

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

**COMMITTEE DAY**

**AGENDA**

*January 25, 2024*  
*10:00 a.m.*

*90 Church Street, 4<sup>th</sup> Floor, Conference Rooms 4 A/B, NYC, 10007*

**I. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW**

Peter Robinson, Chair

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

**Acute Care Services- Construction**

**Exhibit # 1**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	231308 C	New York-Presbyterian Westchester (Westchester County)
2.	231311 C	Samaritan Medical Center (Jefferson County)
3.	231332 C	NYU Langone Hospital-Long Island (Nassau County)
4.	231348 C	Long Island Community Hospital at NYU Langone Health (Suffolk County)

**Cardiac Services - Construction**

**Exhibit #2**

	<u>Number</u>	<u>Applicant/Facility</u>
1.	231326 C	Auburn Community Hospital (Cayuga County)
2.	231351 C	St. Charles Hospital (Suffolk County)

**Diagnostic and Treatment Centers - Construction**

**Exhibit # 3**

	<u>Number</u>	<u>Applicant/Facility</u>
1.	231261 C	Weill Cornell Imaging at New York Presbyterian (Kings County)
2.	231299 C	Weill Cornell Imaging at New York Presbyterian (New York County)
3.	232063 C	ODA Primary Health Care Network, Inc (Kings County)
4.	232124 C	Community Health Center of Richmond, Inc. (Richmond County)

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

**Ambulatory Surgery Centers - Establish/Construct**

**Exhibit # 4**

	<u>Number</u>	<u>Applicant/Facility</u>
1.	222044 B	Sorin Ambulatory, LLC d/b/a Sorin Ambulatory Surgery Center (New York County)
2.	232088 E	Sheepshead Bay Surgery Center (Kings County)

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

**Exhibit # 5**

	<u>Number</u>	<u>Applicant/Facility</u>
1.	231114 B	Prime MD Center, LLC (Nassau County)
2.	232080 B	ALEF Health Center LLC (Richmond County)
3.	232106 B	New York Healthcare and Wellness (Bronx County)
4.	232133 B	Namo Health Inc (New York County)

**Dialysis Services - Establish/Construct**

**Exhibit # 6**

	<u>Number</u>	<u>Applicant/Facility</u>
1.	231361 B	Tidal Home Dialysis (Kings County)

**Residential Health Care Facilities - Establish/Construct**

**Exhibit # 7**

	<u>Number</u>	<u>Applicant/Facility</u>
1.	202035 E	Hilaire Care Network LLC d/b/a Pine Forest Center for Rehabilitation and Healthcare (Suffolk County)
2.	222260 B	Oxford Nursing Home (Kings County)

**Home Care Service Agency Licensures**

**Exhibit # 8**

**Changes of Ownership**

- |    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>  |
|----|----------------------|---|
| 1. | 222103 E             | Lincare Of New York, Inc.<br>(Geographical Service Area: Albany, Broome, Cayuga, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Oneida, Onondaga, Ontario, Oswego, Otsego, Rensselaer, Saint Lawrence, Saratoga, Seneca, Schenectady, Schoharie, Schuyler, Steuben, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, and Yates Counties) |
| 2. | 222104 E             | American Outcomes Management, LP<br>(Geographical Service Area: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester Counties)  |
| 3. | 231120 E             | Health Quest Home Care, Inc. (Licensed)<br>(Geographical Service Area: Dutchess, Orange, Putnam, And Ulster Counties)   |
| 4. | 231216 E             | Tanglewood Manor, Inc.<br>(Geographical Service Area: Allegany, Cattaraugus, Chautaugua, Erie, Genesee, Niagara, Orleans, and Wyoming Counties)   |
| 5. | 232021 E             | Ideal Care SP LLC<br>(Geographical Service Area: Ulster County)   |

**D. Certificates**

**Exhibit # 9**

**Certificate of Amendment of the Certificate of Incorporation**

**Applicant**

Lake Shore Hospital Foundation, Inc.

Open Door Family Medical Center, Inc.

**Certificate of Amendment of the Articles of Organization**

**Applicant**

Pontiac Nursing Home, LLC



**Restated Certificate of Incorporation**

Applicant

The Guidance Center of Westchester, Inc.

**II. ADJOURNMENT**

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



**Project # 231308-C  
New York-Presbyterian Westchester**

**Program: Hospital  
Purpose: Construction**

**County: Westchester  
Acknowledged: July 13, 2023**

**Executive Summary**

**Description**

New York-Presbyterian Hospital Westchester (NYPHW), a voluntary not-for-profit, Article 28, 288-bed hospital requests approval to certify and construct a Multi-Specialty Ambulatory Surgery Hospital Extension Clinic on the 3<sup>rd</sup> and 4<sup>th</sup> floor at 1111 Westchester Avenue, White Plains (Westchester County). The proposed clinic will be certified for Ambulatory Surgery-Multispecialty, including orthopedics, general surgery, ophthalmology, obstetrics/gynecology (OB/GYN), urology, and ear, nose, and throat (ENT). The clinic will also be certified in Medical Services-Other Medical Specialties, including therapy-speech language o/p, therapy-occupational o/p, and therapy-physical o/p.

The new extension clinic will have ten operating rooms, thirty pre-operative prep/recovery positions, twenty infusion treatment areas, space for the rehabilitation therapy program, and requisite support areas.

William J. Higgins, M.D., MBA, Board-certified in Internal Medicine, will serve as Medical Director.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

The applicant projects 55,219 visits (8,423 surgical) in Year One and 67,486 (11,403 surgical) in Year Three, with Medicaid at 15.84% in Year Three.

**Program Summary**

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

**Financial Summary**

Total project costs of \$169,322,634 will be funded with equity from The New York and Presbyterian Hospital (NYPH), the operator of New York-Presbyterian Hospital Westchester.

Budget:	<u>Year One</u> 2025	<u>Year Three</u> 2027
Revenues	\$93,704,618	\$135,075,480
Expenses:	<u>107,817,863</u>	<u>118,009,855</u>
Gain/(Loss)	(\$14,113,245)	\$17,065,625

**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 14, 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 State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. 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 **January 15, 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 15, 2024**, and construction must be completed by **November 15, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

February 8, 2024

# Need Analysis

## Background and Analysis

The primary service area consists of Westchester and Rockland Counties. Demographics for the primary service area are noted below including a comparison with New York State.

Demographics	Westchester County	Rockland County	New York State
Total Population-2021 Estimate	999,723	336,485	20,114,745
Hispanic or Latino (of any race)	25.2%	18.1%	19.2%
White (non-Hispanic)	52.4%	62.9%	54.7%
Black or African American (non-Hispanic)	13.3%	10.8%	13.9%
Asian (non-Hispanic)	5.9%	5.9%	8.6%
Other (non-Hispanic)	3.2%	2.4%	3.6%

Source: 2021 American Community Survey (5-year Estimates Data Profiles)

According to Data USA, in 2021, 94.9% of the population of Westchester County, and 95.7% of the population of Rockland County had health coverage as follows:

	Westchester	Rockland
Total	94.9%	95.7%
Employer Plans	56.2%	45.0%
Medicaid	14.2%	27.7%
Medicare	12.7%	11.7%
Non-Group Plans	11.5%	11.1%
Military or VA	0.3%	0.3%

Projected visits are 55,219 in Year One and 67,486 in Year Three with Medicaid at 15.84% in Year Three. The table below shows Years One and Three's projected payor source utilization.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Medicaid	8,817	15.97%	10,692	15.84%
Medicare	20,895	37.84%	25,347	37.56%
Commercial	23,577	42.70%	29,242	43.33%
Other	1,930	3.50%	2,205	3.27%

The table below shows the number of visits per medical specialty for years one and three.

Specialty	1st Year	3rd Year
Surgery	8,423	11,403
Rehab	39,008	44,557
Infusion	7,788	11,526
<b>Totals</b>	<b>55,219</b>	<b>67,486</b>

The proposed center will be certified for the following services: multi-specialty ambulatory surgery, medical services- other medical specialties, therapy-speech language o/p, therapy-occupational o/p, and therapy-physical o/p. Currently, patients from the proposed service area receive care in dispersed locations throughout Westchester and New York counties, which can create a fragmented care model and require longer travel time. This project seeks to improve inefficiencies and address these concerns by providing a convenient and accessible modernized ambulatory facility. Market data supports a shift in site of care demonstrating that outpatient surgical volumes will continue to grow by 18% through 2033. The new facility will transform the way the hospital delivers care to its ambulatory patients and provide the necessary space in the hospital to increase access to surgical services in those communities.

The center will be a hospital extension clinic and will operate according to current hospital policy and procedures for providing service to the underinsured.

#### Conclusion

Approval of this project will allow the hospital to transform the way it delivers care for a variety of medical services and provide the necessary space in the existing hospital to increase access to surgical services for the residents of Westchester and Rockland Counties.

## Program Analysis

### Project Proposal

New York Presbyterian Westchester, an existing 288-bed community hospital, at 55 Palmer Avenue in Bronxville (Westchester County), seeks approval to certify a new extension clinic to be located on the 4<sup>th</sup> floor of 1111 Westchester Avenue in White Plains (Westchester County). The extension clinic will be certified for Ambulatory Surgery-Multispecialty including Orthopedics, General Surgery, Ophthalmology, Obstetrics/Gynecology, Urology, and ENT.

There will be 10 rooms on the 4<sup>th</sup> floor of Article 28 space. The Applicant reports that there are three ambulatory surgery sites in the PSA. Traveling to these sites, which can be further from their homes, can cause a fragmented experience for the patient and cause operational inefficiencies. The proposed project will focus on the patient experience and access closer to Westchester County and concurrently alleviate volume demands at other New York Presbyterian locations. The Applicant projects 8,423 procedures in the first year and 11,403 in the third year.

Staffing is expected to grow by 135.8 FTEs in Year One and 31.9.0 FTEs in Year Three of the completed project.

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

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

### Prevention Agenda

New York-Presbyterian Westchester is seeking approval to certify a new extension clinic to be located on the 4<sup>th</sup> floor of 1111 Westchester Avenue in White Plains (Westchester County). The extension clinic will be certified for Ambulatory Surgery-Multispecialty including Orthopedics, General Surgery, Ophthalmology, Obstetrics/Gynecology, Urology, and ENT.

New York-Presbyterian Westchester is implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

- Prevent Chronic Diseases
- Promote Well-being and Prevent Mental and Substance Abuse Disorders
- Promote Healthy Women, Infants and Children
- Prevent Communicable Diseases

This project advances the Prevention Agenda's priorities 'Prevent Chronic Diseases' and 'Promote Healthy Women, Infants, and Children'. The Ambulatory Surgery Center will expand the access to the communities within the Hospital's service area, especially underserved populations.

The New York-Presbyterian Westchester spent \$50,651 on Community Benefits in 2018.

### Conclusion

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

## Financial Analysis

### Total Project Cost and Financing

Total project costs for renovations and the acquisition of moveable equipment are estimated at \$169,322,634, broken down as follows:

	Ambulatory Surgery Sub-Project 1	Infusion & Rehabilitation Therapy Program Sub-Project 2	Total
Renovation & Demolition	\$48,678,000	\$23,475,000	\$72,153,000
Site Development	62,500	62,500	125,000
Design Contingency	4,914,300	2,347,500	7,261,800
Construction Contingency	4,914,300	2,347,500	7,261,800
Architect/Engineering Fees	2,257,000	2,257,000	4,514,000
Other Fees	9,355,078	4,117,793	13,472,871
Movable Equipment	47,176,387	9,749,296	56,925,683
Telecommunications	<u>1,313,304</u>	<u>5,367,006</u>	<u>6,680,310</u>
Sub-Total before Fees	\$118,670,869	\$49,723,595	\$168,394,464
CON Application Fee			2,000
CON Processing Fee			<u>926,170</u>
Total Project Cost			\$169,322,634

- Sub-Project #1 – 4<sup>th</sup> Floor- New Ambulatory Surgery Center (ten operating rooms, thirty pre-operative/recovery positions, clinical support, sterile processing).
- Sub-Project #2 – 3<sup>rd</sup> Floor – Infusion Center with twenty treatment positions, phlebotomy suite, laboratory, pharmacy. 4<sup>th</sup> Floor - space for the rehabilitation program.

The New York and Presbyterian Hospital (NYPH), the operator of NYPHW, will fund the \$169,322,634 project with equity. BFA Attachment B presents The New York and Presbyterian Hospital's 2021-2022 Certified Consolidated Financial Statements, which show sufficient resources to meet the equity requirement.

### Operating Budget

The applicant has submitted their first and third-year operating budgets in 2025 dollars, as summarized below:

	<u>Year One</u> <u>2025</u>		<u>Year Three</u> <u>2027</u>	
<u>Revenues:</u>	<u>Per Visits</u>	<u>Total</u>	<u>Per Visits.</u>	<u>Total</u>
Outpatient Revenue	\$1,697	\$93,704,618	\$2,002	\$135,075,480
<u>Expenses:</u>				
Operating	\$1,616	\$89,230,490	\$1,508	\$101,800,710
Capital	<u>\$337</u>	<u>18,587,373</u>	<u>\$241</u>	<u>16,209,145</u>
Total Expenses	\$1,953	\$107,817,863	\$1,749	\$118,009,855
Net Income		<u>(\$14,113,245)</u>		<u>\$17,065,625</u>
Discharge		55,219		67,486

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

- Medicare revenue was calculated using the Medicare ASC fee schedule for Ambulatory Surgery. All other services and payors were based on historical rates per unit of service.
- Direct staffing expenses were based on staffing models developed for the respective services. Ancillary and supplies were based on historical utilization per unit of service. All other expenses, including staffing and non-staffing expenses, were modeled to support the operations.
- Utilization was based on a historical payor mix for respective services and the payor mix from a local medical practice.

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

<u>Outpatient</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>2025</u>		<u>2027</u>	
<u>Payor:</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid -MC	8,817	15.97%	10,692	15.84%
Medicare-FFS	20,895	37.84%	25,347	37.56%
Commercial-MC	23,577	42.69%	29,242	43.33%
Other	<u>1,930</u>	<u>3.50%</u>	<u>2,205</u>	<u>3.27%</u>
Total	55,219	100%	67,486	100%

#### Capability and Feasibility

Total project costs of \$169,322,634 will be funded with equity from The New York and Presbyterian Hospital (NYPH), the operator of New York-Presbyterian Hospital Westchester.

Working capital will be provided from ongoing operations. New York-Presbyterian Hospital Westchester projects a non-cash operating loss of \$14,113,245 in the first year and a surplus of \$17,065,625 in the third year. While the first-year budget shows an operating loss of \$14,113,245, there's expected to be positive cash flow before the \$17,431,947 in non-cash depreciation expense. The New York-Presbyterian Hospital's Group Senior Vice President, Financial Officer, and Treasurer have submitted a letter committing to support the projected loss. The budget appears reasonable.

A review of BFA Attachment B, The New York and Presbyterian Hospital's 2021-2022 Certified Consolidated Financial Statements show \$2.580 billion in working capital, \$10.791 billion in net assets, and a positive operating income of \$201.2 million for 2022. BFA Attachment C, The New York and Presbyterian Hospital's September 30, 2023, internal consolidated financial statements show \$3.303 billion in working capital, \$11.757 billion in net assets, and a positive operating income of \$337.6 million for the period.

#### Conclusion

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

## Attachments

BHFP Attachment	Map
BFA Attachment A	The New York and Presbyterian Hospital – Network Description
BFA Attachment B	The New York and Presbyterian Hospital – 2021–2022 Certified Financial Statements
BFA Attachment C	The New York and Presbyterian Hospital – September 30, 2023, Internal Financial Statements





**Project # 231311-C  
Samaritan Medical Center**

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

**County: Jefferson**  
**Acknowledged: July 14, 2023**

**Executive Summary**

**Description**

Samaritan Medical Center (SMC), a 290-bed not-for-profit hospital at 830 Washington Street, Watertown, requests approval to certify five (5) psychiatric beds in the existing Inpatient Mental Health Unit (IMHU) and perform requisite renovations. Currently, Samaritan Medical Center has a 34-bed IMHU with double patient rooms. This proposed project will allow SMC to fill more double occupancy rooms and serve patients requiring private rooms.

**OPCHSM Recommendation**  
**Contingent Approval**

**Need Summary**

The applicant projects 10,136 psychiatric inpatient visits in Years One and Year Three, with Medicaid at 45%.

**Program Summary**

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

**Financial Summary**

Total project costs are \$712,950, which will be paid via equity from operations.

**Budget (39 psychiatric beds):**

	<u>Year One</u> <u>(2024)</u>	<u>Year Three</u> <u>(2026)</u>
Revenues	\$6,185,219	\$6,185,219
Expenses	<u>5,884,732</u>	<u>5,884,732</u>
Excess Revenues	\$300,487	\$300,487

**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 15, 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]

**Approval conditional upon:**

1. This project must be completed by **May 15, 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 **August 15, 2024**, and construction must be completed by **February 15, 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 staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. Once the renovations are completed, provide an architect's letter of substantial completion and schedule a pre-occupancy site visit with the OMH Central New York Field Office. [OMH]

Council Action Date

February 8, 2024

# Need Analysis

## Background and Analysis

This project will treat patients in Jefferson County. Samaritan is in a Health Professional Shortage Area for Dental Health, Mental Health, and Primary Care. The population of Jefferson County is projected to increase to 114,226 by 2028, per Cornell Program on Applied Demographics. Demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Jefferson County	New York State
Total Population – 2021 Estimate	111,634	20,114,745
Hispanic or Latino (of any race)	7.7%	19.20%
White (non-Hispanic)	80.9%	54.70%
Black or African American (non-Hispanic)	5.5%	13.90%
Asian (non-Hispanic)	1.5%	8.60%
Other (non-Hispanic)	4.4%	3.60%

Source: 2021 American Community Survey (5-Year Estimates Data Profiles)

In 2020, 95.2% of the population in Jefferson County had health coverage as follows:

Employer Plans	33.9%
Medicaid	22.7%
Medicare	10.3%
Non-Group Plans	15.7%
Military or VA	12.6 %

Source: Data USA

Applicant Projected Payor Mix for Inpatient Services		
Payor	Year One	Year Three
Commercial	3.91%	3.91%
Medicare	26.03%	26.03%
Medicaid	45.01%	45.01%
Private Pay	1.70%	1.70%
Charity Care	0%	0%
Other	23.35%	23.35%

SHMC currently has 290 beds, 34 of which are inpatient mental health unit beds in double-bedded patient rooms, and is seeking approval to add 5 private inpatient beds for a total of 39 beds. According to the applicant, often double-bedded rooms are closed off due to clinical diagnoses and/or isolation reasons, including the gender of patients to create private rooms, which inhibits the unit from running at full occupancy. Currently, patients are transferred out to be treated elsewhere when SHMC is at full occupancy, often with patients being held in the ED awaiting a bed. This has caused a backlog of patients and longer wait times in the ED. The unit had 8,187 visits in the current year and projects 10,136 visits in Years One and Three. The addition of the 5 private rooms will give the ability to fill more double occupancy rooms and better serve the needs of patients by keeping off diversion and getting patients to inpatient psychiatric treatment in a timely manner.

<b>Current and Projected Beds at Samaritan Hospital, Source HFIS/Applicant</b>			
<b>Bed Type</b>	<b>Current Beds</b>	<b>Bed Change</b>	<b>Beds Upon Completion</b>
Coronary Care	4		4
Intensive Care	6		6
Maternity	29		29
Medical / Surgical	166		166
Neonatal Intensive Care	7		7
Neonatal Intermediate Care	8		8
Pediatric	20		20
Physical Medicine and Rehabilitation	16		16
Psychiatric	34	5	39
<b>Total</b>	<b>290</b>	<b>5</b>	<b>295</b>

According to the applicant, in 2021, SHMC had 24 beds available for use in the IMHU due to construction and renovation. As of January 1, 2023, SHMC had all 34 available beds in operation.

<b>Samaritan Medical Center Psychiatric Inpatient Average Daily Census (ADC), Source: SPARCS and Applicant</b>							
<b>Historical/Current</b>						<b>Projected</b>	
<b>Year</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2027</b>
Psychiatric Inpatient	20	17	21	24	23	28	28

#### Conclusion

The addition of these beds will help with timely treatment for mental health patients, preventing the applicant from closing beds and improving patient flow and placement.

## Program Analysis

### Project Proposal

Samaritan Medical Center, a 290-bed not-for-profit acute care hospital at 830 Washington Avenue in Watertown (Jefferson County), seeks approval to certify five (5) additional inpatient mental health beds and perform requisite renovations of existing unoccupied space. Approval of the application will result in a net increase of five (5) mental health beds from 34 to 39 beds.

The Applicant reports that Samaritan is currently a 34-bed Inpatient Mental Health Unit that has double patient rooms. They are constantly unable to reach full occupancy due to the need for specific patients requiring single-bedded occupancy. The addition of five (5) private rooms will allow the facility the ability to fill more double occupancy rooms and better serve the needs of the patients by not having to call diversion. They will also be able to be received from the Behavioral Health ED faster and create a faster throughput and more timely treatment.

The Applicant reports that due to the patients being held in the Emergency Department because of capacity issues, the completion of the project will allow a safer and more timely admission process as well as timelier access to inpatient psychiatric treatment in the inpatient unit. This will also allow Emergency Department beds to be used for emergencies that are coming in.

Staffing is expected to increase as a result of this construction/expansion project by 58.2 FTEs in Year One of the completed project and increase by 58.2 FTEs by Year Three of the completed project.

### Compliance with Applicable Codes, Rules and Regulations

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

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

### Prevention Agenda

Samaritan Medical Center seeks approval to certify five (5) additional inpatient mental health beds and perform requisite renovations of existing unoccupied space.

The Samaritan Medical Center is implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

- Preventing Chronic Diseases
- Promote Well-Being and Prevent Mental and Substance Use Disorders

The proposed project advances the 'Promote Well-Being and Prevent Mental and Substance Use Disorders' priority and Jefferson County's care access. By creating private rooms, Samaritan Medical Center will address suicide prevention and opioid overdoses, which will allow patients to detox in a more private location and develop a treatment plan that is more tailored to their needs. In 2021, the Samaritan Medical Center spent \$209,382 on community health improvement services, representing 0.08 % 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 for renovations and the acquisition of moveable equipment is estimated at \$712,950, detailed as follows:

Renovation and Demolition	\$542,999
Design Contingency	50,278
Construction Contingency	54,300
Architect/Engineering Fees	50,278
Moveable Equipment	9,206
CON Fees	2,000
Additional Processing Fee	<u>3,889</u>
Total Project Cost	\$712,950

The applicant will provide equity from operations to meet the total project cost.

### Operating Budget

The applicant has submitted an operating budget for the 39 psychiatric beds, in 2023 dollars, for the first and third years, summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>(2022)</u>		<u>(2024)</u>		<u>(2026)</u>	
	<u>Per Day</u>	<u>Revenue</u>	<u>Per Day</u>	<u>Revenue</u>	<u>Per Day</u>	<u>Revenue</u>
<b>Revenues:</b>						
Commercial FFS	\$971	\$320,399	\$930	\$367,516	\$930	\$367,516
Medicare FFS	\$1,636	\$1,920,195	\$1,572	\$2,202,577	\$1,572	\$2,202,577
Medicare MC	\$764	\$811,665	\$757	\$931,028	\$757	\$931,028
Medicaid FFS	\$575	\$275,587	\$450	\$316,115	\$450	\$316,115
Medicaid MC	\$141	\$462,644	\$138	\$530,680	\$138	\$530,680
Private Pay	\$2,467	\$365,077	\$2,435	\$418,765	\$2,435	\$418,765
Other	\$816	\$1,388,845	\$786	\$1,612,464	\$786	\$1,612,464
Bad Debt		<u>0</u>		<u>(\$193,926)</u>		<u>(\$193,926)</u>
Total Revenues		\$5,544,412		\$6,185,219		\$6,185,219
<b>Expenses:</b>						
Operating	\$650.83	\$5,328,305	\$569.04	\$5,767,813	\$569.04	\$5,768,713
Capital	<u>3.19</u>	<u>26,130</u>	<u>\$11.48</u>	<u>116,019</u>	\$11.48	<u>116,019</u>
Total Expenses	\$654.02	\$5,354,435	\$580.52	\$5,884,732	\$569.52	\$5,884,732
Excess Revenues		\$189,977		\$300,487		\$300,487
Patient Days		8,187		10,108		10,108

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

- Expense assumptions are based on the historical experience in operating psychiatric beds.
- Utilization assumptions are based on the historical experience in operating psychiatric beds.
- Revenues were based on current reimbursement methodologies.

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

	<u>Current Year</u> <u>(2022)</u>	<u>Year One</u> <u>(2024)</u>	<u>Year Three</u> <u>(2026)</u>
Commercial FFS	4.03%	3.91%	3.91%
Medicare FFS	14.34%	13.86%	13.86%
Medicare MC	12.97%	12.17%	12.17%
Medicaid FFS	5.85%	6.95%	6.95%
Medicaid MC	40.20%	38.06%	38.06%
Private Pay	1.81%	1.70%	1.70%
Other	<u>20.80%</u>	<u>23.50%</u>	<u>23.50%</u>
Total	100.00%	100.00%	100.00%

#### Capability and Feasibility

The total project cost of \$712,950 will be paid with equity from operations. Presented as BFA Attachment A is the 2022 Certified Financial Statements of Samaritan Medical Center and Affiliates, which shows that the hospital has sufficient funds for the equity contribution.

The submitted budget indicates an incremental net income of \$300,487 and \$300,487 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for psychiatric services. The submitted budget appears reasonable.

As shown in Attachment A, the hospital has maintained a positive working capital position and a positive net asset position in 2022. Also, the hospital achieved an operating income of \$444,477 in 2022.

#### Conclusion

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

## Attachments

BFA Attachment A	2022 Certified Financial Statements of Samaritan Medical Center and Affiliates.
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Project # 231332-C
NYU Langone Hospital-Long Island

Program: Hospital
Purpose: Construction

County: Nassau
Acknowledged: July 26, 2023

Executive Summary

Description

NYU Langone Hospitals-Long Island (NYULHLI), an existing Article 28, not-for-profit 591-bed medical center requests approval to certify and construct a new Multi-Specialty Ambulatory Surgery Hospital Extension Clinic at 1400 Northern Boulevard in Manhasset (Nassau County). The extension clinic will be certified for Orthopedic Surgery, Podiatric Surgery, General Surgery, Vascular Surgery, and Endoscopic Procedures. The extension clinic will consist of eight (8) Operating Rooms and six (6) procedure rooms, and all associated support spaces. John Allendorf, MD will serve as the Medical Director.

NYULHLI is experiencing increased demand for surgical services at its Garden City extension clinic, the onsite Ambulatory Surgery Unit, and the Main Operating Room. Completion of this project is expected to reduce procedures at the main campus, expand block times for physicians, and create shorter patient wait times. NYULHLI will be able to provide more complex surgeries at the main campus site and transition some of the volume for less complex surgical procedures to the extension site. Residents in the community will benefit from this expansion, having better surgical and procedural time access while decreasing wait times from diagnosis to procedure.

OPCHSM Recommendation

Contingent Approval is recommended.

Need Summary

The applicant projects 16,506 procedures in Year One and 18,307 in Year Three, with Medicaid utilization at 18.19%.

Program Summary

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

Financial Summary

The total project costs of \$60,041,496 will be funded with equity from NYU Langone Hospital.

Table with 3 columns: Budget, Year One (2026), Year Three (2028). Rows include Revenues, Expenses, Excess, and Revenues.

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 19, 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]

#### Approval conditional upon:

1. This project must be completed by **March 15, 2026**, 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 **May 15, 2024**, and construction must be completed by **December 15, 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. Per 710.9 the applicant shall notify the appropriate Regional Office at least two months in advance of the anticipated completion of construction date to schedule any required pre-opening survey. Failure to provide such notice may result in delays affecting both the pre-opening survey and authorization by the Department to commence occupancy and/or operations. [AER]
5. Compliance with all applicable sections of the NFPA 101 Life Safety Code (2012 Edition), and the State Hospital Code during the construction period is mandatory. This is to ensure the health and safety of all building occupants are not compromised by the construction project. This may require the separation of residents, patients, and other building occupants, essential resident/patient support services, and the required means of egress from the actual construction site. The applicant shall develop an acceptable plan for maintaining the above objectives prior to the actual start of construction and maintain a copy of the same on-site for review by Department staff upon request. [AER]
6. This approval in no way obviates the applicant of the responsibility of complying with all applicable codes, rules, and regulations. Should violations be noted upon review of documents or found at the time of on-site inspections, or surveys, such violations shall be corrected prior to occupancy without additional costs allowed for reimbursement beyond the total project cost listed above. [AER]

### Council Action Date

February 8, 2024

## Need Analysis

### Background and Analysis

The primary service area consists of portions of Nassau, Suffolk, and Queens County. 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%	19.20%
White (non-Hispanic)	58.3%	66.4%	24.6%	54.70%
Black or African American (non-Hispanic)	11.0%	6.9%	16.8%	13.90%
Asian (non-Hispanic)	10.5%	4.0%	25.6%	8.60%
Other (non-Hispanic)	3.1%	2.7%	4.8%	3.60%

Source: 2021 American Community Survey (5-year Estimates Data Profiles)

According to Data USA, in 2020, 95.9% of Nassau County residents, 95.8% of Suffolk County residents, and 89.5% of Queens County residents had health coverage as follows:

County	Nassau	Suffolk	Queens
Health Coverage	95.9%	95.8%	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 number of projected procedures is 16,506 in Year One and 18,307 in Year Three with Medicaid utilization of 18.19% in the third year and no Charity Care. The table below shows the applicant's projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Comm Ins FFS	833	5.05%	927	5.06%
Comm Ins MC	9,129	55.31%	10,122	55.29%
Medicare FFS	2,184	13.23%	2,420	13.22%
Medicare MC	1,116	6.76%	1,237	6.76%
Medicaid FFS	68	0.41%	76	0.42%
Medicaid MC	2,932	17.76%	3,254	17.77%
Private Pay	58	0.35%	65	0.35%
Other	186	1.13%	206	1.13%

The center will be a hospital extension clinic and will operate according to current hospital policy and procedures for providing service to the underinsured.

According to the applicant, there currently is an extended lead time for scheduling ambulatory surgery and the times available are either early morning or in the evening. The hospital is experiencing a substantial increase in the demand for surgical services at the Ambulatory Center Zeckendorf, the onsite ambulatory surgery unit, and the main operating room. Due to the limited availability for surgical time, both inpatient and outpatient room utilization averages more than 86% occupancy. This new facility will accommodate the increased ambulatory volume from the hospital setting. The transition of ambulatory volume from the hospital to the new site will provide capacity for more extensive and complex surgical procedures on the main campus.

**Conclusion**

Approval of this project allows the hospital to move ambulatory surgery cases from the hospital to a dedicated ambulatory surgery site. This will provide capacity for more extensive and complex surgical procedures on the hospital's main site. Approval of this project provides improved access to a variety of outpatient surgical procedures for the residents of Nassau, Queens, and Suffolk Counties.

## Program Analysis

### Project Proposal

NYU Langone-Long Island, an existing tertiary care 591-bed medical center at 259 First Street in Mineola (Nassau County), seeks approval to certify and construct a new extension clinic to be located at 1400 Northern Boulevard in Manhasset (Nassau County). The extension clinic will be certified for Orthopedic Surgery, Podiatric Surgery, General Surgery, Vascular Surgery, and Endoscopic Procedures. The extension clinic will provide eight (8) Operating Rooms (OR) and six (6) procedure rooms, and all associated support spaces.

The Applicant reports that they currently have an extended lead time for scheduling ambulatory surgery cases and the times available are either early in the morning or in the evening which the patients are dissatisfied with. The additional ambulatory surgical capacity will enable the accommodation of cases in a timelier manner and will free time in the main OR for more extensive and complex cases.

Staffing is expected to grow by 140.0 FTEs in Year One and 19.0 FTEs in Year Three of the completed project.

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

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

### Prevention Agenda

The NYU Langone Hospital- Long Island, in Nassau County, is seeking approval to establish a multi-specialty Ambulatory Surgery Center (ASC) at 1440 Northern Boulevard, Manhasset, New York. The new ASC will address the substantial increase in demand for surgical services at the Ambulatory Surgery Center Zeckendorf and the Main Operating Room.

The NYU Langone Hospital- Long Island 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 who require ambulatory surgical procedures.

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

Total project costs are estimated at \$60,041,496 broken down as follows:

Renovation & Demolition	\$27,400,426
Design Contingency	2,740,042
Construction Contingency	1,370,021
Architect/Engineering Fees	5,333,631
Construction Manager Fees	3,205,014
Moveable Equipment	19,661,951
CON Fees	2,000
Additional Processing Fee	<u>328,411</u>
Total Project Cost	\$60,041,496

NYULH will provide equity to fund this project in its entirety. As shown in BFA Attachments A and B, NYULH has sufficient resources to meet the equity requirement.

### Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for the first and third year, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2026</u>		<u>2028</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<b>Revenues:</b>				
Commercial Fee-For-Service	\$ 3,659	\$ 3,047,885	\$ 3,657	\$3,389,814
Commercial Managed Care	\$ 7,525	68,700,175	\$ 7,512	76,036,428
Medicare Fee for Service	\$ 1,138	2,486,449	\$ 1,136	2,749,177
Medicare Managed Care	\$ 1,167	1,302,369	\$ 1,165	1,441,114
Medicaid Fee for Service	\$ 1,311	89,151	\$ 1,300	98,771
Medicaid Managed Care	\$ 1,699	4,981,431	\$ 1,696	5,517,824
Private Pay	\$ 1,161	67,350	\$ 1,149	74,666
Other	\$5,168	961,245	\$5,146	1,060,099
Total Revenues		<u>\$81,636,054</u>		<u>\$90,367,892</u>
<b>Expenses:</b>				
Operating	\$1,850.93	\$30,551,497	\$1,996.64	\$36,552,572
Capital	<u>686.96</u>	11,339,007	<u>913.83</u>	16,729,833
Total Expenses	\$2,537.89	<u>\$41,890,505</u>	\$2,910.47	<u>\$53,282,405</u>
Excess Revenues		<u>\$39,745,549</u>		<u>\$37,085,487</u>
Total Visits/Procedures		16,506		18,307
Cost Per Visit		\$2,537.90		\$2,910.49

The following is noted with respect to the operating budget:

- Revenues are based on current payor rates experienced at the Long Island Campus and published Medicaid and Medicare rates and negotiated commercial rates.
- Expenses are based on similar experiences at other NYU locations and projected increased volume during Year One and Year Three during start-up operations. During the start-up phase, more technicians and specialists are needed due to increased volume in Year Three, increasing FTEs from 140 FTEs to 159 FTEs adjusted for volume. Year Three is more normalized, and adjustments to staffing depending on volume for this start-up are a better prediction than Year One. Also, medical supply costs are expected to increase as part of the operating costs and would be a reasonable assumption in Year Three.
- Utilization assumptions are based on the current experience of the Long Island Campus.

Utilization by payor source for Year One and Year Three is as follows:

	<u>Year One</u> <u>(2026)</u>	<u>Year Three</u> <u>(2028)</u>
Commercial Fee-For-Service	5.05%	5.06%
Commercial Managed Care	55.31%	55.29%
Medicare Fee for Service	13.23%	13.22%
Medicare Managed Care	6.76%	6.76%
Medicaid Fee for Service	0.41%	0.42%
Medicaid Managed Care	17.76%	17.77%
Private Pay	0.35%	0.35%
Other	<u>1.13%</u>	<u>1.13%</u>
Total	100.00%	100.00%

The applicant indicated they are committed to serving all persons in need without regard to the patient's ability to pay or the source of payment. The hospital will develop, maintain, and update a sliding fee scale as well as policies and procedures for serving the uninsured and persons without the ability to pay.

### **Lease Rental Agreement**

The applicant has submitted an executed lease rental agreement for the site which is summarized below:

Date:	November 29, 2022
Premise:	1440 Northern Manhasset Drive, Manhasset (3-Story building, 161,726 Sq. Ft.)
Landlord:	HBS Leasehold, LLC
Tenant:	New York University (NYU Grossman School of Medicine).
Term:	30 Years
Rental Amount:	\$6,226,451- yearly base rent and increases of 2.5% percent each year over the term.
Provisions:	Landlord shall maintain a Mid-Term allowance in (Year 20) for eligible alterations to the Premises during this eligible period. Tenant shall pay rent within five business days by wire to landlords' bank account.

Two (2) letters of rent reasonableness have been submitted from licensed NYS Realtors. Also, an executed affidavit has been submitted stating the lease is an arm's length agreement, landlord and tenant are not related. The landlord is Delaware LLC, located at 225 Liberty Street, 31<sup>st</sup> floor, New York, New York 10016.

### **Capability and Feasibility**

The total project cost of \$60,041,496 will be met with equity from NYULH. The working capital requirements are estimated at \$8,880,400 based on two months of third-year expenses and will be funded through NYULH's operations. The submitted budget indicates a net income of \$39,745,549 and \$37,085,487 during the first and third years, respectively. The budget appears reasonable.

BFA Attachment A presents NYULH's 2021-2022 Certified Financial Statements showing the entity maintained positive working capital, a positive net equity position, and a net operating income of \$594,650,000 and \$619,176,000, for both years, respectively. BFA Attachment B presents NYULH's Internal Financial Statements, showing the entity maintained a positive working capital, positive net equity position, and a gain from operations of \$686,257,000 for the full fiscal year ending August 31, 2023.

### **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	August 31, 2023, Internal Financial Statement for NYU (12-Months)





Project # 231348-C
Long Island Community Hospital at NYU Langone Health

Program: Hospital
Purpose: Construction

County: Suffolk
Acknowledged: July 27, 2023

Executive Summary

Description

Long Island Community Hospital at NYU Langone Health (LICH), an existing Article 28, not-for-profit 306-bed medical center, requests approval to certify and construct a new Multi-Specialty Ambulatory Surgery Hospital Extension Clinic at 196 Main Street in Patchogue, New York. The extension clinic will be certified for orthopedic, podiatry, general, vascular, and endoscopy surgery services and consist of six (6) operating rooms and an Endoscopy Suite with four (4) procedure rooms and all associated support spaces. Dr. Hasan will serve as the Medical Director.

LICH is experiencing an increase in demand for surgical services at the main site, which limits the recruitment of new surgeons and the growth in ambulatory procedures. This project is expected to alleviate those pressures. The new facility will accommodate the increased ambulatory surgery volume from the hospital setting at a dedicated ambulatory site of service, resulting in an increase in patient satisfaction and an expected surgical growth rate of 5% annually. The transition of ambulatory volume from the main hospital to the new extension clinic will free up capacity for more extensive and complex surgical procedures on the main campus.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant projects 11,424 visits in the first year and 12,680 in the third. Medicaid utilization is projected at 9.97% with no Charity Care.

