	\$467,880
Medicare Managed Care	\$503	\$434,246	\$560	\$599,277
Medicaid Fee for Service	\$1,603	\$42,131	\$1,674	\$52,878
Medicaid Managed Care	\$1,549	\$648,272	\$1,594	\$826,477
Bad Debt		<u>(\$82,169)</u>		<u>(\$115,442)</u>
Total Revenues		\$5,369,113		\$7,543,252
Expenses:				
Operating	\$1,238	\$3,431,023	\$1,618	\$5,413,525
Capital	<u>\$438</u>	<u>\$1,213,162</u>	<u>\$362</u>	<u>\$1,213,162</u>
Total Expenses	\$1,676	\$4,644,185	\$1,980	\$6,626,687
Excess Revenues		\$724,928		\$916,565
Utilization: (Procedures)		2,772		3,346
Cost Per Procedure		\$1,676		\$1,980

The following is noted with respect to the operating budget:

- The hospital anticipates hiring 11 FTEs and 16 FTEs during the first and third years, respectively. The majority of the incremental FTEs are technicians, specialists, and registered nurses.
- Utilization assumptions are based on the historical experience of the hospital.
- The program is projected to perform 2,772 procedures in Year One and 3,346 procedures in Year Three.

- Revenue assumptions are based on the hospital's DRG (Diagnostic Related Group). The payer levels are based on the hospital's specific contractual rates by the payer.
- Expense assumptions are based on the historical experience of the hospital.
- The increase in operating expenses is due to the increase in utilization and utility expenses. The landlord was responsible for the utilities in Year One.

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

	<u>Year One</u> <u>(2024)</u>	<u>Year Three</u> <u>(2026)</u>
Commercial FFS	26.81%	24.84%
Medicare FFS	25.48%	26.18%
Medicare MC	31.14%	32.01%
Medicaid FFS	0.94%	0.96%
Medicaid MC	15.08%	15.48%
Charity Care	<u>0.55%</u>	<u>0.53%</u>
Total	100.00%	100.00%

Lease Rental Agreement

The applicant submitted an executed lease rental agreement for the site that they are currently occupying, summarized below.

Date	December 20, 2022
Premises	210 Crossways Park Dr, Woodbury, NY
Lessor	210 TZ Property, LLC
Lessee	NYU on behalf of its NYU Grossman School of Medicine
Term	16-year term
Rental	\$510,870 base rent annually for years 1 and 2 and a 2.25% annual increase for year 3-16. Plus, the triple net provisions
Provisions	Triple Net

The applicant provided an affidavit indicating that there is no relationship between the lessor and the lessee.

Capability and Feasibility

Total project costs of \$30,167,000 will be met with equity from the hospital operations of NYU Langone Hospitals. Presented on BFA Attachment A are the August 31, 2021, and August 31, 2022, Certified Financial Statements of NYU Langone Hospitals, which indicate the availability of sufficient funds for the equity contribution.

The submitted budget indicates a net income of \$724,928 and \$916,564 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for oncology services. The submitted budget appears reasonable. As shown in Attachment A, the facility had an average positive working capital position and an average positive net asset position for the period August 31, 2021, and August 31, 2022. Also, the entity had an average gain from operations of \$606,913,000 for the period August 31, 2021, and August 31, 2022.

Presented as BFA Attachment B is the February 28, 2023, Internal Financial Statements of NYU Langone Hospitals. As shown, the entity maintained a positive working capital, positive net asset position, and a gain from operations of \$299,680,000 during the six months of operations.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	August 31, 2021, and August 31, 2022, Certified Financial Statements of NYU Langone Hospitals
BFA Attachment B	February 28, 2023, Internal Financial Statements of NYU Langone Hospitals



**Project # 231103-C
NYU Langone Hospital-Brooklyn**

Program: Hospital
Purpose: Construction

County: Kings
Acknowledged: May 16, 2023

Executive Summary

Description

NYU Langone Hospital (NYULH), a 2,073-bed not-for-profit hospital with four (4) divisions, requests approval for the certification of adult cardiac surgery services at NYU Langone Hospital-Brooklyn (NYULH-Brooklyn), a 444-bed facility in Sunset Park. Upon implementation of the proposed cardiac surgery program, NYULH will be capable of providing a full range of cardiac-related services in Kings County. These services include preventive and primary care through its ambulatory network and the Family Health Center at NYU Langone and complex interventions such as surgical valve procedures, coronary surgical and interventional procedures, and electrophysiology (EP) services at NYULH-Brooklyn.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 199 procedures in Year One and 326 procedures in Year Three, with 48.7% of those Medicaid and 2% Charity Care.

Program Summary

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 \$840,099 will be met with cash from hospital operations.

<u>Budget:</u>	<u>Year One</u> <u>(2024)</u>	<u>Year Three</u> <u>(2026)</u>
Revenues	\$16,011,856	\$26,301,693
Expenses	<u>11,434,722</u>	<u>15,406,196</u>
Excess Revenues	\$4,577,134	\$10,895,497

Health Equity Impact Assessment

No Health Equity Impact Assessment is required for this project under Section 2802-B of the PHL, as it was received prior to the legislation's effective date.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]

Council Action Date

November 16, 2023

Need Analysis

Background and Analysis

The primary service area is Kings County. NYULH-Brooklyn is in a Medically Underserved Area and Health Professional Shortage Area for Primary Care. The population of Kings County is projected to increase to 2,844,643 by 2028, based on Cornell Program of Applied Demographic estimates. Kings County's aged 65+ population was 382,678 in 2021 and is expected to increase to 460,838, an increase of 20.4% by 2028. Demographics of the primary service area are noted below, including a comparison with New York State.

Demographics	Kings County	New York State
Total Population – 2021 Estimate	2,712,360	20,114,745
Hispanic or Latino (of any race)	18.80%	19.20%
White (non-Hispanic)	36.70%	54.70%
Black or African American (non-Hispanic)	28.60%	13.90%
Asian (non-Hispanic)	11.70%	8.60%
Other (non-Hispanic)	4.20%	3.60%

Source: 2021 US Census Population Estimates from the American Community Survey

According to Data USA, in 2020, 93.3% of the population in Kings County had health coverage as follows:

Employer Plans	41.1%
Medicaid	32.2%
Medicare	8.01%
Non-Group Plans	11.8%
Military or VA	0.327%

Below is the applicant's projected payor mix.

Projected Payor Mix for Inpatient Cardiac Services		
Payor	Year One	Year Three
Commercial	15.08%	15.03%
Medicare	34.17%	34.05%
Medicaid	48.75%	48.78%
Charity Care	2.01%	2.15%

Upon implementation of the proposed cardiac surgery program, NYULH will be capable of providing a full range of cardiac-related services in Kings County. These services include preventive and primary care through its vast ambulatory network and the Family Health Centers at NYU Langone (FHC), as well as complex interventions such as surgical valve procedures, coronary and interventional procedures, and electrophysiology (EP) studies at NYULH—Brooklyn.

Cardiac Surgery - Current Utilization

Statewide Cardiac Surgery Procedures					
Year	2018	2019	2020	2021	2022
Cardiac Surgery Procedures	18,317	17,988	13,572	15,345	13,974

Source: Cardiac Services Group, excludes Trans Catheter Aortic Valve Replacement (TAVR)

While the general statewide trend is toward fewer non-TAVR procedures, the COVID-19 pandemic and subsequent recovery obviously impacted 2020-21.

The table below provides the number of Kings County residents who received cardiac surgery within and outside the county.

Kings County Residents Treated for Cardiac Surgery Excluding TAVR					
Facility	2018	2019	2020	2021	2022
Maimonides Medical Ctr	452	404	321	367	244
NYP Brooklyn Methodist	152	122	56	123	70
Univ Hosp at Downstate	85	81	N/A	N/A	N/A
Treated in Kings County	689	607	377	490	314
Albany Med. Ctr	0	0	0	2	0
Univ. Hosp-Stony Brook	0	0	1	4	0
NYU Langone-Long Island	8	3	5	10	6
North Shore Univ Hosp	27	19	13	18	18
St. Francis Hospital	18	12	9	17	14
Good Sam - Suffern	1	0	0	0	0
South Shore Univ. Hosp	0	0	0	0	1
Good Sam Univ Hosp	1	3	0	1	0
Westchester Med Ctr	2	1	0	1	1
Montefiore - Moses	9	14	1	5	1
Bellevue Hospital Ctr	51	63	56	58	56
Lenox Hill Hospital	106	115	90	147	75
Mount Sinai Hospital	199	148	87	164	109
NYP NY Weill Cornell	118	97	67	126	99
NYU Langone Health	244	247	222	323	221
NYP Columbia Presby.	93	76	57	63	51
Mount Sinai Morningside	64	88	84	104	51
Long Island Jewish MC	0	1	0	0	0
NYP Queens	3	9	2	8	4
Staten Island Univ Hosp	10	9	11	7	7
Montefiore - Weiler	1	0	0	0	0
Treated Outside of Kings County	955	905	705	1,058	714
Total	1,644	1,512	1,082	1,548	1,028

Source: Cardiac Services Group, excludes TAVR

In 2022, 69.5% of Kings County residents in need of cardiac surgery underwent procedures at facilities outside of the county. The certification of Cardiac Surgery at NYU Langone Hospital - Brooklyn should reduce that out-migration, allowing a significant number of patients to receive treatment closer to home.

Neighboring Cardiac Surgery Centers in Kings County: Distance from NYU Langone Hospital		
Hospital	Distance (miles)	Travel Time (minutes)
Maimonides Medical Center	1.6	12 min
NYP Brooklyn Methodist	2.8	16 min

Source: Google Maps 2023 (Travel times displayed assume average travel conditions)

NYULH - Brooklyn Health Projections

NYU Langone Hospital - Brooklyn projects 199 cardiac cases in Year One, increasing to 326 cases in Year Three, thus exceeding the annual minimum of 100 procedures required by 10 NYCRR Section 405.29 – Cardiac Services and 300 procedures by the second year of operation required by 10 NYCRR Section 709.14.

Patient Volume Sources

NYULH-Brooklyn has listed the following as patient volume sources to support the projected volume:

- Patients who are transferred from the NYULH - Brooklyn campus to the Manhattan campus during an inpatient admission for cardiac surgery. (In 2022, NYULH-Brooklyn transferred 108 inpatients to NYULH–Manhattan for Cardiac Surgery.)

- Patients receiving scheduled cardiac surgery at the NYULH—Manhattan campus who reside in Brooklyn.
- Patients who travel from their home borough of Brooklyn to non-NYULH facilities in Manhattan for CABG surgeries and surgical valve procedures.

As seen in the table below and according to the applicant, since 2020, NYULH-Brooklyn has seen significant growth in cardiac services while maintaining 90% on-time procedures for cardiac catheterization and electrophysiology services.

NYULH-Brooklyn Current Cardiac Procedures, Source Applicant				
Year	2020	2021	2022	2023 Estimate
Percutaneous Coronary Intervention (PCI)	405	483	433	480
Diagnostic Catheterization	1,214	1,464	1,528	1,668
Total	1,619	1,947	1,961	2,148

To reach the underserved population of Brooklyn and reduce the out-migration of cardiac services, NYULH-Brooklyn will implement the following outreach services.

- Beyond Bridges - NYULH's community-wide health improvement initiative which aims to transform health for individuals and communities, including a cardiovascular disease workgroup.
- REACH FAR's Keep on Track Program - A train-the-trainer blood pressure monitoring program culturally and linguistically adapted for faith-based organization sites.
- Diabetes Research Education and Action for Minorities (DREAM) Initiative - leverages partnerships with PCPs across NYC, including in Brooklyn, to implement and evaluate an intervention to prevent and manage Type 2 diabetes in the South Asian community.

Conclusion

The addition of Cardiac Surgery at NYULH-Brooklyn will serve an area with high out-migration for those services.

Program Analysis

Project Proposal

NYU Langone Hospital-Brooklyn (NYULH-Brooklyn), a 444-bed academic medical center located at 150 55th Street in Brooklyn (Kings County), requests approval to certify Cardiac Surgery - Adult. NYU Langone is already certified for Cardiac Catheterization Adult Diagnostic, Cardiac Catheterization- Percutaneous Coronary Intervention, and Electrophysiology Services. NYULH-Brooklyn recently expanded the Cardiac EP services and saw a volume increase of 148% from CY20 to CY22.

Additionally, NYULH-Brooklyn provides heart failure advanced care to residents of Brooklyn through its Heart Failure Advanced Care Center in Midwood. NYULH-Brooklyn also provides Cardiac Rehabilitation to the Brooklyn residents at the Rusk Rehabilitation Center. Patients who are recovering from heart attacks and other cardiac events are provided care at this facility. Patients who receive cardiac surgery will be referred to the cardiac rehabilitation center as part of their discharge plan.

The Cardiac Program will be implemented under the direction of the Department of Cardiothoracic Surgery at the NYU Grossman School of Medicine through the NYU Langone Heart program. NYU Langone Manhattan's Cardiac Program care quality was implemented under this direction and has undergone marked improvement between 2019 and 2022, seeing a 30% reduction in mortality and an 11% reduction in length of stay. NYULH-Brooklyn's proposed cardiac surgery program will implement the same shared leadership, policies, and procedures.

NYULH-Brooklyn already has the existing OR and ICU infrastructure and capacity to accommodate cardiac surgery patients. There are two (2) ORs identified as the best physical location to handle these surgeries, being in close proximity to the pre-operative care unit and the ICU. NYULH has a network of cardiologists and other referring providers through its FGP and clinically integrated network to promote better clinical outcomes and knowledge sharing. The implementation of the program will be supported by physicians and administration who work in existing cardiac surgery programs, namely NYULH Manhattan. NYULH-Brooklyn projects to treat 199 patients in Year One of the program and 326 patients in Year Three. The program will be clinically led by the Chief of Adult Cardiac Surgery and the Clinical Director of Cardiology at NYULH. The facility expects 23.7 FTEs at project completion in Year One and 33.6 FTEs in Year Three.

Anticipated Cardiac Surgery Program Staffing

Cardiac Surgeons will be provided by NYULH-Manhattan. The cardiac surgery program will require 23.7 Full-Time Equivalents in Year 1:

Operating Room

- Registered Nurse 2.3 FTEs
- Surgical Technician 1.2 FTEs
- Perfusionist 2.0 FTEs
- Operating Room Coordinator 1.0 FTE

Intensive Care Unit

- Registered Nurse 5.7 FTEs

Provider Staffing

- Physician Assistant 6.5 FTEs

Program Administration

- Patient Coordinator 1.0 FTE
- Quality/Data Analyst 1.0 FTE

Other Support Staffing

- Respiratory Therapy 1.0 FTE
- Blood Bank Technician 1.0 FTE
- Case Manager 1.0 FTE

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

Prevention Agenda

The NYU Langone Hospital-Brooklyn, a member of NYU Langone Health, is requesting approval to implement a “Cardiac Surgery - Adult” service at NYU Langone Hospital-Brooklyn (NYULH-Brooklyn), which will provide a full range of cardiac-related services in Sunset Park, Kings County. Service includes preventive and primary care, and complex interventions such as surgical valve procedures, coronary surgical and interventional procedures, and electrophysiology (EP) studies. The proposed program will improve access to high-quality cardiac surgery services and reduce cardiovascular risk factors and disparities in access to care.

NYU Langone Hospital-Brooklyn is implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

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

The proposed project will advance the Prevention Agenda priority selected by NYU Langone Hospital-Brooklyn to improve the management of cardiovascular disease and other chronic diseases in high-risk populations, thereby preventing chronic diseases.

In 2020, NYU Langone Health spent \$ 32,245,843 on community health improvement services, representing 0.51% of total operating expenses.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total project cost, which is for the acquisition of moveable equipment and CON Fees, is estimated at \$840,099, broken down as follows:

Moveable Equipment	\$833,515
CON Fees	2,000
Additional Processing Fee	<u>4,584</u>
Total Project Cost	\$840,099

The applicant will meet the total project cost with equity from hospital operations.

Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for the first and third years, summarized as follows:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
	<u>Per Discharge</u>	<u>Total</u>	<u>Per Discharge</u>	<u>Total</u>
Revenues:				
Commercial Managed Care	\$152,261	\$4,567,825	\$153,087	\$7,501,266
Medicare Fee for Service	\$79,055	2,845,969	\$79,216	\$4,673,728
Medicare Managed Care	\$79,875	2,555,987	\$80,842	\$4,203,771
Medicaid Fee for Service	\$49,599	694,385	\$49,589	\$1,140,543
Medicaid Managed Care	\$64,430	<u>5,347,690</u>	\$64,576	<u>\$8,782,385</u>
Total Revenues		\$16,011,856		\$26,301,693
Expenses:				
Operating	\$57,150	\$11,372,911	\$47,069	\$15,344,385
Capital	<u>\$311</u>	<u>61,811</u>	<u>\$190</u>	<u>\$61,811</u>
Total Expenses	\$57,461	<u>\$11,434,722</u>	\$47,258	<u>\$15,406,196</u>
Excess Revenues		\$4,577,134		\$10,895,497

The following is noted with respect to the operating budget:

- The hospital anticipates hiring 23.7 FTEs and 33.6 FTEs during the first and third years, respectively. The majority of the incremental FTEs are technicians and specialists, physician assistants, and registered nurses.
- Utilization assumptions are based on the historical experience of the hospital.
- The program is projected to perform 199 cardiac surgery procedures in Year One and 326 in Year Three.
- Revenue assumptions are based on the hospital's DRG, and payer levels are based on the hospital's specific contractual rates by payer.

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

	<u>Year One</u>	<u>Year Three</u>
	<u>2024</u>	<u>2026</u>
Commercial Managed Care	15.08%	15.03%
Medicare Fee for Service	18.09%	18.10%
Medicare Managed Care	16.08%	15.95%
Medicaid Fee for Service	7.04%	7.06%
Medicaid Managed Care	41.71%	41.72%
Charity Care	<u>2.01%</u>	<u>2.15%</u>
Total	100.00%	100.00%

Capability and Feasibility

Total project costs of \$840,099 will be met with equity from hospital operations of NYU Langone Hospitals. Presented as BFA Attachment A are the August 31, 2021, and August 31, 2022, Certified Financial Statements of NYU Langone Hospitals, which indicate the availability of sufficient funds for the equity contribution.

The submitted budget indicates a net income of \$4,577,134 and \$10,895,497 during Year One and Year Three, respectively. Revenues are based on current reimbursement methodologies for cardiac surgery services. The submitted budget appears reasonable. As shown in Attachment A, the facility had an average positive working capital position and an average positive net asset position for the periods August 31, 2021, and August 31, 2022. Also, the entity had an average gain from operations of \$606,913,000 for the periods August 31, 2021, and August 31, 2022.

Presented as BFA Attachment B is the February 28, 2023, internal financial statements of NYU Langone Hospitals. As shown, the entity maintained a positive working capital, positive net asset position, and a gain from operations of \$299,680,000 during the 6 month of operations.

Conclusion

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

Attachments

BFA Attachment A	August 31, 2021, and August 31, 2022, Certified Financial Statements of NYU Langone Hospitals.
BFA Attachment B	February 28, 2023 Internal Financial Statements of NYU Langone Hospitals

MEMORANDUM

To: Kathy Marks
General Counsel

From: Jason Riegert
Deputy Director
Bureau of Program Counsel

Date: October 23, 2023

Subject: Rochester General Hospital Association, Inc. – Name Change

The attached package was prepared by Alexa Nagy, Esq. for the Division of Legal Affairs. Relevant background material has been included.

I have reviewed the package and find it acceptable.

If you approve, please sign the memo and kindly return the package to me for further processing.

Thank you.

MEMORANDUM

To: Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

From: Alexa Nagy, Senior Attorney
Division of Legal Affairs, Bureau of Program Counsel

Date: October 23, 2023

Subject: Rochester General Hospital Association, Inc. – Name Change

This is to request that the above matter be included on the agendas for the next Establishment and Project Review Committee and Public Health and Health Planning Council (PHHPC) meetings.

The attachments relating to this matter include the following:

- 1) Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) A photocopy of an email letter from Legal Counsel for Rochester General Hospital Association, Inc., Michael Stone, dated November 21, 2022;
- 3) A copy of the special meeting minutes of the Board of Directors of Rochester General Hospital Association, Inc., dated June 22, 2022, authorizing the change of corporate name and amendment of Certificate of Incorporation, with a proposed Restated Certificate of Incorporation;
- 4) A copy of the Corporate Bylaws Rochester General Hospital Association, Inc.;
- 5) An executed photocopy of the proposed Restated Certificate of Incorporation of Rochester General Hospital Association, Inc., signed by Jennifer Simson, as Authorized Person, dated November 18, 2022; and
- 6) A photocopy of the current Certificate of Incorporation for Rochester General Hospital Association, Inc., dated August 24, 1978, and filed on December 12, 1978, and Consent to File Letter of the Public Health Council for Rochester General Hospital Association, Inc., dated November 20, 1978.

Attachments.

MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy Marks *KSM*
General Counsel

Date: October 23, 2023

Subject: Rochester General Hospital Association, Inc. – Name Change

Rochester General Hospital Association, Inc. (“RGHA”) requests Public Health and Health Planning Council (“PHHPC”) approval to change its corporate name and amend outdated information currently in its Certificate of Incorporation. Rochester General Hospital Association, Inc. was approved by PHHPC as an affiliate of The Rochester General Hospital to solicit contributions on behalf of The Rochester General Hospital, and PHHPC consented to the filing of its Certificate of Incorporation on November 17, 1978, which was filed with the NYS Department of State on December 12, 1978.

RGHA needs to and requests to amend its Certificate of Incorporation to change its corporate name and amend outdated information. Because the Department of Health and PHHPC previously approved RGHA’s Certificate of Incorporation, and the corporate name and the Certificate of Incorporation are now being amended, PHHPC approval of the Restated Certificate of Incorporation is required.

RGHA requests approval of the following amendments in its Restated Certificate of Incorporation:

1. To change the name of the Corporation to "Twig Association, Inc."
2. To replace a statement in Section 3 concerning the Corporation’s type with a statement that the Corporation is a charitable corporation under Section 201 of the Not-For-Profit Law pursuant to updates in law.
3. To amend Section 4 to delete the outdated illustrative list of affiliates of the Corporation’s beneficiary.
4. To amend Section 7 to update references to the Not-For-Profit Law.
5. To amend Section 8 to update statements required by the Internal Revenue Service.
6. To amend Section 13 to delete the city in which the office of the Corporation is to be located.
7. To delete Section 14, which contains an unnecessary provision regarding the territory in which the Corporation’s operations are principally conducted.
8. To amend Section 15 to renumber as Section 14, to add the designation of the Secretary of State as agent of the Corporation upon whom process against it may be served, and to update the address to which a copy of such process shall be mailed.
9. To delete Section 16, which contains unnecessary provisions concerning the number of directors and the identity of the initial directors of the Corporation.
10. To delete Section 17, which contains an unnecessary provision regarding the qualifications of the subscriber of the Certificate of Incorporation.
11. To delete Section 18, which contains unnecessary provisions concerning consents and approvals to be obtained prior to the delivery of the Certificate of Incorporation to the Department of State for filing.
12. To update references to the Internal Revenue Code.

Pursuant to NYS Not-for-Profit Corporation Law § 804 and 10 NYCRR § 600.11, PHHPC must consent to the requested changes prior to the filing of any amended certificate.

There is no legal objection to the change in corporate name and the amendments to outdated information, and the Restated Certificate of Incorporation of Rochester General Hospital Association, Inc. is in legally acceptable form.

Attachments.

November 21, 2022

Colleen M. Leonard, Executive Secretary
Public Health and Health Planning Council
NYS Department of Health
Corning Tower, Room 1805
Empire State Plaza
Albany, New York 12237

Re: Change of Name – Rochester General Hospital Association, Inc. (the “Association”)

Dear Ms. Leonard:

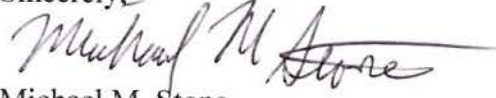
Enclosed is a Restated Certificate of Incorporation of the above-referenced Association, which is an affiliate of The Rochester General Hospital. The Association, a not-for-profit corporation, received Public Health Council approval to solicit contributions on behalf of The Rochester General Hospital at its meeting on November 17, 1978. Because the enclosed Restated Certificate of Incorporation changes the name of the Association, the approval of the Public Health and Health Planning Council is required pursuant to Section 600.11 of Title 10 of the New York Codes, Rules and Regulations.

The new name of the Association will be “Twig Association, Inc.” which capitalizes on the recognition of the Twigs name in the community. The Association is a direct descendent of the group of women from the Rochester Female Charitable Society (celebrating its 200th anniversary this year) who chartered Rochester City Hospital in 1847. The Board of Lady Managers was formed when the hospital opened in 1864 and in the early years managed every aspect of the hospital except for the medical department. In 1887, the first Twig was started by board member Lois Whitney. These groups of friends became the fundraising arm of what is now the Association. The Twig name has been used consistently in conjunction with the Association’s activities and financial contributions to the hospital including the Twig Gift Shop, the Twig Birthing Center, the Twig Auditorium, and most recently the Twig NICU. The Board of Directors of the Association determined that new name honors the history of the Association while providing continuity by keeping the word “Association” in the corporate name.

Please note that, in addition to changing the name, the Restated Certificate of Incorporation updates the Certificate of Incorporation to reflect changes in the Not-for-Profit Corporation Law as well as to remove an outdated illustrative list of affiliates of The Rochester General Hospital that the Association also supported or intended to support. A copy of the current Certificate of Incorporation is enclosed as well for your convenience.

I am available to answer any questions or to provide any necessary additional information.
Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink that reads "Michael M. Stone". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Michael M. Stone
Assistant General Counsel

Enclosures

ROCHESTER GENERAL HOSPITAL ASSOCIATION, INC.
BOARD OF DIRECTORS
SPECIAL MEETING MINUTES
JUNE 22, 2022

PRESENT: Mmes. Baltzer, Gangemi, German, Heald, Rick, Roland, Schenck, Simson, Swogger, Trocano, all present via Zoom

EXCUSED: Mme. Klafehn

ABSENT: none

ADVISORY: none

CALL TO ORDER: Jennifer Simson called the meeting to order at 9:02am via Zoom.

PURPOSE OF SPECIAL MEETING called by RGHA President, Jennifer Simson

- To discuss and approve new name and tagline for RGHA

Governance: Robbie Baltzer reported:

- The Governance Committee recommends the following name and tagline be adopted for Rochester General Hospital Association:
 - Twig Association
 - “Serving Rochester General Hospital since 1864”*
- Discussion of the Pros (and no Cons identified) of making the name change include:
 - Shortens the name by 20 characters
 - Capitalizes on Twig name recognition
 - Maintains continuity by retaining Association identity
 - Retains Rochester General Hospital in the tagline, which will be on all printed materials
 - Adds a date in the tagline of 1864
 - Differentiates RGHA from The Foundations, and all of the R’s, such as Rochester General Hospital, and Rochester Regional Health
 - Also, many people already refer to us as the Twig Association
- Motion approved unanimously
- This information will be kept *confidential* until the corporation’s Class A Member approves the change and Hugh Thomas follows up with necessary legal items and Bylaw changes.

ADJOURNMENT: Jennifer Simson adjourned the meeting at 9:15am

Margaret Schenck
Recording Secretary

**AMENDED AND RESTATED CORPORATE BYLAWS
OF
ROCHESTER GENERAL HOSPITAL ASSOCIATION, INC.**

Effective: December 13, 2017

AMENDED AND RESTATED CORPORATE BYLAWS
OF
THE ROCHESTER GENERAL HOSPITAL ASSOCIATION, INC.

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**AMENDED AND RESTATED CORPORATE BYLAWS
OF
ROCHESTER GENERAL HOSPITAL ASSOCIATION, INC.**

ARTICLE I - MEMBERS

Section 1. Members

The Corporation shall have four (4) classes of members: Class A, Class B, Class C and Class D. The single Class A member shall be The Rochester General Hospital. Class B members shall consist of and be limited to those individuals who currently serve as members of the Board of Directors of the Corporation. Class C members shall consist of and be limited to those individuals who currently serve as Twig Presidents of the Twigs existing at any particular time; provided, however, that there shall be only one (1) Class C member from each Twig, and when a Twig has more than one person holding the office of President; one such person shall be designated in writing by the Twig to the Secretary of the Corporation as the Class C member of that Twig. Class D members shall consist of all other Twig members and Advisory members of the Board of Directors. The number of Class D members shall be unlimited.

Section 2. Rights of Members.

- (a) Except as otherwise specifically provided in these Bylaws, the Class A member shall be the only member with voting rights and shall be entitled to vote on all matters brought before the membership for action pursuant to the laws of New York or the Certificate of Incorporation or Bylaws of the Corporation.
- (b) Class C members or designated alternates shall have the limited and exclusive right to vote on matters submitted to them by the Board of Directors concerning the expenditure of funds raised by the Twigs.
- (c) Class B and D members shall be nonvoting members of the Corporation; provided, however, that the status of non-voting members shall not in any way limit the right of any Class B member to vote in his or her capacity as a director of the Corporation.

Section 3. Evidence of Membership.

Class C and Class D membership shall be evidenced by designation on a roster maintained by the Board of Directors.

ARTICLE II - MEETINGS OF THE MEMBERS OF THE CORPORATION

Section 1. Annual Meetings.

- (a) An annual meeting shall be held for the election of directors and the transaction of other business at any time determined by the Board of Directors in collaboration with the Class A member within six months after the close of each fiscal year.

- (b) The Board of Directors shall direct the President and the Treasurer to present at the annual meeting of the members an annual report verified by the President and Treasurer or by a majority of directors, or certified by an independent public or certified public accountant, showing in appropriate detail the following:
- i. The assets and liabilities, including the trust funds, of the Corporation as of the end of a twelve month fiscal period ending not more than six months prior to said annual meeting;
 - ii. The principal changes in assets and liabilities, including trust funds, during said fiscal period;
 - iii. The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, during said fiscal period;
 - iv. The expenses or disbursements of the Corporation for both general and restricted purposes during said fiscal period; and
 - v. The number of members of the Corporation, any increase or decrease during the fiscal period, and the location of the current list of members' names and addresses.

The annual report shall be filed with the records of this Corporation, and a copy thereof shall be entered in the minutes of the annual meeting of the members.

Section 2. Special Meetings.

Special meetings of members for any purpose may be called at any time by the President or by a majority of the Board of Directors, and shall be called by the President or the Secretary at the written request of the Class A member. Such written request and the notice of the meeting shall state the purpose(s) for the meeting and shall indicate by whom the meeting is called. Dates and times of special meetings of the Class A member shall be determined in collaboration with the Class A member. Business transacted at a special meeting shall be confined to the purpose(s) stated in the notice of meeting.

Section 3. Place of Meetings.

Meetings of members shall be held at the principal office of the Corporation or at such other place, within or without the State of New York, as may be fixed by the Board of Directors, except that the Class A member shall fix the place of its meetings.

Section 4. Notice of Meetings.

- (a) Notice shall be given of each meeting of members, shall be in writing and shall state the place, date and hour of the meeting.
- (b) Formal written notice of each meeting of the members shall be given not less than ten (10) nor more than fifty (50) days before the date of the meeting, to each member entitled to vote at such meeting and to each director of the Class A member, except that the

directors of the Class A member need not be notified of a special meeting if the only item on the agenda of such special meeting is the expenditure of funds raised by the Twigs. Such notices shall be given to members and directors of the Class A member entitled to receive them either personally or by mail. If mailed, notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the recipient at his or her address as it appears in the record of directors or to such other address as the recipient shall have specified to the Secretary of the Corporation in writing.

- (c) Notice of a meeting need not be given to any member of the Corporation or director of the Class A member who submits a signed waiver of notice. The attendance of any voting member or director of the Class A member at a meeting, without protesting prior thereto or at its commencement the lack of notice of such meeting, shall constitute a waiver of notice by him or her.

Section 5. Quorum and Adjourned Meetings.

- (a) The presence of the Class A member, as represented by the presence in person of a quorum of its Board of Directors, shall constitute a quorum for the transaction of business at any regular or special meeting of the membership, except that for the limited purposes of Class C voting, a quorum shall be the presence in person or by proxy of a majority of the Class C members.
- (b) Whether or not a quorum is present, the members present at a meeting who are entitled to vote on a pending matter may adjourn the meeting to another designated time and place, and it shall not be necessary to give notice of the adjourned meeting. If a quorum is present at the adjourned meeting, any business may be transacted that might have been transacted on the original date of the meeting.

Section 6. Organization.

At every meeting of the members the President, or, in his or her absence, the Vice-President, or in the absence of such officers, a person selected by the Class A member or by a majority of the members entitled to vote at such meeting shall act as chair of the meeting. The Recording Secretary or, in his or her absence, the Corresponding Secretary or, in his or her absence, a person selected by the Class A member or a majority of the members entitled to vote at such meeting shall act as secretary of the meeting.

Section 7. Voting.

- (a) Whenever any action is to be taken by the Class A member, it shall, except as otherwise provided by law or by the Certificate of Incorporation, be authorized by a majority of the votes cast by the directors of the Class A member at a duly convened meeting of the Class A member at which a quorum of the directors of the Class A member are present. Written notice of such actions, including a copy of any resolution(s), shall be provided promptly to the Secretary of this Corporation if the Secretary is not in attendance at the meeting for any reason.

- (b) Whenever any action is to be taken by the Class C members, it shall, except as otherwise required by law or by the Certificate of Incorporation, be authorized by a majority of the votes cast at a duly convened meeting of the Class C members at which a quorum of the Class C members is present. Written notice of such actions, including a copy of any resolution(s), shall be provided promptly to the Secretary of this Corporation if the Secretary is not in attendance at the meeting for any reason.
- (c) Any Class C member entitled to vote on any matter under these Bylaws may act by proxy in lieu of presence (individually or through a board quorum) at the meeting at which the vote is to be taken. Proxies must be in writing, signed by the voting member, and delivered to the chair or secretary prior to the end of the meeting at which the vote is taken. All executed proxy forms shall be filed with the minutes of the meeting,

ARTICLE III - BOARD OF DIRECTORS

Section 1. Power of Board and Qualification of Directors.

The Corporation shall be managed by its Board of Directors. Each director shall be at least eighteen years of age.

Section 2. Number and Terms of Office.

- (a) The Board of Directors shall consist of not less than three (3) nor more than twenty-five (25) directors. The exact size of the Board of Directors at any time shall be the number of directors then in office. The number of directors shall be determined from time to time by the Class A member, provided that no decrease in the number of directors shall shorten the term of any incumbent director. No employee of The Rochester General Hospital, Rochester Regional Health or any of Rochester Regional Health's other affiliates may serve as a director of this Corporation, and no more than one third of the directors of this Corporation may be an officer or director of any of the organizations designated in paragraph 4 of the Certificate of Incorporation of the Corporation.
- (b) The Board of Directors shall be divided into five (5) classes of approximately equal size, with the terms of one class of directors expiring each year on a rotating basis. All directors shall have a term of office of five (5) years or until their successors are elected and take Office; provided that a director may be elected to a term of less than five years if necessary for the purpose of maintaining approximately equal class sizes.
- (c) New directors to succeed directors whose terms are expiring shall be appointed by the Class A member at the annual meeting of members following nomination by the Corporation's Board of Directors. The Class A member shall not be obligated to approve the Board's nominee(s).
- (d) Directors may serve an unlimited number of terms in office.
- (e) Each director shall have one vote regarding any corporate action to be taken by the Board.

Section 3. Resignations and Removal of Directors.

- (a) Any director of the Corporation may resign at any time by giving written notice to the President or the Secretary of the Corporation, who shall forward a copy to the Secretary of the Class A member. Such resignation shall take effect at the time specified therein or if no time be specified, then on delivery to the President or Secretary of the Corporation.
- (b) Any director may be removed for cause by vote of a majority of the entire Board of Directors of the Corporation or with or without cause by the Class A member.

Section 4. Vacancies.

Positions on the Board within the permitted range that are or become unfilled for any reason may be filled by the Class A member at any time. The Board of Directors may nominate individual(s) to fill the unfilled seat(s); such nominations shall not be binding upon the Class A member. A director appointed to fill an unfilled seat between annual meetings shall hold office until the next annual meeting of the Corporation and until his or her successor is elected and qualified.

Section 5. Place of Meeting.

The Board of Directors may hold its meetings at the principal office of the Corporation, or at such place or places within or without the State of New York as the Board of Directors may determine.

Section 6. Annual Meeting.

As soon as practicable after the annual meeting of the Corporation concludes, the Board of Directors shall meet at the place of such annual meeting for the purposes of electing officers, appointing committees and transacting such other business as may be necessary or desirable. Such meeting may be held at any other time and place, provided that if it is so held, notice shall be given to each director as hereinafter provided for special meetings of the Board of Directors.

Section 7. Regular Meetings.

Monthly meetings of the Board of Directors shall be held at the principal office of the Corporation, no less than eight (8) times per year, unless otherwise designated by the Board. No Board meetings shall be required in July or August. Written notice shall be given not less than ten (10) nor more than fifty (50) days before the date of the meeting to each Board member.

Section 8. Special Meetings.

Special meetings of the Board of Directors shall be held whenever called by the President, or by the Recording Secretary upon the written request of five (5) directors or the Class A member. If notice is given in person or by telefax, e-mail or telephone, it shall be given not less than one (1) day before the meeting; if it is given by mail, it shall be given not less than five (5) days before the meeting,

Section 9. Notice of Meetings: Waiver of Notice.

- (a) Formal written notice of each meeting of the Board of Directors shall state the place, date and time of the meeting. Such notice shall be given to each director either personally or by mail, telefax or e-mail not less than the number of days in advance prescribed in these Bylaws for the type of meeting called. If mailed, notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the director at his or her address as it appears in the record of directors or to such other address as the director shall have specified to the Secretary of the Corporation in writing. If sent by telefax, notice is given when the sender receives confirmation that the transmission has been received by the recipient's telefax machine at a number provided by the recipient for such purpose. If e-mailed, notice is given when the sender effects electronic transmission to an e-mail address provided by the recipient for such purpose. In addition, notice may be given by telephone, provided that the information is conveyed to the director, an adult message taker or a voice mailbox at the director's telephone number in the records of the Corporation, and that a copy of the notice is promptly mailed to each director who is notified by telephone.
- (b) Notice of a meeting need not be given to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement the lack of notice to him or her.

Section 10. Quorum.

- (a) A majority of the entire Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board, except where otherwise required by law or these Bylaws.
- (b) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place without notice to any director.

Section 11. Action by the Board of Directors.

- (a) Each director shall be entitled to one vote on each matter properly submitted to the directors for action at any meeting of the Board. Unless otherwise required by law or these Bylaws, the vote of a majority of directors present at the time of the vote at a duly convened meeting at which a quorum is present shall be the act of the Board.
- (b) Any action required or permitted to be taken by the Board may be taken without a meeting if all directors consent in writing to the adoption of a resolution setting forth and authorizing the action. The resolution and written consent thereto by the Board shall be filed with the minutes of the proceedings of the Board.

Section 12. Organization of Meetings.

At each meeting of the Board of Directors, the President, or, in his or her absence, the Vice-President shall preside, or in the absence of such officers, a chair chosen by a majority of the directors present shall preside. The Recording Secretary or, in his or her absence, the

Corresponding Secretary, or in his or her absence, a person chosen by a majority of the directors present shall act as secretary of the meeting of the Board of Directors.

Section 13. Minutes.

The Recording Secretary shall maintain complete and accurate minutes of each member, Board and committee meeting. Said minutes shall reflect attendance and all business conducted, including: findings, conclusions, recommendations and resolutions adopted, and shall be maintained in the permanent records of the Corporation.

Section 14. Compensation.

Members of the Board of Directors shall receive no compensation for their services as directors of the Corporation but shall be reimbursed for the expenses reasonably incurred by them in the performance of their Corporation duties.

ARTICLE IV - COMMITTEES

Section 1. Standing Committees of the Board.

The Board of Directors, by resolution adopted by a majority of the entire Board, shall designate from among the directors standing committees of the Board. Each such standing committee shall consist of at least three Board members. Members of standing committees shall be appointed by and serve at the pleasure of the Board. The standing committees of the Board, until changed by the Board, shall include the following:

- (a) Executive Committee: Standing members of the Executive Committee shall be the President, Vice-President, Treasurer, Recording Secretary and Governance Chair of the Corporation. One additional member at large shall be recommended by the Nominating Committee. The Executive Committee shall transact all delegated and emergency business of the Board between its meetings. Any reference in these Bylaws to the Board of Directors shall also apply to the Executive Committee unless the context or an express provision otherwise provides. The Executive Committee shall have no authority as to the following matters:
- 1) The submission to members of any action requiring such members' approval under the law.
 - 2) The filling of vacancies in the Board or in any committee.
 - 3) The amendment or repeal of these Bylaws, or the adoption of new Bylaws.
 - 4) The amendment or repeal of any resolution of the Board unless, by its terms, it is so amendable or repealable.
 - 5) The expenditure of the assets of the Corporation.

- (b) Governance Committee: The Governance Committee shall oversee the general affairs of the Board, by ensuring Board processes, structures and roles are effective, and by equipping Board members with the appropriate tools and motivation to carry out his or her responsibilities.
- (c) Bylaws and Manuals Committee: The Bylaws and Manuals Committee, a sub-committee of the Governance committee, shall periodically review the Bylaws and manuals of the Corporation and make recommendations for amendments to the Board of Directors.
- (d) Nominating Committee: The Nominating Committee, a sub-committee of the Governance committee, shall nominate persons to serve as directors and officers of the Corporation and as committee chairs. The Nominating Committee shall also nominate one Board member to serve at large on the Executive Committee, and individuals from the Board to serve as advisory members of the Board.
- (e) Finance Committee: The Treasurer shall chair the Finance Committee. The Finance Committee shall advise the President and the Board of Directors concerning policies and procedures for the financial management of the assets of the Corporation including such matters as the budget and investments. The Finance Committee shall take those steps which are necessary or desirable to implement approved policies and procedures within the scope of authority delegated to it by the Board of Directors.
- (f) Audit Functions: If, at any time prior to July 1, 2021, the Corporation has revenues in excess of \$750,000, or if after July 1, 2021, the Corporation has revenues in excess of \$1,000,000, the directors who qualify as “Independent Directors” within the meaning of Section 102(21) of the Not-for-Profit Corporation Law shall act as the Audit Committee, which shall oversee the accounting and financial reporting processes of the Corporation and the audit of the Corporation’s financial statements in accordance with the duties set forth under Section 712-a of the Not-for-Profit Corporation Law. This committee may not be chaired by a Treasurer.

Section 2. Special Committees of the Board.

The Board of Directors may, by resolution adopted by a majority of the entire Board, designate from among the directors additional committees, each of which shall consist of at least three Board members. Such committees shall have such authority as is provided in the resolution designating the committee, except that such authority shall not exceed the authority conferred to the Executive Committee by Section 1(a) of this Article. Members shall be appointed by the Board and shall serve for the term designated in the resolution creating each Special Committee.

Section 3. Committees of the Corporation.

The Board of Directors, by resolution adopted by a majority of the entire Board, shall designate, from all classes of membership in the Corporation and from non-members of the Corporation, committees of the Corporation. Each such committee shall consist of at least one Board member and shall have authority as provided in the resolution designating the committee, except that no such committee shall have the authority to bind the Board of Directors. Members

of these committees shall be appointed annually by the Board of Directors. The committees of the Corporation, until changed by the Board, shall include the following:

- (a) Allocations Committee
- (b) Communications Committee
- (c) Nursing Practice and Education Committee
- (d) Patient Staff Library
- (e) Social Work Services Committee
- (f) Teaching Fellowship Committee
- (g) Twig Committee
- (h) Twig Gift Shop Committee
- (i) Vending Committee
- (j) Volunteer Service Committee

Section 4. Meetings.

Meetings of committees, of which no notice shall be necessary, shall be held at such time and place as shall be fixed by the respective committee chairs or by vote of a majority of all of the members of the committee. Written minutes of the proceedings of all meetings of each committee shall be kept by a member appointed by the committee chair and shall be reported at the next regular monthly meeting of the Board of Directors.

Section 5. Quorum and Manner of Acting.

Unless otherwise provided by resolution of the Board of Directors, a majority of all of the members of a committee shall constitute a quorum for the transaction of business, and the vote of a majority of all of the members of the committee shall be the act of the committee. Any corporate action to be taken by a committee shall be taken at a meeting of the committee.

The procedures and manner of acting of the Executive Committee and of any other committee shall be governed by rules adopted by those committees, subject at all times to the directions of the Board of Directors.

Section 6. Annual Reports.

Annual reports shall be presented to the President by each committee chair prior to the Annual Meeting.

Section 7. Tenure of Members of Committees.

Each committee and every member thereof, except when specifically stated otherwise, shall serve at the pleasure of the Board.

ARTICLE V - OFFICERS

Section 1. Number and Salary.

The officers of the Corporation shall be a President, a Vice-President, a Treasurer, a Recording Secretary, a Corresponding Secretary, and such other officers as the Board of

Directors may in its discretion elect. No two offices may be held by the same person. Officers shall serve without salary.

Section 2. Term of Officers and Qualifications.

Those officers whose titles are specifically mentioned in Section 1 of this Article V shall be elected by the Board of Directors from its membership at the Annual Meeting of the Board. Unless a shorter term is provided in the resolution of the Board electing such officer, the term of office of each officer shall extend for one year after his or her election and until his or her successor is elected or appointed and qualified. All officers may be reelected with the exception of the President who may not serve more than two consecutive terms.

Section 3. Additional Officers.

Additional officers may be elected for such period, have such authority and perform such duties, either in an administrative or subordinate capacity, as the Board of Directors may determine.

Section 4. Removal of Officers.

Any officer may be removed by the Board of Directors with or without cause, at any time.

Section 5. Resignation.

Any officer may resign at any time by giving written notice to the Board of Directors, or to the President or the Secretary. Any such resignation shall take effect at the time specified therein, or, if no time is specified, then upon delivery.

Section 6. Vacancies

A vacancy in any office shall be filled by the Board of Directors. An officer appointed to fill a vacancy shall hold office until the next annual meeting of the Board of Directors and until his or her successor is elected and qualified.

Section 7. President

The President shall preside at all meetings of the Class B, Class C and Class D members, the Board of Directors, and the Executive Committee. The President shall act as the chief executive officer of the Corporation, and it shall be his or her duty to supervise generally the management of the affairs of the Corporation subject only to the supervision of the Board. He or she shall be a member ex-officio of all committees, with the exception of the Nominating Committee, which he or she may attend by invitation. The President, along with the chair of each committee, shall submit to the Board of Directors for final approval, a list of members for each committee selected in accordance with the rules for membership to the various committees set out in these Bylaws. The President shall also perform such other duties as may be assigned to him or her from time to time by the Board.

Section 8. Vice-President

In the absence or inability to act of the President, or if the office of President is vacant, the Vice-President shall perform the duties and exercise the powers of the President, subject to the right of the Board from time to time to extend or confine such powers and duties or to assign them to others. He or she shall share with the President the responsibility of attending committee meetings. The Vice-President shall be responsible for legislation and education by arranging for speakers for meetings of the Board of Directors, and keeping abreast of current State and Federal legislation in the health field and informing the Board of important developments. The Vice-President shall also have such other powers and shall perform such other duties as may be assigned to him or her by the Board of Directors or the President.

Section 9. Treasurers.

There shall be three Treasurers:

- (a) Treasurer: The Treasurer shall keep and maintain the books of account and shall have overall charge, custody and responsibility for all funds and securities of the Corporation. He or she or his or her assistants shall deposit all such funds in the name of and to the credit of the Corporation in such banks, trust companies, or other depositories as shall be selected by the Board of Directors. He or she shall, at all reasonable times, exhibit the Corporation's books and accounts to any director or member of the Corporation upon application at the office of the Corporation during ordinary business hours. He or she shall also perform all other duties customarily incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the Board of Directors or the President.
- (b) Twig Treasurer: It shall be the duty of the Twig Treasurer to keep accurate books and records of the funds raised annually by the various Twigs. He or she shall receive and deposit all Twig funds from the individual Twigs and disburses said funds in accordance with the direction of the Board of Directors.
- (c) Twig Shop Treasurer: It shall be the duty of the Twig Shop Treasurer to keep accurate books and records of the monthly revenues received and accounts payable by said Shop. He or she shall be in charge of all bank accounts containing the funds of said Shop and shall have authority to make withdrawals from said accounts. All accounts payable of the Twig Gift Shop shall be paid by the Twig Shop Treasurer from the accounts containing said funds. He or she shall disburse said funds in accordance with the direction of the Board of Directors.

Section 10. Recording Secretary.

It shall be the duty of the Recording Secretary to act as secretary of all meetings of the Board of Directors, the Class B, Class C and Class D members, and Executive Committee, and to keep the minutes of all such meetings at which he or she shall so act in a proper book or books to be provided for that purpose; he or she shall see that all notices required to be given by the Corporation are duly given and served; he or she shall prepare, or cause to be prepared, for use at meetings of the members a list or record of all members and shall certify such list; he or she shall

keep a current list of the Corporation's directors and officers and the residence addresses. The Secretary shall have custody of the minute book containing the minutes of meetings of the Class B, Class C and Class D members, the Class A member when serving in such capacity, the Board of Directors, the Executive Committee, and all other committees, and of all other contracts and documents which are not in the custody of the Treasurer of the Corporation, or in the custody of some other person authorized by the Board of Directors to have such custody. He or she shall attend to such correspondence as may be assigned to him or her and perform all the duties incidental to his or her office and such other duties as may be assigned to him or her by the Board of Directors or the President.

Section 11. Corresponding Secretary

The Corresponding Secretary shall conduct the correspondence of the Corporation and perform all other duties which may be assigned to him or her by the Board of Directors or the President.

Section 12. Appointed Officers

The Board of Directors may delegate to any officer or committee the power to appoint and to remove any subordinate officer, agent or employee.

ARTICLE VI - CONTRACTS, CHECKS, DRAFTS AND BANK ACCOUNTS

Section 1. Execution of Contracts and Other Documents.

The Board of Directors, except as these Bylaws otherwise provide, may authorize the Treasurer, the President or the Vice-President, in the name of and on behalf of the Corporation to enter into any contract or execute and deliver any instrument, and such authority may be general or confined to specific instances but, unless so authorized by the Board of Directors, or expressly authorized by these Bylaws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable pecuniarily in any amount for any purpose.

Section 2. Checks, Drafts, etc.

All checks, drafts and other orders for the payment of money out of the funds of the Corporation, and all notes or other evidences of indebtedness of the Corporation, shall be signed on behalf of the Corporation in such manner as shall be determined by resolution of the Board of Directors or as expressly authorized by these Bylaws,

Section 3. Deposits.

All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may by resolution select.

ARTICLE VII - OFFICE AND BOOKS

Section 1. Office.

The office of the Corporation shall be at such place in the City of Rochester, County of Monroe, State of New York, as the Board of Directors may determine.

Section 2. Books and Records.

There shall be kept at the office of the Corporation (1) correct and complete books and records of account, (2) minutes of the proceedings of the members, the Board of Directors, the Executive Committee and additional committees, (3) a current list of the directors and officers of the Corporation and their residence addresses, (4) a list or records containing the names and addresses of all members, (5) a copy of the certificate of incorporation, and (6) a copy of these Bylaws. The Secretary of the Corporation shall promptly forward to the Secretary of the Class A member copies of minutes of meetings of the Corporation's Board of Directors and Executive Committee when such minutes become available, as well as the lists of members, directors and officers as amended from time to time and the annual report.

ARTICLE VIII - INDEMNIFICATION, INSURANCE AND CONFLICTS OF INTEREST

Section 1. Indemnification and Insurance of Directors and Officers

- (a) The Corporation shall to the fullest extent permitted by law, indemnify its directors, officers, employees and other personnel.
- (b) The Corporation may purchase directors' and officers' liability insurance if authorized and approved by the Board of Directors.

Section 2. Conflicts of Interest.

The Board of Directors shall adopt a conflict of interest policy for the purpose of protecting the Corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Corporation.

ARTICLE IX - GIFTS

Section 1. Acceptance of Gifts.

The Board of Directors may accept or reject on behalf of the Corporation any gift, grant, bequest or devise for the general purposes or for any special purpose of the Corporation. Unless the terms expressly provide otherwise, all gifts, grants, bequests and devises shall be deemed irrevocable.

Section 2. Conditions and Limitations

Any person who shall give, bequeath or devise any property to the Corporation may make such gift subject to such conditions and limitations as to the use of the principal or income as he or she may see fit and may specify such uses for the principal or the income as he or she

may desire, provided such conditions, limitations, specifications and provisions are consistent with the general purposes of the Corporation.

Section 3. Funds and Accounts.

All such property received and accepted by the Corporation shall become a part of the Corporation property and, subject to any limitations, conditions or requirements attached to it, may be commingled with other assets of the Corporation. However, such property shall or may be placed in any number of separate and distinct funds or accounts whenever the conditions, limitation, or instructions, of the gift, grant, bequest, or devise require a separate fund or account or whenever the Board of Directors or Executive Committee, in its judgment, determines that such property should be placed in a separate and distinct fund or account.

ARTICLE X - FISCAL YEAR

The fiscal year of the Corporation shall commence on January 1 of each calendar year and end on the last day of December.

ARTICLE XI - PARLIAMENTARY AUTHORITY

Roberts Rules of Order, Revised, shall govern at all meetings of the Class B, Class C and Class D members, the Board of Directors and committees, except to the extent that they conflict with applicable law or these Bylaws.

ARTICLE XII - AMENDMENTS

The Bylaws of the Corporation may be amended, repealed or adopted only by the Class A member of the Corporation, at any regular or special meeting of membership. The Board of the Corporation may propose amendments for approval by the Class A member, or the Class A member may amend, repeal or adopt Bylaws on its own initiative.

ARTICLE XIII - CONSTRUCTION

If there is any conflict between the provisions of the Certificate of Incorporation and these Bylaws, the provisions of the Certificate of incorporation shall govern.

RESTATED CERTIFICATE OF INCORPORATION

OF

ROCHESTER GENERAL HOSPITAL ASSOCIATION, INC.

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

The undersigned being a Director of ROCHESTER GENERAL HOSPITAL ASSOCIATION, INC. (the "Corporation"), hereby certifies:

1. The name of the Corporation is ROCHESTER GENERAL HOSPITAL ASSOCIATION, INC.

2. The Corporation's Certificate of Incorporation was filed by the Department of State on December 12, 1978, pursuant to the Not-for-Profit Corporation Law.

3. The Corporation's Certificate of Incorporation as previously amended from time to time is hereby further amended to effect the following amendments or changes as authorized in Section 801 of the Not-for-Profit Corporation Law of the State of New York:

- a. to change the name of the Corporation;
- b. to replace a statement concerning the Corporation's type with a statement that the Corporation is a charitable corporation under Section 201 of the Not-for-Profit Corporation Law;
- c. to amend paragraph 4 of the Certificate of Incorporation to delete the outdated illustrative list of affiliates of the Corporation's beneficiary;
- d. to amend paragraph 7 of the Certificate of Incorporation to update references to the Not-for-Profit Corporation Law;
- e. to amend paragraph 8 of the Certificate of Incorporation to update statements required by the Internal Revenue Service;
- f. to amend paragraph 13 of the Certificate of Incorporation to delete the city in which the office of the corporation is to be located;
- g. to delete paragraph 14 of the Certificate of Incorporation, which contains an unnecessary provision regarding the territory in which the corporation's operations are principally conducted;
- h. to amend paragraph 15 of the Certificate of Incorporation to renumber as paragraph 14, to add the designation of the Secretary of State as agent of the corporation upon whom process against it may be served and to update the address to which a copy of such process shall be mailed;

i. to delete paragraph 16 of the Certificate of Incorporation, which contains unnecessary provisions concerning the number of directors and the identity of the initial directors of the corporation;

j. to delete paragraph 17 of the Certificate of Incorporation, which contains an unnecessary provision regarding the qualifications of the subscriber of the Certificate of Incorporation;

k. to delete paragraph 18 of the Certificate of Incorporation, which contains unnecessary provisions concerning consents and approvals to be obtained prior to the delivery of the Certificate of Incorporation to the Department of State for filing; and

l. to update references in the Certificate of Incorporation to the Internal Revenue Code.

4. The text of the Certificate of Incorporation, as amended, is hereby restated to read as hereinafter set forth in full:

1. The name of the corporation is TWIG ASSOCIATION, INC.

2. The corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law of the State of New York.

3. The corporation is a charitable corporation under Section 201 of the of the Not-for-Profit Corporation Law.

4. The corporation is organized and operated exclusively for charitable, scientific and educational purposes and to provide funds to or for the benefit of The Rochester General Hospital and to or for the benefit of any other health care organization or corporation affiliated with or related to The Rochester General Hospital by:

(a) soliciting, accepting, holding, investing, reinvesting and administering any gifts, bequests, devises, benefits of trusts and property of any sort, without limitation as to amount or value;

(b) using, disbursing or donating the income or principal thereof exclusively for the foregoing purposes;

(c) organizing, coordinating, conducting and participating in activities for the foregoing purposes; and

(d) performing any other act incidental to or connected with the foregoing purposes or in advancement thereof.

5. In furtherance of its corporate purposes, the corporation shall have the power to solicit and receive grants and contributions from public and private sources together with all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law.

6. Nothing herein contained shall authorize the corporation to operate a hospital or to provide hospital services or health related services as defined in Article 28 of the Public Health Law.

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

8. The following language relates to the corporation's tax exempt status and is not a statement of purposes and powers. Consequently, this language does not expand or alter the corporation's purposes or powers set forth in paragraphs 4 and 5 hereof. The corporation is organized exclusively for one or more of the following purposes: religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, as specified in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt from Federal income tax under Section 501(c)(3) of such Code or by an organization, contributions to which are deductible under Section 170(c)(2) of such Code.

9. No part of the assets, income, profits or earnings of the corporation shall inure to the benefit of any member, trustee, director, or officer of the corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation affecting one or more of its purposes), and no member, trustee, officer or director of the corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation.

10. No substantial part of the activities of the corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, or participating in, or intervening in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office, except to the extent such activities may be carried on by an organization described in Section 501(c)(3) of the Internal Revenue Code, as amended.

11. In the event of dissolution, all of the remaining assets and property of the corporation shall, after necessary expenses thereof, be distributed to one or more not-for-profit affiliates of the corporation, provided that such distributee(s) shall then qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. If none of the not-for-profit affiliates of the corporation shall so qualify at the time of dissolution, then distribution shall be made to such other organization or organizations that are organized and operated exclusively for religious, charitable, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. For the purpose of this section, an "affiliate" shall mean any not-for-profit organization which controls, is controlled by, or is under common control with the corporation, and any other not-for-profit organization which expressly and specifically includes among its purposes the benefit or support of the corporation.

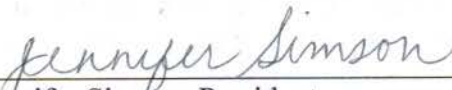
12. The corporation shall distribute its income for each taxable year at such time and in such manner as to not subject it to tax under Section 4942 of the Internal Revenue Code of 1986, as amended; and the corporation shall not (a) engage in any act of self-dealing in such manner as to subject the corporation to tax under Section 4941 of the Code; (b) retain any excess business holdings in such manner as to subject the corporation to tax under Section 4943 of the Code; (c) make any investments in such manner as to subject the corporation to tax under Section 4944 of the Code; or (d) make any expenditures in such a manner as to subject the corporation to tax under Section 4945 of the Code.

13. The office of the corporation is to be located in Monroe County, New York.

14. The Secretary of State of the State of New York is designated as the agent of the corporation upon whom process against the corporation may be served, and the post office address to which the Secretary shall mail a copy of such process served is 1425 Portland Avenue, Rochester, New York 14621.

5. The amendment and restatement of the Certificate of Incorporation was authorized by the affirmative vote of a majority of all of the members of the corporation entitled to vote thereon, with such vote being at least equal to a quorum.

IN WITNESS WHEREOF, the undersigned has subscribed this Restated Certificate of Incorporation this 18th day of November, 2022.



Jennifer Simson, President

STATE OF NEW YORK

DEPARTMENT OF STATE

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



WITNESS my hand and official seal of the Department of State, at the City of Albany, on August 9, 2011.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State

CERTIFICATE OF INCORPORATION
OF
ROCHESTER GENERAL HOSPITAL ASSOCIATION, INC.
PURSUANT TO SECTION 402
OF
THE NOT-FOR-PROFIT CORPORATION LAW

A530059

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

1. The name of the corporation is ROCHESTER GENERAL HOSPITAL ASSOCIATION, INC.

2. The corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-For-Profit Corporation Law of the State of New York.

3. The corporation is a Type B corporation, as defined in Section 201(b) of the Not-For-Profit Corporation Law of the State of New York.

4. The corporation is organized and operated exclusively for charitable, scientific and educational purposes and to provide funds to or for the benefit of the Rochester General Hospital and to or for the benefit of any other health care organization or corporation affiliated with/or related to Rochester General Hospital, including but not limited to the Northeast Health Center, Wayne County Rural Comprehensive Health Program at Sodus, Rochester Mental Health Center, Inc. and Hemophilia Center--Rochester Region, Inc. by:

(a) soliciting, accepting, holding, investing, reinvesting and administering any gifts, bequests, devises,

benefits of trusts and property of any sort, without limitation as to amount or value;

b) using, disbursing or donating the income or principal thereof exclusively for the foregoing purposes;

c) organizing, coordinating, conducting and participating in activities for the foregoing purposes; and

d) performing any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof.

5. In furtherance of its corporate purposes, the corporation shall have the power to solicit and receive grants and contributions from private and public sources together with all general powers enumerated in Section 202 of the Not-For-Profit Corporation Law.

6. Nothing herein contained shall authorize the corporation to operate a hospital or to provide hospital services or health related services as defined in Article 28 of the Public Health Law.

7. Nothing herein shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Not-For-Profit Corporation Law, Section 404(b)-(n) and (p)-(s).

8. Notwithstanding any other provision of these articles, the corporation is organized exclusively for

charitable, scientific and educational purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, and shall not carry on any activities not permitted to be carried on by an organization exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or by an organization, contributions to which are deductible under Section 170(c)(2) of such Code.

9. No part of the assets, income, profits or earnings of the corporation shall inure to the benefit of any member, trustee, director, or officer of the corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation affecting one or more of its purposes), and no member, trustee, officer or director of the corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets *on dissolution of the corporation*.

10. No substantial part of the activities of the corporation shall be carrying on propoganda, or otherwise attempting to influence legislation, or participating in, or intervening in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office, except to the extent such activities may be carried on by an organization described in Section 501(c)(3) of the Internal Revenue Code, as amended.

11. In the event of dissolution, all of the remaining assets of the property of the corporation shall, after deduction for necessary expenses thereof, be distributed exclusively to organizations described in Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, subject to an order of the Justice of the Supreme Court of the State of New York.

12. The corporation shall distribute its income for each taxable year at such time and in such manner as not to subject it to tax under Section 4942 of the Internal Revenue Code of 1954, as amended; and the corporation shall not (a) engage in any act of self-dealing in such manner as to subject the corporation to tax under Section 4941 of the Code; (b) retain any excess business holdings in such manner as to subject the corporation to tax under Section 4943 of the Code; (c) make any investments in such manner as to subject the corporation to tax under Section 4944 of the Code; or (d) make any expenditures in such manner as to subject the corporation to tax under Section 4945 of the Code.

13. The office of the corporation is to be located in the City of Rochester, County of Monroe, State of New York.

14. The territory in which the corporation's activities are principally to be conducted is the County of Monroe, State of New York.

15. The post office address to which the Secretary of State shall mail a copy of any notice required by law is 1425 Portland Avenue, Rochester, New York 14621.

16. The number of directors constituting the entire Board of Directors of the corporation shall not be less than three nor more than forty, as established by the By-Laws. The names and addresses of the initial directors until the first annual meeting are:

Mrs. Edward P. Curtis, Jr.
357 Cobbs Hill Drive
Rochester, New York

Mrs. Louis G. Glesmann
3280 Elmwood Avenue
Rochester, New York

Mrs. John R. Leinen
44 Wood Hill Road
Pittsford, New York

Mrs. William B. Morse
32 East Boulevard
Rochester, New York

17. The subscriber is of the age of eighteen years or over.

18. Prior to the delivery of this certificate of incorporation to the Department of State for filing, all approvals or consents required by the Not-For-Profit Corporation Law or by any other statute of the State of New York will be endorsed upon or annexed to this certificate.

IN WITNESS WHEREOF, this certificate has been signed
by the subscriber this 24th day of August, 1978.

Robert C. Scutt

Robert C. Scutt
Two State Street
Rochester, New York 14614

STATE OF NEW YORK)
) SS.:
COUNTY OF MONROE)

On this 24th day of August, 1978, before me
personally came ROBERT C. SCUTT, to me known to be the same
person described in and who executed the foregoing instrument
and he duly acknowledged to me that he had executed the same.

Janet Graves

JANET GRAVES
Notary Public in the State of New York
WAYNE COUNTY
Commission Expires March 30, 1981



STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY 12237

PUBLIC HEALTH COUNCIL

November 20, 1978

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after due inquiry and investigation at a meeting of the Public Health Council held on the 17th day of November, 1978, I hereby certify that the Certificate of Incorporation of Rochester General Hospital Association, Inc. is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

Marianne K. Adams

MARIANNE K. ADAMS

Secretary

Sent to: Robert C. Scutt, Esq.
Harris, Beach, Wilcox, Rubin and Levey
Two State Street
Rochester, New York 14614

cc: Mr. John S. Gilman, Chairman
Board of Directors
Rochester General Hospital
1425 Portland Avenue
Rochester, New York 14621

COUNCIL

NORMAN S. MOORE, M.D.

CHAIRMAN

GORDON E. BROWN

ROBERT J. COLLINS, M.D.

THOMAS P. DOWLING

MSGR. CHARLES J. FAHEY

JOSEPH R. FONTANETTA, M.D.

WILLIAM LEE FROST

MORTON P. HYMAN

JEANNE E. JONAS

MARY C. MC LAUGHLIN, M.D.

ROBERT H. RANGLES, M.D.

HOWARD A. RUSK, M.D.

JOHN M. WALSH

KENNETH W. WOODWARD, M.D.

COMMISSIONER OF HEALTH

ROBERT P. WHALEN, M.D.

EX OFFICIO



STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY, N.Y. 12224

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL

Telephone: 474-7206

NOV 22 1978

November 20, 1978

Robert C. Scutt, Esq.
Harris, Beach, Wilcox,
Rubin & Levey, Esqs.
2 State Street
Rochester, New York 14614

Dear Mr. Scutt:

Re: Rochester General Hospital Association, Inc.

Due and timely service of the notice of application for the approval of the proposed certificate of incorporation of the above organization is hereby admitted.

The Attorney General does not intend to appear at the time of application.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General

By


JOHN E. LYNCH
Assistant Attorney General



SUPREME COURT
STATE OF NEW YORK


COUNTY OF MONROE

In the Matter of an Application for the :
Approval of the Certificate of Incorporation :
of Rochester General Hospital Foundation, Inc., :
a Not-for-Profit Corporation. :

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF MONROE) SS.:
CITY OR ROCHESTER

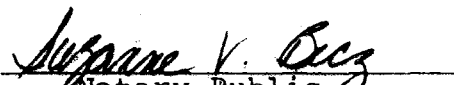
ROBERT C. SCUTT, being duly sworn, deposes and says that he is an associate of the firm of Harris, Beach, Wilcox, Rubin and Levey and is the incorporator of Rochester General Hospital Association, Inc., and that no previous application for approval has been requested of any Court.


Robert C. Scutt

Sworn to before me this

27th day of November,

1978.


Notary Public

SUZANNE V. BECZ

NOTARY PUBLIC, State of N.Y., Monroe County
My Commission Expires March 30, 1979

9

SUPREME COURT
STATE OF NEW YORK

COUNTY OF MONROE

In the Matter of an Application for the
Approval of the Certificate of Incorporation
of Rochester General Hospital Association, Inc.,
a Not-for-Profit Corporation.

)
)
) APPROVAL OF
) CERTIFICATE OF
) INCORPORATION BY
) A JUSTICE OF THE
) SUPREME COURT
)
)

I, Marshall E. Livingston, a Justice of the
Supreme Court of the State of New York for the Seventh Judicial
District, in which the office of the corporation is to be
located, hereby approve the foregoing Certificate of Incorporation
of Rochester General Hospital Association, Inc. and
consent that the same be filed.

Dated: 11/28/78

Marshall E. Livingston
J.S.C.

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CERTIFICATE OF INCORPORATION

OF

ROCHESTER GENERAL HOSPITAL ASSOCIATION, INC.

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STATE OF NEW YORK
DEPARTMENT OF STATE

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M. J. P. B.

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DEPARTMENT OF STATE

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J. Monroe
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11/11/78

HARRIS, BEACH, WILCOX, RUBIN AND LEVEY
TWO STATE STREET
ROCHESTER, N. Y. 14614

STATE OF NEW YORK

DEPARTMENT OF STATE

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



WITNESS my hand and official seal of the Department of State, at the City of Albany, on August 9, 2011.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State

F 950804000321

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
ROCHESTER GENERAL HOSPITAL ASSOCIATION, INC.

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

The undersigned, being the President and Secretary of Rochester General Hospital Association, Inc., hereby certify:

1. The name of the corporation is: Rochester General Hospital Association, Inc.

2. The corporation's Certificate of Incorporation was filed by the Department of State on December 12, 1978 pursuant to the Not-for-Profit Corporation Law.

3. The corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law and is and shall hereafter remain a Type B corporation under Section 201 of said Law.

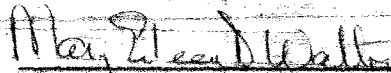
4. To specify the distributees of the assets and property of the corporation in the event of dissolution, the Certificate of Incorporation is hereby amended to delete in its entirety the text of Section 11 as previously stated and to substitute for it the following new Section 11:

11. In the event of dissolution, all of the remaining assets and property of the corporation shall, after necessary expenses thereof, be distributed to one or more not-for-profit affiliates of the corporation, provided that such distributee(s) shall then qualify under Section 501(c) (3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. If none of the not-for-profit affiliates of the corporation shall so qualify at the time of dissolution, then distribution shall be made to such other organization or organizations that are organized and operated exclusively for religious, charitable, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c) (3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. For the purpose of this Section, an "affiliate" shall mean any not-for-profit organization which controls, is controlled by, or is under common control with the corporation, and any other not-for-profit organization which expressly and specifically includes among its purposes the benefit or support of the corporation.

5. The foregoing amendments of the Certificate of Incorporation were authorized by the affirmative vote of a majority of all the members of the corporation entitled to vote thereon, with such vote being at least equal to a quorum.

6. The Secretary of State is hereby designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any such process is 1425 Portland Avenue, Rochester, New York 14621.

IN WITNESS WHEREOF, the undersigned have subscribed this Certificate of Amendment this 26th day of July, 1995 and hereby affirm that the statements contained herein are true under the penalties of perjury.



MARY EILEEN WALTER, President



NORMA Y. HORN, Secretary

ES10571

950804000321

Certificate of Amendment
of
Certificate of Incorporation
OR

Rochester General Hospital Association, Inc.
Under Section 803 of the Not-for-Profit
Corporation Law

FILED
AUG 4 12 02 PM '95

ICC
STATE OF NEW YORK
DEPARTMENT OF STATE
FILED AUG 04 1995

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TAXES
BY: *[Signature]*
Morse

56. 111 59 11

HARRIS, BEACH AND WILCOX
THE GRANITE BUILDING
130 EAST MAIN STREET
ROCHESTER, NEW YORK 14604-1608

950804000338

[Handwritten mark]

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 16th day of November 2023, approves the filing of the Restated Certificate of Incorporation of Rochester General Hospital Association, Inc., dated November 18, 2022.



Project # 231044-E
Sunset SNF Operations LLC d/b/a
Sunset Lake Center for Rehabilitation and Nursing

Program: Residential Health Care Facility
Purpose: Establishment

County: Sullivan
Acknowledged: February 21, 2023

Executive Summary

Description

Sunset SNF Operations LLC, a Delaware limited liability company authorized to conduct business in New York State, requests approval to be established as the new operator of Sullivan County Adult Care Center (SCACC). SCACC is a 146-bed, not-for-profit corporation, Article 28 residential health care facility (RHCF) with a 17-registrant licensed Adult Day Care Health Program (ADCHP). The RHCF and ADCHP programs occupy leased space at 256 Sunset Lake Road, Liberty (Sullivan County). Upon approval, the facility will be named Sunset Lake Center for Rehabilitation and Nursing.

On January 9, 2023, the County of Sullivan entered into a Facility Transition Agreement (FTA) with Sunset SNF Operations, LLC, for the sale and acquisition of the operations associated with the RHCF and ADCHP programs for the assumption of certain liabilities estimated at approximately \$1,000,000. The applicant will lease the premises from Sunset Lake Local Development Corporation (a not-for-profit entity unrelated to the applicant).

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

<u>Current Operator</u> County of Sullivan A Municipal Corporation
--

<u>Proposed Operator</u>	
Sunset SNF Operations, LLC	
<u>Members:</u>	
<u>Sunset Operations Holdings, LLC</u>	100%
<i>Esther Klein</i>	95%
<i>Kathryn Perez</i>	5%

OALTC Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this application. Current occupancy, as of September 6, 2023, was 74.0% for the facility and 86.8% for Sullivan County.

Program Summary

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

Financial Summary

The purchase price for the operations is the assumption of certain liabilities estimated to be approximately \$1 million, to be paid during the ordinary course of business. The proposed budget is as follows:

Budget:	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$15,981,985	\$16,140,457
Expenses:	<u>15,923,035</u>	<u>\$15,993,692</u>
Net Income:	\$58,950	\$146,765

Health Equity Impact Assessment
There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on January 1, 2023.

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 Aging and Long-Term Care

Approval contingent upon:

1. Submission of an executed Consulting 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]

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
November 16, 2023

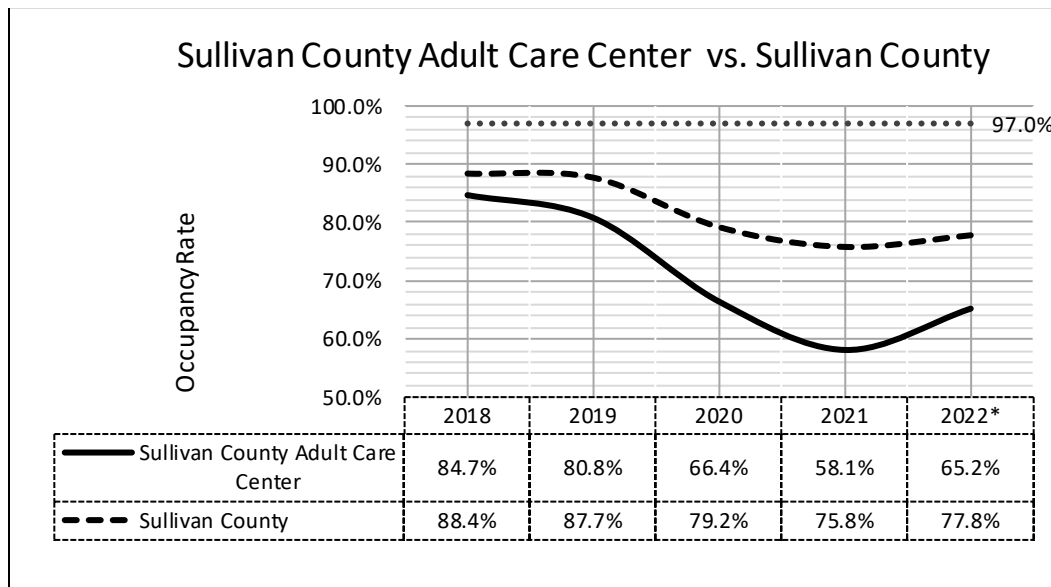
Need Analysis

Background and Analysis

The primary service area is Sullivan County, which has a population that is projected to decrease to 74,776 by 2028 based on Cornell Program of Applied Demographics estimates. Based upon the 2021 U.S. Census Population Estimates from the American Community Survey, the demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Sullivan County	New York State
Total Population (2021 Estimate)	78,230	20,114,745
Hispanic or Latino (of any race)	16.6%	19.2%
White (non-Hispanic)	70.2%	54.7%
Black or African American (non-Hispanic)	8.0%	13.9%
Asian (non-Hispanic)	1.8%	8.6%
Other (non-Hispanic)	3.4%	3.6%

Source: American Community Survey 5-year Estimates Data Profiles



*2022 data is self-reported and not certified

As of September 6, 2023, occupancy was 74.0% for the facility and 86.8% for Sullivan County.

The applicant states that the low historical occupancy has been due to the fact that the facility has been voluntarily limiting the number of new resident admissions in order to comply with minimum staffing ratios and to ensure that the facility's current residents receive the best care possible. The facility has experienced difficulties with hiring and retaining qualified nursing staff over the past few years.

The table below shows the CMS Rating and the utilization of the six closest RCHFs to Sullivan County Adult Care Center.

Facility Name	CMS Overall Rating	Beds	Distance from other RCHFs Miles/Distance	Occupancy			
	As of 6/2023			2019	2020	2021	2022
Sullivan County Adult Care Center	1	146	0 miles/0 mins	80.8%	66.4%	58.1%	65.2%
Achieve Rehab	3	140	3.6miles/7 mins	91.5%	86.0%	90.9%	85.7%
Roscoe Rehab	4	85	20.8 miles/25 mins	94.7%	84.7%	81.2%	86.2%
St Joseph's Place (Orange)	5	42	36.0 miles/44 mins	93.6%	70.9%	69.7%	59.2%
Highland Rehab (Orange)	1	98	38.3 miles/41 mins	89.3%	92.6%	91.1%	92.0%
Middletown Park (Orange)	5	230	38.6 miles/55 mins	86.8%	81.5%	84.6%	83.2%
Mountainside Care (Delaware)	5	82	42.7 miles/57 mins	95.0%	96.0%	82.0%	65.4%

The following table provides the Case Mix Index (CMI) for the facility and surrounding RCHFs, which reflects the relative resources predicted to provide care to a resident. The higher the case mix weight, the greater the resource requirement for the residents.

Case Mix Index	2019		2020		2021	
	All Payor	Medicaid Only	All Payor	Medicaid Only	All Payor	Medicaid Only
Sullivan County Adult Care Center	1.126	0.8282	1.0356	0.9206	1.029	0.923
Achieve Rehab	1.4137	1.0246	1.3333	1.345	1.311	1.156
Roscoe Rehab	1.261	1.2005	1.2545	1.3125	1.161	1.328
St Joseph's Place (Orange)	1.3164	0.8761	1.178	0.887	1.098	0.884
Highland Rehab (Orange)	1.5336	1.2385	1.4411	1.307	1.469	1.36
Middletown Park (Orange)	1.5242	1.2342	1.3783	1.2299	1.458	1.32
Mountainside Care (Delaware)	0.9741	0.8509	0.9163	0.9125	0.898	0.885

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 healthcare facility admissions that are Medicaid-eligible individuals in their planning area. This benchmark 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' Benefits 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.

An applicant will be required to make appropriate adjustments in its admission policies and practices to meet the resultant percentage. The Sullivan County Adult Care Center Medicaid admissions rate was significantly above the threshold of 75% of the Sullivan County rate for the years 2019 through 2021.

Medicaid Access	2019	2020	2021
Sullivan County Total	33.9%	38.5%	27.5%
<i>Sullivan Threshold Value</i>	<i>25.4%</i>	<i>28.9%</i>	<i>20.6%</i>
Sullivan County Adult Care	57.1%	90.8%	65.0%

Conclusion

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

Program Analysis

Program Description

	Existing	Proposed
Facility Name	Sullivan County Adult Care Center	Sunset Lake Center for Rehabilitation and Nursing
Address	256 Sunset Lake Road Liberty, NY 12754	Same
RHCF Capacity	146 beds	Same
ADHCP Capacity	17	Same
Type of Operator	Municipal Corporation (County)	Limited Liability Company
Class of Operator	Public	Proprietary
Operator	County of Sullivan	Sunset SNF Operations, LLC <u>Member:</u> Sunset SNF Operations Holdings, LLC 100% <u>Members:</u> <i>Esther Klein</i> 95% <i>Kathryn Perez</i> 5%

This application indicates that the proposed buyer will enter into a new CASA (consulting and services agreement) with Sunset Lakes Consulting LLC. The existing CASA between the County of Sullivan and Sunset Lakes Consulting will terminate once the ownership transaction described in this application is effectuated. There is a relationship between the parties in that the sole member of Sunset Lakes Consulting LLC is Esther Klein, who is also a 95% member of Sunset SNF Operations LLC, the proposed operating entity.

Upon approval of this Application, Sunset Lake Local Development Corporation (a not-for-profit entity unrelated to the applicant) will lease the RHCF to Sunset Operations LLC for a term of 20 years.

Character and Competence

Esther Klein discloses employment as a Teacher's Coach at Catapult Learning Center, LLC, located in Camden, New Jersey, and is also self-employed as a skilled nursing facility Operator since October 2018. Esther holds a high school diploma from Yeshiva Kehilath Yakov and discloses the following ownership interests:

New York Nursing Homes

Ten Broeck Center for Rehabilitation & Nursing (27.5%)	10/2018 to present
Westhampton Care Center (3%)	01/2018 to present
The New Jewish Home, Sarah Neuman (95%)	Pending

Out-of-State Nursing Homes

Valencia Hills Health and Rehabilitation Center (FL) (11.25%)	02/2022 to present
Seven Hills Health and Rehabilitation Center (FL) (11.25%)	02/2022 to present
Springs at Boca Ciega Bay (FL) (11.25%)	02/2022 to present
Springs at Lake Pointe Woods (FL) (11.25%)	02/2022 to present
Surrey Place Healthcare and Rehabilitation (FL) (11.25%)	02/2022 to present
Diamond Ridge Health and Rehabilitation Center (FL) (11.25%)	02/2022 to present
Madison Health and Rehabilitation Center (FL) (11.25%)	02/2022 to present
Tampa Lakes Health and Rehabilitation Center (FL) (11.25%)	02/2022 to present
Scott Lake Health and Rehabilitation Center (FL) (11.25%)	02/2022 to present

End-Dated Nursing Homes

Abbey Woods Center for Rehabilitation and Healing (MO) (30%)

04/2017 to 06/2019

Kathryn Perez lists employment as Regional Director of Operations at Infinite Care, a skilled nursing consulting company located in Lakewood, NJ, and was previously employed as the administrator at Ten Broeck Commons in Lake Katrine, New York. Kathryn holds a bachelor’s degree in Education/Recreation Therapy from SUNY Cortland and is a Licensed Nursing Home Administrator in New York with a license in good standing. Kathryn is also a Certified Therapeutic Recreation Specialist with an active certification through the National Council for Therapeutic Recreation Certification and discloses the following health facility ownership interests.

New York Nursing Homes

The New Jewish Home, Sarah Neuman (5%)

Pending

End-Dated Nursing Homes

Evergreen Commons (NY) (5%)

05/2008 to 04/2016

Ten Broeck Center for Rehabilitation & Nursing (NY) (8.5%)

09/2004 to 09/2018

Quality Review

The proposed applicant has been evaluated, in part, on the distribution of CMS Star ratings for their portfolio. For the proposed owner, 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*			
		< 48 Months		48 months or more	
<u>Proposed Owner</u>	<u>Total Nursing Homes</u>	<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes With a Below Average Rating</u>	<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes With a Below Average Rating</u>
Esther Klein	11	9	22%	2	0%
Kathryn Perez	0	N/A	N/A	N/A	N/A

*Duration of ownership as of 11/16/2023

Data date: 09/2023

New York: The proposed owner’s portfolio includes ownership in two New York facilities. Both of the New York facilities in the ownership portfolio have a CMS overall quality rating of average or higher.

Florida: The proposed owner’s portfolio includes ownership in nine Florida facilities. Seven of the Florida facilities in the ownership portfolio have a CMS overall quality rating of average or higher. The remaining facilities, Diamond Ridge Health and Rehabilitation Center and Scott Lake Health and Rehabilitation Center, have a CMS overall quality rating of below average or lower. To improve the overall quality rating at Diamond Ridge Health and Rehabilitation Center and Scott Lake Health and Rehabilitation Center, the applicant indicated the following:

Diamond Ridge Health and Rehabilitation Center has two stars overall and three stars for staffing. Regarding the overall rating of two stars, this was the result of an Immediate Jeopardy (IJ) violation received by the facility during an annual survey that was conducted from October 21-24, 2019. It is important to note that this IJ was received by the facility prior to Ms. Klein’s affiliation. The IJ related to a three-minute delay in staff providing Cardio-Pulmonary Resuscitation (CPR) to a resident who was having a heart attack. The resident subsequently passed away. This IJ was subsequently removed on October 25, 2019, and the following actions have been implemented by the facility:

- *Regular audits are conducted to verify that all licensed nurses have current CPR certification;*
- *Re-education was provided to nursing staffing by the facility’s Staff Development Office regarding the proper procedures to utilize when responding to emergency care issues;*
- *Mock drills are performed on a regular basis to assess staff response to emergency care; and*

- *Random weekly audits are conducted by the Director of Nursing to ensure the proper procedures for emergency care are performed. The results of these audits are presented to the Quality Assurance and Improvement Committee on a monthly basis.*

Diamond Ridge Health and Rehabilitation Center is waiting for its next annual survey to take place. Once the survey has been conducted, the facility expects to show three stars in the Overall category.

Scott Lake Health and Rehabilitation Center received three Immediate Jeopardy tags on May 19, 2023, all of which were corrected on June 19, 2023. A Civil Monetary Penalty (CMP) in the amount of \$15,592 relating to these tags was paid by the facility on August 8, 2023.

Since then, the facility Administrator has been replaced. Additional support has been added from the facility's clinical consultant team. The clinical consultant team continues to provide daily oversight to improve facility practices related to policy, procedures, and programming. This oversight includes education of staff, auditing of processes, and observation of the care being provided to facility residents. Further, to improve the facility's quality measures, the facility is in the process of hiring a Resident Services Director who will have the education and experience to support the facility's initiative to increase the quality of care being provided to its residents. Finally, the facility will increase its Registered Nurse hours by filling its vacant unit manager position with an experienced Registered Nurse. The facility is optimistic that these initiatives will lead to an increase in the Overall star rating of the facility.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Sullivan County Adult Care Center	Subject Facility	*	*	***	**
Ten Broeck Center for Rehabilitation & Nursing	Current	****	***	*****	**
	10/2018	*****	****	*****	**
Westhampton Care Center	Current	****	***	*****	**
	1/2018	****	***	*****	***
Florida					
Valencia Hills Health and Rehabilitation Center	Current	***	***	***	***
	2/2022	*	**	****	*
Seven Hills Health and Rehabilitation Center	Current	****	****	****	***
	2/2022	****	***	**	****
Springs at Boca Ciega Bay	Current	****	***	*****	****
	2/2022	****	***	***	****
Springs at Lake Pointe Woods	Current	*****	****	*****	****
	2/2022	*****	*****	*****	***
Surrey Place Healthcare and Rehabilitation	Current	*****	*****	*****	****
	2/2022	*****	****	*****	****

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Diamond Ridge Health and Rehabilitation Center	Current	**	*	*****	***
	2/2022	**	*	*****	***
Madison Health and Rehabilitation Center	Current	*****	*****	***	****
	2/2022	*****	*****	***	****
Tampa Lakes Health and Rehabilitation Center	Current	***	***	****	***
	2/2022	***	**	****	*****
Scott Lake Health and Rehabilitation Center	Current	*	*	****	***
	2/2022	****	***	****	****

Data date: 9/2023

End Dated Ownership					
New York					
Ten Broeck Center for Rehabilitation & Nursing	9/2018	*****	****	*****	**
	9/2004*	*****	*****	***	**
Evergreen Commons	4/2016	*	*	****	**
	5/2008*	*	*	**	*
Missouri					
Abbey Woods Center for Rehabilitation and Healing	6/2019	**	*	*****	**
	4/2017	***	**	**	****

Data as of 01/2009

Enforcement History

New York

A review of the operations of Westhampton Care Center for the time period indicated above reveals the following:

- The facility was fined \$14,000.00 pursuant to Stipulation and Order NH-22-116 for surveillance findings on 1/18/2022. Deficiencies were found under 415.19(a)(1)(2) Infection Control – PPE: Facility staff were observed exiting and entering the rooms of residents on droplet precautions without doffing and donning PPE and 415.12 (h)(2) Quality of Care: A resident, who required total dependence of two persons for bathing, sustained a fall with a head injury when care to the resident was provided without assistance. A federal CMP in the amount of \$11,435.00 was also assessed for surveillance findings on 1/18/2022.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order NH-19-003 for surveillance findings on 9/10/2018. Deficiencies were found under 415.4(b) abuse, verbal, sexual, physical, and mental, corporal punishment, and involuntary seclusion. A federal CMP in the amount of \$7,036.25 was also assessed for surveillance findings on 9/10/2018.

A review of the operations of Ten Broeck Center for Rehabilitation & Nursing for the time period indicated above reveals no enforcements.

A review of the operations of Evergreen Commons for the time period indicated above reveals the following:

- The facility was fined \$12,000.00 pursuant to Stipulation and Order NH-16-150 for surveillance findings on 9/8/2014. Deficiencies were found under 415.11(c)(3)(ii) Resident assessment services must meet professional standards and 415.12 Quality of care highest practicable potential.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order NH-16-064 for surveillance findings on 5/13/2014. Deficiencies were found under 415.12(h)(1) Quality of Care accident-free environment.

Florida

A review of the operations of Valencia Hills Health and Rehabilitation Center for the time period indicated above reveals no enforcements.

A review of the operations of Seven Hills Health and Rehabilitation Center for the time period indicated above reveals no enforcements.

A review of the operations of Springs at Boca Ciega Bay for the time period indicated above reveals no enforcements.

A review of the operations of Springs at Lake Pointe Woods for the time period indicated above reveals no enforcements.

A review of the operations of Surrey Place Healthcare and Rehabilitation for the time period indicated above reveals no enforcements.

A review of the operations of Diamond Ridge Health and Rehabilitation Center for the time period indicated above reveals no enforcements.

A review of the operations of Madison Health and Rehabilitation Center for the time period indicated above reveals no enforcements.

A review of the operations of Tampa Lakes Health and Rehabilitation Center for the time period indicated above reveals no enforcements.

A review of the operations of Scott Lake Health and Rehabilitation Center for the time period indicated above reveals the following:

- The facility was assessed a CMP of \$15,593.00 based on surveillance findings on 5/19/2023 under F609 for failure to timely report suspected abuse, neglect, or theft and report the results of the investigation to proper authorities, F689 for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents, and F757 for failure to ensure each resident's drug regimen must be free from unnecessary drugs.

Missouri

Information provided by the State of Missouri for Abbey Woods during the time period indicated above revealed the following:

- A Federal CMP was paid for surveillance findings on 7/18/2017. Findings were related to tag 684 Quality of Care cited at a G level. A revisit survey was completed on 8/23/2017, and the facility was found to be in compliance.

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 (2022) results and the first and third-year operating budgets after the change in ownership in 2024 dollars, summarized as follows:

	<u>Current Year</u> <u>(2022)</u>		<u>First Year</u> <u>(2024)</u>		<u>Third Year</u> <u>(2026)</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Revenues:						
Medicaid FFS	\$239.73	\$6,435,960	\$258.70	\$10,209,619	\$258.70	\$10,311,715
Medicaid MC	\$239.73	401,064	\$245.80	604,412	\$245.76	610,456
Medicare FFS	\$551.68	1,531,456	\$674.95	2,754,486	\$674.92	2,782,031
Medicare MC	\$551.68	357,487	\$674.69	642,978	\$675.06	649,408
Private	\$253.49	700,403	\$271.49	1,102,501	\$271.53	1,113,526
Other-Assessment		0		533,177		538,509
ADCHP		<u>134,812</u>		<u>134,812</u>		<u>134,812</u>
Total Revenues		\$9,561,182		\$15,981,985		\$16,140,457
Expenses:						
Operating	\$444.61	\$15,431,095	\$294.71	\$15,035,590	\$292.53	\$15,073,927
Capital	<u>\$2.52</u>	<u>87,446</u>	<u>\$17.39</u>	<u>887,445</u>	<u>\$17.85</u>	<u>919,765</u>
Total Expenses	\$447.13	\$15,518,541	\$312.10	\$15,923,035	\$310.38	\$15,993,692
Net Income (Loss)		<u>(\$5,957,359)</u>		<u>\$58,950</u>		<u>\$146,765</u>
RHCF Patient Day		34,707		51,019		51,529
RHCF Utilization %		65.13%		95.74%		96.70%

The following is noted concerning the submitted RHCF operating budget:

- The current year reflects the facility's 2022 revenues and expenses.
- Medicaid revenue is based on the reimbursement methodology under the 2023 Nursing Home Medicaid Rate Sheet. The projected Medicaid Manage Care rate is based on 95% of the 2023 Medicaid Fee for Service rate.
- Medicare rates are based on the facility's forecast. Private pay rates are projected based on the current operator's reimbursement rates.
- Current year staffing is based on 2022 staffing levels. Years One and Three staffing is based on the applicant's plan to improve the facility's staffing ratios. The applicant plans to leverage its relationship with area staffing agencies, professional associations, job training programs, and health fairs to locate and hire additional staff.
- Expenses are based on 2022 operating expenses, increased by 2% for most non-payroll items and increased volume. Administrative expenses are reduced due to the planned elimination of operating expenses.
 - The projected percentage of direct care staffing costs to projected facility revenues is 57.7% in Year One and 59.0% in Year Three, exceeding the 40% requirement in NYS Public Health Law §2808.
 - The percentage of direct resident care costs to projected facility revenue is 74.0% in Year One and 73.5% in Year Three, exceeding the 70% requirement in NYS Public Health Law §2808.
 - The facility's projected profit percentage is forecasted to be 0.4% in Year One and 0.9% in Year Three, less than the 5% maximum outlined in NYS Public Health Law §2808.
- The projected utilization for the facility is 95.74% in Year One and 96.70% in Year Three. It was noted that the facility's annual occupancy averages for 2020, 2021, and 2022 were 66.4%, 58.1%, and 65.13%, respectively. Occupancy was at 74.7% for the week ended September 13, 2023 (self-reported information to the Department).
- The applicant states that the low historical occupancy has been because the facility has voluntarily limited the number of new resident admissions to comply with minimum staffing ratios and ensure

that the facility's current residents receive the best care possible. The facility has experienced difficulties hiring and retaining qualified nursing staff over the past few years.

- The applicant plans to improve occupancy by effectively marketing the facility to prospective residents and implementing the following:
 - The applicant intends to leverage its relationship with area staffing agencies, professional associations, job training programs, and health fairs to locate and hire additional staff.
 - Strengthen relationships with area doctors, hospital discharge planners, and residents' family members regarding improvements being made at the facility;
 - Updating and beautifying resident rooms and dining rooms

Utilization by the payor for the first and third years after the change in ownership is summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>(2022)</u>		<u>(2024)</u>		<u>(2026)</u>	
<u>Pavor</u>	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>
Medicaid FFS	26,847	77.35%	39,465	77.35%	39,860	77.35%
Medicaid MC	1,673	4.82%	2,459	4.82%	2,484	4.82%
Medicare FFS	2,776	8.00%	4,081	8.00%	4,122	8.00%
Medicare MC	648	1.87%	953	1.87%	962	1.87%
Private Pay	<u>2,763</u>	<u>7.96%</u>	<u>4,061</u>	<u>7.96%</u>	<u>4,101</u>	<u>7.96%</u>
Total	34,707	100%	51,019	100%	51,529	100%

The facility's Medicaid admissions of 90.8% in 2020 and 65.0% in 2021 were above Sullivan County's 75% threshold rate of 28.9% for 2020 and 20.6% for 2021.

The breakeven utilization is projected at 96.20% in the first year.

Facility Transition Agreement (FTA)

The applicant submitted an executed FTA to acquire the operations associated with the RHC and ADHP, which will become effective upon PHHP approval. The terms are summarized below:

Date:	January 9, 2023
Seller:	County of Sullivan
Buyer:	Sunset SNF Operations, LLC
Asset Acquired:	Rights, title, and interest in the assets used in the operations. Includes furniture and equipment, inventory, computers, intellectual property, trade names, permits, personal property leases, assigned contracts, books, and records, patient and supplier data, plans, deposits (starting 10/1/21), accounts receivable, and cash
Excluded Assets:	Before 10/1/21, accounts receivable, retroactive adjustments, intercompany accounts, corporate records, tax refunds, domain names, email addresses, employee benefit plans, and accrued payroll taxes.
Assumption of Liabilities:	Expenses from the operations on and after October 1, 2021 (the Consulting Date) accrue by the Consulting Agreement dated January 9, 2023.
Excluded Liabilities:	Any liability before the closing date
Purchase Price:	Assumption of Certain Liabilities estimated at \$1 million
Payment of the Purchase Price:	Liabilities will be paid off during the ordinary course of business.

BFA Attachment A presents the net worth summary for Sunset SNF Operations, LLC members, which reveals sufficient resources to cover the assumed liabilities. The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and surcharges, assessments or fees due from the transferor under Article 28 of the Public Health Law concerning the period before the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of May 19, 2023, the facility had no outstanding Medicaid liabilities.

Consulting Agreement

Sunset SNF Operations LLC entered a draft Consulting Services Agreement with Sunset Lakes Consulting LLC; terms are summarized below:

Facility Operator:	Sunset SNF Operations LLC
Service Provider:	Sunset Lake Consulting LLC
Term:	One year and renews for five (5) successive additional terms of one (1) year and then annually.
Services:	Provide or assist with resident relations, personnel, service contracts, maintenance and repair, collection, expenses, reports, records, legal proceedings, process insurance claims, maintenance of licenses, rate schedules, accounting and report supervision, cost reports and tax returns, and compliance with legal requirements.
Compensation:	\$400,000 per year

Sunset SNF Operations LLC has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation, and understands that the Department will hold the applicant accountable.

County of Sullivan d/b/a Sullivan County Adult Care Center currently has a Consulting Agreement with Sunset Lakes Consulting LLC, which will continue until the earlier of the CON Transition Date or July 31, 2027. Esther Klein (member of the proposed operator) is a 100% Sunset Lake Consulting LLC member. According to the County of Sullivan's 2022 certified financial statement, Sunset Lakes Consulting is paid \$360,000 annually or \$30,000 monthly.

Lease Agreement

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

Dated:	February 23, 2022
Premises:	A 146-bed RHCF is located at 256 Sunset Lake Road, Liberty, New York, 12754.
Landlord:	Sunset Lake Local Development Corporation
Lessee:	Sunset SNF Operations LLC
Term:	Twenty years
Rent:	\$800,000 increases by 2% per year
Provisions:	Triple Net

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 the rental rate.

Capability and Feasibility

The purchase price for the operations is the assumption of certain liabilities estimated to be approximately \$1 million, which will be paid off during the ordinary course of business. There are no project costs associated with this application. The working capital requirement is estimated at \$2,653,839 based on two months of first-year expenses funded from equity by the applicant members. A review of BFA Attachment A, Members' Net Worth Summary, reveals sufficient resources to meet the working capital. Kathryn Perez has provided an affidavit to contribute equity disproportionate to her membership interest.

The budget projects a net income of \$58,950 in the first year and \$146,765 by the third year. Total revenues in the first year are expected to increase by \$6,420,803 as projected utilization climbs from 65.13% to 95.74%. Overall expenses are projected to increase by \$404,494 in the first year, primarily from a \$799,999 increase in rent expenses offset by a \$395,505 reduction in operating costs. Change in operating expenses consists of an increase in salaries and wages of \$1,002,637, a decrease in employee benefits of \$705,516 (going from 59.06% to 40% wages), and a net decrease of \$692,626 primarily from Other Direct Expenses. BFA Attachment B presents Sunset SNF Operations LLC's pro forma balance sheet, which shows the entity will start with \$2,653,839 in members' equity. The budget appears reasonable.

BFA Attachment C presents Sullivan County Adult Care Center's financial summary for 2020 through 2022. The RHCf had negative assets, negative working capital, and operating loss from 2020 through 2022.

BFA Attachment D presents the proposed members' ownership interest in the affiliated RHCfs and their financial summaries. Based on the certified financial statements from 2020 through 2022, the facilities had an average positive working capital of \$1,358,161, average net assets of \$4,246,317, and an average net income of \$2,927,588.

Conclusion

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

Attachments

LTCOP Attachment A	Long-Term Care Ombudsman Program Recommendation
BHFP Attachment	Map
BFA Attachment A	Members' Net Worth of Sunset SNF Operations LLC
BFA Attachment B	Pro Forma Balance Sheet, Sunset SNF Operations LLC
BFA Attachment C	Financial Summary Sullivan County Adult Care Center 2019-2021 and their 2021 Certified Financial Statement
BFA Attachment D	Proposed Members' Ownership Interest in the Affiliated RHCfs and Financial Summary

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 16th day of November 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Sunset SNF Operations LLC as the new operator of Sullivan County Adult Care Center, a 146-bed Residential Health Care Facility currently operated by The County of Sullivan at 256 Sunset Lake Road, Liberty, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

231044 E

Sunset SNF Operations LLC d/b/a Sunset Lake
Center for Rehabilitation and Nursing

APPROVAL CONTINGENT UPON:

1. Submission of an executed Consulting 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]

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]

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



Project # 192204-E
Highland Nursing Home, Inc. d/b/a
North Country Nursing & Rehabilitation Center

Program: Residential Health Care Facility
Purpose: Establishment
County: St. Lawrence
Acknowledged: October 24, 2019

Executive Summary

Description

Highland Nursing Home, Inc., a 140-bed, proprietary, Article 28 residential health care facility (RHCF) at 182 Highland Road, Massena (St. Lawrence County), requests approval to transfer 100% ownership from three current shareholders to nine new shareholders.

On November 30, 2018, Highland Nursing Home, Inc. entered into a Stock Purchase Agreement (SPA) to sell all issued and outstanding capital stock in the corporation. This initial SPA was then amended three times, on July 10, 2019, July 1, 2022, and January 23, 2023, based on shareholder changes. The details of the initial and amended SPAs can be found in the Financial Analysis section of the exhibit.

Ownership of Highland Nursing Home, Inc. before and after the requested change is as follows:

Table with 2 columns: Shareholders, %
Current Ownership
Highland Nursing Home, Inc.
Shareholders: %
Jeffrey Goldstein 33.4%
Alexander Sherman 33.3%
Lea Sherman 33.3%
Total 100%

Table with 2 columns: Shareholders, %
Proposed Ownership
Highland Nursing Home, Inc.
Shareholders: %
Menajem Salamon 35.00%
Mordejai Salamon 17.00%
Joseph Landa 13.75%
Joshua Landa 13.75%
Suri Reich 5.00%
Yossi Mayer 5.00%
Hellen Majerovic 4.50%
Blimie Perlstein 5.00%
Tirtza Salamon 1.00%
Total 100%

Highland Nursing Home, Inc. leases the premises from 182 Highland Road, LLC. There is a relationship between the proposed new shareholders of Highland Nursing Home, Inc. and the members of 182 Highland Road, LLC, in that ownership is overlapping but not identical.

OALTC Recommendation
Contingent Approval

Need Summary
There will be no need review per Public Health Law §2801-a (4).

Program Summary
The individual background review indicates the 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 purchase price of the stock is \$1,863,461, funded through the assumption of a 10-year Promissory Note at 3% interest. The proposed budget is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$14,699,483	\$14,699,483
Expenses	14,351,254	14,435,347
Net Income	\$348,229	\$264,136

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project pursuant to Public Health Law §2802-b, as it was received by the Department on October 17, 2019.

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 Aging and Long-Term Care

Approval contingent upon:

1. Submission of a photocopy of complete and fully executed Shareholder Stock Certificates acceptable to the Department. [CSL]
2. Submission of an executed lease agreement acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and 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

November 16, 2023

Program Analysis

Project Proposal

	Existing	Proposed
Facility Name	Highland Nursing Home Inc.	North Country Nursing and Rehabilitation Center
Address	182 Highland Road Massena, NY 13662	Same
RHCF Capacity	140	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Business Corporation	Same
Class of Operator	Proprietary	Same
Operator	Highland Nursing Home Inc. <u>Shareholders:</u> Lea Sherman 33.3% Jeffrey Goldstein 33.4% Alexander Sherman 33.3%	Highland Nursing Home Inc. <u>Shareholders:</u> Menajem (Mark) Salamon* 35.00% Mordejai (Michael) Salamon** 17.00% Joseph Landa*** 13.75% Joshua Landa 13.75% Suri Reich 5.00% Yossi Mayer 5.00% Blimie Perlstein 5.00% Helen Majerovic 4.50% Tirtza Salamon 1.00% <i>* President and Chief Executive Officer</i> <i>** Vice President</i> <i>*** Secretary and Treasurer</i>

Character and Competence

Menajem (Mark) Salamon lists concurrent employment as Executive Director and Licensed Nursing Home Administrator of Gold Crest Care Center, Bronx, NY, as well as Chief Executive Officer of Highland Nursing Home d/b/a North Country Center for Nursing and Rehabilitation (the subject facility). Menajem (Mark) holds a bachelor's degree in Jewish Studies from the Israel Torah Research Institute and is licensed as a Nursing Home Administrator in both New York and New Jersey, with the New York license currently in good standing. The following healthcare facility ownership interests were disclosed:

New York Nursing Homes

Gold Crest Care Center (7.5%)	01/2022 to present
Windsor Park Rehab & Nursing Center (7.5%)	01/2022 to present

Out-of-State Nursing Homes

Advanced Center for Nursing and Rehabilitation [CT] (40%)	10/2016 to present
West Haven Center for Nursing and Rehabilitation [CT] (44%)	11/2021 to present
Southport Center for Nursing and Rehabilitation [CT] (44%)	11/2021 to present
New Haven Center for Nursing and Rehabilitation [CT] (44%)	11/2021 to present
Waterbury Center for Nursing and Rehabilitation [CT] (44%)	11/2021 to present
Torrington Center for Nursing and Rehabilitation [CT] (44%)	11/2021 to present

Mordejai (Michael) Salamon lists concurrent employment as Director of Business Development at Gold Crest Care Center, Bronx, NY (responsibilities include marketing, implementation of new strategic initiatives, and optimizing occupancy) and as Chief Marketing Officer at Tupper Lake Center, LLC, Tupper Lake, NY. Previously, Mordejai (Michael) was Director of Marketing for Fieldston Lodge Care Center, Bronx, NY. Mordejai (Michael) holds a bachelor's degree in Business Management from Fairleigh Dickenson University and discloses the following healthcare facility ownership interests:

Out-of-State Nursing Homes

Advanced Center for Nursing and Rehabilitation [CT] (10%)	10/2016 to present
West Haven Center for Nursing and Rehabilitation [CT] (7%)	11/2021 to present
Southport Center for Nursing and Rehabilitation [CT] (7%)	11/2021 to present
New Haven Center for Nursing and Rehabilitation [CT] (7%)	11/2021 to present
Waterbury Center for Nursing and Rehabilitation [CT] (7%)	11/2021 to present
Torrington Center for Nursing and Rehabilitation [CT] (7%)	11/2021 to present

Joseph Landa lists employment as Financial Supervisor at Hollis Park Nursing Home, Hollis, NY, and prior to employment at Hollis Park Nursing Home. Joseph was a student at Shor Yoshuv Institute in Lawrence, NY, has a high school diploma, and discloses the following healthcare facility ownership interests:

Out-of-State Nursing Homes

Advanced Center for Nursing and Rehabilitation [CT] (15%)	10/2016 to present
Torrington Center For Nursing and Rehabilitation [CT] (36.5%)	11/2021 to present

Joshua Landa reports providing Fiscal Oversight for the following facilities: Windsor Park Nursing Home, Queens Village, NY; Valley View Manor, Norwich, NY; Sunnyside Care Center, East Syracuse, NY; and Bethany Gardens, Rome, NY. Joshua is also currently a student of Judaiah Studies at Shor Yoshuv Institute in Lawrence, NY, and discloses the following healthcare facility ownership interests:

Out-of-State Nursing Homes

Advanced Center for Nursing and Rehabilitation [CT] (15%)	10/2016 to present
Torrington Center For Nursing and Rehabilitation [CT] (36.5%)	11/2021 to present

Suri Reich reports working in Social Services for the nursing home, Wellsville Manor Care Center, Wellsville, NY, remotely from Brooklyn, NY. Previously, Suri was employed as a teacher for Beth Jacob of Boro Park. Suri has a high school diploma and discloses the following healthcare facility ownership interests:

New York Nursing Homes

Oak Hill Rehabilitation and Nursing Care Center (12.5%)	02/2019 to present
River View Rehabilitation and Nursing Care Center (12.5%)	02/2019 to present

Yossi Mayer lists concurrent employment working in Maintenance for the nursing home Fieldston Lodge Care Center, Bronx, New York, and as Assistant Administrator for the nursing home Gold Crest Care Center, Bronx, New York. Yossi holds a bachelor's degree in Talmudic Law from Yeshivas Mir Yerushalayim and a bachelor's degree in Advanced Talmudic Law from United Talmudical Seminary. The following healthcare facility ownership interests are disclosed:

New York Nursing Homes

Oak Hill Rehabilitation and Nursing Care Center (12.5%)	02/2019 to present
River View Rehabilitation and Nursing Care Center (12.5%)	02/2019 to present

Out-of-State Nursing Homes

West Haven Center for Nursing and Rehabilitation [CT] (1.25%)	11/2021 to present
Southport Center for Nursing and Rehabilitation [CT] (1.25%)	11/2021 to present
Waterbury Center for Nursing and Rehabilitation [CT] (1.25%)	11/2021 to present
Torrington Center for Nursing and Rehabilitation [CT] (1.25%)	11/2021 to present
New Haven Center for Nursing and Rehabilitation [CT] (1.25%)	11/2021 to present

Blimie Perlstein lists employment as Owner/Broker of P&G Brokerage, Inc., which is an insurance brokerage firm in Brooklyn, NY. Blimie has a high school diploma and did not disclose any healthcare facility ownership interests.

Helen Majerovic lists employment as a Receptionist with Flawless Dental in Brooklyn, NY. Helen has a high school diploma and discloses the following healthcare facility ownership interests:

New York Nursing Homes

Oak Hill Rehabilitation and Nursing Care Center (5%) 02/2019 to present
 River View Rehabilitation and Nursing Care Center (10%) 02/2019 to present

Tirtza Salamon lists employment as a Bookkeeper (part-time) for Waterbury Center for Nursing and Rehabilitation, Waterbury, CT. Tirtza has a high school diploma and discloses the following healthcare facility ownership interests:

New York Nursing Homes

Windsor Park Rehab and Nursing Center (6%) 08/2023 to present

Quality Review

CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)					
Proposed Owner	Total Nursing Homes	Duration of Ownership*			
		< 48 Months		48 months or more	
		Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating
Menajem (Mark) Salamon	8	7	71.4%	1	100%
Mordejai (Michael) Salamon	6	5	100%	1	100%
Joseph Landa	2	1	100%	1	100%
Joshua Landa	2	1	100%	1	100%
Suri Reich	2	0	N/A	2	50%
Yossi Mayer	7	5	100%	2	50%
Blimie Perlstein	0	N/A	N/A	N/A	N/A
Helen Majerovic	2	0	N/A	2	50%
Tirtza Salamon	1	1	0%	N/A	N/A

DURATION OF OWNERSHIP AS OF 11/16/2023

Data date: 09/2023

New York. The proposed owner's portfolio includes ownership in four New York facilities, three of which have a CMS overall quality rating of above average or higher. The remaining facility, Oak Hill Rehabilitation and Nursing, has a CMS overall quality rating of one star (much below average rating). To improve the quality of Oak Hill Rehabilitation and Nursing, the applicant indicated the following:

Regarding Oak Hill Rehabilitation and Nursing, the applicant states that the low overall rating was due to an error in the Payroll-Based Journal reports that were submitted to CMS. As a result of this error, the facility's staffing rating went from two (2) stars to one (1) star, which caused the facility's overall rating to decrease to one (1) star. This error has since been corrected, and the facility expects that its overall star rating will be two (2) stars within the near term.

Connecticut. The proposed owner's portfolio includes ownership in six Connecticut facilities, which have a CMS overall quality rating of below average or much below average. Please note: New Haven Center for Nursing and Rehabilitation is on the CMS SFF (Special Focus Facility) Candidate List (added to the list 13 months ago as of 09/2023; thus, was added to the list while under the current management). To improve the quality at the six Connecticut facilities, the applicant indicated the following:

Regarding Advanced Center for Nursing and Rehabilitation, West Haven Center for Nursing and Rehabilitation, and Southport Center for Nursing and Rehabilitation, the applicant states that there has not been a Department of Health survey at these facilities in more than two (2) years. As a result, these facilities' star ratings have not been updated since that time. Although these

facilities have not had any surveys in the past two (2) years, these facilities expect the next survey to be positive, which should serve to increase the overall star rating at these facilities.

Regarding New Haven Center for Nursing and Rehabilitation, the applicant states that New Haven Center for Nursing and Rehabilitation received several G-level tags that ultimately led to the facility being placed on the Special Focus Facility (SFF) Candidate List. Mr. Salamon's affiliation with this facility began in November of 2021, which is a period of approximately nine (9) months prior to the facility being placed on the SFF Candidate List in August of 2022. Mr. Salamon states that it often takes longer than nine (9) months for positive institutional changes to be reflected in the quality of a nursing facility. However, as a testament to the positive operational improvements that have been made to the facility, Mr. Salamon reports that, as of July 25, 2023, the Connecticut Department of Public Health has removed the Independent Nurse Consultant (INC) who was placed at the facility as part of the Connecticut Department of Public Health's regulatory oversight of all new operators of nursing homes located within Connecticut. The removal of the INC was the result of several positive quality inspections conducted by the INC. Please see Attachment 2 for a copy of the letter sent to the facility regarding the removal of the INC. Mr. Salamon also states that his group continues to work with facility staff to improve quality even further. As additional evidence supporting the positive changes being made at the facility, Mr. Salamon reports that the facility received no G-level tags or Immediate Jeopardy violations during the facility's last survey. As a result of these positive developments, Mr. Salamon is optimistic that this facility will be removed from the SFF Candidate List within the near term.

Regarding Waterbury Center for Nursing and Rehabilitation and Torrington Center for Nursing and Rehabilitation, these facilities' current overall star rating of two (2) stars represents a one-(1)-star increase, as compared to these facilities' overall star rating in 2021 when Mr. Salamon first became affiliated with these facilities. As Mr. Salamon continues to make operational improvements at the facility, he is hopeful that these facilities' overall star rating will increase to three (3) stars within the near term.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Highland Nursing Center	Subject Facility	*	*	‡	***
Gold Crest Care Center	Current	*****	****	*****	**
	01/2022	*****	*****	*****	**
Windsor Park Rehab & Nursing Center	Current	*****	*****	****	***
	01/2022	*****	*****	****	***
Oak Hill Rehabilitation and Nursing Care Center	Current	*	**	*	*
	02/2019	*	**	***	*
River View Rehabilitation and Nursing Care Center	Current	****	****	*****	*
	02/2019	*	*	**	***
Connecticut					
Advanced Center for Nursing and Rehabilitation	Current	*	*	***	*
	10/2016	*	*	***	***

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
West Haven Center for Nursing and Rehabilitation	Current	*	*	***	*
	11/2021	***	**	*****	***
Southport Center for Nursing and Rehabilitation	Current	*	*	‡	**
	11/2021	*	*	**	**
New Haven Center for Nursing and Rehabilitation†	Current	*	*	***	*
	11/2021	*	*	**	***
Waterbury Center for Nursing and Rehabilitation	Current	**	**	*****	***
	11/2021	**	*	***	*****
Torrington Center for Nursing and Rehabilitation	Current	**	**	***	**
	11/2021	*	*	*****	***

‡ This facility submitted data that could not be verified through an audit.

† Special Focus Facility Candidate (on the list for 13 months as of 09/2023)

Data date: 09/2023

Enforcement History

New York

A review of the operations of Gold Crest Care Center for the time period indicated above reveals no enforcements.

A review of the operations of Windsor Park Rehab & Nursing Center for the time period indicated above reveals no enforcements.

A review of the operations of River View Rehabilitation and Nursing Care Center for the time period indicated reveals the following:

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-20-077 for surveillance findings on 10/23/2020. Deficiencies were found under 10 NYCRR 415.19 Infection Control. The facility failed to create and implement a CDC and State Operations Manual consistent policy, which effectively communicated a COVID-19-positive resident's status to EMS and the hospital when transferring a symptomatic resident to the hospital. In addition, the facility failed to place a mask on a COVID-19-positive resident prior to EMS transfer to the hospital.
- The facility was assessed a federal CMP of \$3,250 on 10/23/2020 for failure to provide and implement an infection prevention and control program.

A review of the operations of Oak Hill Rehabilitation and Nursing Care Center for the time period indicated reveals the following:

- The facility was assessed federal CMPs of \$1,965 on 11/22/2021, \$1,638 on 11/15/2021, \$1,310 on 08/30/2021, \$975 on 12/14/2020 and \$655 on 12/07/2020 for failure to report COVID data.
- The facility was fined \$18,000 pursuant to Stipulation and Order NH-22-067 for surveillance findings on 05/10/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control. The facility failed to possess and maintain a supply of all necessary items of personal protective equipment (PPE) sufficient to protect health care personnel, consistent with Federal Centers for Disease Control guidance, for at least 60 days by 08/31/2020, at a rate of usage equal to the average daily usage of PPE based upon the amount of PPE the Facility reported using on each day from 04/19/2020 to 04/27/2021.

Connecticut

A review of the operations of Advanced Center for Nursing and Rehabilitation for the time period indicated above reveals the following:

- The facility was assessed a federal CMP of \$40,724 on 04/07/2022 for failure to provide appropriate treatment and care according to orders, resident's preferences and goals, and for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents.

A review of the operations of West Haven Center for Nursing and Rehabilitation for the time period indicated above reveals the following:

- The facility was assessed a federal CMP of \$6,630 on 09/20/2022 for failure to provide basic life support, including CPR, prior to the arrival of emergency medical personnel, subject to physician orders and the resident's advance directives and for failure to ensure services provided by the nursing facility meet professional standards of quality.

A review of the operations of Southport Center for Nursing and Rehabilitation for the time period indicated above reveals the following:

- The facility was assessed a federal CMP of \$8,648 on 06/24/2022 for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents.

A review of the operations of New Haven Center for Nursing and Rehabilitation for the time period indicated above reveals the following:

- The facility was assessed a federal CMP of \$199,306 on 08/03/22 for failure to ensure services provided by the nursing facility meet professional standards of quality and for failure to provide enough nursing staff every day to meet the needs of every resident and have a licensed nurse in charge on each shift. Specifically, the facility failed to administer medications as prescribed (to 21 residents), failed to notify the DNS and physician when medications were not administered, failed to complete assessments of the residents' condition after medications were omitted, failed to monitor residents who had significant medication omissions and failed to accurately document the medication omissions. Further, the facility failed to ensure licensed staff followed professional standards of practice, including report to the oncoming and off-going shifts, narcotic count, and ensuring the security of the narcotic keys.
- The facility was assessed a federal CMP of \$51,077 on 04/27/22 for failure to provide appropriate treatment and care according to orders, resident's preferences and goals and for failure to provide appropriate pressure ulcer care and prevent new ulcers from developing.

A review of the operations of Waterbury Center for Nursing and Rehabilitation for the time period indicated above reveals the following:

- The facility was assessed a CMP of \$9,750 on 06/23/2022 for an infection control deficiency per the applicant.

A review of the operations of Torrington Center for Nursing and Rehabilitation for the time period indicated above reveals the following:

- The facility was assessed a federal CMP of \$650 on 01/03/2022 for failure to report COVID data.