Program Summary

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

Financial Summary

The total project cost of \$69,570,797 will be met with equity from hospital operations.

Table with 3 columns: Budget, Year One (2025), Year Three (2027). Rows include Revenues, Expenses, and Excess Revenues.

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 20, 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. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an MAI appraisal that is acceptable to the Department of Health. [BFA]
4. 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]

#### Approval conditional upon:

1. This project must be completed by **December 8, 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 **August 8, 2024**, and construction must be completed by **September 8, 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 staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospitals/docs/hcs\\_access\\_forms\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]
5. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

### Council Action Date

February 8, 2024

# Need Analysis

## Background and Analysis

The primary service area is Suffolk County. The population of Suffolk County is projected to decrease to 1,492,157 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 State.

Demographics	Suffolk County	New York State
Total Population-2021 Estimate	1,522,998	20,114,745
Hispanic or Latino (of any race)	19.9%	19.2%
White (non-Hispanic)	66.4%	54.7%
Black or African American (non-Hispanic)	6.9%	13.9%
Asian(non-Hispanic)	4.0%	8.6%
Other (non-Hispanic)	2.7%	3.6%

Source: 2021 American Community Survey (5-Year Estimates Data Profiles)

In 2020, 95.8% of Suffolk County residents had health coverage as follows:

Employer Plans	58.3%
Medicaid	11.6%
Medicare	13%
Non-Group Plans	12.4%
Military or VA	0.501%

Source: Data USA

According to the applicant, this project is needed to accommodate the increased demand for surgical services at the main site. The transition of ambulatory volume from the hospital to the new site will provide capacity for more extensive and complex surgical procedures on the main campus.

The number of projected procedures is 11,424 in Year One and 12,680 in Year Three with Medicaid at 9.97%. The table below shows the applicant's projected payor source utilization for Years One and Year Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Comm Ins FFS	95	0.83%	111	0.88%
Comm Ins MC	2,770	24.25%	3,084	24.32%
Medicare FFS	2,986	26.14%	3,281	25.88%
Medicare MC	2,904	25.42%	3,220	25.39%
Medicaid FFS	555	4.86%	622	4.91%
Medicaid MC	581	5.09%	642	5.06%
Private Pay	206	1.80%	234	1.85%
Other	1,327	11.62%	1,486	11.72%

The center will be a hospital extension clinic and will operate according to current hospital policy and procedures for providing service to the underinsured.

## Conclusion

Approval of this project allows the hospital to move ambulatory surgery cases from the hospital to a dedicated ambulatory surgery site. This will provide capacity for more extensive and complex surgical procedures on the hospital's main site. Approval of this project provides improved access to a variety of outpatient surgical procedures for the residents of Suffolk County. From a Need perspective, Approval is recommended.

## Program Analysis

### Project Proposal

<b>Proposed Operator</b>	Long Island Community Hospital
<b>To Be Known As</b>	Long Island Community Hospital at NYU Langone Health
<b>Site Address</b>	196 Main Street Patchogue, NY 11772
<b>Surgical Specialties</b>	Ambulatory Surgery-Multi-Specialty
<b>Surgery Categories</b>	Endoscopic procedures including colonoscopies and EGD procedures, orthopedic surgery, podiatric surgery, general and vascular surgery
<b>Operating Rooms</b>	6
<b>Procedure Rooms</b>	4
<b>Hours of Operation</b>	Monday through Saturday 9 am – 5 pm
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	119 FTEs / 121 FTEs
<b>Medical Director(s)</b>	Chair of surgery – Dr. Collin Brathwaite Chair of Medicine – Dr. Parag Mehta Medical Director – Dr. Hasan
<b>Emergency, In-Patient, and Backup Support Services Agreement and Distance</b>	LICH will provide emergency, inpatient, and backup support services agreement, and distance. LICH in Patchogue to provide backup services. 4.8 miles/ 14 minutes
<b>After-hours access</b>	Patients will have access to surgical staff during hours the facility is closed by utilizing the on-call operating room team.

### Character and Competence

The facility will be governed by the Board of Directors of Long Island Community Hospital with more than 25 members from the community.

### Integration with Community Resources

The Hospital established an Advisory Council to receive further input to the needs of the community's residents. There are more than 30 members on the Advisory Council. Members are typically active in other areas of the community and include civic leaders, members of the clergy, school representatives, public health advocates, business leaders, and service and fraternal club members.

Long Island Community Hospital's outreach program participates in community health fairs, with senior and community centers, as well as civic associations throughout the region. Long Island Community Hospital is also an active member of eight Chambers of Commerce in the community. Membership with these chambers affords LI Community Hospital the opportunity to learn of the needs of the workforce and business leaders in the community. Long Island Community Hospital has a strong presence in the civic and service clubs, (e.g., Kiwanis, Rotary Club, Lions,) houses of worship, the YMCA and Boys and Girls Club, local government health and social service programs, the social service agencies, senior living communities, and public libraries. The engagement of the New York State Department of Health Schedule 16B Certificate of Need Application DOH 155-D Schedule 16B 5 (11/2019) broader community, for assessment processes, is achieved through the LICH's and its partners' ongoing distribution of the Long Island and Eastern Queens Community Health Needs Assessment.

The Long Island Community Hospital specifically addresses the selected priorities through education and interventions. For the condition of diabetes, we offer the New York State National Diabetes Prevention Program (NYS NDPP) to help individuals screened as borderline to prevent full-blown diabetes, and for those already diagnosed, we offer the American Diabetes Association Program at Long Island Community Hospital. These are the statistics: Diabetes mortality rates are 14% of all deaths in Suffolk County and are the highest in the region. Diabetes hospitalization rates in Suffolk County are also highest in the region at 15.9%. Suffolk County has 29.1% of its population classified as obese. This exceeds both the State at 24.9% and the country at 23.2%. The rate of hospitalization for short-term complications due

to diabetes per 10,000 increased to 4.83. 3% of Suffolk County residents are at risk for premature death due to diabetes.

**Substance Use Disorders** - The prevalence of heroin use is increasing, due to its low cost and ease of accessibility. In 2016 Our Emergency Room has noted a significant increase in drug-related visits. In Suffolk County, drug-related admissions increased by 9% from 2013 to 2014. As such, Long Island Community Hospital has identified a strong need for community education, prevention, and treatment services to quell this rising epidemic.

It is not the intent of the Applicant to become part of an Accountable Care Organization.

The facility will utilize an electronic medical record system (EPIC).

### **Prevention Agenda**

Long Island Community Hospital at NYU Langone Health in Suffolk County is seeking approval to establish an Ambulatory Surgery Hospital Extension Clinic (ASC) at 196 Main Street in Patchogue, New York. The new facility will address the substantial increase in demand for surgical services at the main site, which limits the growth in the recruitment of new surgeons and the growth in ambulatory procedures.

Long Island Community Hospital at NYU Langone Health is implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

- Prevent Chronic Diseases
- Promote Well-being and Prevent Mental and Substance Abuse Disorders

Establishing the ASC would improve access for current patients; however, it does not explicitly advance the local Prevention Agenda priorities identified in the most recently completed Community Health Improvement/Community Service Plan.

In 2021, Long Island Community Hospital at NYU Langone Health spent \$236,070 on community health improvement services, representing 0.09% 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

Total project cost, which is for building acquisition, renovations, and the acquisition of moveable equipment, is estimated at \$69,570,797, broken down as follows:

Building Acquisition	\$7,200,000
Renovation and Demolition	32,001,988
Asbestos Abatement or Removal	1,200,000
Design Contingency	3,200,198
Construction Contingency	3,200,198
Fixed Equipment	2,415,425
Planning Consultant Fees	405,000
Architect/Engineering Fees	2,034,219
Construction Manager Fees	836,220
Other Fees (Consultant)	300,562
Moveable Equipment	13,054,869
Telecommunications	3,339,583
CON Fee	2,000
Additional Processing Fee	<u>380,535</u>
Total Project Cost	<u>\$69,570,797</u>

The applicant will provide equity to meet the total project cost.

### Operating Budget

The applicant has submitted an incremental operating budget, in 2023 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u> <u>(2025)</u>		<u>Year Three</u> <u>(2027)</u>	
	<u>Per Procedure</u>	<u>Total</u>	<u>Per Procedure</u>	<u>Total</u>
<b>Revenues:</b>				
Commercial FFS	\$4,669	\$443,508	\$4,725	\$524,421
Commercial MC	\$7,656	\$21,206,664	\$7,610	\$23,467,926
Medicare FFS	\$965	\$2,881,629	\$955	\$3,132,511
Medicare MC	\$1,082	\$3,140,745	\$1,081	\$3,479,822
Medicaid FFS	\$1,651	\$916,323	\$1,659	\$1,032,029
Medicaid MC	\$1,713	\$995,490	\$1,711	\$1,098,599
Private Pay	\$1,908	\$393,123	\$1,941	\$454,078
Other	\$2,155	<u>\$2,860,321</u>	\$2,125	<u>\$3,158,259</u>
Total Revenues		\$32,837,803		\$36,347,645
<b>Expenses:</b>				
Operating	\$1,983	\$22,650,952	\$1,700	\$21,556,655
Capital	<u>\$375</u>	<u>\$4,279,136</u>	<u>\$675</u>	<u>\$8,558,272</u>
Total Expenses	\$2,357	\$26,930,088	\$2,375	\$30,114,927
Excess Revenues		\$5,907,715		\$6,232,718
Utilization: (Procedures)		11,424		12,680

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

- Expense assumptions are based on the historical experience of the hospital.
- Utilization assumptions are based on four (4) ambulatory surgery units and four (4) endoscopy rooms operating 250 days per year for 9.5 hours per day with an 85% occupancy rate and a 5% year-over-year growth.

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

	<u>Year One</u> <u>(2025)</u>	<u>Year Three</u> <u>(2027)</u>
Commercial FFS	0.83%	0.88%
Commercial MC	24.25%	24.32%
Medicare FFS	26.14%	25.88%
Medicare MC	25.42%	25.39%
Medicaid FFS	4.86%	4.91%
Medicaid MC	5.09%	5.06%
Private Pay	1.80%	1.85%
Other	<u>11.62%</u>	<u>11.72%</u>
Total	100.00%	100.00%

### **Building Purchase Agreement**

The applicant has submitted an executed purchase and sale agreement for the building, which is summarized below:

Date	January 18, 2022
Seller	East Main Street Associates, LLC
Purchaser	New York University
Purchase Price	\$7,200,000
Payment of Purchase Price	\$360,000 provided in escrow and \$6,840,000 payable at Closing.

### **Capability and Feasibility**

The total project cost is \$69,570,797 and will be met with equity from the operations of NYU Langone Hospitals.

Working capital requirements are estimated at \$5,019,154, which is equivalent to two months of third-year incremental expenses. The applicant will provide equity from operations to meet the working capital requirement. 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 resources to fund the total project cost and the working capital contribution.

The submitted budget projects excess revenues over expenses of \$5,907,715 and \$6,232,718 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services. The submitted budget appears reasonable. As shown in Attachment A, NYU Langone Hospitals had positive working capital and net asset positions on August 31, 2021, and August 31, 2022. Also, NYU Langone Hospitals achieved an excess of revenues over expenses of \$748,583,000 and \$360,846,000 on August 31, 2021, and August 31, 2022, respectively.

### **Conclusion**

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

## **Attachments**

BHFP Attachment	Map
BFA Attachment A	Financial Summary- August 31, 2021, and August 31, 2022, Certified Financial Statements of NYU Langone Hospitals



Project # 231326-C
Auburn Community Hospital

Program: Hospital
Purpose: Construction

County: Cayuga
Acknowledged: July 26, 2023

Executive Summary

Description

Auburn Community Hospital (ACH), a 99-bed, voluntary not-for-profit, Article 28 acute care hospital at 17 Lansing Street, Auburn (Cayuga County), requests approval to certify Cardiac Catheterization - Percutaneous Coronary Intervention (PCI) services. The PCI lab will be in a second Interventional Radiology (IR) Suite. Limited Review Application (LRA) 231365, to expand and upgrade the Interventional Radiology Suite, is concurrently under review by the Department.

Auburn Community Hospital has a letter of intent from St. Joseph's Hospital Health Center (SJHHC) to provide a clinical sponsorship for Cardiac Catheterization and PCI services at ACH.

The implementation of Cardiac Catheterization - PCI services at ACH is a precursor to a soon-to-be-built Auburn Heart Institute on the ACH's campus. In February 2023, ACH was awarded \$21M through a NYS Statewide Health Care Facility Program III Transformation Grant for the Auburn Heart Institute. The program will be led by Ronald Kirshner, M.D., a cardiothoracic surgeon.

Establishing Cardiac Catheterization and PCI services at ACH will alleviate the need to transfer patients with time-sensitive outcomes. Currently, patients must travel to Syracuse or Rochester.

OPCHSM Recommendation

Contingent Approval is recommended.

Need Summary

In 2022, 131 Cayuga County residents were treated outside of the county for emergency PCI procedures. The applicant projects approximately 75 PCI procedures in Year One (40 emergency) and 125 PCI (64 emergency) procedures by Year Three.

Program Summary

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

Financial Summary

Project costs of \$53,281 will be funded with equity from Auburn Community Hospital.

Table with 3 columns: Budget, Year One, Year Three. Rows include Revenues, Expenses, and Net Income with specific dollar amounts.

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 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. Submission of an executed sponsorship agreement with a New York State Cardiac Surgery Center, acceptable to the Department of Health. [HSP]
3. Submission of an executed Cardiac Catheterization Clinical Sponsorship acceptable to the Department of Health. [BFA]
4. Approval contingent on Department of Health approval of related LRA Project 231365. [CCC]

**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. Conditional on performing a minimum of 36 emergency Percutaneous Coronary Interventions per year of operations in accordance with Regulation 405.29 (e)(2)(iv) minimum workload standards. [HSP]

Council Action Date

February 8, 2024

# Need Analysis

## Background and Analysis

The primary service area is Cayuga County. Auburn Community Hospital is within a Health Professional Shortage Area for Primary Care. The population of Cayuga County was 76,644 in 2021 and is projected to decrease to 75,186 by 2028 based on Cornell Program on Applied Demographics estimates. Cayuga County's 65+ population was 14,696 in 2021 and is expected to increase to 17,104, an increase of 16.4%.

Demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Cayuga County	New York State
Total Population	76,644	20,114,745
Hispanic or Latino (of any race)	3.1%	19.20%
White (non-Hispanic)	88.8%	54.70%
Black or African American (non-Hispanic)	3.9%	13.90%
Asian (non-Hispanic)	0.7%	8.60%
Other (non-Hispanic)	3.5%	3.60%

Source: 2021 American Community Survey (5-Year Estimates Data Profiles)

According to Data USA, in 2020, 95.7% of the population in Cayuga County had health coverage as follows.

Employer Plans	48.0%
Medicaid	19.4%
Medicare	14.5%
Non-Group Plans	11.9%
Military or VA	1.85 %

Applicant Projected Payor Mix				
Payor	Year One	Year Three	Year One	Year Three
	Inpatient Services		Outpatient Services	
Commercial	5.88%	5.03%	5.00%	5.00%
Medicare	84.31%	86.79%	86.00%	85.98%
Medicaid	6.86%	6.92%	7.00%	7.02%
Charity Care	2.94%	1.26%	2.00%	2.01%

The applicant projects 75 PCI procedures in Year One (40 emergency) and 125 PCI procedures (64 emergency) by Year Three.

In 2022, Cayuga residents received 189 PCI treatments as classified under New York Title 10 Cardiac Services Regulation 709.14. Of these, 0 procedures were performed in Cayuga County. Currently, most Cayuga residents are seeking PCI procedures at St. Joseph's Hospital which is 28.3 miles or 39-minute travel time from Auburn Community Hospital, the only Hospital in Cayuga County. Decreasing Door to Balloon time in emergency PCI cases has been shown in many studies to be significantly associated with survival benefits. The table below shows hospitals where PCI treatments were performed for Cayuga County residents and their distance from Auburn Community Hospital.

<b>2022 Total/Emergency PCI's Performed on Cayuga Residents</b>				
<b>Hospital Name</b>	<b>County</b>	<b>Distance/Time from Applicant</b>	<b>Total Cases</b>	<b>Emergency</b>
Upstate University Hospital	Onondaga	21.8 miles/35 min	8	6
St. Joseph's Hospital	Onondaga	28.3 miles/39 min	132	84
Crouse Hospital	Onondaga	29 miles/39 min	17	15
Cayuga Medical Center	Tompkins	40.5 miles/57 min	7	6
Strong Memorial Hospital	Monroe	64 miles/1 hr 12 min	10	7
Rochester General Hospital	Monroe	65.2 miles/1 hr 10 min	5	4
Arnot Ogden Medical Center	Chemung	72.2 miles/1 hr 38 min	2	2
Bassett Medical Center	Otsego	121 miles/2 hr 6 min	2	2
Buffalo General Medical Center	Erie	125 miles/2 hr 2 min	1	1
St. Peter's Hospital	Albany	171 miles/2 hr 38 min	1	0
Albany Medical Center	Albany	172 miles/2 hr 40 min	4	4
<b>Total</b>			<b>189</b>	<b>131</b>

Source: Cardiac Services & Google Maps 2023 (Travel times displayed assume average travel conditions)

### Conclusion

By providing PCI-capable Cardiac Catheterization services, Auburn Community Hospital anticipates the achievement of the following goals:

- Reduced travel times for access to PCI procedures for residents.
- Improved cardiac health outcomes for residents of the ACH service area who experience poor cardiac health outcomes.
- This project will also enhance ACH's designation by the New York State Department of Health as a Primary Stroke Center and help grow the Auburn Heart Institute.
- Promote Auburn's future sustainability.

# Program Analysis

## Project Proposal

Auburn Community Hospital (Auburn), a 99-bed acute care hospital at 17 Lansing Street, Auburn, New York 13021 (Cayuga County), requests approval to certify Cardiac Catheterization - Percutaneous Coronary Intervention (PCI) services. St. Joseph's Hospital Health Center (SJHHC) has submitted a Letter of Intent to serve as the PCI Clinical Sponsor. SJHHC, a 451-bed facility at 301 Prospect Avenue in Syracuse, NY, is a full-service cardiac surgery provider.

Auburn's Primary service area is the city of Auburn, NY, as well as surrounding towns in Cayuga County. The service area envelopes the western borders of Onondaga County, the eastern edges of Seneca County, and the northern borders of Tompkins County. SJHHC is 33.5 miles and 39 minutes from Auburn Community Hospital. Auburn's analysis of 2021 data shows an outmigration of 382 cardiac catheterization cases for patients living in the Auburn primary and secondary service areas. This includes 348 inpatient and outpatient catheterization cases transferred to St. Joseph's, as well as 34 cases transferred to other facilities.

The catheterization laboratory team will be a 4-person team consisting of one (1) radiation technologist and three (3) RNs. Auburn Community Hospital is planning an 8-hour scheduled outpatient catheterization lab with 24/7 coverage on call.

The Applicant anticipates 34-40 emergency Percutaneous Coronary Interventions in the first year of operations and a total of 413 catheterizations and interventions within two years of start-up. There are seven (7) interventional cardiologists at St. Joseph's Hospital. The Applicant reports St. Joseph's volume as being one of the highest in the region. Per the Department of Health Cardiac Department, in 2020, St. Joseph's performed 337 emergent Percutaneous Coronary Interventions - 323 in 2021 and 311 in 2022. This is draft data due to the impacts of COVID-19.

The implementation of this project will result in up to 80% of current procedures being sent to providers outside of their market for advanced cardiovascular care remaining within the service area by Year Five. Auburn further plans a fully functioning heart institute by Year Five. Auburn's Cardiology services include four (4) board-certified cardiologists. Dr. Ronald Kirshner is the Medical Director of the Cardiac Catheterization Lab and is registered through August 2025.

The implementation of this project, as well as the larger Auburn Heart Institute, will (1) address the prevention of chronic disease, (2) Improve health status and reduction of health disparities, and (3) result in bringing services closer to home, especially for lower-income patients, requiring less travel time and expense, less time away from work and less cost for childcare coverage during appointments or procedures. Staffing is expected to increase by 17.8 FTEs in the first year after completion and 18.8 FTEs in the third year of operation.

The Applicant has submitted a written plan that demonstrates their ability to comply with all the standards for PCI Capable Cardiac Catheterization Laboratories, and they have assured the Department that their program will meet all of the requirements of 405.29(e)(1-3) and 405.29(e)(5).

## Compliance with Applicable Codes, Rules, and Regulations

The Department issued a Stipulation and Order (S&O) dated August 7, 2017, and fined Jacobi Medical Center \$2,000 based on findings from a survey that was completed on November 9, 2016. Deficient practice was cited in Patient Rights. Specifically, deficient practice was identified that the security guards were transporting patients from the Emergency Department to the CPEP area using metal handcuffs.

## Office of Public Health

Auburn Community Hospital in Cayuga County is seeking approval to establish a Percutaneous Coronary Intervention (PCI) lab. The cardiac PCI lab will address unmet needs and health disparities that exist for

the rural population of Cayuga County, who are at high risk for cardiovascular disease and primarily (79%) served by Medicaid and Medicare.

Auburn Community Hospital is implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

- Prevent Chronic Diseases
- Promote Well-being and Prevent Mental and Substance Abuse Disorders
- Promote Healthy Women, Children, and Infants
- Promote a Healthy and Safe Environment

Establishing the PCI lab advances the Prevention Agenda priority 'Prevent Chronic Diseases' and improves health status and reduces health disparities. It also brings services closer to Cayuga County, benefiting lower-income patients by lowering costs, travel time, and expenses.

In 2021, Auburn Community Hospital spent \$10,127,869 on community benefits. However, the total reported spending on community health improvement services and community benefit operations was zero.

#### Conclusion

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

## Financial Analysis

### Total Project Cost and Financing

Project costs are estimated at \$53,281, broken down as follows:

Movable Equipment (Software Lease)	\$51,000
Application Fee	2,000
Additional Fee for Projects	<u>281</u>
Total Project Cost with Fees	\$53,281

The applicant will fund the total project cost with liquid resources. BFA Attachment A presents Auburn Community Hospital and Affiliates' 2021- 2022 Certified Financial Statements and shows sufficient resources to fund the project.

### Operating Budget

The applicant has submitted an incremental operating budget, in 2023 dollars, for Year one and Year Three, as summarized below:

	<u>First Year</u> <u>2024</u>		<u>Third Year</u> <u>2026</u>	
	<u>Per Discharge</u>	<u>Total</u>	<u>Per Discharge</u>	<u>Total</u>
Revenues-Inpatient:				
Medicaid FFS	\$22,738	\$90,952	\$19,123	\$133,863
Medicaid MC	\$19,617	58,852	\$21,654	86,617
Medicare FFS	\$21,652	736,181	\$19,700	1,083,501
Medicare MC	\$21,236	1,104,271	\$19,581	1,625,251
Commercial FFS	\$18,726	74,902	\$18,373	110,240
Commercial MC	\$16,051	32,101	\$23,623	47,246
Subtotal Inpatient		\$2,097,259		\$3,086,718
Revenues-Outpatient:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Medicaid FFS	\$1,574	\$284,961	\$1,332	\$364,858
Medicaid MC	\$1,640	191,893	\$1,397	247,344
Medicare FFS	\$1,475	2,159,606	\$1,237	2,732,848
Medicare MC	\$1,475	3,239,409	\$1,237	4,099,271
Commercial FFS	\$1,592	237,227	\$1,352	304,301
Commercial MC	\$1,589	101,669	\$1,358	130,415
Other -340B		<u>75,000</u>		<u>75,000</u>
Subtotal Outpatient		\$6,289,765		\$7,954,037
Total Revenue		\$8,387,024		\$11,040,755
Expense-Inpatient:				
Operating	\$16,243	\$1,656,774	\$12,799	\$2,034,991
Capital	<u>\$42</u>	<u>4,289</u>	<u>\$30</u>	<u>4,786</u>
Subtotal Expenses	\$16,285	\$1,661,063	\$12,829	\$2,039,777
Expense-Outpatient				
Operating	\$1,154	\$4,909,483	\$808	\$5,194,440
Capital	<u>\$3</u>	<u>12,711</u>	<u>\$2</u>	<u>12,215</u>
Subtotal Expenses	\$1,157	\$4,922,194	\$810	\$5,206,655
Total Expenses		<u>\$6,583,257</u>		<u>\$7,246,432</u>
Net Income		\$1,803,767		\$3,794,323
Inpatient discharges		102		159
Outpatient visits		4,256		6,426

The following is noted concerning the operating budget:

- Revenues reflect an analysis from Corazon based on their national database and revenues for outpatient visits.
- The projected expenses are based on staffing guidelines and input provided by Corazon and St. Joseph's Hospital Health Center. The budget reflects the additional clinical services agreement expenses.
- Utilization is based on analysis of invasive procedures referred to other markets and facilities, along with current non-invasive volume, to assist in the volume projections. Auburn Community Hospital is projected to retain ER STEMI transfer volume once they offer interventional cardiology services.
- Utilization by payor source is as follows:

<u>Inpatient</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
Payor:	<u>Discharge</u>	<u>%</u>	<u>Discharge</u>	<u>%</u>
Medicaid FFS Commercial FFS	4	3.93%	7	4.40%
Medicaid MC Commercial MC	3	2.94%	4	2.52%
Medicare FFS	34	33.33%	55	34.59%
Medicare MC	52	50.98%	83	52.20%
Commercial FFS	4	3.93%	6	3.77%
Medicaid FFS				
Commercial MC	2	1.95%	2	1.26%
Medicaid MC				
Charity	<u>3</u>	<u>2.94%</u>	<u>2</u>	<u>1.26%</u>
Total	102	100%	159	100%

<u>Outpatient</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
Payor:	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid FFS	181	4.25%	274	4.26%
Commercial FFS				
Medicaid MC	117	2.75%	177	2.75%
Commercial MC				
Medicare FFS	1,464	34.40%	2,210	34.40%
Medicare MC	2,196	51.60%	3,315	51.59%
Commercial FFS	149	3.50%	225	3.50%
Medicaid FFS				
Commercial MC	64	1.50%	96	1.49%
Medicaid MC				
Charity	<u>85</u>	<u>2.00%</u>	<u>129</u>	<u>2.01%</u>
Total	4,256	100%	6,426	100%

#### Cardiac Catheterization Clinical Sponsorship - Letter of Intent

The applicant has submitted a letter of intent for a Cardiac Catheterization Clinical Sponsorship Agreement regarding the operation and oversight of a cardiac catheterization suite on-site at ACH. The letter is summarized below:

Client:	Auburn Community Hospital (ACH)
Provider:	St. Joseph's Hospital Health Center (SJHHC)
Services:	SJHHC will serve as a clinical sponsor of the Cath Lab at ACH. SJHHC will participate in ACH's quality assurance committee and review ACH data for quality improvement. Hold quarterly joint cardiology/cardiac surgery conferences. Have a telemedicine link between ACH and SJHHC. Participate in developing criteria for physicians performing cardiac catheterization procedures at ACH. Develop and conduct an ongoing review of patient selection criteria. Consult on equipment, staffing, ancillary services, and policies and procedures. Develop a pre-procedure risk stratification tool to ensure that high-risk and or

	complex cases are treated at SJHHC. Develop patient transfer procedures. Communicate any changes to the proper authority. Develop a plan for rotating staff and providing training opportunities. Develop a plan for delivering around o'clock PCI services all year.
Term	Three years.
Fee	\$2.1 million per year

### Capability and Feasibility

Project costs of \$53,281 will be funded with equity from Auburn Community Hospital. Total working capital is estimated at \$1,207,739 based on two months of third-year expenses. Funding will be provided from the ongoing operations and the program's positive operating margin. The submitted budget demonstrates a net income of \$1,803,767 and \$3,794,323 in Year One and Year Three, respectively. The budget appears reasonable.

Review of BFA Attachment A, Auburn Community Hospital's 2021-2022 Certified Financial Statements shows negative working capital, positive net assets, and a loss from operations. It is expected that the proposed PCI Lab's positive contribution margin will help stem ACH's losses.

Per the notes from AHC's 2022 Certified Financial Statements, management has been developing and executing strategic plans to reduce the Hospital's operational losses and increase cash flows during 2023 by working with federal and state agencies to provide grants and support, obtaining additional cash flow through a debt financing, undertaking various revenue cycle and cost saving initiatives and expanding services provided.

Beginning in 2022, ACH has submitted Federal Emergency Management Agency (FEMA) applications totaling approximately \$19.7M for reimbursement of COVID-related expenses related to the Federal Emergency Declaration for the period through July 1, 2022, of which approximately \$2.2M was received in October 2022. ACH anticipates receiving roughly \$10.3M in additional FEMA funding. The Hospital plans to submit an additional application for July 2, 2022, through May 11, 2023, the date the Federal Emergency ended.

During 2023, the Hospital received approximately \$12.2M in Vital Access Provider Assistance Program funding from NYS. In February 2023, the Hospital was awarded a \$21M Statewide Health Care Facility Program III Transformation Grant for operating room and cardiology program expansion.

### Conclusion

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

## Attachments

BHFP Attachment	Map
BFA Attachment A	Auburn Community Hospital 2021-222 Certified Financial Statements





Project # 231351-C
St. Charles Hospital

Program: Hospital
Purpose: Construction

County: Suffolk
Acknowledged: July 24, 2023

Executive Summary

Description

St. Charles Hospital (St. Charles), an existing not-for-profit 243-bed acute care hospital in Port Jefferson (Suffolk County), seeks approval for the certification and licensure of Cardiac Catheterization - Adult Diagnostic and Cardiac Catheterization - Percutaneous Coronary Angioplasty, a PCI capable cardiac catheterization laboratory and Adult - Electrophysiology services. This will include the requisite renovation of space and acquisition of equipment to accommodate one catheterization laboratory and support space for these services. The applicant will renovate 2,815 square feet on the ground floor of the hospital's east wing. The project will include one procedure room, a control room, three recovery bays, and other support areas.

St. Francis Hospital and Heart Center (St. Francis HC) will be responsible for clinical sponsorship and oversight of this program. The program, upon approval, will be known as the St. Francis Heart Center at St. Charles Hospital, which is already designated a Primary Stroke Center by the Department. St. Charles Hospital and St. Francis Heart Center are part of Catholic Health, an extensive health system on Long Island. Catholic Health is the active parent and co-hospital operator of both entities.

In 2022, St. Charles transferred 80 cardiac-related discharges out of the hospital, with nearly 50% staying within the Catholic Health network. Approximately 27 of the 80 transfers were related to acute myocardial infarctions. Implementing this project will enable St. Charles to perform these procedures for patients in a more convenient, local facility while providing

continuity of care. Three interventional cardiologists have committed to providing diagnostic catheterization and PCI procedures at the proposed PCI-capable cardiac catheterization laboratory, and four electrophysiologists have committed to providing EP-related procedures.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects approximately 150 total PCI procedures (36 emergency) in Year One and 156 total PCI (36 emergency) procedures by Year Three.

Program Summary

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

Financial Summary

Total project costs of \$6,818,571 will be funded with equity from Catholic Health.

Table with 3 columns: Budget, Year One 2024, Year Three 2026. Rows: Revenues (\$246,324,084), Expenses (245,292,190), Net Income (\$1,031,894).

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 20, 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 State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

**Approval conditional upon:**

1. This project must be completed by **April 15, 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 15, 2024**, and construction must be completed by **January 15, 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

February 8, 2024

# Need Analysis

## Background and Analysis

The primary service area is Suffolk County. St. Charles Hospital is within a Health Professional Shortage Area for Primary Care and Mental Health. The population of Suffolk County was 1,522,998 in 2021 and is projected to decrease to 1,492,157 by 2028. The County's 65+ population was 257,678 in 2021 and is expected to increase to 345,320, an increase of 34% based on the Cornell Program on Applied Demographics estimates.

Demographics for the primary service area are noted below, including a comparison with New York State.

<b>Demographics</b>	<b>Suffolk County</b>	<b>New York State</b>
Total Population – 2021 Estimate	1,522,998	20,114,745
Hispanic or Latino (of any race)	19.9%	19.20%
White (non-Hispanic)	66.4%	54.70%
Black or African American (non-Hispanic)	6.9%	13.90%
Asian (non-Hispanic)	4.0%	8.60%
Other (non-Hispanic)	2.8%	3.60%

Source: 2021 American Community Survey (5-Year Estimates Data Profiles)

In 2020, 95.8% of the population in Suffolk County had health coverage as follows.

Employer Plans	58.3%
Medicaid	11.6%
Medicare	13%
Non-Group Plans	12.4%
Military or VA	0.501%

Source: Data USA

<b>Applicant Projected Payor Mix for Inpatient Services</b>		
<b>Payor</b>	<b>Year One</b>	<b>Year Three</b>
Commercial	36.04%	36.03%
Medicare	31.61%	31.61%
Medicaid	30.48%	30.48%
Private Pay	0.70%	0.70%
Other	1.17%	1.18%

<b>Applicant Projected Payor Mix for Outpatient Services</b>		
<b>Payor</b>	<b>Year One</b>	<b>Year Three</b>
Commercial	42.23%	42.23%
Medicare	31.02%	31.02%
Medicaid	19.79%	19.79%
Private Pay	3.17%	3.17%
Other	3.79%	3.79%

The applicant projects 150 PCI procedures by Year One and 156 in Year Three, with 36 emergency PCIs each year. St. Charles has entered into an affiliation agreement with St. Francis Hospital that follows the regulatory requirements of NCYRR 10 709.14 and 405.29.

In the most recent data year, St. Francis had 285 inpatient discharges originating from St. Charles Hospital's primary service area. Of those discharges, 156 were PCI, diagnostic cath and EP patients. With clinical support from St. Francis, St. Charles expects to treat 70-75% of these patients.

St. Francis also performed 240 outpatient PCI, diagnostic cath and EP procedures on patients from St. Charles Hospital's service area. There is no reason that those procedures would not go to St. Charles once their program is operational. In 2022, St. Charles transferred 80 cardiac patients who could have

been treated at their facility had they had the services. Of these, 27 transfers were related to acute myocardial infarction.

The table below shows Suffolk County residents received 5,868 PCI treatments as classified under NCYRR 10 709.14 Cardiac Services. Of these, 4,402 procedures were performed in Suffolk.

<b>Suffolk County Residents Receiving Treatment in 2022</b>			
	<b>Treated In-County</b>	<b>Treated Out-of-County</b>	<b>Total</b>
County Residents Treated for PCI	4,402	1,466	5,868
County Residents Receiving Emergency PCI Treatment	3,230	879	4,109

Source: Cardiac Services

The table below shows hospitals where PCI treatments were performed for Suffolk County residents.

<b>2022 Total/Emergency PCI's Performed on Suffolk Residents, Source Cardiac Services</b>				
<b>Hospital Name</b>	<b>County</b>	<b>Distance/Time from Applicant</b>	<b>2022 Total Cases</b>	<b>2022 Emergency</b>
John T. Mather Memorial	Suffolk	0.7 miles/2 min	222	185
Stony Brook University	Suffolk	6 miles/14 min	1046	737
St. Catherine of Siena	Suffolk	13 miles/30 min	248	227
Long Island Community	Suffolk	15 miles/ 32 min	305	264
Peconic Bay Medical Ctr	Suffolk	22 miles/44 min	265	189
Huntington Hospital	Suffolk	25 miles/ 55 min	393	288
South Shore University	Suffolk	26 miles/47 min	723	546
Good Samaritan University	Suffolk	30 miles/48 min	1143	753
NYU Langone Hospital	Nassau	40 miles/1 hr 6 min	304	256
St. Francis Hospital	Nassau	41 miles/1 hr 7 min	635	347
North Shore University	Nassau	43 miles/1 hr 5 min	229	108
Stony Brook Southampton	Suffolk	46 miles/1 hr 5 min	57	41
Mount Sinai South Nassau	Nassau	47 miles/1 hr 18 min	64	33
NYU Langone Health	Manhattan	58 miles/1 hr 42 min	44	27
Mount Sinai Hospital	Manhattan	61 miles/1 hr 43 min	75	41
Lenox Hill Hospital	Manhattan	61 miles/1 hr 46 min	11	7
NYP Hospital - New York	Manhattan	61 miles/1 hr 50 min	20	9
NYP Hospital - Columbia	Manhattan	61 miles/1 hr 52 min	21	4
<b>Total Cases from Hospitals with 10 or less Total Cases</b>	<b>Various</b>		<b>63</b>	<b>47</b>
<b>Total</b>			<b>5868</b>	<b>4109</b>

Source: Cardiac Services & Google Maps 2023 (Travel times displayed assume average travel conditions)

#### Conclusion

Approval of this project will allow patients presenting at St. Charles to be treated there instead of being transferred to other facilities.

## Program Analysis

### Project Proposal

St. Charles Hospital (St. Charles), an existing not-for-profit, 243-bed acute care hospital in Port Jefferson, Suffolk County, seeks approval for the certification and licensure for Cardiac Catheterization - Adult Diagnostic and Cardiac Catheterization - Percutaneous Coronary Angioplasty, a PCI capable cardiac catheterization laboratory, and Adult - Electrophysiology services. This will include the requisite renovation of space and acquisition of equipment to accommodate one catheterization laboratory and support space for these services. The program, upon approval, will be known as the St. Francis Heart Center at St. Charles Hospital.

The proposed program has entered into a Clinical Sponsorship Agreement with St. Francis Hospital and Heart Center (St. Francis) in Roslyn, NY, to serve as the PCI and EP clinical Sponsor. St. Francis is a 364-bed facility located at 100 Port Washington Boulevard in Roslyn, NY, that is a full-service cardiac surgery provider. St. Charles' Primary service area is Suffolk County, NY, representing 68% of the hospital's overall medical-surgical discharges in 2022. The area represents over 1 million people. St. Francis is 33 miles from the facility and 60 minutes travel time. St. Charles reports an analysis of 2022, with 80 cardiac-related discharges out of the hospital for a higher level of care. In 2021, 84 patients (17.2%) were transferred to St. Francis for PCI procedures. Similarly, EP procedures in 2021 represented 15% seeking care at St. Francis.

The catheterization laboratory team will include three interventional cardiologists and four electrophysiologists. The program will operate 7 am - 5 pm, Monday - Friday for scheduled procedures. Staff will be on call 24/7/365 for emergency and critical cases. The EP lab will not be serving patients between the ages of 12 - 18.

Dr. Allen Jeremias will serve as the Medical Director for the PCI laboratory. Dr. Jeremias completed medical training at The Cleveland Clinic Foundation, Stanford University School of Medicine, and Harvard Medical School. He has been an interventional cardiologist since 2006. Dr. Richard Shlofmitz is the chairman of Cardiology at St. Francis Hospital. Dr. Shlofmitz will have ultimate responsibility for the oversight of St. Francis Heart Center at St. Charles Hospital. He has practiced at St. Francis Hospital since 1987. He completed cardiology and Interventional Cardiology training at Columbia University.