Conclusion

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

Financial Analysis

Operating Budget

The applicant has provided the current year (2022) operations and an operating budget, in 2024 dollars, for the first and third years of operations after the change in ownership. The budget is summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2022</u>		<u>2024</u>		<u>2026</u>	
<u>Revenues:</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Medicaid-FFS	\$197.36	\$5,316,686	\$197.36	\$5,369,853	\$197.36	\$5,369,853
Medicaid-MC	\$197.36	457,481	\$187.51	438,953	\$187.51	438,953
Medicare-FFS	\$424.39	6,617,554	\$424.39	6,683,729	\$424.39	6,683,729
Medicare-MC	\$424.39	92,093	\$424.72	93,014	\$424.72	93,014
Private Pay	\$404.07	1,627,614	\$404.00	1,643,890	\$404.00	1,643,890
Assessment Rev		0		447,162		447,162
Other*		<u>22,882</u>		<u>22,882</u>		<u>22,882</u>
Total Revenue		\$14,134,310		\$14,699,483		\$14,699,483
 <u>Expenses:</u>						
Operating	\$200.47	\$9,842,078	\$201.15	\$9,974,196	\$202.85	\$10,058,289
Capital	<u>\$87.58</u>	<u>4,299,706</u>	<u>\$88.27</u>	<u>4,377,058</u>	<u>\$88.27</u>	<u>4,377,058</u>
Total Expense	\$288.05	\$14,141,784	\$289.42	\$14,351,254	\$291.12	\$14,435,347
Net Income:		<u>(\$7,474)</u>		<u>\$348,229</u>		<u>\$264,136</u>
Patient Days:		49,095		49,586		49,586
Utilization %:		96.08%		97.04%		97.04%

* Includes Investment income and vending machine revenues

Additional notes concerning the submitted RHCf operating budget follow:

- The Current Year reflects the facility's 2022 revenues and expenses.
- Medicaid FFS revenue is based on the facility's 2022 Medicaid Regional Pricing rate. The per diem for Medicaid Manage Care is estimated at 95% of the Medicaid FFS rate.
- The Current Year Medicare rate is the actual daily rate experienced by the facility during 2022. The projected Year One and Year Three Medicare rates are based on the average daily rate experienced during 2022. The projected Private Pay rate is based on the average daily rate experienced during 2022.
- Projected expenses are based on the current operator's 2022 costs, adjusted to include inflation and increased volume.
 - The projected percentage of direct care staffing costs to projected facility revenues is 49.2% in Year One and 50.9% in Year Three, exceeding the 40% requirement in NYS Public Health Law §2808.
 - The percentage of direct resident care costs to projected facility revenue is 70.9% in Year One and 73.2% in Year Three, exceeding the 70% requirement in NYS Public Health Law §2808.
 - The facility's projected profit percentage is forecasted to be 2.4% in Year One and 1.8% in Year Three, less than the 5% maximum outlined in NYS Public Health Law §2808.
- The facility's projected utilization is 97.04% in Years One and Three. Occupancy was 93.6% as of September 13, 2023, a significant recovery from the pandemic impact when the utilization from 2018 through 2021 averaged 60.8% and was 78.75% at year-end 2021.

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

Payor	Current Year 2022		Year One 2024		Year Three 2026	
	Days	%	Days	%	Days	%
Medicaid FFS	26,939	54.88%	27,208	54.87%	27,208	54.87%
Medicaid MC	2,318	4.72%	2,341	4.72%	2,341	4.72%
Medicare FFS	15,593	31.76%	15,749	31.76%	15,749	31.76%
Medicare MC	217	0.44%	219	0.44%	219	0.44%
Private Pay	<u>4,028</u>	<u>8.20%</u>	<u>4,069</u>	<u>8.21%</u>	<u>4,069</u>	<u>8.21%</u>
Total	49,095	100%	49,586	100%	49,586	100%

The breakeven utilization is projected at 94.89% for the first year.

Stock Purchase Agreement (SPA)

The applicant submitted an executed SPA to acquire the operating entity's corporate stock. The terms are summarized below:

Date:	November 30, 2018
Operator:	Highland Nursing Home, Inc.
Seller:	Lea Sherman, Jeffrey Goldstein, Alexander Sherman
Buyers:	David Landa, Menajem (Mark) Salamon, or their designees
Asset Acquired:	100% of the issued and outstanding corporate stock in Highland Nursing Home, Inc.
Purchase Price:	\$2,050,000
Payment of Purchase Price:	\$300,000 * paid upon execution, held in escrow; \$1,750,000 balance due at closing

* This amount was held in escrow, and all interest accrued thereon was refunded to the Buyers at the Real Estate closing (May 31, 2019).

First Amendment to Stock Purchase Agreement:

The applicant submitted an executed First Amendment to assign David Landa and Menajem Salamon's rights under the original Agreement to ten new shareholders. The terms are summarized below:

Date:	July 10, 2019
Sellers:	Lea Sherman, Jeffrey Goldstein, Alexander Sherman
Original Buyers:	David Landa and Menajem Salamon and their designees
New Buyers:	Joseph Landa (13.75%, 27.5 shares); Joshua Landa (13.75%, 27.5 shares); Menashe Eisen (5%, 10 shares); Suri Reich (5%, 10 shares); Yossi Mayer (5%, 10 shares); Hellen Majerovic (4.50%, 9 shares); Blimie Perlstein (5%, 10 shares); Mordejai Salamon (17%, 34 shares); Menajem Salamon (30%, 60 shares); Tirtza Salamon (1%, 2 shares).
Provision:	Acquisition of stocks in Highland Nursing Home, Inc. The Original Buyers assign, transfer, and release their right, title, and interest as Buyers under the Stock Purchase Agreement dated November 30, 2018, to New Buyers.
Price:	\$1,863,461 (balance due on a \$2,050,000 Promissory Note between Lea Sherman, Jeffrey Goldstein, and Alexander Sherman as borrowers and 182 Highland Road, LLC as Lender)
Payment of Purchase Price:	\$1,863,461 via the assumption of a 10-year Promissory Note at 3% interest between the current shareholders (Sellers, Borrowers) and 182 Highland Road, LLC (Lender)

The \$1,863,461 purchase price for the operations' corporate stock will be satisfied by the assumption of the balance due on a Promissory Note (original principal valued at \$2,050,000) between Lea Sherman, Jeffrey Goldstein, and Alexander Sherman (Borrowers) and 182 Highland Road LLC (Lender). Sellers' expenses of \$416,640 related to the original SPA and Real Estate Contract were refunded at the Real

Estate closing. Per note seven in the 2021 certified financial statement, the \$1,863,461 note balance will be canceled upon closing the stock purchase agreement.

Second Amendment to Stock Purchase Agreement:

The applicant submitted an executed Second Amendment whereby Menashe Eisen withdraws as Buyer. David Landa will replace Menashe Eisen as one of the 10 proposed shareholders of Highland Nursing Home, Inc. The terms are summarized below:

Date:	July 1, 2022
Sellers:	Lea Sherman, Jeffrey Goldstein, Alexander Sherman
Original Buyers:	David Landa and Menajem Salamon and their designees
New Buyers:	Joseph Landa (11%, 22 shares); Joshua Landa (11%, 22 shares); David Landa (10.5%, 21 shares); Suri Reich (5%, ten shares); Yossi Mayer (5%, 10 shares); Hellen Majerovic (4.50%, 9 shares); Blimie Perlstein (5%, 10 shares); Mordejai Salamon (17%, 34 shares); Menajem Salamon (30%, 60 shares); Tirtza Salamon (1%, 2 shares).

Third Amendment to Stock Purchase Agreement:

The applicant submitted an executed Third Amendment whereby David Landa withdrew as Buyer. David Landa's 10.5% interest was taken by three of the nine proposed shareholders (Menajem Salamon 5%, Joseph Landa 2.75%, and Joshua Landa 2.75%) of Highland Nursing Home, Inc. The terms are summarized below:

Date:	January 23, 2023
Sellers:	Lea Sherman, Jeffrey Goldstein, Alexander Sherman
Original Buyers:	David Landa and Menajem Salamon and their designees
New Buyers:	Joseph Landa (13.75%, 27.5 shares); Joshua Landa (13.75%, 27.5 shares); Suri Reich (5%, 10 shares); Yossi Mayer (5%, 10 shares); Hellen Majerovic (4.50%, 9 shares); Blimie Perlstein (5%, 10 shares); Mordejai Salamon (17%, 34 shares); Menajem Salamon (35%, 70 shares); Tirtza Salamon (1%, 2 shares).

Original Real Estate Purchase Agreement:

The applicant submitted a copy of the original real property purchase agreement and original lease agreement, the terms of which were summarized below:

Date:	June 23, 2016
Seller:	Highland Nursing Home, Inc.
Buyer:	Highland Realty Co, LLC (proposed initially, rights later assigned)
Asset Transferred:	Real property located at 182 Highland Road, Massena, NY 13662
Purchase Price:	\$4,950,000
Payment of Purchase Price:	\$4,950,000 cash at closing

Original Lease Agreement and First Amendment

The applicant has submitted an executed original lease agreement and first amendment, the terms of which were summarized below:

Date:	August 10, 2016, and First Amended on December 4, 2018
Premises:	140-bed RHCf located at 182 Highland Road, Massena, NY 13662
Owner/Landlord:	Highland Realty Co., LLC (proposed initially, rights later assigned)
Lessee:	Highland Nursing Home, Inc.
Term:	30 years (amended to start with the closing of the Real Property Contract and terminate 30 years later)
Rent:	\$360,000 plus annual debt repayment (principal + interest estimated at \$501,866 per year), totaling approx. \$861,866 per year (\$71,822 per month).
Provisions:	Triple Net

On November 30, 2018, Highland Realty Co, LLC assigned its rights under the agreement for the sale of real property dated June 23, 2016, and the facility's lease agreement dated August 10, 2016, as amended December 4, 2018, to 182 Highland Road, LLC.

Assignment of Agreement for Sale of Real Property and Lease

The applicant has submitted an executed agreement for the assignment of the sale of real property agreement and the facility's lease agreement:

Date:	November 30, 2018
Assignor:	Highland Realty Co, LLC
Assignee:	182 Highland Road, LLC
Assignment:	Assignor assigns all its rights, title, and interest to and under the real property sale agreement and the lease.

The applicant confirms that the closing for the real property occurred on May 31, 2019. 182 Highland Road LLC leases the facility to Highland Nursing Home, Inc. for 30 years.

The purchase price of the real property was satisfied as follows:

Equity – 182 Highland Road LLC Members	\$742,500
Loan (M&T Bank, assumed outstanding realty loan debt, five years at 4% one-month Libor or 5.74% (as of December 18, 2019) and one 5-year extension at 5.50% plus one-month Libor, 25-year amortization)	<u>\$4,207,500</u>
Total	\$4,950,000

Second Amendment to Lease

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

Date:	March 26, 2018 (executed March 6, 2019)
Lessor	182 Highland Road, LLC
Lessee:	Highland Nursing Home, Inc.
Term:	30 years
Rental:	\$360,000 plus annual debt repayment obligations (principal + interest estimated at \$501,866 per year), totaling approx. \$861,866 per year (\$71,822 per month).
Provisions:	Triple Net

Third Amendment to Lease

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

Lessor	182 Highland Road, LLC
Lessee:	Highland Nursing Home, Inc.
Term:	30 years
Rental:	\$3,900,000-Base Rent _ If an amount greater than the Base Rent is required to permit Lessor to meet the payments required by or to otherwise comply with the terms of any Loan Documents secured by the Mortgage, the Base Rent shall be increased accordingly. (i) Base Rent 3% increase per year. (ii) Base Rent shall be increased every three years to the then fair market value as determined by a qualified appraisal company selected by the Lessor. (iii) For so long as the Leased Premises is encumbered by a HUD-insured mortgage (a "HUD Mortgage"), the Base Rent shall at all times be equal to at least 1.05 times the sum of the following amounts associated with the HUD Mortgage: annual principal and interest payments; annual mortgage insurance premium; annual deposit to reserve for replacement; annual property insurance; and annual property taxes. Any reduction to the minimum lease payment amount listed above must be explained, and HUD review and approval shall be required.
Provisions:	Triple Net

The lease arrangement is a non-arms-length agreement. The applicant has submitted an affidavit attesting there is overlapping but not identical ownership between the proposed owners of Highland Nursing Home, Inc., and the members of 182 Highland Road, LLC.

Two appraisals (Senior Care Valuation LLC and JLL) showed that the lease's market value ranged from \$3,543,548 to \$4,100,000 per year. The rent is within the range of the appraisals.

Capability and Feasibility

The proposed new shareholders will acquire 100% of Highland Nursing Home, Inc.'s corporate stock for \$1,863,461, to be funded with a 10-year Promissory Note at a 3% interest rate (original principal of \$2,050,000) between the current shareholders and 182 Highland Road, LLC. The \$1,863,461 Promissory note balance will be canceled upon the closing of the stock purchase agreement. 182 Highland Road LLC is the current property owner and has leased the facility to Highland Nursing Home, Inc. for a term of 30 years. There are no project costs associated with this application.

The working capital requirement is estimated at \$2,391,876, based on two months of year one expenses. Funding will be provided from the entity's ongoing operations. BFA Attachment A presents the net worth summaries for the proposed members of Highland Nursing Home, Inc.'s corporate stock and indicates they have sufficient resources to meet equity requirements. BFA Attachment C presents Highland Nursing Home, Inc.'s pro forma balance sheet, which shows the entity will start with \$2,941,876 in equity.

The submitted budget projects a net income of \$348,229 and \$264,136 in the first and third years. Operating revenues are estimated to increase by approximately \$565,173 from the current year to year one. Overall expenses are projected to increase by \$209,470 by the first year following the approval of this project. The budget appears reasonable.

BFA Attachment D presents a Financial Summary of Highland Nursing Home, Inc. for 2020 through 2022. The facility had average positive working capital, average positive net assets, and average positive net income. BFA Attachment E presents their Internal Financials as of June 30, 2023, which shows \$28,416 in negative working capital, positive net assets, and a net income of \$319,795.

BFA Attachment F presents the proposed members' interest in New York Residential Health Care Facilities. On a combined basis, New York State-affiliated nursing homes had average positive working capital, average positive net assets, and average positive net income from 2020 through 2022. In 2022, each affiliated nursing home maintained positive working capital and positive net assets, and three of four affiliated nursing homes had minor losses.

Conclusion

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

Attachments

LTCOP Attachment	Long-Term Care Ombudsman Program Recommendation
BFA Attachment A	Highland Nursing Home, Inc. - Proposed Stockholders' Net Worth
BFA Attachment B	Current Owners of the Real Property
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	2020-2022 Financial Summary of Highland Nursing Home, Inc. and 2022 Certified Financial Statements
BFA Attachment E	Internal Financials Highland Nursing Home, Inc. June 30, 2023
BFA Attachment F	Proposed members' ownership interest in Affiliated RHCs

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 16th day of November 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 100% ownership interest to nine new shareholders, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

192204 E

FACILITY/APPLICANT:

Highland Nursing Home, Inc. d/b/a North
Country Nursing & Rehabilitation Center

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of complete and fully executed Shareholder Stock Certificates acceptable to the Department. [CSL]
2. Submission of an executed lease agreement acceptable to the Department of Health. [BFA]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and 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]

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



Project # 231011-E
Fairport SNF LLC d/b/a Fairport Skilled Nursing & Rehab

Program: Residential Health Care Facility
Purpose: Establishment

County: Monroe
Acknowledged: January 27, 2023

Executive Summary

Description

Fairport SNF LLC, a Delaware limited liability company authorized to conduct business in New York State, requests approval to be established as the new operator of Fairport Baptist Homes (FBH), a 142-bed, voluntary, Article 28 residential health care facility (RHCF) at 4646 Nine Mile Point Road, Fairport (Monroe County). Upon approval, the facility will be known as Fairport Skilled Nursing & Rehab.

On May 6, 2022, Fairport Baptist Homes (FBH), Fairport Baptist Homes Adult Care Facility, Inc. (FBH Adult Care), FBH Community Ministries (Community Ministries), and FBH Distinctive Living Communities, Inc. (Distinctive Living) entered Chapter 11 Bankruptcy in the United States District Court for the Western District of New York. On October 17, 2022, the Court filed an order approving 4646 Nine Mile Point Road, LLC's amended and restated Asset Purchase Agreement to acquire the operations and real property of the above four entities for \$14,300,000. An application to establish a new operator of the Adult Care Facility is concurrently under review by the Department's Bureau of Adult Care Facility & Assisted Living Licensure (Project #230048).

On January 10, 2023, 4646 Nine Mile Point Road, LLC entered an Assignment of Contract Agreement with Fairport SNF LLC for the operating assets associated with Fairport Baptist Homes (FBH). Fairport SNF LLC will lease the real property from 4646 Nine Mile Point Road, LLC.

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

<u>Current Operator</u>	
Fairport Baptist Home, Inc d/b/a Fairport Baptist Homes	
<u>Member:</u>	
Fairport Baptist Home, Inc.	100%

<u>Proposed Operator</u>	
Fairport SNF LLC	
<u>Member:</u>	
Eliezer Zelman*	100%

**Managing member of the facility*

OALTC Recommendation
Contingent Approval

Need Summary
There will be no changes to beds or services as a result of this application. Current occupancy, as of August 23, 2023, was 66.2% for the facility and 80.2% for Monroe 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

The purchase price for the operations and real property of Fairport Baptist Homes, Fairport Baptist Adult Home Care Facility, Inc., FBH Community Ministries, and FBH Distinctive Living Communities, Inc. is \$14,300,000 as approved by the bankruptcy court. Certain members of 4646 Nine Mile Point Road, LLC will fund the \$14,300,000 from liquid resources.

The proposed budget is as follows:

<u>Budget:</u>	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$17,937,200	\$18,503,700
Expenses:	<u>17,135,500</u>	<u>17,664,800</u>
Net Income:	\$801,700	\$838,900

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on Wednesday, January 11, 2023.

Recommendations

Long-Term Care Ombudsman Program

The LTCOP recommends Approval. (See LTCOP Attachment A)

Health Systems Agency

The Finger Lakes HSA made no recommendation for their review of this project.

Office of Aging and Long-Term Care

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 building lease acceptable to the Department of Health. [BFA]
4. Submission of one rent reasonable letter acceptable to the Department of Health. [BFA]
5. Submission of documentation of a final determination of the purchase price allocation. [BFA]

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and 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

November 16, 2023

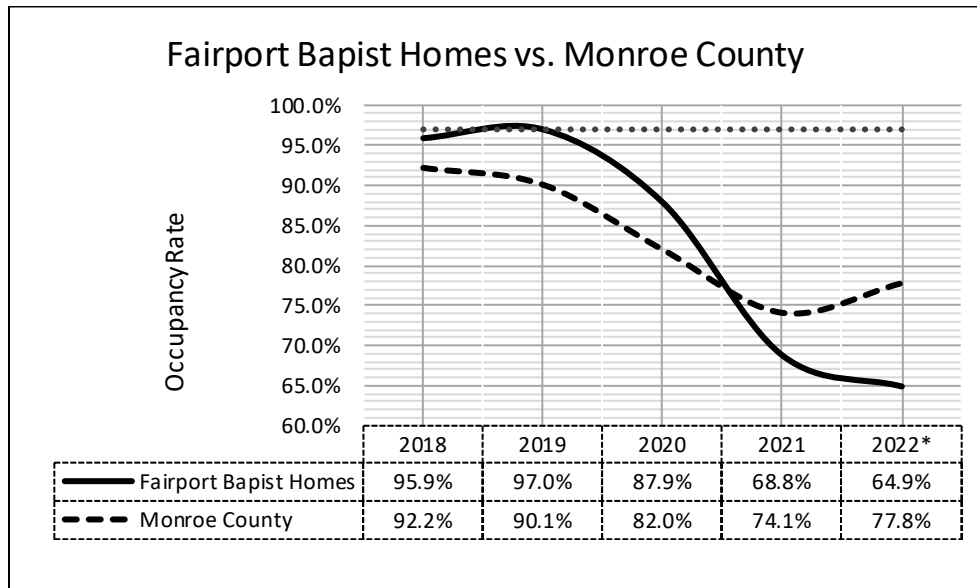
Need Analysis

Background and Analysis

The primary service area is Monroe County, which has a population projected to increase to 758,847 by 2028 based on Cornell Program of Applied Demographics estimates. Demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Monroe County	New York State
Total Population-2021 Estimate	757,332	20,114,745
Hispanic or Latino (of any race)	9.2%	19.2%
White (non-Hispanic)	69.8%	54.7%
Black or African American (non-Hispanic)	14.0%	13.9%
Asian (non-Hispanic)	3.6%	8.6%
Other (non-Hispanic)	3.4%	3.6%

Source: American Community Survey (5-year Estimates Data Profiles)



*2022 data is self-reported and not certified

As of August 23, 2023, occupancy was 66.2% for the facility and 80.2% for Monroe County. The current operators of Fairport Baptist Homes have filed for relief under Chapter 11 of the U.S. Bankruptcy law.

The table below shows the CMS Rating and the utilization of the six closest RCHFs to Fairport Baptist Homes.

Facility Name	CMS Overall Rating As of 8/2023	Number of Beds	Distance from other RCHFs Distance/Time	Occupancy			
				2019	2020	2021	2022
Fairport Baptist	2	142	0 miles/0 mins	97.0%	87.9%	68.8%	64.9%
Aaron Manor	4	140	2.0 miles/6 mins	92.5%	89.6%	80.3%	86.9%
St John's Penfield	3	20	2.3 miles/5 mins	96.5%	90.1%	90.6%	95.6%
Crest Manor	1	80	3.1 miles/9 mins	92.5%	90.3%	85.1%	94.2%
Penfield Place	5	48	4.8 miles/11 mins	87.9%	83.4%	91.4%	88.4%
Highlands Living	2	120	4.9 miles/11 mins	94.6%	91.9%	83.2%	86.6%
Friendly Home	5	200	5.7 miles/12 mins	96.1%	85.0%	76.7%	82.1%

The following table provides the Case Mix Index (CMI) for the facility and surrounding RCHFs, which reflects the relative resources predicted to provide care to a resident. The higher the case mix weight, the greater the resource requirement for the residents.

Case Mix Index	2019		2020		2021	
	All Payor	Medicaid Only	All Payor	Medicaid Only	All Payor	Medicaid Only
Fairport Baptist	1.1908	0.9619	0.9478	0.7943	1.065	0.858
Aaron Manor	1.2547	0.9705	1.1231	1.0077	1.213	1.057
St John's Penfield	0.8169	0.804	0.7874	0.79	0.991	0.943
Crest Manor	1.1088	0.9738	1.1913	1.1451	1.208	1.139
Penfield Place	1.1292	1.0251	1.2643	1.2336	1.266	1.099
Highlands Living	1.1921	0.9774	1.0286	0.9659	1.065	1.001
Friendly Home	1.0526	0.9421	0.9932	0.9083	1.057	0.965

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 healthcare facility admissions that are Medicaid-eligible individuals in their planning area. This benchmark 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' Benefits 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.

An applicant will be required to make appropriate adjustments in its admission policies and practices to meet the resultant percentage. The facility's Medicaid admissions rate was below the threshold of 75% of the Monroe County rate for the years 2019 through 2021.

Medicaid Access	2019	2020	2021
Monroe County Total	15.0%	17.6%	19.1%
Monroe Threshold Value	11.2%	13.2%	14.3%
Fairport Baptist Homes	4.8%	8.2%	1.4%

Conclusion

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

Program Analysis

Program Description

	Existing	Proposed
Facility Name	Fairport Baptist Homes	Fairport Skilled Nursing & Rehab
Address	4646 Nine Mile Point Road Fairport, NY 14450	Same
RHCF Capacity	142 beds	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Voluntary	Limited Liability Company
Class of Operator	Not-for-Profit Corporation	Proprietary
Operator	Fairport Baptist Home	Fairport SNF LLC <u>Member:</u> Eliezer J. Zelman (Jay) 100%

Upon approval of this application, Fairport SNF LLC will enter into an administrative/consulting services agreement with David Heinemann of Advanced Health, Inc. David Heinemann is the sole shareholder of the ASA/consulting provider. The provider of ASA/consulting services is via an arm's length agreement. The ASA/consulting provider agreement consists of financial, back-office, and non-clinical services, including but not limited to billing, collections, accounting, purchasing, administrative, and consulting services.

Character and Competence

Eliezer J. (Jay) Zelman lists concurrent employment as Operator of the following facilities: Buena Vida Rehabilitation and Nursing Center, Brooklyn, NY; Regal Heights Rehabilitation and Nursing Center, Queens, NY; New York Congregational Nursing Center, Brooklyn, NY; and Achieve Rehab and Nursing Facility, Liberty, NY, as well as Founding Partner of REQQER.com, a web-based maintenance management system for skilled nursing facilities. Previous employment was listed as CEO/Operator of Schervier Nursing Care Center, Riverdale, NY, Partner/VP LTC Division of Compass Home Dialysis Center, Philadelphia, PA, Director of Operations of Global Healthcare Services Group, Howell, NJ, a group providing operational oversight of NYS and PA SNFs, and Administrator of Record for Achieve Rehab and Nursing Facility. Eliezer was a Licensed Nursing Home Administrator in both New York and New Jersey, but those licenses have expired. Eliezer holds a master's degree in Administration & Supervision, Ed. from Fordham University, and discloses healthcare facility ownership interests as follows:

New York Nursing Homes

Achieve Rehab and Nursing Facility (9.99%)	09/2007 to present
Buena Vida Rehabilitation and Nursing Center (0.10%)	05/2020 to present
New York Congregational Nursing Center (50.00%)	07/2021 to present
Regal Heights Rehabilitation and Health Care Center (49.50%)	07/2020 to present

End-Dated Facilities

Schervier Nursing Care Center [NY] (10.00%)	07/2017 to 03/2020
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Quality Review

The proposed applicant has been evaluated, in part, on the distribution of CMS Star ratings for their portfolio. For the proposed owner, 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*			
		< 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
Eliezer J. Zelman	4	3	66.7%	1	0%

*Duration of ownership as of 11/16/2023
Data date: 09/2023

New York. The proposed owner's portfolio includes ownership in four New York facilities. Two of the New York facilities in the ownership portfolio have a CMS overall quality rating of three stars (average). Two of the New York facilities in the ownership portfolio have a CMS overall quality rating of two stars (below average) – Buena Vida Rehabilitation and Nursing Center and New York Congregational Nursing Center. To improve the quality at the two-star facilities, the applicant indicated the following:

Buena Vida currently has three stars in health inspections. The one-star in staffing is causing the facility to land with a two-star overall rating. The facility has started an aggressive approach toward hiring additional staff, with a focus on RNs. Buena Vida now has a dedicated recruiting team. The objective of the additional staffing is to provide exceptional care, which will help across the board. The star ratings will go up with the additional help, both on staffing and then on the health inspections as well. It may take a few quarters until all the data makes it to the nursing home compare website and the actual stars are reflected there.

New York Congregational Nursing Center. Please note the following pertinent points as to why the CMS Star Ratings are a two:

- Issued G-tag (G) that was from a complaint survey prior to the start of ownership, which is still part of the overall CMS Star calculation.
- The loss of a staffing payment-based journal audit is freezing the current staffing rating, which the operators expect to end this quarter, and there is a projection that staffing will increase to two stars (it is currently at one star), which is believed that it will lead to an overall three-star facility.
- The facility had a full survey about 3 weeks ago, and it has been reported that they only received 12 low-level deficiencies (level D and E citations) between health and life safety measures. There were no IJs and/or immediate harm.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Fairport Baptist Homes	Subject Facility	**	**	****	**
Achieve Rehab and Nursing Facility	Current	***	***	***	**
	09/2007**	***	**	***	****
Buena Vida Rehabilitation and Nursing Center	Current	**	***	****	*
	05/2020	*****	****	*****	***
New York Congregational Nursing Center	Current	**	**	*****	*
	07/2021	***	**	*****	**
Regal Heights Rehabilitation and Health Care Center	Current	***	***	****	**
	07/2020	*****	*****	*****	***

**Earliest data as of 01/2009

End-Dated Ownership					
New York					
Schervier Nursing Care Center	03/2020	*****	****	*****	**
	07/2017	*****	****	*****	***

Data date: 09/2023

Enforcement History

New York

A review of the operations of Achieve Rehab and Nursing Facility for the time indicated above reveals the following:

- The facility was assessed a federal CMP of \$650 on 05/10/2021 for failure to report COVID-19 data.

A review of the operations of Buena Vida Rehabilitation and Nursing Center for the time indicated above reveals the following:

- The facility was assessed a federal CMP of \$1,316 on 02/28/2022 and \$987 on 02/21/2022 for failure to report COVID-19 data.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-22-052 for surveillance findings on 12/21/2021. Deficiencies were found under 10 NYCRR 415.19(a) Infection Control. The facility failed to ensure that infection control practices and procedures were maintained. Specifically, oxygen tubing and catheter tubing were observed touching the floor on four occasions. In addition, staff were observed not sanitizing residents' hands prior to serving meals.
- The facility was assessed a federal CMP of \$5,000 on 12/21/2021 for failure to provide and implement an infection prevention and control program.
- The facility was assessed a federal CMP of \$650 on 02/15/2021 for failure to report COVID-19 data.

A review of the operations of the New York Congregational Nursing Center for the time indicated above reveals the following:

- The facility was assessed a federal CMP of \$2,113 on 11/07/2022 and \$4,226 on 10/17/2022. Per the applicant: *The civil monetary penalties are for failing to report data to the Centers for Disease Control with COVID-19 data reporting. This is concurrent with the period when a new Administrator of Record commenced at the facility and was unable to have access to the reporting portal.*
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-22-109 for surveillance findings on 01/03/2022. Deficiencies were found under Executive Order 415.19(a) Infection Control. The facility failed to ensure that infection control practices and procedures were maintained. Specifically, oxygen tubing was observed touching the floor on three occasions, a staff member was observed entering a room with signage of contact droplet precautions without wearing the appropriate Personal Protective Equipment, and there was no water management plan for Legionella with the required components, including but not limited to a facility-specific environmental risk assessment, a site-specific water management plan, or a sampling plan.
- The facility was assessed a federal CMP of \$655 on 09/06/2021 for failure to report COVID-19 data.

A review of the operations of Regal Heights Rehabilitation and Health Care Center for the time indicated above reveals the following:

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-22-103 for surveillance findings on 04/22/2022. Deficiencies were found under 10 NYCRR 415.19(a) (1-3) & (b)(1) Infection Control. The facility did not ensure infection control practices were maintained to prevent the development and transmission of COVID-19 infection. Specifically, the facility failed to put two exposed residents on contact isolation following exposure to COVID-19.
- The facility was assessed a federal CMP of \$9,750 on 04/22/2022 for infection control failures.
- The facility was assessed federal CMPs of \$1,988 on 02/28/2022, \$1,657 on 02/21/2022, \$1,325 on 02/14/2022, \$994 on 02/07/2022 and \$663 on 01/31/2022 for failure to report COVID-19 data.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH-21-231 for surveillance findings on 09/10/2021. Deficiencies were found under 10 NYCRR 415.19(a) Infection Control. The facility did not ensure infection control practices and procedures were maintained to provide a safe and sanitary environment to help prevent the development and transmission of communicable diseases and

infections. Specifically, an RN was observed using a Blood Pressure cuff for multiple residents without sanitizing the equipment in between the residents.

- The facility was assessed a federal CMP of \$5,000 on 09/01/2021 for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-21-109 for surveillance findings on 12/30/2020. Deficiencies were found under 10 NYCRR 415.19(a)(1) & (2) Infection Control. The facility failed to maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the transmission of COVID-19. Specifically, the facility failed to appropriately control and prevent the transmission of COVID-19 when it failed to place units exposed to COVID-19-positive staff on contact and droplet precautions.

A review of the operations of Schervier Nursing Care Center for the time indicated above revealed no enforcements.

Conclusion

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

Financial Analysis

Operating Budget

The applicant has provided the current year, 2022, and the first and third-year operating budgets after the change in ownership in 2024 dollars, summarized as follows:

	<u>Current Year</u>		<u>First Year</u>		<u>Third Year</u>	
	<u>2022</u>		<u>2024</u>		<u>2026</u>	
<u>Revenues:</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Medicaid FFS	\$190.10	\$3,677,894	\$218.75	\$7,128,813	\$218.75	\$7,128,813
Medicaid MC	\$74.84	31,358	\$218.74	19,687	\$218.74	19,687
Medicare FFS	\$799.32	756,957	\$839.91	2,510,500	\$835.55	3,546,921
Medicare MC	\$796.13	1,230,020	\$756.40	1,542,300	\$775.37	1,580,979
Commercial FFS	\$545.00	10,900	\$546.37	3,433,400	\$560.01	3,519,100
Private	\$520.610	5,735,081	\$525.35	3,301,300	\$538.39	2,707,000
Other Operating*		1,866,050		1,200		1,200
Non-Operating**		<u>2,577,439</u>		<u>0</u>		<u>0</u>
Total Revenues		\$15,885,699		\$17,937,200		\$18,503,700
 <u>Expenses:</u>						
Operating	\$425.77	\$14,175,673	\$300.42	\$15,103,500	\$302.54	\$15,210,400
Capital	<u>\$32.69</u>	<u>1,088,329</u>	<u>40.42</u>	<u>2,032,000</u>	<u>\$48.82</u>	<u>2,454,400</u>
	\$458.46	\$15,264,002	\$340.84	\$17,135,500	\$351.36	\$17,664,800
 Net Income		<u>\$621,697</u>		<u>\$801,700</u>		<u>\$838,900</u>

Patient Days	33,294	50,275	50,275
Utilization %	64.24%	97.00%	97.00%

* COVID-19 Provider Relief Funds \$1,315,205; Rental Income \$489,600; Cafeteria \$50,581, Other \$10,664

** Change in Funded Status of Pensions \$1,898,166 and Miscellaneous \$679,273

The following is noted concerning the submitted RHCF operating budget:

- Medicaid revenue is based on the reimbursement methodology under statewide pricing. Medicare rates are projected based on the Medicare Prospective Payment System in effect for 2023. Private and Other rates are projected based on similar facilities in the same geographical area plus a 2.5% per annum increase.
- Expenses are based on historical data adjusted by 2% for inflation, utilization, and New York State staffing regulations.
 - The projected percentage of direct care staffing costs to projected facility revenues is 40.94% in Year One and 40.01% in Year Three, exceeding the 40% requirement in NYS Public Health Law §2808.
 - The percentage of direct resident care costs to projected facility revenue is 76.96% in Year One and 74.34% in Year Three, exceeding the 70% requirement in NYS Public Health Law §2808.
 - The facility's projected profit percentage is forecasted to be 4.61% in Year One and 4.68% in Year Three, less than the 5% maximum outlined in NYS Public Health Law §2808.
- RHCF utilization under the current operator was 97.02% in 2019, 87.89% in 2020, 68.84% in 2021, 64.24% in 2022, and 63.4% on September 20, 2023, under self-reporting. The applicant plans to improve occupancy by:
 - Cultivating relationships with area doctors, hospitals, and others in the surrounding communities.
 - Implementing a new marketing program and having a dedicated field employee and admissions team working with local hospitals and physician groups to coordinate the continuation of patient care.
 - Evaluating options for new programs that will benefit the facility, its residents, and the community.

Utilization by the payor for the first and third years after the change in ownership is summarized below:

Payor	Current Year 2022		Year One 2024		Year Three 2026	
	Days	%	Days	%	Days	%
Medicaid FFS	19,347	58.11%	32,589	64.81%	32,589	64.82%
Medicaid MC	419	1.26%	90	0.18%	90	0.18%
Medicare FFS	947	2.84%	2,989	5.95%	4,245	8.44%
Medicare MC	1,545	4.64%	2,039	4.06%	2,039	4.06%
Commercial FFS	20	0.06%	6,284	12.50%	6,284	12.50%
Private Pay	<u>11,016</u>	<u>33.09%</u>	<u>6,284</u>	<u>12.50%</u>	<u>5,028</u>	<u>10.00</u>
Total	33,294	100%	50,275	100%	50,275	100%

The facility's Medicaid admissions of 8.2% in 2020 and 1.4% in 2021 were below Monroe County's 75% threshold rate of 13.2% and 14.3% in 2020 and 2021.

The RHCf breakeven utilization is projected at 92.67% in the first year.

Purchase Agreement (PA)

The applicant submitted an executed APA to acquire the personal and real properties associated with the bankrupt facilities. The sale related to the RHCf will become effective upon PHHPC approval. The terms are summarized below:

Date:	October 11, 2022
Seller/Debtors:	Fairport Baptist Homes FBH () Fairport Baptist Homes Adult Care Facility, Inc. (FBH Adult Care) FBH Community Ministries (Community Ministries) FBH Distinctive Living Communities, Inc. (Distinctive Living)
Buyer:	4646 Nine Mile Point Road, LLC
Asset Acquired:	Rights, title, and interest in and to the facilities' real estate, business, and operations as approved by the Bankruptcy Court's order. Includes Leases, tangible or intangible property, contracts, purchased receivables, inventory, equipment, licenses, permits, intellectual property, computer applications, phone numbers, insurance proceeds, warranties, deposits, and goodwill. Assignments - Medicare Provider Agreements and Medicaid Provider Agreements.
Excluded Assets:	Cash equivalents, minute books, contracts, benefit plans, cause of action before closing, insurance refunds and claims, and deposits unrelated to leases.
Assumption of Liabilities:	Cure obligations, liabilities, and obligations arising concerning the operation of the Facility after the Closing Date;
Excluded Liabilities:	Free and clear of any liabilities, Liens, Claims against, or Obligations of Sellers before closing. (Section 2.5c -will assume liability for Medicare Provider Agreements and Medicaid Provider Agreements as required by applicable regulation, including but not limited to 42 CRF 489.18)
Purchase Price	\$14,300,000
Allocation of Purchase Price:	FBH – Operations and Real Property – hasn't been determined FBH Adult Care – Operations and Real Property- hasn't been determined Community Ministries – Operations and Real Property- hasn't been determined Distinctive Living – Operations and Real Property- hasn't been determined
Payment of the Purchase Price	\$ 439,500 deposit at signing \$ 250,000 deposit into escrow at closing \$13,610,500 due at closing

The purchase price for the personal property and real property of \$14,300,000 will be satisfied through equity of 4646 Nine Mile Point Road, LLC members.

BFA Attachment A-2 presents the net worth summary for 4646 Nine Mile Point Road, LLC members, revealing sufficient resources to fund the purchase price. Teddy Lichtschein, Grantor of Gamfal, LLC, and Eliezer Scheiner, Grantor of Scheiner Holdings, LLC, have each provided affidavits stating their willingness to contribute resources disproportionate to their ownership interest in 4646 Nine Mile Point Road, LLC.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and surcharges, assessments or fees due from the transferor under Article 28 of the Public Health Law concerning the period before the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of June 2, 2023, the facility had \$365,582 outstanding in Medicaid liabilities, which declined to \$315,850 as of October 10, 2023. The Medicaid liabilities are included in the pro forma balance sheet.

Assignment of Contract

The applicant has submitted an executed assignment agreement transferring the RHCF's operations, as summarized below:

Date:	January 10, 2023
Assignor:	4646 Nine Mile Point Road, LLC
Assignee:	Fairport SNF, LLC
Assigned Rights:	All the assignor's rights, title, and interest in and to (a) All permits, licenses, approvals, or authorizations to operate the 142-bed RHCF previously by Fairport Baptist Homes. Any contracts with governmental regulatory entities relating to the operations of the RHCF. Any receivables purchased and all patient records related to the RHCF.
Consideration	Allocation unknown currently

Lease Agreement

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

Premises:	A 142-bed, 176,695 sq. ft. RHCF, located at 4646 Mile Point Road, Fairport, NY 14450.
Landlord/Lessor:	4646 Nine Mile Point Road, LLC
Lessee:	Fairport SNF, LLC
Term:	Ten years
Rent:	\$1,400,000 - 1 st Yr.; \$1,600,000 – 2 nd Yr.; \$1,800,000 -3 rd yr.; \$2,000,000 – 4 th Yr. and then 3% annual increase. (Sq. Ft \$7.93, \$9.06, \$10.19, and \$11.32 in the 4 th yr.)
Provisions:	Triple Net

The lease arrangement is a non-arms-length agreement. The applicant affirms that the solo member has other pre-existing business relations. The applicant has submitted one letter from a New York Licensed Real Estate Broker attesting that the lease cost per square foot is at fair market value, which is a range that covers the first four years.

Consulting Services Agreement

The applicant has provided an executed Consulting Services Agreement, with terms summarized below:

Date:	September 1, 2023
Contractor:	Advance Health, Inc.
Facility:	Fairport SNF, LLC d/b/a Fairport Skilled Nursing & Rehab
Consulting and Advisory Services:	Consulting & advisory services include financial and back-office services, administrative services, and clinical consulting.
Term:	One One-year term and automatically renews for one-year terms
Fee:	\$492,000 annually

Fairport SNF, LLC has submitted an executed attestation stating that the applicant understands and acknowledges that powers must not be delegated, the applicant will not willfully engage in any illegal delegation, and understands that the Department will hold the applicant accountable.

Capability and Feasibility

The Bankruptcy Court approved 4646 Nine Mile Point Road, LLC's \$14,300,000 purchase price for the operations and real property of the following: Fairport Baptist Homes, Fairport Baptist Adult Home Care Facility, Inc., FBH Community Ministries, and FBH Distinctive Living Communities, Inc. Certain members of 4646 Nine Mile Point Road, LLC will fund the \$14,300,000 from liquid resources. Allocation of the purchase price has not been determined. Upon the PHHPC's approval of the change in ownership, the bankruptcy counsel, HUD's current mortgage lender, and the applicant will address the possibility of assuming the existing mortgage. There are no project costs associated with this application.

The working capital requirement is estimated at \$2,855,917 based on two months of first-year expenses to be funded by the member's equity. BFA Attachment A-1 presents the net worth summary for Fairport SNF, LLC member, which indicates sufficient liquid resources to meet the equity requirement.

The submitted budget projects a first- and third-year profit of \$801,700 and \$838,900. Overall revenues are expected to increase by \$2,051,501 due to increased occupancy. Overall expenses are expected to increase by \$1,871,498 due to a \$927,827 increase in operating expenses and a \$943,671 increase in capital expenses (primarily rent). The increase in operating expenses includes salaries of \$1,253,932, Medical Supplies of \$207,814, and purchase of services of \$390,291, offset by \$924,210 in various costs. Employee benefits went from 32.25% to 22%. BFA Attachment B presents Fairport SNF LLC's pro forma balance sheet, which shows the entity will start with \$2,540,418 in members' equity. The budget appears reasonable.

BFA Attachment C presents the Financial Summary of Fairport Baptist Homes for the period 2020 through 2022. The RHCF reported negative net assets, positive working capital, and positive earnings each year.

BFA Attachment D presents the proposed members' ownership interest in the affiliated RHCFs and their financial summaries. Of the four nursing homes, one was acquired in 2007, two in the middle of 2020, and one in July of 2021. The facilities had a combined negative working capital position, negative net asset position, and positive net income of \$728,833.

Conclusion

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

Attachments

LTCOP Attachment	Long-Term Care Ombudsman Program Recommendation
BHFP Attachment	Map
BFA Attachment A-1	Net Worth of Proposed Members of Fairport SNF LLC
BFA Attachment A-2	Net Worth for members of 4646 Nine Mile Point Road, LLC
BFA Attachment B	Pro Forma Balance Sheet, Fairport SNF LLC
BFA Attachment C	Financial Summary Fairport Baptist Homes and Fairport Baptist Homes Caring Ministries and Affiliates 2020–2021 certified financial statement.
BFA Attachment D	Proposed Members' Ownership Interest in the Affiliated RHCFs and Financial Summary
BFA Attachment E	Members and Chart of 4646 Nine Mile Point Road, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 16th day of November 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Fairport SNF LLC as the new operator of a 142-bed residential health care facility currently operated by Fairport Baptist Home at 4646 Nine Mile Point Road, Fairport, and change its name to WeCare at Fairport Nursing & Rehabilitation., and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

231011 E

Fairport SNF LLC d/b/a Fairport Skilled
Nursing & Rehab

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of 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 building lease acceptable to the Department of Health. [BFA]
4. Submission of one rent reasonable letter acceptable to the Department of Health. [BFA]
5. Submission of documentation of a final determination of the purchase price allocation. [BFA]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and 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]

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



Project # 231259-E
Tupper Lake Center LLC d/b/a
Tupper Lake Center for Nursing and Rehabilitation

Program: Residential Health Care Facility
Purpose: Establishment

County: Franklin
Acknowledged: June 15, 2023

Executive Summary

Description

Tupper Lake Center LLC, an existing New York limited liability company, requests approval to be established as the new operator of Mercy Living Center, a 60-bed, voluntary not-for-profit corporation, Article 28 residential health care facility (RHCF), at 114 Wawbeek Avenue, Tupper Lake, NY (Franklin County). Upon approval, the facility will be known as Tupper Lake Center for Nursing and Rehabilitation.

On March 27, 2023, Adirondack Medical Center entered into an Operations Transfer and Surrender Agreement (OTA) with Tupper Lake Center LLC for the transfer and acquisition of the RHCF's operations. Concurrently, Adirondack Medical Center entered a Real Estate Contract of Sale with Tupper Lake Propco LLC for the sale and acquisition of the RHCF's real estate for a purchase price of \$800,000. There is a relationship between Tupper Lake Center LLC and Tupper Lake Propco LLC in that the entities have common ownership. Tupper Lake Center LLC will lease the RHCF premises from Tupper Lake Propco LLC.

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

<u>Current Ownership</u>	
Adirondack Medical Center d/b/a Adirondack Health	
<u>Shareholders:</u>	
Adirondack Medical Center	100.0%

<u>Proposed Ownership</u>	
Tupper Lake Center LLC	
<u>Members:</u>	
Menajem (Mark) Salamon*	67.0%
Jonathan Gewirtz	33.0%
Total	100.0%

* *Managing Member*

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

<u>Current Ownership</u>	
Adirondack Medical Center d/b/a Adirondack Health	
<u>Shareholders:</u>	
Adirondack Medical Center	100.0%

<u>Proposed Ownership</u>	
Tupper Lake Propco LLC	
<u>Members:</u>	
Tupper Lake Investors LLC	10.0%
Siata Holdings, LLC	57.0%
Sari Landa	5.5%
Esther Gewirtz	5.5%
Alan Landa	5.5%
Steven Landa	5.5%
Joseph Landa	5.5%
Joshua Landa	5.5%
Total	100.0%

Yehudis Klein and Blimie Perlstein are each 50% owners of the Tupper Lake Investors, LLC. Menajem Salamon Family Trust is the sole member of Siata Holding, LLC. The beneficiaries of this trust are the children of Menajem Salamon, who is a non-member

Manager of Siata Holdings, LLC. David Salamon (Menajem Salamon's brother) is the Trustee of the Menajem Family Trust.

Menajem Salamon, one of the proposed members of Mercy Operating, LLC, is also seeking PHHPC approval to be established as the new operator of Highland Nursing Home, Inc. d/b/a North Country Nursing and Rehabilitation.

OALTC Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this application. Current occupancy, as of September 6, 2023, was 81.7% for the facility and 86.7% for Franklin 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

There are no project costs associated with this application. There are no costs associated with the acquisition of operations of the facility; the applicant will assume certain liabilities related to assumed contracts. The total purchase price for the RHCf's realty is \$800,000 and will be funded with equity from members of Tupper Lake Propco LLC. The proposed budget is as follows:

<u>Budget:</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$8,063,940	\$8,101,899
Expenses	<u>8,047,007</u>	<u>8,051,741</u>
Gain/(Loss)	\$16,933	\$50,158

Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on May 26, 2023.

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 Aging and Long-Term Care

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).

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
November 16, 2023

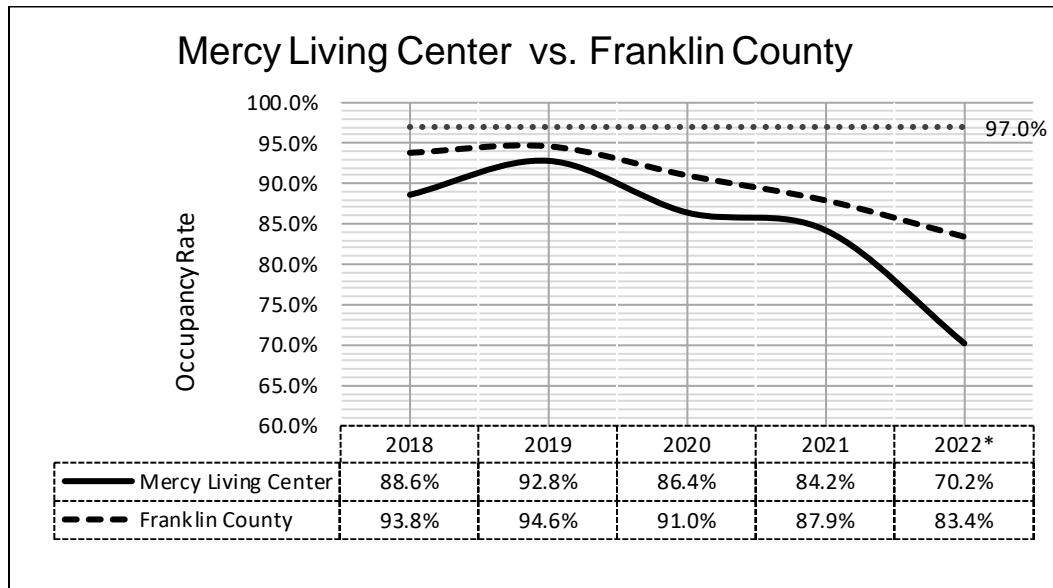
Need Analysis

Background and Analysis

The primary service area is Franklin County, which has a population that is projected to increase to 49,558 by 2028 based on Cornell Program of Applied Demographic estimates. Demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Franklin County	New York State
Total Population (2021 Estimate)	47,996	20,114,745
Hispanic or Latino (of any race)	3.6%	19.2%
White (non-Hispanic)	81.1%	54.7%
Black or African American (non-Hispanic)	5.1%	13.9%
Asian(non-Hispanic)	0.6%	8.6%
Other (non-Hispanic)	9.7%	3.6%

Source: 2021 American Community Survey (5-year Estimates Data Profiles)



*2022 data is self-reported and not certified

As of September 6, 2023, occupancy was 81.7% for the facility and 86.7% for Franklin County. The facility's occupancy rates during 2021 and 2022 were impacted by COVID-19, but occupancy levels have improved as the effects of the pandemic have waned.

The table below shows the CMS Rating and the utilization of the closest RCHFs to Mercy Living Center.

Facility Name	CMS Overall rating	Number of Beds	Distance from other RCHFs	Occupancy			
	As of 8/2023			2019	2020	2021	2022
Mercy Living Center	1	60	0 miles/0 mins	92.8%	86.4%	84.2%	70.2%
Elderwood of Uihlein (Essex)	1	156	30.7 miles/41 mins	62.9%	61.6%	52.3%	54.9%
United Helpers (St Lawrence)	4	96	54.3 miles/67 mins	51.2%	93.9%	83.9%	89.0%
Essex Center(Essex)	1	100	56.0 miles/72 mins	95.3%	89.2%	93.1%	91.7%
Alice Hyde	2	135	60.4 miles/73 mins	95.4%	93.1%	89.6%	89.2%
Elderwood at No. Creek (Warren)	3	82	60.6 miles/71 mins	89.4%	79.6%	71.1%	65.4%
Massena Rehab (St. Lawrence)	1	160	71.3 miles/95 mins	87.8%	78.0%	72.2%	91.0%

The following table provides the Case Mix Index (CMI) for the facility and surrounding RCHFs, which reflects the relative resources predicted to provide care to a resident. The higher the case mix weight, the greater the resource requirement for the residents.

Case Mix Index	2019		2020		2021	
	All Payor	Medicaid Only	All Payor	Medicaid Only	All Payor	Medicaid Only
Mercy Living Center	1.118	0.9115	N/A	N/A	1.034	0.884
Elderwood of Uihlein (Essex)	1.2791	1.0075	1.1304	1.0565	1.256	1.129
United Helpers (St Lawrence)	1.136	0.9436	0.987	1.0125	0.958	0.988
Essex Center (Essex)	1.2863	1.1447	1.2343	1.2559	1.367	1.373
Alice Hyde	1.2156	0.9165	1.0629	0.9131	1.064	0.891
Elderwood at No. Creek (Warren)	1.1154	0.9316	1.1754	1.1147	1.191	1.111
Massena Rehab (St. Lawrence)	1.1509	0.8879	1.0687	0.965	1.257	1.123

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 healthcare facility admissions that are Medicaid-eligible individuals in their planning area. This benchmark 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' Benefits 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.

An applicant will be required to make appropriate adjustments in its admission policies and practices to meet the resultant percentage. The facility's Medicaid admissions rate was above the threshold of 75% of the Franklin County rate for the years 2019 through 2021.

Percent of New Medicaid Admissions	2019	2020	2021
Franklin County Medicaid Threshold	24.1%	16.8%	17.5%
Franklin County 75% Threshold	18.1%	11.9%	13.1%
Mercy Living Center	21.7%	18.7%	19.0%

Conclusion

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

Program Analysis

Program Description

This application proposes to establish Tupper Lake Center LLC as the new operator of Mercy Living Center, an existing 60-bed residential health care facility, at 114 Wawbeek Avenue, Tupper Lake (Franklin County), New York 12986.

	Existing	Proposed
Facility Name	Mercy Living Center	Tupper Lake Center for Nursing and Rehabilitation
Address	114 Wawbeek Avenue, Tupper Lake, New York 12986	Same
RHCF Capacity	60 beds	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Voluntary	Limited Liability Company
Class of Operator	Not-for-Profit Corporation	Proprietary
Operator	Adirondack Medical Center	Tupper Lake Center LLC <u>Membership:</u> Menajem (Mark) Salamon* 67% Jonathan Gewirtz 33% <i>*Managing Member</i>

Character and Competence

Menajem (Mark) Salamon lists concurrent employment as Executive Director and Licensed Nursing Home Administrator of Gold Crest Care Center, Bronx, NY, as well as Chief Executive Officer of Highland Nursing Home d/b/a North Country Center for Nursing and Rehabilitation (the subject facility). Menajem (Mark) holds a bachelor's degree in Jewish Studies from the Israel Torah Research Institute and is licensed as a Nursing Home Administrator in both New York and New Jersey, with the New York license currently in good standing. The following healthcare facility ownership interests were disclosed:

New York Nursing Homes

Gold Crest Care Center (7.5%)	01/2022 to present
Windsor Park Rehab & Nursing Center (7.5%)	01/2022 to present

Out-of-State Nursing Homes

Advanced Center for Nursing and Rehabilitation [CT] (40%)	10/2016 to present
West Haven Center for Nursing and Rehabilitation [CT] (44%)	11/2021 to present
Southport Center for Nursing and Rehabilitation [CT] (44%)	11/2021 to present
New Haven Center for Nursing and Rehabilitation [CT] (44%)	11/2021 to present
Waterbury Center for Nursing and Rehabilitation [CT] (44%)	11/2021 to present
Torrington Center for Nursing and Rehabilitation [CT] (44%)	11/2021 to present

Jonathan Gewirtz lists employment as Controller at Gold Crest Care Center in Bronx, NY; this role is responsible for fiscal oversight, including auditing Medicare and Medicaid payments for accuracy, revalidating Medicare and Medicaid certifications, and establishing policies and procedures to comply with regulations as well as establishing best practice systems for billing and finance-related activity. Jonathan provides similar services at the following facilities: Fieldston Lodge Care Center, Bronx, NY; Wellsville Manor Care Center, Wellsville, NY; Valley View Manor Nursing Home, Norwich, NY; Sunnyside Care Center, East Syracuse, NY, and Windsor Park Nursing Home, Queens, NY. Jonathan holds a master's degree in Talmudic studies from the Rabbinical College of Telshe and discloses healthcare facility ownership interests as follows:

New York Nursing Homes

Hollis Park Manor Nursing Home (14%)	06/2015 to present
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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*			
		< 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
Menajem (Mark) Salamon	8	7	71.4%	1	100%
Jonathan Gewirtz	1	0	N/A	1	0%

*Duration of ownership as of 11/16/23

Data date: 09/2023

New York. The proposed owner's portfolio includes ownership in two New York facilities, both of which have a CMS overall quality rating of average or higher.

Connecticut. The proposed owner's portfolio includes ownership in six Connecticut facilities, all of which have a CMS overall quality rating of below average or much below average. Please note: New Haven Center for Nursing and Rehabilitation is on the CMS Special Focus Facility (SFF) Candidate List (added to the list 13 months ago as of 09/2023; thus, was added to the list while under the current management). To improve the quality at the six Connecticut facilities, the applicant indicated the following:

Regarding Torrington Center for Nursing and Rehabilitation, this facility's current Overall star rating of two stars represents a one-star increase, as compared to the facility's Overall star rating in 2021 when Mr. Salamon first became affiliated with this facility. As Mr. Salamon continues to make operational improvements at the facility, he is hopeful that the facility's Overall star rating will increase to three stars within the near term. Regarding West Haven Center for Nursing and Rehabilitation, Southport Center for Nursing and Rehabilitation, New Haven Center for Nursing and Rehabilitation, and Advanced Center for Nursing and Rehabilitation, the applicant states that there has not been a Department of Health survey at these facilities in more than two years. As a result, these facilities' star ratings have not been updated since that time. As noted, these facilities have not had any surveys in the past two years, and they expect the next survey to be positive, which should serve to increase the Overall star rating at each facility. Regarding the Special Focus Candidate designation at New Haven Center for Nursing and Rehabilitation, it is important to note that this facility was a Special Focus Facility Candidate prior to the new operators becoming involved with the operation of the facility in 2021. Mr. Salamon is hopeful that this facility will be removed from the Special Focus Facility Candidate List within the near term.

Mr Salamon states that the New Haven Center for Nursing and Rehabilitation received several G-level tags that ultimately led to the facility being placed on the SFF Candidate List. Mr. Salamon's affiliation with this facility began in November of 2021, which is a period of approximately nine months prior to the facility being placed on the SFF Candidate List in August of 2022. Mr. Salamon states that it often takes longer than nine months for positive institutional changes to be reflected in the quality of a nursing facility. However, as a testament to the positive operational improvements that have been made to the facility, Mr Salamon is pleased to report that, as of July 25, 2023, the Connecticut Department of Public Health has removed the Independent Nurse Consultant (INC) who was placed at the facility as part of The Connecticut Department of Public Health's regulatory oversight of all new operators of nursing homes located within Connecticut. The removal of the INC was the result of several positive quality inspections conducted by the INC. Mr. Salamon also states that his group continues to work with facility staff to improve quality even further. As additional evidence supporting the positive changes being made at the facility, Mr. Salamon reports that the facility received no G-level tags or Immediate Jeopardy violations

during the facility's last survey. As a result of these positive developments, Mr. Salamon is optimistic that this facility will be removed from the Special Focus Facility Candidate List in the near term.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Mercy Living Center	Subject Facility	*	*	**	****
Gold Crest Care Center	Current	*****	****	*****	**
	01/2022	*****	*****	*****	**
Windsor Park Rehab & Nursing Center	Current	*****	*****	****	***
	01/2022	*****	*****	****	***
Hollis Park Manor Nursing Home	Current	****	***	*****	***
	06/2015	****	****	*****	*
Connecticut					
Advanced Center for Nursing and Rehabilitation	Current	*	*	***	*
	10/2016	*	*	***	***
West Haven Center for Nursing and Rehabilitation	Current	*	*	***	*
	11/2021	***	**	*****	***
Southport Center for Nursing and Rehabilitation	Current	*	*	‡	**
	11/2021	*	*	**	**
New Haven Center for Nursing and Rehabilitation†	Current	*	*	***	*
	11/2021	*	*	**	***
Waterbury Center for Nursing and Rehabilitation	Current	**	**	*****	***
	11/2021	**	*	***	*****
Torrington Center for Nursing and Rehabilitation	Current	**	**	***	**
	11/2021	*	*	****	***

‡ This facility submitted data that could not be verified through an audit

† Special Focus Facility Candidate (on the list for 13 months as of 09/2023)

Data date: 09/2023

Enforcement History

New York

A review of the operations of Gold Crest Care Center for the period indicated above revealed no enforcements.

A review of the operations of Windsor Park Rehab & Nursing Center for the period indicated above revealed no enforcements.

A review of the operations of Hollis Park Manor Nursing Home for the period indicated above revealed no enforcements.

Connecticut

A review of the operations of the Advanced Center for Nursing and Rehabilitation for the period indicated above revealed the following:

- The facility was assessed a federal Civil Money Penalty (CMP) of \$40,724 on 04/07/2022 for failure to provide appropriate treatment and care according to orders, resident's preferences, and goals and for failure to ensure that a nursing home area is free from accident hazards and provide adequate supervision to prevent accidents.

A review of the operations of West Haven Center for Nursing and Rehabilitation for the period indicated above revealed the following:

- The facility was assessed a federal CMP of \$6,630 on 09/20/2022 for failure to provide basic life support, including CPR, prior to the arrival of emergency medical personnel, subject to physician orders and the resident's advance directives and for failure to ensure services provided by the nursing facility meet professional standards of quality.

A review of the operations of Southport Center for Nursing and Rehabilitation for the period indicated above revealed the following:

- The facility was assessed a federal CMP of \$8,648 on 06/24/2022 for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents.

A review of the operations of the New Haven Center for Nursing and Rehabilitation for the period indicated above revealed the following:

- The facility was assessed a federal CMP of \$199,306 on 08/03/2022 for failure to ensure services provided by the nursing facility met professional standards of quality and for failure to provide enough nursing staff every day to meet the needs of every resident and have a licensed nurse in charge on each shift. Specifically, the facility failed to administer medications as prescribed (to 21 residents), failed to notify the DNS and physician when medications were not administered, failed to complete assessments of the residents' condition after medications were omitted, failed to monitor residents who had significant medication omissions and failed to accurately document the medication omissions. Further, the facility failed to ensure licensed staff followed professional standards of practice, including reporting to the oncoming and off-going shifts, narcotic count, and ensuring the security of the narcotic keys.
- The facility was assessed a federal CMP of \$51,077 on 04/27/2022 for failure to provide appropriate treatment and care according to orders, residents' preferences, and goals and for failure to provide appropriate pressure ulcer care and prevent new ulcers from developing.