The three (3) interventional cardiologists are Dr. Allen Jeremias, Dr. Michael Rosenband, and Dr. Ezra Deutsch. The two (2) electrophysiologists are Dr. Armen Ovsepian and Dr. Abram Mozes.

### Prevention Agenda

The St. Charles Hospital, in Suffolk County, seeks approval to 1) certify Cardiac Catheterization - Adult Diagnostic, Cardiac Catheterization - Percutaneous Coronary Angioplasty (PCI) and Adult – Electrophysiology (EP) services, and 2) renovate space and acquire equipment to accommodate one cardiac catheterization laboratory and support space for these services.

The St. Charles 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
- Promote Healthy Women, Infants and Children
- Promote Wellbeing and Prevent Mental and Substance Use Disorders
- Prevent Communicable Disease

The proposed project advances the Prevention Agenda priority 'Prevent Chronic Diseases.' The project will enhance access to cardiac procedures and improve cardiac health outcomes for residents of the St. Charles service area who experience poor cardiac health outcomes. The new services will enable St. Charles to perform procedures for patients in a more convenient, local facility while providing continuity of care.

In 2021, the St. Charles Hospital spent \$655,519 on community health improvement services, representing 0.28% 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

Total project costs for renovation and moveable equipment are estimated at \$6,818,571, broken down as follows:

Renovation & Demolition	\$3,120,000
Design Contingency	\$312,000
Construction Contingency	\$312,000
Architect/Engineering Fees	\$312,000
Construction Manager Fees	\$234,000
Other Fees	\$35,092
Movable Equipment	\$2,454,193
Application Fee	\$2,000
Additional Fee for Projects	<u>\$37,286</u>
Total Project Cost with Fees	\$6,818,571

The applicant's financing plan is as follows:

Equity - Catholic Health	<u>\$6,818,571</u>
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Catholic Health has provided a commitment letter to fund the project. BFA Attachments A presents the Catholic Health 2021-2022 Certified Financial Statements, which shows sufficient liquid resources to fund the project.

### Operating Budget

The applicant has submitted their current year (2022) and projected operating budgets for the first and third years in 2024 dollars, summarized below:

Revenues	<u>Current Year</u>		<u>First Year</u>		<u>Third Year</u>	
	<u>2022</u>		<u>2024</u>		<u>2026</u>	
	<u>Per</u>		<u>Per</u>		<u>Per</u>	
Inpatient:	<u>Disch.</u>	<u>Total</u>	<u>Disch.</u>	<u>Total</u>	<u>Disch.</u>	<u>Total</u>
Medicaid FFS	\$4,576	\$1,400,309	\$4,638	\$1,433,109	\$4,642	\$1,434,434
Medicaid MC	\$5,405	15,420,752	\$5,474	15,781,964	\$5,477	15,796,557
Medicare FFS	\$19,073	47,721,006	\$19,319	48,838,811	\$19,322	48,883,970
Medicare MC	\$17,493	13,539,504	\$17,719	13,856,650	\$17,736	13,869,463
Commercial FFS	\$12,457	1,494,833	\$12,239	1,529,848	\$12,250	1,531,262
Commercial MC	\$18,034	65,119,504	\$18,264	66,644,846	\$18,276	66,706,470
Private Pay	\$1,215	87,468	\$1,226	89,517	\$1,279	89,599
All Other	\$15,160	<u>1,849,582</u>	\$15,389	<u>1,892,906</u>	\$15,279	<u>1,894,657</u>
Subtotal Inpatient		\$146,632,958		\$150,067,651		\$150,206,412
Outpatient:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Medicaid FFS	\$454	\$455,448	\$466	\$469,143	\$466	\$469,697
Medicaid MC	\$413	5,063,103	\$423	5,215,354	\$424	5,221,505
Medicare FFS	\$1,266	20,634,997	\$1,298	21,255,506	\$1300	21,280,575
Medicare MC	\$1,185	5,343,661	\$1,216	5,504,348	\$1,217	5,510,840
Commercial FFS	\$1,639	744,327	\$1,681	766,709	\$1,683	767,613
Commercial MC	\$1,859	51,821,630	\$1,907	53,379,943	\$1,909	53,442,899
Private Pay	\$343	729,753	\$352	751,698	\$353	752,584
All Other	\$1,132	<u>2,880,123</u>	\$1,162	<u>2,966,732</u>	\$1,163	<u>2,970,230</u>
Subtotal-outpatient		\$87,673,042		\$90,309,433		\$90,415,943
Other Operating *		<u>\$5,947,000</u>		<u>\$5,947,000</u>		<u>\$5,947,000</u>
Total Revenue		\$240,253,000		\$246,324,084		\$246,569,355

	<u>Current Year</u> <u>2022</u>	<u>First Year</u> <u>2024</u>	<u>Third Year</u> <u>2026</u>
Expenses			
Operating	\$231,669,900	\$236,652,750	\$236,720,550
Capital	<u>8,165,000</u>	<u>8,639,440</u>	<u>8,639,440</u>
Total Expenses	\$239,834,900	\$245,292,190	\$245,359,990
 Net Income (Loss)	 \$418,100	 \$1,031,894	 \$1,209,365
 Inpatient discharges	 10,360	 10,472	 10,477
Outpatient Visits	67,074	67,362	67,374
<i>* Other Revenue Income: Grant Income \$1,191,315, Rental Income \$1,923,483, Coffee Shop \$665,109, Pharmacy 340b \$93,122, concussion management services \$244,141, Hospice Port Jeff chargebacks \$366,708, Brookhaven physical therapy services \$867,992, and other \$595,130.</i>			

The following is noted concerning the operating budget:

- The current year reflects the facility's 2022 revenue and expenses.
- Reimbursement rate assumptions are based on St. Francis HC's current average reimbursement for each type of procedure for inpatient and outpatient cases.
- The projected expenses are based on the experience of Catholic Health in providing these services.
- Almost half of Catholic Health procedural volume for cardiac catheterization, PCI, and EP are generated out of St. Charles primary service area (PSA) and performed at St. Francis Hospital Heart Center in Nassau County. St. Francis has proposed to support the foundational volume at St. Francis Heart Center at St. Charles Hospital. The volume assumptions for the new program will be primarily from:
  - Diagnostic catheterization and PCI volume originating in the St. Charles market but receiving care at St. Francis HC and St. Catherine of Siena Hospital (St. Catherine), including current cardiac transfer from St. Charles to Catholic Hospitals and alternative health systems. Approximately 50% of the cases could remain at St. Charles.
  - Electrophysiology volume originating in the St. Charles market area but receiving care at St. Francis HC and St. Catherine, including current cardiac transfer from St. Charles to CH's hospitals and alternative health systems. Approximately 64 electrophysiology cases were performed by physicians who will support St. Charles's lab.

Utilization by payor source for inpatient and outpatient services is projected as follows:

<u>Inpatient</u>	<u>Current Year (2022)</u>		<u>Year One (2024)</u>		<u>Year Three (2026)</u>	
Medicaid-FFS	306	2.95%	309	2.95%	309	2.95%
Medicaid-MC	2,853	27.55%	2,883	27.53%	2,884	27.53%
Medicare-FFS	2,502	24.15%	2,528	24.15%	2,530	24.15%
Medicare-MC	774	7.47%	782	7.47%	782	7.46%
Commercial FFS	120	1.16%	125	1.19%	125	1.19%
Commercial MC	3,611	34.85%	3,649	34.84%	3,650	34.84%
Private Pay	72	.69%	73	.70%	73	.70%
All Other	<u>122</u>	<u>1.18%</u>	<u>123</u>	<u>1.17%</u>	<u>124</u>	<u>1.18%</u>
Total Inpatient	10,360	100%	10,472	100%	10,477	100%
 <u>Outpatient</u>						
Medicaid-FFS	1,003	1.50%	1,007	1.49%	1,007	1.49%
Medicaid-MC	12,268	18.29%	12,321	18.29%	12,323	18.29%
Medicare-FFS	16,299	24.30%	16,369	24.30%	16,372	24.30%
Medicare-MC	4,508	6.72%	4,528	6.72%	4,528	6.72%
Commercial FFS	454	.68%	456	.68%	456	.68%
Commercial MC	27,873	41.55%	27,993	41.56%	27,998	41.56%
Private Pay	2,125	3.17%	2,134	3.17%	2,135	3.17%
All Other	<u>2,544</u>	<u>3.79%</u>	<u>2,554</u>	<u>3.79%</u>	<u>2,555</u>	<u>3.79%</u>
Total Outpatient	67,074	100%	67,362	100%	67,374	100%



## Clinical Sponsorship Agreement

The applicant has submitted an executed Sponsorship Agreement regarding operating and overseeing an adult cardiac catheterization suite on-site at St. Charles Hospital. The terms are summarized below:

Date	June 14, 2023
Client:	St. Charles Hospital (St. Charles)
Provider:	St. Francis Hospital & Heart Center (St. Francis HC)
Services:	<p><u>Quality Assurance/Performance Improvement (QA/PI)</u>, St. Francis HC representatives will review the quality of cardiac care provided by St. Charles, including statistical data, policy and procedures, care by medical, nursing, and others. St. Francis will participate in joint cardiology/cardiac interventional conferences at least quarterly to include a review of cardiac laboratory-related morbidity and mortality, uncomplicated routine cases, patient selection, and the number and duration of cardiac catheterization laboratory system failures.</p> <p><u>Staffing and Support</u>, St. Francis HC will ensure staffing coverage by a qualified interventional cardiologist immediately available for consultation (on-site within 30 minutes) who remains available after each PCI to handle emergencies. St. Francis HC will support St. Charles in compliance with EP Cardiac laboratory program regulations.</p> <p><u>Consultation and Cooperation</u>, St. Francis HC, will assist St. Charles in the following: development of privileging criteria and re-credentialing; development of patient selection criteria; consult concerning equipment, staffing, ancillary services, policies, and procedures; implement a pre-procedure risk stratification tool, development, and implementation of procedures to provide appropriate patient transfers between facilities; establish and maintain a telemedicine link between two facilities that provide the capability for off-site review of digital studies; cause right medical staff physicians to provide timely treatment consultation on cardiac cases.</p> <p><u>Studies and Training</u>, St. Francis HC and St. Charles will jointly sponsor and conduct annual studies of the impact of the St. Charles service on costs and access to cardiac services in the hospital's service area. St. Francis HC and St. Charles will develop a plan for how St. Charles will maintain the capacity to provide PCI services on a 24-hour-a-day, 365-days-a-year basis and be capable of assembling a dedicated team within 30 minutes of the activation call to provide coronary intervention.</p> <p><u>Transfers</u>, If, by the implemented risk stratification procedures, a cardiac patient needs to be transferred to another facility for services that cannot be provided at St. Charles, St. Charles will contact Good Samaritan Hospital (GSH) and St. Francis HC to coordinate with an accepting physician for the patient's prompt and continued care.</p>
Term	Five years and shall extend for an additional five years unless terminated. Upon written agreement of the parties, upon at least ninety (90) days 'written notice.
Fee	St. Francis Hospital will provide this service free as part of its commitment to all Catholic Health hospitals.

St. Charles Hospital has submitted an executed attestation stating that the applicant understands and acknowledges that there are statutory and regulatory requirements that cannot be delegated to a third party and that St. Charles Hospital will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

### Capability and Feasibility

Total project costs of \$6,818,571 will be funded with equity from Catholic Health. CH's Executive Vice President and Chief Financial Officer has submitted a letter supporting the operating and capital needs of the Hospital.

Total working capital is estimated at \$920,848 based on two months of third-year incremental expenses. Catholic Health will fund working capital from operations. A review of BFA Attachment A Catholic Health's 2022 Certified Financial Statements indicates sufficient resources to meet the project's equity requirements.

The submitted budget projects a net income of \$1,031,894 and \$1,209,365 in Year One and Year Three, respectively. The budget appears reasonable.

A review of BFA Attachment A, Catholic Health 2021-2022 certified financial statement shows \$1.321 billion in positive working capital, \$1.917 billion in positive net assets, and \$56.556 million in operating income. A review of BFA Attachment B, St. Charles Hospital's April 30, 2023, internal financial statement shows negative working capital, net assets deficit, and operating loss. St. Francis Heart Center at St. Charles Hospital catheterization lab benefits the community within the St. Charles PSA and will contribute to the Hospital's long-term financial sustainability. As an integrated healthcare delivery system, Catholic Health supports its member entities to provide mission-critical care to its patients. In addition to this support, Catholic Health is executing its strategic plan "Vision Forward," which includes margin-improving initiatives at each member entity, including St. Charles Hospital.

#### Conclusion

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

## Attachments

BFHP	Map
BFA Attachment A	2021-2022 Certified Financial Statements- Catholic Health
BFA Attachment B	St. Charles Hospital, April 30, 2023 Internal Financial Statements



**Project # 231261-C**  
**Weill Cornell Imaging at New York Presbyterian**

**Program:** Diagnostic and Treatment Center  
**Purpose:** Construction

**County:** Kings  
**Acknowledged:** June 14, 2023

**Executive Summary**

**Description**

Weill Cornell Imaging at New York-Presbyterian (WCINYP, the "Center"), an existing Article 28 Diagnostic & Treatment Center (D&TC) specializing in radiology and imaging services, requests approval to certify and construct a new radiology extension clinic at 186 Joralemon Street, Brooklyn (Kings County). The extension clinic will provide imaging services, including an MRI machine, CT Scanners, two (2) ultrasound machines, a mammography unit, and an X-ray unit.

WCINYP's main site, at 520 East 70th Street, New York (New York County), as well as its six (6) existing extension clinics, provide radiology and imaging services. The sites have been experiencing increased utilization and increased volume demand. Many current Brooklyn patients are traveling to Manhattan, causing transportation and appointment issues. The applicant states this project will improve wait times, add additional equipment consistent with patient needs, decrease the patient's need to travel from Brooklyn to Manhattan, as well as cover the (5) New York City boroughs as a secondary population.

Keith Hentel, M.D., will serve as the Medical Director and is a Board-Certified Radiologist who will supervise the operations of the extension clinic. The New York-Presbyterian Hospital will serve as the backup hospital.

**OPCHSM Recommendation**  
**Contingent Approval**

**Need Summary**

The applicant projects 10,355 visits in the first year and 14,534 in the third year, with Medicaid utilization at 7.88%. These projections include 2,845 MRI scans in Year One and 3,600 scans in Year Three.

**Program Summary**

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

**Financial Summary**

The total project cost of \$28,263,980 will be funded with \$27,950,460 in equity from WCINYP and \$313,520 for the cost of the two (2) ultrasound machines funded by an equipment lease.

	<u>Year One</u>	<u>Year Three</u>
Budget:	<u>2025</u>	<u>2027</u>
Revenues	\$8,619,670	\$12,311,643
Expenses	<u>7,776,573</u>	<u>10,075,685</u>
Net Income/(Loss)	\$843,097	\$2,235,958

**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 31, 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 State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. Submission of an executed lease agreement acceptable to the Department of Health. [BFA]
5. Submission of all executed equipment leases, acceptable to the Department of Health. [BFA]

**Approval conditional upon:**

1. This project must be completed by **June 15, 2026**, 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 **August 15, 2024**, and construction must be completed by **March 15, 2026**, 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

February 8, 2024

# Need Analysis

## Background and Analysis

The primary service area is Brooklyn Heights, with the secondary service area being Kings County. The population of Kings County is projected to increase to 2,844,643 by 2028 based on Cornell Program on Applied Demographic estimates. Demographics for the primary service area are noted below, including comparisons with the county and New York State:

<b>Demographics</b>	<b>Primary Service Area</b>	<b>Kings County</b>	<b>New York State</b>
Total Population-2021 Estimate	68,777	2,712,360	20,114,745
Hispanic or Latino (of any race)	11.82%	18.79%	19.20%
White (non-Hispanic)	56.88%	36.73%	54.70%
Black or African American (non-Hispanic)	12.34%	28.63%	13.90%
Asian(non-Hispanic)	13.75%	11.75%	8.60%
Other (non-Hispanic)	5.21%	4.10%	3.60%

Source: 2021 American Community Survey (5-year Estimates Data Profiles)

In 2020, 93.3% of the population of Kings County had health coverage as follows:

Employee plans	41.1%
Medicaid	32.2%
Medicare	8.01%
Non-group plans	11.8%
Military or VA plans	0.327%

Source: Data USA

The table below shows the projected payor mix for the proposed extension clinic. Medicaid utilization is projected at 7.9%. The applicant states the Medicaid projection is based on the current patient mix at other WCINYP locations.

<b>Applicant Projected Payor Mix</b>		
<b>Payor</b>	<b>Year One</b>	<b>Year Three</b>
Commercial FFS	4.38%	4.40%
Commercial MC	56.67%	56.66%
Medicare FFS	22.94%	22.94%
Medicare MC	7.30%	7.30%
Medicaid FFS	0.52%	0.52%
Medicaid MC	7.36%	7.36%
Private Pay	0.78%	0.78%
Other	0.05%	0.05%

Weill Cornell Imaging at NY Presbyterian began operations in 2007 and operates six extension clinics serving the residents of New York County, providing a variety of imaging services. This proposed extension clinic will be the first extension clinic located in Kings County. Over the past few years, WCINYP sites have experienced a steady increase in the demand for services. The various centers had a combined total volume of 248,029 in 2019 and a total volume of 269,297 in 2022, an increase of 9 percent. The number of referrals from Kings County residents has increased significantly over the past few years. These patients have to travel to Weill Cornell Imaging sites in Manhattan for their imaging services. The proposed hours of operation at the new site will be Monday through Friday, 7:30 am to 5 pm. Operating hours will include evenings and weekends at a later date.

<b>Projected Visits</b>		
<b>Type of Service</b>	<b>Year 1</b>	<b>Year 3</b>
CT Scanner	1,822	2,732
MRI	2,845	3,600
Other Medical Services	5,688	8,202
Total	10,355	14,534

**Conclusion**

Approval of this project will allow for improved access to a clinic offering a variety of imaging services to the residents of Kings County.

# Program Analysis

## Project Proposal

Weill Cornell Imaging at New York Presbyterian (WCINYP), an existing Article 28 Diagnostic and Treatment Center located at 520 East 70th Street, Level J-0, in New York (New York County), seeks approval to certify and construct a new extension clinic at 186 Joralemon Street in Brooklyn (Kings County). The extension clinic will be certified for CT Scanner, Magnetic Resonance Imaging, and Medical Services-Other Medical Specialties. The extension clinic will provide CT Scanning, MRI imaging, Ultrasound, Mammography, and X-ray imaging services.

The Applicant reports that the creation of the new extension clinic will help meet the radiologic needs of the medical specialty offices of Weill Cornell Medicine and the non-Cornell affiliated physicians in Brooklyn. The extension clinic will also help alleviate capacity and operational challenges at the Center's existing sites. The Center's existing sites are experiencing heavy growth and utilization due to a growing volume of referrals. This clinic will also improve access to imaging services by decreasing the need for patients who reside in Brooklyn to travel to Manhattan to receive imaging services.

The Applicant reports that WCINYP experiences very high utilization across existing sites. Total volume across all existing sites increased from 199,943 in 2017 to 269,297 in 2022. The facilities did see a decrease in 2020 from the COVID-19 pandemic but rebounded with a 13.4% increase in patient visits from 2021 to 2022. One of the most important factors is that elderly patients are heavy users of radiologic imaging procedures. The elderly population is expected to increase by 21.3%. Also, the total referrals WCINYP has received for patients residing in Brooklyn has increased 248% from 2020. This has strained capacity at the Manhattan sites as these patients currently travel to these sites to receive their imaging, which has created a demand for longer hours and weekend hours. There are currently no Article 28 facilities in Brooklyn that specialize in radiology and imaging.

Staffing is expected to grow by 30.50 FTEs in Year One and 7.50 FTEs in Year Three of the completed project.

## Compliance with Applicable Codes, Rules, and Regulations

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

The Department issued a Stipulation and Order dated October 3, 2023, and fined New York Presbyterian Queens \$10,000 based on findings from a survey that was completed on April 6, 2023. Deficient practice was cited in the area of Sexual Assault and Patient Rights. Specifically, the facility failed to investigate an allegation of sexual assault and implement corrective actions.

The Department issued a Stipulation and Order dated November 6, 2017, and fined New York Presbyterian Queens \$2,000 based on findings from an allegation survey that was completed on May 16, 2016. Deficient practice was cited in the area of Patient Rights.

## 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 costs for renovation and movable equipment, are estimated at \$28,263,980, and detailed as follows.

Renovation & Demolition	\$15,091,853
Temporary Utilities	110,000
Design Contingency	1,509,105
Construction Contingency	2,043,413
Architect/Engineering Fees	950,000
Construction Manager Fees	379,769
Other Fees	1,394,026
Movable Equipment	6,118,643
Telecommunications	510,500
Application Fee	2,000
Additional Processing Fee	<u>154,591</u>
<b>Total Project Cost</b>	<b>\$28,263,980</b>

The applicant's financing plan appears as follows:

Equity	\$27,950,460
Equipment Leases (interest TBD, term TBD) *	<u>\$313,520</u>
<b>Total Project Costs:</b>	<b>\$28,263,980</b>

\* The operator has two (2) quotes from GE Healthcare and Siemen's Medical Solutions USA, Inc. Both are drafts and are being evaluated by the applicant.

### Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for Years One and Three, summarized below:

	Year One		Year Three	
	<u>2025</u>		<u>2027</u>	
<u>Outpatient Rev.</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial FFS	\$1,138.71	\$516,973	\$1,155.56	\$738,403
Commercial MC	\$1,136.31	6,667,860	\$1,156.51	9,523,834
Medicare FFS	\$299.81	712,057	\$305.05	1,017,045
Medicare MC	\$512.35	387,334	\$521.43	553,236
Medicaid FFS	\$39.69	2,143	\$40.82	3,062
Medicaid MC	\$361.83	275,713	\$368.04	393,806
Private Pay	\$649.18	52,583	\$664.65	75,106
Other *	\$1,001.31	5,007	\$1,021.56	7,151
<b>Total Revenues</b>		<b><u>\$8,619,670</u></b>		<b><u>\$12,311,643</u></b>
<b>Expenses</b>				
Operating	\$545.04	\$5,643,910	\$546.51	\$7,943,022
Capital	205.95	2,132,663	146.74	2,132,665
<b>Total Expense</b>	<b>\$751.00</b>	<b><u>\$7,776,573</u></b>	<b>\$693.25</b>	<b><u>\$10,075,685</u></b>
<b>Net Income</b>		<b><u>\$843,097</u></b>		<b><u>\$2,235,958</u></b>
Visits		10,355		14,534
Cost per Visit		\$751.00		\$693.25

\* Other is related to the sliding scale and discount policy currently in place.

The following is noted with respect to the submitted budget:

- Revenues and projections are in keeping with the current utilization and volume trends experienced at WCINYP's existing sites.



- The payer mix and revenue by payer are also based on the actual experience of the Center at its other existing sites.
- The staffing plans and projected operating expenses are based on the actual experience of the Center in providing the proposed imaging service at its existing clinic sites.
- WCINYP states it does have a free or reduced-price policy for people who are unable to pay based on their financial situation, which also includes outpatient services.

Utilization by payor source for Year One and Year Three is as follows:

Payor	<u>Years One</u>	<u>Year Three</u>
	<u>2025</u>	<u>2027</u>
<u>Outpatient:</u>		
Commercial FFS	4.38%	4.40%
Commercial MC	56.67%	56.66%
Medicare FFS	22.94%	22.94%
Medicare MC	7.30%	7.30%
Medicaid FFS	.52%	.52%
Medicaid MC	7.36%	7.36%
Private Pay	.78%	.78%
Other	<u>.05%</u>	<u>.05%</u>
Total	100%	100%

#### Lease Rental Agreement

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

Date:	TBD
Premises:	9,148 sq. ft. located at 186 Joralmon Street, Brooklyn (Kings County)
Landlord:	Joralemon Associates, LLC
Tenant:	Weill Cornell Imaging at York-Presbyterian
Term:	20 Year Lease.
Rent:	<p>First Floor (Per Month)</p> <p>Year 1-5 is \$45,360.33 per month</p> <p>Year 6-10 is \$47,908.67 per month</p> <p>Year 11-15 is \$50,457.00 per month</p> <p>Year 16-20 is \$53,515.00 per month</p> <p>Lower Level (Per Month MRI Room - Basement)</p> <p>Year 1 is \$14,595.00      Year 11 is \$19,143.55</p> <p>Year 2 is \$14,996.00      Year 12 is \$19,669.99</p> <p>Year 3 is \$15,408.76      Year 13 is \$20,210.92</p> <p>Year 4 is \$15,832.50      Year 14 is \$20,766.72</p> <p>Year 5 is \$16,267.90      Year 15 is \$21,337.80</p> <p>Year 6 is \$16,715.26      Year 16 is \$21,924.59</p> <p>Year 7 is \$17,174.93      Year 17 is \$22,527.52</p> <p>Year 8 is \$17,647.24      Year 18 is \$23,147.03</p> <p>Year 9 is \$18,132.54      Year 19 is \$23,783.57</p> <p>Year 10 is \$18,361.19      Year 20 is \$24,437.62</p>
Provisions:	Tenant may not sublet unless authorized by landlord. Landlord understands the MRI will be used on-site. Taxes or escalations will be proportioned and charged to the tenant from there if increased from the base year. Landlord shall provide cleaning services and water. Utilities will be provided at landlord's rate plus a 4% service charge for overhead and expenses in connection with submetering.

The applicant has stated that there is no relationship between the tenant or landlord. Also, the applicant has submitted two letters of rent reasonableness.

### Capability and Feasibility

The total project cost of \$28,263,980 will be funded with \$27,950,460 in equity from WCINYP and \$313,520 with an equipment lease for the cost of two ultrasound machines. A draft equipment lease has been submitted; however, the interest rate and term have not yet been established. The working capital requirements are estimated at \$1,679,281, based on two months of third-year expenses, and will be funded with equity from WCINYP. The submitted budget projects a net income of \$843,097 and \$2,235,958 during years one and three of operations. The budget appears reasonable.

BFA Attachment A presents the 2021-2022 Certified Financial Statements showing the entity maintained an average positive working capital and net asset position for both years and an operating income of \$56,046,000 and \$69,750,000 in 2021 and 2022, respectively.

BFA Attachment B presents the June 30, 2023, Internal Financial Statements. The entity maintained a positive working capital and net asset position and a net operating income of \$39,069,818.

### Conclusion

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

## Attachments

BHFP Attachment	Map
BFA Attachment A	2021-2022 Certified Financial Statements
BFA Attachment B	June 30, 2023 Internal Financial Statements



Project # 231299-C
Weill Cornell Imaging at New York Presbyterian

Program: Diagnostic and Treatment Center
Purpose: Construction
County: New York
Acknowledged: July 13, 2023

Executive Summary

Description

Weill Cornell Imaging at New York-Presbyterian (WCINYP, the "Center"), an existing Article 28 Diagnostic & Treatment Center (D&TC) specializing in radiology and imaging services, requests approval to certify and construct a new radiology extension clinic at 575 Lexington Avenue, New York (New York County). The extension clinic will provide imaging services, including four (4) MRI machines, three (3) CT Scanners, thirteen (13) ultrasound machines, nine (9) mammography units, (1) One EOS-X-ray unit, and one (1) densitometry unit.

WCINYP's main site is 520 East 70th Street, New York (New York County). WCINYP is consolidating the services available at the two (2) existing extension clinics into a single site. Upon PHHPC approval of this proposed new extension clinic, WCINYP will relocate two (2) existing extension clinics at 416 East 55th Street (PFI 8535) and 425 East 61st Street (PFI 8570). These extension clinics are approximately 0.5 miles from each other and less than one (1) mile from the proposed new extension clinic on Lexington Avenue. The new facility will be accessible to the patients who currently receive services at the to-be-closed extension clinics and will also provide increased capacity for other patients. Draft relocation Plans for the (2) existing clinics have been submitted and will be formalized upon PHHPC's approval of this project.

Keith Hentel, M.D., will serve as the Medical Director and is a Board-certified Radiologist who will supervise the operations of the extension clinic. The New York-Presbyterian Hospital will serve as the backup hospital.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 91,644 visits in Year One and 114,780 in Year Three. The projected payor mix includes 7.9% Medicaid and no Charity Care for both years.

Program Summary

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

Financial Summary

The total project cost of \$94,956,814 will be funded with \$92,658,430 in equity from WCINYP and \$2,298,384 from an equipment lease for the cost of the two (2) ultrasound machines.

Table with 3 columns: Budget, Year One 2026, Year Three 2028. Rows include Revenues, Expenses, Net Income/ (Loss).

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 13, 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 State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. Submission of an executed building lease agreement acceptable to the Department of Health. [BFA]
5. Submission of all executed equipment leases acceptable to the Department of Health. [BFA]

**Approval conditional upon:**

1. This project must be completed by **January 15, 2027**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **August 15, 2024**, and construction must be completed by **October 15, 2026**, 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

February 8, 2024

# Need Analysis

## Background and Analysis

The primary service area for this project is New York County, with a focus on zip code 10022. The population of New York County in 2021 was 1,669,127, according to the most recent American Community Survey population estimates data. The population of the county is estimated to increase to 1,720,649 by 2028 per projection data from the Cornell Program on Applied Demographics, an increase of 3.1%. The demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Zip Code 10022	New York County	New York State
Total Population - 2021 Estimate	33,303	1,669,127	20,114,745
Hispanic or Latino (of any race)	9.4%	25.6%	19.2%
White (non-Hispanic)	76.9%	46.7%	54.7%
Black or African American (non-Hispanic)	1.2%	12.1%	13.9%
Asian (non-Hispanic)	10.3%	11.8%	8.6%
Other (non-Hispanic)	2.2%	3.8%	3.6%

Source: 2021 American Community Survey (5-Year Estimates Data Profiles)

According to Data USA, in 2018, 94.2% of the population of New York County had health coverage as follows:

Employee plans	51.5%
Medicaid	20.5%
Medicare	9.7%
Non-group plans	12.2%
Military or VA plans	0.315%

The projected payor mix includes:

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	61.1%	61.1%
Medicare	30.2%	30.2%
Medicaid	7.9%	7.9%
Private Pay	0.8%	0.8%
Charity Care	0%	0%
Other	0.04%	0.04%

The applicant has a policy to provide free or reduced-price services that are medically necessary to persons who are determined to be unable to pay for their care in whole or in part regardless of age, gender, race, national origin, socio-economic or immigrant status, sexual orientation, or religious affiliation.

The applicant anticipates a significant portion of the proposed new extension clinic's patients will be persons who commute to work in midtown Manhattan, taking advantage of the radiology services provided during the business day.

The applicant is working to partner in a Transfer and Affiliation Agreement with New York-Presbyterian Hospital (NYP) for backup hospital services located 1.6 miles and 15 minutes away.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization or for which early intervention can

prevent complications or more severe disease. The table below provides information on PQI rates for 2020:

<b>Hospital Admissions per 100,000 Adults</b>			
<b>PQI Name</b>	<b>Zip Code 10022</b>	<b>New York County</b>	<b>New York State</b>
Chronic Obstructive Pulmonary Disease or Asthma	111	191	244
Hypertension	7	55	63
Heart Failure	151	244	336
Bacterial Pneumonia	89	57	105
Uncontrolled Diabetes	34	35	45
Prevention Quality Overall Composite	487	729	994

#### Conclusion

Approval of this project will allow for expanded access to imaging services for those who commute and reside in New York County.

# Program Analysis

## Project Proposal

Weill Cornell Imaging at New York Presbyterian (WCINYP), an existing Article 28 Diagnostic and Treatment Center at 520 East 70th Street, Level J-0, in New York (New York County), seeks approval to certify and construct a new extension clinic to be located at 575 Lexington Avenue in New York (New York County). The extension clinic will be certified for CT Scanner, Magnetic Resonance Imaging, and Medical Services - Other Medical Specialties. The extension clinic will provide CT Scanning, MRI imaging, Ultrasound, Mammography, and X-ray, including DEXA bone scanning and EOS X-ray.

The Applicant reports that the creation of the new extension clinic will be the consolidation of two existing clinics that are within one mile of each other and the new clinic. The clinics would all be performing essentially the same services. The new flagship facility will continue to be accessible to the patients who previously received services at the other facilities and will have increased capacity in order to better meet the needs for service.

The Applicant reports that WCINYP experiences very high utilization across existing sites. Total volume across all existing sites increased from 199,943 in 2017 to 269,297 in 2022. The facilities did see a decrease in 2020 from the COVID-19 pandemic but rebounded with a 13.4% increase in patient visits from 2021 to 2022. One of the most important factors is that elderly patients are heavy users of radiologic imaging procedures. The elderly population is expected to increase by 11.4%. This has strained the capacity at the Manhattan sites as these patients currently travel from Brooklyn to the Manhattan sites to receive their imaging, which has created a demand for longer hours and weekend hours. There has been an 8% increase in physicians practicing in Manhattan who referred patients to WCINYP, which increases constraints and creates longer wait times. The proposed project will help alleviate these.

Staffing is expected to grow by 155.25 FTEs in Year One and 37.00 FTEs in Year Three of the completed project.

## Compliance with Applicable Codes, Rules and Regulations

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

The Department issued a Stipulation and Order dated October 3, 2023, and fined New York Presbyterian Queens \$10,000 based on findings from a survey that was completed on April 6, 2023. Deficient practice was cited in the area of Sexual Assault and Patient Rights. Specifically, the facility failed to investigate an allegation of sexual assault and implement corrective actions.

The Department issued a Stipulation and Order dated November 6, 2017, and fined New York Presbyterian Queens \$2,000 based on findings from an allegation survey that was completed on May 16, 2016. Deficient practice was cited in the area of Patient Rights.

## 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 costs for renovation and movable equipment are estimated at \$94,956,814 and detailed as follows.

Renovation & Demolition	\$42,088,624
Temporary Utilities	600,000
Design Contingency	2,303,000
Construction Contingency	5,093,300
Planning/Consulting Fees	5,936,339
Architect/Engineering Fees	4,352,963
Construction Manager Fees	1,501,376
Other Fees	1,844,233
Movable Equipment	28,252,794
Telecommunications	2,462,800
Application Fee	2,000
Additional Processing Fee	<u>519,395</u>
<b>Total Project Cost</b>	<b>\$94,956,814</b>

The applicant's financing plan appears as follows:

Equity	\$92,658,430
Equipment Leases: (interest/term TBD) *	<u>2,298,384</u>
<b>Total Project Costs:</b>	<b>\$94,956,814</b>

\* The operator has two (2) quotes from GE Healthcare and Siemen's Medical Solutions USA, Inc. Both are drafts.

### Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for Years One and Three, summarized below:

	Year One 2025		Year Three 2027	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<b>Outpatient Rev.</b>				
Commercial FFS	\$927.83	\$3,729,890	\$971.14	\$4,889,686
Commercial MC	\$926.16	48,107,655	\$969.40	63,066,561
Medicare FFS	\$244.42	5,137,392	\$255.82	6,734,846
Medicare MC	\$417.66	2,794,556	\$437.17	3,663,514
Medicaid FFS	\$32.63	15,465	\$34.19	20,274
Medicaid MC	\$295.09	1,989,227	\$308.87	2,607,770
Private Pay	\$529.86	379,382	\$555.08	497,349
Other *	\$903.03	36,121	\$947.06	47,353
<b>Total Revenues</b>		<b><u>\$62,189,688</u></b>		<b><u>\$81,527,353</u></b>
<b>Expenses</b>				
Operating	\$436.47	\$40,000,030	\$441.41	\$53,190,316
Capital	\$109.45	10,030,227	\$87.39	10,030,227
<b>Total Expense</b>	<b>\$545.92</b>	<b><u>\$50,030,257</u></b>	<b>\$550.80</b>	<b><u>\$63,220,543</u></b>
<b>Net Income</b>		<b><u>\$12,159,431</u></b>		<b><u>\$18,636,810</u></b>
Visits		91,644		114,780
Cost per Visit		\$545.92		\$550.80

\* Other is related to the sliding scale and discount policy currently in place.



The following is noted with respect to the submitted budget:

- Revenues and projections are based on the actual operations of the existing sites in keeping with the current utilization and volume trends experienced at WCINYP's existing sites.
- The payer mix and revenue by payer are also based on the actual experience of the existing two (2) sites being consolidated.
- The staffing plans and projected operating expenses are based on the actual experience of the two (2) Centers providing the proposed imaging service at its proposed new site.
- WCINYP states it does have a free or reduced-price policy for people who are unable to pay based on their financial situation, which also includes outpatient services.

Utilization by payor source for Year One and Year Three is based on the consolidating of the (2) two stated facilities into (1) facility projected as follows:

Payor	<u>Years One</u>	<u>Year Three</u>
	<u>2026</u>	<u>2028</u>
<u>Outpatient:</u>		
Commercial FFS	4.39%	4.39%
Commercial MC	56.68%	56.68%
Medicare FFS	22.94%	22.94%
Medicare MC	7.30%	7.30%
Medicaid FFS	.52%	.52%
Medicaid MC	7.36%	7.36%
Private Pay	.78%	.78%
Other	.04%	.04%
Total	100%	100%

#### Lease Rental Agreement

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

Date:	TBD
Premises:	757 Lexington Avenue, New York (51,527 sq. ft.)
Landlord:	575 Lex Property Owner, L.L.C.
Tenant:	Cornell University
Assignor:	Cornell University (for the Joan and Sanford I. Weill Medical College)
Assignee:	Weill Cornell Imaging at New York-Presbyterian
Term:	5-year term or option to lock in a 10-year term.
Rent:	\$5,282,386 fixed annually and initially has a (5) year or (10) year term to choose from.
Provisions:	Lease space includes a portion of the basement and ground floor and the entire 2nd through 6th floor. The lease is currently under the 6th amendment dependent upon the Assignee exercising the 5 or 10 term it may raise the costs.

The applicant states that there is no relationship between WCINYP and the landlord. There is a relationship between Cornell University and WCINYP - Cornell University is a 50% member of MRSI Management, Inc., a 50% owner and active member of WCINYP. The applicant has submitted two (2) letters of rent reasonableness from NYS-licensed independent realtors.

#### Capability and Feasibility

The total project cost is \$94,956,814 and will be funded with \$92,658,430 in equity from WCINYP and a \$2,298,384 equipment lease for the cost of the (2) ultrasound machines. Draft equipment leases have been submitted from Siemens Medical Solutions USA, Inc. and General Electric Healthcare; however, the interest rates and terms still need to be established. The working capital requirements are estimated at \$10,536,757, based on two months of third-year expenses, and will be funded with equity from WCINYP operations. The submitted budget projects a net income of \$12,159,431 and \$18,636,810 during years one and three of operations. The budget appears reasonable.

BFA Attachment A presents the 2021-2022 Certified Financial Statements showing the entity maintained an average positive working capital and net asset position for both years and an operating income of \$56,046,000 and \$69,750,000 in 2021 and 2022, respectively.