A review of the operations of Waterbury Center for Nursing and Rehabilitation for the period indicated above revealed the following:

- The facility was assessed a CMP of \$9,750 on 06/23/2022. The applicant states that this CMP was related to an isolated infection control incident at the facility. Initially, a G-Level Tag was issued relative to this incident but was later removed by CMS. The fine has been paid, and this matter is resolved.

A review of the operations of Torrington Center for Nursing and Rehabilitation for the period indicated above revealed the following:

- The facility was assessed a federal CMP of \$650 on 01/03/2022 for failure to report COVID-19 data.

On 03/27/2023, an Interim Consultative Services Agreement was entered into by and between Adirondack Medical Center and Tupper Lake Consulting Group LLC. The interim agreement will terminate when this CON has been approved, and all contingencies have been fulfilled. Once Tupper Lake Center LLC has assumed ownership of the facility, there is no intent to enter into any agreement(s) involving the management/administrative/billing or consulting services for the facility.

Conclusion

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

Financial Analysis

Operating Budget

The applicant has submitted the current year (2021) operations and an operating budget for the first and third years after the change in operator, summarized below:

	<u>Current Year</u> (2021)		<u>Year One</u> (2024)		<u>Year Three</u> (2026)	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Revenues:						
Medicare FFS	\$552.75	\$271,955	\$640.29	\$363,686	\$675.31	\$383,576
Medicare MC	\$552.75	\$247,081	\$640.35	\$330,422	\$675.37	\$348,492
Medicaid FFS	\$324.55	\$3,616,405	\$324.55	\$4,176,948	\$324.55	\$4,176,948
Medicaid MC	\$324.55	\$508,562	\$324.55	\$587,389	\$324.52	\$587,389
Private Pay	\$655.02	\$3,140,809	\$655.04	\$3,627,634	\$655.04	\$3,627,634
Less: Bad Debt		(3,335,870)		(1,167,555)		(1,167,555)
Total Pt. Revenues		\$4,448,943		\$7,918,524		\$7,956,484
Other Oper. Rev.		<u>230,177</u>		<u>145,415</u>		<u>145,415</u>
Total Revenues		\$4,679,120		\$8,063,940		\$8,101,899
Expenses:						
Operating	\$418.90	\$7,726,203	\$307.03	\$6,540,301	\$307.25	\$6,545,035
Capital	<u>\$16.76</u>	<u>\$309,111</u>	<u>\$70.73</u>	<u>\$1,506,706</u>	<u>\$70.73</u>	<u>\$1,506,706</u>
Total Expenses	\$435.66	\$8,035,314	\$377.76	\$8,047,007	\$377.98	\$8,051,741
Net Income (Loss)		(\$3,356,194)		\$16,933		\$50,158
Patient Days		18,444		21,302		21,302
Occupancy		84.2%		97.3%		97.3%

The following is noted for the submitted RHCf operating budget:

- The facility's forecasted Medicaid reimbursement rate for Years One and Three is based on the DOH's 2023 Medicaid Regional Pricing rate.
- The facility's projected occupancy in Years One and Three of 97.3% is based on the facility's 2021 occupancy, increased to account for applicants' plan to market the facility more effectively to prospective residents. Occupancy for the period 2021-2022 has averaged 77.3%, and as of October 11, 2023, the occupancy was at 90.0%.
- Years One and Three operating expenses are based on 2021 operating expenses, increased by 2% for most non-payroll items, and reflect the reduction of certain direct operating expenses based on efficiencies that are expected to be realized by the new operator.

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

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicare FFS	3.49%	4.00%	4.20%
Medicare MC	3.17%	3.64%	3.82%
Medicaid FFS	46.45%	45.97%	45.78%
Medicaid MC	6.53%	6.46%	6.44%
Private Pay	<u>40.35%</u>	<u>39.93%</u>	<u>39.76%</u>
	100.00%	100.00%	100.00%

Operations Transfer and Surrender Agreement

The applicant submitted an executed operations transfer and surrender agreement (OTA) to acquire the RHC's operating interests, liabilities, and obligations, as summarized below:

Date:	March 27, 2023
Transferor:	Adirondack Medical Center d/b/a Adirondack Health
Transferee:	Tupper Lake Center LLC
Facility:	Mercy Living Center, an Article 28, 60-bed Skilled Nursing Facility
Assets Acquired:	Assets used in connection with the operation and/or management of the facility, certain tangible and intangible property and other interests solely and exclusively relating to the facility including title, physical custody, all furniture, fixtures, furnishings, equipment, appliances, tools, instruments, machinery that exist on the date of this OTA and other tangible personal property owned by transferor, all inventory and supplies including office, medical disposables, prescription medications, pharmaceutical inventories, computers, computer equipment and hardware, office equipment, trucks, vehicles and other transportation equipment, all material outstanding contracts, agreements, leases, purchase orders to the extent transferrable, all menus, operating manuals, training materials, marketing, sales and promotional materials, all rights to telephone and facsimile numbers, all administrative records, financial books and records, employee and payroll records, medical staff records, copies of all books and records related to operations, licenses, certificates, permits, waivers, accreditations, guarantees, certificate of occupancy, utility lease agreement, goodwill, provider numbers, resident funds held in trust, all cash deposits, funds from rate adjustments and appeals, all accounts receivable, residents records, residents' charts, transferor's rights and interest in Medicare, Medicaid and third party provider numbers and reimbursement agreements, all other assets owned by the transferor at closing.
Excluded Assets:	Licenses and permits that are not assignable or transferable, investments and settlements owned by the transferor, grant awards, other awards, any funds received from the Medicare Accelerated and Advance Payment Program or Payroll Protection Program Loans, state equivalent stimulus money, retroactive rate increases all cash and account receivable related to services rendered prior to the effective date, excluded assets under the real estate contract of sale, tax records, record books related to the legal organization of transferor, insurance refunds and claims, monies held in retirement programs, all actions claims and lawsuits owned by transferor, intellectual property, software and databases not related to the business, prepaid expenses and refunds for taxes.
Assumed Liabilities:	All obligations and liabilities under the assumed contracts.
Purchase Price:	None

There are no costs associated with the acquisition of operations of the facility and the applicant will assume certain liabilities related to the assumed contracts.

Real Estate Contract of Sale

The applicant submitted an executed real estate contract of sale to acquire the RHCF's real property, as summarized below:

Date:	March 27, 2023
Seller:	Adirondack Medical Center d/b/a Adirondack Health
Buyer:	Tupper Lake Propco LLC
Real Property:	All real property with all improvements and certain personal property used in the operation of a 60-bed skilled nursing home located at 114 Wawbeek Avenue, Tupper Lake, NY (Franklin County).
Excluded Assets:	Furnishings, fixtures and equipment associated with seller's physical therapy outpatient space at the Mercy Living Center, items subject to leases and contracts not assumed by the buyer, licenses approvals and permits that are not assignable or transferrable, marketable securities, investments, cash and accounts receivables and collections owned by seller as of the closing, any grant or other awards to the seller for the retained facilities, assets and assumed liabilities and assumed contracts under the OTA, tax records, record books, all refunds and claims under sellers insurance prior to closing and the insurance policies themselves, all actions, claims, and lawsuits owned by the seller not expressly assumed by the buyer, intellectual property including materials bearing "Mercy Living Center", "Adirondack Health" and/or "Adirondack Medical Center", software and databases for which seller does not have unlimited authority, all contracts not assumed by buyer, all prepaid expenses and all refunds, claims, abatements, and adjustments for taxes, personal computers, non-real-estate related inventory, copiers, printers, scanners leased from SymQuest.
Purchase Price:	\$800,000
Payment of the Purchase Price:	\$40,000 deposited and held in escrow. \$760,000 due at closing. Real Estate transaction closed on July 17, 2023

The purchase price of the realty interest in the facility will be satisfied via equity from members of Tupper Lake Propco LLC.

The applicant has 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 October 13, 2023, the facility had no outstanding Medicaid liabilities.

Lease Rental Agreement

The applicant submitted an executed lease agreement for the site, summarized below:

Facility:	A 60-bed skilled nursing facility located at 114 Wawbeek Avenue, Tupper Lake, NY (Franklin County)
Landlord:	Tupper Lake Propco LLC
Tenant:	Tupper Lake Center LLC
Term:	5-year term with an option to extend for two (2) additional 5-year terms.
Rental:	\$1,200,000 per year (\$100,000 monthly) for Years 1 through 5, and a 3% annual increase in Years 6 through 15.
Provisions:	The tenant is responsible for maintenance, insurance, taxes, and utilities.

The lease arrangement is a non-arms-length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and tenant in that there is common ownership between

Tupper Lake Propco LLC and Tupper Lake Center LLC. The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per-square footage rental.

Interim Consultative Service Agreement (ICSA)

The applicant has provided an executed ICSA, with terms summarized below:

Date:	March 27, 2023
Operator:	Adirondack Medical Center
Consultant:	Tupper Lake Consulting Group LLC
Administrative Services:	Conduct development, maintenance, revisions, and administration of the overall charge and billing structure of the Facility pursuant to Applicable Law, including, but not limited to, Facility services, charges for all ancillary services, charges for supplies and special services, and implementing and monitoring all relevant and agreed-upon changes in the charge structure. Consultant shall establish, revise, and administer wage scales, rates of compensation, employee benefits and conditions of employment, in-service training, attendance at seminars or conferences, staffing schedules, and job and position descriptions with respect to Operator's employees who staff the Facility. Preparation of all first and third-party bills for services and materials rendered by the facility, generation and submission of patient bills and third-party payor bills to the responsible party, either in paper or electronic format, as appropriate; the processing of denied claims and revision and resubmission of such claims for payment to the patient, or applicable third-party payor; follow-ups on unpaid claims, including the sending of patient follow-up statements at such intervals as reasonably determined by Consultant and referrals for collection, subject to applicable written policies of the Facility; answering of inquiries received by phone; Assist with all billing and collection work in the name of, on behalf of, Operator. Maintain a standard reporting system to regularly inform Operator of the current status of the Facility's billing and collection accounts. Payment of Accounts and Indebtedness. Assist with the payment of payroll, trade accounts, and amounts due on short-and long-term indebtedness.
Term:	The agreement shall commence on the closing date of the real property and terminate upon earlier of the date to which the parties mutually consent in writing or the date on which CON approval is received.
Consulting Fee:	\$1.00
Delay Fee:	\$5,000

The executed ICSA provides that the established operator retains ultimate authority, responsibility, and control in all the final decisions associated with the services. In accordance with the Department's ASA policy effective December 13, 2016, the terms of the executed ICSA must acknowledge the reserve powers that must not be delegated, the conflicts clause provisions to ensure that the Licensed Operator retains ultimate control for the operations, and the notwithstanding clause provisions to ensure compliance with governmental agencies, statutes, and regulations. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation, and understands that the Department will hold the applicant accountable.

Capability and Feasibility

There are no costs associated with the acquisition of operating interest. The total purchase price for the RHCF's operations and realty is \$800,000 and is funded with proposed member equity. The working capital requirement is estimated at \$1,341,168 based on two months of first-year expenses, to be funded with the proposed member's equity. BFA Attachment A presents a summary of the net worth of the applicant members, which indicates sufficient resources to meet the equity requirement overall.

The submitted budget projects net income from operations of \$16,933 in Year One and \$50,158 in Year Three. The budget appears reasonable.

BFA Attachment C presents the Pro Forma Balance Sheet of Mercy Operating, LLC, which indicates positive members' equity of \$1,341,168.

BFA Attachment D, the 2021-2022 Financial Summary of ADKH and Affiliates, indicates the facility had positive working capital and positive equity. The entity had a net income of \$7,403,132 in 2021 and a net loss of \$15,613,405 in 2023. The 2021 reported net income included a \$3,356,193 net loss attributable to Mercy Living Center. Similarly, ADKH's 2022 net loss included a \$4,533,555 net loss attributable to Mercy Living Center.

As of June 30, 2023, ADKH reported positive working capital, positive equity, and a net loss of \$558,782. For the period ending June 30, 2023, Mercy Living Center reported a net loss of \$1,509,345. The reported losses at the SNF facility in 2021 were due to lower-than-expected occupancy. Losses reported by Mercy Living Center in 2022 and 2023 are attributable to a voluntary hold placed on new resident admissions due to staffing shortages at the facility. During 2023, the facility sourced additional personnel from local staffing agencies and lifted the hold on new resident admissions, leading to expected improvements in occupancy.

BFA Attachment E presents a financial summary of proposed members' affiliated nursing homes based on Certified Financial Statements for the years ended December 31, 2020, 2021, and 2022. Between 2020 and 2021, the affiliated facilities maintained positive net asset positions, net equity, and reported net income from operation, except for Hollis Park and Windsor Park, which reported negative working capital positions in 2020. The negative working capital reported by Hollis Park in 2020 is attributable to a higher-than-expected level of third-party payables during that time. The negative net asset position and net loss reported by Windsor Park in 2020 are attributable to the negative impacts of the COVID-19 pandemic on the facility. Windsor Park's 2022 operating loss is attributable to a lower-than-expected occupancy at the facility.

Conclusion

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

<h2>Attachments</h2>

LTCOP Attachment	Long-Term Care Ombudsman Program Recommendation
BFA Attachment A	Mercy Living Center, LLC – Proposed Members Net Worth
BFA Attachment B	Mercy Living Center, LLC – Equity Analysis
BFA Attachment C	Mercy Operating, LLC – Pro Forma Balance Sheet
BFA Attachment D	Adirondack Health and Affiliates – Financial Summary 2021-2022 and June 2023 Internal Financial Summary
BFA Attachment E	Proposed Member's – Affiliated RHCFC Financial Summary 2020-2022 Internal Financial Summary
BFA Attachment F	Organization Chart – Proposed Members

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 16th day of November 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Tupper Lake Center LLC as the new operator of Mercy Living Center, a 60-bed Residential Health Care Facility currently operated by Adirondack Medical Center at 114 Wawbeek Avenue, Tupper Lake, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

231259 E

Tupper Lake Center LLC d/b/a Tupper Lake
Center for Nursing and Rehabilitation

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. (RNR).

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]

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



**Project # 231010-E
Vilas Home Care, LLC**

Program: LHCSA
Purpose: Establishment

County: Clinton
Acknowledged: February 16, 2023

Executive Summary

Description

Villas Home Care, LLC, a limited liability company, requests approval to obtain licensure as a Licensed Home Care Services Agency (LHCSA) under Article 36 of the Public Health Law.

The applicant proposes to serve the residents of the following counties from an office at 61 Beekman Street, Plattsburgh, NY 12901:

- Clinton
- Essex
- Franklin

The applicant proposes to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care Aide
- Physical Therapy
- Occupational Therapy
- Medical Social Work
- Homemaker
- Housekeeper

**OALTC Recommendation
Approval**

Need Summary

This CON meets the need requirements set forth in 10 NYCRR Section 765-1.16 as all counties requested have a presumed need.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

Financial Summary

In accordance with 10 NYCRR 765-1.2(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Approval is recommended

Council Action Date

November 16, 2023

Program Analysis

Program Description

Villas Home Care, LLC requests approval to obtain licensure as a Licensed Home Care Services Agency (LHCSA) under Article 36 of the Public Health Law.

The applicant proposes to serve the residents of the following counties from an office at 61 Beekman Street, Plattsburgh, NY 12901:

- Clinton
- Essex
- Franklin

The applicant proposes to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care Aide
- Physical Therapy
- Occupational Therapy
- Medical Social Work
- Homemaker
- Housekeeper

Character and Competence Review

The membership of Vilas Home Care, LLC is comprised of the following individual:

Eli Schwartzberg - 100%

Sole Member/Operator, Plattsburgh ALR, Inc.

Sole Member/Operator, Champlain Valley Senior Community

Affiliations

- Plattsburgh ALR d/b/a Samuel F. Vilas Home (January 2019-Present)
- Champlain Valley Senior Community (2012-present)

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

A review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care service agency.

Facility Compliance/Enforcement

The Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the above-mentioned adult care facilities and reports as follows:

- Plattsburgh ALR d/b/a Samuel F. Vilas Home was fined \$2,000 pursuant to a Stipulation and Order from an October 1, 2020, survey for violations of Article 7 of Social Services Law and 18 NYCRR Part 487 Sections 487.9(a)(8).
- Plattsburgh ALR d/b/a Samuel F. Vilas Home was fined \$6,000 pursuant to a Stipulation and Order from a January 27, 2021, survey for violation of Article 7 of Social Services Law and 18 NYCRR Part 486.5(a)(4)(v).
- Plattsburgh ALR d/b/a Samuel F. Vilas Home was fined \$3,000 pursuant to a Stipulation and Order from an April 7, 2021, survey for violations of Article 7 of Social Services Law and 18 NYCRR Part 486.5(a)(4)(v).

Need Review

This CON meets the need requirements set forth in 10 NYCRR Section 765-1.16 as all counties requested have a presumed need.

Financial Review

In accordance with 10 NYCRR 765-1.2(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

Workforce Review

Current availability of professional/paraprofessional staff:

- The current availability of workers is strong. Several assisted living communities in the area are 100% staffed, and other nursing homes have seen stabilization of staff.

Competing employers:

- Competing employers include HCR of Rochester, North Country Home Services, Meadowbrook Healthcare, Plattsburgh Nursing Home, CVPH Nursing Home, and Clinton County Nursing Home.

Training, recruitment, and workforce initiatives:

- The applicant reports they will ensure each employee has a thorough and effective onboarding with an organized training program that sets them up for success and ensures that the clients receive high-level care. They plan to provide a driving stipend and have company vehicles to reduce the cost of travel for the staff. They report they will attend job fairs and look to certify people from other industries looking for a career in healthcare as two of the primary recruitment strategies.

Measure to promote retention:

- The applicant plans to provide competitive pay and benefits so that staff have a livable wage. They will offer healthcare, vacation time, a 401k, and provide opportunities for upward mobility and job growth. They report they will have manageable client caseloads and provide paid training.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 16th day of November, 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to establish a new Licensed Home Care Services Agency at 61 Beekman Street, Plattsburgh, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

231010 E

Vilas Home Care, Inc

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

N/A

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



**Project # 222238-E
Auburn Assisted Living LLC**

Program: LHCSA
Purpose: Establishment

County: Saratoga
Acknowledged: January 3, 2023

Executive Summary

Description

Auburn Assisted Living Services, LLC, a limited liability company, requests approval under Article 36 of the Public Health Law to become the operator of a Licensed Home Care Services Agency (LHCSA) currently operated by Northbrook Heights Home for Adults, Inc.

The LHCSA, to be known as Auburn Assisted Living Services, LLC, will be associated with the Assisted Living Program (ALP) to be operated by Auburn Assisted Living Services, LLC. The LHCSA and the ALP will have identical membership.

The applicant proposes to serve the residents of the ALP located at 170 Murray Street Extension, Auburn, NY 13021.

The applicant proposes to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care

**OALTC Recommendation
Contingent Approval**

Need Summary

In accordance with 10 NYCRR 765-1.16(c)2, this application is exempt from Public Need review as the agency is proposing to only serve patients associated with the Assisted Living Program (ALP), as attested to by the current operator.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

Financial Summary

In accordance with 10 NYCRR 765-1.2(b)3, the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Approval contingent upon:

1. Submission of a photocopy of the amended and executed Certificate of Amendment to the Articles of Organization, acceptable to the Department. [CSL]
2. Submission of a photocopy of the amended and executed Amendment to the Operating Agreement, acceptable to the Department. [CSL]

Council Action Date

November 16, 2023

Program Analysis

Program Description

Auburn Assisted Living Services, LLC, requests approval for an Asset Purchase to obtain licensure as a Licensed Home Care Services Agency under Article 36 of the Public Health Law.

The LHCSA, to be known as Auburn Assisted Living Services, LLC, will be associated with the Assisted Living Program (ALP) to be operated by Auburn Assisted Living Services, LLC. The LHCSA and the ALP will have identical membership.

The applicant proposes to serve the residents of the ALP from an office at 170 Murray Street Extension, Auburn, NY 13021.

The applicant proposes to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care

Character and Competence Review

Auburn Assisted Living Services, LLC is comprised of the following individuals:

Avi Lustig - 100%

Operator and Administrator, Mariners Home Care, Inc.

Affiliations

- Silver Lake Support Services, Inc. (2001-Present)
- The Elliot Pearl House, LLC (January 2022-Present)
- Mariners Residence, Inc. (2013-Present)
- Mariners Home Care, Inc. (January 2019-Present)

The applicant has owned and/or worked in an assisted living facility, home care agency, and OASAS-approved facilities and is considered to have the experience to operate an Assisted Living Program.

A review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home health agency.

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

Facility Compliance/Enforcement

The Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the above-mentioned adult care facilities and reports as follows:

- The Elliot Pearl House, LLC d/b/a The Elliot Pearl House was fined \$100 pursuant to a Stipulation and Order for inspection findings on October 17, 2022, for violations of Article 7 of the Social Services Law and 18 NYCRR Part 486.
- Mariners Residence, Inc. was fined \$50 pursuant to a Stipulation and Order for inspection findings on September 13, 2021, for violations of Article 7 of the Social Services Law and 18 NYCRR Part 486.
- Mariners Residence, Inc. was fined \$50 pursuant to a Stipulation and Order for inspection findings on February 17, 2022, for violations of Article 7 of the Social Services Law and 18 NYCRR Part 486.
- Mariners Residence, Inc. was fined \$2,340 pursuant to a Stipulation and Order for inspection findings on September 11, 2017, and March 19, 2018, for violations of Article 7 of the Social Services Law and 18 NYCRR Part 486.

Need Review

In accordance with 10 NYCRR 765-1.16(c)2, this application is exempt from Public Need review as the agency is proposing to only serve patients associated with the Assisted Living Program (ALP), as attested to by the current operator.

Financial Review

In accordance with 10 NYCRR 765-1.2(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

Workforce Review

Current availability of professional/paraprofessional staff:

- The applicant is taking over an existing operating agency that serves the residents of the ALP associated with the agency; therefore, staff is projected to remain in place without change when the agency is approved.

Competing employers:

- The applicant's home care agency is part of a licensed ALP. Competing employers for home care workers are licensed agencies that require home visits. Home care workers have stated a preference for shift work under one roof in a facility rather than the sporadic contract work and travel required by home care agencies. Therefore, the applicant does not view any of the area agencies to be competitors and feels confident that the working conditions of a well-managed, attractive facility for these home care workers will provide a competitive edge in hiring and retention.

Training, recruitment, and workforce initiatives:

- The applicant reports that competitive salaries are offered at all levels of employment. Recruitment is ongoing, although the agency has had success with long-term retention of workers, so this is not perceived as an issue for the applicant. The applicant does not feel the need for coordination with local workforce initiatives or the Department of Labor for this reason.

Measures to promote retention:

- The applicant reports that competitive salaries are offered at all levels of employment, and the agency has had success with long-term retention of workers, so this is not perceived as an issue.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 16th day of November, 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to establish Auburn Assisted Living LLC as the new operator of a Licensed Home Care Services Agency currently operated by Northbrook Heights Home for Adults, Inc. at 170 Murray Street Extension, Auburn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

222238 E

Auburn Assisted Living LLC

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the amended and executed Certificate of Amendment to the Articles of Organization, acceptable to the Department. [CSL]
2. Submission of a photocopy of the amended and executed Amendment to the Operating Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

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



Project # 22220-E
Kris Agency And Home Care, Inc.

Program: LHCSA
Purpose: Establishment

County: Queens
Acknowledged: December 15, 2022

Executive Summary

Description

Kris Agency and Home Care, Inc., a business corporation that is a current Licensed Home Care Services Agency (LHCSA) under Article 36 of the Public Health Law, requests approval to transfer 90.1% ownership interest from one current shareholder to another current shareholder.

Kris Agency and Home Care, Inc. was approved by the Public Health and Health Planning Council (PHHPC) on September 27, 1991, and the agency was subsequently licensed under license number 9220L001.

The current shareholders of Kris Agency and Home Care, Inc. are Mehadai Deoki (90.1%) and Parsana Deoki (9.9%). Upon approval of the requested transfer, Parsana Deoki will be the sole shareholder (100%).

The LHCSA currently serves residents of the following counties from an office at 169-14 Hillside Avenue, Jamaica, New York 11432.

- Bronx
New York
Queens
Nassau
Kings

The LHCSA provides the following healthcare services:

- Nursing
Health Aide
Personal Care

OALTC Recommendation
Contingent Approval

Need Summary

In accordance with 10 NYCRR 765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator. Additionally, the applicant submitted a rebuttal to the presumption of no need in Nassau County, which the Department deemed acceptable.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

Financial Summary

In accordance with 10 NYCRR 765-1.2(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Approval contingent upon:

1. Submission of a signed/executed copy of a stock purchase agreement that is acceptable to the Department. [CSL]

Council Action Date

November 16, 2023

Program Analysis

Project Description

Kris Agency and Home Care, Inc., request approval to transfer 90.1% ownership interest from one current shareholder to an existing shareholder.

The LHCSA serves the residents of the following counties from an office at 169-14 Hillside Avenue, Jamaica, New York 11432.

- Bronx
- New York
- Queens
- Nassau
- Kings

The LHCSA provides the following healthcare services:

- Nursing
- Health Aide
- Personal Care

Character and Competence

The proposed membership of Kris Agency and Home Care, Inc. is comprised of the following individual:

Parsana Deoki - 100%

Chief Operations Officer, Kris Agency and Home Care, Inc.

Affiliations

- Kris Agency and Home Care, Inc. (October 2021 – Present).

A review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home health agency.

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

Facility Compliance/Enforcement

The information provided by the Division of Home and Community-Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety, and welfare of patients and to prevent recurrent code violations. The information provided by the Bureau of Emergency Medical Services indicated that Parsana Deoki held an EMT license (#495727), and there were no disciplinary actions taken against this individual or their license.

Need Review

In accordance with 10 NYCRR 765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator. Additionally, the applicant submitted a rebuttal to the presumption of no need in Nassau County, which the Department deemed acceptable.

Financial Review

In accordance with 10 NYCRR 765-1.2(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

Workforce Review

Kris Agency and Home Care Inc. has specialized relationships in the veteran community, many of whom are underemployed. As an LHCSA in good standing, they employ over 100 caregivers, many of whom have over five years at the agency. This is a function of fair wages, good training, and word of mouth, which will also be assets when recruiting and hiring. Kris Agency provides ongoing training programs for their staff, including in-house in-service programs, refresher training that is part of the quality assurance program, and specialized training for Alzheimer's, dementia, TBI, mental health screening, and cultural sensitivity. The agency recruits at local training schools and has an approved New York State Department of Health Personal Care Aide training program. It also uses word of mouth, employee friend and family referrals, and local advertising.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 16th day of November, 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to transfer 90.10% ownership interest from one current shareholder to an existing shareholder, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

222220 E

Kris Agency And Home Care, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a signed/executed copy of a stock purchase agreement that is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

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



**Project # 222255-E
Riverside Select Services, LLC d/b/a
Cottage Homecare Services**

Program: LHCSA
Purpose: Establishment

County: Nassau
Acknowledged: January 23, 2023

Executive Summary

Description

Riverside Select Services, LLC, a New York limited liability company, is requesting to become the new operator of Cottage Home Care Services, Inc., a Licensed Home Care Services Agency (LHCSA) under Article 36 of the Public Health Law.

The applicant proposes to serve the residents of the following counties from an office at 25 Newbridge Road, Suite 302, Hicksville, New York 11801:

- Nassau
- Suffolk
- Queens
- Bronx
- Kings
- New York
- Richmond
- Westchester

The applicant proposes to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care Aide

**OALTC Recommendation
Approval**

Need Summary

In accordance with 10 NYCRR Section 765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

Financial Summary

In accordance with 10 NYCRR 765-1(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Approval is recommended

Council Action Date

November 16, 2023

Program Analysis

Program Description

Riverside Select Services, LLC d/b/a Cottage Homecare Services, a Limited Liability Company, seeks approval for an asset purchase of Cottage Homecare Services, Inc.

The applicant is proposing to serve the residents of the following counties from an office at 25 Newbridge Road, Suite 302, Hicksville, New York 11801:

- Nassau
- Suffolk
- Queens
- Bronx
- Kings
- New York
- Richmond
- Westchester

The applicant proposed to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care Aide

Character and Competence Review

Riverside Select Services, LLC d/b/a Cottage Homecare Services is comprised of the following individual:

Allen Stein – 100%

Managing Member, Sprain Brook Manor Rehab, LLC

Managing Member, L&A Operations LLC d/b/a Adira at Riverside Rehabilitation

Affiliations

- Sprain Brook Manor Rehab, LLC (2012 - Present)
- L&A Operations LLC d/b/a Adira at Riverside Rehabilitation & Nursing (January 2015 - Present)
- St. Camillus Stamford Opco, LLC [CT] (January 2020 – Present)
- Governor's House Simsbury Opco, LLC [CT] (January 2020 -Present)
- ABH Opco, LLC [CT] (January 2022 -Present)

Cottage Home Care in Hicksville, NY has been receiving management assistance from Allen Stein since 2020. His healthcare management skills qualify him to operate the proposed agency.

A review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

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

Facility Compliance/Enforcement

The Division of Quality and Surveillance for Nursing Homes has reviewed the compliance histories of the affiliated nursing homes and reports as follows:

- Adira at Riverside Rehabilitation & Nursing was fined \$2,000 pursuant to a stipulation and order from an August 18, 2021 survey for violations of Title18 NYCRR Part 415.19(a) and 415.19(b)(4).

Need Review

In accordance with 10 NYCRR Section 765-1.16(c)2, this application is exempt from Public Need review as the agency is actively serving over 25 patients, as attested to by the current operator.

Financial Review

In accordance with 10 NYCRR 765-1.2(b)3 the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating financial feasibility of the agency.

Workforce Review

The applicant's response regarding the recruitment and retention of the workforce was adequately addressed. Attachment A outlines their workforce goals.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2).

Attachments

OALTC Attachment A	Workforce Review
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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 16th day of November, 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to establish Riverside Select Services, LLC as the new operator of a licensed home care services agency currently operated by Cottage Homecare Services, Inc., and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

222255 E

Riverside Select Services, LLC d/b/a Cottage Homecare Services

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

N/A

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



Project # 231369-E
Westside Ambulatory Surgery Center

Program: Diagnostic and Treatment Center
Purpose: Establishment
County: New York
Acknowledged: July 21, 2023

Executive Summary

Description

Westside ASC, LLC (Westside), a New York State limited liability company, seeks approval to establish a multi-specialty freestanding ambulatory surgery center (ASC) at 450 West 31st Street, New York (New York County). Westside will share leased space in a temporal separation arrangement with Hudson Yards Surgery Center, LLC. The proposed operator of the ASC is also the owner/operator of Hudson Yards Surgery Center. Upon PHHPC approval, the ASC will be known as Westside Ambulatory Surgery Center.

The ASC will specialize in podiatry, pain management, and general surgical services, consisting of three (3) operating rooms. Westside will operate only on Friday and Saturday when Hudson Yard Surgery Center, LLC is closed.

Westside ASC, LLC's sole member is John Khadem, M.D., the Medical Director and the sole member/manager of Hudson Yards ASC, LLC. Hudson Yard Surgery Center, LLC has a transfer and affiliation agreement with Mount Sinai Beth Israel. Dialogue with the hospital has already commenced, and The applicant is working with Mount Sinai Beth Israel to include Westside in this agreement. Mount Sinai is approximately three (3) miles away from the ASC.

OPCHSM Recommendation

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

Need Summary

The applicant projects 900 procedures in Year One and 1,069 in Year Three, with Medicaid at 10% 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

The total project cost for renovation and movable equipment is \$72,385. The total project cost will be paid from member equity.

Table with 3 columns: Budget, Year One (2024), Year Three (2026). Rows include Revenues, Expenses, and Net Income/(Loss).

Health Equity Impact Assessment

The was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on Tuesday, June 20, 2023.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

1. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement that identifies, at a minimum, the populations, and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
2. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
 - a. Data displaying actual utilization including procedures;
 - b. Data displaying the breakdown of visits by payor source;
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data displaying the number of emergency transfers to a hospital;
 - e. Data displaying the percentage of charity care provided;
 - f. The number of nosocomial infections recorded during the year reported;
 - g. A list of all efforts made to secure charity cases; and
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
3. Submission of an executed Lease Agreement acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
3. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The entities will operate at two separate times; there will be no overlap in hours. [HSP]
5. The signage must clearly denote the facility is separate and distinct from other entities, with hours of operation of each program clearly identified. [HSP]
6. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
7. The clinical space must be used exclusively for the approved purpose. [HSP]
8. Medical records will be separately maintained for each entity. [HSP]

Council Action Date

November 16, 2023

Need Analysis

Background and Analysis

The service area consists of the Chelsea and Clinton neighborhoods (zip codes 10001, 10011, 10016, and 10018) in New York County. The population of New York County is projected to increase to 1,720,649 by 2028 based on Cornell Program on Applied Demographics estimates. Demographics for the primary service area are noted below, including a comparison with New York County and New York State.

Demographics	Primary Service Area	New York County	New York State
Total Population-2021 Estimate	143,654	1,669,127	20,114,745
Hispanic or Latino (of any race)	13.9%	25.6%	19.2%
White (non-Hispanic)	61.8%	46.7%	54.7%
Black or African American (non-Hispanic)	4.7%	12.1%	13.9%
Asian(non-Hispanic)	15.0%	11.8%	8.6%
Other (non-Hispanic)	4.6%	3.7%	3.6%

Source: 2021 American Community Survey (5-year Estimates Data Profiles)

According to Data USA, in 2020, 94.2% of the population of New York County had health coverage as follows:

Employer Plans	51.5%
Medicaid	20.5%
Medicare	9.7%
Non-Group Plans	12.2%
Military or VA	0.315%

The applicant projects 900 procedures in Year One and 1,069 in Year Three with Medicaid at 10% and Charity Care at 2% in Year Three. These projections are based on the current practices of participating surgeons. The applicant states that of the procedures moving to this center, 54% are currently being performed in other ambulatory surgery centers, 14% in a hospital setting, and 32% in an office-based setting. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	207	23%	246	23%
Commercial MC	315	35%	374	35%
Medicare FFS	234	26%	278	26%
Medicaid FFS	45	5%	53	5%
Medicaid MC	45	5%	53	5%
Private Pay	36	4%	43	4%
Charity Care	18	2%	22	2%

The table below shows the number of patient visits for relevant ASCs in New York County for 2020 through 2022. The number of patient visits for 2020 was significantly impacted by COVID-19.

Specialty Type	Facility Name	Patient Visits		
		2020	2021	2022
Multi	East Side Endoscopy & Pain Management Center	6,038	9,269	9,092
Multi	Fifth Avenue Surgery Center	3,464	3,637	3,632
Multi	Fifth Avenue Surgery Center (opened 7/20/21)	N/A	1,452	4,461
Multi	Gramercy Surgery Center	3,521	4,582	5,726
Multi	Hudson Surgery Center (opened 1/13/22)	N/A	N/A	0
Multi	Manhattan Surgery Center	4,091	4,799	4,788
Multi	Midtown Surgery Center	2,449	1,765	2,047
Multi	NY Center for Ambulatory Surgery	480	934	1,042
Multi	Surgicare of Manhattan	2,878	2,665	3,321
Multi	Surgicare of Westside (opened 12/16/20)	N/A	156	453
Multi	The Derfner Foundation ASC (opened 2/22/22)	N/A	N/A	434
Total Visits		22,921	29,259	34,996

Westside ASC, LLC will be in the same building as Hudson Specialty Surgery Center, which operates as a freestanding single specialty (ophthalmology) surgery center. The goal is to ensure the most programmatic and economically efficient use of the space for specialties other than the eye. Westside will operate on Friday and Saturday as Hudson Specialty Surgery Center will be closed on these days. The hours of operation will be from 9 am to 5 pm.

The center initially plans to obtain contracts with the following Medicaid Managed Care plans: Affinity, BCBS Medicaid, Fidelis, Healthfirst, HIP, Metro Plus, and United Community Plan. The center will work collaboratively with local Federally Qualified Health Centers such as Urban Health Plan, The Institute for Family Health, and Bedford Stuyvesant Family Health Center to provide service to the under-insured in their service area. The center has developed a financial assistance policy with a sliding fee scale to be utilized when the center is operational.

Conclusion

Approval of this project will provide increased access to podiatry, pain management, and general surgery services in an outpatient setting for the residents of New York County.

Program Analysis

Project Proposal

Westside ASC, LLC is requesting approval to establish an Article 28 Diagnostic and Treatment Center for ambulatory surgery to be located at 450 West 31st Street, New York, New York 10001. The program will be housed in the same facility as Hudson Yards, ASC. A temporal separation will be in effect between the two entities with separate signage, different staff, and operating hours.

Proposed Operator	Westside ASC, LLC
Doing Business As	Westside Ambulatory Surgery Center
Site Address	450 West 31st Street New York, NY (New York County)
Surgical Specialties	Multispecialty-Podiatry, Pain Management, General Surgery
Operating Rooms	3 total – 1 (class A) and 2 (class B)
Procedure Rooms	0
Hours of Operation	Friday and Saturday, 9 am – 5 pm initially. Hudson Yards LLC will not be open as indicated.
Staffing (1st Year / 3rd Year)	3.95 FTEs / 5.8 FTEs
Medical Director(s)	John J. Khadem, MD
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Is expected to be provided by: Mt. Sinai Beth Israel Hospital 3 miles/13 minutes
On-call service	The surgeons will either use MAP communications (which is in place from Hudson Yards Surgery Center), or they will utilize answering services which they already have relationships with.

Character and Competence

The sole member/manager of Westside ASC, LLC is:

<u>Name</u>	<u>Ownership Interest</u>
John J. Khadem, MD	100%

Dr. Khadem is a board-certified practicing ophthalmologist in private practice. Dr. Khadem earned both his medical degree and a Master's in Public Health from Columbia University. In addition, he has completed several clinical, research, and surgical fellowships and has 25 years of experience in the field of ophthalmology.

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 Hudson Yards Surgery Center (PFI 10423). Dr. Khadem discloses five (5) lawsuits, three (3) are medical-related. 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 U.S. Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Integration with Community Resources

The Center will ensure that patients have access to general medical/surgical hospitalizations, tertiary level of care requirements, obstetrical services, cardiac diagnostic testing, emergency room, and laboratory services through a transfer and affiliation agreement with Mount Sinai Beth Israel Hospital, as needed. Outreach to the community with comprehensive marketing and advertising plans and identifying areas that can best serve the public's needs. Charity care will be provided at least 2% per financial projections.

The applicant intends to utilize an Electronic Medical Record, NextGen Healthcare. The facility will not be a part of an Accountable Care Organization (ACO). The facility will investigate the possibility of participating in the Regional Health Information Organization (RHIO)/Health Information Exchange (HIE).

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total project costs for renovation and movable equipment are estimated at \$72,385 and detailed as follows.

Other Fees	\$35,000
Movable Equipment	\$35,000
Application Fee	\$2,000
Processing Fee	<u>\$385</u>
Total Project Cost	\$72,385

The applicant's financing plan appears as follows:

Equity from member net worth as shown in Attachment A \$72,385

Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for years one and three, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues:				
Commercial FFS	\$1,903.61	\$394,048	\$1784.46	\$438,828
Commercial MC	\$875.36	501,880	\$1,529.54	\$572,385
Medicare FFS	\$612.60	298,260	\$1,274.62	\$354,333
Medicaid FFS	\$549.65	57,358	\$1,274.62	\$68,141
Medicaid MC	\$507.01	57,538	\$1,274.62	\$68,141
Private Pay	\$1,221.45	36,709	\$1,019.69	\$43,610
Deductions Revenue		<u>(\$111,833)</u>		<u>(\$126,591)</u>
Total Revenue		<u>\$1,233,780</u>		<u>\$1,418,848</u>
Expenses:				
Operating	\$873.01	\$785,707	\$937.70	\$2,144,360
Capital	<u>192.90</u>	<u>173,610</u>	<u>162.40</u>	<u>173,610</u>
Total	\$1,065.91	\$959,317	\$1,100.11	\$1,176,014
Cost per Visit:				
Net Income / (Loss)		<u>\$274,463</u>		<u>\$242,834</u>
Total Visits		900		1,069
Cost per Visit		\$1,065		\$1,100

The following is noted with respect to the submitted budget:

- The basis of revenues, expenses, and projected utilization for this project is based on the experience of similar ASCs in New York State and the experience of the surgeons currently performing these near the stated facility.
- Projections indicate that 3.95 FTEs and 5.80 FTEs will be needed in Years One and Year Three, respectively.
- Four (4) M.D.s submitted letters of intent to perform surgeries at the ASC. Utilization projections include Dr. Julian Sosner, M.D. (Pain Management Specialist), who presently performs 480 surgical procedures a year at Mount Sinai. Abdalla Adam, MD, also sent a letter of intent, who has admitting privileges at Kingsbrook Jewish Medical Center and Brookdale Hospital, proposing to perform approximately 780 surgical procedures for Westside. Jian Zhang, DPM (Podiatrist), has submitted a letter of intent to perform approximately 120 surgical procedures per year and currently has admitting privileges at Montefiore Hospital. Also, Daniel Rosen, M.D., is the general surgeon.

Utilization by payor source for Year One and Year Three is as follows:

<u>Payor:</u>	<u>Years One and Three</u>
Commercial FFS	23%
Commercial MC	35%
Medicare FFS	26%
Medicaid FFS	5%
Medicaid MC	5%
Private Pay	4%
Charity	<u>2%</u>
Total	100%

Sublease Rental Agreement

The applicant has submitted a draft sublease rental agreement for the site, which is summarized below:

Date:	TBD
Premises:	(The Premises currently what Hudson Yards occupies.)
Lessor:	Heykal Properties, LLC
Lessee:	Hudson Yards Surgery Center, LLC
Sublessee:	Westside ASC, LLC
Term of Lease:	(10) Ten Years commencing the first week when non-contingent approval from the Department of Health approves with all contingencies satisfied.
Rental Amount:	\$69,264 annually
Provisions:	Subleased space will be subject to only the limited date the sublessee when Hudson Yards Surgery Center, LLC is closed. Tenant shall not erect or post signs without the written consent of the landlord.

The space is already being used for Article 28 ASC space and will remain unchanged except for adding specific additional services in the same exact space. The original lease has been approved by the Department for Hudson Yards Surgery Center, LLC in 2020, and the conditions outlined in the original lease will continue. Two (2) letters of rent reasonableness have also been submitted from licensed NYS realtors. An executed affidavit has been provided stating the lease is a non-arm's length agreement, Lessor and Lessee are the same.

Capability and Feasibility

Total project costs of \$72,385 for movable equipment and renovations will be funded through member equity. Working capital requirements are estimated at \$196,002, based on two months of third-year expenses. Attachment A is the sole member's net worth, showing sufficient equity to fund total project costs and working capital.

Attachment B Westside ASC's Pro Forma Balance Sheet shows the operation will have \$268,387 in equity as of the first day of operations. The submitted budget projects a net income of \$274,463 in Year One and \$242,834 in Year Three. Revenues are based on prevailing reimbursement methodologies and contracted rates for this newly existing service compared to other diagnostic and treatment center services. The budget appears reasonable.

Attachment C presents Westside's proposed organization chart after PHHPC approval.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Westside ASC – Pro Forma Balance Sheet
BFA Attachment C	Proposed Organizational Chart of Westside ASC, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 16th day of November 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish a new Multi-Specialty Ambulatory Surgery Center to be shared with Hudson Specialty Surgery Center in a temporally distinct arrangement at 450 West 31st Street, New York, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

231369 E

FACILITY/APPLICANT:

Westside ASC LLC d/b/a Westside Ambulatory
Surgery Center

APPROVAL CONTINGENT UPON:

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

1. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement that identifies, at a minimum, the populations, and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
2. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
 - a. Data displaying actual utilization including procedures;
 - b. Data displaying the breakdown of visits by payor source;
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data displaying the number of emergency transfers to a hospital;
 - e. Data displaying the percentage of charity care provided;
 - f. The number of nosocomial infections recorded during the year reported;
 - g. A list of all efforts made to secure charity cases; and
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
3. Submission of an executed Lease Agreement acceptable to the Department of Health. [BFA]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
3. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The entities will operate at two separate times; there will be no overlap in hours. [HSP]
5. The signage must clearly denote the facility is separate and distinct from other entities, with hours of operation of each program clearly identified. [HSP]
6. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
7. The clinical space must be used exclusively for the approved purpose. [HSP]
8. Medical records will be separately maintained for each entity. [HSP]

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



**Project # 231380-B
Mohawk Valley Surgery Center**

Program: Diagnostic and Treatment Center **County:** Oneida
Purpose: Establishment and Construction **Acknowledged:** July 21, 2023

Executive Summary

Description

Mohawk Valley Ventures, LLC (MVV) d/b/a Mohawk Valley Surgery Center, an existing limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be certified as a multi-specialty freestanding ambulatory surgical center (ASC) specializing in dentistry, general surgery, obstetrics, orthopedic surgery, plastic surgery, podiatry, urology, and vascular surgery. The Center will have four (4) operating rooms and be in leased space at 601 State Street, Utica, New York.

Mohawk Valley Health Services (MVHS) is the sole member of MVV. MVHS is also the sole corporate member of Faxton-St. Luke's Healthcare, St. Elizabeth Medical Center, St. Luke's Home Residential Health Care Facility, Inc., Senior Network Health, LLC, Visiting Nurse Association of Utica and Oneida County, Inc., and Mohawk Valley Health System Foundation. The proposed center will have a transfer and affiliation agreement with MVHS (Faxton St. Luke's Healthcare St Luke's Division and eventually with Wynn Hospital) to provide backup and emergency services to the Center. Nils-Tomas Dalager McBride, M.D. will serve as the Center's Medical Director.

OPCHSM Recommendation
Contingent approval

Need Summary

The applicant projects 2,596 procedures in Year One and 3,209 in Year Three, with Medicaid at 23.03% and Charity Care at 2.03% by Year Three.

Program Summary

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

Financial Summary

The total project cost of \$15,115,379 will be met with equity from the applicant's sole member, Mohawk Valley Health System.

	Year One (2026)	Year Three (2028)
Budget:		
Revenues	\$7,019,772	\$9,136,899
Expenses	<u>7,263,099</u>	<u>8,097,506</u>
Net Income (Loss)	(\$243,327)	\$1,039,393

Health Equity Impact Assessment

No Health Equity Impact Assessment was required for this project under Section 2802-B of the PHL as it was received by the Department prior to the legislation's effective date.

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 by the governing body of the ambulatory surgery center of an Organizational Mission Statement that identifies, at a minimum, the populations, and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
 - a. Data displaying actual utilization including procedures;
 - b. Data displaying the breakdown of visits by payor source;
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data displaying the number of emergency transfers to a hospital;
 - e. Data displaying the percentage of charity care provided;
 - f. The number of nosocomial infections recorded during the year reported;
 - g. A list of all efforts made to secure charity cases; and
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
6. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. This project must be completed by **August 1, 2025**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **July 1, 2024**, and construction must be completed by **May 1, 2025**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

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

Council Action Date
November 16, 2023

Need Analysis

Background and Analysis

The service area consists of Oneida County. The address is within a Health Professional Shortage Area for primary care, dental, and mental health and is also located within a Medically Underserved Area. The population of Oneida County is projected to decrease to 228,293 by 2028 based on Cornell Program on Applied Demographics estimates. Demographics for the primary service are noted below, including a comparison with New York State.

Demographics	Oneida County	New York State
Total Population-2021 Estimate	232,034	20,114,745
Hispanic or Latino (of any race)	6.2%	19.2%
White (non-Hispanic)	81.1%	54.7%
Black or African American (non-Hispanic)	5.7%	13.9%
Asian (non-Hispanic)	4.0%	8.6%
Other (non-Hispanic)	2.9%	3.6%

Source: 2021 American Community Survey (5-year Estimates Data Profiles)

According to Data USA, in 2020, 96.2% of the population of Oneida County had health coverage as follows:

Employer Plans	46.7%
Medicaid	22.4%
Medicare	14.1%
Non-Group Plans	11.6%
Military or VA	1.35%

Based on volumes at the current practices of participating surgeons, the applicant projects 2,596 procedures in the first year and 3,209 by the third, with Medicaid at 20.03% and Charity Care at 2.03%. The applicant states that all of the procedures moving to this center are currently being performed in a hospital. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	920	35.44%	1,137	35.43%
Medicare FFS	445	17.14%	550	17.14%
Medicare MC	522	20.11%	645	20.10%
Medicaid FFS	11	0.42%	13	0.41%
Medicaid MC	588	22.65%	726	22.62%
Charity Care	51	1.96%	65	2.03%
Other	59	2.27%	73	2.27%

Mohawk Valley Health System is the sole member of Mohawk Valley Ventures. During 2022, MVHS performed 4,080 surgery cases that did not require an overnight stay for patients. MVHS has committed to right-size the number of operating rooms in the new acute care hospital and to shift cases to an outpatient setting as appropriate. Therefore, it is anticipated that approximately 1,350 cases, in addition to the 2,177 cases committed by the surgeons, will be shifted to the proposed ambulatory surgery center.

The center initially plans to obtain contracts with the following Medicaid Managed Care plans: Beacon, CDPHP, Excellus, Fidelis, MVP, Cigna, United Healthcare, and WellCare/Todays Options. The center will work collaboratively with local Federally Qualified Health Centers, local family shelters, and homeless shelters to provide service to the under-insured in their service area. The center has developed a financial assistance policy with a sliding fee scale to be utilized when the center is operational.

The table below shows the number of patient visits for relevant ASCs in Oneida County for 2020 through 2022. The number of patient visits for 2020 was significantly impacted by COVID-19.

Specialty Type	Facility Name	Patient Visits		
		2020	2021	2022
Multi	Apex Surgical Center	3,367	4,397	4,871
Multi	Griffiss Surgery Center	7,956	9,602	9,921
Multi	OMNI Surgery Center ¹	2,499	2,772	2,556
Total Visits		13,822	16,771	17,348

¹ 2021 & 2022 are an estimation based on partial year data.

Conclusion

Approval of this project will provide improved access to dentistry, general, obstetrics, orthopedic, plastic, podiatry, urology, and vascular surgery services in an outpatient setting for the residents of Oneida.

Program Analysis

Project Proposal

Mohawk Valley Ventures, LLC d/b/a Mohawk Valley Surgery Center, an existing limited liability company, seeks approval to establish and construct a multi-specialty freestanding ambulatory surgery center specializing in Dentistry, General Surgery, Obstetrics, Orthopedic Surgery, Plastic Surgery, Podiatry, Urology, and Vascular Surgery to be located on the third floor at 601 State Street, Utica, New York 13502 (Oneida County).

Proposed Operator	Mohawk Valley Ventures, LLC
Doing Business As	Mohawk Valley Surgery Center
Site Address	601 State Street Utica, New York 13502 (Oneida County)
Surgical Specialties	Multi-specialty ASC Dentistry General Surgery Obstetric Orthopedic Surgery Plastic Surgery Podiatry Urology Vascular Surgery
Operating Rooms	4
Procedure Rooms	0
Hours of Operation	Monday to Friday, 7 am to 5 pm. As the center matures, it is expected to expand the schedule to weekend and/or evening procedures if needed.
Staffing (1st Year / 3rd Year)	17.4 FTEs / 19.9 FTEs
Medical Director(s)	Nils-Tomas Dalager McBride, MD
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Is provided by: Mohawk Valley Health System (Faxton-St. Lukes Healthcare - St. Luke's Division) and eventually Wynn Hospital.
On-call service	Patients who require assistance during off-hours will have a phone number of an on-call service, which will be available 24/7 to immediately refer the patient to the Center's on-call physician, who will be a member of the Center's credentialed medical staff.

Mohawk Valley Health System is the sole member of MVV. MVHS has planned for the Wynn Hospital project to shift cases to the outpatient setting as appropriate. It is anticipated that approximately 1,350 of these cases and 2,177 cases committed to by the surgeons will be shifted from MVSC to be located across the street from the Wynn Hospital (total of 3,527 cases). There should be no negative impact on the other existing ASCs due to shifting the existing surgical volume from the hospital campus to the proposed new site.

Character and Competence

The ownership of Mohawk Valley Ventures, LLC d/b/a Mohawk Valley Surgery Center is:

Member Name	Proposed Interest
Mohawk Valley Health System	100.00%

MVHS has assigned three representatives as the Board of Managers for MVV: Darlene Stromstad, Louis Aiello, and Jerome Dayao. They will have full oversight and authority over MVV.

Catherine Brownell has been the Chair of Nursing at LeMoyne College since 2018. She has prior work experience as an Associate Professor of Nursing at Utica College. She serves as a member of the Board of Directors for Mohawk Valley Health Systems. She is an RN with the State of New York and has received her Ph.D. from Binghamton University.

Andrew Kowalczyk, III, is a lawyer in New York State. He has worked at Kowalczyk & Deery LLP since 2012 as an attorney and partner. He received a JD degree from Albany Law School and a BA from St. Lawrence University. He practices Real Property, Banking, Business, Corporate, Limited Liability Companies, and General Commercial law. He serves as a member of the Board of Directors/Trustees at Faxton-St. Luke's Hospital, St. Elizabeth Medical Center, and Mohawk Valley Health Systems.

Gregory McLean is currently the president, owner, and Co-Founder of Caruso McLean & Co. Inc. since 1988. He received a bachelor's degree in Business Management from Siena College, then went on to a graduate degree at The Lally School of Management RPI and the University of Dubuque Theological Seminary. He has a series of licenses, including insurance. He is a Member of the Board of Directors at Mohawk Valley Health Systems.

Darlene Stromstad is currently the CEO of Mohawk Valley Health System in Utica, NY, since 2019. Prior to that, she worked for Fenway Health System in Boston, MA, as interim CEO and for Waterbury Hospital as CEO from 2011-2017. She received her most recent degree, a BA from the University Rivier College in NH. She holds a position as a member of the Board of Directors at Mohawk Valley Health Systems.

Catherine Cominsky has worked as Senior Managing Director of Fundraising at Direct Mail Solutions since 2011. She received an Educational Leadership and Instruction for Inclusive Classroom degree in 2003 and holds a BS in Business Administration. She is a Member of the Board of Directors at Mohawk Valley Health Systems.

Norman Siegel was a judge for the NYS Court of Claims since 2010 and retired in 2017. He received a BA at Colgate University and a Law degree from Albany Law School. He held a license as an attorney from 1967-2018. He is the Chair and member of the Board of Directors at St. Elizabeth Medical Center. He is also a member of the Board of Directors and Trustee at St. Elizabeth Medical Center and Mohawk Valley Health System.

Symeon Tsoupelis is the owner of Symeon's Greek Restaurant, Inc. since 2002. He has a BS from Providence College. He serves as a Member of the Board of Directors of Mohawk Valley Health Systems.

Domenic Aiello is a physician in the states of NY and PA. Board certified in Endocrinology, Metabolism, and Diabetes since 1991 and Internal Medicine since 1990. He received his medical license in Mexico and underwent a Fifth Pathway Program at SUNY Buffalo. He did postgraduate training at M.S. Hershey Medical Center for a fellowship in Endocrinology. His most recent practice has been in clinical Endocrinology in New Hartford, NY, since 2002. He also has teaching appointments at Faxton-St. Lukes Healthcare since 2000, St. Elizabeth's Medical Center since 1989, and SUNY in Syracuse since 1989. He serves as a Member of the Board of Directors of Mohawk Valley Health Systems.

Gregory Evans has worked at the Indium Corporation in Utica, NY, from 1981 to the present. He has served as CEO since 2017, as President from 1996 – 2017, and held other positions at the company previously. He received his most recent degree, an MBA from RPI in Troy, NY. He currently serves as a trustee emeritus at Utica Zoological Society. He is a member of the Board of Directors at Utica First Insurance Company and the Board of Directors (Chair) at Mohawk Valley Health Systems.

Lauren Bull was president and CEO from 1971-2019 of Bull Bros. Inc. in Utica. She is currently retired. She serves as a member of the Board of Directors of Mohawk Valley Health Systems.

Jonathan Block is a physician and has worked since 2000 at U.S. Urology Partners. He holds a medical license in NY State and is board-certified in Urology and Obesity Medicine. He graduated from Albany Medical Center for Urology and General Surgery and did an internship in General Surgery at Albany Medical Center. He serves as a member of the Board of Directors of Mohawk Valley Health Systems.

Louis Aiello has worked at Mohawk Valley Health System since 2014 as Senior VP and CFO. Prior to that, he worked at St. Elizabeth Medical Center as CFO and VP of finance. Mr. Aiello graduated from Utica College of Syracuse and holds a CPA. He has affiliations with the Healthcare Financial Management Association since 1995. He has outside Board memberships at United Iroquois Shared Services, Inc., Junior Junction Inc., Healthcare Underwriters Mutual Risk Management Group Compensation Trust, St. Elizabeth Health Support Services, and Frankfort Little League.

Jerome Dayao has been a Nurse Practitioner in New York State since 2018. He graduated from The University of California, Los Angeles with a Doctorate. He currently works as Senior VP and CNO for Mohawk Valley Health Systems since 2017. Prior to that, he had worked as Senior Associate Administrator and CNO from 2019-2022 at the University of Washington Medical Center. Where he oversaw all nursing practices. Mr. Dayo will serve as a board member for the ASC.

Barbara Brodock has been self-employed since 2002. She has held licensure as an insurance agent in NY and PA. She was the owner and president of CBB Realty, LLC for 20 years. She is a member of the Board of Directors at Mohawk Valley Health System.

Richard Tantillo is currently a Senior Philanthropy Advisor since 2017 at Hamilton College. Prior to that, he was VP of communications and development since 1994 at Hamilton College. He has assisted the Mohawk Valley Health System in several areas, especially Board governance. He is a member of the Board of Directors at Mohawk Valley Health System.

Sushma Kaul is a physician licensed in New York State. She earned her medical degree in India and completed a fellowship in critical care medicine at Albert Einstein College of Medicine and a fellowship in pulmonary disease from St. Luke's Roosevelt. She has worked since 2016 at Mohawk Valley Health System as Medical Director of ICU and an attending physician in pulmonary and critical care medicine. Prior to this, she worked in private practice for Pulmonary and Critical Care Associates, LLP. She has been a voting member of the Mohawk Valley Health System Board since 2019.

Nils-Tomas McBride is a physician in NY State and the proposed Director of the ASC. He completed his education at St. George's University in 2013 and his residency at Easton Hospital until 2019. In 2020, he completed a fellowship from Virginia Commonwealth University in Cardiothoracic Surgery. He was out of work from 2020-2021 due to the pandemic. He was an attending physician since 2021 at Slocum Dickson Medical Group, then became an MD/Surgeon at Mohawk Valley Health System in April of 2023. Dr. McBride with late disclosure of ongoing malpractice suit.

Karen Leach is currently the VP of administration and finance since 2001 at Hamilton College. She has a master's in business administration from Syracuse University. She currently serves on the Board of Directors at Mohawk Valley Health System.

Joan Compson has worked as a certified public accountant but is now retired since 2012. She is a member of the Board of Directors at Mohawk Valley Health System.

Richard Zweifel most recently graduated from Clarkson University. He is licensed as a certified professional accountant. He has worked for Bonadio & Co., LLP since 2012 as a CPA in Utica. He is a member of the Board of Directors at Mohawk Valley Health System. He discloses a Class A misdemeanor in 1980, unrelated to health care.

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 U.S. 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.

Integration with Community Resources

MVHS has committed to right-size the number of operating rooms in the new acute care hospital (Wynn Hospital) and to shift cases to the outpatient setting as appropriate. These cases will be shifted to MVSC. Physicians will continue to be on call at the hospitals they are currently serving and to see patients there. The center projects 2% charity care and 23% Medicaid recipients. The project narrative demonstrates outreach efforts to be put in place to serve the traditionally medically underserved by contracting with Medicaid Managed Care plans.