BFA Attachment B presents the June 30, 2023, Internal Financial Statements. The entity maintained a positive working capital, a positive net asset position, and a net operating income of \$39,069,818.

Conclusion

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

<h2>Attachments</h2>
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BHFP Attachment	Map
BFA Attachment A	2021-2022 Audited Financial Statements
BFA Attachment B	(6/30/2023) Internal Financial Statements



**Project # 232063-C  
ODA Primary Health Care Network, Inc**

**Program: Diagnostic and Treatment Center    County: Kings**  
**Purpose: Construction    Acknowledged: September 27, 2023**

**Executive Summary**

**Description**

ODA Primary Health Care Network, Inc. (ODA), an existing Article 28, voluntary not-for-profit corporation, and Federally Qualified Health Center (FQHC) requests approval to certify a new extension clinic for primary medical care and medical specialties (pediatrics, internal medicine, family medicine, endocrinology, cardiology, and podiatry), ophthalmology and optometry services. The new extension clinic will be in leased space on the second floor at 251 Wallabout Street, Brooklyn, NY (Kings County).

Currently, the services are provided at an existing extension clinic, less than a mile away (.6) at 18 Heyward Street, Brooklyn, NY (Kings County). The clinic, known as the ODA Therapy Center, provides only ophthalmology and optometry. This project will provide patients with access to a broader continuum of services at a single location. Upon completion of this project, the ODA Therapy Center extension clinic will be closed.

Dr. Robert B. Krausz, who is Board-Certified in pediatrics, will serve as Medical Director. ODA has an existing Transfer and Affiliation Agreement with Interfaith Medical Center, located 2.6 miles (21-minute travel time) for back-up and emergency care services.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

The applicant projects 60,496 visits in Year One and 65,995 in Year Three. The projected payor mix includes 74% Medicaid and 5% Charity Care in Year One and Year Three.

**Program Summary**

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

**Financial Summary**

Total project costs of \$18,298,281 will be met with \$6,048,281 in equity from ODA Primary Health Care Network, Inc. and \$12,250,000 from a Statewide Health Care Facility Transformation Grant Program III grant.

	<u>Year One</u>	<u>Year Three</u>
Budget:	<u>2025</u>	<u>2027</u>
Revenues	\$11,715,157	\$13,005,140
Expenses	<u>\$12,082,206</u>	<u>\$12,921,978</u>
Net Income/ (Loss)	(\$367,049)	\$83,162

**Health Equity Impact Assessment**

This project does not meet the requirements for a Health Equity Impact Assessment under Section 2802-B of the PHL.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of forty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed Statewide Healthcare Facility Transformation Program 3 grant (SHCFTP III Grant), acceptable to the Department of Health. [BFA].
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

**Approval conditional upon:**

1. This project must be completed by **September 30, 2025**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **July 1, 2024**, and construction must be completed by **June 30, 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 staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospital/docs/hcs\\_access\\_form\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]
5. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

February 8, 2024

# Need Analysis

## Background and Analysis

The primary service area for this project is the Northwest corner of Brooklyn. The proposed location is in a Health Professional Shortage Area (HPSA) for Primary Care, Dental Health, and Mental Health and is also a Medically Underserved Area/Population (MUA/P). The population of Kings County is estimated to increase to 2,844,643 by 2028 per projection data from the Cornell Program on Applied Demographics, an increase of 4.9%. Demographics for the primary service area are noted below including a comparison with New York State.

Demographics	Primary Service Area	Kings County	New York State
Total Population – 2021 Estimate	249,930	2,712,360	20,114,745
Hispanic or Latino (of any race)	24.6%	18.8%	19.2%
White (non-Hispanic)	53.1%	36.7%	54.7%
Black or African American (non-Hispanic)	12.6%	28.6%	13.9%
Asian (non-Hispanic)	5.9%	11.7%	8.6%
Other (non-Hispanic)	3.8%	4.1%	3.6%

Source: 2021 American Community Survey (5-Year Estimates Data Profiles)

In 2021, 93.4% of the population of Kings County had health coverage as follows:

Employee plans	41.1%
Medicaid	32.2%
Medicare	8.01%
Non-group plans	11.8%
Military or VA plans	0.327%

Source: Data USA

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	14%	14%
Medicare	7%	7%
Medicaid	74%	74%
Private Pay	0%	0%
Charity Care	5%	5%
Other	0%	0%

The hours of operation for the extension clinic will be Sunday through Thursday from 8 AM to 8 PM, and Friday from 8 AM to 2 PM. Walk-in patients will be seen on a first-come, first-served basis. ODA also has an After-Hours On-Call Service that is available to patients 24 hours a day, 365 days a year.

Patients in need of the clinic's services will be accepted without regard to age, sex, sexual orientation, race, creed, religion, disability, source of payment, or other personal characteristics. ODA has developed a sliding fee scale for patients who are uninsured.

The applicant has an existing Affiliation and Transfer Agreement with One Brooklyn Health System (OBHS) for backup hospital services. The closest OBHS hospital to the proposed extension clinic, Interfaith Medical Center, is 2.6 miles and 21 minutes away.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on PQI rates for 2020:

<b>Hospital Admissions per 100,000 Adults</b>				
<b>PQI Name</b>	<b>Zip Code 11206</b>	<b>Primary Service Area*</b>	<b>Kings County</b>	<b>New York State</b>
<b>Chronic Obstructive Pulmonary Disease or Asthma</b>	411	292	312	244
<b>Hypertension</b>	712	69	76	63
<b>Heart Failure</b>	423	330	359	336
<b>Bacterial Pneumonia</b>	65	59	82	105
<b>Uncontrolled Diabetes</b>	59	42	59	45
<b>Prevention Quality Overall Composite</b>	1201	949	1015	994

*\*The area encompassed by ZIP Code 11249 was previously part of 11211*

**Conclusion**

Approval of this project will allow for expanded access to Medical Services - Primary Care, Medical Services - Other Medical Specialties, and Optometry O/P for the residents of Kings County.

## Program Analysis

### Project Proposal

ODA Primary Health Care Network, Inc. (ODA, the "Center"), an existing, not-for-profit Article 28 diagnostic and treatment center and a Federally Qualified Health Center (FQHC), is seeking to certify a new extension clinic at 251 Wallabout Street, Brooklyn (Kings County), New York 11206. The extension clinic will provide primary medical care and medical specialties (pediatrics, internal medicine, family medicine, endocrinology, cardiology, and podiatry), ophthalmology, and optometry services.

<b>Proposed Operator</b>	ODA Primary Health Care Network, Inc.
<b>To Be Known As</b>	ODA Primary Health Care Network, Inc.
<b>Site Address</b>	<p><b>New Site:</b> 251 Wallabout Street Brooklyn, NY 11206 Kings County</p> <p><b>Old Site:</b> 18 Heyward St. Brooklyn, NY 11249</p>
<b>Specialties</b>	<p><b>New Site:</b> Medical Services-Primary Care Medical Services-Medical Specialties Optometry Ophthalmology</p>
<b>Hours of Operation</b>	<p>Primary Site: Sunday to Thursday 8:00 am to 8:00 pm Fridays 8:00 am to 2:00 pm</p>
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	64 FTEs / 65.92 FTEs
<b>Medical Director(s)</b>	Dr. Robert Krausz, M.D
<b>Emergency, In-Patient, and Backup Support Services Agreement and Distance</b>	<p>Agreement in place with: One Brooklyn Health System 2.6 miles/21 minutes</p>

The facility will utilize an EMR system (eClinicalworks). ODA has an existing Affiliation and Transfer Agreement with One Brooklyn Health System for backup hospital services.

Dr. Robert Krausz, M.D. is the proposed Medical Director. Dr. Krausz graduated from Albert Einstein College of Medicine in 1982 and had a residency at Bronx Municipal Hospital Center until 1985. He is registered through March 2024. He has been the Chief Medical Officer at ODA Primary Health Care Center, Inc. since 2008.

### 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 costs for construction and movable equipment are estimated at \$18,298,281 and detailed as follows.

Renovation	\$13,245,050
Design Contingency	\$1,324,505
Construction Contingency	\$1,324,505
Architect/Engineering Fees	\$1,059,604
Movable Equipment	\$1,261,399
Application Fee	\$1,250
Additional Processing Fee	<u>\$81,968</u>
Total Project Cost	\$18,298,281

ODA Primary Health Care Network, Inc. will provide \$6,048,281 in equity to fund the project. The remaining \$12,250,000 will be funded with a SHCFTP III grant. BFA Attachment A, ODA Primary Health Care Network, Inc. Certified Financial Statements, show sufficient resources to meet the cash equity requirement for the project.

### Operating Budget

The applicant has submitted an operating budget, in 2024 dollars, for Years One (2025) and Three (2027), summarized below:

Outpatient Rev.	Year One (2025)		Year Three (2027)	
	Per Visit	Total	Per Visit	Total
Commercial MC	\$85.00	\$719,950	\$85.00	\$785,400
Medicare MC	\$148.96	\$630,846	\$148.96	\$687,450
Medicaid FFS	\$229.82	\$278,077	\$234.43	\$309,454
Medicaid MC	\$229.82	\$10,010,759	\$234.43	\$11,140,336
Other Operating Revenue		<u>\$75,525</u>		<u>\$82,500</u>
Total Revenues		\$11,715,157		\$13,005,140
Expenses				
Operating	\$144.78	\$8,758,500	\$143.54	\$9,473,142
Capital	\$55.68	<u>\$3,323,706</u>	<u>\$52.26</u>	<u>\$3,448,836</u>
Total Expense	\$200.46	\$12,082,206	\$195.80	\$12,921,978
Net Income/(Loss)		<u>(\$367,049)</u>		<u>\$83,162</u>
Visits		60,496		65,995
Cost per Visit		\$200.46		\$195.80

The following is noted with respect to the submitted budget:

- Expense, utilization, and revenue assumptions are based on the actual operations of ODA in providing the proposed services at its existing sites.



Utilization by payor source for Year One and Year Three is as follows:

<u>Outpatient:</u>	Year One (2025)	Year Three (2027)
Commercial MC	14%	14%
Medicare MC	7%	7%
Medicaid FFS	2%	2%
Medicaid MC	72%	72%
Charity Care	5%	5%
Total	100%	100%

The applicant indicated they are committed to serving all persons in need without regard to the patient's ability to pay or the source of payment. The hospital will develop, maintain, and update a sliding fee scale as well as policies and procedures for serving the uninsured and persons without the ability to pay.

#### Lease Agreement

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

Premises:	40,606 Square Feet on the second floor of the building and 2,463 Square Feet on the ground floor located at 251 Wallabout Street, Brooklyn, NY
Landlord:	Harrison Realty II, LLC
Tenant:	ODA Primary Health Care Network, Inc
Terms:	15 years with 3 (5) year extensions
Rental:	\$1,983,408 annually for Year one with an annual 2% increase for Year two going forward
Provisions:	Triple Net lease

The lease arrangement is an arm's length agreement. The applicant submitted an affidavit attesting to no relationship between the landlord and the operating entity. The applicant submitted two real estate letters attesting to the reasonableness of the per-square-foot rental.

#### Capability and Feasibility

The total project costs of \$18,298,281 for this application will be met with equity of \$6,048,281 from ODA Primary Health Care Network, Inc.'s accumulated funds, and the remaining \$12,250,000 will be funded from a SHCFTP III grant.

The working capital requirements are estimated at \$2,153,663, based on two months of third-year expenses, and will be funded with equity from ODA Primary Health Care Network, Inc. As shown in BFA Attachment A, ODA has sufficient resources to meet the working capital and cash equity requirement for the project.

The submitted budget projects a net loss of (\$367,049) and a net gain of \$83,162 during Year One and Year Three of operations, respectively. The budget appears reasonable. The year-one loss will be covered by the operations of ODA Primary Health Care Network, Inc. A letter of support has been provided by the CEO to cover the loss.

BFA Attachment A presents the 2022 Certified Financial Statements of ODA Primary Health Care Network, Inc. showing the entity maintained positive working capital, a positive net equity position, and a net operating income of \$26,064,239. BFA Attachment B presents the 1/1/23-8/31/23 internal financial statement of ODA Primary Health Care Network, Inc. which shows the entity maintained positive working capital and positive net equity positions and a gain from operations of \$2,666,632 during the eight-month period.

#### Conclusion

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

## Attachments

BHFP Attachment	Map
BFA Attachment A	2022 Audited Financial Statements and the 1/1/2023-8/31/2023 Internal Financial Statements of ODA Primary Health Care Network, Inc.



**Project # 232124-C**  
**Community Health Center of Richmond, Inc.**

**Program:** Diagnostic and Treatment Center    **County:** Richmond  
**Purpose:** Construction    **Acknowledged:** October 16, 2023

**Executive Summary**

**Description**

Community Health Center of Richmond (CHCR, the "Center"), a Federally Qualified Health Center (FQHC), is submitting an amendment to approved Certificate of Need (CON) Project No. 201165- C, which proposed to certify a new extension clinic at 104 New Dorp Plaza, Staten Island (Richmond County). The amendment is being submitted due to an increase in total project cost over \$15,000,000 which requires a Full Review CON.

CHCR currently operates two (2) extension clinics, serving the North Shore of Staten Island. Services provided at the new extension clinic will include the full range of primary and preventive health care, including cancer screening, well-child checks, immunizations, family planning services, prenatal care, and all appropriate primary care screening (e.g., cholesterol, glucose testing, blood lead, STIs, etc.). The extension clinic will also provide pediatric services, OB/GYN, nutritional and medical social services, as well as dental services and dental X-ray services.

Rosalinda Rosario-Lipka, D.O., will serve as the Medical Director of CHCR. The Center has existing backup and transfer agreements for emergencies with Staten Island University Hospital, approximately 12 minutes away, and Richmond University Medical Center, 11 minutes away.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

The applicant projects 16,656 visits in Year One and 26,571 in Year Three, with Medicaid at 67.4% and Charity Care at 12.44% by Year Three.

**Program Summary**

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

**Financial Summary**

Total project cost of \$20,901,236 will be met with equity of \$3,100,000 for previously purchased land, a \$1,000,000 HRSA grant, a \$2,000,000 Statewide Health Facility Health Transformation III grant, a \$9,500,000 loan from Local Initiatives Support Corporation, \$4,003,650 through the New Markets Tax Credit Program, and \$1,297,586 in accumulated funds.

	<u>Year One</u>	<u>Year Three</u>
<u>Budget:</u>	<u>2026</u>	<u>2028</u>
Revenues	\$3,469,449	\$5,660,340
Expenses	<u>\$3,885,695</u>	<u>\$5,391,432</u>
Net Income (Loss)	(\$416,246)	\$268,908

**Health Equity Impact Assessment**

This project does not meet the requirements for a Health Equity Impact Assessment under Section 2802-B of the PHL.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of forty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. Submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. Submission of documentation confirming final approval of the executed New Markets Tax Credit contract, acceptable to the Department of Health. [BFA]
5. Submission of documentation confirming final approval of the Statewide Health Care Facility Transformation Program III grant, acceptable to the Department. [BFA]
6. Submission of an executed loan agreement from the Local Initiatives Support Corporation, acceptable to the Department. [BFA]

**Approval conditional upon:**

1. This project must be completed by **January 1, 2027**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **October 1, 2024**, and construction must be completed by **October 1, 2026**, 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

February 8, 2024

# Need Analysis

## Background and Analysis

Established in 2006, the Community Health Center of Richmond is a not-for-profit healthcare organization. Community Health Center of Richmond currently has a main site and two extension clinics. The applicant proposes offering the following services: Dental O/P, Medical Services – Other Medical Specialties, and Medical Services – Primary Care.

The primary service area is Staten Island in Richmond County, with a focus on patients in zip code 10306 the applicant will still treat all residents of Richmond County in need. The county's overall population is estimated to decrease to 487,631 or 0.7% while its 65+ population is expected to increase to 106,871 or 25.1% by 2028 per projection data from the Cornell Program on Applied Demographics. Demographics for the primary service area are noted below, including a comparison with the county and New York State.

Demographics	Zip Code 10306	Richmond County	New York State
Total Population	55,805	491,133	20,114,745
Hispanic or Latino (of any race)	16.00%	18.80%	19.20%
White (non-Hispanic)	66.9%	55.70%	54.70%
Black or African American (non-Hispanic)	3.6%	9.00%	13.90%
Asian (non-Hispanic)	10.2%	13.00%	8.60%
Other (non-Hispanic)	3.30%	3.50%	3.60%

Source: 2021 American Community Survey (5-Year Estimates Data Profiles)

In 2021 95.9% of the population in Richmond County has health coverage as follows.

Employer Plans	55.40%
Medicaid	17.90%
Medicare	12.40%
Non-Group Plans	9.85%
Military or VA	0.31%

Source: Data USA

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	9.57%	9.60%
Medicare	1.37%	1.36%
Medicaid	67.40%	67.40%
Private Pay	9.20%	9.19%
Charity Care	12.45%	12.44%
<b>Total Visits</b>	16,656	26,571

Prevention Quality Indicators (PQI) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition.

Hospital Admissions per 100,000 Adults for Overall PQIs			
PQI Rates: 2020	Zip code 10306	Richmond County	New York State
<b>All PQI's</b>	1,055	931	994

The overall PQI rates for zip code 10306 exceed that of Richmond County and the State average. It is the goal of the applicant to reduce avoidable hospitalizations by providing primary care services.

Hours of operation will be Monday - Friday, 8:00 AM – 4:30 PM. The extension clinic will increase access for residents of Staten Island with a focus on zip code 10306 providing a full range of primary care and dental services. Services will include cancer screening, well-child checks, immunizations, family planning, prenatal care, pediatric services, OB/GYN, nutritional and medical social services, and other screening procedures.

Currently, the only existing Article 28 facility in zip code 10306 is a school-based health center located at New Dorp High School operated by Staten Island University Hospital. The new extension clinic is expected to be more accessible for residents who have difficulty accessing the Center's existing site on the North Shore of Staten Island.

#### Conclusion

The applicant plans to provide dental services, primary care, and other medical specialty services to a new service area on Staten Island.

## Program Analysis

### Project Proposal

Community Health Center of Richmond (CHCR, the “Center”), a Federally Qualified Health Center (FQHC), is submitting an amendment to the approved Certificate of Need (C.O.N.) Project No. 201165-C, which proposed to certify a new extension clinic located at 104 New Dorp Plaza, Staten Island (Richmond County), New York 10306. This C.O.N. amendment is being submitted due to an increase in the Total Project Cost above \$15 million, meaning the project must now be submitted as a Full Review C.O.N. Application, instead of an Administrative Review.

***This submission represents an approved HRSA Federal grant project, as well as an approved Statewide Health Care Facility Transformation Program project.***

Project Number	232124
Facility Name	Community Health Center of Richmond, Inc
Description	Certify a new extension clinic to be located at 104 New Dorp Plaza, Staten Island - HRSA Funded Safety Net (Amends and Supersedes CON 201165)

Site	PFI	
<b>Community Health Center of Richmond, Inc</b> 233 Doughty Boulevard Inwood, NY 11096	<b>New</b>	<b>Certify</b> the extension clinic to provide: Medical Services - Primary Care Medical Services - Other Medical Specialties Dental O/P

<b>Staffing Categories</b>	<b>Year 1</b>	<b>Year 3</b>
Management and Supervision	0.65	1
Licensed Practical Nurses	1.3	2.0
Physicians	2.75	4.0
Nurse Practitioners	0.5	1.0
Social Workers and Psychologists	0.65	1.0
Clerical and Other Administrative	5.85	9.0
Other – Dentist and Dental Hygienist	1.95	3.0
Other – Nutritionist	0.65	1.0
Other – Direct Medical Support	7.8	12.0
<b>Total</b>	<b>22.1</b>	<b>34</b>

*Staffing is based on expected utilization and the experience of the applicant at its existing clinic sites.*

The proposed new extension clinic will increase access to high-quality, patient-centered primary care for Staten Island residents, particularly for the residents of ZIP Code 10306. Currently, the only existing Article 28 site in ZC 10306 is a school-based health center at New Dorp High School operated by Staten Island University Hospital. The proposed new extension clinic will be geographically more accessible for residents of the ZIP Code who have trouble accessing the Center’s existing site on the North Shore of Staten Island.

Services provided at the new extension clinic will include the full range of primary and preventive health care, including cancer screening, well-child checks, immunizations, family planning services, prenatal care, and all appropriate primary care screening (e.g., cholesterol, glucose testing, blood lead, STIs, etc.). The extension clinic will also provide pediatric services, OB/GYN, nutritional and medical social services, as well as dental services and dental X-ray services.

The hours of operation of the extension clinic will be 8:00 A.M. to 4:30 P.M, Monday to Friday.

**Rosalinda Rosario-Lipka, DO** is the proposed Medical Director. Dr. Rosario-Lipka is a Doctor of Osteopathic Medicine and has been the Chief Medical Officer of the Community Health Center of Richmond, Inc., Staten Island, NY from 12/2010 – Present. She was an Attending Physician in Family Medicine at The Brooklyn Hospital Center, Brooklyn, NY from 8/2002 – 12/2010 and Medical Director at, Continuity Care Clinic of The Brooklyn Hospital Center from 2/2006 – 12/2010. She earned her Medical Degree from the New York College of Osteopathic Medicine in 1999. She was licensed to practice medicine and surgery in the State of New York in 2001 and American Board of Family Practice Board Certified in 2004.

CHCR will maintain its current transfer and affiliation agreement from 2011 with Staten Island University Hospital and Richmond University Medical Center.

#### 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 construction and movable equipment is estimated at \$20,901,236 and is distributed as follows:

Land	\$3,100,000
New Construction	11,791,675
Site Development	488,871
Design Contingency	1,179,168
Construction Contingency	589,583
Architect/Engineering Fees	943,334
Other Fees	51,000
Movable Equipment	405,184
Telecommunications	76,500
Financing Costs	1,615,000
Interim Interest Expense	566,042
Application Fee	1,250
Additional Processing Fee	<u>93,629</u>
Total Project Cost	\$20,901,236

Financing for this project is as follows:

Land Purchase (contract/appraisal submitted)	\$3,100,000
Federal Health Resources and Services award	\$1,000,000
Statewide Health Facility Transformation Program	\$2,000,000
Loan from (LISC) Local Initiatives	\$9,500,000
New Market Tax Program (Approximate net value)	\$4,003,650
Equity from the Center – See Attachment (A and B)	<u>\$1,297,586</u>
Total Project Cost	\$20,901,236

### 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>2026</u>		<u>2028</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<b>Revenues:</b>				
Commercial FFS	\$84.97	\$135,450	\$85.02	\$1,222,385
Medicare FFS	\$137.21	31,420	\$140.78	590,528
Medicaid FFS	\$238.82	178,159	\$245.90	2,203,779
Medicaid MC	\$238.92	2,503,870	\$245.84	1,054,899
Private Pay	\$62.98	96,550	\$63.00	153,960
*Other Rev.	-	524,000	-	835,730
Total Revenue		<u>\$3,469,449</u>		<u>\$5,660,340</u>
<b>Expenses:</b>				
Operating	\$156.92	\$2,613,731	\$155.59	\$4,134,291
** Capital	<u>76.37</u>	<u>1,271,964</u>	<u>47.31</u>	<u>1,257,141</u>
Total Expenses	\$233.29	\$3,885,695	\$202.91	\$5,391,432
Net Income/(Loss)		<u>(\$416,246)</u>		<u>\$268,908</u>
Total Visits		16,656		26,571
Cost per Visit		\$233.29		\$202.91

Utilization by payor source for Year One and Year Three is as follows:

Payor:	Year One	Year Three
	2026	2028
Commercial FFS	9.57%	9.60%
Medicare FFS	1.37%	1.36%
Medicaid FFS	4.48%	4.49%
Medicaid M/C	62.92%	62.91%
Private Pay	9.20%	9.19%
Charity Care	12.45%	12.44%
Total	100.00%	100.00%

The following is noted with respect to the submitted budget:

- Reimbursement rate assumptions are based on the experience of the applicant operating other centers near the existing Federally Qualified Health Center.
- Staffing is based on the expected utilization and the experience of the applicant as a federally funded health center currently operating other existing sites.
- Expenses are based predominantly on the depreciation cost due to construction, and labor costs for the staffing model that includes 22.10 FTEs in Year One and 34 FTEs in Year Three, including 2.75 Physicians in Year One and 4 physicians in Year Three.
- The applicant indicated they are committed to providing high-quality and efficient health care services to underserved and uninsured populations and all persons in need without regard to the patient's ability to pay or the source of payment. The center maintains a sliding fee scale and policies and procedures for serving the uninsured and persons without the ability to pay.

#### Land Purchase

The applicant submitted an executed contract of sale agreement and appraisal of the property from a New York State real estate valuation and advisory company using the lower of cost or market methodology. The property was paid for according to a contractual agreement at closing.

Date:	April 6, 2016
Seller:	XMART, LLC
Buyer:	Community Health Center of Richmond, Inc.
Purchase Price:	\$3,100,000 or \$121.54 Per Square Foot noted on the MAI evaluation.
Appraisal of Property:	Cushman & Wakefield, Inc. Valuation & Advisory Services (Value \$3,100,000) Certified MAI has been submitted for this commercial property.

As of February 19, 2018, the appraisal report was executed for the Local Initiative Support Corporation which is certified by the Members Appraisal Institute. An affidavit from the CEO of Community Health Center of Richmond was submitted stating there is no relationship between the purchaser and seller.

#### Capability and Feasibility

Total project cost of \$20,901,236 will be met with equity of \$3,100,000 for previously purchased land, a \$1,000,000 HRSA grant, a \$2,000,000 Statewide Health Facility Health Transformation III grant, a \$9,500,000 loan from Local Initiatives Support Corporation, \$4,003,650 through the New Markets Tax Credit Program, and \$1,297,586 in accumulated funds.

Working capital requirements, estimated at \$898,572 based on two months of third-year expenses, will be funded through ongoing operations. BFA Attachment B shows the entity has sufficient funds to cover the working capital requirement.

BFA Attachment A presents the Community Health Center of Richmond Inc.'s 2021-2022 Certified Financial Statements. The Center maintained a positive working capital and net asset position in both years and reported an operating income of \$3,680,668 and \$1,484,361, in 2021 and 2022, respectively. BFA Attachment B shows Community Health Center of Richmond Inc.'s Internal Financial Statements for the year ended June 30, 2023, in which Community Health Center of Richmond Inc. reported positive

working capital and positive net asset position and generated an operating income of \$368,717 before depreciation.

The submitted budget projects a net loss of (\$416,246) and a net income of \$268,908 during the first and third years of operations, respectively. The first-year loss is due to start-up costs and Community Health Center of Richmond Inc. has submitted a deficit funding letter to cover the anticipated loss through operations.

Conclusion

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

<h2>Attachments</h2>
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BHFP Attachment	Map
BFA Attachment A	Community Health Center of Richmond Inc. – December 2021 & 2022 Certified Financial Statements
BFA Attachment B	Community Health Center of Richmond Inc. – June 30, 2023, Internal Financial Statement



Project # 222044-B  
Sorin Ambulatory, LLC d/b/a Sorin Ambulatory Surgery  
Center

**Program:** Diagnostic and Treatment Center    **County:** New York  
**Purpose:** Establishment and Construction    **Acknowledged:** September 19, 2022

## Executive Summary

### Description

Sorin Ambulatory, LLC d/b/a Sorin Ambulatory Surgery Center (Sorin or The Center) an existing New York State limited liability company, requests approval to establish and construct a multi-specialty Article 28 freestanding ambulatory surgery center (FASC) specializing in orthopedic, vascular, and endovascular surgery. The Center, at 120 Wall Street in New York (New York County), will be open six days a week and New York County will be its primary service area.

The proposed center will be housed in leased space on the ground floor and on the lower level of an existing thirty-four-story commercial-use building. The FASC will include two procedure rooms (one of which will have a fixed C-Arm imaging unit) and one room for CT scans. The space is currently used by Sorin Medical, P.C. for their existing private practice. This practice will close once this facility opens.

The proposed sole member of Sorin is Joseph Puma, D.O. Justin A. Ratcliffe, M.D., MBA, FACC, FSCAI, who is Board-Certified in internal and endovascular medicine and interventional cardiology and cardiovascular disease, will serve as Medical Director.

Sorin will enter into a Transfer and Affiliation Agreement with NYU Langone Health, 4.8 miles away with a 21-minute travel time, for backup and emergency care services.

### OPCHSM Recommendation

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

### Need Summary

The applicant projects 8,640 procedures in Year One and 9,167 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

There are no project costs associated with this project as the space currently meets Article 28 requirements, and no buildout is required.

	<u>Year One</u> 2024	<u>Year Three</u> 2026
<b><u>Budget:</u></b>		
Revenues	\$30,590,723	\$32,453,076
Expenses	<u>\$30,253,774</u>	<u>\$31,678,205</u>
Net Income	\$336,949	\$774,871

### 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 August 3, 2022.

## 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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed sublease agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed employee lease agreement, acceptable to the Department of Health. [BFA]

**Approval conditional upon:**

1. 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]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or updating enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospitals/docs/hcs\\_access\\_forms\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]
4. The submission of 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  
February 8, 2024

# Need Analysis

## Background and Analysis

The service area consists of New York County. The population of New York County is projected to increase to 1,720,649 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	New York County	New York State
Total Population-2021 Estimate	1,669,127	20,114,745
Hispanic or Latino (of any race)	25.6%	19.2%
White (non-Hispanic)	46.7%	54.7%
Black or African American (non-Hispanic)	12.1%	13.9%
Asian (non-Hispanic)	11.8%	8.6%
Other (non-Hispanic)	3.7%	3.6%

Source: American Community Survey (5-Year Estimates Data Profiles)

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%

Source: Data USA

Based on the current practices of participating surgeons, the applicant projects 8,640 procedures in Year One and 9,167 in Year Three with Medicaid at 10% and Charity Care at 2%. The applicant has identified twelve physicians interested in performing procedures at the proposed center. The applicant states that all of the procedures moving to this center are currently being performed in an office-based setting. The center's operating hours will be Monday through Saturday from 7 am until 11 pm. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	2,160	25%	2,292	25%
Commercial MC	1,642	19%	1,742	19%
Medicare FFS	432	5%	458	5%
Medicare MC	3,110	36%	3,300	36%
Medicaid MC	864	10%	917	10%
Private Pay	259	3%	275	3%
Charity Care	173	2%	183	2%

The center initially plans to obtain contracts with the following Medicaid Managed Care plans: Fidelis, Health First, United Community Plan, AmidaCare, and Empire Health Plus. The center will work collaboratively with local Health Centers such as AllHealth D&TC, Bronx Health Center, and NY Preventive 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.

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	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
Orthopedics	HSS ASC of Manhattan	2,646	3,217	3,295
Orthopedics	HSS West Side ASC	1,593	1,849	1,979
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
Endovascular	NY Endovascular Center (opened 8/16/22)	N/A	N/A	0
Multi	NY Center for Ambulatory Surgery	480	934	1,037
Multi	Surgicare of Manhattan, LLC	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	642
<b>Total Visits</b>		<b>21,122</b>	<b>25,056</b>	<b>31,381</b>

Conclusion

Approval of this project will bring office-based outpatient orthopedic, vascular, and endovascular surgery services into an Article 28 setting.



## Program Analysis

### Project Proposal

<b>Proposed Operator</b>	Sorin Ambulatory, LLC
<b>Doing Business As</b>	Sorin Ambulatory Surgery Center
<b>Site Address</b>	120 Wall Street New York, New York 10005 (New York County)
<b>Surgical Specialties</b>	Multispecialty ASC Orthopedic Surgery Vascular Surgery Endovascular Surgery
<b>Operating Rooms</b>	0
<b>Procedure Rooms</b>	2
<b>Hours of Operation</b>	Monday – Saturday 7 am – 11 pm
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	16.75 FTEs / 16.75 FTEs
<b>Medical Director(s)</b>	Justin Ratcliffe, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	NYU Langone Health, located 4.8 miles away with a 21-minute travel time
<b>On-call service</b>	Patients who require assistance during off-hours will be provided a phone number for a 24-hour/day, seven (7) days/week on-call service to immediately refer the patient to the Center's on-call physician.

### Character and Competence

The ownership of Sorin ASC, LLC is:

Member Name	Proposed Interest
Joseph Puma, D.O	<b>100.00%</b>
<b>TOTAL</b>	<b>100%</b>

**Dr. Joseph Puma** is the Founder and President of Sorin Medical P.C. for over nine (9) years. He is the Assistant Clinical Professor of Medicine of Cardiology for Columbia for nine (9) years. He was the Director of the Division of Cardiology at Twin County Regional Hospital for 13 years. He was an Associate Consultant in Medicine in the Cardiology Department for 12 years. He was the President of the Clinical Research Division of Medcath, Inc. for six (6) months. He was the Medical Director and President at Advanced Health Institute for over four (4) years. He was the Senior Vice President and Director of Clinical Research for over one (1) year. He was the Medical Director and Managing Partner for over five (5) years. He was the Chief of the Cardiac Catheterization Lab, Director of the Cardiovascular Outreach Program, and Director of Cardiovascular Clinical Research at New York Methodist Hospital for over two (2) years. He was an Attending Physician in Research at Lenox Hill Interventional Cardiac and Vascular Services, PC for over two (2) years. He was an Associate Director of the Interventional Cardiology Training Program at Lenox Hill Interventional Cardiac and Vascular Services, PC for over three (3) years. He was the Director of Cardiology Inpatient Services at Mount Sinai St. Luke's Hospital for six (6) months. He was the Chief of Clinical Cardiology and Vice President of Strategy Outpatient Cardiovascular Services at Mount Sinai St. Luke's Hospital for one (1) year. He received his medical degree from New York College of Osteopathic Medicine. He completed his Internal Medicine residency and Cardiology fellowship at Long Island College Hospital. He is board-certified in Internal Medicine, Cardiovascular Disease, and Interventional Cardiology.

**Dr. Justin Ratcliffe** is the Associate Program Director of the Interventional Cardiology Fellowship Program at Mount Sinai Morningside for five (5) years. He has been the Medical Director of Sorin Medical P.C. for seven (7) years. He is the Assistant Clinical Professor of Medicine at New York Presbyterian-Columbia University for six (6) years. He received his medical degree from Albert Einstein College of Medicine. He completed his Internal Medicine Residency at Beth Israel Medical Center. He completed his Cardiovascular Disease fellowship at Beth Israel Medical Center and his Interventional Cardiology

fellowship at Mount Sinai. He is board-certified in Internal Medicine, Endovascular Medicine, Interventional Cardiology, and Cardiovascular Disease.

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

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

#### Integration with Community Resources

For those patients who do not identify a primary care provider (PCP), the Center plans to work closely with patients to educate them regarding the availability of primary care services in the area offered by local providers, including the array of services offered by Mount Sinai Beth Israel as well as other D&TCs which the Center has a relationship with, including AllHealth D&TC, Bronx Health Center, and New York Preventative Health Center. Prior to leaving, each patient will be provided with information regarding the availability of local primary care services. The members of the Center are committed to serving all patients without regard to race, sex, age, religion, creed, sexual orientation, source of payment, ability to pay, or other personal characteristics. The operating budget projects include 10% Medicaid and that 2% of procedures will be for charity care, reduced compensation, or uncompensated care. The Applicant is committed to the development of a formal outreach program directed to the members of the local community. The purpose of this program is to inform these groups of the benefits derived from the outpatient surgical treatments at the Center. The Applicant will utilize his working relationship with AllHealth D&TC, Bronx Health Center, and New York Preventative Health Center. The Applicant will reach out to these organizations to promote enhanced access to surgical services offered by the Center.

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. The Applicant does not expect to consider joining any Accountable Care Organization (ACO) or Medical Homes.

#### 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 submitted an operating budget, in 2024 dollars, for Year One and Year Three, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
Revenues:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial - FFS	\$5,619	\$12,136,251	\$5,619	\$12,875,101
Commercial - MC	\$4,767	\$7,826,043	\$4,767	\$8,302,490
Medicare - FFS	\$3,405	\$1,471,061	\$3,405	\$1,560,618
Medicare - MC	\$2,894	\$9,002,892	\$2,894	\$9,550,984
Medicaid - MC	\$984	\$850,592	\$984	\$902,375
Private Pay	\$341	\$88,264	\$341	\$93,637
Bad Debt		<u>(784,378)</u>		<u>(832,130)</u>
<b>Total Revenue</b>		<b>\$30,590,723</b>		<b>\$32,453,076</b>
Expenses:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Operating	\$3,452	\$29,825,514	\$3,405	\$31,208,814
Capital	\$50	\$428,260	\$51	\$469,391
<b>Total</b>	<b>\$3,502</b>	<b>\$30,253,774</b>	<b>\$3,456</b>	<b>\$31,678,205</b>
<b>Net Income (Loss):</b>		<b>\$336,949</b>		<b>\$774,871</b>
<b>Total Procedures:</b>		<b>8,640</b>		<b>9,167</b>

Utilization by payor source for Year One and Year Three is as follows:

<u>Payor</u>	<u>Years One and Three</u>
Commercial – FFS	25%
Commercial – MC	19%
Medicare – FFS	5%
Medicare – MC	36%
Medicaid – MC	10%
Private Pay	3%
Charity	<u>2%</u>
<b>Total</b>	<b>100%</b>

The following is noted with respect to the submitted budget:

- Rates are based on the 2022 Medicare and Medicaid rate schedule for the services to be provided. Commercial Fee-for-Service is approximately 1.65 times the Medicare fee schedule, Commercial Managed Care is 1.4 times the Medicare fee schedule.
- Expenses are based on historical data from previous cost reports of similar ambulatory surgery centers.
- The numbers and mix of staffing were determined by the historical experience of the physicians and the proposed operator.
- The applicant identified 12 physicians interested in performing procedures at the proposed Center. Utilization is based upon physicians submitting letters of intent to perform the estimated number of procedures at the FASC.
- The applicant states this proposal will not result in the migration of procedures to the proposed Center from local hospitals. All procedures projected for the Center are currently being performed in the office-based surgical setting of the participating physicians.

The applicant indicated they are committed to serving underinsured populations and all persons in need without regard to the patient's ability to pay or the source of payment. The FASC will develop, maintain, and update a sliding fee scale as well as policies and procedures for serving the uninsured and persons without the ability to pay.

#### Lease Agreement

The applicant submitted a draft lease agreement for the site to be occupied, summarized below:

Premises:	A portion of the ground floor (5,686 sqft) and lower level (1,847 sqft) at 120 Wall Street, New York City, NY
Landlord:	120 Wall Street Property Owner, LLC
Tenant:	Sorin Medical, P.C.
Term:	15 years
Rental:	\$392,334 base rent for the 1 <sup>st</sup> year, \$420,764 for the 2 <sup>nd</sup> year, with 2.5% per annum increases for years 3-15.
Provisions:	Tenant is responsible for utilities and any tenant work

#### Sublease Agreement

The applicant submitted a draft sublease agreement for the site to be occupied, summarized below:

Premises:	A portion of the ground floor (5,686 sqft.) and lower level (1,847 sqft.) at 120 Wall Street, New York City, NY
Sublandlord:	Sorin Medical, P.C.
Subtenant:	Sorin Ambulatory, LLC
Term:	15 years
Rental:	\$392,334 rent for year 1, \$420,764 for year 2, with 2.5% per annum increases in years 3-15
Provisions:	Tenant is responsible for utilities and any tenant work

The applicant submitted an affidavit stating that there is no relationship between the landlord and tenant or subtenant. The tenant and the subtenant are related due to common ownership. The lease is an arm's length agreement, while the subspace lease is non-arm's length. The applicant submitted letters from two NYS licensed realtors attesting to the reasonableness of the per-square-foot rental.

#### Employee Leasing Agreement

The applicant submitted a draft employee leasing agreement. The terms are summarized below:

Facility/Operator:	Sorin Ambulatory, LLC
Manager/Contractor:	Sorin Management, LLC
Term:	1 year with infinite 1-year renewals
Duties	Perform support services for Sorin Ambulatory including such functions and services as Sorin Ambulatory shall reasonably request, consistent with the reasonable expectations of persons serving in similar positions
Compensation:	\$2,003,040 Annually

While Sorin Management, LLC will be providing all the above services, Sorin Ambulatory, LLC retains ultimate control in all the final decisions associated with the services. The applicant 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. It is also noted that the proposed ASA is not an arm's length agreement as there is a relationship between the facility operator and the contractor.

### Capability and Feasibility

There are no project costs associated with this project as the space currently meets Article 28 requirements. Working capital requirements are estimated at \$5,288,685 based on two months of third-year expenses and will be funded with members' equity. BFA Attachment A presents the proposed members' net worth statement, indicating sufficient resources to fund the requirement.

The submitted budget projects a net income of \$336,949 and \$774,871 during Year One and Year Three of operations, respectively. Revenue assumptions are based on physicians' letters of intent to perform procedures, and the rates are projected based on CMS-published rates for FASCs. Expenses are based on historical data from previous cost reports of similar ambulatory surgery centers. The budget appears reasonable.

### Conclusion

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

## Attachments

BHFP Attachment	Map
BFA Attachment A	Net Worth Statement of Proposed Member
BFA Attachment B	Pro-Forma Balance Sheet



**Project # 232088-E**

**Sheepshead Bay Surgery Center**

**Program:** Diagnostic and Treatment Center  
**Purpose:** Establishment

**County:** Kings  
**Acknowledged:** September 20, 2023

**Executive Summary**

**Description**

Sheepshead Bay Surgery Center, Inc. (SBSC or the "Center"), a proprietary business corporation that operates an Article 28 freestanding ambulatory surgery center (FASC) at 2269 Ocean Avenue, Brooklyn (Kings County), requests approval to redeem ten (10) shares, representing 5% of the common shares in SBSC, from David Edelstein, M.D., an existing shareholder, who passed away. SBSC proposes transferring the redeemed shares to Dr. Deborah Silberman, M.D., an existing shareholder with a current 9.9% ownership interest in the FASC. The purchase price for the ten (10) redeemed shares is \$200,000 and will be funded with Dr. Silberman's resources. Dr. Silberman's ownership share in SBSC will be 14.9% after the transfer. The amount for which SBSC redeemed the shares is identical to the purchase price.

The Center is licensed to provide single-specialty ophthalmology services. There will be no change in services upon the change in membership interest. Deborah Silberman, M.D., who is Board-Certified in Ophthalmology, will continue to serve as the Medical Director at the Center.

**OPCHSM Recommendation**

Approval

**Need Summary**

There will be no need review per Public Health Law §2801-a (4).

**Program Summary**

The individual background review indicates the 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 for this application. The total purchase price for the 5% ownership interest is \$200,000 and will be funded with Dr. Silberman's personal equity. Operating budget projections are not included as part of this application as it is limited to a change in membership, with no changes in services or location.

**Health Equity Impact Assessment**

This project does not meet the requirements for a Health Equity Impact Assessment under Section 2802-B of the PHL.

## 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](https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]

### Council Action Date

February 8, 2024

## Program Analysis

### Program Proposal

Sheepshead Bay Surgery Center, Inc., an existing Article 28 Ambulatory Surgery Center, seeks approval to redeem 10 shares (5%) of ownership interest from a deceased member. Those 10 shares (5%) will be purchased by Dr. Deborah Silberman M.D. Through the transaction, Dr. Silberman will increase her ownership from less than 10% to greater than 10%. The existing facility is located at 2269 Ocean Avenue, Brooklyn, NY 11229 (Kings County). There will be no change in services as a result of this application.

### Character and Competence

The proposed membership of Sheepshead Bay Surgery Center is provided in the chart below.

<b>Member Name/Title</b>	<b>Current Ownership</b>	<b>Proposed Ownership</b>
Thomas Aiello, M.D.	1.0%	1.0%
Natalie Borodoker, M.D.	2.1%	2.1%
Keith Chang, M.D.	19.9%	19.9%
David Edelstein, M.D.	5.0%	0%
Albert Hazan, M.D.	1.0%	1.0%
Darlene Isola/Chief Executive Officer	0%	0%
Andrea Jue, M.D.	1.0%	1.0%
John Kung, M.D.	19.9%	19.9%
Kevin Lai, M.D.	1.0%	1.0%
David Pinhas, M.D./President	19.9%	19.9%
Raphael Rosenbaum, M.D./Treasurer	16.3%	16.3%
Mehryar Sadeghi, M.D.	1.0%	1.0%
Deborah Silberman, M.D./Vice President	9.9%	14.9%
Rumei Yuan, M.D.	2.0%	2.0%
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>

\*\*\*No new members, Deborah Silberman, M.D. now owns over 10%\*\*\*

**Deborah Silberman, M.D.**, is the Medical Director of Sheepshead Bay Surgical Center since 2017. Additionally, Dr. Silberman operates a private practice since 1992. Dr. Silberman received a medical degree from The University at Buffalo School of Medicine. Internal Medicine Internship was completed at St. Luke's Hospital. Ophthalmology Residency was completed at Brookdale University Medical Center. Dr. Silberman discloses a malpractice case settled in 2000. Dr. Silberman discloses ownership interest in the following:

*Sheepshead Bay Surgery Center*

*02/01/2015 - present*

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases, as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database. Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

### Conclusion

The 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

### Redemption Agreement

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

Date:	August 28, 2023
Company:	Sheepshead Bay Surgery Center, Inc.
Shareholder:	David Edelstein, M.D.
Redeemed Shares:	10 shares of common stock out of 200 outstanding shares.
Transaction:	The shareholder desires to redeem the shares, and the company desires to purchase the shares.
Purchase Price:	\$200,000 (\$20,000 per share)
Conditions:	To be paid by the company to the shareholder within five (5) business days of receiving the signed Redemption Agreement.

### Subscription Agreement

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

Date:	September 23, 2023
Company:	Sheepshead Bay Surgery Center, Inc. d/b/a Sheepshead Bay Surgery Center
Subscriber:	Deborah Silberman M.D.
Common Shares:	10 common shares of the company, representing 5% of the issued and outstanding common shares.
Subscription Price:	\$200,000 (\$20,000 per share)

BFA Attachment A presents Deborah Silberman's Net Worth Statement, which indicates sufficient liquid resources to fund the total purchase price.

### Capability and Feasibility

There are no project costs associated with this application. The total purchase price for the ten (10) shares is \$200,000 and will be funded with Dr. Silberman's personal equity. BFA Attachment A indicates sufficient resources to fund the total purchase price.

A summary of the 2022 Certified Financial Statements for Sheepshead Bay Surgery Center, Inc., is presented as BFA Attachment C. For the year-end December 31, 2022, SBSC reported positive working capital, positive net assets, and a net income of \$1,494,488. BFA Attachment D summarizes the Internal Financial Statements for Sheepshead Bay Surgery Center, Inc. for the period ending October 31, 2023, during which SBSC reported a positive working capital position, a positive net asset position, and a net income of \$1,013,327.

### Conclusion

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

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## **Attachments**

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BFA Attachment A	Net Worth Statement – Deborah Silberman
BFA Attachment B	Current and Post-Purchase Ownership Interest
BFA Attachment C	2022 Certified Financial Statements – Sheepshead Bay Surgery Center
BFA Attachment D	October 2023 Internal Financial Statements – Sheepshead Bay Surgery Center



**Project # 231114-B  
Prime MD Center, LLC**

**Program:** Diagnostic and Treatment Center    **County:** Nassau  
**Purpose:** Establishment and Construction    **Acknowledged:** April 4, 2023

**Executive Summary**

**Description**

Prime MD Center, LLC (Prime), a New York State limited liability company, is seeking approval to establish and construct a Diagnostic & Treatment Center (D&TC) at 1000 Railroad Avenue, Woodmere (Nassau County), currently operating as a private practice (Upstate Urgent Care, PLLC). Prime intends to operate as an urgent care center being certified for Medical Services – Primary Care and Medical Services – Other Medical Specialties including radiology x-ray services.

Prime MD Center, LLC's sole member is Mr. Benjamin Nadler. Sekuleo Gathers, M.D., will serve as the Medical Director.

Prime is currently negotiating a Transfer and Affiliation Agreement with Mount Sinai South Nassau 5.3 miles away. Prime indicated that St. John's Episcopal Hospital South Shore, approximately 4.6 miles away, has expressed interest as a backup hospital.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

The applicant projects 20,000 visits in Year One and 27,601 in Year Three. Medicaid utilization is projected at 11% with Charity Care at 2% in Years One and 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**

There are no project costs associated with this application. The purchase price to acquire the operations and fixed assets is \$2,000,000. The applicant provided a draft promissory note between the buyer and seller for the purchase.

	<u>Year One</u> <u>2024</u>	<u>Year Three</u> <u>2026</u>
<b>Budget:</b>		
Revenues	\$2,269,443	\$3,132,137
Expenses	<u>2,047,291</u>	<u>2,464,602</u>
Net Income/(Loss)	\$222,152	\$667,535

**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 March 31, 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 an executed Billing & Administrative Services Agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed Asset Purchase Agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed Amended Lease Agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed Assignment and Assumption of Lease Agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

**Approval conditional upon:**

1. This project must be completed by **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 staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
3. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process of enrolling for HCS access for the first time or update enrollment information as necessary: [https://www.health.ny.gov/facilities/hospital/docs/hcs\\_access\\_form\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
5. Per 710.9 the applicant shall notify the appropriate Regional Office at least two months in advance of the anticipated completion of construction date to schedule any required pre-opening survey. Failure to provide such notice may result in delays affecting both the pre-opening survey and authorization by the Department to commence occupancy and/or operations. [AER]
6. Compliance with all applicable sections of the NFPA 101 Life Safety Code (2012 Edition), and the State Hospital Code during the construction period is mandatory. This is to ensure the health and safety of all building occupants are not compromised by the construction project. This may require the separation of residents, patients, and other building occupants, essential resident/patient support services, and the required means of egress from the actual construction site. The applicant shall develop an acceptable plan for maintaining the above objectives prior to the actual start of construction and maintain a copy of same on-site for review by Department staff upon request. [AER]
7. This approval in no way obviates the applicant of the responsibility of complying with all applicable codes, rules, and regulations. Should violations be noted upon review of documents or found at the time of on-site inspections, or surveys, such violations shall be corrected prior to occupancy without additional costs allowed for reimbursement beyond the total project cost listed above. [AER]

Council Action Date  
February 8, 2024

# Need Analysis

## Background and Analysis

The primary service area comprises Woodmere, Valley Stream, and Lawrence (zip codes: 11598, 11557, 11581, 11516, and 11559) which occupy the southwestern portion of Nassau County.

The population of Nassau County is projected to slightly increase to 1,424,878 by 2028 based on Cornell Program on Applied Demographic estimates. Demographics for the primary service area are noted below including comparisons with the county and New York State:

<b>Demographics</b>	<b>Totals for Primary Service Area</b>	<b>Nassau County</b>	<b>New York State</b>
Total Population	61,882	1,391,678	20,114,745
Hispanic or Latino (of any race)	12.4%	17.2%	19.2%
White (non-Hispanic)	67.8%	58.3%	54.7%
Black or African American (non-Hispanic)	8.5%	11.0%	13.9%
Asian(non-Hispanic)	7.3%	10.5%	8.6%
Other (non-Hispanic)	3.9%	3.1%	3.6%

Source: American Community Survey (5-year Estimates Data Profiles)

According to Data USA, in 2020 95.9% of the population in Nassau County had health coverage as follows.

Employer Plans	59.5%
Medicaid	10.1%
Medicare	13.5%
Non-Group Plans	12.6%
Military or VA	0.238%

The following services will be provided: urgent care including x-ray services. Hours of operation will be Sunday-Thursday, 8 AM to 10 PM; Friday, 8 AM to 6 PM and Saturday from 5 PM to 10 PM. Through this project, the center will convert an existing private practice into an Article 28 Diagnostic and Treatment Center. The center will provide outpatient urgent care services for patients with acute illness or minor traumas that are not life-threatening or permanently disabling and do not require hospital-level care in an Emergency Department.

The projected visits are 20,000 in Year One and 27,601 in Year Three. The table below shows the projected payor mix for the first and third years.

<b>Projected Payor Mix</b>		
<b>Insurance Type</b>	<b>Year One</b>	<b>Year Three</b>
Commercial FFS	10%	10%
Commercial MC	45%	45%
Medicare FFS	25%	25%
Medicare MC	5%	5%
Medicaid MC	11%	11%
Private Pay	2%	2%
Charity Care	2%	2%

## Conclusion

The new proposed D&TC will provide improved access to urgent care services to the residents of Woodmere, Valley Stream, Lawrence, and the surrounding communities in Nassau County.

## Program Analysis

### Project Proposal

<b>Proposed Operator</b>	Prime MD Center, LLC.
<b>To Be Known As</b>	Prime MD Center
<b>Site Address</b>	1000 Railroad Avenue Woodmere, New York 11598 (Nassau County)
<b>Specialties</b>	Medical Services-Primary Care Medical Services-Other Medical Specialties including: Radiology-X-ray services
<b>Hours of Operation</b>	Sunday to Thursday 8:00 am to 10:00 pm Friday 8:00 am to 6:00 pm Saturday 5:00 pm to 10:00 pm
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	11.90 FTEs / 14.80 FTEs
<b>Medical Director(s)</b>	Sekuleo Gathers, M.D.
<b>Emergency, In-Patient, and Backup Support Services Agreement and Distance</b>	Expected to be provided by Mount Sinai South Nassau 5.3 miles / 22 minutes away

The sole member of Prime MD Center, LLC. is:

<u>Name</u>	<u>Ownership Interest</u>
<i>Benjamin Nadler</i>	<i>100.00 %</i>
<b>Total</b>	<b>100.00 %</b>

**Sekuleo Gathers, M.D.** is the Proposed Medical Director. He has been the Medical Director of Urgent Care Suite in New Jersey for over three (3) years. He has been an Emergency Room Physician at New Bridge Medical Center for five (5) years. He has been a Supervising/Collaborating Physician at Onyx Medical Center/NU Wave Medical for 10 years. He has been the Medical Director and Inventor at New York Physician PLLC for 15 years. He was an Emergency Physician at Queens Hospital Center for two (2) years. He was an Emergency Physician at Riverview Medical Center for three (3) years. He was an Emergency Physician at St. Mary's Hospital in New Jersey for two (2) years. He received his medical degree from the George Washington University School of Medicine. He completed his Emergency Department Residency at Mount Sinai School of Medicine. He is Board Certified in Emergency Medicine.

**Mr. Benjamin Nadler** was the President of Friendly Urgent Care for five (5) years. He is responsible for overseeing and managing two urgent cares located in New Jersey. He is the President and CEO of Prime Medical Supply for 29 years. He was responsible for the overall operations and management of the company which engages in the provision of home care and rehabilitation equipment and supplies.

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

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

## Conclusion

The 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 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</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
	<u>Visit</u>			
<b>Revenues:</b>				
Commercial FFS	\$141.30	\$282,605	\$141.30	\$389,995
Commercial MC	\$120.11	1,081,009	\$120.11	1,491,791
Medicare FFS	\$97.45	487,250	\$97.45	672,405
Medicare MC	\$82.83	82,833	\$82.83	114,309
Medicaid MC	\$148.18	326,001	\$148.23	450,165
Private Pay	\$24.36	<u>9,745</u>	\$24.41	<u>13,472</u>
<b>Total Revenue</b>		<b><u>\$2,269,443</u></b>		<b><u>\$3,132,137</u></b>
<b>Expenses:</b>				
Operating	\$86.86	\$1,737,280	\$77.69	\$2,144,360
Capital	<u>\$15.50</u>	<u>310,011</u>	<u>\$11.60</u>	<u>320,242</u>
<b>Total</b>	<b>\$102.36</b>	<b>\$2,047,291</b>	<b>\$89.29</b>	<b>\$2,464,602</b>
<b>Cost per Visit:</b>				
<b>Net Income / (Loss)</b>		<b><u>\$222,152</u></b>		<b><u>\$667,535</u></b>
<b>Total Visits</b>		<b>20,000</b>		<b>27,601</b>
<b>Cost per Visit</b>		<b>\$102.36</b>		<b>\$89.29</b>

Utilization by payor source for Year One and Year Three is as follows:

<u>Payor:</u>	<u>Years One &amp; Three</u>
Commercial FFS	10%
Commercial MC	45%
Medicare FFS	25%
Medicare MC	5%
Medicaid M/C	11%
Private Pay	2%
Charity	<u>2%</u>
<b>Total</b>	<b>100%</b>

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 D&TCS in New York State.
- Construction and other asset purchases have already been completed by the private practice at this location.
- Depreciation of the assets is part of the budget since it is included as part of the Asset Purchase Agreement.
- The existing private practice commenced operations on November 10, 2022.

Asset Purchase Agreement

The applicant has submitted a draft APA for the sale and acquisition of the assets purchases of the D&TC. The terms of the agreement are summarized below:

Date:	TBD
Existing Operators:	Woodmere Medical Management, LLC
New Operator:	Prime MD Center Management, LLC
Conveyed Assets:	All the tangible personal property owned by the Existing Operator, copies of the Required Certificates, promissory note setter for the obligations to party for the obligations of the purchase price to the seller. Intangibles such as required filings, documents, and documents to satisfy the buyer.
Liabilities:	Buyer shall not assume any liabilities or obligations of the sellers of any kind, whether known or unknown. (Tax returns will be the responsibility of both parties to ensure they properly represent buyer and seller agreement).
Purchase Price:	\$2,000,000 to be paid between the buyer and seller via a promissory note that has been submitted as a draft.
*Payment of Purchase Price:	Payments will be in the amount of \$40,313.92 beginning April 1, 2023. And continue until March 1, 2028, with an interest rate of 7.75% as a draft promissory note has been submitted for the purchase price consideration.

*\*A draft promissory note has been submitted for the stated amount in the APA, which must also be executed.*

Billing & Administrative Services Agreement

The applicant has provided an executed Billing and Administrative Agreement summarized below:

Date:	November 1, 2022
Established Operator:	Prime MD Center, LLC
Contractor:	Diamond Billing NY, LLC
Term:	One (1) year and automatically renew unless either party gives 30-days' notice
Consulting and Advisory Services:	At the request of the established operator, The McGuire Group, Inc. (TMG) shall provide consulting and advisory services related to administration and operational functions but not limited to, advice and assistance about accounts receivable, billing, accounts payable, payroll, reports, bookkeeping and miscellaneous
Clinical Services:	Administrative & Billing Services. Upon request, additional mutual services may be requested or delegated upon mutual consent.
Fees:	\$50.00 per hour billed every month.

The parties to this agreement have no relationship and an attestation service agreement was submitted. Also, the attestation states that only material changes can be made by Prime as the Reserved Powers Clause has been executed with this agreement.

## Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site which is summarized below:

Date:	November 22, 2021
Premises:	2,870 sq. feet, located at 1000, Railroad Ave.
Lessor:	1000 Railroad, LLC
Lessee:	Matov Realty, LLC
Sub-Lessee (Assigned)	Prime MD Center, LLC (Sole Member is Benjamin Nadler)
Term of Lease:	Ten (10) year-term
Rental Amount:	Year (1) \$66,000 per year. Year (2) \$66,000 per year Year (3) \$132,000 per year Year (4) \$135,960 per year Year (5) \$140,038 per year Year (6) \$144,240 per year Year (7) \$148,567 per year Year (7) \$153,024 per year Year (8) \$157,614 per year Year (9) \$162,343 per year Year (10) \$160,733 per last
Provisions:	The tenant is responsible for utilities, no over-overload of electrical service, monitoring system, and repair contracts, and needs the approval to sublet or lease the premises.
*Amended Lease Agreement:	The draft amendment is the current lease that will allow for the Assignment and Assumption of the original executed lease.

\*The first amendment to the lease dated November 22, 2021, is a modification between the landlord and tenant to allow the facility to remain unchanged as it has already been approved for Article 28 space and will remain unchanged in operations. The original 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 submitted stating the lease is an arm's length agreement, Lessor and Lessee are not related.

## Assignment and Assumption of Lease

The applicant has submitted a draft assignment and assumption of the lease agreement for site control of the center. The terms are summarized below:

Assignor:	Matov Realty, LLC
Assignee:	Prime MD Center, LLC
Assigned Rights:	All the Assignor's leasehold rights, title, and interest in and to the lease of the premises consisting of 2,870 sq. ft. located at 1000, Railroad Ave. Woodmere, New York 11598
Rent:	Rental Payments will be the same as Upstate Urgent Care, PLLC and payments will be transferred to Assignee.

## Capability and Feasibility

There are no project costs associated with this application. The purchase price to acquire the operations and fixed assets is \$2,000,000, funded with a draft promissory note between the buyer and seller. Working capital requirements are estimated at \$426,823, based on two months of third-year expenses. Attachment A is the sole member's net worth statement, showing sufficient equity to fund working capital.

Attachment B is the pro forma balance sheet and shows a net equity position of \$428,823 as of the first day of operations. The submitted budget projects a net income of \$222,152 and \$667,535 in Year One and Year Three, respectively. Revenues are based on prevailing reimbursement methodologies and contracted rates for this newly existing service compared to other D&TC services. The budget appears reasonable.

Conclusion

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

<h2>Attachments</h2>
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BHFP Attachment	Map
BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Prime – Pro forma statement
BFA Attachment C	Proposed Organizational Chart of Prime MD Center, LLC



Project # 232080-B
Alef Health Center LLC

Program: Diagnostic and Treatment Center
Purpose: Establishment and Construction
County: Richmond
Acknowledged: November 6, 2023

Executive Summary

Description

Alef Health Center, LLC (the "Center"), a New York State limited liability company, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) at 3777 Richmond Avenue, Staten Island (Richmond County). The Center will provide Primary Medical Care and Other Medical Specialties, including Pediatrics, Internal Medicine, Neurology, and Podiatry. Behavioral and mental health services will be provided to the extent regulation allows.

Alef Health Center LLC plans to provide comprehensive diagnostic and treatment services for chronic diseases and has outreach programs to improve primary and specialized care access.

Anne Gershkowitz is the sole member of Alef Health Center, LLC.

Elizabeth Ann Kulesza, M.D., will serve as the Center's Medical Director. The applicant will enter into a Transfer and Affiliation Agreement for backup and emergency services with Richmond University Medical Center, located 8.6 miles (23 minutes travel time) from the Center.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant projects 7,800 visits in Year One and 13,000 visits in Year Three, with Medicaid at 80% 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 costs of \$375,146 will be met with the members' equity.

Table with 3 columns: Budget, Year One (2024), Year Three (2026). Rows include Revenues (\$1,136,148 vs \$1,893,580), Expenses (1,020,076 vs \$1,576,671), and Gain/(Loss) (\$116,072 vs \$316,909).

Health Equity Impact Assessment

This project does not meet the requirements for a Health Equity Impact Assessment under Section 2802-B of the PHL.

## 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. A copy of the check must also be uploaded into NYSECON. [PMU]
2. Submission of an executed building lease acceptable to the Department of Health. [BFA]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. Submission of a photocopy of an executed copy of the Lease Agreement acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed Operating Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed copy of the Articles of Organization acceptable to the Department. [CSL]

#### Approval conditional upon:

1. This project must be completed by **December 15, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **July 15, 2024**, and construction must be completed by **September 15, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: [https://www.health.ny.gov/facilities/hospital/docs/hcs\\_access\\_form\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]

### Council Action Date

February 8, 2024

# Need Analysis

## Background and Analysis

The primary service area comprises zip codes 10312, 10306, 10308, 10309, and 10314 in Richmond County. Cornell's Program on Applied Demographics projects the county's population to decrease to 487,631 or 0.7% while its 65+ population increases to 106,871 or 25.1% by 2028. Demographics for the primary service area are noted below including a comparison with the county and New York State.

Demographics	Primary Service Area	Richmond County	New York State
Total Population – 2021 Estimate	279,661	491,133	20,114,745
Hispanic or Latino (of any race)	13.32%	18.8%	19.2%
White (non-Hispanic)	71.57%	55.7%	54.7%
Black or African American (non-Hispanic)	2.34%	9.0%	13.9%
Asian (non-Hispanic)	10.41%	13.0%	8.6%
Other (non-Hispanic)	2.36%	3.5%	3.6%

Source: 2021 American Community Survey (5-Year Estimates Data Profiles)

In 2021 95.9% of the population in Richmond County had health coverage as follows.

Employer Plans	55.4%
Medicaid	17.9%
Medicare	12.4%
Non-Group Plans	9.85%
Military or VA	0.305%

Source: Data USA

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	7.00%	7.00%
Medicare	8.00%	8.00%
Medicaid	80.00%	80.00%
Private Pay	1.00%	1.00%
Charity Care	2.00%	2.00%
Other	2.00%	2.00%
<b>Total Visits</b>	7,800	13,000

The applicant seeks to be certified for Primary Care and Other Medical Services including pediatrics, internal medicine, neurology, and podiatry. The applicant plans to address the growing elderly population and the rise in mental health concerns in the area. Hours of operation will be Sunday - Friday, 9:00 AM-6:00 PM.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition.

Hospital Admissions per 100,000 Adults			
PQI Rates: 2020	Primary Service Area	Richmond County	New York State
Prevention Quality Overall Composite	833	931	994
Prevention Quality All Diabetes Composite	201	251	234

## Conclusion

The applicant plans to provide a comprehensive set of services to the community to enhance primary care,

improve patient outcomes, and reduce re-hospitalizations in southeastern Richmond County.

<b>Program Analysis</b>
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**Project Proposal**

<b>Proposed Operator</b>	Alef Health Center, LLC
<b>To Be Known As</b>	Alef Health Center, LLC
<b>Site Address</b>	3777 Richmond Ave., Lower Level Staten Island, NY 10312 (Richmond County)
<b>Specialties</b>	Medical Services-Primary Care Medical Services-Other Medical Specialties Neurology
<b>Hours of Operation</b>	Sunday through Friday 9 am – 6 pm (54 hours per week)
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	6.5 FTEs / 9 FTEs
<b>Medical Director(s)</b>	Elizabeth Kulesza, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by Richmond University Medical Center/ Staten Island University Hospital 8.6 miles/ 23 minutes away

\*Staffing is based on the experience similar to D&TC in NY State

**Character and Competence**

The sole member of Alef Health Center, LLC is:

Name	Ownership Interest
Anne Gershkowitz DDS- Owner	<b>100%</b>
<b>Total</b>	<b>100.00%</b>

BH/MH program will not include a psychiatrist and will follow regulation limitations of 30% or 10,000 visits.

**Dr. Elizabeth Kulesza** is the proposed Medical Director. Dr. Kulesza graduated from the Autonomous University of Guadalajara in Jalisco Mexico in 1979 and completed an internship at Rutgers Medical School in NJ in 1986. A Residency in Internal Medicine at Harlem Hospital center in 1988, a clinical fellowship in Nephrology at Booth Memorial Medical Center in 1990, and a residency in Internal medicine at St. Barnabas MC in 1992. The most recent work experience is from Wellcare of BX Medical PC in the Bronx since 2021. Prior to that she worked at Medical Impressions in the Bronx as attending physician since 2014. The CV includes a Medical Director position from 2011 – 2013 at ARC of Rockland and at Dr. Robert L Yeager Health Center. She is registered through July 2025.

**Dr. Anne Gershokowitz, DDS is the owner of ALEF Health Center, LLC.** She is registered through September 30, 2026, and has managed a private practice dental surgery clinic for 20 years. She has ownership in Bezalel Care Management (100%), Sola Dental Spa P.C. (100%), and All Heart Homecare Agency, Inc. (70%).

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

**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

Total project costs for renovations and the acquisition of moveable equipment are estimated at \$375,146, broken down as follows:

Renovation & Demolition	\$300,000
Architect/Engineering Fees	36,000
Movable Equipment	35,105
CON Application Fee	2,000
CON Processing Fee	<u>2,041</u>
Total Project Cost	\$375,146

The applicant's financing plan appears as follows:

Equity	\$375,146
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BFA Attachment A presents the member's net worth, which shows sufficient resources to meet the equity requirement.

### Operating Budget

The applicant has submitted first and third-year operating budgets in 2024 dollars, as summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
Revenues:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Medicaid-MC	\$159	\$992,160	\$159	\$1,653,600
Medicare-FFS	\$98	45,864	\$98	76,440
Medicare-MC	\$83	12,948	\$83	21,580
Commercial-FFS	\$109	34,008	\$109	56,680
Commercial-MC	\$92	21,528	\$92	35,880
Private Pay	\$20	1,560	\$20	2,600
All Other	\$180	<u>28,080</u>	\$180	<u>46,800</u>
Total		\$1,136,148		\$1,893,580
Expenses:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Operating	\$104	\$812,700	\$104	\$1,353,700
Capital	<u>\$27</u>	<u>207,376</u>	<u>\$17</u>	<u>222,971</u>
Total	\$131	\$1,020,076	\$121	\$1,576,671
Net Income		\$116,072		\$316,909
Total Visits		7,800		13,000

The following is noted concerning the submitted budget:

- The rate assumptions by payor sources were determined based on the experience of similar D&TC and using the APG provider manual and fee schedules.
- The utilization assumptions took into consideration the high prevalence of chronic diseases such as diabetes and heart disease, challenges related to access to healthcare, the rise in mental health concerns, and the experience of similar D&TC.
- Staffing will be based on demand. Staffing includes two physicians in the first year and three by the third year. In the first and third years, an additional 4.5 FTEs and 6 FTEs will support the D&TC operation.
- Breakeven utilization for the first year is 7,004 visits.

Utilization broken down by payor source during Year One and Year Three is as follows:

Payor:	Year One		Year Three	
	2024		2026	
	Visits	%	Visits	%
Medicaid-MC	6,240	80%	10,400	80%
Medicare-FFS	468	6%	780	6%
Medicare-MC	156	2%	260	2%
Commercial-FFS	312	4%	520	4%
Commercial-MC	234	3%	390	3%
Private	78	1%	130	1%
Charity	156	2%	260	2%
All Other	156	2%	260	2%
Total	7,800	100%	13,000	100%

### Lease Rental Agreement

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

Premises:	1,293 square feet located at 3777 Richmond Avenue, Staten Island 10312
Landlord:	3777 Richmond Ave, LLC
Lessee:	ALEF Health Center, LLC
Term:	Ten years
Payment:	\$114,000 for the 1 <sup>st</sup> year. The annual rent increase is 5% per year (for years two (2) through five (5) and 3% (for years six (6) through ten (10) of the term. (\$88.16 per sq. ft.)
Provisions:	Utilities, Maintenance, Insurance and Taxes

The applicant has provided an affidavit attesting that the lease is a non-arms-length agreement, as a relationship exists between landlord and tenant. Anne Gershkowitz, DDS, and her husband Steven Gershkowitz each own 50% of 3777 Richmond Ave, LLC. Letters from two NYS licensed realtors have been provided attesting to the rental rate being fair market value.

### Capability and Feasibility

The total project costs of \$375,146 will be met with member's equity. Working capital requirements are estimated at \$262,779, based on two months of third-year expenses and funded with member's equity. The review of BFA Attachment A reveals sufficient resources to meet all the equity requirements. BFA Attachment B presents Alef Health Center, LLC's pro forma balance sheet that shows operations will have \$637,939 in equity as of the first day of operations. The Center projects an operating surplus of \$116,072 and \$316,909 in Year One and Year Three, respectively. The applicant's budgets appear to be reasonable.

### Conclusion

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

## Attachments

BHFP Attachment	Map
BFA Attachment A	Net Worth Statements of Member of ALEF Health Center, LLC
BFA Attachment B	Pro Forma Balance Sheet of ALEF Health Center, LLC



Project # 232106-B
New York Healthcare and Wellness

Program: Diagnostic and Treatment Center County: Bronx
Purpose: Establishment and Construction Acknowledged: October 16, 2023

Executive Summary

Description

New York Healthcare & Wellness, LLC, a New York State limited liability company, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) at 3005 Grand Concourse (Bronx County). The applicant will lease space spanning three floors of a nine-story medical office building currently under construction. The cellar level will contain a physical therapy suite. The first floor will have a pharmacy and clinical exam space. The second floor will also contain clinical exam space. The site will include 17 exam rooms and the requisite support areas. The D&TC will be known as New York Healthcare & Wellness upon approval.

The new D&TC will provide Primary Medical Care, Physical Therapy, and Other Medical Specialties, including Gynecology, Neurology, Podiatry, Gastroenterology, Pediatrics, Pain Management, Orthopedics, Oncology, Endocrinology, Cardiology, Ophthalmology, and Urology. The facility plans to provide Behavioral and Mental Health services, which are not expected to exceed the 30% of visits threshold.

The proposed members of New York Healthcare and Wellness, LLC are Herman Patel, MD (60%) and Sweta Patel (40%). Hemant Patel, M.D., is Board-Certified in Internal Medicine and will serve as the Center's Medical Director.

The applicant is negotiating an Affiliation and Transfer Agreement with Montefiore Hospital, 1 mile and 5 minutes away.

OPCHSM Recommendation

Contingent Approval

Need Summary

The applicant projects 22,469 visits in Year One and 47,435 in Year Three, with Medicaid at 63% and Charity Care at 2%.

Program Summary

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

Financial Summary

Total project costs of \$4,799,823 will be met with \$601,284 from the applicant and \$4,198,539 from the landlord. The applicant will contribute \$85,548 in equity and finance \$515,736. The landlord will contribute \$198,539 in equity and finance \$4,000,000.

Table with 3 columns: Budget, Year One (2024), Year Three (2026). Rows include Revenues, Expenses, and Gain/(Loss).

Health Equity Impact Assessment

This project does not meet the requirements for a Health Equity Impact Assessment under Section 2802-B of the PHL.

## 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 State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. (AER)
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0 (AER)
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. (HSP)
5. Submission of an executed loan commitment to the applicant acceptable to the Department of Health. (BFA)
6. Submission of an executed working capital loan commitment acceptable to the Department of Health. (BFA)

#### 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 **December 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 staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospital/docs/hcs\\_access\\_form\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf). [HSP]

### Council Action Date

February 8, 2024

# Need Analysis

## Background and Analysis

The primary service area for this project is the Kingsbridge Heights and Bedford neighborhoods in **the Bronx**. The proposed location is in a Health Professional Shortage Area (HPSA) for Primary Care, Dental Health, and Mental Health and is also within a Medically Underserved Area (MUA). The population of Bronx County is estimated to increase to 1,590,942 by 2028 per projection data from the Cornell Program on Applied Demographics, an increase of 8.4%. Demographics for the primary service area are noted below including a comparison with New York State.

Demographics	Primary Service Area	Bronx County	New York State
Total Population – 2021 Estimate	82,480	1,468,262	20,114,745
Hispanic or Latino (of any race)	79.3%	56.1%	19.2%
White (non-Hispanic)	2.6%	9.0%	54.7%
Black or African American (non-Hispanic)	13.8%	28.5%	13.9%
Asian(non-Hispanic)	2.6%	3.7%	8.6%
Other (non-Hispanic)	1.7%	2.7%	3.6%

Source: 2021 American Community Survey (5-Year Estimates Data Profiles)

In 2021, 92.2% of the population of Bronx County had health coverage as follows:

Employee plans	30.7%
Medicaid	42.3%
Medicare	6.78%
Non-group plans	12.0%
Military or VA plans	0.4%

Source: Data USA

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	14%	14%
Medicare	18%	18%
Medicaid	63%	63%
Private Pay	3%	3%
Charity Care	2%	2%
Other	0%	0%

Hours of operation at the initial start-up will be Monday-Friday 9:00 am-8:00 pm and Saturday and Sunday from 9:00 am -2:00 pm. Hours will change to accommodate the needs of the community and as the patient base grows.

This project will serve all patients needing care, regardless of their ability to pay or the source of payment.

The applicant is negotiating an Affiliation and Transfer Agreement with Montefiore Hospital 1 mile and 5 minutes away, for backup hospital services.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on PQI rates for 2020:

Hospital Admissions per 100,000 Adults			
PQI Name	Primary Service Area	Bronx County	New York State
Chronic Obstructive Pulmonary Disease or Asthma	454	531	244
Hypertension	141	129	63
Heart Failure	385	444	336
Bacterial Pneumonia	69	117	105
Uncontrolled Diabetes	83	100	45
Prevention Quality Overall Composite	1361	1578	994

**Conclusion**

Approval of this project will allow for expanded access to Medical Services - Primary Care, Medical Services - Other Medical Specialties, Podiatry O/P, and Therapy - Physical O/P for the residents of Bronx County.

## Program Analysis

### Project Proposal

New York Healthcare and Wellness, LLC seeks approval to establish and construct a new Article 28 diagnostic and treatment center to be located at 3005 Grand Concourse, Bronx, NY (Bronx County). The proposed center will provide Medical Services-Primary Care and Medical Services- Other Medical Specialties, and behavioral and mental health services, to the extent regulation allows.

<b>Proposed Operator</b>	New York Healthcare and Wellness, LLC
<b>To Be Known As</b>	New York Healthcare and Wellness
<b>Site Address</b>	3005 Grand Concourse Bronx, NY 10468 Bronx County
<b>Specialties</b>	Medical Services-Primary Care Medical Services-Other Medical Specialties -Neurology -Gastroenterology -Orthopedics -Oncology -Endocrinology -Cardiology -Urology Podiatry O/P Therapy – Physical O/P
<b>Hours of Operation</b>	Initially: Monday-Friday 9:00 am to 8:00 pm Saturday and Sunday 9:00 am to 2:00 pm Hours will change to accommodate the needs of the community as the patient base grows
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	26.41 FTEs / 64.30 FTEs
<b>Medical Director(s)</b>	Hemant Patel, MD
<b>Emergency, In-Patient, and Backup Support Services Agreement and Distance</b>	Expected to be provided by Montefiore Medical Center 5 minutes away or 1 mile.