The Center plans to utilize an Electronic Medical Record (EMR) system and to fully integrate and exchange information with an established RHIO with the capability for clinical referral and event notification.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$15,115,379, further broken down as follows:

Renovation and Demolition	\$9,449,128
Design Contingency	944,913
Construction Contingency	944,913
Architect/Engineering Fees	803,176
Construction Manager Fees	236,229
Other Fees (Consultant)	20,000
Moveable Equipment	2,632,351
CON Fee	2,000
Additional Processing Fee	<u>82,669</u>
Total Project Cost	\$15,115,379

Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u> <u>2026</u>		<u>Year Three</u> <u>2028</u>	
	<u>Per Procedure</u>	<u>Total</u>	<u>Per Procedure</u>	<u>Total</u>
Revenues:				
Commercial FFS	\$4,559	\$4,194,075	\$4,837	\$5,499,575
Medicare FFS	\$2,037	\$906,457	\$2,119	\$1,165,645
Medicare Managed Care	\$2,067	\$1,078,884	\$2,151	\$1,387,374
Medicaid FFS	\$1,401	\$15,414	\$1,525	\$19,821
Medicaid Managed Care	\$1,157	\$680,386	\$1,205	\$874,932
Other	\$2,450	<u>\$144,556</u>	\$2,597	<u>\$189,552</u>
Total Revenues		\$7,019,772		\$9,136,899
Expenses:				
Operating	\$2,207.52	\$5,730,728	\$2,045.85	\$6,565,135
Capital	<u>\$590.28</u>	<u>\$1,532,371</u>	<u>\$477.52</u>	<u>\$1,532,371</u>
Total Expenses	\$2,797.80	\$7,263,099	\$2,523.37	\$8,097,506
Total Revenue		(\$243,327)		\$1,039,393
Utilization: (Procedures)		2,596		3,209

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

- Expense and utilization assumptions are based on the historical experience of MVHS in providing ambulatory surgery services.
- Reimbursement rates reflect rates based on MVHS's experience, governmental reimbursement rates (Medicare and Medicaid), and anticipated contractual agreements with commercial insurance companies.
- During 2022, MVHS performed 4,080 surgery cases that did not require overnight stays for patients residing in Oneida and Herkimer Counties. As planned for in the Health Care Transformation Program, MVHS committed to right-size the number of operating rooms in the new acute care hospital (Wynn Hospital) and to shift cases to the outpatient setting as appropriate. Therefore, approximately 1,350 cases and 2,177 cases committed by surgeons are anticipated to be shifted to MVV.

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

	<u>Year One</u>	<u>Year Three</u>
	<u>2026</u>	<u>2028</u>
Commercial FFS	35.44%	35.43%
Medicare FFS	17.14%	17.14%
Medicare MC	20.11%	20.10%
Medicaid FFS	0.42%	0.41%
Medicaid MC	22.65%	22.62%
Charity Care	1.96%	2.03%
Other	<u>2.27%</u>	<u>2.27%</u>
Total	100.00%	100.00%

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site that they will occupy, which is summarized below:

Premises	14,500 square feet located at 601 State Street, Utica, New York.
Sublessor	Mohawk Valley Health System
Sublessee	Mohawk Valley Ventures, LLC
Term	30 years
Rental	\$398,750 (\$27.50 per sq.ft.)
Provisions	The sublessee shall be responsible for maintenance, real estate taxes, and utilities.

The lease agreement between Central Utica Building, LLC (Lessor) and Mohawk Health System (Lessee) is an arm's length lease agreement. The sublease agreement will be a non-arms-length lease arrangement. The applicant submitted two real estate letters attesting to the reasonableness of the per-square-foot rental.

Capability and Feasibility

The total project cost of \$15,115,379 will be funded by the operations of Mohawk Valley Health Systems.

Working capital requirements are estimated at \$1,349,584, equivalent to two months of third-year expenses, and be funded with equity from MVHS operations. Presented as BFA Attachment A are the 2021-2022 Certified Financial Statements of Mohawk Valley Health System, indicating the availability of sufficient funds for the required equity contribution. Presented as BFA Attachment B is the Pro Forma Balance Sheet of Mohawk Valley Health System as of the first day of operations, which indicates a positive net asset position of \$16,464,963.

The submitted budget indicates a net loss of (\$243,327) in the first year and a net income of \$1,039,393 by the third year. First-year losses will be offset with working capital, and MVHS has submitted a letter indicating that they will offset the loss with MVHS operations. Revenues are based on current reimbursement methodologies for ambulatory surgery services. The submitted budget appears reasonable.

The entity had an average positive working capital position and an average positive net asset position during 2021 and 2022. Also, the entity incurred average losses of \$5,474,264 from 2021 through 2022. The primary reason for the losses in 2022 was the additional labor cost associated with agency nurses. MVHS has invested additional funds in recruitment and retention and expects a reduction in agency labor expenses in 2023. Additionally, MVHS will realize financial efficiencies by consolidating all its inpatient services from its existing campuses into the new Wynn Hospital campus in October 2023.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	2021 and 2022 Certified Financial Statements of Mohawk Valley Health System
BFA Attachment B	Pro Forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 16th day of November 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a multi-specialty ambulatory surgery center at 601 State Street, Utica, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

231380 B

FACILITY/APPLICANT:

Mohawk Valley Surgery Center

APPROVAL CONTINGENT UPON:

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

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **August 1, 2025**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **July 1, 2024**, and construction must be completed by **May 1, 2025**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request

prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]

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

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



Project # 221277-E
Medcare LLC

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Establishment **Acknowledged:** September 8, 2022

Executive Summary

Description

Medcare, LLC (Center), an existing limited liability company, requests approval to transfer 100% of its member's interest in the Article 28 diagnostic and treatment center (D&TC) located in leased space at 468 Lafayette Avenue, Brooklyn (Kings County), to Lafayette Avenue Care, LLC (Lafayette). The Center provides Medical Services - Primary Care and Other Medical Specialties. There are no planned changes to the currently provided services.

On February 9, 2022, the current sole member of Medcare, LLC, Sofiya Keisserman, entered into a membership interest purchase agreement (MIPA) to sell 100% interest in Medcare, LLC to Lafayette Avenue Care, LLC, for \$1,750,000.

Ownership before and after the requested change is as follows:

<u>Current Operator</u>		
Medcare, LLC		
<u>Ownership:</u>		<u>%</u>
Sofiya Keisserman		100%

<u>Proposed Operator</u>		
Medcare, LLC		
<u>Ownership</u>		<u>%</u>
<u>Lafayette Avenue Care, LLC</u>		<u>100%</u>
Joseph Ehrman	50%	
Mordechai Getz	50%	

Lazer Leifer, M.D., will serve as the facility's Medical Director. The applicant will continue the transfer agreement for backup and emergency services with The Brooklyn Hospital Center, located 1.2 miles (3 minutes travel time) from the Center.

OPCHSM Recommendation
Approval is recommended

Need Summary
There will be no need review per Public Health Law §2801-a (4).

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
Operating budget projections are not included as part of this application as it is limited to a change in membership, with no purchase price or changes in services or location.

Health Equity Impact Assessment
There was no Health Equity Impact Assessment required for this project under Section 2802-B of the PHL, as it was received by the Department on June 24, 2022.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The 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

November 16, 2023

Program Analysis

Project Proposal

Medcare, LLC, an existing Article 28 Diagnostic and Treatment Center located at 468 Lafayette Avenue in Brooklyn (Kings County) seeks approval to transfer 100% membership interest from the current member LLC to two (2) new members. The facility is proposing a new Medical Director. There will be no change in services as a result of this application. Staffing will increase by 3.28 FTEs in Year One and 2.00 FTEs in Year Three.

Character and Competence

The proposed membership Medcare, LLC is provided in the chart below.

Member Name/Title	Current Ownership	Proposed Ownership
Lafayette Avenue Care*** Mordechai Getz (50.00%) Joseph Ehrman (50.00%)	0.00%	100.00%
Sofiya Keisserman	100.00%	0.00%
Total	100%	100%

Members Subject to Character and Competence

Dr. Lazer Leifer will be the Medical Director of Medcare, LLC. He is currently a Staff Physician and Primary Care/Internal Medicine Physician serving at Boro Park Center for Rehabilitation and Ezra Medical Center since 2020. Dr. Leifer received his accreditations from Long Island University's Arnold and Marie Schwartz College of Pharmacy in 2013 and Yeshiva University's Albert Einstein College of Medicine. He completed his residency at Staten Island University Hospital in 2019.

Joseph Ehrman is the CEO of Nurastar, LLC., a nutraceutical company well as Optimum Property Management, LLC., a rental property management company which he has been running for sixteen (16) and thirteen (13) years, respectively. Moreover, he has been an investor in an urgent care management firm JYM UC, LLC. Ehrman has assisted in collaboration with community leaders by providing New York State COVID-19 testing, bringing it to community facilities and houses of worship.

Mordechai Getz has been the CEO of LevelUp MD Urgent Care since 2021. He is also the CEO of Eichler's Borough Park location, which specializes in Judaica products since 2017. He currently serves on the Indiana University School of Medicine's Dean Council. Mr. Getz declares ownership interest in several healthcare facilities. The facilities are listed below.

Facility Name	State	Facility Type	Ownership %	Period of Ownership	Star Rating
Baron House of Hueytown	AL	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare of Arab	AL	Skilled Nursing Facility	0.866%	2022-Present	2
Diversicare of Bessemer	AL	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare of Big Springs	AL	Skilled Nursing Facility	0.866%	2022-Present	3
Diversicare of Boaz	AL	Skilled Nursing Facility	0.866%	2022-Present	3
Diversicare of Foley	AL	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare Of Greensboro	AL	Skilled Nursing Facility	0.875%	2022-Present	5
Diversicare of Lanett	AL	Skilled Nursing Facility	0.866%	2022-Present	4
Diversicare of Montgomery	AL	Skilled Nursing Facility	0.866%	2022-Present	3
Diversicare of Oneonta	AL	Skilled Nursing Facility	0.866%	2022-Present	4
Diversicare of Oxford	AL	Skilled Nursing Facility	0.866%	2022-Present	2
Diversicare of Park Place	AL	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare of Pell City	AL	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare of Riverchase	AL	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare of Winfield	AL	Skilled Nursing Facility	0.866%	2022-Present	5

Facility Name	State	Facility Type	Ownership %	Period of Ownership	Star Rating
Hartford Health Care	AL	Skilled Nursing Facility	0.857%	2022-Present	5
Windsor House	AL	Skilled Nursing Facility	0.857%	2022-Present	1
The Pearl of Hillside	IL	Skilled Nursing Facility	1.925%	2022-Present	1
Diversicare of Providence	IN	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare of Chanute	KS	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare of Council Grove	KS	Skilled Nursing Facility	0.866%	2022-Present	3
Diversicare of Haysville	KS	Skilled Nursing Facility	0.866%	2022-Present	3
Diversicare of Hutchinson	KS	Skilled Nursing Facility	0.866%	2022-Present	3
Diversicare of Larned	KS	Skilled Nursing Facility	0.866%	2022-Present	4
Diversicare of Sedgwick	KS	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare of Amory	MS	Skilled Nursing Facility	0.866%	2022-Present	3
Diversicare of Batesville	MS	Skilled Nursing Facility	0.866%	2022-Present	2
Diversicare of Brookhaven	MS	Skilled Nursing Facility	0.866%	2022-Present	3
Diversicare of Eupora	MS	Skilled Nursing Facility	0.866%	2022-Present	3
Diversicare of Meridian	MS	Skilled Nursing Facility	0.866%	2022-Present	3
Diversicare of Moss Point	MS	Skilled Nursing Facility	0.536%	2022-Present	1
Diversicare of Quitman	MS	Skilled Nursing Facility	0.536%	2022-Present	2
Diversicare of Ripley	MS	Skilled Nursing Facility	0.866%	2022-Present	2
Diversicare of Shelby	MS	Skilled Nursing Facility	0.536%	2022-Present	4
Diversicare of Southaven	MS	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare of Tupelo	MS	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare of Tylertown	MS	Skilled Nursing Facility	0.866%	2022-Present	5
Monument Rehabilitation and Care Center	NE	Skilled Nursing Facility	4.669%	2022-Present	1
Mystic Meadows Rehab & Nursing Center	NJ	Skilled Nursing Facility	1.315%	2022-Present	1
Tenbroeck Center for Rehabilitation and Nursing	NY	Skilled Nursing Facility	7.500%	2022-Present	3
Diversicare of Bradford Place	OH	Skilled Nursing Facility	0.866%	2022-Present	1
Diversicare of Siena Woods	OH	Skilled Nursing Facility	0.866%	2022-Present	2
Diversicare of St. Theresa	OH	Skilled Nursing Facility	0.866%	2022-Present	4
Valley Manor Rehabilitation and Care Center	PA	Skilled Nursing Facility	1.940%	2022-Present	1
Diversicare of Oak Ridge	TN	Skilled Nursing Facility	0.857%	2022-Present	1
Majestic Gardens at Memphis Rehabilitation and Skilled Nursing Center	TN	Skilled Nursing Facility	1.730%	2022-Present	2
Afton Oaks Nursing & Rehab Center	TX	Skilled Nursing Facility	0.857%	2022-Present	1
Ballinger Healthcare & Rehab Center	TX	Skilled Nursing Facility	0.857%	2022-Present	5
Brentwood Terrace Healthcare & Rehab Center	TX	Skilled Nursing Facility	0.857%	2022-Present	1

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

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint

investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Out-of-State Facilities:

Alabama:

Baron House of Hueytown received three (3) complaint violations on February 11, 2023, and received a CMP for infection control of \$14,900.00.

Diversicare of Bessemer received an enforcement action that resulted in a CMP on December 2, 2022, for \$9,081.00.

Diversicare of Foley received three (3) complaint violations as of June 2023. The facility received a CMP for \$20,651.00 in June 2021.

Diversicare of Marion received two (2) enforcement actions that resulted in CMPs. These were both received on October 20, 2022, in the amount of \$9,302.00.

Diversicare of Park Place d/b/a Park Place received five (5) health citations as of April 2022. The facility received a CMP of \$110,975.00 in 2021.

Diversicare of Riverchase received an enforcement action that resulted in a CMP. This was received on April 18, 2022, and resulted in a CMP in the amount of \$1,316.00.

Illinois:

The Pearl of Hillside received 28 complaint violations as of 2/2023. The Pearl of Hillside received an Immediate Jeopardy on March 2, 2022, for failing to initiate CPR and call a Code Blue when a resident, who was a full code, was found unresponsive. CPR was not begun until paramedics arrived approximately nine (9) minutes after the resident was found unresponsive. The resident was pronounced deceased. Federal fines in the last three years include CMP \$15,000.00 in October 2022, CMP \$12,080.00 in April 2022, CMP \$1,973.00 and CMP \$10,520.00 March 2022, CMP \$1,645.00 in February 2022, CMP \$1,300.00 in December 2021, CMP \$36,660.00 in November 2021, CMP \$983.00 in April 2021, CMP \$108,780.00 in October 2020, and CMP \$650.00 in August 2020.

Indiana:

Diversicare of Providence d/b/a Charlestown Place at New Albany received seventy-one (71) complaint inspections and nine (9) health citations as of January 2023. The facility received CMPs for \$29,325.00 in July 2022, \$28,915.00 in March 2022, \$9,750.00 in October 2021, \$9,750.00 in August 2021, \$12,103.00 in April 2021, \$9,350.00 in March 2021, and \$3,250.00 in September 2020.

Kansas:

Diversicare of Chanute received an enforcement action that resulted in a CMP of \$6,500.00 in May 2022.

Diversicare of Council Grove received an enforcement action that resulted in a CMP. This was received on December 5, 2022. The facility has not received any documentation regarding the CMP for infection control.

Diversicare of Haysville received four (4) complaint violations as of June 2023. The facility previously received CMPs for May 2019 - November 2019 for \$92,137.50 and CMP for \$7,380.46 in May 2019.

Diversicare of Lanard received an enforcement action that resulted in a CMP in November 2019 for \$13,905.45 and one in April 2022 for \$657.80.

Diversicare of Sedgwick received eight (8) health violations that resulted in CMPs in March 2022 for \$71,740.50, December 2020 for \$91,240.50, and October 2019 for \$12,941.50.

Mississippi:

Diversicare of Amory received a complaint for neglect in November 2022. The facility received a CMP in May 2017 for \$17,446.00.

Diversicare of Batesville received an IJ in February 2022. The facility received a CMP for \$44,954.00 in March 2022.

Diversicare of Meridian received a CMP for \$94,055.68 in September 2019.

Diversicare of Quitman received CMPs in September 2020 for \$3,250.00 and in March 2019 for \$13,867.75.

Diversicare of Ripley received CMPs in April 2022 for \$13,000.00 and in December 2020 for \$3,250.00.

Diversicare of Southaven, as of July 2022, has received eight (8) health violations. The facility received CMPs in February 2021 for \$65,77.74 and in September 2020 for \$81,887.00.

Diversicare of Tupelo was cited by Medicare for abuse. The facility has received five (5) complaint violations as of October 2022. The facility had received CMPs as of August 2021 for \$56,943.25 and in January 2020 for \$13,905.45.

Nebraska:

Monument Rehabilitation and Care Center has received seven (7) infection control inspections as of March 2023. The facility received CMPs in December 2021 for \$29,543.00 and \$650.00, and in August 2020 for \$16,250.00.

New Jersey:

Mystic Meadows Rehab & Nursing Center has received two (2) health violations as of November 2022. The facility received CMPs in March 2022 for \$1,316.00, in September 2021 for \$983.00 and \$655.00, and in February 2021 for \$9,750.00.

Ohio:

Diversicare of Bradford Place has received twenty-nine (29) complaint inspections as of June 2023. The facility received CMPs in December 2022 for \$15,000.00, in January 2022 for \$983.00 and \$655.00, and in December 2020 for \$26,000.00.

Pennsylvania:

Valley Manor Rehabilitation and Care Center has received twenty-three (23) health citations as of March 2023.

Tennessee:

Diversicare of Oak Ridge d/b/a Briarcliff Healthcare Center received seven (7) complaint violations and fourteen (14) health citations as of May 2023. The facility received CMPs for \$15,593.00 in September 2022, \$987.00 in March 2022, \$650.00 in January 2022, and \$14,625.00 in August 2021.

Texas:

Afton Oaks Nursing & Rehab Center has received twenty-five (25) complaint citations as of March 2023. The facility received CMPs for \$13,666.00 in February 2022, in June 2021 for \$650.00, and for \$3,250.00 in August 2021.

Brentwood Terrace Healthcare & Rehab Center has received seventeen (17) control citations as of April 2023. The facility has received CMPs for \$3,345.00 in January 2023 and \$104,293.00 in July 2021.

Chisolm Trail Nursing and Rehab received two enforcement actions that resulted in CMPs. The first was received on April 15, 2022, in the amount of \$9750.00. The second was received on July 7, 2022, in the amount of \$9750.00.

Diversicare of Oak Ridge received an enforcement action that resulted in a CMP. This was received on September 14, 2022, and resulted in a CMP in the amount of \$15,534.00.

Estates Health Care & Rehab Center has received nine (9) infection control citations as of April 2023. The facility has received CMPs of \$1,073.00 in October 2022, \$9750.00 in August 2022, \$21,522.00 in November 2021, \$10,848.00 in December 2020, and \$5,148.00 in September 2020.

Normandy Terrace Healthcare & Rehab Center has received fifteen (15) infection control citations as of June 2023. The facility has received CMPs for \$9,750.00 in January 2023, August 2022 for \$9,750.00, \$15,000.00 in February 2022, November 2021 for \$13,507.00, September 2021 for \$650.00, and \$5,000.00 in August 2021.

Oakmont Healthcare & Rehab Center of Humble has received five (5) health citations as of August 2022. The facility has received CMPs for \$2,580.00 in March 2023, \$61,211.00 in July 2022, \$650.00 in November 2021, and \$55,290.00 in September 2021.

Treemont Healthcare & Rehab Center has received fourteen (14) health inspection citations as of June 2023. The facility has received CMPs for \$62,531.00 in February 2023, \$133,065.00 in March 2022, \$26,620 in December 2021, \$9,750.00 in August 2021, \$9,750.00 in May 2021, and \$5,000.00 in October 2020.

Conclusion

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

Financial Analysis

Lease Agreement

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

Date:	February 23, 2022
Premises:	2,500 square feet located at 468 Lafayette Avenue, Brooklyn, New York 11205
Landlord:	BMS Realty Management, LLC.
Tenant:	Medcare, LLC.
Term:	Ten Years and three (3) renewals of ten years each
Rental:	Rent is \$96,000 with a 3% yearly increase. Rent for 1 st -year renewal is \$129,016 with a 3% increase.
Provisions:	Real estate taxes, maintenance, insurance, and utilities.

The applicant has provided an affidavit attesting that the lease is an arms-length agreement, as there is no relationship between landlord and tenant. Letters from two NYS licensed realtors have been provided attesting to the rental rate being fair market value.

Membership Interest Purchase Agreement

The applicant has submitted an executed membership purchase agreement to be effectuated upon PHHPC approval. The terms are summarized below:

Date:	February 9, 2022
Seller:	Medcare, LLC and Sofiya Keisserman
Buyer:	Lafayette Avenue Care, LLC
Membership Interest Acquired:	100% issued and outstanding membership interest
Asset Acquired:	All the assets and property owned by the company are necessary to conduct the business free and clear of any liens.
Excluded Assets:	Accounts Receivable before closing
Excluded Liabilities:	Accounts Payables accrued before closing.
Purchase Price:	\$1,750,000
Payment of the Purchase Price:	\$175,000 deposit at signing \$1,575,000 due at Closing

The \$1,750,000 purchase price for the Center is to be funded via members' equity. BFA Attachment A presents the net worth summary for Lafayette Avenue Care, LLC members, which reveals sufficient resources to cover equity.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and surcharges, assessments or fees due from the transferor under Article 28 of the Public Health Law concerning the period before the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of October 25, 2022, the facility had no outstanding Medicaid liabilities.

Capability and Feasibility

There are no project costs associated with this application; however, the acquisition costs for membership in Medcare, LLC of \$1,750,000 will be met through members' equity from Lafayette Avenue Care, LLC.

The working capital requirement is estimated at \$241,164 based on two months of first-year expenses. The applicant will fund working capital from members' equity. Review of BFA Attachments A reveals sufficient resources to meet all the equity requirements.

BFA Attachment B presents Medicare, LLC., pro forma balance sheet, which shows the entity will start with \$1,641,164 in members' equity. Equity includes \$1,480,000 in goodwill, which is not a liquid resource nor recognized for Medicaid reimbursement. If goodwill were eliminated from the equation, the total net assets would become a positive \$161,164.

BFA Attachments C presents Medicare, LLC. 2020 and 2021 certified financial statements show positive working capital and net assets. For 2020 and 2021, the Center had an average profit of \$73,988.

Conclusion

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

<h2>Attachments</h2>

BFA Attachment A	Net Worth Statement of Proposed Members
BFA Attachment B	Pro-Forma Statement
BFA Attachment C	Medicare, LLC., 2020 - 2021 Certified Financial Statements

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 16th day of November, 2023, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to transfer 100% membership interest from the current sole and withdrawing member to a new member LLC, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

221277 E

Medcare LLC

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf.
Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email hospinfo@health.ny.gov. [HSP]

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

MEMORANDUM

To: Kathy Marks
General Counsel
Division of Legal Affairs

From: Jason Riegert, Deputy Director
Bureau of Program Counsel

Date: October 4, 2023

Subject: Consent to Formation of The Foundation of Catholic Health

The attached package was prepared by Vincent DiCocco for the Division of Legal Affairs. Relevant background material has been included.

I have reviewed the package and find it acceptable.

If you approve, please sign the memorandum and kindly return the package to Vincent DiCocco for further processing.

Thank you.

MEMORANDUM

To: Michael Stelluti
Division of Health Facility Planning and Development

Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

From: Vincent DiCocco, Senior Attorney
Bureau of Program Counsel
Division of Legal Affairs

Date: October 4, 2023

Subject: Consent to Formation of The Foundation of Catholic Health

Please include this matter on the next Establishment and Project Review Public Health and Health Planning Council agenda.

The attachments relating to the matter include the following:

- 1) A Memorandum to the Public Health and Health Planning Council (PHHPC) from Kathy Marks, Department of Health General Counsel;
- 2) A March 29, 2023, letter to the PHHPC requesting Consent to Formation of The Foundation of Catholic Health;
- 3) The Certificate of Incorporation of The Foundation of Catholic Health;
- 4) The Bylaws of The Foundation of Catholic Health; and
- 5) Original letters signed by duly authorized representatives of each of the intended supported organizations.

Attachments.

cc: J. Corvino

MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy Marks, General Counsel *KSM*

Date: October 4, 2023

Subject: Consent to Formation of The Foundation of Catholic Health

The Foundation of Catholic Health ('The Corporation') requests Public Health and Health Planning Council ('PHHPC') approval of its formation in accordance with the requirements of Not-For-Profit Corporation Law ('NPCL') § 404(b), (o) and (t).

The Corporation is seeking to form a New York not-for-profit with a corporate purpose to "... *benefit and assist, through the solicitation of contributions, the healthcare and/ or hospital purposes and such other purposes as may be set forth in the respective certificates of incorporation of [listed affiliates] ...*" and to be "... *operated, exclusively for Catholic charitable, religious, scientific, or educational purposes.*"

Attached is a request letter from Sharon Prise Azurin on behalf of The Corporation, a proposed Certificate of Incorporation, the corporate Bylaws and original letters signed by authorized representatives of each of the intended supported organizations.

There is no legal objection to the proposed formation of this charitable organization.

Attachments



Phillips Lytle LLP

Via E-Mail and Federal Express

March 29, 2023

Mark A. Schweitzer
NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

Re: Consent to Formation of The Foundation of Catholic Health (the "Corporation")
by New York State Department of Health/Public Health and Health Planning
Council ("PHHPC")

Dear Mr. Schweitzer:

As a follow up to our prior emails in connection with the above referenced matter,
attached please find the following documentation:

1. Certificate of Incorporation of the Corporation ("COI") (*Exhibit A*);
2. Bylaws for the Corporation (*Exhibit B*);
3. Original letters signed by a duly authorized representative of each of the
following intended supported organizations:
 - a. Catholic Health System, Inc. (*Exhibit C*);
 - b. Kenmore Mercy Hospital (*Exhibit D*);
 - c. Mercy Hospital of Buffalo (*Exhibit E*);
 - d. Sisters of Charity Hospital of Buffalo, New York (*Exhibit F*);
 - e. Mount St. Mary's Hospital of Niagara Falls (*Exhibit G*);
 - f. WNY Catholic Long Term Care, Inc. (*Exhibit H*);
 - g. McAuley-Seton Home Care Corporation (*Exhibit I*);
 - h. Niagara Homemaker Services, Inc. (*Exhibit J*); and

ATTORNEYS AT LAW

SHARON PRISE AZURIN, PARTNER DIRECT 716 847 7088 SAZURIN@PHILLIPSLYTLLE.COM

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- i. Catholic Health System Program of All-Inclusive Care for the Elderly, Inc.
(*Exhibit K*).

In response to certain additional questions regarding the proposed Corporation, we provide the following responses:

1. Regarding the fundraising activities to be taken by the Corporation, please see Paragraph THIRD of the COI, which states that the Corporation will solicit contributions for the noted entities:

“the specific purpose of the corporation shall be to benefit and assist, through the solicitation of contributions...”

2. Following is information regarding the Corporation’s initial Board of Directors:

Name & Address	Employer Name & Address	Past & Present Affiliations with Other Charitable or Non-Profit Organizations
Raymond P. Crane c/o Brock, Schechter & Polakoff, LLP 726 Exchange Street Suite 822 Buffalo, NY 14210	Brock, Schechter & Polakoff, LLP 726 Exchange Street Suite 822 Buffalo, NY 14210 Occupation: Accountant (Partner)	<ul style="list-style-type: none">• St. Joseph Hospital Foundation - Former Director• Kenmore Mercy Foundation - Director, Vice President• St. Christopher Church Finance Committee - Former Member, Head of the Committee
Anthony L. Eugeni 1285 87th Street Niagara Falls, NY 14304	Woods Oviatt Gilman, LLP 200 Delaware Ave #1200 Buffalo, NY 14202 Occupation: Attorney (Partner)	<ul style="list-style-type: none">• Niagara Falls Boys & Girls Club - Director, Former Chairman• Mount St. Mary’s Hospital - Former Director• Niagara Falls Country Club - Former Director, President



Name & Address	Employer Name & Address	Past & Present Affiliations with Other Charitable or Non-Profit Organizations
Anthony L. Eugeni (continued)		<ul style="list-style-type: none">• Our Lady of Peace Nursing Home - Director• Mount St. Mary's Hospital Foundation - Director• United Way of Greater Niagara - Former Director
Vincent O. Hanley c/o Bond, Schoeneck & King, PLLC The Avant Building Suite 900 200 Delaware Avenue Buffalo, NY 14202- 2107	Bond, Schoeneck & King, PLLC The Avant Building Suite 900 200 Delaware Avenue Buffalo, NY 14202-2107 Occupation: Attorney (Member)	<ul style="list-style-type: none">• Mercy Hospital Foundation - Director• Catholic Health Continuing & Home Care Foundation - Director• Society of St. Vincent de Paul of Western New York - Director• Food Bank of Western New York 2014-2019 - Former Director• Hilbert College - Former Trustee, Chair• D'Youville College - Former Trustee
Sharon Prise Azurin 42 Hillsboro Dr. Orchard Park, NY 14127	Phillips Lytle LLP One Canalside 125 Main Street Buffalo, NY 14203 Occupation: Attorney (Partner)	<ul style="list-style-type: none">• Mercy Hospital Foundation - Director, Vice Chair• Trocaire College - Former Director, Vice Chair• The Buffalo Seminary Alumnae Association - Former Director, Treasurer



Name & Address	Employer Name & Address	Past & Present Affiliations with Other Charitable or Non-Profit Organizations
Joyce V. Williams 3 Sun Street Buffalo, New York 14215	Univera Healthcare 205 Park Club Lane Buffalo, NY 14221 Occupation: Advocacy Associate	• Sisters Hospital Foundation - Director

3. Identification of the organizational relationship between the Corporation and the licensed supported organizations: Catholic Health System, Inc. will be the sole corporate member of the Corporation. Catholic Health is also the sole corporate member of each of the other supported organizations.

4. A list of any entities, which control, or are controlled by, the Corporation and the nature of such relationships: Catholic Health System, Inc. will be the sole corporate member of the Corporation.

5. The Corporation has not been previously approved by PHHPC. This is an initial consent for a new not-for-profit corporation to be formed. The Corporation requires consent of PHHPC to form (see paragraph FOURTH of the COI).

We respectfully request a letter of consent from PHHPC to permit filing of the proposed Certificate of Incorporation of "The Foundation of Catholic Health" with the New York State Department of State.



Mark A. Schweitzer
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March 29, 2023

Thank you for your assistance and please do not hesitate to contact me should you have any additional questions.

Very truly yours,

Phillips Lytle LLP

By *Sharon Prise Azurin*

Sharon Prise Azurin

SPA

Enclosure(s)

Doc #10829871.2

cc: Colleen M. Leonard
Executive Secretary,
Public Health and Health Planning Council
NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

**CERTIFICATE OF INCORPORATION
OF
THE FOUNDATION OF CATHOLIC HEALTH**

Under Section 402 of the Not-For-Profit Corporation Law

FIRST: The name of the corporation is THE FOUNDATION OF CATHOLIC HEALTH.

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

THIRD: The corporation is organized, and at all times shall be operated, exclusively for Catholic charitable, religious, scientific, or educational purposes. Consistent with the foregoing, the specific purpose of the corporation shall be to benefit and assist, through the solicitation of contributions, the healthcare and/or hospital purposes and such other purposes as may be set forth in the respective certificates of incorporation of Catholic Health System, Inc. ("CHS"); Kenmore Mercy Hospital; Mercy Hospital of Buffalo; Sisters of Charity Hospital of Buffalo, New York; Mount St. Mary's Hospital of Niagara Falls; WNY Catholic Long Term Care, Inc.; McAuley-Seton Home Care Corporation; Niagara Homemaker Services, Inc.; and Catholic Health System Program of All-Inclusive Care for the Elderly, Inc., so long as they are charitable not-for-profit corporations and organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and such other affiliated charitable not-for-profit corporations formed to fulfill the mission and purposes of any of the foregoing not-for-profit corporations (collectively, the "Affiliates").

FOURTH: The corporation is formed to engage in an activity or for a purpose requiring consent or approval of a state official, department, board, agency or other body. Such consent or approval is attached.

FIFTH: The Corporation is a charitable corporation under Section 201 of the Not-for-Profit Corporation Law.

SIXTH: The office of the corporation is to be located in the County of Erie, State of New York.

SEVENTH: The names and addresses of the initial directors of the corporation are:

Raymond P. Crane
c/o Partner, Brock, Schechter & Polakoff, LLP
726 Exchange Street/Suite 822
Buffalo, NY 14210

Anthony Eugeni
c/o Woods Oviatt Gilman, LLP
200 Delaware Ave #1200
Buffalo, NY 14202

Vincent Hanley
c/o Bond, Schoeneck & King, PLLC
The Avant Building - Suite 900
Buffalo, NY 14202-2107

Sharon Prise Azurin
c/o Phillips Lytle LLP
One Canalside
125 Main Street
Buffalo, NY 14203

Joyce Williams
c/o Univera Healthcare
205 Park Club Lane
Buffalo, NY 14221

EIGHTH: The Secretary of State of New York is designated as the agent of the corporation, upon whom process against the corporation may be served, and the post office address to which the Secretary of State shall mail a copy of any such process served upon him/her is:

c/o Catholic Health System, Inc.
144 Genesee Street
Buffalo, New York 14203
Attention: President

NINTH: The following language relates to the corporation's tax exempt status and is not a statement of purposes and powers. Consequently, this language does not expand or alter the corporation's purposes or powers set forth in paragraph THIRD.

a. No part of the net earnings of the corporation shall inure to the benefit of any trustee, director, officer of the corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation), and no trustee, director or officer of the corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation; except the corporation may make payments, distributions or donations for charitable, religious, educational and scientific purposes to organizations that are exempt from Federal income tax under Section 501(a) of the Code, described in Section 501(c)(3) of the Code and described in Section 509(a)(1) or 509(a)(2) of the Code.

b. No substantial part of the activities of the corporation shall consist of carrying on propaganda or otherwise attempting to influence legislation; nor shall it in any manner participate or intervene (including the publication or distribution of statements) in any political campaign on behalf of any candidate for public office.

c. Notwithstanding any other provision of this Certificate, the corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt from taxation under Section 501(c)(3) of the Code and by an organization, contributions to which are deductible under the Code.

d. Notwithstanding any other provision of this Certificate of Incorporation, if at any time or times the corporation is a private foundation within the meaning of Section 509 of the Code, then during such time or times:

1. The corporation shall distribute all of its income for each taxable year and, if necessary, so much of its principal at such time and in such manner as not to subject the corporation to tax under Section 4942 of the Code;

2. The corporation shall not engage in any act of self-dealing, as defined in Section 4941(d) of the Code;

3. The corporation shall not retain any excess business holdings, as defined in Section 4943(c) of the Code;

4. The corporation shall not make any investments in such manner as to subject the corporation to tax under Section 4944 of the Code; and

5. The corporation shall not make any taxable expenditures as defined in Section 4945(d) of the Code.

e. Any references herein to any provision of the Code shall be deemed to mean such provision as now or hereafter existing, amended, or superseded, as the case may be.

TENTH: The management of the affairs of the corporation shall be vested in the board of directors except as otherwise provided in this Certificate of Incorporation or in the by-laws of the corporation.

ELEVENTH: Nothing in this Certificate of Incorporation shall authorize the corporation within the State of New York, to (1) provide hospital services or health related services, as such terms are defined in the New York State Public Health Law (the "PHL"); (2) establish, operate or maintain a hospital, a home care services agency, a hospice, a managed care organization or a health maintenance organization, as provided for by Articles 28, 36, 40 and 44 respectively, of the PHL and implementing regulations; (3) establish and operate an independent practice association; (4) establish, operate, construct, lease, or maintain an adult home, an enriched housing program, a residence for adults, or an assisted living program, as provided for by Article 7 of the New York State Social Services Law; or (5) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL. Additionally, nothing in this Certificate of Incorporation shall authorize the corporation within the State of New York, to (a) hold itself out as providing or (b) provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law, or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physical therapy, or radiation technology.

TWELFTH: In the event of dissolution, all of the remaining assets and property of the corporation shall, after necessary expenses thereof, be distributed to CHS and/or one or more of the Affiliates, provided that such distributee(s) shall then qualify under Section 501(c)(3) and Section 509(a)(1), (2) or (3) of the Code pursuant to a plan of distribution approved by CHS, and subject to any approvals, consents or proceedings required under applicable governing law regarding the dissolution of not-for-profit corporations. If none of the distributees shall so qualify at the time of dissolution, then distribution shall be made to such other organization or organizations that are organized and operated exclusively for Catholic religious, charitable, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) and Section 509(a)(1), (2) or (3) of the Code pursuant to a plan of distribution approved by CHS, and subject to any approvals, consents or proceedings required under applicable governing law regarding the dissolution of not-for-profit corporations.

IN WITNESS WHEREOF, the undersigned has made and signed this certificate as of the 16th day of June, 2022.

Lisa Bryning

Lisa Bryning, Incorporator
28 E Main Street, Suite 1400
Rochester, New York 14614

Doc #10330919.7

CERTIFICATE OF INCORPORATION

OF

THE FOUNDATION OF CATHOLIC HEALTH

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

Phillips Lytle LLP
28 E Main Street, Suite 1400
Rochester, New York 14614

BY-LAWS
OF
THE FOUNDATION OF CATHOLIC HEALTH

ARTICLE I

Purposes

The name of the corporation is The Foundation of Catholic Health (hereinafter called the “Corporation”). The Corporation is a charitable corporation within the meaning of the New York Not-for-Profit Corporation Law (as amended from time to time, the “NPCL”). The Corporation is formed and is operated exclusively for those purposes set forth in its certification of incorporation, as may be amended from time to time.

ARTICLE II

Membership

Section 1. Member. Catholic Health System, Inc. (the “System”) shall be the sole member (the “Member”) of the Corporation.

Section 2. Withdrawal. The System may withdraw from membership in the Corporation at any time by notice in writing to the chair of the board of directors of the Corporation or the secretary. The consent of the Corporation to a withdrawal shall not be necessary.

Section 3. Dues. No dues shall be required of the System as the Member of the Corporation.

Section 4. Compensation. The System shall not receive compensation for serving in its capacity as Member to the Corporation, but it may be reimbursed for any reasonable expenses incurred on behalf of the Corporation.

ARTICLE III

Meetings of the Member

Section 1. Annual Meeting. The annual meeting of the Member of the Corporation, for the election of directors and for the transaction of such other business as may properly come before the meeting, shall be held at the principal office of the Corporation or at such other place as the Member may determine, in May or at such other place and date as the System as the Member may determine.

Section 2. Special Meetings. Special meetings of the Member, except as otherwise provided by law, may be called to be held at the principal office of the Corporation or elsewhere at any time by the board of directors, or the chair of the board, and shall be called by the chair of the board or the secretary at the request in writing of one-third or more of the directors then in office or at the request in writing of the Member. Such request shall state the purpose or purposes of the proposed meeting. Business transacted at a special meeting shall be confined to the objects stated in the call and matters germane thereto.

Section 3. Notice of Meetings of the Member. Written notice of the place, date and hour of each meeting of the Member shall be given, personally, by mail, by facsimile telecommunications or by electronic mail, to the System as Member, and, unless it is an annual meeting, indicate that it is being issued by or at the direction of the person or persons calling the meeting. If the notice is given personally, by first class mail or by facsimile telecommunications or by electronic mail, it shall be given not less than ten (10) nor more than fifty (50) days before

the date of the meeting. If the notice is mailed by any other class of mail, it shall be given not less than thirty (30) nor more than sixty (60) days before such date. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the System as Member at its address as it appears on the Corporation's records, a written request that notices the System as Member, her or it be mailed to some other address, then directed to the System as Member at such other address. If sent by facsimile telecommunication or electronic mail, notice is given when directed to the Member's facsimile number or electronic mail address as it appears on the record of members or to such other facsimile number or electronic mail address as the Member may specify to the secretary of the Corporation. An affidavit of the secretary or other person giving the notice or of a transfer agent of the Corporation that the notice required by this Section has been given shall be prima facie evidence of the facts therein stated.

Section 4. Waiver of Notice. Notice of any meeting of the Member need not be given to the Member if it submits a waiver of notice, in person or by proxy, whether before or after the meeting. Such waiver of notice may be written or electronic. If written, the waiver must be executed by the Member or the Member's authorized officer, director, employee or agent signing such waiver or causing his or her signature to be affixed to such waiver by any reasonable means including, but not limited to, facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Member. The attendance of any duly authorized representative of the Member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting shall constitute a waiver of notice by the Member. The meeting shall be duly called and held if notice is given to, or is waived by the Member.

Section 5. Procedure. The order of business and all other matters of procedure at every meeting of the Member may be determined by the presiding officer.

Section 6. Quorum. At every meeting of the Member, except as otherwise provided by law or these by-laws, a quorum must be present for the transaction of any business and a quorum shall consist of the System as Member present either in person or by proxy.

Section 7. Adjournments. If the System as Member is present in person or by proxy at any meeting of the Member, whether or not it constitutes a quorum, it shall have power by a majority vote to adjourn the meeting from time to time. Subject to any notice required by law, at any adjourned meeting at which a quorum is present any business may be transacted which might have been transacted on the original date of the meeting.

Section 8. Voting - Proxies. Except as otherwise provided in the certificate of incorporation or by law, the System as the Member shall be entitled at every meeting of the Member to one vote. Except as otherwise provided by law or these by-laws, all questions that shall come before a meeting shall be decided by a majority of votes cast. The System as the Member may vote either in person or by proxy signed by it or by the attorney-in-fact and delivered to the secretary of the meeting. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member or its personal representatives, unless it is entitled "irrevocable proxy" in which event its revocability shall be determined by the law of the State of New York in effect at the time.

Section 9. Action Without A Meeting. Whenever the Member is required or permitted to take any action by vote, such action may be taken without a meeting upon the consent, setting forth the action so taken, of the System as Member. Such consent may be written or

electronic. If written, the consent must be executed by the Member or the Member's authorized officer, director, employee or agent by signing such consent or causing his or her signature to be affixed to such consent by any reasonable means including, but not limited to, facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Member. The resolution and the written consents thereto shall be filed with the minutes of the proceedings of the Member.

ARTICLE IV

Reserved Powers

In addition to all other rights and powers of membership prescribed by New York law, and the certificate of incorporation, the Corporation hereby reserves to the System as Member the following powers:

(a) To approve and interpret the statement of philosophy and mission of the Corporation including the stated purposes of the Corporation as set forth in the certificate of incorporation, and to require that the Corporation operates in accordance with an agreed upon strategic plan and in conformance with the Corporation's philosophy, mission and stated purposes;

(b) To approve and amend the certificate of incorporation and the by-laws of the Corporation;

(c) To approve any plan of merger, consolidation or reorganization of the Corporation;

(d) To approve any plan of dissolution of the Corporation and the distribution of the assets of the Corporation upon dissolution;

(e) To appoint and remove, with or without cause, the directors of the Corporation;

(f) To appoint and remove, with or without cause, the chair of the board of directors of the Corporation; and

(g) To approve the sale, acquisition, lease, transfer, mortgage, pledge or other alienation of real or personal property of the Corporation which constitutes all or substantially all of the assets of the Corporation.

ARTICLE V

Directors

Section 1. Number and Qualifications. The board of directors (the "Board") shall initially be composed of five (5) directors. The total number of directors may be increased to such number not greater than twenty-four (24) or decreased to such number not less than three (3), as may be fixed from time to time by the Member. The president and chief executive officer of the System (or the individual with corresponding responsibilities regardless of title) shall serve as an ex-officio voting member of the Board. The Executive Director of the Corporation (or the individual with corresponding responsibilities regardless of title) shall serve as an ex-officio non-voting member of the Board. No decrease in the number of directors shall shorten the term of any incumbent director. Any vacancy created by an increase in the number of directors shall be filled as provided in Section 5 hereof. Directors must be at least eighteen years of age.

Section 2. Appointment and Tenure. The directors (other than the ex-officio directors) shall be appointed by the System as the Member upon recommendation of the Board, at the annual meeting of the Member or at any meeting of the Member held in lieu thereof. However, the System as Member shall not be bound to elect persons recommended by the Board. Directors shall serve no more than two consecutive three-year terms, with the exception of the chair of the Board, the vice-chair, and the immediate past chair who may continue to serve until the conclusion of their respective terms of office with respect to the chair and the vice-chair and until one year

after the conclusion of his/her term of office with respect to the immediate past chair. An ex-officio director shall serve on the Board as long as he or she holds the position from which the directorship derives.

Section 3. Resignation. Any director of the Corporation may resign at any time by giving his or her resignation to any officer of the Corporation. An ex-officio director may resign his or her directorship only by resigning or otherwise withdrawing from the office from which the directorship is derived. Unless otherwise specified therein, the acceptance of a resignation shall not be necessary to make it effective.

Section 4. Removal. Any or all of the directors (other than the ex-officio directors) may be removed with or without cause by a vote of the System as Member, provided that the proposed action was referred to in the notice for such meeting.

Section 5. Newly Created Directorships and Vacancies. Newly created directorships resulting from an increase in the number of directors, and vacancies occurring in the Board for any reason (other than the ex-officio directors) may be filled by vote of the System as Member. A director elected to fill a vacancy shall be elected to hold office until the next annual meeting of the System as Member at which the election of directors is in the regular order of business, and until a successor is elected or appointed and qualified. A vacancy in an ex-officio directorship shall automatically and immediately be filled by the successor in the office from which the directorship is derived.

Section 6. Compensation. No director as such shall receive any compensation, either by way of salary, fees for attendance at meetings, or otherwise, or shall be reimbursed for his or her expenses, except pursuant to authorization of the Board. This section shall not preclude any director from serving the Corporation in any other capacity or from receiving compensation

for such services and reimbursement for his or her related expenses, provided, that no such director who may benefit from such compensation may be present at or otherwise participate in any Board or committee deliberation or vote concerning such director's compensation. Notwithstanding the foregoing, nothing in this section shall prohibit the Board or an authorized committee thereof from requesting that a director who may benefit from such compensation present information as background or answer questions at a Board or committee meeting prior to the commencement of deliberations or voting relating thereto.

Section 7. Meetings of Directors. A regular annual meeting of the Board shall be held at such time in the month of December in each year as the Board may determine for the purposes of approving the annual report, recommending candidates for directors and electing officers, and transacting such other business as may properly come before the meeting. For the purpose of fostering a close and continuous working relationship between the Corporation and the System or its successor, one or more of the officers of the System, or its successor, shall be invited to attend each regular meeting of the Board. The Board shall regularly consult with officers of the System regarding investment policies of the Corporation, the timing and manner of making grants of income to, and the financial needs and requirements of, the System in order that the Corporation may be responsive to such needs and requirements and enhance the close and continuous working relationship between the Corporation and the System. Regular meetings of the Board shall be held at least quarterly at such times and at such places as may be determined by action of the Board or in the absence of such action by any two directors or the chair of the Board pursuant to such notice as is required by Section 8 of this Article.

Section 8. Notice of Meetings of Board of Directors.

(a) Notice of the time and place of each meeting of the Board shall be given by the chair of the Board or the secretary, or by the two directors calling the same to each director (1) not less than one (1) nor more than thirty (30) days before the meeting by (i) mailing the notice, postage prepaid, addressed, to each director at his or her residence or usual place of business, (ii) by facsimile or (iii) by electronic-mail or (2) not less than one (1) day before the meeting by delivering the notice to each director personally by telephone.

(b) If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the director at his or her address as it appears in the record of directors or to such other address as the director may specify to the secretary of the Corporation in writing from time to time. If sent by facsimile, notice is given when the sender transmits it to the director's facsimile number as it appears in the record of directors or to such other facsimile number as the director may specify to the secretary of the Corporation. If sent electronically, notice is given when the sender transmits it to the director's electronic address as it appears in the record of directors or to such other address as the director may specify to the secretary of the Corporation. If personally by telephone, notice is given when the sender speaks with the director directly or leaves the director a message in a voice mail box or with another person at the telephone number as it appears in the record of directors or such other telephone number as the director may specify to the secretary of the Corporation.

Section 9. Waiver of Notice of Meeting. Notice of a meeting of the Board or a committee thereof need not be given to any director who submits a waiver of notice, whether before or after the meeting. Such waiver of notice may be written or electronic. If written, the waiver must be executed by the director signing such waiver or causing his or her signature to be

affixed to such waiver by any reasonable means including, but not limited to, facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the director. The attendance of any director at a meeting of the Board or a committee thereof without protesting prior thereto or at its commencement the lack of notice to him or her shall constitute a waiver of notice. The meeting shall be duly called and held if notice is given to, or is waived by, all absent directors.

Section 10. Quorum. At all meetings of the Board, except as otherwise provided by law, the certificate of incorporation or these by-laws, a quorum shall be required for the transaction of business and shall consist of not less than a majority of the entire Board, and the vote of a majority of the directors present shall decide any question that may come before the meeting. A majority of the directors present at any meeting, although less than a quorum, may adjourn the same from time to time, without notice other than announcement at the meeting.

Section 11. Procedure. The order of business and all other matters of procedure at every meeting of directors may be determined by the presiding officer.

Section 12. Committees of the Board.

(a) The committees of the Board shall be:

i. Executive Committee. The Executive Committee shall consist of no less than three (3) directors and shall include the officers of the Corporation then in office (all of whom shall be members of the Board), plus such additional directors as may be recommended by the chair and approved by the Board. The Executive Committee shall have the power to transact all regular business of the Corporation between meetings of the Board, subject to the limitations set forth in any provision of applicable law, the certificate of incorporation, or these

by-laws. The Executive Committee shall coordinate the activities and general policies of the Corporation; shall make recommendations to the Board with respect to managing and conducting the affairs of the Corporation; shall review all operations, transactions, and business of the Corporation to assure the best interests of the Corporation will be served or shall recommend changes; and shall meet and act as otherwise instructed by the Board.

ii. Audit Committee. The Audit Committee shall consist of three (3) or more directors, each of whom shall be an Independent Director (as defined below). The Audit Committee shall oversee the accounting and financial reporting processes of the Corporation and the audit of the Corporation's financial statements in accordance with Section 16 of this Article.

(b) The Board may, by resolution or resolutions adopted by a majority of the entire Board, designate from among its members such other committees, each consisting of three (3) or more directors.

(c) Each committee shall serve at the pleasure of the Board and shall have to the extent provided for in such resolutions, the certificate of incorporation or these by-laws, all of the authority of the Board; provided, however, that no committee shall have authority over the following matters: (1) the submission to the Member of any action requiring the Member's approval by law, the certificate of incorporation or these by-laws; (2) the filling of vacancies in the Board or in any committee; (3) the fixing of compensation of the directors for serving on the Board or on any committee; (4) the amendment or repeal of these by-laws or the adoption of new by-laws; (5) the amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable; (6) the election or removal of officers and directors; (7) the approval of a merger or plan of dissolution; (8) the adoption of a resolution recommending to the Member

action on the sale, lease, exchange or other disposition of all or substantially all the assets of the Corporation; and (9) the approval of amendments to the certificate of incorporation.

(d) The Board may designate one or more directors as alternate members of a committee, who may replace any absent member or members at any meeting of such committee.

(e) Committees other than committees of the Board shall be committees of the Corporation. Members of such committees of the Corporation, who may be non-directors, shall be elected or appointed in the same manner as officers of the Corporation, but no such committee shall have the authority to bind the Board.

(f) The committees shall keep regular minutes of their proceedings and make the same available to the Board upon request.

Section 13. Annual Report. The Board shall keep a fair record of all of the transactions of the Corporation, a report of which, prepared in accordance with the provisions of the NPCL, shall be presented at each annual meeting of the Member. The report shall be filed in the Corporation's records and a copy of the report shall be entered in the minutes of the proceedings of the annual meeting of the Member.

Section 14. Action Without A Meeting. Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all members of the Board or the committee consent to the adoption of a resolution authorizing the action. Such consent may be written or electronic. If written, the consent must be executed by the director by signing such consent or causing his or her signature to be affixed to such consent by any reasonable means including, but not limited to, facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the director. The

resolution and the written consents thereto shall be filed with the minutes of the proceedings of the Board or the committee.

Section 15. Meetings by Conference Telephone or Electronic Video Screen Communication. Any one or more members of the Board or any committee thereof who is not physically present at a meeting of the Board or committee may participate by means of a conference telephone or similar communications equipment or by electronic video screen communication, as long as all persons participating in the meeting can hear each other at the same time and each director can participate in all matters before the Board or committee including, without limitation, the ability to propose, object to and vote upon a specific action to be taken by the Board or committee. Participation by such means shall constitute presence in person at a meeting.

Section 16. Audit Oversight.

(a) The Audit Committee shall oversee the audit of the Corporation's financial statements in accordance with the requirements of this section. The Audit Committee shall annually retain or renew the retention of an independent auditor to conduct the audit and, upon completion thereof, review the results of the audit and any related management letter with the independent auditor.

(b) If for any fiscal year the Corporation is required to file an independent certified public accountant's audit report with the attorney general pursuant to Section 172-b(1) of the New York Executive Law (or such successor provision thereto) and the Corporation, in the prior fiscal year, had or, in the current fiscal year, reasonably expects to have annual revenue in excess of one million dollars (\$1,000,000), the Audit Committee shall, in addition to those duties set forth in paragraph (a) of this section: (1) review with the independent auditor the scope and

planning of the audit prior to the audit's commencement; (2) upon completion of the audit, review and discuss with the independent auditor: (A) any material risks and weaknesses in internal controls identified by the auditor; (B) any restrictions on the scope of the auditor's activities or access to requested information; (C) any significant disagreements between the auditor and management; and (D) the adequacy of the Corporation's accounting and financial reporting processes; (3) annually consider the performance and independence of the independent auditor; and (4) report on the committee's activities to the Board.

(c) If the Corporation controls a group of corporations, the board of directors or designated audit committee of the controlling corporation may perform the duties required by this section for one or more of the controlled corporations.

(d) Only Independent Directors may participate in any Board or committee deliberations or voting relating to matters set forth in this section, provided that nothing in this paragraph shall prohibit the Board or the Audit Committee from requesting that a person with an interest in the matter present information as background or answer questions at a committee or board meeting prior to the commencement of deliberations or voting relating thereto.

(e) For purposes of these by-laws, "Independent Director" means a director who: (i) is not, and has not been within the last three years, an employee or a key person of the Corporation or an affiliate of the Corporation, and does not have a relative who is, or has been within the last three years, a key person of the Corporation or an affiliate of the Corporation; (ii) has not received, and does not have a relative who has received, in any of the last three fiscal years, more than ten thousand dollars (\$10,000) in direct compensation from the Corporation or an affiliate of the Corporation; (iii) is not a current employee of or does not have a substantial financial interest in, and does not have a relative who is a current officer of or has a substantial financial

interest in, any entity that has provided payments, property or services to, or received payments, property or services from, the Corporation or an affiliate of the Corporation if the amount paid by the Corporation to the entity or received by the Corporation from the entity for such property or services, in any of the last three fiscal years, exceeded the lesser of ten thousand dollars (\$10,000) or two percent (2%) of such entity's consolidated gross revenues if the entity's consolidated gross revenue was less than five hundred thousand dollars (\$500,000); twenty-five thousand dollars (\$25,000) if the entity's consolidated gross revenue was five hundred thousand dollars (\$500,000) or more but less than ten million dollars (\$10,000,000); one hundred thousand dollars (\$100,000) if the entity's consolidated gross revenue was ten million dollars (\$10,000,000) or more; or (iv) is not and does not have a relative who is a current owner, whether wholly or partially, director, officer or employee of the Corporation's outside auditor or who has worked on the Corporation's audit at any time during the past three years. For purposes of this subparagraph, the terms "compensation" does not include reimbursement for expenses reasonably incurred as a director or reasonable compensation for service as a director as permitted by paragraph (a) of section 202 (General and special powers) of the NPCL; and "payment" does not include charitable contributions, dues or fees paid to the Corporation for services which the Corporation performs as part of its nonprofit purposes, or payments made by the Corporation at fixed or non-negotiable rates or amounts for services received, provided that such services by and to the Corporation are available to individual members of the public on the same terms, and such services received by the Corporation are not available from another source. For the purposes of this Section, the terms "key person," "affiliate," and "relative" shall have such meanings as ascribed to them in the NPCL.

Section 17. Policy Oversight.

(a) The Board shall adopt, and oversee the implementation of, and compliance with, the Corporation's conflict of interest policy and whistleblower policy, as required by the NPCL.

(b) Directors who are employees may not participate in any Board or committee deliberations or voting relating to administration of the whistleblower policy.

ARTICLE VI

Officers

Section 1. Officers. The officers of the Corporation shall consist of a chair, a vice-chair, a secretary and a treasurer, all of whom shall be members of the Board and such additional officers as the Board may determine from time to time. Officers shall be elected at the annual meeting of the Board; provided that the chair shall be appointed by the Member. Such additional officers shall exercise such powers and perform such duties as usually pertain to their respective offices or as are properly delegated or assigned to them from time to time by the board of directors.

Section 2. Term of Office. The officers of the Corporation, unless otherwise determined by the Member or directors, as applicable, shall hold office until their successors are elected and have qualified. The chair may be removed, with or without cause, by a vote of the Member. Any officer, other than the chair, may be removed at any time with or without cause by the Board. Vacancies in any office, other than the chair, shall be filled by the Board. Vacancies in the offices of the chair shall be filled by the Member.

Section 3. The Chair. The chair shall preside at all meetings of the Board at which the chair is present. The chair shall exercise such powers and perform such duties as usually

pertains to the office or are designated or assigned from time to time by the members. No employee of the Corporation shall serve as chair or hold any other title with similar responsibilities.

Section 4. The Vice-Chair. The vice-chair shall, in the absence or at the request of the chair, perform the duties and exercise the powers of the chairman. The vice-chair shall also have such powers and perform such duties as usually pertain to his or her office or as are properly required of him by the Board. No employee of the Corporation shall serve as vice-chair or hold any other title with similar responsibilities.

Section 5. The Secretary and Assistant Secretaries. The secretary shall issue notices of all meetings of the Member and directors where notices of such meetings are required by law or these by-laws. The secretary shall attend all meetings of the Board and keep the minutes thereof. The secretary shall affix the corporate seal to and sign such instruments as require the seal or his or her signature and shall perform such other duties as usually pertain to the office or as are properly required by the Board.

The assistant secretaries, if any, may, in the absence or disability of the secretary, or at his or her request, perform the duties and exercise the powers of the secretary, and shall perform such other duties as the board of directors shall prescribe.

Section 6. The Treasurer and Assistant Treasurers. The treasurer shall have the care and custody of all moneys and securities of the Corporation. The treasurer shall keep full and accurate accounts of all the moneys received by him or her and paid by him or her on account of the Corporation. The treasurer shall make and sign such reports, statements and instruments as may be required by the board of directors or by the laws of the United States or of any state in which the Corporation operates, and shall perform such other duties as usually pertain to the office or as are properly required by the board of directors.

The assistant treasurers, if any, may, in the absence or disability of the treasurer, or at his or her request, perform the duties and exercise the powers of the treasurer and shall perform such other duties as the board of directors shall prescribe.

Section 7. Officers Holding Two or More Offices. Any two or more of the above-mentioned offices, except those of chair (or president, if any) and secretary, may be held by the same person, but no officer shall execute or verify any instrument in more than one capacity if such instrument is required by law or otherwise to be executed or verified by two or more officers.

Section 8. Temporary Transfer of Powers and Duties. In case of the absence or illness of any officer of the Corporation, or for any other reason that the Board may deem sufficient, the board of directors may delegate and assign, for the time being, the powers and duties of any officer to any other officer or to any director.

Section 9. Compensation. The officers shall not receive any compensation for their services, but they may be reimbursed for any reasonable expenses incurred on behalf of the corporation.

Section 10. Executive Director or Other Personnel. All staff personnel including the Executive Director, shall be employees of the Member, or a corporation affiliated with the Member, which shall be responsible for all aspects of their employment. The Executive Director shall report both to the Board and the Member and shall comply with Catholic Health System, Inc. policies. The Executive Director shall be responsible for executing, directing and coordinating activities that increase philanthropic support for the Corporation. The Executive Director will engage the Board in productive fundraising and support its governance efforts. The Executive Director shall have the following specific responsibilities:

- (a) Design, execution and evaluation of all philanthropic activity necessary to achieve the Corporation's goals and objectives.
- (b) Design and implementation of procedures to assure compliance with all fiduciary responsibilities of the Corporation.
- (c) Management of the human resources of the Corporation including professional development and performance evaluation.
- (d) Responsible for administering Corporation policies and initiatives and ensuring that the Corporation successfully carries out the mission.
- (e) Keeps the Board fully aware of all Corporation activities through periodic and appropriate means of communication and Board meetings.
- (f) Development and management of the technology resources of the Corporation.
- (g) Collaborate with the Board on recruitment, training, support and direction of volunteer leaders.