Behavior and Mental Health services are not expected to exceed 30% of visits.

### Character and Competence

The members of New York Healthcare and Wellness, LLC. are:

<b>Name</b>	<b>Ownership Interest</b>
<b>Dr. Hemant Patel, MD</b>	<b>60%</b>
<b>Sweta Patel</b>	<b>40%</b>
<b>Total</b>	<b>100.00%</b>

**Dr. Hemant Patel** is part owner of the Diagnostic and Treatment Center and is proposed as the co-manager and Medical Director. He has been in Hemant Patel Private medical practice since 1987. He has also been employed with Harlem Medical Group, P.C. since 2012. Finally, Dr. Patel serves as the Director of Ambulatory Service at Touro College of Osteopathic Medicine since 2011. Dr. Patel Graduated from B.J. Medical College, Gujarat University in India, and served a residency at Cabrini Medical Center in New York. Upon request, he disclosed an ongoing medical case. He is registered through March 2025.

**Sweta Patel** is the proposed co-manager. Sweta Patel has worked at Hemant Patel MD P.C. since 1992. Sweta Patel is the Director for credentialing and Billing. She holds responsibilities to monitor revenue cycle management including but not limited to coding, billing, AR, and quality measures.

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

- *Dr. Patel disclosed upon request that on May 17, 2019, an action was filed against him alleging neglect. The case is currently ongoing and is expected to settle within Dr. Patel's policy limits.*

### **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**

Total project costs for renovations and the acquisition of moveable equipment are estimated at \$4,799,823, broken down as follows:

Renovation & Demolition	\$3,114,780
Site Development	518,323
Design Contingency	311,478
Construction Contingency	155,739
Architect/Engineering Fees	158,220
Other Fees	65,000
Movable Equipment	432,889
Financing Costs	15,150
CON Application Fee	2,000
CON Processing Fee	<u>26,244</u>
Total Project Cost	\$4,799,823

The applicant's financing plan appears as follows:

Applicant - Cash Equity	\$85,548
Applicant - Loan (6% interest, 5-year term)	515,736
Landlord - Cash Equity	198,539
Landlord - Loan (10-year, approx. 8.04%, 25-year amortization)	<u>4,000,000</u>
Total	\$4,799,823

BFA Attachment A.1 presents the operating members' net worth, which shows sufficient resources to meet the equity requirement. Hudsonshine Capital has provided a letter of interest for the loans. BFA Attachment A.2 presents the 3005 GC, LLC (Landlord) members' net worth, which shows sufficient resources to meet the equity requirements. Orange Bank & Trust Company is currently providing a one-year construction loan, interest only at the Federal Home Loan Bank of New York (FHLBNY) with a fixed advance rate plus 2.5% or 8.04% as of 11-29-23. Upon construction completion, it will be converted to a 10-year loan at FHLBNY plus 2.5% or a floating rate tied to prime with a 25-year amortization.

## Operating Budget

The applicant has submitted first and third-year operating budgets in \$2024, as summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2026</u>		<u>2028</u>	
Revenues:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Medicaid-FFS	\$197.14	\$88,515	\$197.14	\$187,083
Medicaid-MC	\$167.57	2,296,669	\$167.57	4,848,709
Medicare-FFS	\$165.00	556,050	\$165.00	1,173,975
Medicare-MC	\$140.25	94,529	\$140.25	199,576
Commercial-FFS	\$165.00	370,755	\$165.00	782,760
Commercial-MC	\$140.25	126,085	\$140.25	266,054
Private Pay	\$200.00	<u>135,000</u>	\$200.00	<u>284,400</u>
Total		\$3,667,603		\$7,742,557
Expenses:				
Operating	\$123.38	\$2,772,123	\$121.56	\$5,766,185
Capital	<u>\$30.61</u>	<u>687,675</u>	<u>\$14.38</u>	<u>682,135</u>
Total	\$153.99	\$3,459,798	\$135.94	\$6,448,320
Net Income		\$207,805		\$1,294,237
Total Visits		22,469		47,435

Utilization broken down by payor source during Year One and Year Three is as follows:

<u>Payor:</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>2026</u>		<u>2028</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid-FFS	449	2.00%	949	2.00%
Medicaid-MC	13,706	61.00%	28,936	61.00%
Medicare-FFS	3,370	15.00%	7,115	15.00%
Medicare-MC	674	3.00%	1,423	3.00%
Commercial-FFS	2,247	10.00%	4,744	10.00%
Commercial-MC	899	4.00%	1,897	4.00%
Private Pay	675	3.00%	1,422	3.00%
Charity	<u>449</u>	<u>2.00%</u>	<u>949</u>	<u>2.00%</u>
Total	22,469	100%	47,435	100%

The following is noted concerning the submitted budget:

- Medicaid Fee for Service rate is based upon the basic per-visit rate plus capital obtained from the Bureau of D&TC Reimbursement. Medicaid Managed Care is assumed to be 85% of the Medicaid FFS's basic rate.
- The Medicare Fee for Service rate is based on the Medicare Part B fee schedule, with the Managed Care assumed to be at 85%. The Commercial Fee for Service rate is based on the Medicare Part B fee schedule, while managed care is discounted by approximately 85%.
- Staffing is based on the applicant's experience and incorporates the New York State Department of Health staffing requirements. For the first year, there will be 26.41 FTEs, of which 5.14 FTE will be physicians. For the third year, there will be 64.30 FTEs, of which 10.84 will be physicians.
- Expenses are based on the applicant's experience and review of previously submitted Medicaid cost reports (AHCF-1).
- Utilization by payor source is based on the demographic of the service area, which includes Kingsbridge Heights and Bedford. The Center will be in Bronx Community District 7. A Health Care Professional Shortage Area concerning primary care, mental health, and dental health. It has been designated as a medically underserved area.

- The operators will engage with community leaders, schools, hospitals, community centers, and religious institutions to inform them of their presence. It can be a resource for education and advocacy as well as treatment.
- Breakeven utilization for the first year is 21,196 visits.

**Lease Rental Agreement**

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

Date:	July 31, 2023
Premises:	12,483 square feet located at 3005 Grand Concourse, Bronx, NY 10468
Landlord:	3005 GC, LLC
Lessee:	New York Healthcare & Wellness, LLC
Term:	Five years, three (3) year renewals
Payment:	\$540,000 per year, rent increase 3% per year (\$43.26 per sq. ft.)
Provisions:	Triple Net

The applicant has provided an affidavit attesting that the lease is a non-arms-length agreement, as a relationship exists between landlord and tenant. The costs associated with the landlord’s construction costs are included in the lease agreement. Letters from two NYS licensed realtors have been provided attesting to the rental rate being fair market value.

**Capability and Feasibility**

Total project costs of \$4,799,823 will be met through \$601,284 from the applicant and \$4,198,539 from the landlord. The applicant members will contribute \$85,548 in equity and finance \$515,736 through Hudsonshine Capital for five years at the bank’s five-year cost of funds with an indicative rate of 6%. The landlord will contribute \$198,539 in equity and finance \$4,000,000. Orange Bank & Trust Company currently provides a one-year construction loan, interest only at the Federal Home Loan Bank of New York (FHLB NY) fixed advance rate plus 2.5% or 8.04% as of 11-29-23. Upon construction completion, it will be converted to a 10-year loan at FHLB NY plus 2.5% or a floating rate tied to prime with a 25-year amortization.

Working capital requirements are estimated at \$1,074,720, based on two months of third-year expenses, and will be funded with \$537,360 from member equity, with the \$537,360 balance satisfied through a three-year loan from Hudsonshine Capital at the firm’s five-year cost of funds at an indicative interest rate of 6%. Hudsonshine Capital has provided a letter of interest. A review of BFA Attachments A.1 reveals that the applicant members have sufficient resources to meet all the equity requirements. BFA Attachment B presents New York Healthcare & Wellness, LLC’s Pro Forma Balance Sheet and shows operations will start with \$594,664 equity. The Center projects an operating surplus of \$207,805 and \$1,294,237 in the first and third years. The applicant’s budgets appear to be reasonable.

**Conclusion**

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

**Attachments**

BHFP Attachment	Map
BFA Attachment A.1	Net Worth Statements of Members of New York Healthcare & Wellness, LLC
BFA Attachment A.2	Net Worth Statements of Members of 3005 GC, LLC
BFA Attachment B	Pro Forma Balance Sheet of New York Healthcare & Wellness, LLC



**Project # 232133-B  
Namo Health Inc**

**Program:** Diagnostic and Treatment Center    **County:** New York  
**Purpose:** Establishment and Construction    **Acknowledged:** October 26, 2023

**Executive Summary**

**Description**

Namo Health, Inc., a New York State nonprofit corporation, requests approval to establish and construct an Article 28 Diagnostic Treatment Center (D&TC) in leased space of a two-story office building basement at 651 Academy Street (New York County). The site will include thirteen exam rooms and the requisite support areas. The new D&TC will provide Primary Medical Care and Other Medical Specialties, including infectious disease, gastroenterology, pulmonology, endocrinology, cardiology, ophthalmology, urology, and physical therapy.

The project is a conversion of a private practice known as Sheldon Medical Services under the direction of Sangita Shah, M.D., a board member of Namo Health, Inc. Upon approval of this application, the D&TC will be known as Namo Health, Inc. Tushar Shah, M.D., who is board-certified in Internal Medicine, will serve as the Medical Director.

The applicant has entered into a Transfer and Affiliation Agreement for backup and emergency services with St. Barnabas Hospital, located 3 miles (8 minutes travel time) from the Center.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

The applicant projects 12,502 visits in Year One and 32,500 in Year Three. The projected payor mix is 65% Medicaid and 2% Charity Care in Year One and Year Three.

**Program Summary**

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

**Financial Summary**

Total project costs of \$785,999 will be met with equity from Sangita Shah, M.D.

Budget:	<u>Year One</u> 2025	<u>Year Three</u> 2027
Revenues	\$2,210,512	\$5,856,164
Expenses:	<u>1,860,747</u>	<u>\$3,029,526</u>
Gain/(Loss)	\$349,765	\$2,826,638

**Health Equity Impact Assessment**

This project does not require a Health Equity Impact Assessment as it does not meet the requirements under Public Health Law Section 2802-B.

## 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. A copy of the check must also be uploaded into NYSECON. [PMU]
2. Submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. 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 **December 15, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **July 15, 2024**, and construction must be completed by **September 15, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospital/docs/hcs\\_access\\_form\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]

Council Action Date

February 8, 2024

# Need Analysis

## Background and Analysis

The primary service area for this project is the Washington Heights – Inwood section in New York County, specifically zip code 10034. The proposed location is in a Health Professional Shortage Area (HPSA) for Primary Care, Dental Health, and Mental Health and is also a Medically Underserved Area/Population (MUA/P). The population of New York County is estimated to increase to 1,720,649 by 2028 per projection data from the Cornell Program on Applied Demographics, an increase of 3.1%. Demographics for the primary service area are noted below including a comparison with New York State.

Demographics	Zip Code 10034	New York County	New York State
Total Population – 2021 Estimate	43,365	1,669,127	20,114,745
Hispanic or Latino (of any race)	71.0%	25.6%	19.2%
White (non-Hispanic)	18.4%	46.7%	54.7%
Black or African American (non-Hispanic)	5.2%	12.1%	13.9%
Asian (non-Hispanic)	2.7%	11.8%	8.6%
Other (non-Hispanic)	2.7%	3.8%	3.6%

Source: 2021 American Community Survey (5-Year Estimates Data Profiles)

In 2021, 95.3% of the population of New York County had health coverage as follows:

Employee plans	52.7%
Medicaid	19.5%
Medicare	10.3%
Non-group plans	12.4%
Military or VA plans	0.329%

Source: Data USA

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	13%	13%
Medicare	20%	20%
Medicaid	65%	65%
Private Pay	0%	0%
Charity Care	2%	2%
Other	0%	0%

The existing private practice to be replaced currently provides primary medical care and physical therapy services as well as referrals to other specialists. According to the applicant, primary care visits will be reduced from 17,049 before the conversion to 12,502 during the first year, growing to 32,500 by Year Three. They state the implementation of an Article 28 and seeking FQHC status will see an overall increase in utilization and services. Their services will also be enhanced during the first year with further services being added after Year Three.

The applicant will accept all patients regardless of the ability to pay and in no circumstance will a patient be refused treatment. All services will be offered to those in need of care who satisfy admission requirements, regardless of age, sex, sexual orientation, race, creed, religion, disability, source of payment, or any other personal characteristic.

The applicant has an existing Affiliation and Transfer Agreement with St. Barnabas Hospital for back-up hospital services located 3 miles and 8 minutes travel time away.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on PQI rates for 2020:

<b>Hospital Admissions per 100,000 Adults</b>			
<b>PQI Name</b>	<b>Zip Code 10034</b>	<b>New York County</b>	<b>New York State</b>
<b>Chronic Obstructive Pulmonary Disease or Asthma</b>	152	191	244
<b>Hypertension</b>	52	55	63
<b>Heart Failure</b>	193	244	336
<b>Bacterial Pneumonia</b>	48	57	105
<b>Uncontrolled Diabetes</b>	29	35	45
<b>Prevention Quality Overall Composite</b>	544	729	994

#### Conclusion

Approval of this project will allow for expanded access to Medical Services - Primary Care, Medical Services - Other Medical Specialties and Therapy - Physical O/P for the residents of New York County.

## Program Analysis

### Project Proposal

Namo Health, Inc., a not-for-profit entity, seeks approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) at 651 Academy Street, New York, NY 10034. The proposed D&TC will provide Medical Services-Primary Care, Therapy – physical O/P, and Medical Services- Other Medical Specialties including Infectious Disease, Gastroenterology, Pulmonology, Endocrinology, Cardiology, Ophthalmology, and Urology.

<b>Proposed Operator</b>	Namo Health Inc.
<b>To Be Known As</b>	Namo Health Inc.
<b>Site Address</b>	651 Academy Street New York, NY 10034 (New York County)
<b>Specialties</b>	Medical Services-Primary Care Medical Services-Other Medical Specialties Gastroenterology Pulmonology Endocrinology Cardiology Ophthalmology Urology Therapy – Physical O/P
<b>Hours of Operation</b>	Monday through Friday 8 am to 6 pm If needed will expand to Saturday 8:30 am to 6 pm
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	10.75 FTEs / 15.75 FTEs
<b>Medical Director(s)</b>	Tushar Shah, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	To be provided by St. Barnabas Hospital 3 miles / 8 minutes away

Staffing based on operations of existing Article 28 D&TCs and review of existing AHCF-1s.

### Character and Competence

The members of Namu Health, Inc. are:

<b>Board Members:</b>
Sangita Shah, MD, President and Board Member
Steven Santana, Chairperson and Board Member
Issac Kuzi, Board Member
Remesh Sareuta, Board Member
Casilda Del Rosasrio Alvarado, Board Member

**Dr. Tushar Shah** is the proposed Medical Director. Dr. Shah has practiced at Sheldon Medical Care in NY since 2004. Dr. Shah graduated from BJ Medical College in India in 1989, completed their residency in Internal Medicine at Catholic Medical Center of Brooklyn in 1996, and is board-certified in Internal Medicine. Currently licensed in New York and Florida.

**Casilda Del Rosario Alvarado** is a proposed board member. Casilda has been retired since 2012. Casilda states she is a community leader. She is also a patient of Dr. Shah's.

**Isaac Kuzi** is a proposed board member. Isaac has experience as the founder and CEO of Krismark Foods Inc. and Krismark Cosmetics USA, Inc.



**Steve Santana** is a proposed board member. Steven states he is a non-patient board member for 2 years at Morris Heights Health Center and will provide leadership to grow the organization. He also worked with government officials and community leaders with roles as Secretary of Police Precinct Counsel of 46<sup>th</sup> in the Bronx and District Leader in the 86<sup>th</sup> Assembly District.

**Ramesh Sareuta** has been retired for the last ten years. She is a proposed board member. She was a manager of a radiology facility (Mosholu Park Radiology-Bronx NY) for 30+ years. She holds an M.B.B.S., obtained in 1974, from Dow Medical College in Pakistan.

**Dr. Sangita Shah** is the proposed Owner. Currently working as a primary care physician at Sheldon Medical Care in the Bronx since 2004. Dr. Shah also has experience working as an ER physician at St. Anthony Community Hospital in Warwick, NY. Obtained a medical degree in India at Gujarat University and became a board-certified internal medicine physician in 1995.

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

#### 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

Total project costs for renovations and the acquisition of moveable equipment are estimated at \$785,999, broken down as follows:

Renovation & Demolition	\$564,075
Design Contingency	28,204
Construction Contingency	42,306
Architect/Engineering Fees	45,126
Other Fees	50,000
Movable Equipment	50,000
CON Application Fee	2,000
CON Processing Fee	<u>4,288</u>
<b>Total Project Cost</b>	<b>\$785,999</b>

The applicant's financing plan appears as follows:

Applicant Cash Equity	\$785,999
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BFA Attachment A presents the members' net worth, which shows sufficient resources to meet the equity requirement.

### Operating Budget

The applicant has submitted first and third-year operating budgets in 2025 dollars, as summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2025</u>		<u>2027</u>	
Revenues:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Medicaid-FFS	\$240.00	\$120,000	\$240.00	\$312,000
Medicaid-MC	\$230.00	1,753,750	\$234.60	4,650,945
Medicare-FFS	\$105.00	157,500	\$107.10	417,690
Medicare-MC	\$135.00	135,000	\$137.70	358,020
Commercial-FFS	\$55.00	68,750	\$56.10	182,325
Commercial-MC	\$55.00	20,625	\$56.10	54,698
Bad Debt		<u>-45,113</u>		<u>-119,514</u>
<b>Total</b>		<b>\$2,210,512</b>		<b>\$5,856,164</b>
Expenses:				
Operating	\$118.82	\$1,485,515	\$81.07	\$2,634,877
Capital	<u>\$30.01</u>	<u>375,232</u>	<u>\$12.14</u>	<u>394,649</u>
<b>Total</b>	<b>\$148.83</b>	<b>\$1,860,747</b>	<b>\$93.21</b>	<b>\$3,029,526</b>
Net Income		\$349,765		\$2,826,638
Total Visits		12,502		32,500

Utilization broken down by payor source during Year One and Year Three is as follows:

<u>Payor:</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>2025</u>		<u>2027</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid-FFS	500	4.0%	1,300	4.0%
Medicaid-MC	7,625	61.0%	19,825	61.0%
Medicare-FFS	1,500	12.0%	3,900	12.0%
Medicare-MC	1,000	8.0%	2,600	8.0%
Commercial-FFS	1,250	10.0%	3,250	10.0%
Commercial-MC	375	3.0%	975	3.0%
Charity	<u>252</u>	<u>2.0%</u>	<u>650</u>	<u>2.0%</u>
Total	12,502	100%	32,500	100%

The following is noted concerning the submitted budget:

- Rate and revenue projections are based on the Freestanding APG Base Rates using full APG investment and the Medicare Part B fee schedule.
- Expenses are based on a review of cost reports for other Article 28 D&TC in the same service area, including staffing ratios and input from the proposed Medical Director.
- The applicant expects that upon converting its private practice to an Article 28 D&TC, some medical providers will opt out of continuing their clinical participation. As a result, the primary care visits will be reduced from 17,049 before the conversion to 12,502 during the first year. Namo Health Center will target the developmental disability screening needs of children, seropositive persons, elder care needs, and linguistically isolated populations. It is anticipated that with the implementation of Article 28, seeking FQHC status, utilization, and services will see an overall increase.

#### Lease Rental Agreement

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

Date:	September 16, 2022
Premises:	4,905 square feet located at 651 Academy Street, NY, NY 10034
Landlord:	651 Inwood Realty Corp.
Lessee:	Namo Health, Inc.
Term:	January 1, 2013 – December 31, 2027, three (3) five (5) year renewals
Payment:	Rent as of October 1, 2024, is \$328,390 per year. Rent increases by 3% per year, and at the start of each renewal period, it increases by 5% and then 3% per year (\$66.95 per sq. ft.)
Provisions:	Utilities, Maintenance, Insurance and Taxes

The applicant has provided an affidavit attesting that the lease is a non-arms-length agreement, as Sangita Shah, M.D., is the sole shareholder of the landlord and a Board Member of the tenant. Letters from two NYS licensed realtors have been provided attesting to the rental rate being fair market value.

#### Capability and Feasibility

Total project costs of \$785,999 will be met with equity from Sangita Shah, M.D. Working capital requirements are estimated at \$504,921, based on two months of third-year expenses funded with equity from Sangita Shah, M.D. The review of BFA Attachment A reveals sufficient resources to meet all the equity requirements.

BFA Attachment B presents Namo Health, Inc.'s Pro Forma Balance Sheet that shows operations will start with \$1,290,920 in equity as of the first day of operation. The Center projects an operating surplus of \$349,765 and \$2,826,638 in the first and third years. The applicant's budgets appear to be reasonable.

Conclusion

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

<h2>Attachments</h2>
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BFHP	Map
BFA Attachment A	Net Worth Statements of Members of Namo Health, Inc.
BFA Attachment B	Pro Forma Balance Sheet of Namo Health, Inc.
BFA Attachment C	Namo Health, Inc., Board Members



**Project # 231361-B  
Tidal Home Dialysis**

**Program:** Diagnostic and Treatment Center    **County:** Kings  
**Purpose:** Establishment and Construction    **Acknowledged:** September 29, 2023

**Executive Summary**

**Description**

Tidal Dialysis, LLC (The Center) seeks to establish and construct a new Article 28 Diagnostic and Treatment Center (D&TC) to provide home hemodialysis and peritoneal dialysis training. The proposed D&TC will be in renovated space at 336 Himrod Street in Brooklyn (Kings County). Upon approval of this application, the center will be known as Tidal Home Dialysis.

The applicant intends to provide home hemodialysis and home peritoneal dialysis training as an alternative to in-center dialysis to reduce hospital admissions and improve the health of residents within the service area.

The proposed members and their ownership percentages are as follows:

Tidal Dialysis, LLC	
<u>Members:</u>	
Premila Bhat, M.D. *	25%
Pravin Bhat, M.D. *	25%
Denneke Tsega, M.D.	25%
Mahankali Bhavani, M.D. *	25%
<b>Total</b>	<b>100%</b>

\* *managing member*

Premila Bhat, M.D., board-certified in Internal Medicine/Nephrology, will serve as the D&TC's Medical Director. All proposed members will be practicing physicians at the Center and are board-certified in their respective specialties.

Tidal will enter into a transfer agreement with Wyckoff Heights Medical Center (WHMC), located 0.2 miles (2-minute travel time). Tidal

will refer patients to WHMC for in-center services as part of the transfer agreement. Ridgewood Dialysis will serve as a backup dialysis program should the patients require in-center services.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

The applicant projects 2,560 visits in Year One and 7,680 in Year Three, with 22% Medicaid, 58% Medicare, and 2% Charity Care in Year 3 of operations.

**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 \$1,103,121 will be met with \$110,312 in members' equity and a five-year loan for \$992,809t.

	<u>Year One</u>	<u>Year Three</u>
<u>Budget:</u>	<u>2025</u>	<u>2027</u>
Revenues	\$741,148	\$2,279,300
Expenses	<u>\$737,829</u>	<u>\$1,324,481</u>
Net Income (Loss)	\$3,319	\$954,819

**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 20, 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. Submission of an executed working capital loan commitment acceptable to the Department of Health. [BFA]
3. Submission of a commitment for a permanent mortgage for the project provided by a recognized lending institution at a prevailing interest rate acceptable to the Department of Health. Included with the permanent mortgage commitment must be a Sources and Uses statement and debt amortization schedule for both new and refinanced debt. [BFA]

**Approval conditional upon:**

1. This project must be completed by **March 15, 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 **August 15, 2024**, and construction must be completed by **December 15, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/Director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:  
[https://www.health.ny.gov/facilities/hospitals/docs/hcs\\_access\\_forms\\_new\\_clinics.pdf](https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf). Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov). [HSP]

Council Action Date

February 8, 2024

# Need Analysis

## Background and Analysis

The primary service area is the Bushwick neighborhood in Kings County. The facility's proposed location is within a Health Professional Shortage Area for Primary Care, Mental Health, and Dental Health and within a Medically Underserved Area. According to US Census estimates, the Kings County population was 2,590,516 in 2022 and is projected to increase to 2,844,643 by 2028, an increase of 9.8% based on Cornell's Program on Applied Demographics. The 65+ population had an estimate of 404,121 in 2022 and is expected to increase to 460,838 by 2028, an increase of 14%. The non-white population is higher for the county than the state. These are two population groups most in need of renal dialysis services.

County Residents	Kings County	New York State
<b>Ages 65 and Over</b>	15.6%	18.1%
<b>Non-white</b>	50.4%	31.4%

Source: U.S. Census 2022

According to Data USA, in 2021, 93.4% of the population in Kings County had health coverage as follows:

Employer Plans	40.9%
Medicaid	32.5%
Medicare	8.13%
Non-Group Plans	11.7%
Military or VA	0.308%

The table below shows the projected payor mix:

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	10.94%	14.45%
Medicare	58.52%	58.28%
Medicaid	21.88%	21.61%
Private Pay	4.69%	3.65%
Charity Care	3.98%	2.01%
<b>Total Visits</b>	2,560	7,680

The projected increase in Year Three will be accomplished by ramping up and establishing the program. This facility is focused on improving access to the patient population in the area and reducing hospital readmissions. Providing home care training allows patients the freedom to perform the procedure at their convenience in their own homes. This reduces stress and travel time for the patient.

The facility will provide home hemodialysis and home peritoneal dialysis training during the hours of Monday-Friday, 8:00 am through 3:00 pm, but will have 24/7 access to their care team. The number of anticipated training visits is 2,560 in Year One and 7,680 in Year Three.

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition.

Hospital Admissions per 100,000 Adults			
PQI Rates: 2020	Zip Code 11237	Kings County	New York State
<b>Prevention Quality Overall Composite</b>	814	1,015	994
<b>Prevention Quality All Diabetes Composite</b>	216	278	234

Kings County has a higher than state average of Diabetes Preventive Quality Indicators, which have been linked to an increase in the prevalence of a need for End Stage Renal Dialysis treatment.

#### Conclusion

The facility will provide home hemodialysis and home peritoneal dialysis training to residents of Kings County with a focus on the Bushwick area.



## Program Analysis

### Project Proposal

Tidal Dialysis, LLC seeks approval for the establishment and construction of a new D&TC of a new Article 28 Diagnostic and Treatment Center for the provision of home hemodialysis and home peritoneal dialysis training. The proposed center will be in renovated space at 336 Himrod Street, Brooklyn, New York 11237 (Kings County).

<b>Proposed Operator</b>	Tidal Dialysis, LLC
<b>Doing Business As</b>	Tidal Home Dialysis
<b>Site Address</b>	336 Himrod Street Brooklyn, NY 11237 (Kings County)
<b>Shift/Hours/Schedule</b>	Monday through Saturday, 9:00 AM to 5:00 PM - as determined by scheduled training appointments.
<b>Approved Services</b>	Home Hemodialysis Training and Support Home Peritoneal Dialysis Training and Support
<b>Staffing (1<sup>st</sup> Year/3<sup>rd</sup> Year)</b>	4.2 FTEs/10.0 FTEs
<b>Medical Director(s)</b>	Premila Bhat, MD
<b>Emergency, In-Patient, and Backup Support Services Agreement and Distance</b>	<b>Expected to be:</b> Wyckoff Heights Medical Center 0.2 miles and 2 minutes  Ridgewood Dialysis will act as a backup dialysis program.

Tidal Dialysis, LLC has relationships with both Ridgewood Dialysis and Wyckoff Heights Medical Center.

### Character and Competence

The proposed membership of Tidal Dialysis, LLC are:

<b>Member Name/Title</b>	<b>Membership Interest</b>
Premila Bhat, MD - Member, Manager, Medical Director	25%
Pravin Bhat, MD - Member, Manager	25%
Tsega Denneke, MD – Member	25%
Bhavani Mahankali, MD – Member	25%
<b>Total</b>	<b>100%</b>

**Premila Bhat, M.D.**, is the proposed Medical Director. Dr. Premila Bhat graduated from Yale University School of Medicine in 1997. Dr. Bhat is registered through January 2025. Dr. Bhat is currently the Regional Medical Director (part-time) for Prine IPA. Dr. Bhat is also the medical director for Atlantic Dialysis Management Services part-time since 2016, and has a private practice in Nephrology at Mattoo and Bhat Medical Associates since 2009. Dr. Bhat is board-certified in internal medicine with a subspecialty in nephrology. Dr. Bhat has served as the Medical Director of Ridgewood Dialysis (a 43-station dialysis facility) for over 10 years. Dr. Premila Bhat is registered through January 2025.

**Pravin Bhat, M.D.**, is a board-certified nephrologist with experience with End Stage Renal Disease for over 5 years. Dr. Bhat graduated from St. George's School of Medicine in the West Indies. Dr. Bhat completed a fellowship in Nephrology and hypertension in 2017 from Mount Sinai Beth Israel. Current employment is at Mattoo & Bhatt Medical Associates, P.C. since 2019, and also at Wyckoff Height Medical Center as an associate nephrologist since 2019, Essen Health as an associate nephrologist since 2021, and Mount Sinai Queens Hospital as an inpatient voluntary associate nephrologist since October 2021. Dr. Pravin Bhat is registered through November 2025.

Both Dr. Premila and Dr. Pravin Bhat claim offices held in the following (ownership interest held by Jodumutt Bhat – father of applicants):

From	To	Facility Name	Facility Type	% Interest
12/11/1991	Current	Ridgewood Dialysis Center	Dialysis Facility	50%
7/16/1997	Current	Newtown Dialysis Center	Dialysis Facility	50%
10/13/2000	Current	West Nassau Dialysis Center	Dialysis Facility	30%
7/30/2001	Current	New Hyde Park Dialysis Center	Dialysis Facility	25.5%
4/8/2010	Current	New Hyde Park Dialysis Center PD	Dialysis Facility	50%
6/1/2006	Current	Astoria Dialysis Center	Dialysis Facility	50%
1/5/2009	Current	Broadway Dialysis Center at EHC	Dialysis Facility	50%
1/5/2009	Current	Central Brooklyn Dialysis Center	Dialysis Facility	25%
9/1/2012	Current	Central Park Dialysis Center	Dialysis Facility	50%
11/14/2013	Current	East End Dialysis Center	Dialysis Facility	33.5%
08/13/2012	Current	Morissania Dialysis Center	Dialysis Facility	50%
3/21/2007	Current	New York Renal Associates Dialysis	Dialysis Facility	34.5%
9/26/2014	Current	Prospect Park Dialysis Center	Dialysis Facility	30%
7/24/2009	Current	Springfield Dialysis Center	Dialysis Facility	50%

**Tsega Denneke, M.D.**, is currently a Nephrologist at Newtown Dialysis (since 1998) and Astoria Dialysis Center (since 2019). Dr. Denneke graduated from the Halle Selassie I University School of Medicine in Ethiopia (1974) and completed an internship at St. Paul and Princess Tsehay Hospital in Ethiopia (1975). He completed an Internal Medicine internship at United Hospitals Medical Center in New Jersey in 1990 and a Residency at the same hospital in 1992. He continued on to a Fellowship in Nephrology from SUNY Downstate in 1997. Dr. Denneke is registered through December 2025

**Bhavani Mahankali, M.D.**, is an attending physician at Wyckoff Heights Medical Center in Brooklyn, NY since 2006. Dr. Mahankali graduated from Andhra University in India in 1992. Dr. Mahankali's internship was completed at Government General Hospital in India. Dr. Mahankali completed an internship and residency at Long Island College Hospital in Brooklyn and then a fellowship in Nephrology and Hypertension at Long Island College Hospital in Brooklyn, NY in 2002. Dr. Mahankali is registered through October 2024.

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

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.

#### Proceedings

*Dr. Premila Bhat, Dr. Tsega Denneke, and Dr. Mahankali all disclosed a qui tam complaint filed on 4/13/2012 against Mattoo and Bhat Medical Associates P.C. alleging that a surgeon employed by the practice performed vascular access procedures that did not meet Medicare Guidelines and were therefore medically unnecessary. A settlement was made in 2015. The surgeon was no longer employed, and the physicians in the application were not the subject of the investigation and were not a party to the settlement agreement.*

*Dr. Premila Bhat also disclosed a case from 12/4/2018, Claim PRI 171070. Dr. Bhat was consulted in this case when a 63-year-old female developed a bowel perforation after undergoing surgery and later died. Dr. Bhat was consulted when the patient developed acute renal failure.*

#### 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 for renovations and movable equipment is estimated at \$1,103,121 and is distributed as follows:

Renovation & Demolition	\$468,000
Design Contingency	46,800
Construction Contingency	46,800
Planning Consultant Fees	25,000
Architect/Engineering Fees	36,000
Other Fees	40,000
Movable Equipment	382,803
Financing Costs	39,756
Interim Interest Expense	9,939
Application Fee	2,000
Additional Processing Fee	<u>6,023</u>
Total Project Cost	\$1,103,121

The financing for this project will be as follows:

Cash	\$110,312
Construction Loan (5 years, 6% interest)	<u>\$992,809</u>
Total	\$1,103,121

### Operating Budget

The applicant submitted an operating budget, in 2024 dollars, for years one and three, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2025</u>		<u>2027</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<b>Revenues:</b>				
Commercial FFS	\$358.93	\$50,250	\$359.63	\$219,375
Commercial MC	\$358.93	50,250	\$360.00	180,000
Medicare FFS	\$314.00	172,072	\$314.00	785,000
Medicare MC	\$314.00	298,300	\$314.00	620,464
Medicaid FFS	\$218.35	26,202	\$218.35	78,606
Medicaid MC	\$218.35	96,074	\$218.35	283,855
Private Pay	\$400.00	<u>48,000</u>	\$400.00	112,000
Total Revenue		\$741,148		\$2,279,300
<b>Expenses:</b>				
Operating	\$176.13	\$450,896	\$138.64	\$1,064,772
Capital	<u>112.08</u>	<u>286,933</u>	<u>33.82</u>	<u>259,759</u>
Total	\$288.21	\$737,829	\$172.46	\$1,324,481
Net Income / (Loss)		<u>\$3,319</u>		<u>\$954,819</u>
Total Procedures		2,560		7,680
Cost per Procedure		\$288.21		\$172.46

Utilization by payor source for Year One and Year Three is as follows:

<u>Payor:</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	5.47%	7.94%
Commercial MC	5.47%	6.51%
Medicare FFS	21.41%	32.55%
Medicare M/C	37.11%	25.73%
Medicaid FFS	4.69%	4.69%
Medicaid M/C	17.19%	16.93%
Private Pay	4.69%	3.65%
Charity	<u>3.98%</u>	<u>2.01%</u>
Total	100.00%	100.00%

The following is noted with respect to the submitted budget:

- The basis for utilization and payor mix is based on the experience of the proposed operators. The increase in utilization between Years One and Three is based on the expanded growth of the existing population served by Tidal.
- The Medicaid rates are based on Medicaid APG and Medicaid fee-for-service rates. Medicare rates are based on Medicare Part B billing schedules.
- Commercial insurance and private pay rates are based on the experience of other programs that operate this home hemodialysis and home peritoneal dialysis training and support services.
- Revenues and expenses are based on actual experience of the existing medical practice.
- Expenses are based predominantly on the labor costs for the staffing model that includes Registered Nurses (2.00 FTE by year three), Technicians and Specialists (at 1.00 FTEs by year three), Social Workers (1.00 FTE by year three), Infection Control (2.00 FTEs by year three), Clerical and Other Administrative staff (3.00 FTEs by year three) Management and Supervision (1.00 FTEs by year three), as well as medical supplies, and other direct expenses as documented per the sublease agreement.

The applicant indicated they are committed to serving underinsured populations and all persons in need without regard to the patient's ability to pay or the source of payment. The Center is developing and will have a sliding fee scale as well as policies and procedures for serving the uninsured and persons without the ability to pay.

#### Lease Agreement

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

Date:	July 31, 2023
Premises:	4,477 sq. ft in a building located at 342 Himrod Street, Brooklyn, New York.
Landlord:	Himrod Development LLC
Tenant:	Mattoo & Bhat Medical Associates, P.C.
Term:	15-year term
Rent:	\$210,000 annually (\$17,500 per month), rent shall increase 3% annually.
Security Deposit:	\$35,000
Provisions:	Tenant is responsible for real estate taxes, insurance, utilities, and maintenance.

#### Sublease Agreement

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

Date:	June 20, 2023
Subleased Premises:	2,238 sq. ft. in a building located at 342 Himrod Street, Brooklyn, New York.
Prime Landlord:	Himrod Development LLC
Sublandlord:	Mattoo & Bhat Medical Associates, P.C.
Subtenant:	Tidal Dialysis, LLC

Term:	15-year term
Rent:	\$105,000 annually (\$8,750 per month), rent shall increase 3% annually.
Security Deposit:	\$17,500
Provisions:	Subtenant is responsible for real estate taxes, insurance, utilities, and maintenance.

The applicant submitted an affidavit indicating there is no relationship between Himrod Development LLC as landlord, and Mattoo & Bhat Medical Associates P.C., as tenant. With respect to the sublease agreement, the applicant provided an affidavit indicating that there is a familiar relationship between sublandlord, Mattoo & Bhat Medical Associates P.C., and subtenant, Tidal Dialysis, LLC as such, this is a non-arms-length transaction. The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per-square footage rental.

#### Capability and Feasibility

Total project cost of \$1,103,121 will be met with \$110,312 in members' equity and a five-year loan for \$992,809 at 6% interest. Working capital is estimated at \$220,747 and is based on two months of third-year expenses and will be funded with members' equity of \$110,374 and a bank loan of \$110,373 for a three-year term at 6% interest. Hudson Shine Capital has provided a letter of interest for the respective loans at the stated terms. BFA Attachment A presents the Member's Net Worth Statement, indicating sufficient resources to fund the equity requirements. BFA Attachment C presents Tidal Dialysis' Pro Forma Balance Sheet, which shows the operation will start with \$220,747 in members' equity.

The submitted budget projects a net income of \$3,319 and \$954,819 during Years One and Three of operations, respectively. Revenue growth is based on utilization between Year One and Year Three, driven by an increase in the existing population served by the proposed center. The budget appears reasonable.