ARTICLE VII

Indemnification

The Corporation shall indemnify each person made, or threatened to be made, a party to any action or proceeding, whether civil or criminal, by reason of the fact that such person or such person's testator or intestate is or was a member, director or officer of the Corporation, or, while a member, director or officer, serves or served, at the request of the Corporation, any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, against judgments, fines, penalties, amounts paid in settlement and reasonable expenses, including attorneys' fees, incurred in connection with such action or proceeding, or any appeal therein, provided that no such indemnification shall be made if a judgment or other final

adjudication adverse to such person establishes that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled, and provided, further, that no such indemnification shall be required with respect to any settlement or other nonadjudicated disposition of any threatened or pending action or proceeding unless the Corporation has given its prior consent to such settlement or other disposition.

The Corporation shall advance or promptly reimburse any member, director or officer seeking indemnification hereunder for all expenses, including attorneys' fees, reasonably incurred in defending any action or proceeding in advance of the final disposition thereof upon request by or on behalf of such person and receipt of an undertaking by or on behalf of such person to repay such amount if such person is ultimately found not to be entitled to indemnification or, where indemnification is granted, to the extent the expenses so advanced or reimbursed exceed the amount to which such person is entitled.

This Article shall be given retroactive effect and the full benefits hereof shall be available in respect of any alleged or actual occurrences, acts, or failures to act prior to the date of the adoption of this Article. The right to indemnification or advancement of expenses under this Article shall be a contract right.

ARTICLE VIII

Miscellaneous

Section 1. Form of Seal. The seal of the Corporation shall be in such form as the directors shall determine.

Section 2. Fiscal Year. The fiscal year of the Corporation shall be the calendar year unless otherwise provided by the Board.

Section 3. Amendment. These by-laws may be added to, amended, or repealed by the Member at any regular meeting or any special meeting, if at least seven (7) days' written notice is given of intention to add to, alter, amend or repeal at such meeting.

Doc #10347954.3



March 20, 2023

NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

Attn: Colleen M. Leonard, Executive Secretary,
Public Health and Health Planning Council

Re: Proposed Certificate of Incorporation of "The Foundation of Catholic Health"

Dear Ms. Leonard:

Please be advised that Catholic Health System, Inc. (the "Corporation") will accept funds, if any, raised for or on behalf of the Corporation by The Foundation of Catholic Health, an entity to be formed as a New York not-for-profit corporation.

Sincerely,

CATHOLIC HEALTH SYSTEM, INC.

By: 

Name: Leonardo Sette-Camara, Esq.
Title: Secretary

cc: Mark A. Schweitzer - Via E-Mail

Doc #10950250.1



March 20, 2023

NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

Attn: Colleen M. Leonard, Executive Secretary,
Public Health and Health Planning Council

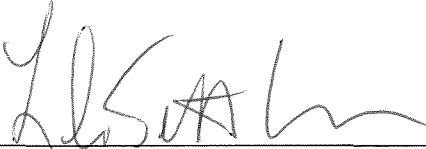
Re: Proposed Certificate of Incorporation of "The Foundation of Catholic Health"

Dear Ms. Leonard:

Please be advised that Kenmore Mercy Hospital (the "Corporation") will accept funds, if any, raised for or on behalf of the Corporation by The Foundation of Catholic Health, an entity to be formed as a New York not-for-profit corporation.

Sincerely,

KENMORE MERCY HOSPITAL

By: 

Name: Leonardo Sette-Camara, Esq.
Title: Secretary

cc: Mark A. Schweitzer - Via E-Mail

Doc #10950254.1



March 20, 2023

NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

Attn: Colleen M. Leonard, Executive Secretary,
Public Health and Health Planning Council

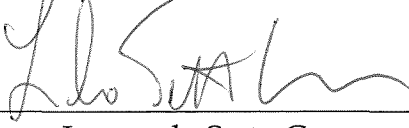
Re: Proposed Certificate of Incorporation of "The Foundation of Catholic Health"

Dear Ms. Leonard:

Please be advised that Mercy Hospital of Buffalo (the "Corporation") will accept funds, if any, raised for or on behalf of the Corporation by The Foundation of Catholic Health, an entity to be formed as a New York not-for-profit corporation.

Sincerely,

MERCY HOSPITAL OF BUFFALO

By: 

Name: Leonardo Sette-Camara, Esq.
Title: Secretary

cc: Mark A. Schweitzer - Via E-Mail

Doc #10950320.1



March 20, 2023

NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

Attn: Colleen M. Leonard, Executive Secretary,
Public Health and Health Planning Council

Re: Proposed Certificate of Incorporation of "The Foundation of Catholic Health"

Dear Ms. Leonard:

Please be advised that Sisters of Charity Hospital of Buffalo, New York (the "Corporation") will accept funds, if any, raised for or on behalf of the Corporation by The Foundation of Catholic Health, an entity to be formed as a New York not-for-profit corporation.

Sincerely,

SISTERS OF CHARITY HOSPITAL OF BUFFALO, NEW YORK

By: _____

Name: Leonardo Sette-Camara, Esq.

Title: Secretary

cc: Mark A. Schweitzer - Via E-Mail

Doc #10950338.1



March 20, 2023

NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

Attn: Colleen M. Leonard, Executive Secretary,
Public Health and Health Planning Council

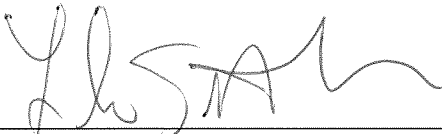
Re: Proposed Certificate of Incorporation of "The Foundation of Catholic Health"

Dear Ms. Leonard:

Please be advised that Mount St. Mary's Hospital of Niagara Falls (the "Corporation") will accept funds, if any, raised for or on behalf of the Corporation by The Foundation of Catholic Health, an entity to be formed as a New York not-for-profit corporation.

Sincerely,

MOUNT ST. MARY'S HOSPITAL OF NIAGARA FALLS

By: 

Name: Leonardo Sette-Camara, Esq.
Title: Secretary

cc: Mark A. Schweitzer - Via E-Mail

Doc #10950343.1



March 20, 2023

NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

Attn: Colleen M. Leonard, Executive Secretary,
Public Health and Health Planning Council

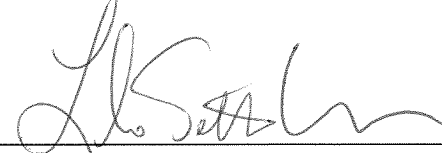
Re: Proposed Certificate of Incorporation of "The Foundation of Catholic Health"

Dear Ms. Leonard:

Please be advised that WNY Catholic Long Term Care, Inc. (the "Corporation") will accept funds, if any, raised for or on behalf of the Corporation by The Foundation of Catholic Health, an entity to be formed as a New York not-for-profit corporation.

Sincerely,

WNY CATHOLIC LONG TERM CARE, INC.

By: 

Name: Leonardo Sette-Camara, Esq.

Title: Secretary

cc: Mark A. Schweitzer - Via E-Mail

Doc #10950348.1



March 20, 2023

NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

Attn: Colleen M. Leonard, Executive Secretary,
Public Health and Health Planning Council

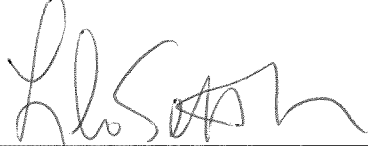
Re: Proposed Certificate of Incorporation of "The Foundation of Catholic Health"

Dear Ms. Leonard:

Please be advised that McAuley-Seton Home Care Corporation (the "Corporation") will accept funds, if any, raised for or on behalf of the Corporation by The Foundation of Catholic Health, an entity to be formed as a New York not-for-profit corporation.

Sincerely,

McAULEY-SETON HOME CARE CORPORATION

By: 

Name: Leonardo Sette-Camara, Esq.
Title: Secretary

cc: Mark A. Schweitzer - Via E-Mail

Doc #10950351.1



March 23, 2023

NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

Attn: Colleen M. Leonard, Executive Secretary,
Public Health and Health Planning Council

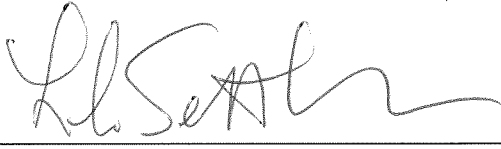
Re: Proposed Certificate of Incorporation of "The Foundation of Catholic Health"

Dear Ms. Leonard:

Please be advised that Niagara Homemaker Services, Inc. (the "Corporation") will accept funds, if any, raised for or on behalf of the Corporation by The Foundation of Catholic Health, an entity to be formed as a New York not-for-profit corporation.

Sincerely,

NIAGARA HOMEMAKER SERVICES, INC.

By: 

Name: Leonardo Sette-Camara, Esq.
Title: Secretary

cc: Mark A. Schweitzer - Via E-Mail

Doc #10950358.1



March 24, 2023

NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237

Attn: Colleen M. Leonard, Executive Secretary,
Public Health and Health Planning Council

Re: Proposed Certificate of Incorporation of "The Foundation of Catholic Health"

Dear Ms. Leonard:

Please be advised that Catholic Health System Program of All-Inclusive Care for the Elderly, Inc. (the "Corporation") will accept funds, if any, raised for or on behalf of the Corporation by The Foundation of Catholic Health, an entity to be formed as a New York not-for-profit corporation.

Sincerely,

CATHOLIC HEALTH SYSTEM PROGRAM OF ALL-
INCLUSIVE CARE FOR THE ELDERLY, INC.

By: 

Name: Leonardo Sette-Camara, Esq.

Title: Secretary

cc: Mark A. Schweitzer - Via E-Mail

Doc #10950367.1

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 16th day of November 2023, approves the filing of the Certificate of Incorporation of The Foundation of Catholic Health, dated June 16, 2022.

MEMORANDUM

To: Kathy Marks
General Counsel
Division of Legal Affairs

From: Jason W. Riegert, Deputy Director
Bureau of Program Counsel
Division of Legal Affairs

Date: September 28, 2023

Subject: VJJ Holding Company, LLC – Assumed Name Change

The attached package was prepared by Alexa Nagy, Esq. for the Division of Legal Affairs. Relevant background material has been included.

I have reviewed the package and find it acceptable.

If you approve, please sign the memo and kindly return the package to me for further processing.

Thank you.

MEMORANDUM

To: Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

From: Alexa Nagy, Senior Attorney
Bureau of Program Counsel
Division of Legal Affairs

Date: September 28, 2023

Subject: VJJ Holding Company, LLC – Assumed Name Change

This is to request that the above matter be included on the agendas for the next Establishment and Project Review Committee and Public Health and Health Planning Council (PHHPC) meetings.

The attachments relating to this matter include the following:

- 1) Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) A photocopy of an email letter from Legal Counsel for VJJ Holding Company, LLC, Michael Stringfellow, dated August 5, 2023;
- 3) A copy of the Amended Certificate of Assumed Name of VJJ Holding Company, LLC, signed by Michael Stringfellow, as authorized person;
- 4) A copy of the current Operating Certificate for VJJ Holding Company, LLC, effective April 1, 2009;
- 5) A copy of the original Articles of Organization of VJJ Holding Company, LLC, dated March 9, 2009, and filed on March 10, 2009;
- 6) A copy of the Certificate of Amendment of the Articles of Organization of VJJ Holding Company, LLC, dated March 13, 2009, and filed on March 16, 2009;
- 7) A copy of the original Certificate of Assumed Name for VJJ Holding Company, LLC, signed by Joseph Zwolak, as managing member, and filed on April 8, 2009;
- 8) A copy of the Certificate of Publication of VJJ Holding Company, LLC and accompanying documents, filed on June 25, 2009; and
- 9) A copy of the Biennial Statement of VJJ Holding Company, LLC for the March 1, 2021 filing period, and filed on August 4, 2022.

Attachments

MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Kathy Marks *KSM*
General Counsel

Date: September 28, 2023

Subject: VJJ Holding Company, LLC – Assumed Name Change

VJJ Holding Company, LLC requests Public Health and Health Planning Council (“PHHPC”) approval to amend its Certificate of Assumed Name. VJJ Holding Company, LLC filed an original Certificate of Assumed Name to do business as Woodhaven Nursing Home, which was approved by the NYS Department of State on April 8, 2009, and currently operates under this name as a residential health care facility pursuant to Article 28 of the Public Health Law.

VJJ Holding Company, LLC requests approval for an Amended Certificate of Assumed Name to change the assumed name of the entity. PHHPC approval of the Amended Certificate of Assumed Name is now requested and required.

VJJ Holding Company, LLC requests approval for an Amended Certificate of Assumed Name to change the assumed name of the entity from Woodhaven Nursing Home to Allegria Nursing & Rehabilitation Center of Port Jefferson.

Pursuant to NY Not-for-Profit Corporation Law § 804(a)(i) and 10 NYCRR § 600.11, PHHPC must consent to the requested changes prior to the filing of any amended certificate.

There is no legal objection to the change in assumed name, and the Amended Certificate of Assumed Name of VJJ Holding Company, LLC is in legally acceptable form.

Attachments

GARFUNKEL WILD, P.C.

ATTORNEYS AT LAW

111 GREAT NECK ROAD • GREAT NECK, NEW YORK 11021

TEL (516) 393-2200 • FAX (516) 466-5964

www.garfunkelwild.com

FILE NO.: 14010.0001

August 5, 2023

By FedEx & EMAIL

Vincent DiCocco, Senior Attorney
Bureau of Program Counsel
New York State Department of Health - Division of Legal Affairs
Room 2480, Corning Tower
Empire State Plaza
Albany, NY 12237
Vincent.DiCocco@health.ny.gov

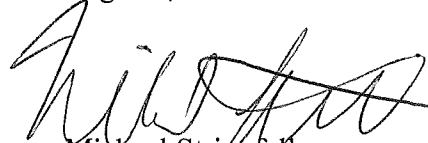
Re: Proposed Certificate of Amendment of Assumed Name for VJJ Holding Company
(dba Woodhaven Nursing Home (the "Home"))

Dear Mr. DiCocco:

I enclose a copy of the proposed Amended Certificate of Assumed name for the Home to operate as Allegria Nursing & Rehabilitation Center of Port Jefferson. The Home currently holds an operating certificate in the name referenced above and wishes to change the dba. For your reference, attached are the current certified copies of the charter documents and a copy of the current operating certificate. We request your approval to proceed with this assumed name amendment. Also enclosed is a self-addressed stamped envelope.

Kindly contact me at (516) 393-2578 or via e-mail at mstringfellow@garfunkelwild.com, if there is any additional information or additional supporting documentation that you require, or if you have any further questions.

Regards,



Michael Stringfellow
Paralegal

Enclosure

cc: Andrew Schulson, Esq.

NEW YORK

NEW JERSEY

CONNECTICUT



**Division of Corporations,
State Records and
Uniform Commercial Code**

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

AMENDED CERTIFICATE OF ASSUMED NAME OF

VJJ HOLDING COMPANY, LLC

(Insert Current Real Name of Entity)

Under Section 130 of the General Business Law

1. The current real name of the entity is: VJJ Holding Company, LLC

2. *(Foreign entities only)* If applicable, the fictitious name the entity has agreed to use in New York State is: _____

3. If the current real name of the entity is different from the real name listed on the last preceding filing with respect to this assumed name, the previous real name of the entity listed was:

4. The assumed name listed on the last preceding filing with respect to this assumed name was: Woodhaven Nursing Home

5a. The date the original Certificate of Assumed Name was filed: April 8, 2009

5b. The DOS Assumed Name ID is: 418201

6. If applicable, the date the last Amended Certificate of Assumed Name was filed is:
N/A

7. The following change(s) are being made:

- Entity real name
- Assumed name
- Location of principal place of business
- County(ies) in which the entity does or intends to do business
- Location(s) where the entity carries on or conducts or transacts business in New York State

8. The text of the Certificate of Assumed Name is amended to read in its entirety as follows:

FIRST: The real name of the entity is:

VJJ Holding Company, LLC

SECOND: *(Foreign entities only)* If applicable, the fictitious name the entity has agreed to use in New York State is:

THIRD: The entity was formed or authorized to do business/conduct activities in New York State under the following law: *(Check one)*

- | | |
|---|--|
| <input type="checkbox"/> Business Corporation Law | <input type="checkbox"/> Not-for-Profit Corporation Law |
| <input type="checkbox"/> Education Law | <input type="checkbox"/> Revised Limited Partnership Act |
| <input type="checkbox"/> Insurance Law | <input type="checkbox"/> Other (specify law): _____ |
| <input checked="" type="checkbox"/> Limited Liability Company Law | |

FOURTH: The assumed name of the entity is:

Allegria Nursing & Rehabilitation Center of Port Jefferson

FIFTH: The location including number and street, if any, of the entity's principal place of business in New York State. If none, provide the out-of-state address of the entity's principal place of business:

1360 Route 112, Port Jefferson Station, New York 11776

SIXTH: The county(ies) in which the entity does business or intends to do business: *(Check the applicable box(es).)*

ALL COUNTIES

- | | | | | | | |
|--------------------------------------|-----------------------------------|-------------------------------------|-------------------------------------|---------------------------------------|---|--------------------------------------|
| <input type="checkbox"/> Albany | <input type="checkbox"/> Clinton | <input type="checkbox"/> Genesee | <input type="checkbox"/> Monroe | <input type="checkbox"/> Orleans | <input type="checkbox"/> Saratoga | <input type="checkbox"/> Tompkins |
| <input type="checkbox"/> Allegany | <input type="checkbox"/> Columbia | <input type="checkbox"/> Greene | <input type="checkbox"/> Montgomery | <input type="checkbox"/> Oswego | <input type="checkbox"/> Schenectady | <input type="checkbox"/> Ulster |
| <input type="checkbox"/> Bronx | <input type="checkbox"/> Cortland | <input type="checkbox"/> Hamilton | <input type="checkbox"/> Nassau | <input type="checkbox"/> Otsego | <input type="checkbox"/> Schoharie | <input type="checkbox"/> Warren |
| <input type="checkbox"/> Broome | <input type="checkbox"/> Delaware | <input type="checkbox"/> Herkimer | <input type="checkbox"/> New York | <input type="checkbox"/> Putnam | <input type="checkbox"/> Schuylar | <input type="checkbox"/> Washington |
| <input type="checkbox"/> Cattaraugus | <input type="checkbox"/> Dutchess | <input type="checkbox"/> Jefferson | <input type="checkbox"/> Niagara | <input type="checkbox"/> Queens | <input type="checkbox"/> Seneca | <input type="checkbox"/> Wayne |
| <input type="checkbox"/> Cayuga | <input type="checkbox"/> Erie | <input type="checkbox"/> Kings | <input type="checkbox"/> Oneida | <input type="checkbox"/> Rensselaer | <input type="checkbox"/> Steuben | <input type="checkbox"/> Westchester |
| <input type="checkbox"/> Chautauqua | <input type="checkbox"/> Essex | <input type="checkbox"/> Lewis | <input type="checkbox"/> Onondaga | <input type="checkbox"/> Richmond | <input checked="" type="checkbox"/> Suffolk | <input type="checkbox"/> Wyoming |
| <input type="checkbox"/> Chemung | <input type="checkbox"/> Franklin | <input type="checkbox"/> Livingston | <input type="checkbox"/> Ontario | <input type="checkbox"/> Rockland | <input type="checkbox"/> Sullivan | <input type="checkbox"/> Yates |
| <input type="checkbox"/> Chenango | <input type="checkbox"/> Fulton | <input type="checkbox"/> Madison | <input type="checkbox"/> Orange | <input type="checkbox"/> St. Lawrence | <input type="checkbox"/> Tioga | |

SEVENTH: The location including number and street, if any, of each place where the entity carries on, conducts or transacts business in New York State: *(The address(es) must include a number and street, city, state and zip code. The address(es) must be within the county(ies) indicated in paragraph SIXTH.)* If none, check this box

1360 Route 112, Port Jefferson Station, New York 11776

Print or Type Michael Stringfellow
Name of Signer: _____

Signature: _____



Capacity of Signer (Check one): Authorized Person Officer of the Corporation General Partner of the Limited Partnership
 Member of the Limited Liability Company Manager of the Limited Liability Company

AMENDED CERTIFICATE OF ASSUMED NAME OF

VJJ HOLDING COMPANY, LLC

(Insert Current Real Name of Entity)

Under Section 130 of the General Business Law

Filer's Name and Mailing Address:

Michael Stringfellow, Paralegal

Name:

Garfunkel Wild, P.C.

Company, if Applicable:

111 Great Neck Road, 6th Floor

Mailing Address:

Great Neck, Ny 11021-5406

City, State and Zip Code:

NOTES:

1. This form was prepared by the New York State Department of State. You are not required to use this form. You may draft a form or obtain a form from a legal form company. If this form is not suitable for your needs, you may draft your own form.
2. **Instructions for signing:**
If a corporation, by an officer; if a limited partnership, by a general partner or; if a limited liability company, by a member or manager. An authorized person or attorney-in-fact for such corporation, limited partnership or limited liability company may also sign the certificate.
3. The Department of State recommends that this certificate be prepared under the guidance of an attorney.
4. **Filing Fee:**
 - a. Limited Liability Companies \$25.
 - b. Limited Partnerships - \$25.
 - c. Corporations - \$25 plus the additional fee for each county. The additional fee for each county within New York City (Bronx, Kings, New York, Queens and Richmond) is \$100. The additional fee for each county outside New York City is \$25.
5. Make checks are payable to the "Department of State".
6. All checks over \$500 must be certified.

For Office Use Only

Facility Id. 908
Certificate No. 5151323N

Certified Beds - Total 143
RHC 143

State of New York
Department of Health
Office of Primary Care and Health Systems Management



OPERATING CERTIFICATE
Residential Health Care Facility - SNF

Effective Date: 04/01/2009
Expiration Date: NONE

Woodhaven Nursing Home
1360 Route 112
Port Jefferson Station, New York 11776

Operator: VIJ Holding Company, LLC
Operator Class: Proprietary LLC

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law for the service(s) specified.

Baseline

Keith W. Lewis

20161229 Deputy Director Office of Primary Care and Health Systems Management

Howard Zucker M.D.

Commissioner

This certificate must be conspicuously displayed on the premises.

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for VJJ HOLDING COMPANY, LLC, File Number 090310000492 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on September 05, 2023.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

090310000492

BW13

**ARTICLES OF ORGANIZATION
OF
VJJ HOLDING COMPANY, LLC**

Under Section 203 of the Limited Liability Company Law.

FIRST: The name of the limited liability company is **VJJ HOLDING COMPANY, LLC.**

SECOND: The county within the state in which the office of the limited liability company is to be located is Suffolk.

THIRD: The Company does not have a specific date of dissolution in addition to the events of dissolution set forth by law.

FOURTH: The Secretary of State is designated as agent of the limited liability company upon whom process against it may be served. The post office address within or without this state to which the Secretary of State shall mail a copy of any process against the limited liability company served upon him or her is:

1360 Route 112
Port Jefferson Station, New York 11776

FIFTH: The effective date of the Articles of Organization shall be the date of filing with the Secretary of State.

SIXTH: The limited liability company is to be managed by 1 or more members.

090310000492

IN WITNESS WHEREOF, this certificate has been subscribed to this 9th day of March, 2009 by the undersigned who affirms that the statements made herein are true under the penalties of perjury.

Lawrence A. Kirsch

Lawrence A. Kirsch, Organizer

090310000492

6/2/13
DRAWDOWN

10/5/08

ARTICLES OF ORGANIZATION
OF
VJJ HOLDING COMPANY, LLC

FILED
2009 MAR 10 PM 12:01

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAR 10 2009

TAXS _____

BY: MS

Filed by:

Enrico Scarda, P.C.
38 Kings Highway
Hauppauge, New York 11788

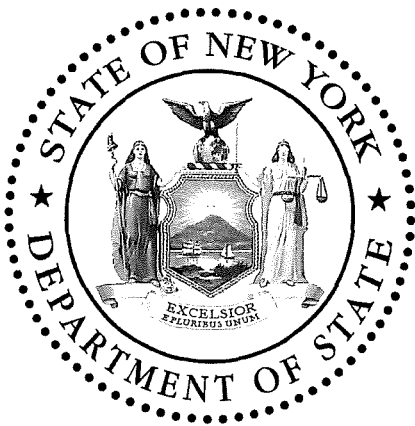
2009 MAR 10 AM 11:12

RECEIVED

045

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for VJJ HOLDING COMPANY, LLC, File Number 090316000093 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on September 05, 2023.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

090316000093

GWB

**CERTIFICATE OF AMENDMENT
OF THE
ARTICLES OF ORGANIZATION
OF
VJJ HOLDING COMPANY, LLC**

Under Section 211 of the Limited Liability Company Law.

FIRST: The name of the limited liability company is **VJJ HOLDING COMPANY, LLC**.

SECOND: The date of filing of the articles of organization is March 10, 2009.

THIRD: The amendment effected by this certificate is to change the address for service of process, the manner in which the limited liability company is to be managed and to add provisions to the articles of organization.

Paragraph FOURTH of the articles of organization is hereby amended to read:

FOURTH: The Secretary of State is designated as agent of the limited liability company upon whom process against it may be served. The post office address within or without this state to which the Secretary of State shall mail a copy of any process against the limited liability company served upon him or her is:

Duane Morris LLP
380 Lexington Avenue
New York, New York 10168
Attn: Kathleen Cheney, Esq.

Paragraph SIXTH of the articles of organization is hereby amended to read:

SIXTH: The limited liability company shall be managed by one or more members and neither the management structure nor the provision setting forth such structure may be deleted, modified or amended without the

prior approval of the Department of Health.

Paragraph SEVENTH and EIGHTH are hereby added to the articles of organization as follows:

SEVENTH: The powers and purposes of the Company are limited to the ownership and operation of a skilled nursing facility at 1360 Route 112, Port Jefferson Station, County of Suffolk, State of New York, pursuant to the provisions of Article 28 of the New York State Public Health Law; and to carry out such auxiliary matters and do such things as are related to the operation of such facility.

EIGHTH: Notwithstanding anything in this Articles of Organization or the Operating Agreement to the contrary, transfers, assignments or other dispositions of membership interests or voting rights shall be effectuated in accordance with Public Health Law Section 2801-(a)(4)(b).

IN WITNESS WHEREOF, this certificate has been subscribed to this 13th day of March, 2009 by the undersigned who affirms that the statements made herein are true under the penalties of perjury.

Lawrence A. Kirsch

Lawrence A. Kirsch, Authorized Person

6013

090316000093

BRANDDOWN

CERTIFICATE OF AMENDMENT
OF THE
ARTICLES OF ORGANIZATION
OF
VJJ HOLDING COMPANY, LLC

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAR 16 2009

Text
BY: S. Scarda

Filed by:

Enrico Scarda, P.C.
38 Kings Highway
Hauppauge, New York 11788

2009 MAR 16 AM 9:31

FILED

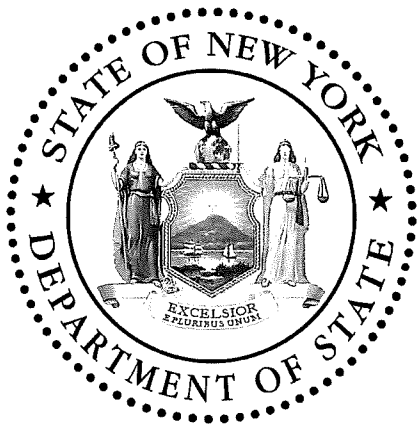
2009 MAR 13 PM 3:14

RECEIVED

101

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for VJJ HOLDING COMPANY, LLC, File Number 20090408004 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on September 05, 2023.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

200904080 04

NYS Department of State
Division of Corporations, State Records and UCC
41 State Street, Albany, NY 12231-0001
www.dos.state.ny.us

Certificate of Assumed Name
Pursuant to General Business Law, §130

1. NAME OF ENTITY

VJJ HOLDING COMPANY, LLC

1W6-14

1a. FOREIGN ENTITIES ONLY. If applicable, the fictitious name the entity agreed to use in New York State is:

2. NEW YORK LAW FORMED OR AUTHORIZED UNDER (CHECK ONE):

Business Corporation Law

Limited Liability Company Law

Education Law

Not-for-Profit Corporation Law

Insurance Law

Revised Limited Partnership Act

Other (specify law):

3. ASSUMED NAME

WOODHAVEN NURSING HOME

4. PRINCIPAL PLACE OF BUSINESS IN NEW YORK STATE (MUST BE NUMBER AND STREET. IF NONE, INSERT OUT-OF-STATE ADDRESS)

1360 ROUTE 112

Port Jefferson Station, N.Y. 11776

5. COUNTIES IN WHICH BUSINESS WILL BE CONDUCTED UNDER ASSUMED NAME

ALL COUNTIES (if not, circle county[ies] below)

Albany	Clinton	Genesee	Monroe	Orleans	Saratoga	Tompkins
Allegany	Columbia	Greene	Montgomery	Oswego	Schenectady	Ulster
Bronx	Cortland	Hamilton	Nassau	Otsego	Schoharie	Warren
Broome	Delaware	Herkimer	New York	Putnam	Schuyler	Washington
Cattaraugus	Dutchess	Jefferson	Niagara	Queens	Seneca	Wayne
Cayuga	Erie	Kings	Oneida	Rensselaer	Steuben	Westchester
Chautauqua	Essex	Lewis	Onondaga	Richmond	<u>Suffolk</u>	Wyoming
Chemung	Franklin	Livingston	Ontario	Rockland	Sullivan	Yates
Chenango	Fulton	Madison	Orange	St. Lawrence	Tioga	

6. INSERT THE ADDRESS OF EACH LOCATION WHERE BUSINESS WILL BE CARRIED ON OR TRANSACTED UNDER THE ASSUMED NAME. Use a continuous sheet, if needed. (The address must be set forth in terms of a number and street, city, state and zip code. Please note that the address(es) reflected in paragraph 6 must be within the county(ies) circled in paragraph 5. If the entity does not have a specific location where it will conduct business under the assumed name please check the statement below.)

1360 Route 112

Suffolk County

Port Jefferson Station, N.Y. 11776

No New York State Business Location

20090408004

1W6-14

INSTRUCTIONS FOR SIGNATURE: If corporation, by an officer; if limited partnership, by a general partner; if limited liability company, by a member or manager or by an attorney-in-fact or authorized person for such corporation, limited partnership, or limited liability company.

Joseph Zwolak / Managing Member

s/ Joseph Zwolak

Name and Title

Signature

CERTIFICATE OF ASSUMED NAME
OF
VJJ HOLDING COMPANY, LLC

(Insert Entity Name)

Pursuant to §130, General Business Law

2009 APR -8 AM 8:14

FILED

FILER'S NAME AND MAILING ADDRESS Enrico Scarda, P.C.

38 Kinas Highway

Hauppauge, N.Y. 11788

090310000492

NOTE: This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$25 fee. The Department of State also collects the following, additional, county clerk fees for each county in which a corporation does or transacts business: \$100 for each county within New York City (Bronx, Kings, New York, Queens and Richmond) and \$25 for each county outside New York City. All checks over \$500 must be certified.

(For office use only)

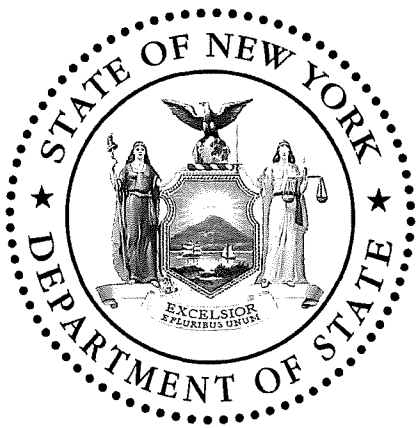
STATE OF NEW YORK
DEPARTMENT OF STATE

APR 08 2009
915261
SB

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for VJJ HOLDING COMPANY, LLC, File Number 090625000524 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on September 05, 2023.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

090625000524 ORIGINAL

New York State
Department of State
Division of Corporations, State Records and Uniform Commercial Code
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231
www.dos.state.ny.us

CERTIFICATE OF PUBLICATION
OF
VJJ HOLDING COMPANY, LLC

(Name of Domestic Limited Liability Company)

Under Section 206 of the Limited Liability Company Law

The undersigned is the member *(Title*)*
of VJJ HOLDING COMPANY, LLC

(Name of Domestic Limited Liability Company)

If the name of the limited liability company has changed, the name under which it was
organized is: _____

The articles of organization were filed by the Department of State on: 3/10/09

The published notices described in the annexed affidavits of publication contain all of the
information required by Section 206 of the Limited Liability Company Law.

The newspapers described in such affidavits of publication satisfy the requirements set forth in
the Limited Liability Company Law and the designation made by the county clerk.

I certify the foregoing statements to be true under penalties of perjury.

6/12/09 *(Date)*
X Joseph A. Zwolak *(Signature)*
JOSEPH ZWOLAK
(Type or Print Name)

* This certificate must be signed by a member, manager, authorized person or attorney-in-fact. If the certificate is signed by an attorney-in-fact, include the name and title of the person for whom the attorney-in-fact is acting. (Example, John Smith, attorney-in-fact for Robert Johnson, member.)

NEWSDAY

AFFIDAVIT OF PUBLICATION

ENRICO BENNETT
38 KINGS HIGHWAY
HAUPPAUGE, NY
11788

Under Section 206 of the Limited Liability Company Law

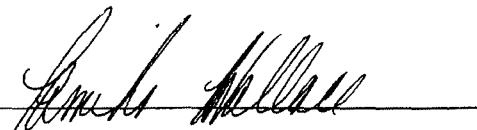
STATE OF NEW YORK)
SS.:
COUNTY OF SUFFOLK)

Legal Notice No. 16104814

The undersigned is the publisher of **Newsday**, a *daily* newspaper printed in Melville, County of Suffolk, State of New York, and circulated in Nassau, Suffolk Queens and Bronx Counties.

A Legal Notice regarding VJJ Holding Company, LLC was published in said newspaper once in each week for six successive weeks, commencing on 4/6/2009 and ending on 5/11/2009. The text of the notice as published in said newspaper is as set forth below or in the annexed exhibit. This newspaper has been designated by the Clerk of Suffolk County for this purpose.

By: _____



Tamika Wallace

SWORN to before me this
13th Day of May 2009.

“Authorized Designee of Tim Knight, Publisher of Newsday”



Guy P. Wasser
Notary Public, State of New York
No. 01WA6045924
Commission Expires 08/07/2010
Qualified in Suffolk County

Legal Notice 16104814

Notice of formation of VJJ Holding Company, LLC, a limited liability company. Art. of Org. filed with the Secretary of State of the State of NY on 3/10/09. Office located in Suffolk. SSNY has been designated for service of process. SSNY shall mail copy of any process served against the LLC to VJJ Holding, LLC 1360 Rte 112, Port Jefferson Station NY 11776. Purpose: any lawful purpose.

16104814 ENRICO SCARDA Th 5.14.9 09:42

.090625000 524.

CERTIFICATE OF PUBLICATION
OF
VJJ HOLDING COMPANY, LLC

(Name of Domestic Limited Liability Company)

Under Section 206 of the Limited Liability Company Law

Filed by: ENRICO SCARDA, P.C.
(Name)
38 KINGS HIGHWAY
(Mailing Address)
HAUPPAUGE NY 11788
(City, State and ZIP Code)

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JUN 25 2009

TAX \$ _____
BY: *Amu*

Note: This form was prepared by the New York State Department of State for filing a certificate of publication for a domestic limited liability company. You are not required to use this form. You may draft your own form or use forms available from legal stationery stores. The Department of State recommends that legal documents be prepared under the guidance of an attorney. This certificate of publication, with the affidavits of publication of the newspapers annexed thereto, must be submitted with a \$50 filing fee payable to the Department of State.

(For office use only)

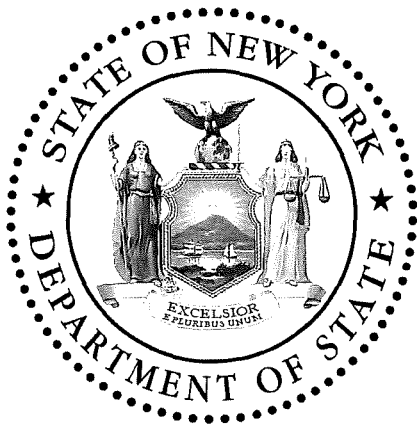
Attach this page after the affidavits of publication.

568

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for VJJ HOLDING COMPANY, LLC, File Number 220804001477 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on September 05, 2023.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

Biennial Statement

NYS Department of State
Division of Corporations, State Records &
Uniform Commercial Code
<http://www.dos.ny.gov>

BUSINESS NAME: VJJ HOLDING COMPANY, LLC
FILING PERIOD: 3/1/2021 12:00:00 AM

Part 1 - Service of Process Address (Address must be within the United States or its territories)

Name

THE LLC

Address Line 1

1360 ROUTE 112

Address Line 2

City

PORT JEFFERSON STAT.

State

NY

Zip Code

11776

Signer Information

I affirm that the statements contained herein are true to the best of my knowledge, that I am authorized to sign this Biennial Statement and that my signature typed below constitutes my electronic signature.

Electronic Signature

BRENDAN KOMBOL

Capacity of Signer

AUTHORIZED PERSON

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 16th day of November 2023, approves the filing of the Certificate of Assumed Name of VJJ Holding Company, LLC, dated September 5, 2023.



MEMORANDUM

To: Kathy Marks
General Counsel
Division of Legal Affairs

From: Jason Riegert, Deputy Director
Bureau of Program Counsel
Division of Legal Affairs

Date: September 15, 2023

Subject: Proposed Dissolution of DOJ Dialysis Center Corp.

The attached package was prepared by Alexa Nagy, Esq. for the Division of Legal Affairs. Relevant background material has been included.

I have reviewed the package and find it acceptable.

If you approve, please sign the memo and kindly return the package to me for further processing.

Thank you.

MEMORANDUM

To: Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

From: Alexa Nagy, Senior Attorney
Bureau of Program Counsel
Division of Legal Affairs

Date: September 15, 2023

Subject: Proposed Dissolution of DOJ Dialysis Center Corp.

This is to request that the above matter be included on the agendas for the next Establishment and Project Review Committee and Public Health and Health Planning Council (PHHPC) meetings.

The attachments relating to this matter include the following:

- 1) Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) A photocopy of an email letter from Legal Counsel requesting approval of the proposed Certificate of Dissolution of DOJ Dialysis Center Corp., dated September 5, 2023;
- 3) A proposed verified petition seeking the Attorney General's approval of the filing of the Certificate of Dissolution of DOJ Dialysis Center Corp.;
- 4) A photocopy of the Certificate of Incorporation for DOJ Dialysis Center Corp., dated October 1, 2002, and filed on May 1, 2003, and Consent to File Letter of the Public Health Council for DOJ Dialysis Center Corp., dated April 8, 2003;
- 5) A copy of the Corporate Bylaws of DOJ Dialysis Center Corp.;
- 6) An executed, proposed Plan of Dissolution and Certificate of Dissolution of DOJ Dialysis Center Corp.;
- 7) A copy of the Resolutions of the Board of Directors of DOJ Dialysis Center Corp., dated May 1, 2019, approving and authorizing the dissolution;
- 8) An executed photocopy of the Operating Certificate for DOJ Dialysis Center Corp. as a Diagnostic and Treatment Center; and
- 9) A photocopy of a letter from the Deputy Commissioner of the Office of Health Systems Management, dated December 7, 2011, conditionally approving the site closure plan for DOJ Dialysis Center Corp.

Attachments

MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Kathy Marks *KSM*
General Counsel

Date: September 15, 2023

Subject: Proposed Dissolution of DOJ Dialysis Center Corp.

DOJ Dialysis Center Corp. requests Public Health and Health Planning Council (“PHHPC”) approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law §§ 1002(c) and 1003, as well as 10 NYCRR Part 650.

DOJ Dialysis Center Corp. was approved by the Public Health Council when PHHPC consented to the filing of its Certificate of Incorporation on April 8, 2003, which was filed with the NYS Department of State on May 1, 2003.

DOJ Dialysis Center Corp. was the licensed operator of a Diagnostic and Treatment Center to provide chronic renal dialysis services, located at 1160 Teller Avenue in the County of the Bronx, New York. DOJ Dialysis Center Corp. is dissolving because its operations have been dormant since 2013. DOJ Dialysis Center Corp. largely operated in support of its affiliate, Daughters of Jacob Support Organization, Inc., f/k/a Daughters of Jacob Nursing Home Company, Inc., a New York Not-for-Profit corporation (“DOJ Nursing Home”). DOJ Nursing Home disposed of substantially all of its assets and ceased operations in 2018 and is in the process of winding down its business. As such, DOJ Dialysis Center Corp. has no current operations and reasonably anticipates that it will not undertake operations at any point in the future. In light of this, DOJ Dialysis Center Corp.’s directors have deemed it in the best interests of DOJ Dialysis Center Corp. to dissolve. DOJ Dialysis Center Corp. has no assets or liabilities.

The Board of Directors of DOJ Dialysis Center Corp. approved and authorized dissolution and authorized the filing of the Certificate of Dissolution on May 1, 2019.

The required documents: a proposed Verified Petition to the Attorney General, a Plan of Dissolution, and a proposed Certificate of Dissolution, with supporting organizational documents of St. Teresa’s Nursing Home, Inc. and resolutions of the board of directors of DOJ Dialysis Center Corp., authorizing the dissolution, are included for PHHPC’s review. A letter from the legal counsel for DOJ Dialysis Center Corp. advocating for dissolution, is also enclosed.

There is no legal objection to the proposed Verified Petition, Plan of Dissolution, and Certificate of Dissolution of DOJ Dialysis Center Corp.

Attachments

GARFUNKEL WILD, P.C.

ATTORNEYS AT LAW

350 BEDFORD STREET • STAMFORD, CONNECTICUT 06901

TEL (203) 316-0483 • FAX (203) 399-0505

www.garfunkelwild.com

FILE NO.: 12819.0004

September 5, 2023

By FedEx & EMAIL

Vincent DiCocco, Senior Attorney

Bureau of Program Counsel

New York State Department of Health - Division of Legal Affairs

Room 2480, Corning Tower

Empire State Plaza

Albany, NY 12237

Vincent.DiCocco@health.ny.gov

Re: Request for Consent for Dissolution of DJ Dialysis Center Corp. (the "Corporation").

Dear Vincent:

Enclosed please find for your review and approval, a copy of the Verified Petition for the approval of the Certificate of Dissolution submitted to the NY Attorney General's Office in connection with the dissolution of DOJ Dialysis Center Corp (the "Corporation"). The original Verified Petition includes a copy of the Certificate of Incorporation and any amendments, a copy of the Unanimous Written Consent of the Board of Directors; the original Plan of Dissolution, a copy of the operating certificate and the original Certificate of Dissolution for DOJ Dialysis Center Corp.

Kindly review and let me know if you will additional information or an attestation from the Corporation to proceed with your review for consent. Please note that this entity has been defunct and non-operational since 2013. If acceptable please provide consent to dissolve and return in the self-addressed envelope which is enclosed.

NEW YORK

NEW JERSEY

CONNECTICUT

September 5, 2023
Page 2

Kindly contact me at (516) 393-2578 or via e-mail at mstringfellow@garfunkelwild.com, if there is any additional information or additional supporting documentation that you require, or if you have any further questions.

Regards,

A handwritten signature in black ink, appearing to read 'Michael Stringfellow', written in a cursive style.

Michael Stringfellow
Paralegal

Enclosure

cc: Nicole Gade, Esq.

GARFUNKEL WILD, P.C.

----- X
 In the Matter of the Application of :
 DOJ Dialysis Center Corp., :
 For Approval of Certificate of : VERIFIED PETITION
 Dissolution pursuant to :
 Section 1002 of the Not-for-Profit :
 Corporation Law. :
 ----- X

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
 OFFICE OF THE ATTORNEY GENERAL
 28 Liberty Street
 New York, New York 10005

Petitioner, DOJ Dialysis Center Corp. (the "corporation"), by the undersigned director of the corporation, for its Verified Petition alleges:

1. DOJ Dialysis Center Corp., whose principal address is located in the county of Bronx, was incorporated pursuant to New York's Not-for-Profit Corporation Law on May 1, 2003. A copy of the Certificate of Incorporation, any amendments thereto, and the complete and current By-laws are attached as Exhibit A.

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

<u>Name</u>	<u>Title</u>	<u>Address</u>
Henry I. Burr	Director	130 Sunrise Avenue Apt. 304W Palm Beach, FL 33480
Gerald Gordon	Director & Acting Secretary	25 Washington Lane, #733 Wyncote, PA 19095

Vacant

3. The purposes for which the corporation was organized are set forth in its Certificate of Incorporation at paragraph 4 thereof and are as follows:

to provide chronic renal dialysis services, and other related services, to residents of local facilities, as well as members of the community, who have end-stage renal disease.

4. The corporation is a charitable corporation.

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

6. The corporation is dissolving because its operations have been dormant since 2013. The corporation largely operated in support of its affiliate, Daughters of Jacob Support Organization, Inc., f/k/a Daughters of Jacob Nursing Home Company, Inc., a New York Not-for-Profit corporation (“DOJ Nursing Home”). DOJ Nursing Home disposed of substantially all of its assets and ceased operations in 2018 and is in the process of winding down its business. As such, the corporation has no current operations and reasonably anticipates that it will not undertake operations at any point in the future. In light of this, the corporation’s directors have deemed it in the best interests of the corporation to dissolve.
7. The Board of Directors by unanimous written consent dated May 1, 2019 approved resolutions adopting the Plan, and authorizing the filing of a Certificate of Dissolution. Such written consent is attached hereto as Exhibit C.
8. The corporation does not have any members.
9. The corporation has no assets or liabilities.
10. Any incidental liabilities of the corporation incurred in connection with its winding up and dissolution are anticipated to be di-minimus and shall be paid on its behalf by contributions from affiliates of the corporation.
11. The corporation is unaware of any ongoing or completed audit or inquiry by the Internal Revenue Service (“IRS”) in the past three years or if the corporation paid any excise taxes or disclosed an excess benefit transaction or diversion of assets on its information returns to the IRS.
12. The corporation is not required to file a final financial report with the Charities Bureau because the organization is exempt from registration with the Charities Bureau.
13. Other than the approval of the Attorney General, no approval of the dissolution of the corporation is required by any governmental body or officer.
14. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003.

WHEREFORE, petitioner requests that the Attorney General approve the Certificate of Dissolution of DOJ Dialysis Center Corp., a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed this 1st day of May 2019, by

A handwritten signature in cursive script, appearing to read "Gerald Gordon", written over a horizontal line.

Signature

Name: Gerald Gordon

Title: Acting Secretary & Director

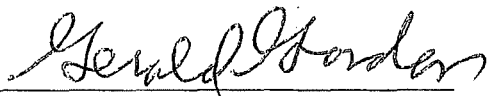
----- X
In the Matter of the Application of :
DOJ Dialysis Center Corp., :
For Approval of Certificate of :
Dissolution pursuant to :
Section 1002 of the Not-for-Profit :
Corporation Law. :
----- X

Verification and Certification

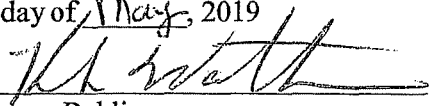
STATE OF NEW YORK)
 :SS.:
COUNTY OF NEW YORK

Gerald Gordon, being duly sworn, deposes and says:

I am a duly elected and acting Director and the duly named and acting Secretary of DOJ Dialysis Center Corp., the corporation named in the above Petition, and make this verification and certification at the direction of its Board of Directors. I have read the foregoing Petition and (i) I know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief, and as to those matters I believe them to be true and (ii) I hereby certify under penalties of perjury that the Plan was duly authorized and adopted by the Board of Directors.



Gerald Gordon

Sworn to before me this
23 day of May, 2019


Notary Public

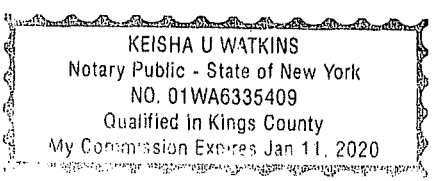
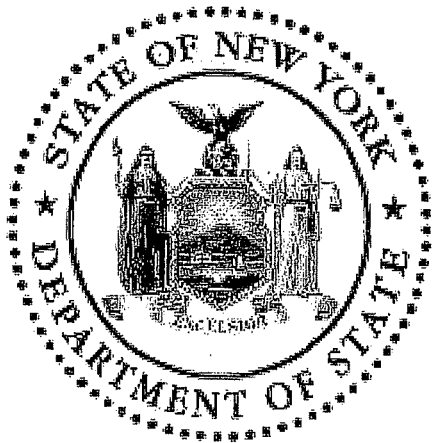


EXHIBIT A

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy for DOJ DIALYSIS CENTER CORP., File Number 030501000365 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
November 26, 2019.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

Rev. 06/07

Authentication Number: 1911261046 To verify the authenticity of this document you may access the
Division of Coporation's Document Authentication Website at <http://ecorp.dos.ny.gov>

F030501000 365

**CERTIFICATE OF INCORPORATION
OF
DOJ DIALYSIS CENTER CORP.**

UNDER SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION LAW

THE UNDERSIGNED, who is over the age of eighteen (18) years, for the purpose of forming a corporation pursuant to Section 402 of the Not-For-Profit Corporation Law of New York, does hereby state:

FIRST: The name of the corporation is DOJ Dialysis Center Corp. (hereinafter, the "Corporation").

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

THIRD: The Corporation shall be a Type C corporation pursuant to Section 201 of the Not-For-Profit Law.

FOURTH: The purposes for which the Corporation is formed, and the lawful public or quasi-public objective which the business purposes of the corporation will achieve, is to provide chronic renal dialysis services, and other related services, to residents of local facilities, as well as members of the community, who have end-stage renal disease.

To have in furtherance of its not-for-profit purposes, all of the powers conferred upon corporations organized under the Not-For-Profit Corporation Law subject to any limitations thereof contained in this Certificate of Incorporation or in the laws of the State of New York.

FIFTH: The office of the corporation is to be located in the County of Bronx, State of New York.

SIXTH: The Corporation shall be operated by a board of directors, the number of which is to be no less than three (3).

SEVENTH: The names and addresses of the persons constituting the initial Board of Directors of the Corporation are:

	<u>Names</u>	<u>Residences</u>
1.	Howard S. Modlin	1120 Park Avenue, # 14C New York, New York 10128
2.	Henry I. Burr	6 Stonewall Lane Mamaroneck, New York 10543
3.	David Dworksy	320 West 90th Street New York, New York 10024

EIGHTH: The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address of the Corporation to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: c/o Weisman Celler Spett & Modlin, P.C., 445 Park Avenue, 15th Floor, New York, New York, 10022-2606, Attention: Howard S. Modlin, Esq.

NINTH: Notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the purposes, as specified in Section 501(c)(3) of the Internal Revenue Code of 1986 or corresponding provisions of any subsequent federal tax laws and shall not carry on any other activities not permitted to be carried on by (a) a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

TENTH: No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its members, trustees, director, officers, or other private persons, except that the corporation shall be authorized to pay reasonable compensation for services rendered and to make payments and distribution in furtherance of its purposes as set forth in this certificate of incorporation.

ELEVENTH: No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except as

otherwise provided by Internal Revenue Code Section 501(h), and the Corporation shall not participate in, or intervene (including the publication or distributions of statements) any political campaign on behalf of or in opposition to any candidate, or participating in, or intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

TWELFTH: In the event of dissolution, all of the remaining assets and property of the Corporation shall after necessary expenses thereof be distributed to another organization exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent Federal tax laws, or to the Federal government, or state or local government for a public purpose upon approval of a Justice of the Supreme Court of the State of New York.

THIRTEENTH: In any taxable year in which the Corporation is a private foundation as described in Section 509(a) of the Internal Revenue Code of 1986, the Corporation shall distribute its income for said period at such time and in such manner as not to subject it to tax under Section 4942 of the Code; and the Corporation shall not (a) engage in any act of self-dealing as defined in Section 4941(d) of the Code; (b) retain any excess business holdings as defined in Section 4943(c) of the Code; (c) make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; or (d) make any taxable expenditures as defined in Section 4945(d) of the Code or corresponding provisions of any subsequent Federal tax laws.

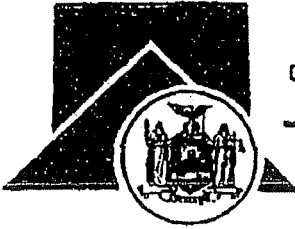
October 1, 2002



Signature

Scott M. Golodner
Name Typed or Printed

Weisman Celler Spett & Modlin, P.C.
445 Park Avenue- 15th Floor
New York, NY 10022
Address



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

April 8, 2003

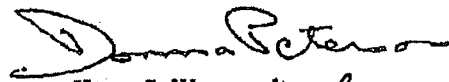
Mr. Gilbert Preira
Executive Director
Daughters of Jacob NH Company, Inc.
1160 Teller Avenue
Bronx, New York 10456

Re: Certificate of Incorporation of DOJ Dialysis Center Corp.

Dear Mr. Preira:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 19th day of July, 2002, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of DOJ Dialysis Center Corp., dated October 1, 2002.

Sincerely,


Karen S. Westervelt
Executive Secretary 

4

F: 030501000365

**CERTIFICATE OF INCORPORATION
OF
DAUGHTERS OF JACOB DIALYSIS CENTER CORP.**

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

lcc

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAY 01 2003

TAX \$ BY: *Lmb / JLB*

Bronx

Filed by: **Weisman Celler Spett & Modlin, PC**
445 Park Avenue, 15th Floor
New York, NY 10022

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BY-LAWS

OF

DOJ DIALYSIS CENTER CORP.

(a New York not-for-profit corporation)

ARTICLE I

MEMBERS

1. **MEMBERSHIP CERTIFICATES.** The Board of Directors may, but need not, cause to be issued certificates to evidence membership in the corporation. The fact that the corporation is a not-for-profit corporation, and that any such membership certificate or card is non-transferable shall be noted conspicuously on the face or back of any membership certificate which may be issued. Any such certificate shall set forth any such additional statements as may be required by the Not-for-Profit Corporation Law or any other provision of law. Membership certificates, if issued, shall bear the signature or facsimile signature of the officer or officers designated by the Board of Directors and may bear the seal of the corporation or a facsimile thereof.

2. **CAPITAL CERTIFICATES.** If any capital contribution shall be made, each certificate evidencing a capital contribution shall contain the statements prescribed by Section 503 of the Not-for-Profit Corporation Law or of any other provision of law, and shall be signed by the Chairman of the Board, if any, or the Vice-Chairman of the Board, if any, or the President, or a Vice-President and by the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer and may bear the seal of the corporation or a facsimile thereof. The signatures of the officers upon any such certificate may be facsimiles if the certificate is countersigned by a transfer agent or registered by a registrar other than the corporation itself or its employees. Except as may otherwise be provided by the Not-for-Profit Corporation Law, any such certificate shall not be transferable.

3. **MEMBERSHIP.** The person or persons signing the Certificate of Incorporation as incorporator or incorporators shall be the first member or members of the corporation unless he or they shall have resigned as such member or members or unless membership shall otherwise be terminated. Thereafter, the qualifications and eligibility for membership and the manner of admission into membership shall be prescribed by resolution of the Board of Directors and/or by

any similarly prescribed rules and regulations which the Board of Directors may promulgate. In like manner, any such resolution and/or rules and regulations shall prescribe, in relation to all members, the amount and manner of imposing and collecting any initiation or other fees, and any dues, assessments, fines, and penalties, the manner of suspension or termination of membership and for reinstatement, if any, and, except as may hereinafter be provided, the rights, liabilities, and other incidents of membership. Any such resolution and/or rules and regulations relating to memberships in the corporation shall be annexed to these By-Laws and shall be deemed to be a component part thereof.

Except as may herein otherwise be provided, membership shall be terminated by the death, resignation, or expulsion of a member or dissolution or liquidation of a corporate member or by the dissolution or liquidation of the corporation; and any right or interest of a member shall terminate upon the happening of any such event or otherwise.

A member shall be liable to the corporation only to the extent of any unpaid portion of any initiation fees, dues, and assessments or for any other indebtedness owed by him or it to the corporation.

Members shall have, upon dissolution or liquidation of the corporation, only such distributive rights relating to any contributions, initiation fees, dues, and assessments paid by them as the Certificate of Incorporation may confer upon them.

4. **RECORD DATE FOR MEMBERS.** For the purpose of determining the members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or to express consent to or dissent from any proposal without a meeting, or for the purpose of determining members entitled to receive distributions, or the allotment of any rights, or for the purpose of any other action, the directors may fix, in advance, a date as the record date for any such determination of members. Such record date shall not be more than fifty days and not less than ten days before the date of such meeting or such consent or dissent or other action by the members or the date on which the resolution of directors relating to any distribution or allotment of rights, as the case may be. If no record date is fixed, the record date for the determination of members entitled to vote at a meeting of members shall be at the close of business on the day next preceding the day on which notice is given, or, if no notice is given, the day on which the meeting is held; and, in such case, the record date for determining members for any purpose other than that specified in the preceding clause shall be at the close of business on the day on which the resolution of the directors relating thereto is adopted. When a determination of members of record entitled to notice of or to vote at any meeting of members has been made as provided in this paragraph, such determination shall apply to any adjournment thereof, unless the directors fix a new record date under this paragraph for the adjourned meeting.

5. **MEANING OF CERTAIN TERMS.** As used herein in respect of the right to notice of a meeting of members or a waiver thereof or to participate or vote thereat or to consent or dissent in writing in lieu of a meeting, as the case may be, the term "membership" or "memberships" or "member" or "members" refers to an outstanding membership or memberships of record and in good standing.

6. **MEMBERSHIP MEETINGS.**

TIME. The annual meeting shall be held on the date fixed, from time to time, by the directors, provided, that the first annual meeting shall be held on a date within thirteen months after the formation of the corporation, and each successive annual meeting shall be held on a date within thirteen months after the date of the preceding annual meeting. A special meeting shall be held on the date fixed by the directors except when the Not-for-Profit Corporation Law confers the right to fix the date upon members.

PLACE. Annual meetings and special meetings shall be held at such place, within or without the State of New York, as the directors may, from time to time, fix. Whenever the directors shall fail to fix such place, or, whenever members entitled to call or convene a special meeting shall convene the same, the meeting shall be held at the office of the corporation in the State of New York.

CALL. Annual meetings may be called by the directors or by any officer instructed by the directors to call the meeting. Special meetings may be called in like manner except when the directors are required by the Not-for-Profit Corporation Law to call a meeting, or except when the members are entitled by said Law to demand the call of a meeting.

NOTICE OR ACTUAL OR CONSTRUCTIVE WAIVER OF NOTICE.

Written notice of all meetings shall be given, stating the place, date, and hour of the meeting, and, unless it is an annual meeting, indicate that it is being issued by or at the direction of the person or persons calling the meeting. The notice of an annual meeting shall state that the meeting is called for the election of directors and for the transaction of other business which may properly come before the meeting, and shall (if any other action which could be taken at a special meeting is to be taken at such annual meeting) state the purpose or purposes. The notice of a special meeting shall in all instances state the purpose or purposes for which the meeting is called; and, at any such meeting, only such business may be transacted which is related to the purpose or purposes set forth in the notice. If the directors shall adopt, amend, or repeal a by-law regulating an impending election of directors, the notice of the next meeting for election of directors shall set forth the By-Law so adopted, amended, or repealed, together with a concise statement of the changes made. A copy of the notice of any meeting shall be given to each member at his record address or at such other address which he may have furnished by request in writing to the Secretary of the corporation. If the notice is given personally or by first class mail, it shall be given not less than ten nor more than fifty days before the date of the meeting or, if mailed by any other class of mail, it shall be given not less than thirty nor more than sixty days before such date. Notice by mail shall be deemed to be given when deposited, with postage thereon prepaid, in a post office or official depository under the exclusive care and custody of the United States post office department. If a meeting is adjourned to another time or place, and, if any announcement of the adjourned time or place is made at such meeting, it shall not be necessary to give notice of the adjourned meeting unless the directors, after adjournment, fix a new record date for the adjourned meeting. Notice of a meeting and/or of the lapse of any prescribed period of time need not be given to any member who submits a signed waiver of notice and/or of the lapse of any prescribed period of time before or after the meeting. The attendance of a member at a meeting without protesting prior to the conclusion of the meeting the

lack of notice of such meeting shall constitute a waiver of notice by him.

MEMBERS LIST OR RECORD AND CHALLENGE. A list or record of members as of the record date, certified by the Secretary or other officer responsible for its preparation, shall be produced at any meeting of members upon the request therefor of any member who has given written notice to the corporation that such request will be made at least ten days prior to such meeting. If the right to vote at any meeting is challenged, the inspectors of election, if any, or the person presiding thereat, shall require such list or record of members to be produced as evidence of the right of the persons challenged to vote at such meeting, and all persons who appear from such list or record to be members entitled to vote thereat may vote at such meeting.

ANNUAL REPORT OF DIRECTORS. The Board of Directors shall present at each annual meeting of members its report, which shall set forth the statements and shall be verified or certified in the manner prescribed by Section 519 of the Not-for-Profit Corporation Law. Such report shall be filed with the records of the corporation and either a copy or an abstract thereof entered in the minutes of the proceedings of such annual meeting of members.

CONDUCT OF MEETING. Meetings of the members shall be presided over by one of the following officers in the order of seniority and if present and acting - the Chairman of the Board, if any, the Vice-Chairman of the Board, if any, the President, a Vice-President, or, if none of the foregoing is in office and present and acting, by a chairman to be chosen by the members. The Secretary of the corporation, or in his absence, an Assistant Secretary, shall act as secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present the Chairman of the meeting shall appoint a secretary of the meeting.

PROXY REPRESENTATION. Every member may authorize another person or persons to act for him by proxy in all matters in which a member is entitled to participate, whether by waiving notice of any meeting or the lapse of any prescribed period of time, voting or participating at a meeting, or expressing consent or dissent without a meeting. Every proxy must be signed by the member or his attorney-in-fact. No proxy shall be valid after the expiration of eleven months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the member executing it, except as otherwise provided by the Not-for-Profit Corporation Law.

INSPECTORS - APPOINTMENT. The directors, in advance of any meeting, may, but need not, appoint one or more inspectors to act at the meeting or any adjournment thereof. If an inspector or inspectors are not appointed, the person presiding at the meeting may, but need not, appoint one or more inspectors. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the directors in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, if

any, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors, if any, shall determine the number of membership certificates or cards, if any, or the number of memberships, outstanding and the voting power of each, the membership certificates or cards, if any, or the number of memberships represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots, or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots, or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all members. On request of the person presiding at the meeting or any member, the inspector or inspectors, if any, shall make a report in writing of any challenge, question, or matter determined by him or them and execute a certificate of any fact found by him or them.

QUORUM. Except for a special election of directors pursuant to Section 604 of the Not-for-Profit Corporation Law, and except as herein otherwise provided, the members entitled to cast a majority of the total number of votes entitled to be cast thereat shall constitute a quorum at a meeting of members for the transaction of any business. The members present may adjourn the meeting despite the absence of a quorum.

VOTING. Each membership shall entitle the holder thereof to one vote. In the election of directors, a plurality of the votes cast shall elect. Any other action shall be authorized by a majority of the votes cast except where the Not-for-Profit Corporation Law prescribes a different proportion of votes; provided that the said majority of the affirmative votes cast shall be at least equal to a quorum.

7. **MEMBERSHIP ACTION WITHOUT MEETINGS.** Whenever members are required or permitted to take any action by vote, such action may be taken without a meeting on written consent, setting forth the action so taken, signed by the holders of all memberships.

ARTICLE II GOVERNING BOARD

1. **FUNCTIONS AND DEFINITIONS.** The corporation shall be managed by a governing board, which is herein referred to as the "Board of Directors" or "directors" notwithstanding that the members thereof may otherwise bear the titles of trustees, managers, or governors or any other designated title. The word "director" or "directors" likewise herein refers to a member or to members of the governing board notwithstanding the designation of a different official title or titles. The use of the phrase "entire board" herein refers to the total number of directors which the corporation would have if there were no vacancies.

2. **QUALIFICATIONS AND NUMBER.** Each director shall be at least eighteen years of age. A director shall be a member during his directorship, but need not be a citizen of the United States, or a resident of the State of New York. The initial Board of Directors shall consist of three persons. Thereafter the number of directors constituting the entire board shall be at least three. Subject to the foregoing limitation and except for the first Board of Directors, such number may be fixed from time to time by action of the members or of the directors, or, if the number is not so fixed, the number shall be three. The number of directors may be increased or decreased by action of the members or of the directors, provided that any action of the directors to effect such increase or decrease shall require the vote of a majority of the entire Board. No decrease shall shorten the term of any incumbent director.

3. **ELECTION AND TERM.** The first Board of Directors shall consist of those persons named as the initial directors in the Certificate of Incorporation and shall hold office until the first annual meeting of members and until their successors have been elected and qualified. Thereafter, directors who are elected at an annual meeting of members, and directors who are elected in the interim to fill vacancies and newly created directorships, shall hold office until the next annual meeting of members and until their successors have been elected and qualified. In the interim between annual meetings of members or of special meetings of members called for the election of directors, newly created directorships and any vacancies in the Board of Directors, including vacancies resulting from the removal of directors for cause or without cause, may be filled by the vote of the remaining directors then in office.

4. **MEETINGS.**

TIME. Meetings shall be held at such time as the Board shall fix, except that the first meeting of a newly elected Board shall be held as soon after its election as the directors may conveniently assemble.

PLACE. Meetings shall be held at such place within or without the State of New York as shall be fixed by the Board.

CALL. No call shall be required for regular or annual meetings for which the time and place have been fixed. Special meetings may be called by the Chairman of the Board, if any, the President, or a Vice-President.

NOTICE OR ACTUAL OR CONSTRUCTIVE WAIVER. No notice shall be required for regular or annual meetings for which the time and place have been fixed. Written, oral, or any other mode of notice of the time and place shall be given for special meetings in sufficient time for the convenient assembly of the directors thereat unless the lapse of such time has been waived. The notice of any meeting need not specify the purpose of the meeting. Notice of any adjournment of a meeting of the Board of Directors to another time or place because a quorum is not present shall be given to the directors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other directors. Any requirement of furnishing a notice shall be waived by any director who signs a waiver of notice before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him.

QUORUM AND ACTION. Except as hereinafter provided, a majority of the entire Board shall constitute a quorum. Whenever a vacancy or vacancies in the Board shall prevent a quorum from consisting of a majority of the entire Board as aforesaid, a quorum shall consist of at least one-third of the entire Board if the entire Board consists of not more than fifteen directors and shall, if the entire Board exceeds fifteen directors in number, consist of five directors plus one additional director for every ten directors (or fraction thereof) in excess of fifteen. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting to another time and place. Except as otherwise provided by the Not-for-Profit Corporation Law and except as in these By-Laws otherwise provided, the vote of a majority of the directors present at the time of the vote, if a quorum is present at such time, shall be the act of the Board.

Any one or more members of the Board of Directors or of any committee thereof may participate in a meeting of the Board of Directors or of any such committee, as the case may be, by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time; and participation by such means shall constitute presence in person at a meeting.

CHAIRMAN OF THE MEETING. The Chairman of the Board, if any and if present and acting, shall preside at all meetings. Otherwise, the President, if present and acting, or any other director chosen by the Board, shall preside.

5. **REMOVAL OF DIRECTORS.** Any or all of the directors may be removed for cause or without cause by the members. One or more of the directors may be removed for cause by the Board of Directors; provided that there is a quorum of not less than a majority present at the meeting at which such action is taken.

6. **COMMITTEES.** Whenever the Board of Directors shall consist of more than three members, the Board of Directors, by resolution adopted by a majority of the entire Board of Directors, may designate from their number three or more directors to constitute an Executive Committee and other standing committees, each of which, to the extent provided in the resolution designating it, shall have the authority of the Board of Directors with the exception of any authority the delegation of which is prohibited by Section 712 of the Not-for-Profit Corporation Law.

7. **ACTION WITHOUT MEETINGS.** Any action required or permitted to be taken by the Board of Directors or by any committee thereof may be taken without a meeting if all members of the Board of Directors or of a committee thereof consent in writing to the adoption of a resolution authorizing the action. In the event of any such action without a meeting, the resolution and the written consents thereto by all of the members of the Board of Directors or of a committee thereof shall be filed with the minutes of the proceedings of the Board of Directors or of a committee thereof as the case may be.

ARTICLE III
OFFICERS

The directors may elect or appoint a Chairman of the Board of Directors, a Vice-Chairman of the Board, a President, one or more Vice-Presidents, a Secretary, one or more Assistant Secretaries, a Treasurer, one or more Assistant Treasurers, and such other officers as they may determine. The President may but need not be a director. Any two or more offices may be held by the same person except the offices of President and Secretary.

Unless otherwise provided in the resolution of election or appointment, each officer shall hold office until the meeting of the Board of Directors following the next annual meeting of members and until his successor has been elected and qualified.

Officers shall have the powers and duties defined in the resolution appointing them.

The Board of Directors may remove any officer for cause or without cause.

ARTICLE IV
BOOKS AND RECORDS

The corporation shall keep at the office of the corporation within the State of New York correct and complete books and records of account and shall keep minutes of the proceedings of the members, of the Board of Directors, and/or any committee which the directors may appoint, and a list or record containing the names and addresses of all members; provided that the books and records of account may be kept at an office without the State of New York if the Certificate of Incorporation shall so provide. Any of the foregoing books, minutes, or lists or records may be in written form or in any other form capable of being converted into written form within a reasonable time.

ARTICLE V
CORPORATE SEAL

The corporate seal, if any, shall be in such form as the Board of Directors shall prescribe.

ARTICLE VI
FISCAL YEAR

The fiscal year of the corporation shall be fixed, and shall be subject to change, by the Board of Directors.

EXHIBIT B

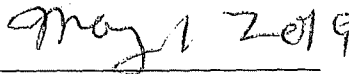
PLAN OF DISSOLUTION
OF
DOJ DIALYSIS CENTER CORP.

The Board of Directors ("Directors") of DOJ Dialysis Center Corp. (the "Corporation") has considered the advisability of voluntarily dissolving the Corporation and has determined that dissolution is in the best interest of the Corporation.

1. The Corporation has no assets or liabilities.
2. Other than the approval of the Attorney General, no approval of the dissolution of the Corporation by any governmental body or officer is required.
3. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.



Gerald Gordon, Director & Acting Secretary



(Date)

CERTIFICATE OF DISSOLUTION

OF

DOJ DIALYSIS CENTER CORP.

(Under Section 1003 of the New York Not-for-Profit Corporation Law)

I, Gerald Gordon, Director & Acting Secretary of DOJ Dialysis Center Corp. hereby certify:

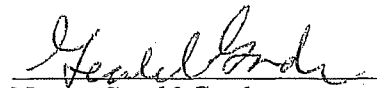
1. The name of this Corporation is DOJ Dialysis Center Corp. (the "Corporation").
2. The Certificate of Incorporation of the Corporation was filed by the Department of State of the State of New York on May 1, 2003.

3. The names, addresses and titles of the Corporation's Officers and Directors are as follows:

<u>Name</u>	<u>Title</u>	<u>Address</u>
Henry I. Burr	Director	130 Sunrise Avenue Apt. 304W Palm Beach, FL 33480
Gerald Gordon	Director & Acting Secretary	25 Washington Lane, #733 Wyncote PA 19095

4. At the time of dissolution, the Corporation is a charitable corporation.
5. When the Board of Directors authorized the Plan of Dissolution, the Corporation had no assets or liabilities and did not hold any assets required to be used for a restricted purpose.
6. The Corporation elects to dissolve.
7. Dissolution of the Corporation was authorized by a unanimous vote of the Board of Directors, which authorization is annexed hereto.
8. Prior to the delivery of this Certificate of Dissolution to the Department of State for filing, the Plan of Dissolution has been approved by the Attorney General, which approval is annexed hereto.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of
DOJ Dialysis Center Corp., this ~~1st~~ day of May, 2019.



Name: Gerald Gordon

Title: Director & Acting Secretary

**CERTIFICATE OF DISSOLUTION
OF
DOJ DIALYSIS CENTER CORP.**

(Under Section 1003 of the New York Not-for-Profit Corporation Law)

Filed by:

Cynthia Thomas, Esq.,
Garfunkel Wild, P.C.
111 Great Neck Road
Great Neck, New York 11021
(516) 393-2200

EXHIBIT C

**RESOLUTIONS OF THE BOARD OF DIRECTORS
OF
DOJ DIALYSIS CENTER CORP.**

The undersigned, being all of the members of the Board of Directors of DOJ Dialysis Center Corp., a New York State Not-for-Profit corporation (the "Corporation"), hereby consent to the adoption of the following resolutions without a meeting pursuant to Section 614 of the Not-for-Profit Corporation Law of the State of New York:

WHEREAS, the Corporation has determined that it is in the best interest of the Corporation to dissolve; and

WHEREAS, the Corporation has no assets, liabilities or operations.

NOW THEREFORE BE IT:

RESOLVED, that the Corporation be dissolved and that, in furtherance thereof, the Plan of Dissolution, in the form annexed hereto as Exhibit A, be and such Plan of Dissolution hereby is ratified and approved in all respects;

RESOLVED, that, upon the taking of all actions contemplated by the Plan of Dissolution, the Corporation file the Certificate of Dissolution, in the form annexed hereto as Exhibit B, with the Secretary of State of the State of New York, which Certificate of Dissolution is hereby ratified and approved in all respects;

RESOLVED, that each of the members of the Board of Directors of the Corporation and any of designee of either (each, an "Authorized Representative"), acting individually, is hereby authorized to do such acts, and to execute and deliver any and all agreements, documents, instruments, obligations, certificates and other undertakings, on behalf of the Corporation, as he or she may deem useful or necessary to effectuate the transactions contemplated hereby and to carry out the intent and purposes of these Resolutions; and be it further

RESOLVED, that any and all acts done, and any agreements, documents, instruments, obligations, certificates and other undertakings negotiated, executed and delivered, by an Authorized Representative, in the name and on behalf of the Corporation in connection with the foregoing Resolutions, be, and they hereby are, ratified, confirmed and approved in all respects as the acts and deeds of the Corporation.

RESOLVED, that these Resolutions shall take effect immediately.

This Consent may be executed in two or more counterparts, all of which together shall be deemed to be one and the same instrument. Delivery by facsimile or electronic means of a counterpart signature page hereto shall constitute execution and delivery of such counterpart of this Consent.

IN WITNESS WHEREOF, the undersigned have executed this consent this 1st day of April 2019.

Henry I Burr

Gerald Gordon
Gerald Gordon

Exhibit A

Plan of Dissolution

Exhibit A
Plan of Dissolution

PLAN OF DISSOLUTION
OF
DOJ DIALYSIS CENTER CORP.

The Board of Directors ("Directors") of DOJ Dialysis Center Corp. (the "Corporation") has considered the advisability of voluntarily dissolving the Corporation and has determined that dissolution is in the best interest of the Corporation.

1. The Corporation has no assets or liabilities.
2. Other than the approval of the Attorney General, no approval of the dissolution of the Corporation by any governmental body or officer is required.
3. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.

Gerald Gordon, Director & Acting Secretary

(Date)

DOJ Dialysis Corp.
Schedule of Cash collected and summary Balance Sheet from 990 filings
Years ended December 31, 2013 through 2018

Balance Sheet

Assets

	2013	2014	2015	2016	2017	2018
Cash	106,851	6,694	6,584			
Total Assets	106,851	6,694	6,584	-	-	-

Liabilities and Net Assets

Accounts Payable and accrued expenses	139,556	139,555	139,555			
Due to management company	35,334					
Due to third parties	138,400	73,254	73,254			
Total liabilities	313,290	212,809	212,809	-	-	-
Net assets	(206,439)	(206,115)	(206,225)			
Total liabilities and net assets	106,851	6,694	6,584	-	-	-

Statement of Activities

Revenues

Recovery of bad debt	430,495					
Interest	-	480				
Total revenues	430,495	480	-	-	-	-

Expenses

Grant to related entity (DOJNH)	240,000					
Accounting	1,059					
Office expenses	6,411					
Interest and bank charges	6,101	156	110			
Bad debt	3,372					
Total expenses	256,943	156	110	-	-	-
Excess of Revenues over expenses	173,552	324	(110)	-	-	-

Facility Id. 6750
Certificate No. 7000270R

State of New York
Department of Health
Office of Health Systems Management

OPERATING CERTIFICATE

Diagnostic and Treatment Center

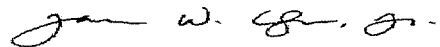
DOJ Dialysis Center Corp
1160 Teller Avenue
Bronx, New York 10456

Effective Date: 01/05/2009
Expiration Date: NONE

Operator: DOJ Dialysis Center Corp
Operator Class: Voluntary Not for Profit Corporation

Has been granted this Operating Certificate pursuant to Article 28
of the Public Health Law for the service(s) specified:

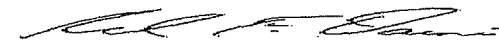
Renal Dialysis - Chronic O/P (12)



Deputy Commissioner
Office of Health Systems Management

20081231

This certificate must be conspicuously displayed on the premises.



Commissioner

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

December 7, 2011

Mr. Gary Lipperman
Administrator
DOJ Nursing and Rehabilitation Center
1160 Teller Avenue
Bronx, New York 10456

Re: Decertification of operator and site closure of
DOJ Dialysis Center
1160 Teller Avenue, Bronx
Operating Certificate: 7000270R
Facility ID: 6750

Dear Mr. Lipperman:

In response to your request of June 17, 2011, staff from the Division of Certification and Surveillance and the New York Metropolitan Area Regional Office reviewed the closure plan for the site listed above.

The closure plan is approved effective upon completion of CON 112256. The operating certificate should be surrendered immediately after that date to the New York Metropolitan Area Regional Office.

If you have any questions concerning this matter please contact Mr. Jeffrey M. Spitz at 212-417-5990.

Thank you.

Sincerely,



Richard M. Cook
Deputy Commissioner
Office of Health Systems Management

cc: Ms. Celeste Johnson
Mr. Jeffrey M. Spitz
Closure File 842

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 16th day of November 2023, approves the filing of the Certificate of Dissolution of DOJ Dialysis Center Corp., dated May 1, 2019.

MEMORANDUM

To: Kathy Marks
General Counsel

From: Jason Riegert
Deputy Director
Bureau of Program Counsel

Date: October 13, 2023

Subject: Proposed Dissolution of Wartburg Nursing Home, Inc.

The attached package was prepared by Vincent DiCocco for the Division of legal Affairs. Relevant background material has been included.

I have reviewed the package and find it acceptable.

If you approve, please sign the memo and kindly return to Vincent DiCocco for further processing.

Thank you.

MEMORANDUM

TO: Michael Stelluti
Division of Health Facility Planning

Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

FROM: Vincent DiCocco, Senior Attorney
Bureau of Program Counsel

DATE: October 13, 2023

SUBJECT: Proposed Dissolution of Wartburg Nursing Home, Inc.

This is to request that the above matter be included on the agendas for the next Establishment Committee and Public Health Council meetings.

The attachments relating to this matter include the following:

1. A memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
2. An electronic letter dated August 4, 2023, from Jamie D. Hogenkamp on behalf of Wartburg Nursing Home, Inc. to the Department;
3. The proposed Verified Petition to the Attorney General from Wartburg Nursing Home, Inc. seeking dissolution;
4. The Wartburg Nursing Home, Inc. Plan of Dissolution;
5. The Certificate of Incorporation of Wartburg Nursing Home, Inc.;
6. The Bylaws of The Wartburg Nursing Home, Inc.; and
7. The resolutions of the Lutheran Care Network, Inc., the sole member of Wartburg Nursing Home, Inc. and the Board of Directors of Wartburg Nursing Home, Inc. approving the plan of dissolution.

Attachments

cc: Jason Corvino

MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Kathy Marks *KSM*
General Counsel
Division of Legal Affairs

Date: October 13, 2023

Subject: Proposed Dissolution of Wartburg Nursing Home, Inc.

Wartburg Nursing Home, Inc. ('WNH') requests Public Health and Health Planning Council ('PHHPC') approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law ('NPCL') §§ 1002(c) and 1003, as well as 10 NYCRR Part 650.

WNH, a New York not-for-profit charitable corporation was formed on September 21, 1970, with the stated purpose to forming a Nursing Home Corporation in Kings County, State of New York. Wartburg ceased operating its Nursing Home in 2010 and has no remaining assets. As a result, WNH had voluntarily relinquished its Operating Certificate.

Wartburg's Board of Directors and sole corporate member (The Lutheran Care Network, Inc.) now desire to dissolve the corporation.

Attached is an August 4, 2023, electronic letter from Jamie D. Hogenkamp on behalf of WNH to PHHPC, a proposed Verified Petition to the Attorney General, a Plan of Dissolution, a proposed Certificate of Dissolution, WNH's Certificate of Incorporation and Bylaws. Additionally, there is WNH's resolution of the Board of Directors and the resolution of the sole corporate member authorizing the dissolution.

There is no legal objection to the proposed dissolution of Wartburg Nursing Home, Inc., and it is in a legally acceptable form.

Attachments

BARCLAY DAMON ^{LLP}

Jamie Dughi Hogenkamp
Counsel

August 4, 2023

VIA ELECTRONIC MAIL

New York State Department of Health
Office for the Aging
2 Empire State Plaza, 5th Floor
Albany, New York 12223

Re: Request for DOH Consent to Voluntarily Dissolve Wartburg Nursing Home, Inc.

To whom it may concern:

Barclay Damon LLP represents Wartburg Nursing Home, Inc. (“Wartburg”) and its sole corporate member, The Lutheran Care Network, Inc. (“TLCN”), each a New York not-for-profit corporation. We write today requesting the New York State Department of Health’s consent to voluntarily dissolve Wartburg. Such consent is required to secure the New York State Office of the Attorney General’s approval to dissolved and must also be included when filing Wartburg’s Certificate of Dissolution with the New York Department of State.

Wartburg ceased operating its Nursing Home in 2010 and has no remaining assets. As a result, we no longer have a copy of Wartburg’s DOH Operating Certificate. Wartburg’s Board of Directors (“Board”) and sole corporate member now desire to dissolve the corporation.

Attached hereto as Exhibit A is a copy of the Plan of Dissolution approved by the Board and TLCN. Corresponding authorizing resolutions are attached at Exhibit B and Exhibit C, respectively, and Wartburg’s final IRS Form 990 is attached for reference at Exhibit D.

We respectfully request that your office review the attached materials and provide consent for the voluntary dissolutions at your earliest convenience. Should you have any questions or concerns, please do not hesitate to contact me using the information below.

Very truly yours,


Jamie Dughi Hogenkamp

JDH:rmm
Enclosure

-----X
In the Matter of the Application of :

Wartburg Nursing Home, Inc. : **VERIFIED PETITION**

For Approval of Certificate of :
Dissolution pursuant to : OAG No. _____
Section 1002 of the Not-for-Profit Corporation Law. :
-----X

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
Charities Bureau
Transactions Section
28 Liberty Street
New York, New York 10005

Petitioner, Wartburg Nursing Home, Inc. (the "Petitioner"), by Laraine Fellegara, its Chief Executive Office, for its Verified Petition alleges:

1. Petitioner was incorporated pursuant to Section 402 of the New York Not-for-Profit Corporation Law on October 9, 1970. Copies of Petitioner's Certificate of Incorporation, including all amendments thereto, and complete and current By-laws are attached hereto as **Exhibit A**.
2. Petitioner's principal office is located in the County of Kings.
3. The names, addresses and titles of Petitioner's directors and officers are as follows:

Ms. Laraine Fellegara
Board Member & Chief Executive Officer
103 Vernon Drive
Scarsdale, NY 10583

Mr. John Mesloh
Board Chair
46 Whitehall Boulevard
Garden City, NY 11530

Mr. Arthur Upright
Board Vice-Chair
663 New Paltz Road
Highland, NY 12528

Mr. Peter Mazer
Board Member

2437 Fifth Avenue
East Meadow, NY 11554

Mr. John Shane
Board Member
114 Snowberry Lane
New Canaan, CT 06840

Mr. John F. Ruth
Board Member
174 Mariomi Road
New Canaan, CT 06840

Fr. Brian E. McWeeney
Board Member
St. Michael's Roman Catholic Church
424 West 34th Street
New York, NY 10001

Mr. Bill Teator
Board Member
3 Aurora Avenue
Saratoga Springs, NY 12866

Mr. Tom Roemke
Board Member
39 Washington Avenue
Albany, NY 12205

4. The purposes for which Petitioner was organized are set forth in its Certificate of Incorporation at paragraph THIRD thereof and are as follows:

“The purpose for which the corporation is formed are to provide either separately , or in combination, the following: Nursing home accommodations for sick, invalid, infirm, disabled or convalescent persons of low income, and to this end to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of the Public Health Law.”
5. Petitioner is a charitable corporation.
6. Petitioner plans to dissolve in accordance with the Plan of Dissolution attached hereto as **Exhibit B** (the “Plan”).
7. Petitioner is dissolving because the nursing home is no longer in operation.
8. The Board of Directors, by Unanimous Written Consent dated July 21, 2023, approved resolutions adopting the Plan and authorizing the filing of a Certificate of Dissolution. The Unanimous Written Consent of Petitioner’s Board of Directors is attached hereto as **Exhibit C**.

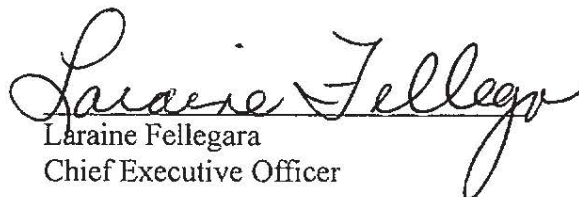
9. Following Board of Director approval of the Plan, the Sole Member by Unanimous Written Consent approved the Plan and the dissolution of Petitioner. The Unanimous Written Consent of the Sole Member is attached hereto as **Exhibit D**.
9. Petitioner has no assets or liabilities.
10. Petitioner has filed a final financial report on form CHAR500, with all required attachments, with the Charities Bureau showing no assets or liabilities and attaching the appropriate registration fee, a copy of which is attached hereto as **Exhibit E**.
11. Copies of any governmental approvals to the Plan are set forth in the Plan and attached to the Certificate of Dissolution.
12. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003. *See Exhibit F*.

WHEREFORE, petitioner requests that the Attorney General approve the Certificate of Dissolution of The Lutheran Care Network Foundation, Inc., a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREFORE, Petitioner has caused this Petition to be executed this 21st
day of June, 2023, by

July


Laraine Fellegara
Chief Executive Officer

Verification and Certification

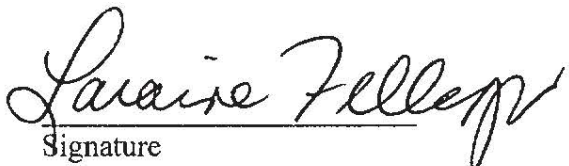
STATE OF NEW YORK)

:SS.:

COUNTY OF Westchester

Laraine Fellegara, being duly sworn, deposes and says:

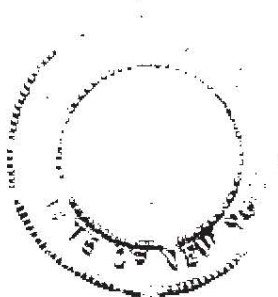
I am the Chief Executive Officer of Wartburg Nursing Home, Inc., the Petitioner named in the above Petition, and make this verification and certification at the direction of its Board of Directors. I have read the foregoing Petition and (i) I know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief, and as to those matters I believe them to be true and (ii) I hereby certify under penalties of perjury that the Plan was duly authorized and adopted by the Board of Directors and by the Petitioner's sole member.


Signature

Sworn to before me this 21st day of June, 2023.


Notary Public

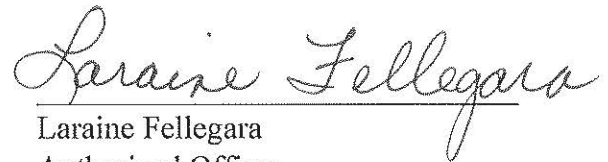
J. DAVID NANNA
No. 01NA5067128
Notary Public, State of New York
Qualified in Westchester County
My Commission Expires 10/15/2026



**PLAN OF DISSOLUTION
OF
WARTBURG NURSING HOME, INC.**

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

1. The Corporation has no assets or liabilities.
2. In addition to Attorney General approval, the following governmental approvals of the Plan are required and copies of the approvals will be attached to the Verified Petition submitted to the Attorney General.
 - a. New York State Department of Health
3. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.



Laraine Fellegara
Authorized Officer

*No distribution
to member
and exclusively
for WNH purposes
or similar purposes*

CERTIFICATE OF INCORPORATION

OF

WARTBURG NURSING HOME, INC.

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

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

I

The name of the proposed Corporation is WARTBURG
NURSING HOME, INC. (Hereinafter referred to as the "Cor-
poration").

II

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

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

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

III

The purposes for which the Corporation is formed are
to provide either separately, or in combination, the
following:

Nursing home accommodations for sick, invalid,
firm, disabled or convalescent persons of low income,
this end to plan, construct, erect, build, acquire, alter

reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of the Public Health Law.

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

IV

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

V

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

VI

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

VII

The names and residences of the Directors of the Corporation until the first annual meeting are:

<u>Name</u>	<u>Address</u>
Carl L. Maurer	11 Woodridge Lane, Seacliff, N. Y.
Howard Hallett	11 Sycamore Drive, Flower Hill, Roslyn, N. Y.
Robert H. Just	46 Lincoln Avenue, Tuckahoe, N. Y.
John H. Krasman	465 74th St., Brooklyn, N.Y.
Henry Steinbrecher	1042 Hart St., Brooklyn, N.Y.
Albert M. Nelson	176 Margaret Drive, East Meadow, N. Y.
Fred N. Sollog	781 Cornell Rd., Franklin Square, N.Y.

VIII

The duration of the Corporation shall be perpetual.

IX

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

X

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

XI

The Corporation is organized and shall be operated as a non-profit organization, and shall not have power to issue certificates of stock or to declare or pay dividends, and shall be operated exclusively for the purposes enumerated in Article II hereof, thereby to lessen the burdens of government

and promote social welfare. No part of the net income or net earnings of the Corporation shall inure to the benefit or profit of any private individual, firm or corporation. No officer or employee of the Corporation shall receive or be lawfully entitled to receive any pecuniary benefits from the operation thereof except as reasonable compensation for services. No member or director of the Corporation shall receive any salary, other compensation or pecuniary profit of any kind for services as such member or director other than reimbursement of actual and necessary expenses incurred in the performance of his duties.

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

or organizations as in the judgment of the Court will best accomplish the general purposes or a similar public use or purpose of the Corporation. In no event shall the assets of this Corporation upon dissolution be distributed to a director, officer, employee or member of the Corporation.

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

XII

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

XIII

The following consents and approvals are annexed hereto:

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

XIV

The post office address to which the Secretary of State shall mail a copy of any notice required by law is:

2598 Fulton Street, Brooklyn, New York.

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this Certificate of Incorporation, in quadruplicate, this 21st day of September, 1970.

Fred N. Sollog

FRED N. SOLLOG
781 Cornell Road, Franklin Square, N.Y.

Robert H. Just

ROBERT H. JUST
46 Lincoln Avenue, Tuckahoe, N. Y.

Albert M. Nelson

ALBERT M. NELSON
176 Margaret Drive, East Meadow, N. Y.

STATE OF NEW YORK)
) SS.:
COUNTY OF KINGS)

On this 21st day of September, 1970, before me personally came FRED N. SOLLOG, ROBERT H. JUST, and ALBERT M. NELSON, to me known and known to me to be the persons described in and who executed the foregoing Certificate of Incorporation of WARTEBURG NURSING HOME, INC., and they duly acknowledged to me that they executed the same.

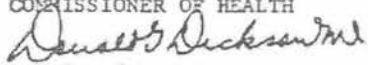
Patricia McCabe

PATRICIA McCABE
Notary Public, State of New York
No. 41-2509240
Qualified in Queens County
Commission Expires March 30, 1971

CONSENT TO INCORPORATION
BY COMMISSIONER OF HEALTH

I, Hollis S. Ingraham, M.D., Commissioner of Health of the State of New York, do this 1st day of October, 1970, pursuant to Article 28-A of the Public Health Law hereby certify that I consent to the filing of the foregoing Certificate of Incorporation of WARTBURG NURSING HOME, INC., with the Secretary of State of the State of New York.

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

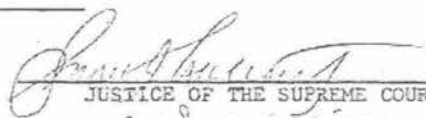

BY Donald G. Dickson, M.D.
DEPUTY COMMISSIONER

The undersigned, a Justice of the Supreme Court of the State of New York, County of Kings, Second Judicial District, wherein is located the principal office of WARTBURG NURSING HOME, INC., hereby approves the within Certificate of Incorporation of WARTBURG NURSING HOME, INC., and the filing thereof.

DATED: Oct 7, 1970

Oct 26, 1970

HON. SIMON I. LIEBOWITZ


JUSTICE OF THE SUPREME COURT
2nd Judicial District

BY-LAWS OF
WARTBURG NURSING HOME

*Assets on dissolution
to TWT/Wartburg
95 adoption
Identical to W.L.H.A
#*

ARTICLE I

NAME, PURPOSES, OFFICES AND CORPORATE SEAL

Section 1.01. Name. The name of the Corporation shall be WARTBURG NURSING HOME (hereinafter "Corporation").

Section 1.02. Purposes. The purposes of this Corporation shall be set forth in its Certificate of Incorporation.

*> Not
enforced*

Section 1.03. Offices. The location of the principal office of the Corporation shall be in the County of Kings and State of New York, or at such other location within the State of New York as the Board of Directors may designate.

ARTICLE II

MEMBERSHIP

Section 2.01. Members. The Corporation shall be a membership corporation. The sole member shall be Wartburg Lutheran Services, Inc., a New York not-for-profit corporation, as duly constituted from time to time.

Section 2.02. Annual Meeting. The annual meeting of the Membership of the Corporation for the election of Directors shall be held at such time, date and place as the Board of Directors shall fix with the advice and consent of the Membership.

Section 2.03. Special Meetings. A special meeting of the Membership may be called by the Board of Directors or by the Membership at any time at such times and places and pursuant to notice as shall be fixed for the meeting.

Section 2.04. Action by Unanimous Written Consent. Any action required or permitted to be taken by the Membership may be taken without a meeting, if the Membership consents in writing to such action. Such consent shall have the same force and effect as the unanimous vote of the Membership. Any certificate or other document filed under any provision of law which relates to actions so taken shall state that the action was taken by the unanimous written consent of the membership without a meeting, and that these By-Laws authorized the membership to so act. Such statement shall be prima facie evidence of such authority.

ARTICLE III

BOARD OF DIRECTORS

Section 3.01. Powers and Authority. The property, business and affairs of the Corporation shall be managed and controlled by the Board of Directors. The Board of Directors shall have, in addition to the powers and authority expressly conferred upon it by these By-Laws, the right, power and authority to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation as a corporation organized under the New York Not-For-Profit Corporation Law but subject, nevertheless, to the statutes of the State of New York, and to the provisions of the Certificate of Incorporation and the By-Laws of the Corporation.

Section 3.02. Number. The Board of Directors shall consist of no less than five (5) directors. The number of directors shall be set by majority vote of the Membership at any annual or special meeting but no decrease shall shorten the term of an incumbent director.

Section 3.03. Election. The Board of Directors shall be elected at the annual meeting of the Membership and until their successors are elected and qualified.

Section 3.04. Vacancies. Any vacancy occurring among the Directors, including any vacancy to be filled by reason of an increase in the number of Directors may be filled by vote of the Membership of the Corporation, unless otherwise required by law, the Certificate of Incorporation, or these By-Laws. A Director elected to fill a vacancy shall serve for the unexpired term of his predecessor in office, and a Director elected to fill a newly created directorship shall serve until the next succeeding annual meeting of the Membership and until his successor shall have been elected and qualified.

Section 3.05. Removal. Any Director may at any time be removed, with or without cause, by vote of the Membership.

Section 3.06. Resignation. A Director may resign by providing written notice to the Chairman. Such resignation shall be effective upon receipt, or upon any subsequent time set forth in the notice of resignation.

Section 3.07. Annual Meetings. The Annual Meeting of the Board of Directors for the election of officers and for the transaction of such other business, as may properly come before such meeting, shall be held within sixty-days (60) after the Annual Meeting of the Members.

Section 3.08. Regular Meetings. Regular meetings of the Board of Directors shall be held at such time and place as shall be fixed by the Board of Directors from time to time. Meetings shall be held at the offices of the Corporation or at such other place as may be designated by the Chairman.

Section 3.09. Special Meetings. Special meetings of the Directors may be called by the Chairman or by any three (3) Directors on three (3) days written notice to each Director either personally, by mail or by telegraph.

Section 3.10. Quorum and Voting. At any duly called meeting of the Board of Directors, a majority of the Directors shall constitute a quorum. Any corporate action to be taken by vote shall be authorized by a majority of Directors present and voting at a meeting at which a quorum is present unless the law, the Certificate or Incorporation, or these By-Laws require a different number. The vote of the Membership shall be required for the following actions: (i) the amendment of these By-Laws, (ii) incurring debt in excess of \$100,000, (iii) initiation of any activities requiring a certificate of need, and (iv) establishing a subsidiary or otherwise affiliating with any other entity.

Section 3.11. Action by Unanimous Written Consent. Any action required or permitted to be taken by the Directors may be taken without a meeting, if all the Directors shall individually or collectively consent in writing to such action. Such written consent or consents shall have the same force and effect as the unanimous vote of the Directors. Any certificate or other document filed under any provision of law which relates to action so taken shall state the action was taken by the unanimous written consent of the Directors without a meeting and that these By-Laws authorized the Directors to so act. Such statement shall be prima facie evidence of such authority.

Section 3.12. Participation by Telephonic Conference. Any one or more of the Directors may participate in any meeting of the Board or any committee thereof by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at the meeting.

Section 3.13. Compensation and Fiduciary Obligations.

(a) Compensation. No Director shall receive any compensation for any services performed, but such Director may be reimbursed for out-of-pocket expenses necessarily incurred in connection with his duties as a Director.

(b) Fiduciary Standards. Directors shall discharge their duties in good faith and with that degree of diligence, care and skill, which ordinarily prudent persons would exercise under similar circumstances in like positions. In discharging their duties, Directors, when acting in good faith, may rely upon the financial statements of the Corporation represented to them to be correct by the President or the Treasurer of the Corporation, or stated in a written report by an independent or public or certified public accountant or firm of such accountants, fairly to reflect the financial condition of the Corporation.

(c) Liability and Indemnification. The liability of the Directors, whether joint or several, shall be as set forth in Section 719 of the New York Not-For-Profit Corporation Law (The "N-PCL") and shall be subject to indemnification by the Corporation under the conditions set forth in Article IX of these By-Laws.

Section 3.14. President of Wartburg Lutheran Services, Inc. The President of Wartburg Lutheran Services, Inc. shall have the right to attend all meetings of the Board of Directors of the Corporation.

ARTICLE IV

OFFICERS

Section 4.01. Election. The Directors shall elect a Chairman, Vice Chairman, a Secretary and a Treasurer at the annual meeting of the Directors from among the Directors. The Directors may also elect one or more Vice Presidents who need not be Directors, or provide for the appointment of such other officers and agents and the hiring of such employees as they may deem necessary, and may prescribe their terms of office and duties.

Section 4.02. Terms of Office, Vacancies and Removal of Officers. The terms of office of the Officers of the Corporation shall be one (1) year or until their successors are elected and qualified. Any Officer may be removed with or without cause by the Membership. The removal of an Officer without cause shall be without prejudice to such Officer's contract rights, if any; provided, however, that election or appointment of an Officer shall not of itself create contract rights. The Membership may fill the unexpired term of any vacancy, which occurs in any office of the Corporation.

Section 4.03. Chairman. The Chairman shall call, preside at and conduct all meetings of the Board of Directors. He shall prepare the order of business for all meetings with due regard to expediting the business of the meeting and including, therein, any matters which may be ordered by the Board of Directors. The Chairman shall have the authority to appoint Special Committees not otherwise provided for by these By-Laws. He shall be a member of the Executive Committee, shall serve as chairman of that Committee and shall be an ex-officio member, without vote, of all other Standing and Special Committees of the Board.

Section 4.04. The President. The President shall be the chief executive officer of the Corporation. The President shall be elected by the Membership. The President shall have the right to attend all Board meetings and all meetings of all committees of the Board of Directors. In addition, the President shall perform such other duties as the Board and the Membership shall require.

Section 4.05. The Vice Presidents. The Vice President, if any, or if there be more than one (1), the Vice Presidents, shall perform such duties as may be requested by the President. In the event of the President's death, resignation, removal, incapacity, or refusal to act, the Vice President, or if there be more than one (1), the First vice President, shall succeed him and shall serve for the remainder of the term of his immediate predecessor, until and unless the members fill such vacancy pursuant to Section 4.01 of these By-Laws.

Section 4.06. Secretary. The Secretary shall keep the minute books of meetings of the Board of Directors; shall give and serve all required notices of meetings; shall have custody of the records of the Corporation; shall have custody of the seal of the Corporation and affix it to such instruments or documents as may be authorized by the Board of Directors; and shall keep, and shall make the records of the Corporation available for inspection during business hours at the principal office of the Corporation by any Director or the Membership; and shall perform all other duties incident to the office of Secretary.

Section 4.07. Treasurer. The Treasurer shall report the financial condition of the Corporation to the Board.

Section 4.08. Advisory Board.

} Regional Group

(a) Membership.

The Advisory Board shall be a special committee of the Board of Directors and shall include representatives of the Corporation and representatives of such other Wartburg Lutheran Services, Inc. ("WLS") affiliates ("Representatives") located in the Region in which the Corporation is located ("Region"). The Chairmen of the Boards of Directors of the WLS affiliates located in the Region appoint the Chairman of the Advisory Board. The Chairman of the Advisory Board shall, upon the advice and concurrence of the Chairmen of the Boards of the WLS affiliates located in the Region, appoint Representatives to the Advisory Boards.

(b) Functions.

(i) The Advisory Board shall concern itself with identifying community needs and issues, including the advisability of new projects, and the ways in which the Corporation may be responsive to those needs.

(ii) The Advisory Board shall view operational issues and provide input on management and operations at regular Board meetings.

(iii) The Advisory Board shall act as the sponsoring group for local fund raising events.

(iv) The Advisory Board shall meet regularly to review financial and operational performance of the combined facilities and make recommendations.

(v) The Advisory Board shall assist in the development of strategic planning for the regional affiliates, including identification of opportunities for regional development of new programs.

(vi) The Advisory Board shall provide information to the Board of Directors with respect to changes in the community, which may affect the Corporation's mission or that of its affiliates.

(vii) The Advisory Board shall report to the Boards of Directors of the WLS affiliates located in the Region.

(viii) The Chairman of the Board of WLS shall be charged with monitoring the Advisory Board's discharge of its responsibilities.

(c) Meetings.

The Advisory Board shall meet a minimum of three (3) times per year.

ARTICLE V

ADMINISTRATIVE POSITIONS

The President may from time to time designate new or additional administrative titles, including but not limited to titles such as Vice President for Operations and Vice President for Finance, for administrative positions of the Corporation. Administrators of the Corporation who receive administrative titles will continue to carry out the duties of their respective positions, and despite their administrative titles, shall not be officers of the Corporation.

ARTICLE VI

MEDICAL STAFF

Section 6.01. Organization of Medical Staff.

(a) The Medical Staff of the Corporation shall consist of those physicians, dentists and any other authorized professional personnel who are appointed thereto by the Board of Directors of the Corporation. The Medical Staff shall be organized under the Medical Staff By-Laws approved by the Board of Directors.

(b) All applications for appointment to the Medical Staff shall be in writing and addressed to the President. They shall contain full information concerning the applicant's education, licensure, practice, previous hospital experience, and any history with regard to licensure and privileges at any health care institution.

(c) All appointments to the Medical Staff shall be for one (1) year, renewable at the discretion of the Board of Directors.

Section 6.02. Responsibility for Residents.

(a) The care and treatment of residents in all departments and divisions of the Corporation shall be the sole responsibility of the Medical Staff, nurses and such other persons employed or engaged by the Corporation to render care and treatment.

(b) No member of the Medical Staff or other person shall treat any resident in the Corporation unless the By-Laws, Rules and Regulations of the Medical Staff so authorize.

ARTICLE VII

COMMITTEES

Section 7.01. Committees.

The Board, by resolution adopted by a majority of the entire Board, may designate from among its members and Executive Committee and other committees, each consisting of three (3) or more Directors, as are necessary to fulfill its obligations under Section 3.01 above. Each such committee and its members shall serve at the pleasure of the Board.

Section 7.02. Executive Committee.

(a) The Executive Committee shall consist of the Board Chairman, the Vice Chairman, President, Secretary and Treasurer.

(b) Except as otherwise provided in a resolution of the Board, the Executive Committee shall possess the full authority of the Board, except that neither the Executive Committee nor any other committee shall have authority as to the following matters:

- (i) the submission to Membership of any action that by law or these By-Laws requires the Membership's approval;
- (ii) the amendment or repeal of the By-Laws, or the adoption of new By-Laws; and
- (iii) the amendment or repeal of any resolution of the Board, which by its terms shall not be so amendable or repealable.

Section 7.03. Other Committees. All other committees shall have such authority as shall be provided in the resolution creating such committee.

Section 7.04. Minutes. Each committee shall keep minutes of its proceedings.

ARTICLE VIII

PROPERTY AND INVESTMENTS

Section 8.01. Disposition of Property Received. All property, whether real, personal or mixed, and any undivided interest or interests therein received by the Corporation by gift, grant, purchase, lease, bequest, devise or otherwise, either absolutely or jointly with any other person or persons or corporation, shall be held by the Corporation or disposed of by it in such manner, not consistent with the purpose of this Corporation, as the Board of Directors shall determine.

Section 8.02. Investments. Unless otherwise specified by the terms of the instrument under which the funds are received, the funds of the Corporation may be invested from time to time in such manner as the Board of Directors, or such committee as the Board may designate for the purpose, may deem advantageous, whether or not the investments are of the character which would be required by law for similar funds held by trustees.

Section 8.03. Execution of Instruments. The Board of Directors, except as otherwise provided in these By-Laws, may by resolution authorize any officer or agent of the Corporation to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless so authorized, no Officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement, to pledge its credit or to render it pecuniarily liable for any purposes or in any amount.

Section 8.04. Checks and Notes. All checks, drafts, promissory notes, orders for the payment of money, and other evidences of indebtedness of the Corporation shall be issued in the name of the Corporation and in such manner and shall from time to time be determined by resolution of the Board of Directors.

Section 8.05. Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board of Directors may select or as may be required under escrow agreements.

ARTICLE IX

RECORDS AND REPORTS

Section 9.01. Minutes of the Meetings. The Corporation shall keep at its principal office, or at such other place as the Board of Directors may order, a Corporate Record Book of minutes of all meetings of Directors, with the time and place convened, whether regular or special, and, if special, how authorized, the notice given, the names of those present thereat, and the proceedings thereat.

Section 9.02. Records of Account. The Corporation shall keep and maintain adequate and correct accounts of its properties and business transactions, including accounts of its assets, liabilities, equities, receipts, disbursements, gains and losses.

Section 9.03. Inspection of Records. The records of account shall be at reasonable times be open for inspection by any Director or the Membership. Every Director and the Membership shall have the absolute right at any reasonable business time to inspect all books, records, documents of every kind and all physical properties of the Corporation. Such inspection may be made in person or by agent or attorney and the right of inspection includes the right to make extracts.

Section 9.04. Annual Report and Financial Statement. The Board of Directors shall require the preparation of a written annual report including a financial statement, for presentation at the annual meetings of the Board of Directors and of the Membership. Such report shall summarize the Corporation's activities for the preceding year, and activities projected for the forthcoming year. The financial statement shall include a balance sheet, as of the close of business of the Corporation's fiscal year, and a summary of receipts and disbursements. This financial statement shall be prepared in such manner and form as is sanctioned by generally accepted accounting principles, and shall be attested by a certified public accountant.

ARTICLE X

INTERESTED DIRECTORS

Section 10.01. Contracts or Transactions. No contract or other transaction between the Corporation and one (1) or more of its Directors or Officers, or between the Corporation and any other corporation, firm, association or other entity in which one (1) or more of its Directors or Officers are directors or officers, or have a substantial financial interest, shall be either void or

voidable for this reason alone or by reason alone that such Director or Directors or Officer or Officers are present at the meeting of the Board, or of a committee thereof, which authorizes such contract or transaction, or that his or their votes are counted for such purpose, if:

(a) the material facts as to such Director's or Officer's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith, or known to the Board or committee, and the Board or committee authorizes such contract or transaction by a vote sufficient for such purpose without counting the vote of such interested Director or Officer, or, if the votes of the disinterested Directors are insufficient to constitute an act of the Board, by unanimous vote of the disinterested Directors; or

(b) the material facts as to such Director's or Officer's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith, or known to the Membership of the Corporation entitled to vote thereon, if any, and such contract or transaction is authorized by vote of such Membership.

Section 10.02. When Avoidable. If there was no such bona fide disclosure to, or knowledge of, the Board of Directors, committee thereof, or the Membership which authorized such contract or transaction, as set forth in Section 10.01, or if the vote of such interested Director or Officer was necessary for the authorization of such contract or transaction at a meeting of the Board or committee at which it was authorized, the Corporation may avoid the contract or transaction unless the party or parties thereto shall establish affirmatively that the contract or transaction was fair and reasonable as to the Corporation at the time it was authorized by the Board, a committee thereof, or the Membership.

Section 10.03. Quorum. Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or a committee, which authorizes such contract or transaction.

ARTICLE XI

INDEMNIFICATION

Section 11.01. Applicability and Scope.

(a) Consistent with the restrictions contained in the New York Not-For-Profit Corporation Law, the Corporation shall indemnify each person who is or was a Director or Officer of the Corporation against any and all reasonable expense that may be incurred by him in connection with or resulting from any action, claims, suit or proceeding, civil or criminal, in which he may become involved by reason of his being or having been a Director or Officer of the Corporation, or by reason of any past or future action taken or not taken in his capacity as such Director or Officer, whether or not he continues to be such at the time of such liability or expense being incurred, provided:

- (1) such Director or Officer acted in good faith for a purpose which he reasonably believed to be in the best interest of the Corporation, and with

that degree of diligence, care and skill which reasonably prudent persons would exercise under similar circumstances in like positions; and

- (2) such Director or Officer is not adjudged liable for negligence or misconduct in the performance of his duty in such action, suit or proceeding; and
- (3) in connection with any criminal action or proceeding, he had not reasonable cause to believe that his conduct was unlawful.

(b) As set forth in this Article, the terms "liability" and "expense" shall include, but shall not be limited to, counsel fees, proper expenses and disbursements, and amounts of judgments, fines or penalties and sums paid in settlement by such Director or Officer of the Corporation.

(c) In the event that a question arises as to whether or not such Director or Officer has met the standards of conduct set forth in this Article, such question shall be conclusively determined by either: (i) the Board of Directors acting by a quorum consisting of Directors who are not involved in such claim, suit or proceeding; or (ii) the written opinion of reputable disinterested legal counsel selected by the Corporation.

(d) If any word, clause or provision of this Article shall for any reason be determined to be invalid, the remaining provisions hereof shall not otherwise be affected thereby, but shall remain in full force and effect.

Section 11.02. Insurance.

- (a) The Corporation shall have the power to purchase and maintain insurance:
- (1) to indemnify the Corporation for any obligation, which it incurs as a result of the indemnification of Directors and Officers under the provisions of this Article, and
 - (2) to indemnify Directors and Officers in instances in, which they may be indemnified by the Corporation under the provisions of this Article.

(b) No insurance may provide for any payments other than the cost of defense, to or on behalf of any Director or Officer:

- (1) if a judgment or other final adjudication adverse to the insured Director or Officer establishes that his acts or active and deliberate dishonesty were material to the cause of action so adjudicated, or that he personally gained, in fact, a financial profit or other advantage to which he was not legally entitled, or
- (2) in relation to any risk, the insurance of which is prohibited under the Not-For-Profit Corporation Law or the Insurance Law of the State of New York.

Section 11.03. Right not Exclusive. The foregoing right of indemnification shall not be deemed exclusive of any other right to which such Director or Officer may be entitled apart from this Article.

ARTICLE XII

FISCAL YEAR; CORPORATE SEAL

Section 12.01. Fiscal Year. The fiscal year of the Corporation shall begin January 1, and end December 31 of each calendar year.

Section 12.02. Corporate Seal. The Board of Directors shall adopt a corporate seal, which shall be in the form of a circle and bear the full name of the Corporation and the year of its incorporation.

ARTICLE XIII

WAIVER OF NOTICE

The giving of any notice required to be given under these By-Laws and the laws of the State of New York may be waived in writing by any person or persons entitled to said notice, whether before or after the time or event referred to in such notice, which waiver shall be deemed, equivalent to such notice. Attendance of a person at any meeting shall constitute a waiver of notice of such meeting, except when a person attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

ARTICLE XIV

DISSOLUTION

Upon dissolution of the Corporation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation to the sole member, Wartburg Lutheran Services, Inc., provided that at the time of such dissolution, such corporation is an organization organized and operated exclusively for charitable purpose and which qualifies as an exempt organization under section 501(c) (3) of the Internal Revenue Code of 1954, as amended, and its regulations.

ARTICLE XV

AMENDMENT

The By-Laws may be amended only by an affirmative vote of the member.

As amended June 15, 1995.

POLICY STATEMENT OF
WARTBURG LUTHERAN SERVICES AND ITS AFFILIATES

Wartburg Lutheran Services, Inc. and its affiliates acknowledge their participation in a vital and important health care system, designed to provide for the physical and spiritual needs of the residents and other persons served by the entities. In order to promote the efficient functioning of the system, Wartburg Lutheran Services, Inc. and each of the undersigned affiliates, recognize that Wartburg Lutheran Services, Inc., as sole member of each of the affiliates, will have the responsibility and authority with respect to the following:

- (i) Developing an overall mission for the system;
- (ii) Developing a strategic plan for the system, which will include deciding whether system affiliates should initiate or discontinue major services;
- (iii) Developing a capital formation and debt strategy for the system;
- (iv) Directing and coordinating the flow of funds between system affiliates;
- (v) Allocating human, physical and financial resources between affiliates to maximize achievement of system objectives;
- (vi) Facilitating communication between affiliates;
- (vii) Representing the system to the public.

be and is hereby adopted.

**WRITTEN CONSENT
OF THE SOLE MEMBER
OF
WARTBURG NURSING HOME, INC.**

THE UNDERSIGNED, being the sole member (the "Member") of Wartburg Nursing Home, Inc. (the "Corporation"), hereby take the following actions and consent to the adoption of the following resolutions without a meeting pursuant to Section 614(a) of the New York not-for-profit corporation law (the "NPLC").

WHEREAS, the Corporation was formed to provide nursing home accommodations for the sick, invalid, infirm, and disabled or convalescent persons of low income; and

WHEREAS, the Corporation is inactive and has no plans to resume operations; and

WHEREAS, it is in the best interests of the Corporation and the Member to dissolve the Corporation and wind up its operations;

WHEREAS, the Board of Directors of the Corporation (the "Board") has approved a Plan of Dissolution (the "Plan") to effectuate the foregoing;

WHEREAS, the Board has presented the Plan to the Member and has recommended that the Member approve the Plan;

NOW THEREFORE, it is hereby

RESOLVED: That the Plan be, and hereby is, approved substantially in the form presented to the Member; and be it further

RESOLVED: That the Chief Executive Officer or the Chairperson of the Board, or such officer as either shall designate (each an "Authorized Officer") be, and hereby are, authorized and directed to take any and all actions, and to execute and deliver any and all documents deemed by such Chief Executive Officer or Chairperson to be necessary, appropriate or helpful to effectuate the foregoing Resolution; and be it further

RESOLVED: That any and all actions taken by an Authorized Officer to effectuate or evidence the purpose and intent of the Plan of Dissolution be, and hereby are, approved ratified, and confirmed as a valid act of the Corporation.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the undersigned Member has caused this Written Consent to be executed on the date reflected below.

MEMBER:

**THE LUTHERAN CARE NETWORK, INC.
(F/K/A WARTBURG LUTHERAN SERVICES, INC.)**

By: Laraine Fellegara
Laraine Fellegara, *President & CEO*

Date: 6/12/2023

*[Signature Page to Written Consent of
the Sole Member of Wartburg Nursing Home, Inc.]*

**UNANIMOUS WRITTEN CONSENT
OF THE BOARD OF DIRECTORS
OF
WARTBURG NURSING HOME, INC.**

July 21, 2023

THE UNDERSIGNED, being all of the members of the Board of Directors (the “Board”) of Wartburg Nursing Home, Inc. (the “Corporation”), hereby take the following actions and consent to the adoption of the following resolutions without a meeting pursuant to Section 708(b) of the New York not-for-profit corporation law (the “NPCL”).

WHEREAS, the Corporation was formed to provide nursing home accommodations for the sick, invalid, infirm, and disabled or convalescent persons of low income; and

WHEREAS, the Corporation is inactive and has no plans to resume operations; and

WHEREAS, it is in the best interests of the Corporation to dissolve the Corporation and wind up its operations;

WHEREAS, counsel to the Corporation has presented to the Board a proposed Plan of Dissolution to effectuate the foregoing;

NOW THEREFORE, it is hereby

RESOLVED: That the Plan of Dissolution of the Corporation, be and hereby is, approved substantially in the form presented to the Board; and be it further

RESOLVED: That the Chief Executive Officer or the Chairperson of the Board, or such officer as either shall designate (each an “Authorized Officer”) be, and hereby are, authorized and directed to take any and all actions, and to execute and deliver any and all documents deemed by such Chief Executive Officer or Chairperson to be necessary, appropriate or helpful to effectuate the foregoing Resolution; and be it further

RESOLVED: That any and all actions taken by an Authorized Officer to effectuate or evidence the purpose and intent of the Plan of Dissolution be, and hereby are, approved ratified, and confirmed as a valid act of the Corporation.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

This Unanimous Written Consent may be executed and delivered by electronic or facsimile signature and/or in any number of counterparts, each of which is deemed an original, but all of which together constitute one and the same instrument, notwithstanding that each of the parties are not a signatory to the original or the same counterpart.

BOARD:



JOHN MESLOH, CHAIR

PETER MAZER

JOHN SHANE

JOHN F. RUTH

FR. BRIAN E. MCWEENEY

ARTHUR UPRIGHT, VICE CHAIR

BILL TEATOR

TOM ROEMKE



LARAIN FELLEGGARA, CEO

*[Signature Page to Unanimous Written Consent of
the Board of Wartburg Nursing Home, Inc.]*

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FR. BRIAN E. MCWEENEY

BILL TEATOR



LARAINÉ FELLEGGARA, CEO

PETER MAZER

JOHN F. RUTH

ARTHUR UPRIGHT, VICE CHAIR

TOM ROEMKE

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Laraine Fellegara

LARAINÉ FELLEGGARA, CEO

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PETER MAZER

JOHN SHANE

JOHN F. RUTH



FR. BRIAN E. MCWEENEY

ARTHUR UPRIGHT, VICE CHAIR

BILL TEATOR

TOM ROEMKE



LARAIN FELLEGERA, CEO

*[Signature Page to Unanimous Written Consent of the Board
of The Lutheran Care Network Foundation, Inc.]*

This Unanimous Written Consent may be executed and delivered by electronic or facsimile signature and/or in any number of counterparts, each of which is deemed an original, but all of which together constitute one and the same instrument, notwithstanding that each of the parties are not a signatory to the original or the same counterpart.

BOARD:

JOHN MESLOH, CHAIR

PETER MAZER

JOHN SHANE

JOHN F. RUTH

FR. BRIAN E. MCWEENEY



ARTHUR UPRIGHT, VICE CHAIR

BILL TEATOR

TOM ROEMKE



LARAINÉ FELLEGGARA, CEO

*[Signature Page to Unanimous Written Consent of
the Board of Wartburg Nursing Home, Inc.]*

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BOARD:

JOHN MESLOH, CHAIR


PETER MAZER

JOHN SHANE

JOHN F. RUTH

FR. BRIAN E. MCWEENEY

ARTHUR UPRIGHT, VICE CHAIR



BILL TEATOR

TOM ROEMKE



LARAIN FELLEGGARA, CEO

*[Signature Page to Unanimous Written Consent of
the Board of Wartburg Nursing Home, Inc.]*

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BOARD:

JOHN MESLOH, CHAIR

PETER MAZER

JOHN SHANE

JOHN F. RUTH

FR. BRIAN E. MCWEENEY

ARTHUR UPRIGHT, VICE CHAIR

BILL TEATOR



TOM ROEMKE



LARAIN FELLEGERA, CEO

*[Signature Page to Unanimous Written Consent of the Board
of The Lutheran Care Network Foundation, Inc.]*



CERTIFICATE OF DISSOLUTION OF

Wartburg Nursing Home, Inc.

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is:

Wartburg Nursing Home, Inc.

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

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

October 9, 1970

THIRD: The name and address of each officer and director of the corporation is:

See Schedule A attached.