#### Conclusion

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

## Attachments

BHFP Attachment	Map
BFA Attachment A	Net Worth Statement of Proposed Member of Tidal
BFA Attachment B	Organization Chart
BFA Attachment C	Pro-Forma Balance Sheet



**Project # 202035-E  
Hilaire Care Network LLC d/b/a  
Pine Forest Center for Rehabilitation and Healthcare**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Suffolk  
**Acknowledged:** August 19, 2020

**Executive Summary**

**Description**

Hilaire Care Network, LLC d/b/a Pine Forest Center for Rehabilitation and Healthcare, a New York limited liability company, requests approval to be established as the new operator of Hilaire Rehabilitation & Nursing, a 76-bed, proprietary, Article 28 Residential Health Care Facility (RHCF) at 9 Hilaire Drive, Huntington, NY (Suffolk County). The facility is currently operated by Hilaire Farm Skilled Living & Rehabilitation Center, LLC (Hilaire Farm).

On May 30, 2018, Skillaire, LLC and Hilaire Holdings, LLC, entered into a Real Estate Purchase Agreement (REPA), wherein Hilaire Holdings, LLC agreed to purchase three parcels of land, 9 Hilaire Drive (the current location of Hilaire Rehabilitation & Nursing), and 11 and 13 Hilaire Drive, parcels contiguous to the current facility location. The closing on the property purchase occurred in April 2019. After the change of ownership approval proposed in this application and under a future Certificate of Need (CON) application, Hilaire Care Network, LLC plans to construct a new facility on one of the contiguous parcels once approved.

Also, on May 30, 2018, Hilaire Farm Skilled Living and Rehabilitation Center, LLC entered into an Asset Purchase Agreement (APA) with Hilaire Care Network, LLC for the sale and acquisition of the operating interests of the RHCF. On August 31, 2023, the current owners of Hilaire Care Network, LLC entered into an assignment of membership interest agreement for the full transfer of ownership in Hilaire Care Network, LLC to the new applicant. The Hilaire

Care Network, LLC will lease the premises from Hilaire Holdings, LLC.

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

<u>Current Operator</u>	
Hilaire Farm Skilled Living & Rehabilitation Center, LLC	
<u>Members:</u>	<u>%</u>
Robert Heppenheimer	33.34%
Anupadevi Lamba	33.33%
Dr. Smita Lodha	33.33%

<u>Proposed Operator</u>	
Hilaire Care Network, LLC	
<u>Member</u>	<u>%</u>
Elimelich Greenfield	100%

OALTC Recommendation  
Contingent Approval

**Need Summary**  
There will be no changes to beds or services as a result of this application. Based upon weekly census data, current occupancy, as of December 6, 2023, was 97.4% for the facility and 87.1% for Suffolk County.

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

### Financial Summary

Hilaire Care Network, LLC will acquire the RHC operating assets for \$1,500,000, funded by a loan of \$1,500,000 at 6% interest for a two-year term.

<u>Budget:</u>	<u>Current</u>	<u>Year</u>	<u>Year</u>
	<u>Year</u>	<u>One</u>	<u>Three</u>
Revenues	\$11,355,213	\$10,579,708	\$10,579,708
Expenses	<u>\$12,431,325</u>	<u>\$9,791,561</u>	<u>\$9,791,561</u>
Net Income/ (Loss)	(\$1,076,112)	\$788,147	\$788,147

### Health Equity Impact Assessment

There was no Health Equity Impact Assessment required for this project under New York State Public Health Law §2802-B, as it was received by the Department on July 24, 2020.

## 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 working capital loan commitment acceptable to the Department of Health. [BFA]
2. Submission of an executed loan document acceptable to the Department of Health. [BFA]
3. Submission of an executed building lease acceptable to the Department of Health. [BFA]
4. 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]
5. Submission of an amended and executed Certificate of Assumed Name of Hilaire Care Network, LLC, acceptable to the Department. [CSL]
6. Submission of an executed Certificate of Amendment of the Articles of Organization of Hilaire Care Network, LLC, acceptable to the Department. [CSL]
7. Submission of an executed Operating Agreement of Hilaire Care Network, LLC, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

February 8, 2024



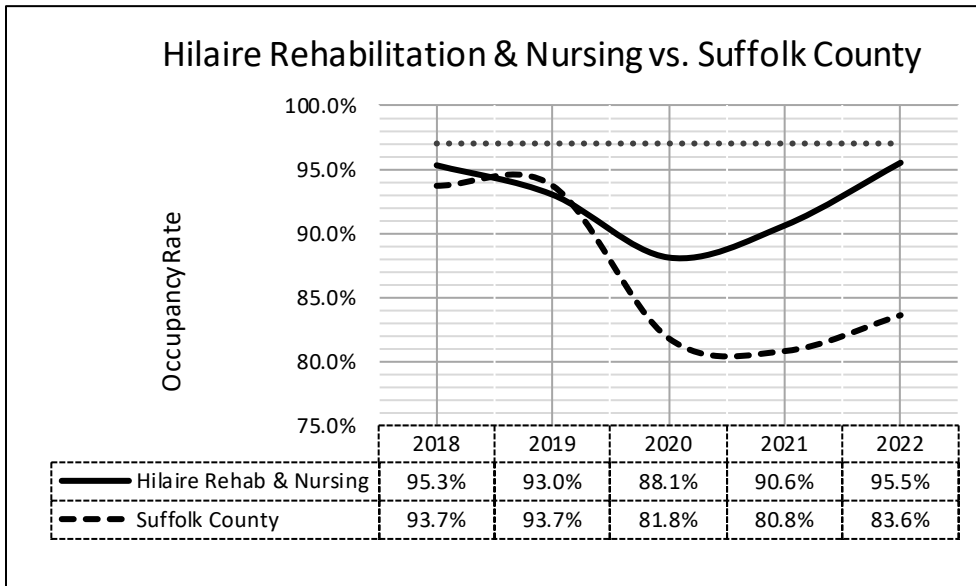
# Need Analysis

## Background and Analysis

The primary service area is Suffolk County, which has a population projected to decrease to 1,492,157 by 2028, based on the Cornell Program of Applied Demographic estimates. Demographics for the primary service area are noted below, including a comparison with New York State.

Demographics	Suffolk County	New York State
Total Population (2021 Estimate)	1,522,998	20,114,745
Hispanic or Latino (of any race)	19.9%	19.2%
White (non-Hispanic)	66.4%	54.7%
Black or African American (non-Hispanic)	6.9%	13.9%
Asian (non-Hispanic)	4.0%	8.6%
Other (non-Hispanic)	2.7%	3.6%

Source: American Community Survey (2021 5-year Estimates Data Profile)



Occupancy rates shown through 2022 have been calculated from the RHCF-4 cost reports.

As of December 6, 2023, occupancy was 97.4% for the facility and 87.1% for Suffolk County.

The 2020 occupancy was significantly impacted by COVID-19. The applicant is developing plans for after the change in ownership to replace the current facility due to its physical plant shortcomings and a CON application will be submitted in the future. In the interim, the facility's utilization has returned to its previous levels since the impact of the pandemic has diminished.

The table below shows the CMS Rating and the utilization of the closest RHCFS to Hilaire Rehabilitation and Nursing.

Facility Name	CMS Overall Rating	Beds	Distance from other RHCFS Miles/Time	Occupancy			
	As of 12/2023			2019	2020	2021	2022
Hilaire Rehabilitation & Nursing	1	76	0 miles/0 mins	93.0%	88.1%	90.6%	95.5%
Carillon Nursing	5	315	1.8 miles/6 mins	89.9%	75.1%	72.0%	70.4%
Apex Rehab	4	195	3.4 miles/11 mins	94.4%	79.2%	92.6%	96.2%
White Oaks (Nassau)	4	200	5.5 miles/14 mins	93.4%	71.1%	73.3%	85.5%
Cold Springs (Nassau)	2	564	5.3 miles/13 mins	95.1%	80.0%	76.6%	83.7%
Excel @ Woodbury (Nassau)	4	123	5.5 miles/13 mins	90.7%	76.9%	82.8%	85.8%
Huntington Hills Center	5	320	6.6 miles/20 mins	94.8%	80.6%	84.6%	91.5%

The following table provides the Case Mix Index (CMI) for the facility and the surrounding RHCFS, which reflects the relative resources predicted to provide care to a resident. The higher the case mix index, the greater the resource requirement for the residents.

Case Mix Index	2021		2022		2023	
	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only
Hilaire Rehabilitation & Nursing	1.278	1.211	1.4645	1.5144	1.4635	1.468
Carillon Nursing	1.406	1.299	1.4194	1.3707	1.4169	1.3296
Apex Rehab	1.401	1.27	1.4454	1.3653	1.4721	1.4066
White Oaks (Nassau)	1.273	1.118	1.4965	1.4365	1.6545	1.7619
Cold Springs (Nassau)	1.24	1.172	1.2745	1.2013	1.2729	1.1966
Excel @ Woodbury (Nassau)	1.385	0.985	1.552	1.1073	1.5746	1.1135
Huntington Hills Center	1.286	1.155	1.2909	1.1759	1.3688	1.3057

#### 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 is 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 is 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 has been above the threshold of 75% of the Suffolk County rate.

<b>Medicaid Access</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Suffolk County Total	20.6%	24.3%	23.1%
Suffolk Threshold Value	15.4%	18.3%	17.3%
Hilaire Rehabilitation & Nursing	35.6%	35.4%	36.0%

#### Conclusion

There will be no changes to beds or services as a result of this project. Based upon weekly census data, current occupancy, as of December 6, 2023, was 97.4% for the facility and 87.1% for Suffolk County.

# Program Analysis

## Project Proposal

	Existing	Proposed
<b>Facility Name</b>	Hilaire Rehabilitation & Nursing	Pine Forest Center for Rehabilitation and Healthcare
<b>Address</b>	9 Hilaire Drive Huntington, NY 11743	Same
<b>RHCF Capacity</b>	76 beds	Same
<b>ADHCP Capacity</b>	N/A	N/A
<b>Type of Operator</b>	Limited Liability Company	Same
<b>Class of Operator</b>	Proprietary	Same
<b>Operator</b>	<b>Hilaire Farm Skilled Living &amp; Rehabilitation Center, LLC</b>  <u>Membership:</u> Robert Heppenheimer      33.3% Anupadevi Lamba            33.3% Dr. Smita Lodha                33.3%	<b>Hilaire Care Network LLC</b>  <u>Membership:</u> Elimelich Greenfield      100%

### Character and Competence

**Elimelich Greenfield** discloses current employment as the Administrator of Apex Rehabilitation and Care Center, a skilled nursing facility in Huntington, NY. Previously, Elimelich was the Administrator of Hilaire Rehabilitation & Nursing, the Assistant Administrator of Meadow Park Rehabilitation and Healthcare Center, the Director of staffing at Zenith Care Health Group, and the Staffing Coordinator at Centers Health Care Healthcare Bushwick Center. Elimelich holds a bachelor's degree in business administration from Post University, is licensed as a nursing home administrator in New York, and discloses no health facility ownership interests.

### Quality Review

The proposed owner 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					
		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
Elimelich Greenfield	0	N/A	N/A	N/A	N/A

\*Duration of Ownership as of 02/8/2024

Data date: 11/2023

A review was conducted to ensure that the applicant had adequate relevant experience. Elimelich Greenfield has over five years of experience as a Nursing Home Administrator at Hilaire Rehabilitation & Nursing from October 2018 to February 2023 and Apex Rehabilitation and Care Center from March 2023 to the present. A review of the operations of Hilaire Rehabilitation & Nursing and Apex Rehabilitation and Care Center while Elimelich Greenfield was the administrator revealed no enforcements.

<b>Facility</b>	<b>Administrator Since*</b>	<b>Overall</b>	<b>Health Inspection</b>	<b>Quality Measures</b>	<b>Staffing</b>
<b>New York</b>					
Apex Rehabilitation and Care Center	Current	****	****	***	**
	03/2023	****	****	****	**
<b>End Dated as Administrator</b>					
Hilaire Rehabilitation & Nursing	02/2023	*	*	****	**
	10/2018	*	**	****	*

\* Note that Elimelich Greenfield was not the operator of the above facilities, but rather he was serving as the administrator.

Data date: 11/2023

### Conclusion

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

## Financial Analysis

### Operating Budget

The applicant provided the current year (2022) budget and their operating budget, in 2024 dollars, for the first (2024) and third year (2026) of operation after the change in ownership. The budget is summarized below:

<u>Revenues</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Comm. FFS	\$402.95	\$1,538,063	\$315.16	\$1,013,548	\$315.16	\$1,013,548
Medicaid FFS	\$315.07	\$4,889,547	\$263.25	\$3,550,155	\$263.25	\$3,550,155
Medicaid MC	\$414.37	\$123,067	\$268.23	\$786,179	\$268.23	\$786,179
Medicare FFS	\$799.64	\$4,142,955	\$806.67	\$4,401,173	\$806.67	\$4,401,173
Medicare MC	\$394.15	\$299,950	\$498.95	\$406,641	\$498.95	\$406,641
Private Pay	\$370.81	\$343,371	\$262.92	\$118,053	\$262.92	\$118,053
All Other		<u>\$18,260</u>		<u>\$303,959</u>		<u>\$303,959</u>
<b>Total Revenue</b>		<b>\$11,355,213</b>		<b>\$10,579,708</b>		<b>\$10,579,708</b>
 <u>Expenses</u>						
Operating	\$424.74	\$11,255,979	\$337.14	\$8,884,692	\$337.14	\$8,884,692
Capital	<u>\$44.35</u>	<u>\$1,175,346</u>	<u>\$39.70</u>	<u>\$906,869</u>	<u>\$34.41</u>	<u>\$906,869</u>
<b>Total</b>	<b>\$469.09</b>	<b>\$12,431,325</b>	<b>\$376.84</b>	<b>\$9,791,561</b>	<b>\$371.55</b>	<b>\$9,791,561</b>
 Net Income(Loss)		<u><b>(\$1,076,112)</b></u>		<u><b>\$788,147</b></u>		<u><b>\$788,147</b></u>
Patient Days		<u>26,501</u>		<u>26,353</u>		<u>26,353</u>
Occupancy		95.53%		95.00%		95.00%

The following is noted concerning the submitted RHCF operating budget:

- Medicaid revenue is based on the facility's 2022 Medicaid rate adjusted for current facility-specific CMI.
- The Medicare and private pay rates are the actual daily 2022 rates experienced by the facility.
- Expense assumptions are based on the current experience of the facility in 2022, adjusted to the projected census in Years One and Three. Lease rental expense per the executed lease has been included. The over \$2 million drop in the operating expenses from the Current Year to Years One and Three is due to the facility transferring the physical therapy program from a contracted service to an in-house service.

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

<u>Payor</u>	<u>Current Year</u>		<u>Years One and Three</u>	
	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>
Comm. FFS	3,817	14.40%	3,216	12.20%
Medicare FFS	5,181	19.55%	5,456	20.70%
Medicare MC	761	2.87%	815	3.09%
Medicaid FFS	15,519	58.56%	13,486	51.17%
Medicaid MC	297	1.12%	2,931	11.12%
Private Pay	<u>926</u>	<u>3.50%</u>	<u>449</u>	<u>1.72%</u>
<b>Total</b>	<b>26,501</b>	<b>100.00%</b>	<b>26,353</b>	<b>100.00%</b>

- The breakeven utilization is projected at 88.61% or 24,580 patient days for Year One and 87.71% or 24,332 patient days for Year Three.
- The facility had Medicaid admissions of 35.6% in 2020, 35.4% in 2021, and 36% in 2022. The 75% Medicaid admissions threshold for Suffolk County was 15.4% in 2020, 18.3% in 2021, and 17.3% in 2022. All the Medicaid admission rates are above the county's 75% threshold.

### Asset Purchase Agreement

The applicant submitted an executed asset purchase agreement to acquire the RHCF's operating interest. The agreement will become effectuated upon PHHPC approval of this CON. The terms are summarized below.

Date:	May 30, 2018
Seller:	Hilaire Farm Skilled Living & Rehabilitation Center, LLC
Purchaser:	Hilaire Care Network, LLC d/b/a Pine Forest Center for Rehabilitation and Healthcare
Assets Transferred:	All rights, title, and interest in the business assets lien free, the business and operation of the facility. The assets include leases, inventory, supplies, and other articles of personal property, all assumed contracts, resident funds held in trust, trade names, logos, trademarks and service marks, all security deposits and prepayments for future services, all menus, policies and procedures manuals and computer software, telephone numbers, telefax numbers and domain names, copies financial books and records relating to the facility, all resident/patient records, all employees payroll records, Seller's Medicare and Medicaid provider numbers, goodwill will and licenses and permits.
Excluded Assets:	Pre-closing accounts receivables: retroactive rate increases for services prior to closing date, securities, refunds and settlements prior to closing, and assets in 401 (k) and deferred compensation plans.
Assumed Liabilities:	Those occurring after the closing date.
Purchase Price:	\$1,500,000
Payment:	\$500,000 promissory note and \$1,000,000 wire transfer two business days prior to closing.

The purchase price will be satisfied as follows:

Loan for \$1,500,000 at 6% for a 2-year term	<u>\$1,500,000</u>
Total	<u>\$1,500,000</u>

HHC Capital Advisory Group, LLC submitted a letter of Interest for the respective loan at the stated terms.

The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of 12/14/2023, the facility has no outstanding Medicaid Liabilities.

### Lease Agreement

A draft lease agreement was submitted for the RHCF real property. The terms are summarized below.

Date:	TBD
Premises:	76-bed RHCF located at 9 Hilaire Drive, Huntington, NY 11743
Owner/Landlord:	Hilaire Holding, LLC
Lessee:	Hilaire Care Network, LLC
Term:	For a period to end no later than December 31, 2035
Rent:	\$900,000 per year for year one with an annual 2% increase from year 2 going forward
Provisions:	Triple Net. Tenant responsible for taxes, insurance, maintenance & utilities.

The applicant submitted an affidavit indicating that the lease agreement will be an arm's length agreement, as there is no relationship between the landlord and the lessee. Letters from two New York licensed realtors have been provided attesting that the cost per square foot is at fair market value for the lease.

#### Assignment and Assumption Agreement

The Assignor entered into a Membership Interest Purchase Agreement as of August 31, 2023, with Zalmen Oberlander to purchase 50% of his ownership in Hilaire Care, Network, LLC, and Ari Silberstein to purchase his 50% ownership in Hilaire Care Network, LLC. The Assignor is passing this interest to the assignee. This will be effectuated in accordance with the terms of an Assignment and Assumption Agreement, as follows:

Date:	8/31/2023
Assignors	Ari Silberstein (50%) and Zalmen Oberlander (50%)
Assignee	Elimelich Greenfield (100%)
Assets	Right, title and interest in the asset purchase agreement
Liabilities Assumed	None
Consideration	\$10 per each 50% ownership. Payable on the effective date

#### Capability and Feasibility

The purchase price for the RHCF's operating interest is \$1,500,000 and will be funded with a \$1,500,000 loan with a 2-year term and a 6% interest rate. HHC Capital Advisory Group, LLC submitted a Letter of Interest for the respective loan at the stated terms. There are no project costs associated with this application.

The working capital requirement is estimated at \$1,631,927, based on approximately two months of Year One expenses. The applicant will provide \$815,964 from the members' equity, with the remaining \$815,963 to be satisfied through a 2-year term loan at a 6% interest rate. HHC Capital Advisory Group, LLC provided a letter of interest for the respective loan at the stated terms. The members have sufficient liquid resources to meet the working capital equity requirements, as shown in BFA Attachment A.

The submitted budget projects a net income of \$788,147 in Year One (2024) and \$788,147 in Year Three (2026) after the change in ownership. The budget is reasonable.

The applicant has provided the Department with an affidavit stating they would fund any shortcomings in paying off both the purchase price loan and the working capital loan through both the cash surrender value of life insurance and the applicant's equity in real estate investment if net income from operations isn't sufficient to cover to costs.

BFA Attachment C presents Hilaire Care Network, LLC's Pro Forma Balance Sheet, which shows the entity will start with \$815,964 in members' equity.

BFA Attachment D presents the 2020-2022 Financial Summary of Hilaire Farm Skilled Living & Rehabilitation Center, LLC, and the Financial Summary for the period ending September 30, 2023. As shown, the RHCF had an average negative working capital position, an average negative net assets position, and an average net loss of (\$1,114,806) for the period. For the period ending September 30, 2023, the facility had a positive working capital position and a negative net asset position and generated a net income of \$793,564. The applicant states that the facility has been struggling with cash while the current operator has been focusing on the change of ownership. As a result, the facility is declining financially. With the experience of the proposed operator, as well as plans to replace the current facility due to physical plant shortcomings, a positive impact is projected for the facility's financial position.

#### 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 A	Map
BFA Attachment A	Net Worth of Proposed Member of Hilaire Care Network, LLC
BFA Attachment B	Pre, Interim and Post Ownership of the RHCF
BFA Attachment C	Pro Forma Balance Sheet, Hilaire Care Network, LLC D/B/A Pine Forest Center for Rehabilitation and Healthcare
BFA Attachment D	2020-2022 Financial Summary and September 30, 2023 Financial Summary of Hilaire Farm Skilled Living & Rehabilitation Center, LLC



Project # 222260-B  
Oxford Nursing Home Inc. d/b/a  
Oxford Rehabilitation and Nursing Facility

**Program:** Residential Health Care Facility      **County:** Kings  
**Purpose:** Establishment and Construction      **Acknowledged:** January 31, 2023

**Executive Summary**

**Description**

Oxford Nursing Home, Inc., a 235-bed, proprietary, Article 28 Residential Health Care Facility (RHCF) at 144 South Oxford Street, Brooklyn (Kings County), requests approval to certify five additional RHCF beds, construct a 240-bed replacement facility at 2832 Linden Boulevard, Brooklyn, and transfer the Estate of Livia Goldberg’s 25.15% interest equally to her daughters Rochelle Braun, M.D. and Shulamith Goldberg, M.D.

The current facility is one of the oldest nursing homes in NYC, and its bed complement includes several multi-bedded “ward accommodation” rooms. The new facility will employ the neighborhood concept to serve the residents better and create an efficient building for staff and operations. The new building will consist of three levels above ground and a basement. The design will focus on the resident’s quality of life and have 24-bed housing wings, a central nursing station, and support functions.

Conover King Realty, LLC, an affiliate of Oxford Nursing Home, Inc., will be the real property owner of the replacement facility and will be responsible for the mortgage. Oxford Nursing Home, Inc. will enter into a 30-year lease agreement with Conover King Realty, LLC, for site control.

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

<u>Members</u>	<u>Current</u>	<u>Proposed</u>
Estate of Livia Goldberg	25.15%	0%
Rochelle Braun, M.D.	9.93%	22.505%
Shulamith Goldberg, M.D.	9.93%	22.505%
Barry Braunstein	45.01%	45.010%
Norman Motechin	<u>9.98%</u>	<u>9.980%</u>
<b>Total</b>	<b>100%</b>	<b>100%</b>

**OALTC Recommendation  
Contingent Approval**

**Need Summary**

Based upon weekly census data, current occupancy, as of December 6, 2023, was 83.8% for the facility and 94.7% for Kings County.

**Program Summary**

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

**Financial Summary**

The total project cost for the replacement facility is \$84,946,640. Conover King Realty LLC will fund the project with equity of \$21,586,640 and a \$63,360,000 30-year mortgage at 6.125%. The proposed budget is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$42,066,033	\$43,967,079
Expenses	<u>41,348,722</u>	<u>43,416,156</u>
<b>Net Income</b>	<b>\$717,311</b>	<b>\$550,923</b>

Health Equity Impact Assessment  
There was no Health Equity Impact Assessment  
required for this project under New York State  
Public Health Law §2802-B, as it was received  
by the Department on December 21, 2022.

## 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 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 State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. Submission of an executed real property loan commitment acceptable to the Department of Health. [BFA]
5. Submission of an executed lease agreement acceptable to the Department of Health. [BFA]
6. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
7. Submission of a copy of the signed/executed Lease Agreement that is acceptable to The Department. [CSL]
8. Submission of State Environmental Quality Review (SEQR) Summary of Findings pursuant to 6 NYCRR Part 617.4(b) (6), and 10NYCRR 97.12. [SEQ]

**Approval conditional upon:**

1. This project must be completed by **October 15, 2026**, 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 **August 15, 2024**, and construction must be completed by **July 15, 2026**, 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 operator shall submit a plan for the transition and relocation of residents to the Metropolitan Area Regional Office and must receive approval for such plan prior to the commencement of construction. [LTC]

Council Action Date

February 8, 2024

# Need Analysis

## Background and Analysis

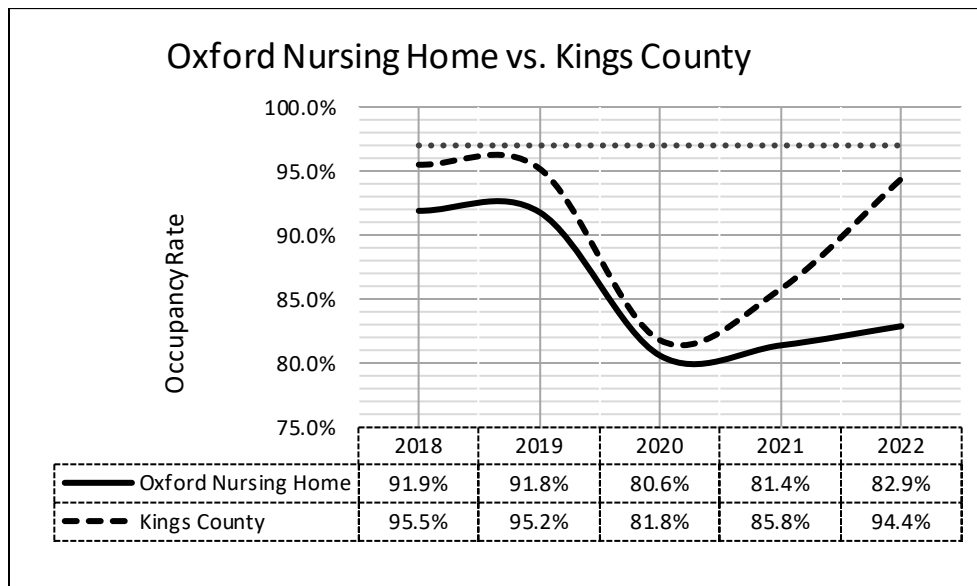
Oxford Nursing Home is requesting approval to relocate the facility from 144 South Oxford Street, Brooklyn, to 2832 Linden Boulevard, Brooklyn, 11208, in Kings County, add five RHCf beds to the facility, and transfer 25.15% ownership interest from one deceased member to two existing members.

Bed Type	Bed Capacity	Proposed Action	Upon Completion
RHCf	235	+5	240
Vent	0	0	0
<b>Total</b>	<b>235</b>	<b>5</b>	<b>240</b>

The primary service area is Kings County, which has a population projected to increase to 2,844,643 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	Kings County	New York State
Total Population (2021 Estimate)	2,712,360	20,114,745
Hispanic or Latino (of any race)	18.8%	19.2%
White (non-Hispanic)	36.7%	54.7%
Black or African American (non-Hispanic)	28.6%	13.9%
Asian (non-Hispanic)	11.7%	8.6%
Other (non-Hispanic)	4.1%	3.6%

Source: 2021 American Community Survey (5-year Estimates Data Profiles)



Occupancy rates shown through 2022 have been calculated from the RHCf-4 cost reports.

As of December 6, 2023, occupancy was 83.8% for the facility and 94.7% for Kings County.

The table below shows the CMS Rating and the utilization of the closest RCHFs to the proposed location of Oxford Nursing Home in New York State. Oxford Nursing Home is one of the oldest nursing homes in the city of New York and this project represents the operator's intent to modernize the facility. All surrounding facilities have strong occupancy rates for 2022.

Facility Name	CMS Overall Rating	Number of Beds	Distance from other RHCs	Occupancy			
	As of 12/2023			Miles/Time	2019	2020	2021
Oxford Nursing	1	235	0 miles/0 mins	91.8%	80.6%	81.4%	82.9%
Brooklyn-Queens NH	1	140	0.5 miles/3 mins	88.8%	88.9%	96.0%	97.9%
Linden Ctr.	4	280	1.6 miles/8 mins	98.0%	89.5%	90.4%	97.5%
Bushwick Ctr.	3	225	2.9 miles/15 mins	97.9%	97.5%	96.5%	96.4%
Spring Creek	2	188	2.9 miles/13 mins	98.0%	84.4%	90.6%	96.7%
Atrium Ctr.	3	380	2.9 miles/15 mins	96.9%	85.9%	89.5%	98.0%
Four Seasons	2	250	3.3 miles/14 mins	96.2%	78.7%	80.9%	95.3%

The following table provides the Case Mix Index (CMI) for the facility and surrounding RHCs, 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	2021		2022		2023	
	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only
Oxford Nursing Home	1.671	1.738	1.6856	1.8013	1.6534	1.8323
Brooklyn-Queens NH	1.798	1.806	1.8739	2.0501	1.9015	2.0458
Linden Ctr	1.396	1.289	1.5566	1.5912	1.5232	1.5724
Bushwick Ctr	1.437	1.481	1.3921	1.4941	1.4647	1.5788
Spring Creek	1.475	1.532	1.5925	1.529	1.4477	1.4362
Atrium Ctr	1.327	1.447	1.5327	1.3936	1.5973	1.5192
Four Seasons	1.427	1.317	1.4882	1.3873	1.449	1.4188

### 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 is 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 is 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 Kings County rate for the years 2020 through 2022.

Medicaid Access	2020	2021	2022
Kings County Total	38.9%	45.1%	32.6%
Kings Threshold	29.1%	33.8%	24.4%
Oxford Nursing Home	90.0%	92.3%	91.7%

## Conclusion

The applicant is requesting approval to add five RHCF beds to the facility and relocate the facility. Based upon weekly census data, current occupancy, as of December 6, 2023, was 83.8% for the facility and 94.7% for Kings County.

# Program Analysis

## Project Proposal

	Existing	Proposed
<b>Facility Name</b>	Oxford Nursing Home	Same
<b>Address</b>	144 South Oxford Street Brooklyn, NY 11217	2832 Linden Boulevard Brooklyn, NY 11208
<b>RHCF Capacity</b>	235 beds	240 beds
<b>ADHCP Capacity</b>	N/A	N/A
<b>Type of Operator</b>	Proprietary	Same
<b>Class of Operator</b>	Business Corporation	Same
<b>Operator</b>	<b>Oxford Nursing Home Inc.</b>  <u>Membership:</u> Barry Braunstein 45.01% Estate of Livia Goldberg 25.15% Norman Motechin 9.98% Dr. Rochelle Braun 9.93% Dr. Shulamith Goldberg 9.93%	<b>Oxford Nursing Home Inc.</b>  <u>Membership:</u> Barry Braunstein 45.01% Norman Motechin 9.98% Dr. Rochelle Braun 22.505% Dr. Shulamith Goldberg 22.505%

### Character and Competence

**Dr. Rochelle Braun** discloses employment in general pediatrics as a Locum Tenens Pediatrician with Dr. Chana Gelbfish in Brooklyn, NY. Dr. Braun has a medical degree from SUNY Downstate Medical School and is licensed to practice in New York and New Jersey. Dr. Braun discloses the following health facility ownership interests:

#### Nursing Homes

Oxford Nursing Home (NY) (9.93%)

01/1994 to Present

**Dr. Shulamith Goldberg** is currently a homemaker and investor. Dr. Goldberg has a medical degree from SUNY Downstate Medical School and is licensed to practice in New York. Dr. Goldberg discloses the following health facility ownership interests:

#### Nursing Homes

Oxford Nursing Home (NY) (9.93%)

01/1994 to Present

### Quality Review

The 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					
		Duration of Ownership*			
		< 48 Months		48 months or more	
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
Dr. Rochelle Braun	1	0	N/A	1	100%
Dr. Shulamith Goldberg	1	0	N/A	1	100%

\* Duration of Ownership as of 02/8/2024

Data date: 11/2023



**New York.** The proposed owner’s portfolio includes ownership in one New York facility. The New York facility has a CMS overall quality rating of much below average. When asked to explain what measures were being put into place to improve the low overall CMS ratings for Oxford Nursing Home, the applicant indicated the following:

*The building housing the present Oxford Nursing Home is over 100 years old. It has been in use as a nursing home since the 1950s. The original use was as an Elk’s Club. Nursing home standards were very different in the pre-Medicare/Medicaid days. There are ward accommodations and other features that are unacceptable by today’s standards. In fact, in a citywide assessment of nursing homes performed by the Health Systems Agency of New York City (“HSA”) in 1983, Oxford Nursing Home was described as “not part of the long-term care resource” of skilled nursing facilities. In other words, forty years ago, the HSA determined that the facility should close due to its age and outmoded physical environment. Nonetheless, Oxford, even with its physical limitations, continued to serve its patients and serve them well, as may be seen from the reports of the Medicare/Medicaid surveys performed by the Department of Health. Given the age of the building and the fact that the existing facility is outmoded, it is not surprising that the facility receives low ratings on the Medicare 5-star system. The operators of the facility understand the existing Oxford Nursing Home should be replaced and have been pursuing this application and its predecessors since 2003.*

*The plan for improvement in the 5-star system rating is the replacement of the existing outmoded Oxford. Approval of this application will result in a rapid improvement of living conditions for Oxford’s current and future residents. Like many other healthcare facilities, Oxford is dealing with the staffing challenges brought on and exacerbated by the pandemic. Oxford has raised its wages, has offered sign-on bonuses, as well as, retention bonuses, and has slowly increased its hiring and overall hours per patient.*

*As stated previously, Oxford’s physical plant presents unique challenges. None of the citations on Oxford’s last survey rose to the level of “harm,” and many were associated with the physical environment. While Oxford is somewhat limited in what it can do in such an old building, it has spent significant sums of money in the past year improving the home-like environment. For example, Oxford has upgraded the lights and furniture and hired an interior decorator to improve the environment with artwork. An example of Oxford’s quality of care is that it has had multiple infection control surveys since COVID-19 and has received no deficiencies in this area.*

<b>Facility</b>	<b>Ownership Since</b>	<b>Overall</b>	<b>Health Inspection</b>	<b>Quality* Measure</b>	<b>Staffing</b>
<b>New York</b>					
	Current	*	*	*	**
Oxford Nursing Home	01/1994 (ratings started 1/2009)	****	****	*****	*

\* Current data on Quality Measure couldn’t be verified through an audit.

Data date: 11/2023

### Enforcement History

#### **New York**

A review of the operations of Oxford Nursing Home for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-21-174 issued on July 13, 2021, for surveillance findings on February 24, 2021. The facility failed to establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection.

## Physical Environment

The proposed layout of the Oxford Nursing Home Inc. is a three-story facility with a neighborhood concept. The floor plan consists of a half basement, a central core, two wings on the ground floor, and a core with four wings on the second and third floors. Resident rooms line the exterior walls of the wings with decentralized communal and support space.

The basement is half the size of the upper facility floors and is used for resident support facilities, staff support, and parking. The resident support space features the central kitchen, laundry room, maintenance, housekeeping storage, and trash room. The staff support service space provides access to three staff locker rooms and an adjacent staff lounge. The parking garage provides covered parking for 23 cars and an additional space for bicycles.

The first floor of the facility is differentiated into a south side and a north side, with the facility's primary entrance located in between. The south side of the first floor features a central administrative suite and staff offices, a therapy department with a full ADL suite, central residential communal and activity spaces, and a facility support area with a receiving dock. The north side of the first floor is composed of two residential wings with 24 beds each. The two wings utilize a neighborhood layout, with each neighborhood having its own day rooms, nourishment area, bathing facilities, and nurse station. The main dining room and outdoor patio areas are located centrally between the two wings.

The second and third floors have similar floorplans, which utilize a neighborhood layout. The floors are organized into four neighborhoods consisting of 24 beds in each neighborhood. Each floor has 96 total beds, composed of 42 double rooms and 12 single rooms. Each neighborhood has its day rooms, bathing facilities, and a decentralized nurse station. Centrally located on the second and third floor is a large nurse station, main resident dining room, nourishment area, and decentralized resident communal and activity spaces.

Food service will be provided on hot and cold carts from the central kitchen to the residential floors. The central dining rooms on each floor feature a full-service pantry with steam tables, refrigerators, freezers, an ice maker, and a beverage center for meal service. The large central dining rooms and small group dining areas located in the resident units provide ample seating for mealtimes.

## Conclusion

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

## Financial Analysis

### Total Project Cost and Financing

The total construction cost for the new 240-bed facility is projected to be \$84,946,640, broken down as follows:

Land/Building Acquisition	\$11,300,000
New Construction	51,601,600
Design Contingency	5,160,160
Construction Contingency	2,580,080
Architect/Engineering Fees	4,128,128
Construction Manager Fees	1,032,032
Other Fees	800,000
Movable Equipment	2,400,000
Financing Costs	2,217,600
Interim Interest Expense	3,260,400
Application Fees	2,000
Additional Processing Fees	<u>464,640</u>
<b>Total Project Cost</b>	<b>\$84,946,640</b>

The Bureau of Architectural and Engineering Review has determined that the cost per bed meets the applicable RHCF bed cap limitation for new construction.

Conover King Realty LLC (property owner/landlord) will fund the total project cost with equity of \$21,586,640 (\$10,286,640 from liquid resources borrowed from a related company, Oxford Nursing Home, Inc., and land of \$11,300,000 (previously appraised at contributed value) plus a loan of \$63,360,000.

Financing for the project is anticipated as follows:

Landlord Equity - Land owned, previously appraised at contributed value.	\$11,300,000
Landlord Equity (as noted, proceeds loaned from related entity's accumulated funds - Oxford Nursing Home, Inc)	10,286,640
Landlord mortgage (6.125% over a 30-year term)	<u>63,360,000</u>
<b>Total Funds</b>	<b>\$84,946,640</b>

Oxford Nursing Home, Inc., a related entity, has provided a letter of interest for the \$10,286,640. The interest rate will be 2.1% unless the Internal Revenue Service's minimum permissible interest rate is lower. The term is five years, interest-only, with a balloon payment. A review of BFA Attachment D, Oxford Nursing Home, Inc.'s 2022 Certified Financial Statements, shows that the facility has sufficient resources to meet the loan commitment. If, for any reason, Oxford Nursing Home, Inc. is short to cover the loan commitment, then stockholders Barry Braunstein and Norman Motechin have submitted affidavits to cover any shortfall. BFA Attachment A-1 shows their net worth. BFA Attachment A-2 shows the net worth of Conover King Realty, LLC members. It was stated that members of Conover King have sufficient assets to fund their portion of the balloon payment to Oxford Nursing Home with cash or place a mortgage on real property they own, which was attested via affidavits. Newpoint Real Estate Capital has provided a letter of interest to Conover King Realty, LLC, for the financing.