FOURTH: The corporation is a: *(check the appropriate box)*

charitable corporation non-charitable corporation.

FIFTH: At the time of authorization of the corporation's Plan of Dissolution and Distribution of Assets as provided in Not-for-Profit Corporation Law §1002, the corporation holds:

(Check the appropriate statement)

assets which are legally required to be used for a particular purpose.

no assets which are legally required to be used for a particular purpose.

SIXTH: The corporation elects to dissolve.

SEVENTH: *(Check the appropriate statement)* The dissolution was authorized by:

- a vote of a majority of the board of directors. The corporation has no members.
- the majority vote of the board of directors, followed by two-thirds vote of the members.

EIGHTH: *(Check the appropriate statement)*

- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by the Attorney General. A copy of the approval of the Attorney General is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by a Justice of the Supreme Court. A copy of the Court's Order is attached.
- The corporation is a charitable corporation with no assets. Prior to the delivery of the Certificate of Dissolution to the Department of State for filing a copy of the Plan of Dissolution which contains the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law, has been duly filed with the Attorney General.
- The corporation is a non-charitable corporation with no assets. The corporation's Plan of Dissolution is not required to contain the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law and is not required to be filed with Attorney General.

x Laraine Fellegara
(Signature)

Laraine Fellegara

(Print or Type Name of Signer)

Chief Executive Officer

(Capacity of Signer)

SCHEDULE A

Ms. Laraine Fellegara
Board Member & Chief Executive Officer
103 Vernon Drive
Scarsdale, NY 10583

Mr. John Mesloh
Board Chair
46 Whitehall Boulevard
Garden City, NY 11530

Mr. Arthur Upright
Board Vice-Chair
663 New Paltz Road
Highland, NY 12528

Mr. Peter Mazer
Board Member
2437 Fifth Avenue
East Meadow, NY 11554

Mr. John Shane
Board Member
114 Snowberry Lane
New Canaan, CT 06840

Mr. John F. Ruth
Board Member
174 Mariomi Road
New Canaan, CT 06840

Fr. Brian E. McWeeney
Board Member
St. Michael's Roman Catholic Church
424 West 34th Street
New York, NY 10001

Mr. Bill Teator
Board Member
3 Aurora Avenue
Saratoga Springs, NY 12866

Mr. Tom Roemke
Board Member
39 Washington Avenue
Albany, NY 12205

CERTIFICATE OF DISSOLUTION
OF

Wartburg Nursing Home, Inc.

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

Filer's Name: Jamie Dughi Hogenkamp, Esq.

Company, if applicable: Barclay Damon LLP

Address: 80 State Street, 6th Floor

City, State and Zip Code: Albany, NY 12207

NOTES:

1. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at www.dos.ny.gov.
2. This Certificate of Dissolution must be signed by an officer, director or duly authorized person.
3. Attach the consent of the New York State Department of Taxation and Finance.
4. Attach the consent of the New York City Department of Finance, if required.
5. Attach a copy of the approval of the Attorney General or Order of the Supreme Court, if required.
6. The Certificate of Dissolution must include the approval of the Attorney General if the corporation is a charitable corporation or if the corporation is a non-charitable corporation and holds assets at the time of dissolution legally required to be used for a particular purpose.
7. Attach any other consent or approval required by law.
8. The fee for filing this certificate is \$30, made payable to the Department of State.

For DOS Use Only

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 16th day of November 2023, approves the filing of the Certificate of Dissolution of Wartburg Nursing Home, Inc., dated as attached.

MEMORANDUM

To: Kathy Marks
General Counsel

From: Jason Riegert
Deputy Director
Bureau of Program Counsel, Division of Legal Affairs

Date: October 24, 2023

Subject: Proposed Dissolution of Greater Harlem Nursing & Rehabilitation Center, Inc.

The attached package was prepared by William Sacks, Senior Attorney, for the Division of Legal Affairs. Relevant background material has been included.

I have reviewed the package and find it acceptable.

If you approve, please sign the memo and kindly return the package to me for further processing.

Thank you.

MEMORANDUM

To: Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

From: William Sacks, Senior Attorney
Bureau of Program Counsel, Division of Legal Affairs

Date: October 24, 2023

Subject: Proposed Dissolution of Greater Harlem Nursing & Rehabilitation Center, Inc.

Please include this matter on the next Establishment and Project Review Public Health and Health Planning Council agenda.

The attachments relating to the matter include the following:

- 1) A Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) Letter from applicant's legal counsel requesting approval of the proposed Certificate of Dissolution of Greater Harlem Nursing & Rehabilitation Center, Inc.;
- 3) A proposed verified petition seeking the Attorney General's approval of the filing of the Certificate of Dissolution of Greater Harlem Nursing & Rehabilitation Center, Inc.;
- 4) An executed Plan of Dissolution and a proposed Certificate of Dissolution of Greater Harlem Nursing & Rehabilitation Center, Inc.;
- 5) Certificate of Incorporation of Greater Harlem Nursing Home Company, Inc., Certificates of Amendment of Certificates of Incorporation (Greater Harlem Nursing & Rehabilitation Center, Inc.), and associated documents and consents;
- 6) The Bylaws of Greater Harlem Nursing & Rehabilitation Center, Inc.;
- 7) Joint Resolution of the Board of Directors and Members of Greater Harlem Nursing and Rehabilitation Center, Inc., to approve the dissolution.
- 8) Correspondence from counsel for Ryan Health to the New York State Supreme Court for New York County.
- 9) A decision from the Supreme Court for New York County and subsequent wire transfer records from applicant's attorney to Brooklyn Plaza Medical Center, New York City Health and Hospitals and William F. Ryan Community Health, demonstrating that distribution of Greater Harlem's remaining assets was properly approved and completed.

Attachments

MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy Marks, General Counsel *KSM*

Date: October 24, 2023

Subject: Proposed Dissolution of Greater Harlem Nursing & Rehabilitation Center, Inc.

Greater Harlem Nursing & Rehabilitation Center, Inc. requests Public Health and Health Planning Council (“PHHPC”) approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law §§ 1002(c) and 1003, as well as 10 NYCRR Part 650.

Greater Harlem Nursing & Rehabilitation Center, Inc. (“GHNRC”) is a New York not-for-profit corporation formed on February 8, 1973, when the entity filed a Certificate of Incorporation for the predecessor corporation, Greater Harlem Nursing Home Company, Inc. with the Department of State. The original company received approval from the NYS Department of Health and the Public Health Council (“PHC”) to file its Certificate of Incorporation on January 12, 1973.

On November 18, 2008, PHHPC issued its approval to file a Certificate of Amendment to the Certificate of Incorporation for the Greater Harlem Nursing Home Company, Inc., as adopted by the company on February 22, 2008. This amendment reflected a change of corporate name to Greater Harlem Nursing & Rehabilitation Center, Inc., more accurately describing the then-current services and reflecting its desire to expand said operations.

On March 31, 2014, the Harlem Center for Nursing and Rehabilitation, LLC (“Harlem Center”) and GHNRC entered into a court-approved asset purchase agreement whereby Harlem Center agreed to purchase the 200-bed residential care facility and certain other assets from GHNRC. As referenced in CON 152128-B dated May 3, 2018, Harlem Center was approved to operate said residential care facility previously operated by GHNRC. The aforementioned sale was completed in June of 2018 and, as a result, GHNRC elected to dissolve.

GHNRC currently has four directors. The Plan and Certificate of Dissolution were authorized by majority vote of the Directors on June 4, 2019. A copy of such authorizing resolutions is attached. The corporation president certified the results of the dissolution proceedings on July 12, 2019.

Per its Plan of Dissolution dated July 12, 2019, the corporation holds cash assets in the amount of \$9,177,600.35, with outstanding liabilities of \$697,657.68. Following satisfaction of unpaid liabilities, all remaining corporate assets were approved for distribution by court order dated March 14, 2018, to the following three tax-exempt organizations:

- 50% to the New York City Health and Hospitals Corp., for the exclusive use of Renaissance Health Care Network Diagnostic & Treatment Center

- 35% to the William F. Ryan Community Health Center, Inc., with a designation of funds for exclusive use in operation of the Thelma C. Davidson Adair/William F. Ryan Community Health Center
- 15% to the Brooklyn Plaza Medical Center, on the condition that all funds be used for care and treatment provided to persons aged 65 and older

I have confirmed that the applicant received court approval for these distributions and that they were completed via applicant's counsel on October 6 and 13, 2021.

Because the PHC previously approved the filing of the Certificate of Incorporation of GHNRC, PHHPC must approve of this dissolution. If approved by PHHPC, the submitted Petition and Certificate of Dissolution will then be executed/verified and addressed with the Attorney General's Office Charities Bureau.

There is no legal objection to the proposed Verified Petition, Plan of Dissolution, and the Certificate of Dissolution. The required documents are attached.

Attachments.

April 28, 2023

Via Overnight Mail

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

**RE: Proposed Dissolution of Greater Harlem Nursing Home
and Rehabilitation Center, Inc.**

Dear Ms. Leonard:

Greater Harlem Nursing Home and Rehabilitation Center, Inc. requests Public Health and Health Planning Council ("PHHPC") approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law Sections 1002(c) and 1003, as well as 10 NYCRR Part 650.

In project 152128-B, Harlem Center for Nursing and Rehabilitation, LLC was approved to be an operator of a 200-bed Article 28 residential health care facility (RHCF) that was previously operated by Greater Harlem Center for Nursing and Rehabilitation, Inc. On March 31, 2014, Harlem Center for Nursing and Rehabilitation, LLC and Greater Harlem Nursing Home and Rehabilitation Center, Inc. entered into an Asset Purchase Agreement (APA) whereby Harlem Center for Nursing and Rehabilitation, LLC agreed to purchase the operations of the RHCF and certain other assets from Greater Harlem Nursing Home and Rehabilitation Center, Inc. The sale was consummated in June of 2018, and as a result Greater Harlem Nursing Home and Rehabilitation Center, Inc. decided to dissolve. Attached are the following documents for your consideration when reviewing the proposed Certificate of Dissolution:

1. An executed, proposed Certificate of Dissolution of Greater Harlem Nursing Home and Rehabilitation Center, Inc.
2. The Resolution of the Board of Directors and Members of Greater Harlem Nursing Home and Rehabilitation Center, Inc., approving and authorizing the dissolution.

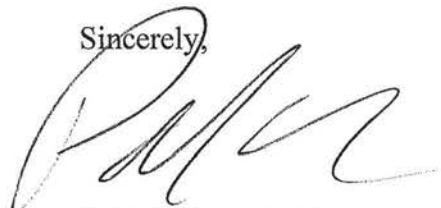
A | F

3. Certificate of Incorporation of Greater Harlem Nursing Home Company, Inc., dated February 6, 1973, and the Certificate of Amendment of Certificate of incorporation dated December 20, 2010, and associated corporate documents and consents.
4. The Amended and Restated Bylaws of Greater Harlem Nursing Home and Rehabilitation Center, Inc. adopted October 20, 1989.
5. A Proposed verified petition seeking the Attorney General's approval of the filing of the Certificate of Dissolution of Greater Harlem Nursing Home and Rehabilitation Center, Inc.

The proposed Certificate of Dissolution is enclosed. The approval of the Certificate of Dissolution by PHHPC is required for the New York State Attorney General to provide consent to the Plan of Dissolution.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Patrick Formato', written in a cursive style.

Patrick Formato, Esq.

ATTORNEY GENERAL OF THE STATE OF NEW YORK
28 Liberty Street, 19th Floor
New York, NY 10005

COUNTY OF NEW YORK

-----X
In the matter of the Application of

GREATER HARLEM NURSING HOME AND
REHABILITATION CENTER INC.,
Petitioner,

VERIFIED PETITION
AG# _____

For Approval of Plan of Dissolution and
Distribution of Assets, pursuant to
Section 1002 of the Not-For-Profit Corporation Law
-----X

Petitioner, Greater Harlem Nursing Home and Rehabilitation Center Inc., by Rodney Alexander, Director/President, of Petitioner for its Verified Petition herein, respectfully alleges:

1. Petitioner, Greater Harlem Nursing Home and Rehabilitation Center Inc., was formed on date of incorporation February 8, 1973, pursuant to Section 402 of the New York Not-for-Profit Law of the State of New York. The Petitioner's Certificate of Incorporation, as amended, and By-Laws, as amended and restated, are attached hereto as Exhibits A-1 and A-2, respectively.

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

<u>NAME</u>	<u>TITLE</u>	<u>ADDRESS</u>
Rodney Alexander	Director/President	1 Hanson Place Apartment 19G, Brooklyn, NY 11206
Wayne Benjamin	Director	800 Riverside Drive Apartment 6G New York, NY 11570
Carolyn Bowman	Director/Secretary	132 West 131 Street New York, NY 10306
Joseph Searles	Director	2301 Fifth Avenue Suite 10BB New York, NY 10037

3. Pursuant to the Certificate of Incorporation, Petitioner was formed, inter alia, to increase the residential health care capacity in New York City and help alleviate the problem of minority access to institutional long-term care experienced throughout New York City's health care system and to this end, to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of Article 28 of the Public Health Law.

4. The Petitioner is a charitable corporation.

5. Petitioner plans to dissolve and distribute its assets and pay its liabilities in accordance with the Plan of Dissolution and Distribution of Assets attached hereto as Exhibit B (the "Plan").

6. A special meeting of the Board of Directors of the Petitioner was held pursuant to duly given notice on June 4, 2019, at which a resolution was duly passed by all of directors of the Petitioner adopting a Plan of Dissolution for the Distribution of Assets and authorizing the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-For-Profit Corporation Law. A copy of the accepted resolutions and unanimous written consent are attached hereto as Exhibit C.

7. The Corporation is dissolving due to the fact that it has sold the nursing home that it had operated and is no longer best positioned to continue performing its corporate purposes.

8. The required governmental approval from the New York State Department of Health, Public Health and Health Planning Council to sell the nursing home had been obtained and is attached as Exhibit D.

9. The required governmental approvals from the New York State Supreme Court to sell the nursing home had been obtained and are attached hereto as Exhibit E.

10. The required governmental approval from the New York State Department of Health, Public Health and Health Planning Council to dissolve the corporation has been obtained and is attached hereto as Exhibit F. No other approvals are necessary.

11. The corporation is registered with the Charities Bureau of the Office of the Attorney General and its registration number is: 02-02-38. The corporation is up to date with its filings and most recently filed its annual report with the Charities Bureau for its fiscal year ended December 31, 20__.

WHEREFORE, Petitioner requests that the Attorney General approve the Certificate of Dissolution of Greater Harlem Nursing Home and Rehabilitation Center, Inc., a not-for-profit corporation, pursuant to the Not-for-Profit Corporation Law Section 1002.

IN WITNESS WHEREFORE, the Petitioner has caused this Petition to be executed this ____ day of _____, 2023.

GREATER HARLEM NURSING HOME
AND REHABILITATION CENTER, INC.

By: _____
Rodney Alexander, Director/President

Verification

STATE OF NEW YORK }

} ss

COUNTY OF _____ }

Scott Short, being duly sworn, deposes and says:

I am the Director/ President of Greater Harlem Nursing Home and Rehabilitation Center, Inc., the corporation named in the above Petition. I make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.

Rodney Alexander, Director/President

On this _____ day of _____, 2023, before me personally appeared _____ to me personally known, who, being duly sworn, did say that he is the _____ of Greater Harlem Nursing Home and Rehabilitation Center, Inc. and that he duly executed the foregoing instrument for and on behalf of Greater Harlem Nursing Home and Rehabilitation Center, Inc. being duly authorized to do so and that said individual acknowledged said instrument to be the free act and deed of said corporation.

Notary Public

Printed Name: _____

My Commission Expires:

PLAN OF DISSOLUTION AND DISTRIBUTION OF ASSETS**OF****GREATER HARLEM NURSING HOME AND REHABILITATION CENTER, INC.,**

The Board of Directors (the "Board") and Members (the "Members") of Greater Harlem Nursing Home and Rehabilitation Center, Inc., a New York not-for-profit corporation (the "Corporation"), considered the advisability of voluntarily dissolving the Corporation. All of the Board and the Members determined that dissolution of the Corporation is advisable and in the best interests of the Corporation. They adopted the following plan (the "Plan"):

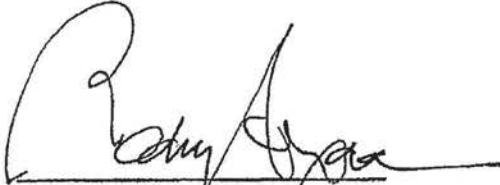
1. The sole asset of the Corporation is cash in the amount of \$9,177,600.35.
2. The Corporation has liabilities of \$697,657.68, which are fully described and itemized on Exhibit A. In addition, Exhibit A lists those liabilities which the Corporation expects to incur in the process of administering the Plan and dissolving the Corporation.
3. Subject to any satisfaction of any unpaid liabilities, the assets of the Corporation shall be distributed to the following organization(s) with substantially similar purposes to those of the Corporation, which qualify as an exempt organization(s) pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, in the proportions or amounts, as set forth on Exhibit B hereto. Attached hereto as Exhibit C are the following documents for each proposed recipient:
 - a. Certificate of Incorporation
 - b. Most recent financial report
 - c. An affidavit from a director or officer of such recipient stating (i) the purposes of the organization, (ii) that such organization is tax exempt pursuant to Section 501(c)(3) of the Internal Revenue Code, and (iii) that it is up to date in its registration and annual financial filings
4. Approval of the sale of the nursing home was obtained from the New York State Department of Health and the New York State Public Health and Health Planning Council (collectively "DOH"), whose approvals are attached as Exhibit D. No additional approvals are necessary.
5. Within two hundred seventy (270) days after the date on which the Attorney General approved the Plan, the Corporation shall carry out the Plan. After the Plan is carried out, a certificate of dissolution shall be signed by an authorized officer and all required approvals shall be attached thereto

[Signature Page Follows]

CERTIFICATION

I, Rodney Alexander, President of Greater Harlem Nursing Home and Rehabilitation Center, Inc., (the "Corporation") hereby certify under penalties for perjury that a special meeting of the Board of Directors and members of the corporation was duly held at 2:00 p.m. on November 4, 2014 via teleconference at which a resolution was duly passed by all of directors of the Corporation adopting a Plan of Dissolution for the Distribution of Assets and authorizing the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-For-Profit Corporation Law. In addition, the Board and the Members ratified such initial resolutions by means of a meeting of the Board and Members, dated June 4, 2019, approving the final Plan of Dissolution.

Dated: July 12, 2019



Rodney Alexander, President

Exhibit A**Liabilities****Outstanding Creditors**

1. HMM, CPAs LLP – \$36,820 – accounting fees related to calculation of closing and post-closing adjustments.
2. Abrams Fensterman, et. al., LLP – \$47,094.11 post-closing and dissolution costs
3. Nicholas M. Cherot, Esq. – \$94,861.50. Legal Services from December 1, 2015 as outside general counsel to the Corporation.
4. Harlem Center for Nursing and Rehabilitation, LLC – \$86,416.80 as reimbursement for (i) fees paid at the Closing to New York State Homes & Community Renewal and (ii) unpaid liabilities assumed which are due and owing to the New York State Department of Health, both of which from periods prior to the date that Harlem Center for Nursing and Rehabilitation, LLC (“Harlem Center”) was appointed receiver for the nursing facility. The total verifiable amount assumed by Harlem Center was \$124,541.76. However, of such amount, Harlem Center had already received a credit for \$38,124.96 in the closing adjustments approved by the court.
5. Harlem Center for Nursing and Rehabilitation, LLC – \$180,885.96. Reimbursement to Harlem Center for Nursing and Rehabilitation, LLC for payments made in connection with a settlement with employees related to wage and hour allegations which related to periods before and after the receivership commencing.
6. Harlem Center for Nursing and Rehabilitation, LLC - \$160,481.00 as reimbursement to Harlem Center for Nursing and Rehabilitation, LLC for overpayments deducted from collections due to operations prior to the commencement of the receivership. Specifically, these overpayments relate to recent determinations made by the New York State Department of Health for Nursing Home Quality Pool assessments.
7. Gorton and Partners - \$ 91,098.31. This was an outstanding account payable that was carved out of the assumption by Harlem Center for Nursing and Rehabilitation, LLC based on the closing adjustments approved by the court.

Wind -Up Costs

1. HMM, CPAs LLP — accounting fees related to dissolution and final tax return
2. Abrams Fensterman, et. al., LLP – Dissolution and wind-up costs
3. Nicholas M. Cherot, Esq. – Dissolution and other general counsel costs

Exhibit B**Distribution of Assets**

Following the satisfaction of the debts and liabilities of the Corporation and subsequent to the dissolution of the Corporation, the Corporation, which has served the Harlem community for more than 50 years, has a desire to maintain a continuing presence in Harlem, even after dissolution. It intends to do so by associating itself with one of the area's most distinguished nonprofit institutions, The Studio Museum in Harlem. Towards that end, the Corporation will distribute \$100,000 to the museum's acquisitions committee to purchase art, including photography. The display of such art would be accompanied by a plaque acknowledging the Corporation and the impact that such had on the community.

The remaining balance of the Proceeds (the "Balance") will be distributed as follows:

- (i) fifty percent (50%) of the Balance will be distributed to New York City Health and Hospitals Corporation for the exclusive use of Renaissance Health Care Network Diagnostic & Treatment Center;
- (ii) thirty-five percent (35%) of the Balance shall be distributed to William F. Ryan Community Health Center, Inc., with a designation that the funds are intended for the exclusive use of The Thelma C. Davidson Adair/William F. Ryan Community Health Center; and
- (iii) (iii) fifteen percent (15%) of the Balance shall be distributed to Brooklyn Plaza Medical Center, Inc., upon the condition that all of the funds distributed shall be used for the benefit, care and treatment of those aged 65 and older.



Division of Corporations,
State Records and
Uniform Commercial Code

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

CERTIFICATE OF DISSOLUTION
OF

GREATER HARLEM NURSING HOME AND REHABILITATION CENTER, INC.

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is:

GREATER HARLEM NURSING HOME AND REHABILITATION CENTER, INC.

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

GREATER HARLEM NURSING HOME COMPANY, INC.

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

February 8, 1973

THIRD: The name and address of each officer and director of the corporation is:

Rodney Alexander (Director/President): 924 West End Avenue #113, New York, NY 10025

Wayne Benjamin (Director): 800 Riverside Drive, Apartment 6G, New York, NY 10032

Joseph Searles (Director): 2301 Fifth Avenue, Suite 10BB, New York, NY 10037

Carolyn Bowman (Director/Secretary): 132 West 131 Street, New York, NY 10027

FOURTH: The corporation is a: *(check the appropriate box)*

charitable corporation non-charitable corporation.

FIFTH: At the time of authorization of the corporation's Plan of Dissolution and Distribution of Assets as provided in Not-for-Profit Corporation Law §1002, the corporation holds:

(Check the appropriate statement)

assets which are legally required to be used for a particular purpose.

no assets which are legally required to be used for a particular purpose.

SIXTH: The corporation elects to dissolve.

SEVENTH: *(Check the appropriate statement)* The dissolution was authorized by:

- a vote of a majority of the board of directors. The corporation has no members.
- the majority vote of the board of directors, followed by two-thirds vote of the members.

EIGHTH: *(Check the appropriate statement)*

- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by the Attorney General. A copy of the approval of the Attorney General is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by a Justice of the Supreme Court. A copy of the Court's Order is attached.
- The corporation is a charitable corporation with no assets. Prior to the delivery of the Certificate of Dissolution to the Department of State for filing a copy of the Plan of Dissolution which contains the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law, has been duly filed with the Attorney General.
- The corporation is a non-charitable corporation with no assets. The corporation's Plan of Dissolution is not required to contain the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law and is not required to be filed with Attorney General.

X 
(Signature)

Rodney Alexander

(Print or Type Name of Signer)

President

(Capacity of Signer)

CERTIFICATE OF DISSOLUTION
OF
GREATER HARLEM NURSING HOME AND REHABILITATION CENTER, INC.

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

Filer's Name: Patrick Formato

Company, if applicable: Abrams Fensterman, LLP

Address: 3 Dakota Drive, Suite 300

City, State and Zip Code: Lake Success, New York 11042

NOTES:

1. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at www.dos.ny.gov.
2. This Certificate of Dissolution must be signed by an officer, director or duly authorized person.
3. Attach the consent of the New York State Department of Taxation and Finance.
4. Attach the consent of the New York City Department of Finance, if required.
5. Attach a copy of the approval of the Attorney General or Order of the Supreme Court, if required.
6. The Certificate of Dissolution must include the approval of the Attorney General if the corporation is a charitable corporation or if the corporation is a non-charitable corporation and holds assets at the time of dissolution legally required to be used for a particular purpose.
7. Attach any other consent or approval required by law.
8. The fee for filing this certificate is \$30, made payable to the Department of State.

For DOS Use Only

**CERTIFICATE OF DISSOLUTION OF
GREATER HARLEM NURSING HOME AND REHABILITATION CENTER, INC.**

Under Section 1003 of the Not- For-Profit Corporation Law

I, Rodney Alexander, the President of Greater Harlem Nursing Home and Rehabilitation Center, Inc. (the "Corporation"), hereby certify:

1. The name of this corporation is Greater Harlem Nursing Home and Rehabilitation Center, Inc. The name under which the Corporation was formed is Greater Harlem Nursing Home Company, Inc.

2. The Certificate of Incorporation of the Corporation was filed with the New York State Department of State on the 8th day of February, 1973.

3. The names and addresses of each of the officers and directors of the Corporation and the title of each are as follows:

<u>NAME</u>	<u>TITLE</u>	<u>ADDRESS</u>
Rodney Alexander	Director/President	924 West End Avenue #113 New York, New York 10025
Wayne Benjamin	Director	800 Riverside Drive Apartment 6G New York, New York 10032
Carolyn Bowman	Director/Secretary	132 West 131 Street New York, New York 10027
Roscoe C. Brown, Jr., Ph.D.	Director/Senior Vice President	4555 Henry Hudson Parkway Riverside, New York 10471
Joseph Searles	Director	2301 Fifth Avenue Suite 10BB New York, New York 10037
Thomas Foristall	Chief Executive Officer	51 Ridgefield Drive Middletown, Connecticut 06457
Steve Cohen	Chief Financial Officer	93 Glenwood Avenue New Rochelle, New York 10801

4. At the time of dissolution, the Corporation is a charitable New York not-for-profit corporation.

5. [A. At the time of authorization of the Corporation's Plan of Dissolution and Distribution of Assets pursuant to N-PCL § 1002, the Corporation held assets legally required to be used for a particular purpose

OR

B. At the time of authorization of the Corporation's Plan of Dissolution and Distribution of Assets pursuant to N-PCL § 1002, the Corporation held no assets legally required to be used for a particular purpose.]

6. The Corporation elects to dissolve.

7. The Board of Directors approved a Plan of Dissolution and Distribution of Assets by unanimous approval of the Board of Directors. The Members approved a Plan of Dissolution and Distribution of Assets by unanimous approval by the Members.

8. On _____, 20__, the Attorney General of the State of New York approved the Plan of Dissolution and Distribution of Assets. A copy of the Attorney General's Approval is attached hereto pursuant to N-PCL § 1003(a)(8).

9. Approval of the dissolution of the Corporation by the New York Department of Health, Public Health and Public Health Planning Council is attached hereto.

10. The Corporation has carried out the Plan of Dissolution and Distribution of Assets.

11. Prior to the filing of this Certificate of Dissolution with the Department of State, the endorsement of the New York State Attorney General will be stamped below.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has signed the Certificate of Dissolution of Greater Harlem Nursing Home and Rehabilitation Center, Inc., this __ day of _____, 20__

GREATER HARLEM NURSING HOME
AND REHABILITATION CENTER, INC.

By: _____
Rodney Alexander, President

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
GREATER HARLEM NURSING HOME AND REHABILITATION CENTER, INC.**

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

The undersigned, being the President of Greater Harlem Nursing Home and Rehabilitation Center, Inc., DOES HEREBY CERTIFY THAT:

FIRST: The name of the Corporation is:

GREATER HARLEM NURSING HOME AND REHABILITATION CENTER, INC.

The name under which the Corporation was formed is:

GREATER HARLEM NURSING HOME COMPANY, INC.

SECOND: The date of filing of the certificate of incorporation with the Department of State is February 8, 1973.

THIRD: The laws under which the Corporation was formed are the Not-for-Profit Corporation Law and the Public Health Law.

FOURTH: The Corporation is a corporation as defined in Section 102(a)(5) of the Not-for-Profit Corporation Law. The Corporation is a Type D corporation under Section 201 of the Not-for-Profit Corporation Law. It shall continue to be a Type D corporation under Section 201 of the Not-for-Profit Corporation Law following the enlargement of the corporate purposes as herein provided.

FIFTH: The certificate of incorporation of GREATER HARLEM NURSING HOME AND REHABILITATION CENTER, INC., is hereby amended in the following respects:

(a) Article III, which sets for the purposes of the corporation, is hereby amended to read as follows:

The purposes for which the Corporation is formed, is to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of the Public Health Law; to establish and operate an adult care facility, commonly referred to as an "adult home," for the purpose of providing long-term residential care, room, board, housekeeping, personal care, (either directly or indirectly), and supervision to five or more adults as provided in Social

Services Law Section 2(25); to establish and operate an assisted living program under and pursuant to Social Services Law Section 461-1; and to establish and operate a licensed home care services agency approved under Article 36 of the Public Health Law; provided that no such adult home, assisted living program or licensed home care services agency shall be established and operated without the prior written approval of the New York State Department of Health and the written approval of any other New York State agency as may be required by law.

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

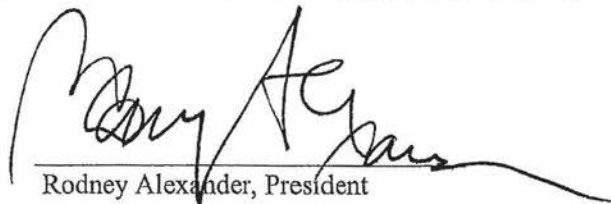
(b) Article VI, which addresses the directors of the corporation, is hereby amended to read as follows:

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

SIXTH: The Secretary of State of the State of New York hereby is designated as the agent of the Corporation upon whom process in any action or proceeding against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation, served upon the Secretary of State, is 30 West 138th Street, New York, New York 10037.

SEVENTH: The amendment was authorized by the vote of a majority of the members of the Corporation.

IN WITNESS WHEREOF, this Certificate has been subscribed the 20 day of December, 2010, by the undersigned, who affirms that the statements made herein are true under the penalties of perjury.


Rodney Alexander, President

**AMENDED AND RESTATED
BY-LAWS
OF
GREATER HARLEM NURSING HOME & REHABILITATION CENTER, INC.**

**ARTICLE I
MEMBERSHIP**

SECTION 1. The membership of the Company shall consist of those persons who are elected to membership as hereinafter provided.

SECTION 2. A person shall become a member upon being elected by the Board of Directors (the "Board", each member of the Board a "Director") after submission of an application to the Secretary on the prescribed form for such purpose. The application shall be endorsed with the approval of at least one Director. The Board of Directors, at a meeting duly called, shall act upon the proposal. Directors shall consider, in addition to an applicant's general qualifications and the needs of the Company, the composition of the surrounding community, including its major institutions and the degree to which granting membership to the applicant would enhance the reflection of such composition in the Company. Elections shall be by ballot and three negative votes shall preclude membership. All proceedings regarding election of members shall be strictly confidential.

SECTION 3. Membership shall be evidenced by a certificate of membership, signed by the Secretary of the Company. The certificate of membership and the rights and privileges of a member shall not be assignable.

SECTION 4. Immediately upon and by virtue of election to membership, the member shall become a Director and shall be assigned to one of the three classes of Directors, except that if the member is filling a vacancy on the Board of Directors he/she shall hold office until the next annual meeting of members of the Company at which the election of Directors is in the regular order of business and until his/her successor is elected and qualified.

SECTION 5. Each member shall have one vote only at any meeting of the members except as set forth in Section 3 of Article III.

SECTION 6. All notices to members shall be mailed to their addresses as given on the books of the Company, and such mailing shall constitute presumptive evidence of service thereof.

SECTION 7. Membership will terminate on the death or resignation of a member or on the member's expulsion. A member of the Company shall lose all rights and benefits of membership, including but not limited to, his or her membership on the

Board of Directors pursuant to Article 1, Section 4, and shall cease being a member of the Company immediately upon his/her resignation or removal from office or other termination of his/her term as a Director.

ARTICLE II MEETINGS

SECTION 1. a. The annual meeting of members of the Company shall be held in the month of April or May in each year on a day and hour to be fixed by the Directors at a prior meeting. Notice of the time and place of the annual meeting shall be mailed to each member at least fifteen (15) days prior thereto.

b. At all annual meetings of members of the Company the order of business shall be as follows:

- i. Reading of minutes of immediately preceding annual meeting for information and approval, if not previously approved.
- ii. Reports of officers
- iii. Reports of committees
- iv. Election of Directors
- v. Unfinished business
- vi. New business
- vii. Reading and approval of minutes of meeting just held, if requested.

SECTION 2. Special meetings of members may be called by the President at any time on his own initiative or by the President or Secretary upon request of five members to such officer made in writing or as otherwise provided by law. Notice of the meeting shall be delivered personally or mailed to each member at least ten days prior to the meeting. At such special meeting, there shall be considered only such business as specified in the notice of meeting.

SECTION 3. At all meetings of the Company, either regular or special, the number of members entitled to cast a majority of the total number of votes entitled to be cast at the meeting shall constitute a quorum. If a quorum is not present, the presiding officer may adjourn the meeting to a day and hour fixed by him.

SECTION 4. Regular meetings of the Board of Directors shall be held monthly except in July and August. Special meetings may be called by the President on his own initiative whenever, in his/her judgment, it may be necessary, or by the Secretary upon request of any four members of the Board of Directors. Five days notice of meetings of the Board shall be delivered personally, by electronic means or by mail to all Directors and shall be deemed sufficient notice of such meetings.

SECTION 5. One third of the entire Board of Directors shall constitute a quorum. If a quorum is not present, the presiding officer may adjourn the meeting to a day and hour fixed by him/her.

SECTION 6. Unless otherwise specified in the notice of meeting, all meetings shall be held at the offices of the Company.

SECTION 7. a. Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all members of the Board or the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the Board or committee shall be filed with the minutes of the proceedings of the Board or committee.

b. Any one or more members of the Board or any committee thereof may participate in a meeting of such Board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

ARTICLE III BOARD OF DIRECTORS

SECTION 1. The Board of Directors shall have general charge and management of the affairs, funds and property of the Company. It shall have full power and it shall be its duty to carry out the purposes of the Company according to these bylaws. It may vote the expenditure of money, as it may deem necessary or advisable.

SECTION 2. The Board of Directors may make rules for the conduct of the members and the use of the Company property, not inconsistent, however, with anything herein set forth.

SECTION 3. Except for those members who become Directors pursuant to Article 1, Section 4 of these By-Laws, the Directors of the Company shall be elected at the annual meeting of members. Each active member shall be entitled to one vote for each Director to be elected. Votes may not be cast cumulatively. Those candidates equal in number to the position to be filled who receive the greatest number of votes cast shall be declared elected.

SECTION 4. a. The number of directors constituting the entire Board shall be not less than three and not more than fifteen, with the precise number of directors fixed from time to time by action of a majority of the members or a majority of the entire Board. One additional director may be designated by the Commissioner of Health of the State of New York (the "Commissioner"). Notwithstanding anything to the contrary in these By-Laws, in the absence of fraud or bad faith said additional director appointed

by the Commissioner shall not be personally liable for the debts, obligations or liabilities of the Corporation.

b. The Directors shall be divided into classes, as nearly equal in number as may be. At the first annual meeting one-third thereof shall be elected to serve for one year; one-third thereof for two years; and one-third thereof for three years. Then upon expiration of the term of each class of Directors, new Directors shall be elected to serve for a full term of three years each and until the successor of each has been elected and qualified.

SECTION 5. a. The standing committees of the Board shall be the Executive Committee and such other committees as the Board may establish, each of which shall consist of at least three Directors. The Board may also establish special or ad hoc committees from time to time, which may consist of one or more Directors, appointed by the Chairperson in consultation with the President, and the Chairperson shall also name the chairpersons. Committees shall meet as often as necessary and as otherwise directed by the Chairperson.

b. The Executive committee shall consist of the officers of the Company and the chairpersons of the other standing committees. The Executive Committee shall be vested with all of the powers of the Board during the intervals when the Board is not in session, except as otherwise provided by law. It shall report on its activities at the meetings of the Board.

SECTION 6. The Board of Directors shall not impose any liability or levy any assessment upon the members.

SECTION 7. The Board of Directors may require any Director, officer, agent employee, representative or any other individual or individuals responsible for funds to furnish a surety bond in such amount as may be determined by the Board of Directors.

SECTION 8. Immediately upon election and by virtue thereof, a Director shall become a member of the Company. Termination of a Director's membership in the company shall result in the immediate and simultaneous termination of his/her term as Director.

SECTION 9. It is the policy of the Company that its Directors avoid conflicts of interest. To that end, each Director shall (a) fully and in writing disclose to the Board his or her interest in any contract or proposed contract with the Company; (b) annually execute and file a Director's Annual Certification with the Secretary not less than 30 days and not more than 60 days preceding the date set by these Bylaws for the annual meeting of members; and (c) refrain from participating in any deliberations, voting or otherwise attempting to influence any decision whenever he or she has a substantial financial interest in a matter coming before the Board.

SECTION 10. a. Any or all of the directors may be removed for cause by vote of the

members, or by vote of the directors provided there is a quorum of not less than a majority present at the meeting of directors at which such action is taken.

b. Any or all of the directors may be removed without cause by vote of the members.

ARTICLE IV OFFICERS

SECTION 1. The officers of the Company shall be President, Senior Vice-President, Vice-President, Secretary and Treasurer.

SECTION 2. The President shall preside at all meetings of the members of the Company, the Board of Directors and the Executive Committee, and shall set the agendas for all meetings of the Board of Directors. He or she shall name the chairpersons of all committees and shall be a member *ex-officio* of all committees.

SECTION 3. In the absence or incapacity of the President, the Senior Vice-President shall perform the President's duties, and in the absence of or incapacity of both President and Senior Vice-President, the Vice-President shall preside and assume the duties of the President.

SECTION 4. The Secretary shall keep the minutes of all meetings of members of the Company and of the Board of Directors and shall mail out all notices for meetings of the Company or the Board of Directors. The Secretary shall maintain and have custody of the official records of the Company, including membership records, and shall in general perform all other duties normally associated with the office of secretary of a corporation.

SECTION 5. The Treasurer shall have charge of all receipts and monies of the Company. The Treasurer shall report in detail to the Board from time to time on the fiscal affairs of the Company, and shall in general perform all other duties normally associated with the office of Treasurer of a corporation.

SECTION 6. The President, Secretary or Treasurer shall, on being so directed by the Board, execute all leases, contracts or other instruments in writing, unless otherwise delegated. They shall perform such other duties and tasks as may be required by the Board or in the case of the Secretary and Treasurer, by the President, and have such other powers as may be prescribed by the Board.

SECTION 7. Officers shall be elected by the Board of Directors at the meeting of the Board on the same day as and immediately following the annual meeting of members of the Company. An officer shall be elected by majority vote of the Directors present and shall serve in office until the next annual election of officers and until his/her successor is elected and qualified.

SECTION 8. Any officer may be removed from office with or without cause at any time by the Board of Directors.

ARTICLE V VACANCIES

SECTION 1. If a vacancy occurs among the officers, the vacancy shall be filled by the vote of the Board of Directors, subject to any applicable provisions of these by-laws.

SECTION 2. If a vacancy occurs among the Board of Directors, the vacancy shall be filled by the vote of the Members, subject to any applicable provisions of these by-laws.

SECTION 3. The person elected to fill a vacancy shall serve until the next meeting at which the election to the position filled is in the regular order of business and until the person's successor is elected and qualified.

ARTICLE VI COMPENSATION OF DIRECTORS AND OFFICERS

SECTION 1. Neither officers, Directors nor members shall receive any salary or compensation for services rendered to the Company as such officers, Directors or members.

SECTION 2. The above shall not preclude payment of necessary expenses.

ARTICLE VII ADMINISTRATOR

SECTION 1. The Board of Directors shall select for employment by the Company an administrator who holds a currently valid nursing home administrator's license and registration who shall be its direct executive representative in the management of the nursing home. He/she shall have the necessary authority and be held responsible for the administration of the nursing home, subject only to such policies adopted and such orders issued by the Board of Directors and to any applicable federal, state or local regulations or legal provisions.

SECTION 2. The administrator shall:

a. Report to the Board of Directors at each regular monthly meeting and whenever directed to do so by the Board of Directors, and attend all meetings of the Board.

b. Implement the policies of the nursing home by making operating decisions. Pursuant to the foregoing the authority and duties of the administrator shall include but not be limited to:

1. To be responsible for carrying out all policies established by the Board of Directors;
2. To plan and submit to the Board of Directors for approval the organization of personnel and others concerned with the operation of the nursing home;
3. To prepare an annual budget, showing expected receipts and expenditures for approval by the Board of Directors;
4. To select, employ, control and discharge all employees;
5. To keep all physical properties in a good state of repair and operating condition;
6. To supervise all business affairs and collections and expenditures of all funds to the best possible advantage;
7. To report to the Treasurer regularly;
8. Where appropriate, to integrate the services of the nursing home with the community's health resources.

**ARTICLE VIII
AMENDMENTS**

SECTION 1. These by-laws may be amended by a majority vote of the members of the Company at a regular or special meeting provided notice of the proposed amendment has been stated in the call of the meeting.

SECTION 2. These by-laws may be amended by a majority vote of the Board of Directors at a regular or special meeting provided notice of the proposed amendment has been stated in the call for the meeting.

**ARTICLE IX
INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Insofar as the laws of the State of New York permit, the corporation shall, except as hereinafter provided, indemnify and reimburse each director, former director, officer, and former officer, and his/her heirs and legal representatives for and against loss, liability and expense, whether heretofore or hereafter imposed upon or incurred by his/her in connection with any pending or future action, suit, proceeding or claim in which he/she may be involved, or with which he/she may be threatened by reason of any alleged act or omission as a director, or as an officer of the Corporation. Such loss, liability and expense shall include, but not be limited to judgments, court costs, attorney's fees and the cost of reasonable settlements. Such indemnification and reimbursements shall not cover (a) judgments, expense or liabilities rendered, imposed or incurred in connection with any item or matter as to which such director or officer has benefited from, or shall be finally adjudged to be liable by reason of gross negligence, or willful misconduct in the performance of his/her duties as such director or officer; (b) amounts paid to the Corporation, or (c) loss, liability or expense imposed or incurred in connection with any item or matter which shall be settled without final adjudication, unless such settlement shall have been approved as in the best interests of the Corporation by vote of the Board of Directors at any meeting in which no director participates against whom as such director any suit or proceeding on the same or similar grounds is then pending or threatened. The foregoing rights of indemnification and reimbursement shall be in addition to any rights which any director, former director, officer or former officer may otherwise be entitled to as a matter of law. The Corporation may purchase and maintain insurance in addition to directors and officers to the fullest extent permitted by the laws of the State of New York.

Adopted October 20, 1989
Amendment Approved September 19, 1997
Amendment Approved January 25, 2002
Amendment Approved May 16, 2003
Amendment Approved January 16, 2004
Amendment Approved May 16, 2007
Amendment Approved December 15, 2010
Amendment Approved June 15, 2011
Amendment Approved February 24, 2012
Amendment Approved February 16, 2016

GREATER HARLEM NURSING HOME & REHABILITATION CENTER, INC.

30 WEST 138 STREET

NEW YORK, NY 10037

PHONE: 212 690-7400 FAX: 212 926-1799

A special meeting of the **Board of Directors** (the “Board”) and of the **Members** (the “Members”) of Greater Harlem Nursing Home & Rehabilitation Center, Inc., a New York not-for-profit corporation (the “Company” or “Corporation”) was held Tuesday, June 4, 2019 by teleconference.

PRESENT (Directors and Members)

Rodney Alexander
Wayne Benjamin
Carolyn Bowman

EXCUSED

Joseph Searles

COUNSEL

Nicholas Cherot, Esq.
Michael L. Gurman, Esq.,

CALL TO ORDER

Mr. Alexander, a quorum for the meeting of the Board and a quorum for a meeting of the Members being satisfied, called the meeting to order at approximately 2:05 pm.

MEETING OF THE BOARD AND THE MEMBERS OF THE COMPANY

Mr. Alexander conducted a roll call of all persons in attendance, with each person named under “Present,” “Staff” and “Counsel” reciting his or her name. Due notice of the meeting had been provided and/or waived by each director and member. Mr. Gurman accepted Mr. Alexander’s invitation to lead the discussion of the Meeting Package, its contents and the transactions contemplated in the Meeting Package as follows:

1. The Meeting Package (consisting of (i) the petition to seeking the approval of the Plan of Dissolution of the Company, (ii) the Verified Petition for the dissolution of the Company, (iii) and the Certificate of Dissolution of the Company) was distributed to each meeting attendee via e-mail (collectively, the “Meeting Package”).
2. Each Director and Member acknowledged receiving and reviewing a copy of the Meeting Package in advance of the scheduled meeting date.

3. An in-depth discussion of each document within the Meeting Package was held, aided by Counsel, each of whom answered questions posed by the Board and the Members.
4. Upon due deliberation and a motion having been made, the following resolutions were adopted by unanimous vote of the Board:

RESOLVED, that Board deems it advisable and in the best interest of the Corporation that the Corporation be dissolved; and be it further

RESOLVED, that the form, terms and provisions of the Plan of Dissolution and Distribution of Assets of the Corporation (the “Plan”), a copy of which is attached hereto as Exhibit A, be, and the same hereby are, authorized and approved in all respects; and be it further

RESOLVED, that the form, terms and provisions of the Verified Petition (the “Petition”), a copy of which is attached hereto as Exhibit B, be, and the same hereby are, authorized and approved in all respects; and be it further

RESOLVED, the Board submits its recommendation to dissolve the Corporation to the members of the Corporation and requests that the members approve the dissolution of this Corporation in accordance with the Plan; and be it further

RESOLVED, upon the approval of the members of the Corporation, that the President of the Corporation be, and hereby is, authorized in the name and on behalf of the Corporation, to execute and deliver the Plan and Petition, as applicable, and all certificates, instruments, agreements, notices or other documents contemplated by the Plan and Petition, with such additions thereto or deletions therefrom as the President may, in his sole discretion, determine to be in the best interest of the Corporation, the execution and delivery thereof, as applicable, to constitute conclusive evidence of such determination and the approval thereof; and be it further

RESOLVED, that the form, terms and provisions of the Certificate of Dissolution of the Corporation (the “Certificate”), a copy of which is attached hereto as Exhibit C, be, and the same hereby are, authorized and approved in all respects:

RESOLVED, upon the approval of the Petition, Plan and the Certificate by the New York State Supreme Court, the President of the Corporation be, and hereby is, authorized in the name and on behalf of the Corporation, to execute and file with the Secretary of State of the State of New York, the Certificate, with such additions thereto or deletions therefrom as the President may, in his sole discretion, determine to be in the best interest of the Corporation, the execution and filing thereof to constitute conclusive evidence of such determination and the approval thereof; and be it further

RESOLVED, that all prior actions of the duly elected officers of the Corporation, in the name of and on behalf of the Corporation, in their capacity as officers of the Corporation, be, and the same hereby are, ratified, confirmed and approved in all respects; and be it further

RESOLVED, that the proper officers of the Corporation be, and each of them hereby is, authorized, empowered and directed, in the name and on behalf of the Corporation or otherwise, to take any and all actions, perform all such other acts and things, execute, file, deliver and/or record all such certificates, instruments, agreements or other documents, and make and receive all such payments as such officers may, in such officers' sole discretion, deem necessary or advisable in order to carry into effect the purposes and intent of the foregoing resolutions, the authority therefore to be conclusively evidenced by the taking of such action, execution and delivery of such documents and/or making or receiving of such payments.⁵ Upon due deliberation and a motion having been made, the following resolutions were adopted by unanimous vote of the Members:

RESOLVED, that the Plan and Petition be and the same hereby are approved, authorized and adopted in all respects and the activities and transaction contemplated by the Petition and the Plan, be, and they hereby are, approved, authorized and adopted; and be it further

RESOLVED, that the Corporation be, and hereby is, authorized and empowered to consummate the transactions contemplated by the Petition and the Plan and, in connection therewith, to execute and deliver any and all documents as shall be required in connection with the consummation of the transactions contemplated by the Petition and Plan, including, without limitation, a Certification of the Plan, and a Certificate of Dissolution (collectively, the "Plan Documents"), each containing such terms and conditions as the officers of the Corporation executing the same shall deem appropriate or necessary in their judgment and discretion; and be it further

RESOLVED, that each officer of the Corporation be, and each of them hereby is, authorized, empowered and directed to execute the Plan Documents in the name and on behalf of the Corporation and to deliver the same once executed, the execution and delivery thereof to be deemed conclusive evidence of the approval by the Corporation of the terms, conditions and provisions thereof; and be it further

RESOLVED, that each officer of the Corporation be, and each of them hereby is, authorized, empowered and directed to take any and all actions as shall be required in connection with the consummation of the transactions contemplated by the Plan; and be it further

RESOLVED, that each officer of the Corporation be, and each of them hereby is authorized, empowered and directed to do or cause to be done all such acts, deeds and things and to make, executed and deliver, or cause to be made, executed or delivered, all such agreements, undertakings, documents, instruments or certificates, in the name and on behalf of the Corporation otherwise, as he or she may deem necessary, advisable or appropriate to effectuate or fulfill the purposes and intent of the foregoing resolutions; and be it further

RESOLVED, that any acts of the officer and Directors of the Corporation, which acts would have been authorized by any of the foregoing resolutions except that such acts were

taken prior to the adoption of the foregoing resolutions, shall be, and hereby are, severally ratified, confirmed, approved and adopted as acts in the name and on behalf of the Corporation.

6. Upon due deliberation and a motion having been made, the following resolutions were adopted by unanimous vote of the Members:

RESOLVED, that the Plan and Petition be and the same hereby are approved, authorized and adopted in all respects and the activities and transaction contemplated by the Petition and the Plan, be, and they hereby are, approved, authorized and adopted; and be it further

RESOLVED, that the Corporation be, and hereby is, authorized and empowered to consummate the transactions contemplated by the Petition and the Plan and, in connection therewith, to execute and deliver any and all documents as shall be required in connection with the consummation of the transactions contemplated by the Petition and Plan, including, without limitation, a Certification of the Plan, and a Certificate of Dissolution (collectively, the "Plan Documents"), each containing such terms and conditions as the officers of the Corporation executing the same shall deem appropriate or necessary in their judgment and discretion; and be it further

RESOLVED, that each officer of the Corporation be, and each of them hereby is, authorized, empowered and directed to execute the Plan Documents in the name and on behalf of the Corporation and to deliver the same once executed, the execution and delivery thereof to be deemed conclusive evidence of the approval by the Corporation of the terms, conditions and provisions thereof; and be it further

RESOLVED, that each officer of the Corporation be, and each of them hereby is, authorized, empowered and directed to take any and all actions as shall be required in connection with the consummation of the transactions contemplated by the Plan; and be it further

RESOLVED, that each officer of the Corporation be, and each of them hereby is authorized, empowered and directed to do or cause to be done all such acts, deeds and things and to make, executed and deliver, or cause to be made, executed or delivered, all such agreements, undertakings, documents, instruments or certificates, in the name and on behalf of the Corporation otherwise, as he or she may deem necessary, advisable or appropriate to effectuate or fulfill the purposes and intent of the foregoing resolutions; and be it further

RESOLVED, that any acts of the officer and Directors of the Corporation, which acts would have been authorized by any of the foregoing resolutions except that such acts were taken prior to the adoption of the foregoing resolutions, shall be, and hereby are, severally ratified, confirmed, approved and adopted as acts in the name and on behalf of the Corporation.

7. Officers. The Board of Directors and Members ratified and voted to approve the re-election of all Officers of the Corporation.

ADJOURNMENT

Having completed the agenda and having completed discussion regarding issues raised by the Meeting Package, Mr. Alexander asked if any member of the Board or the Members of the Company desired to raise any further issues. There being no issues raised, upon motion duly made and seconded, the meeting was adjourned at approximately 2:45pm.

Submitted by:

Rodney Alexander, President

Recorded by:

Michael Gurman, Esq.

February 16, 2021

Honorable Melissa A. Crane
New York State Supreme Court
New York County
71 Thomas Street
New York, New York 10013

Re: *In re Greater Harlem Nursing Home and Rehab. Center, Inc.*,
Index No. 156915/2019

Dear Justice Crane:

I am General Counsel to the William F. Ryan Community Health Center, Inc. d/b/a Ryan Health (“Ryan Health”), which has not previously appeared in this proceeding. Our organization is a 35% distributee under the proposed Plan of Dissolution and Distribution of Assets (“Plan”) of Petitioner Greater Harlem Nursing Home. I write regarding recent decisions of the Court regarding interim distributions under the Plan.

As the Court is aware, there are three *pro rata* distributees under the Plan:

- (1) New York Health and Hospitals Corporation (“HHC”): 50%
- (2) Ryan Health: 35%
- (3) Brooklyn Plaza Medical Center (“BPMC”): 15%

In 2020, HHC and BPMC moved this Court for interim distributions pending the resolution of an objection by the Charities Bureau to payments to certain creditors. As HHC and BPMC noted, the Charities Bureau did not object to the proposed *pro rata* distributions under the Plan. Ryan Health did not seek identical relief because, as the only other *pro rata* distributee, such motion practice seemed redundant.

Like the other *pro rata* distributees, Ryan Health is a non-profit organization whose mission is to provide healthcare to medically underserved communities. We have also been significantly impacted by the COVID-19 pandemic and would apply the Plan distribution to the delivery of healthcare services by the Thelma C. Davidson Adair/William F. Ryan Community Health Center which we operate for the benefit of the Harlem community.

As there would be no prejudice to the Petitioner, any distributee, or any creditors, Ryan Health respectfully requests that it receive its *pro rata* distribution contemporaneous with HHC and BPMC. If the Court requires a formal motion this effect, we will promptly submit such papers. If there is further guidance from the Court on how to proceed, we are available at Your Honor's convenience.

Respectfully Submitted,



Jonathan Fried
General Counsel
Ryan Health
110 West 97th Street
New York, New York 10025
212-531-7568
jonathan.fried@ryanhealth.org

cc: Matthew Didora, Esq.
Abrams, Fensterman
Attorneys for Petitioner Greater Harlem Nursing Home
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Lake Success, NY 11042

Linda Rosen Heinberg
Assistant Attorney General
Office of the NYS Attorney General
Charities Bureau
28 Liberty Street
New York, NY 10005

Leonard Rosenberg
Garfunkel Wild, P.C.
Attorneys For Non-Party Distributee NYCH+H and BPMC
111 Great Neck Road, 6th Floor
Great Neck, New York 11021

Daniel Takesky

From: cnobwire@cnob.com
Sent: Wednesday, October 06, 2021 1:22 PM
To: Lorraine Takesky; Daniel Takesky; TKOKINIAS@CNOB.COM; APOLACEK@CNOB.COM; MDORNELLAS@CNOB.COM
Subject: ADVICE OF DEBIT - BANK CONFIDENTIAL

Caution: This email originated outside of the organization

WIRE DEPARTMENT ADVICE OF DEBIT

ON OCTOBER 06, 2021, WE DEBITED YOUR ACCOUNT *****0694 FOR USD
1,294,300.34

DETAILS OF PAYMENT

PAYMENT DATE AND TIME: 06-OCT-2021 12:21:17 CT
PAID AMOUNT: USD 1,294,300.34
METHOD OF PAYMENT: FED Payment
TRANSACTION NUMBER: 202110060058562
IMAD(CYCLE DATE/LTERM/IMSN) 20211006/MMQFMPB1/000103/
OMAD(CYCLE DATE/LTERM/OMSN) 20211006/B1QGC01R/047838/
REFERENCE: 1401365772
PAID TO: F/021000021
JPMORGAN CHASE BANK, NA
NEW YORK
NY
BENEFICIARY: *****5856
BROOKLYN PLAZA MEDICAL CENTER
650 FULTON STREET
BROOKLYN, NY 11217
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3 DAKOTA DR SUITE 300
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Ernesto Gallone

From: cnobwire@cnob.com
Sent: Wednesday, October 13, 2021 3:58 PM
To: Lorraine Takesky; Daniel Takesky; TKOKINIAS@CNOB.COM; APOLACEK@CNOB.COM; MDORNELLAS@CNOB.COM
Subject: ADVICE OF DEBIT - BANK CONFIDENTIAL

Caution: This email originated outside of the organization

WIRE DEPARTMENT ADVICE OF DEBIT

ON OCTOBER 13, 2021, WE DEBITED YOUR ACCOUNT *****0694 FOR USD
4,314,334.46

DETAILS OF PAYMENT

PAYMENT DATE AND TIME: 13-OCT-2021 14:56:49 CT
PAID AMOUNT: USD 4,314,334.46
METHOD OF PAYMENT: FED Payment
TRANSACTION NUMBER: 202110130090041
IMAD(CYCLE DATE/LTERM/IMSN) 20211013/MMQFMPB1/000159/
OMAD(CYCLE DATE/LTERM/OMSN) 20211013/B1QGC01R/078600/
REFERENCE: 4144124252
PAID TO: F/021000021
JPMORGAN CHASE BANK, NA
NEW YORK
NY
BENEFICIARY: ***4278
NEW YORK CITY HEALTH AND
HOSPITALS
50 WATER STREET
NEW YORK, NY 10004
DEBITED TO: *****0694
ABRAMS, FENSTERMAN, FENSTERMAN,
EIS
3 DAKOTA DR SUITE 300
NEW HYDE PARK NY 11042-1167

ORIGINATOR TO BENEFICIARY INFO:

Daniel Takesky

From: cnobwire@cnob.com
Sent: Wednesday, October 06, 2021 1:13 PM
To: Lorraine Takesky; Daniel Takesky; TKOKINIAS@CNOB.COM; APOLACEK@CNOB.COM; MDORNELLAS@CNOB.COM
Subject: ADVICE OF DEBIT - BANK CONFIDENTIAL

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WIRE DEPARTMENT ADVICE OF DEBIT

ON OCTOBER 06, 2021, WE DEBITED YOUR ACCOUNT *****0694 FOR USD
3,020,034.12

DETAILS OF PAYMENT

PAYMENT DATE AND TIME: 06-OCT-2021 12:11:46 CT
PAID AMOUNT: USD 3,020,034.12
METHOD OF PAYMENT: FED Payment
TRANSACTION NUMBER: 202110060054628
IMAD(CYCLE DATE/LTERM/IMSN) 20211006/MMQFMPB1/000096/
OMAD(CYCLE DATE/LTERM/OMSN) 20211006/MMQFMPYQ/004842/
REFERENCE: 3797452004
PAID TO: F/026013673
TD BANK, NA
NEW YORK
NY
BENEFICIARY: *****3654
WILLIAM F. RYAN COMMUNITY
HEALTH
110 WEST 97TH STREET
NEW YORK, NY 10025
DEBITED TO: *****0694
ABRAMS, FENSTERMAN, FENSTERMAN,
EIS
3 DAKOTA DR SUITE 300
NEW HYDE PARK NY 11042-1167
ORIGINATOR TO BENEFICIARY INFO:

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MELISSA CRANE PART 60M

Justice

-----X

INDEX NO. 156915/2019

GREATER HARLEM NURSING HOME

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 005

- v -

X

DECISION + ORDER ON MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 005) 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104

were read on this motion to/for REARGUMENT/RECONSIDERATION

Upon the foregoing documents, it is

The motion for "reargument", "renewal" or "clarification" is denied for the reasons stated on the record of 10/1/2021 without prejudice to the lawfirm making a new motion, via order to show cause, in within ten days from 10/1/2021, that excludes all fees for efforts trying to recover fees, the bulk of which this court ultimately denied.

The cross motions are dealt with as follows: The lawfirm of Abrams Fensterman is directed to release the funds to Brooklyn Plaza Medical Center and New York City Health and Hospitals Corp. according to the Plan that this court has approved already (minus the fees this court did not approve).

Melissa Crane signature and ID: 20211002180238MACRANE0D7771829B5E4957A0EC4CE7EEAA7FD0

10/1/2021 DATE

MELISSA CRANE, J.S.C.

CHECK ONE:

Form with checkboxes: CASE DISPOSED (checked), GRANTED, DENIED (checked), NON-FINAL DISPOSITION, GRANTED IN PART, OTHER

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 16th day of November 2023, approves the filing of the Certificate of Dissolution of Greater Harlem Nursing and Rehabilitation Center, Inc., dated as attached.