## Operating Budget

The applicant has submitted their 2022 operations and an operating budget, in 2025 dollars, for the first and third years of operation after occupancy in the replacement facility. The budget is summarized as follows:

<u>Revenues</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Medicaid FFS	\$337.79	\$16,011,769	\$350.42	13,122,528	\$351.62	\$13,181,696
Medicaid MC	\$374.44	1,916,026	\$350.42	1,752,100	\$352.00	1,760,000
Medicare FFS	\$944.47	12,437,665	\$752.36	19,717,893	\$809.94	21,226,901
Medicare MC	\$598.09	2,949,169	\$752.36	3,761,808	\$809.94	4,049,699
Commercial FFS	\$758.70	311,827	\$367.26	1,984,303	\$370.88	2,003,883
Private Pay	\$394.25	47,310	\$407.98	1,697,601	\$411.99	1,714,300
All Other		<u>0</u>		<u>29,800</u>		<u>30,600</u>
<b>Total</b>		<b>\$33,673,766</b>		<b>42,066,033</b>		<b>\$43,967,079</b>
<u>Expenses</u>						
Operating	\$338.36	\$24,073,722	\$390.81	\$32,523,376	\$410.16	\$34,149,543
Capital	<u>\$122.80</u>	<u>8,736,843</u>	<u>\$106.05</u>	<u>8,825,346</u>	<u>\$111.30</u>	<u>9,266,613</u>
<b>Total Expenses</b>	<b>\$461.16</b>	<b>\$32,810,565</b>	<b>\$496.86</b>	<b>\$41,348,722</b>	<b>\$521.46</b>	<b>\$43,416,156</b>
<b>Net Income</b>		<b><u>\$863,201</u></b>		<b><u>\$717,311</u></b>		<b><u>\$550,923</u></b>
Patient Days		71,149		83,220		83,260
Utilization		82.95%		95.00%		95.05%

The following is noted concerning the operating budget:

- The Medicaid rate is based on the current rate under the statewide pricing methodology and reflects an increase due to capital reimbursement on the new building.
- The Medicare rate is projected based on the full federal rates for the Medicare Prospective Payment System in effect for 2023 and increased by 1% annually for inflation.
- Private pay and other rates are projected based on similar facilities in the same geographical area and are increased by 1% annually for inflation.
- The increase in Year One expense is due to the new lease for the replacement facility plus changes in volume.
  - The projected percentage of direct care staffing costs to projected facility revenues is 49.85% in Year One and 50.14% in Year Three, exceeding the 40% requirement in New York State Public Health Law §2808.
  - The percentage of direct resident care costs to projected facility revenue is 70.00% in Year One and 70.00% in Year Three, meeting the 70% requirement in New York State Public Health Law §2808.
  - The facility's projected profit percentage is forecasted to be 1.75% in Year One and 1.19% in Year Three, less than the 5% maximum outlined in New York State Public Health Law §2808.
- The projected utilization for the facility is 95% and 95.05% in Year One and Year Three. It was noted that the facility's annual occupancy averages for 2019, 2020, 2021, and 2022 were 91.8%, 80.6%, 81.4%, and 82.9% respectively. Occupancy was 83.3% for the week ending December 6, 2023 (self-reported information to the Department).

Utilization by payor source is projected as follows:

<u>Payor</u>	<u>Current Year</u>		<u>First Year</u>		<u>Third Year</u>	
	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>
Medicaid FFS	47,401	66.62%	37,448	45.00%	37,488	45.01%
Medicaid MC	5,117	7.19%	5,000	6.01%	5,000	6.01%
Medicare FFS	13,169	18.51%	26,208	31.49%	26,208	31.48%
Medicare MC	4,931	6.93%	5,000	6.01%	5,000	6.01%
Commercial FFS	411	0.58%	5,403	6.49%	5,403	6.49%
Private Pay/Other	<u>120</u>	<u>0.17%</u>	<u>4,161</u>	<u>5.00%</u>	<u>4,161</u>	<u>5.00%</u>
Total	71,149	100%	83,220	100%	83,260	100%

- The facility's Medicaid admissions of 92.3% in 2021 and 91.7% in 2022 exceeded Kings County's 75% threshold rate of 33.8% for 2021 and 24.4% for 2022.
- Breakeven occupancy for the first year after the replacement of the facility is projected at 93.38%.

#### Transfer of Shares from the Estate of Livia Goldberg

The applicant has submitted an executed document, which will be effectuated by the Public Health and Health Planning Council (PHHCP). The terms are summarized below:

<b>Date:</b>	June 27, 2022
<b>From:</b>	Estate of Livia Goldberg (died May 10, 2019) willed her interest of 25.15% in Oxford Nursing Home, Inc. equally to her daughters Rochelle Braun, M.D. and Shulamith Goldberg, M.D.
<b>To:</b>	Rochelle Braun, M.D. (12.575%) and Shulamith Goldberg, M.D. (12.575%)
<b>Action:</b>	Rochelle Braun, M.D. and Shulamith Goldberg, M.D. Executrixes of the Estate of Livia Goldberg deceased (the "Estate") who died May 10, 2019. By agreement of all beneficiaries of the Estate, her interest in Oxford Nursing Home, Inc. (the "Corporation") is to be allocated to her two daughters, Rochelle Braun, M.D., and Shulamith Goldberg, M.D. The Estate shall accomplish this transfer upon PHHCP approval.
<b>Payment:</b>	No compensation.

#### Contract of Sale

The terms of the executed land Contract of Sale are summarized below:

<b>Date:</b>	January 24, 2018
<b>Parcel:</b>	2832 Linden Boulevard, Brooklyn, New York, designated as block 4495, Lot 1
<b>Seller:</b>	Health Insurance Plan of Greater New York
<b>Purchaser:</b>	Conover King Realty, LLC
<b>Purchase Price:</b>	\$11,300,000
<b>Payment of Purchase Price:</b>	\$11,300,000 (closing statement provided)

#### Lease Agreement

The terms of the related party draft lease agreement are summarized below:

<b>Premises:</b>	A 240-bed RHC (227,174 sq ft located at 2832 Linden Boulevard, Brooklyn, NY 11208)
<b>Lessor:</b>	Conover King Realty, LLC
<b>Lessee:</b>	Oxford Nursing Home, Inc.
<b>Term:</b>	30 Years
<b>Rental:</b>	Rent \$5,020,000, including annual debt service due under the mortgage loan's debt service plus coverage requirements for taxes, insurance, and reserve for replacement contributions plus an additional \$200,000 (\$418,333 per month – \$22.10 per sq. ft.)
<b>Provisions:</b>	Triple Net

The applicant attested that the lease arrangement is a non-arms-length agreement, as members are related. The applicant has provided two letters from NYS licensed realtors attesting to the reasonableness of the rental rate.

### Capability and Feasibility

The total project cost to replace the facility is \$84,946,640. Conover King Realty LLC (property owner and landlord) will fund the project via equity of \$21,586,640 (including land already purchased) and a \$63,360,000 self-amortizing 30-year mortgage at a 6.125% interest rate. Newpoint Real Estate Capital has provided a letter of interest as a source of financing. The applicant states they may seek to refinance with a HUD loan in the future.

Working capital requirements should be minimal as operations transfer to the new facility, and revenue streams will not be negatively impacted. Costs associated with relocating residents and staff are included in the budget. The new facility is approximately 7.2 miles away, and residents will be moved by ambulance, which is covered under Medicaid and accounts for most of the patient population.

The budget projects a net income of \$717,311 and \$550,923 in Years One and Three following the replacement of the facility. BFA Attachment B, Oxford Nursing Home, Inc.'s Pro Forma Balance Sheet, shows the entity will start with \$21,787,994 in members' equity. The budget appears reasonable.

BFA Attachment C, Oxford Nursing Financial Summary shows positive working capital, positive net assets, and an average operating income of \$3,270,860 for the period 2020-2022. BFA Attachment D, Oxford Nursing Home Inc., 2022 Certified Financial Statements shows working capital of \$23,500,426, net assets of \$28,398,236, and net income after taxes of \$882,182.

BFA Attachment E presents the proposed members' ownership interest in the affiliated RHCs and their financial summaries.

- Laconia Nursing Home, Inc., for 2020 through 2022, shows average positive working capital, average positive net assets, and average positive operating income of \$2,926,848.
- Cayuga Ridge, LLC d/b/a Cayuga Nursing & Rehabilitation Center, for 2020 through 2022, shows average negative working capital, average positive net assets, and average positive operating income of \$675,192. Per the applicant, Cayuga recently completed a \$25 million renovation, which is expected to significantly increase the capital rate and attract more Medicare and private pay patients.

### 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	Members' Net Worth-Oxford Nursing Home Inc.
BFA Attachment A-2	Members' Net Worth- Conover King Realty LLC
BFA Attachment B	Pro Forma Balance Sheet- Oxford Nursing Home
BFA Attachment C	Financial Summary – Oxford Nursing Center Inc. and Oxford Nursing Home 2021 Certified Financial Statement
BFA Attachment D	Oxford Nursing Home 2022 Certified Financial Statement
BFA Attachment E	Affiliated Nursing Homes



**Project # 222103-E  
Lincare Of New York, Inc.**

**Program:** LHCSA  
**Purpose:** Establishment

**County:** Onondaga  
**Acknowledged:** October 17, 2022

**Executive Summary**

**Description**

Lincare of New York, Inc. is an existing Licensed Home Care Services Agency (LHCSA) that is seeking approval to transfer 100% of its ownership interest to a new shareholder LLC, KabaFusion NY, LLC.

The applicant provides home infusion therapy of intravenous medications and will continue to serve residents from its main office at 922 Spencer St., Syracuse, NY, and two branch offices at 1151 Pittsford-Victor Road, Suite 217, Pittsford, NY, and 57 Karner Road, Albany, NY.

This Certificate of Need (CON) application does not propose any changes to the LHCSA's service area, branch offices, or licensed services.

OALTC Recommendation  
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.

**Program Summary**

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

**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

February 8, 2024



## Program Analysis

### Program Description

Lincare of New York, Inc. is seeking approval to transfer 100% of its ownership interest to a new shareholder, KabaFusion NY, LLC.

The home office located at 922 Spencer Street, Syracuse, NY, 13204, serves the residents of the following counties:

- Broome
- Cayuga
- Chenango
- Cortland
- Herkimer
- Jefferson
- Lewis
- Madison
- Oneida
- Onondaga
- Oswego
- Saint Lawrence
- Tioga
- Tompkins

This location provides the following healthcare services:

- Nursing

The Branch Office located at 1151 Pittsford Victor Road, Suite 217, Pittsford, NY, 14534, serves the residents of the following counties:

- Chemung
- Genesee
- Livingston
- Monroe
- Ontario
- Schuyler
- Seneca
- Steuben
- Wayne
- Yates

This location provides the following healthcare services:

- Nursing

The Branch Office located at 57 Karner Road, Albany, NY, 12205, serves the residents of the following counties:

- Albany
- Clinton
- Columbia
- Delaware
- Dutchess

- Essex
- Franklin
- Fulton
- Greene
- Hamilton
- Montgomery
- Otsego
- Rensselaer
- Saratoga
- Schenectady
- Schoharie
- Ulster
- Warren
- Washington

This location provides the following healthcare services:

- Nursing
- Medical Supplies, Equipment, and Appliances

An affidavit of no control has been implemented above the grandparent entity, KabaFusion Holdings, LLC, whereby KabaFusion Parent LLC and all organizations above this entity will refrain from exercising control over the licensed home care services agency by directing or causing the direction of the actions, management or policies of the agency, whether through voting securities or voting rights thereunder, electing or appointing directors, the direct and indirect determination of policies, or otherwise (please refer to Attachment A for the organizational chart).

Please note that Lincare of New York, Inc. is 100% owned by KabaFusion NY, LLC, which is 100% owned by KabaFusion Holdings, LLC, which is 100% owned by KabaFusion Parent LLC. Neither KabaFusion NY, LLC nor KabaFusion Holdings, LLC are owned by natural persons.

#### Character and Competence Review

Lincare of New York, Inc., KabaFusion NY, LLC and KabaFusion Holdings, LLC are comprised of the following individuals:

#### **Sohail Masood, Board Member**

- KabaFusion Holdings LLC Chief Executive Officer (October 2009 – Present)

Please refer to Attachment B for the ownership interest in Health Facilities.

#### **Aslam Masood, Board Member**

- KabaFusion Holdings LLC, Secretary (July 2010 – Present)

Please refer to Attachment B for the ownership interest in health facilities.

#### **Sohail Merchant, Board Member**

- KabaFusion Holdings LLC, President LLC (July 2010 – Present)

Please refer to Attachment B for the ownership interest in health facilities.

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 information provided by the Division of Home and Community Based Services and the New York Board of Pharmacy 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.

Boards of Pharmacy for the following states have indicated no issue with the licensure if the health professionals associated with the application:

- Alabama
- Arkansas
- Arizona
- Colorado
- Connecticut
- Georgia
- Michigan
- New Hampshire
- Missouri
- Kentucky
- Maryland
- Tennessee
- Virginia
- Wisconsin
- California
- Florida
- Idaho
- Iowa
- Indiana
- Kansas
- Louisiana
- Massachusetts
- Maine
- Minnesota
- Vermont
- West Virginia
- Mississippi
- North Carolina
- New Hampshire
- New Mexico
- Nevada
- Ohio
- Oklahoma
- Oregon
- Pennsylvania
- Rhode Island
- Texas
- Wyoming

In addition, the following state agencies have indicated no issue with the licensure of the health professional associated with this application:

- The Commonwealth of Kentucky – Cabinet for Health and Family Services,
- South Carolina Department of Labor, Licensing and Regulation,
- Illinois Department of Financial and Professional Regulation,
- Florida Agency of Healthcare Administration,
- District of Columbia Health Regulation and Licensing,
- Delaware Division of Regulation,
- North Carolina Department of Health and Human Services,
- New Hampshire Department of Health and Human Services,
- Utah Department of Commerce – Occupational Licensing,
- Texas Health and Human Services,
- Virginia Health and Human Services, and
- Washington Department of Health.

### 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.

### 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. Please refer to Attachment C.

### Conclusion

The individual background review indicates the proposed members have met the standards for approval as set forth in New York State Public Health Law §3605.

## Attachments

Attachment A	Organizational Chart
Attachment B	Ownership Interest/Healthcare Affiliations
Attachment C	Workforce Questions/Initiatives



**Project # 222104-E  
American Outcomes Management, LP**

**Program:** LHCSA  
**Purpose:** Establishment

**County:** New York  
**Acknowledged:** October 17, 2022

**Executive Summary**

**Description**

American Outcomes Management, LP d/b/a AOM Infusion is seeking approval to transfer 100% of a partnership interest from the current partners to a new LLC partner, AOM Acquisition LLC.

American Outcomes Management, LP provides home intravenous (IV) therapy services for patients with chronic and acute disease conditions. The applicant will continue to serve residents from its main office at 36 West 37th Street, New York and from a branch office at 1 Crossfield Ave. West Nyack.

This Certificate of Need (CON) application does not propose any changes to the LHCSA's service area, branch offices, or licensed services.

**OALTC Recommendation**

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.

**Program Summary**

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

**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

February 8, 2024

## Program Analysis

### Program Description

American Outcomes Management, LP d/b/a AOM Infusion is seeking approval to transfer 100% partnership interest from the current partners to a new LLC partner, AOM Acquisition LLC.

The home office, at 36 West 37th Street, New York, NY, 10018, serves the residents of the following counties:

- Bronx
- Queens
- Kings
- Richmond
- New York

This location will continue to provide the following healthcare services:

- Nursing

The branch office at 1 Crossfield Avenue, Suite 304, West Nyack, NY, 10994, serves the residents of the following counties:

- Dutchess
- Nassau
- Orange
- Putnam
- Rockland
- Suffolk
- Sullivan
- Ulster
- Westchester

This location will continue to provide the following healthcare services:

- Nursing

An affidavit of no control has been implemented above AOM Midco, LLC whereby REP AOM Holdings, LLC and all other organizations above this entity will refrain from exercising control over the licensed home care services agency by directing or causing the direction of the actions, management or policies of the agency, whether through voting securities or voting rights thereunder, electing or appointing directors, the direct and indirect determination of policies, or otherwise (please refer to Attachment A for the organizational chart).

Please note that American Outcomes Management, LP is 100% owned by AOM GP, LLC, which is 100% owned by AOM Acquisition LLC, which is 100% owned by AOM Midco, LLC, which is 100% owned by REP AOM Holdings, LLC. American Outcomes Management, LP is not controlled by natural persons.

### Character and Competence Review

AOM GP, LLC; AOM Acquisition, LLC; and AOM Midco, LLC are comprised of the following individuals:

#### **Walker Poole, Member – 33.33%**

Ridgmont Equity Partners Vice Chairman (January 1993 - Present)

#### Affiliations

- Perimeter Healthcare - Director (September 2016 - Present)
- Sunvera Group - Director (August 2018 - Present)
- Again Care Group - Director (January 2021 - Present)

Please refer to Attachment B for a full list of individual healthcare facilities and agencies.

**Scott Poole, Member - 33.33%**

Ridgmont Equity Partners - Partner (January 1995 - Present)

Affiliations

- Perimeter Healthcare - Director (September 2016 - Present)
- Sunvera Group - Director (August 2018 - Present)

Please refer to Attachment B for a full list of individual healthcare facilities and agencies.

**Petri Lindberg, Member - 33.33%**

Ridgmont Equity Partners - Principal (August 2011 - Present)

Affiliations

- Perimeter Healthcare - Director (September 2016 - Present)
- Sunvera Group - (August 2018 - Present)

Please refer to Attachment B for a full list of individual healthcare facilities and agencies.

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

In or around March 2020, Perimeter Healthcare learned that one of its facilities in the State of Missouri, Woodridge of Missouri, Inc. d/b/a Piney Ridge Center, a Delaware corporation, was subject to an investigation by the Missouri Attorney General's office. A settlement was reached in the amount of approximately \$504,000 to resolve the concerns that were expressed by the Missouri Attorney General's office. The settlement was executed in December 2021. Piney Ridge also took steps before and after the settlement to ensure that appropriate services, including therapy, were being provided to all residents at that facility.

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 following state agencies have indicated no issue with the licensure of the health professionals associated with this application:

- The Alabama State Board of Health,
- State of Louisiana Department of Health and Hospitals,
- Missouri Department of Health and Senior Services,
- State of Arkansas Department of Health,
- Tennessee Department of Mental Health and Substance Abuse Services,
- Texas Department of Health and Human Services,
- Arkansas Department of Human Services: Division of Child Care and Early Childhood Education,
- Missouri Department of Health and Senior Services,
- State of Michigan Department of Licensing and Regulatory Affairs,
- Georgia Department of Community Health,
- South Carolina Department of Health and Environmental Control,
- Georgia Department of Community Health, and
- NC Department of Health & Human Services



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.

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. Please refer to Attachment C.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

<h2>Attachments</h2>
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OALTC Attachment A	Organizational Chart
OALTC Attachment B	Ownership Interest/Healthcare Affiliations
OALTC Attachment C	Workforce Questions/Initiatives



**Project # 231120-E  
Health Quest Home Care, Inc. (Licensed)**

**Program:** LHCSA  
**Purpose:** Establishment

**County:** Dutchess  
**Acknowledged:** April 27, 2023

**Executive Summary**

**Description**

Health Quest Home Care, Inc., a not-for-profit Licensed Home Care Services Agency (LHSCA), requests approval to transfer ownership interest above the grandparent level to Nuvance Health.

The applicant serves the residents of the following counties from an office located at 2469 South Road, Suite 220, Poughkeepsie, New York 12601:

- Dutchess
- Putnam
- Ulster
- Orange

The applicant proposes to provide the following healthcare services:

- Nursing
- Home Health Aide

**OALTC Recommendation**

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.

**Program Summary**

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

**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 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 is recommended.

Council Action Date

February 8, 2024

# Program Analysis

## Program Description

Health Quest Home Care, Inc. is seeking approval to transfer 100% of its ownership interest above the parent level to Nuvance Health.

The applicant serves residents of the following counties from an office at 2469 South Road, Suite 220, Poughkeepsie, New York 12601:

- Dutchess
- Putnam
- Ulster
- Orange

The applicant proposes to provide the following healthcare services:

- Nursing
- Home Health Aide

Health Quest Systems, Inc. is the sole member of Health Quest Home Care, Inc. (Certified) and will become the sole member of Health Quest Home Care, Inc. (Licensed) at the approval of the CON. Nuvance Health is the sole member of Health Quest Systems, Inc. and the grandparent of Health Quest Home Care, Inc. (Certified). Once approved, Nuvance Health will then become the grandparent of Health Quest Home Care, Inc. (Licensed).

## Character and Competence Review

Health Quest Home Care, Inc. is comprised of the following individuals:

### **John Murphy, M.D. - Chief Executive Officer, Health Quest Systems, Inc.**

#### Affiliations

Northern Dutchess Hospital	(April 1, 2019 - Present)
Northern Dutchess Residential Care	(April 1, 2019 - Present)
Putnam Hospital	(April 1, 2019 - Present)
Vassar Brothers Medical Center	(April 1, 2019 - Present)
Health Quest Home Care, Inc. (LHSCA)	(April 1, 2019 - Present)
Health Quest Home Care, Inc. (CHHA)	(April 1, 2019 - Present)
Alamo Ambulance Service, Inc.	(April 1, 2019 - Present)
Sharon Hospital	(April 1, 2019 - Present)
Danbury Hospital	(April 1, 2019 - Present)
Norwalk Hospital	(April 1, 2019 - Present)
Western CT Home Care, Inc.	(April 1, 2019 - Present)

### **Anne Roby – Board Chair, Director, Health Quest Systems, Inc.**

#### Affiliations

Northern Dutchess Hospital	(April 1, 2019 - Present)
Northern Dutchess Residential Care	(April 1, 2019 - Present)
Putnam Hospital	(April 1, 2019 - Present)
Vassar Brothers Medical Center	(April 1, 2019 - Present)
Health Quest Home Care, Inc. (LHSCA)	(April 1, 2019 - Present)
Health Quest Home Care, Inc. (CHHA)	(April 1, 2019 - Present)
Alamo Ambulance Service, Inc.	(April 1, 2019 - Present)
Sharon Hospital	(April 1, 2019 - Present)
Danbury Hospital	(April 1, 2019 - Present)
Norwalk Hospital	(April 1, 2019 - Present)

Western CT Home Care, Inc. (April 1, 2019 - Present)

**Steven Lant – Board Vice Chair, Health Quest Systems, Inc.**

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)  
Northern Dutchess Residential Care (April 1, 2019 - Present)  
Putnam Hospital (April 1, 2019 - Present)  
Vassar Brothers Medical Center (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (LHSCA) (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (CHHA) (April 1, 2019 - Present)  
Alamo Ambulance Service, Inc. (April 1, 2019 - Present)  
Sharon Hospital (April 1, 2019 - Present)  
Danbury Hospital (April 1, 2019 - Present)  
Norwalk Hospital (April 1, 2019 - Present)  
Western CT Home Care, Inc. (April 1, 2019 - Present)

**Elizabeth Bradley – Board Member, Health Quest Systems, Inc.**

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)  
Northern Dutchess Residential Care (April 1, 2019 - Present)  
Putnam Hospital (April 1, 2019 - Present)  
Vassar Brothers Medical Center (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (LHSCA) (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (CHHA) (April 1, 2019 - Present)  
Alamo Ambulance Service, Inc. (April 1, 2019 - Present)  
Sharon Hospital (April 1, 2019 - Present)  
Danbury Hospital (April 1, 2019 - Present)  
Norwalk Hospital (April 1, 2019 - Present)  
Western CT Home Care, Inc. (April 1, 2019 - Present)

**Robert Dyson – Board Member, Health Quest Systems, Inc.**

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)  
Northern Dutchess Residential Care (April 1, 2019 - Present)  
Putnam Hospital (April 1, 2019 - Present)  
Vassar Brothers Medical Center (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (LHSCA) (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (CHHA) (April 1, 2019 - Present)  
Alamo Ambulance Service, Inc. (April 1, 2019 - Present)  
Sharon Hospital (April 1, 2019 - Present)  
Danbury Hospital (April 1, 2019 - Present)  
Norwalk Hospital (April 1, 2019 - Present)  
Western CT Home Care, Inc. (April 1, 2019 - Present)

**Syed Javid Shahid – Board Member, Health Quest Systems, Inc.**

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)  
Northern Dutchess Residential Care (April 1, 2019 - Present)  
Putnam Hospital (April 1, 2019 - Present)  
Vassar Brothers Medical Center (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (LHSCA) (April 1, 2019 - Present)

Health Quest Home Care, Inc. (CHHA) (April 1, 2019 - Present)  
Alamo Ambulance Service, Inc. (April 1, 2019 - Present)  
Sharon Hospital (April 1, 2019 - Present)  
Danbury Hospital (April 1, 2019 - Present)  
Norwalk Hospital (April 1, 2019 - Present)  
Western CT Home Care, Inc. (April 1, 2019 - Present)

**Ervin Shames – Board Member, Health Quest Systems, Inc.**

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)  
Northern Dutchess Residential Care (April 1, 2019 - Present)  
Putnam Hospital (April 1, 2019 - Present)  
Vassar Brothers Medical Center (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (LHSCA) (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (CHHA) (April 1, 2019 - Present)  
Alamo Ambulance Service, Inc. (April 1, 2019 - Present)  
Sharon Hospital (April 1, 2019 - Present)  
Danbury Hospital (April 1, 2019 - Present)  
Norwalk Hospital (April 1, 2019 - Present)  
Western CT Home Care, Inc. (April 1, 2019 - Present)

**Joseph DiVestea – Board Member, Health Quest Systems, Inc.**

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)  
Northern Dutchess Residential Care (April 1, 2019 - Present)  
Putnam Hospital (April 1, 2019 - Present)  
Vassar Brothers Medical Center (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (LHSCA) (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (CHHA) (April 1, 2019 - Present)  
Alamo Ambulance Service, Inc. (April 1, 2019 - Present)  
Sharon Hospital (April 1, 2019 - Present)  
Danbury Hospital (April 1, 2019 - Present)  
Norwalk Hospital (April 1, 2019 - Present)  
Western CT Home Care, Inc. (April 1, 2019 - Present)

**Richard Jabara – Board Member, Health Quest Systems, Inc.**

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)  
Northern Dutchess Residential Care (April 1, 2019 - Present)  
Putnam Hospital (April 1, 2019 - Present)  
Vassar Brothers Medical Center (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (LHSCA) (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (CHHA) (April 1, 2019 - Present)  
Alamo Ambulance Service, Inc. (April 1, 2019 - Present)  
Sharon Hospital (April 1, 2019 - Present)  
Danbury Hospital (April 1, 2019 - Present)  
Norwalk Hospital (April 1, 2019 - Present)  
Western CT Home Care, Inc. (April 1, 2019 - Present)

**Daniel McCarthy – Board Member, Health Quest Systems, Inc.**

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)  
Northern Dutchess Residential Care (April 1, 2019 - present)  
Putnam Hospital (April 1, 2019 - Present)  
Vassar Brothers Medical Center (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (LHSCA) (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (CHHA) (April 1, 2019 - Present)  
Alamo Ambulance Service, Inc. (April 1, 2019 - Present)  
Sharon Hospital (April 1, 2019 - Present)  
Danbury Hospital (April 1, 2019 - Present)  
Norwalk Hospital (April 1, 2019 - Present)  
Western CT Home Care, Inc. (April 1, 2019 - Present)

**Michael Nesheiwat – Board Member, Health Quest Systems, Inc.**

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)  
Northern Dutchess Residential Care (April 1, 2019 - Present)  
Putnam Hospital (April 1, 2019 - Present)  
Vassar Brothers Medical Center (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (LHSCA) (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (CHHA) (April 1, 2019 - Present)  
Alamo Ambulance Service, Inc. (April 1, 2019 - Present)  
Sharon Hospital (April 1, 2019 - Present)  
Danbury Hospital (April 1, 2019 - Present)  
Norwalk Hospital (April 1, 2019 - Present)  
Western CT Home Care, Inc. (April 1, 2019 - Present)

**Gregory Rakow – Board Member, Health Quest Systems, Inc.**

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)  
Northern Dutchess Residential Care (April 1, 2019 - Present)  
Putnam Hospital (April 1, 2019 - Present)  
Vassar Brothers Medical Center (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (LHSCA) (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (CHHA) (April 1, 2019 - Present)  
Alamo Ambulance Service, Inc. (April 1, 2019 - Present)  
Sharon Hospital (April 1, 2019 - Present)  
Danbury Hospital (April 1, 2019 - Present)  
Norwalk Hospital (April 1, 2019 - Present)  
Western CT Home Care, Inc. (April 1, 2019 - Present)

**Salvatore Calta Jr – Board Member, Health Quest Systems, Inc.**

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)  
Northern Dutchess Residential Care (April 1, 2019 - Present)  
Putnam Hospital (April 1, 2019 - Present)  
Vassar Brothers Medical Center (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (LHSCA) (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (CHHA) (April 1, 2019 - Present)  
Alamo Ambulance Service, Inc. (April 1, 2019 - Present)  
Sharon Hospital (April 1, 2019 - Present)

Danbury Hospital (April 1, 2019 - Present)  
Norwalk Hospital (April 1, 2019 - Present)  
Western CT Home Care, Inc. (April 1, 2019 - Present)

**David Cyganowski – Board Member, Health Quest Systems, Inc.**

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)  
Northern Dutchess Residential Care (April 1, 2019 - Present)  
Putnam Hospital (April 1, 2019 - Present)  
Vassar Brothers Medical Center (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (LHSCA) (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (CHHA) (April 1, 2019 - Present)  
Alamo Ambulance Service, Inc. (April 1, 2019 - Present)  
Sharon Hospital (April 1, 2019 - Present)  
Danbury Hospital (April 1, 2019 - Present)  
Norwalk Hospital (April 1, 2019 - Present)  
Western CT Home Care, Inc. (April 1, 2019 - Present)

**Mark Gudis – Board Member, Health Quest Systems, Inc.**

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)  
Northern Dutchess Residential Care (April 1, 2019 - Present)  
Putnam Hospital (April 1, 2019 - Present)  
Vassar Brothers Medical Center (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (LHSCA) (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (CHHA) (April 1, 2019 - Present)  
Alamo Ambulance Service, Inc. (April 1, 2019 - Present)  
Sharon Hospital (April 1, 2019 - Present)  
Danbury Hospital (April 1, 2019 - Present)  
Norwalk Hospital (April 1, 2019 - Present)  
Western CT Home Care, Inc. (April 1, 2019 - Present)

**Donald Jones – Board Member, Health Quest Systems, Inc.**

Affiliations

Northern Dutchess Hospital (April 1, 2019 - Present)  
Northern Dutchess Residential Care (April 1, 2019 - Present)  
Putnam Hospital (April 1, 2019 - Present)  
Vassar Brothers Medical Center (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (LHSCA) (April 1, 2019 - Present)  
Health Quest Home Care, Inc. (CHHA) (April 1, 2019 - Present)  
Alamo Ambulance Service, Inc. (April 1, 2019 - Present)  
Sharon Hospital (April 1, 2019 - Present)  
Danbury Hospital (April 1, 2019 - Present)  
Norwalk Hospital (April 1, 2019 - Present)  
Western CT Home Care, Inc. (April 1, 2019 - Present)

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 Hospitals and Diagnostic and Treatment Centers has reviewed the compliance histories of the affiliated Hospitals and Diagnostic & Treatment Centers and reports the following:

- Vassar Brothers Medical Center was fined two thousand dollars (\$2,000) pursuant to a stipulation and order dated October 29, 2021, for the Condition of Participation (COP) of Surgical Services allegation.

### 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.

### 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 retainment of the workforce was adequately addressed in their project narrative. 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 New York State Public Health Law §3605.

<h2>Attachments</h2>
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OALTC Attachment A
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Workforce Review
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**Project # 231216-E  
Tanglewood Manor, Inc.**

**Program:** LHCSA  
**Purpose:** Establishment

**County:** Chautauqua  
**Acknowledged:** June 8, 2023

**Executive Summary**

**Description**

Tanglewood Manor, Inc., a New York For-Profit Corporation, is requesting to transfer 100% ownership interest of a Licensed Home Care Services Agency (LHCSA) to Culture Care, LLC.

The LHCSA serves the residents of the following counties from an office at 560 Fairmont Avenue, Jamestown, New York 14701:

- Allegany
- Cattaraugus
- Chautauqua
- Erie
- Genesee
- Niagara
- Orleans
- Wyoming

The LHCSA provides the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care Aide

This Licensed Home Care Services Agency (LHCSA) application does not propose any changes to the LHCSA's service area or licensed services.

**OALTC Recommendation  
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.

**Program Summary**

The individual background review indicates the proposed members have met the standard for approval as set forth in New York State Public Health Law §3605.

**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 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 is recommended.

Council Action Date

February 8, 2024

# Program Analysis

## Program Description

Tanglewood Manor, Inc., a New York For-Profit Corporation, is requesting to transfer 100% ownership interest of a Licensed Home Care Services Agency (LHCSA) to Culture Care, LLC.

The applicant intends to continue to serve the residents of the following counties from an office at 560 Fairmont Avenue, Jamestown, New York 14701:

- Allegany
- Cattaraugus
- Chautauqua
- Erie
- Genesee
- Niagara
- Orleans
- Wyoming

The applicant intends to continue to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care Aide

## Character and Competence Review

Culture Care, LLC is comprised of the following individuals:

### **Gary Rohinsky - 50%**

CEO, Culture Care, LLC

#### Affiliations

Palmyra Senior Living (PA)	(February 2022 - Present)
Briarwood Senior Living (PA)	(January 2020 - Present)
Twin Cedar Senior Living (PA)	(January 2020 – Present)
Pearl Valley Rehab & Healthcare Center (PA)	(August 2015 - October 2021)
Pearl Valley Rehab & Healthcare Center (IA)	(August 2015 - October 2021)
Donnellson Health Center (IA)	(April 2017- December 2017)
Riverview Manor (IA)	(April 2017 - December 2017)

### **Jacob J Guttman - 50%**

CFO, Culture Care, LLC

#### Affiliations

Palmyra Senior Living (PA)	(February 2022 - Present)
Briarwood Senior Living (PA)	(January 2021 - Present)
Twin Cedar Senior Living (PA)	(January 2020 – Present)

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 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.

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.

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 New York State Public Health Law §3605.

Attachments
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OALTC Attachment A	Workforce Review
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**Project # 232021-E  
Ideal Care SP LLC**

**Program:** LHCSA  
**Purpose:** Establishment

**County:** Ulster  
**Acknowledged:** August 02, 2023

**Executive Summary**

**Description**

Ideal Care SP LLC, a New York limited liability company, is requesting approval for a Stock/Membership Transfer of the Licensed Home Care Services Agency (LHCSA).

Current membership of Ideal Care SP LLC:

<b>Members</b>	<b>%</b>
Steven Schonberger	48%
Philip Schonberger	50%
Joseph Schonberger	1%
Jeffrey Schonberger	1%
<b>Total</b>	<b>100%</b>

Proposed membership of Ideal Care SP LLC:

<b>Members</b>	<b>%</b>
Steven Schonberger	25%
Philip Schonberger	0%
Joseph Schonberger	25%
Jeffrey Schonberger	25%
Isaac Friedman	25%
<b>Total</b>	<b>100%</b>

The applicant proposes to serve the residents of the following county from an office at 1 Grove Street, Highland, New York 12528:

- Ulster

The applicant intends to continue to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care

**OALTC Recommendation**

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 only serving 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 New York State Public Health Law §3605.

**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 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 is recommended.

Council Action Date

February 8, 2024

# Program Analysis

## Program Description

Ideal Care SP, LLC, a New York limited liability company, is requesting approval for a Stock/Membership Transfer of the Licensed Home Care Services Agency (LHCSA).

The applicant is proposing to serve the residents of the following county from an office at 1 Grove Street, Highland, New York 12528:

- Ulster

The applicant intends to continue to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care

## Character and Competence Review

Ideal Care SP, LLC is comprised of the following individuals:

### **Steven Schonberger - 25% (Already PHHPC approved)**

Managing Member, Ideal Care SP, LLC

#### Affiliations

Ideal Care SP, LLC (2013 - Present)

### **Joseph Schonberger - 25%**

Chief Financial Officer (for entities listed below)

#### Affiliations

Ideal Care SP, LLC (January 2023-Present)  
Evergreen Court Home for Adults SP, LLC (January 2015-Present)  
The New Village View SP, LLC (January 2016-Present)  
The New Golden Acres SP, LLC (2011-Present)  
Boro Park Senior Living, LLC d/b/a The Belvedere (January 2015-Present)  
The New Lexington Manor, LLC (1999- Present)  
The New Future Dreams, LLC (1999-Present)  
The New Essecare of NJ, LLC (2004-Present)

### **Jeffrey Schonberger – 25%**

Administrator, The New Lexington Manor

#### Affiliations

Ideal Care SP, LLC (January 2023-Present)  
The New Village View SP, LLC (January 2016-Present)  
Evergreen Court Home for Adults SP, LLC (January 2015-Present)  
The New Golden Acres SP, LLC (2011-Present)  
The New Essecare of NJ, LLC (2004-Present)  
The New Future Dreams, LLC (1999-Present)  
The New Lexington Manor, LLC (1999- Present)

### **Isaac Friedman - 25%**

Owner/Operator, The Belvedere

#### Affiliations

Boro Park Senior Living, LLC d/b/a The Belvedere (January 2013-Present)



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 Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the above-mentioned adult care facilities and reports as follows:

- The Belvedere was fined \$4,410 pursuant to a stipulation and order from a July 14, 2017, and September 18, 2017 survey for violations of Article 7 of Social Services Law and 18 NYCRR Part 487.
- The Belvedere was fined \$50 pursuant to a stipulation and order from a July 13, 2017, survey for violations of Article 7 of Social Services Law and 18 NYCRR Part 460.
- On August 19, 2021, the department initiated an administrative proceeding seeking enforcement revocation of Evergreen Court Home for Adults SP, LLC operating certificate pursuant to 18 NYCRR 485.5
- The New Golden Acres SP, LLC settled pursuant to a stipulation and order from November 2, 2021, August 16, 2021, June 21, 2021, April 15, 2021, April 12, 2021, December 19, 2019, December 14, 2018, August 30, 2017, July 26, 2017, and January 26, 2017, survey for violations of Article 7 of Social Services Law and 18 NYCRR Part 487.
- On June 4, 2021, the Department suspended The New Village View SP, LLC's operating certificate pursuant to Social Services Law §460-d(4)(b), the respondent's alleged failure to submit plans of correction in response to inspections dated June 11, 2019, and March 28, 2021.
  - Following the violations of New Village View of 2019 and 2021, New Village View and its LHCSA, Ideal Care, temporarily closed the ALP to safely renovate the physical plant. The Operator(s) hired an outside consultant in 2022, approved by the Department of Health (DOH), responsible for the oversight and coordination of the reopening of the New Village View Assisted Living in accordance with NYS Rules and Regulations.
  - The Operator(s), in coordination with the outside consultant(s) and the DOH staff, met regularly to ensure necessary actions and benchmarks were met in accordance with the plan approved by the DOH.
  - The Plan, approved by the DOH, included but was not limited to new leadership for the facility, policies/procedures, employee educational programs, continuity of staff to care for residents, pre-employment policies, communication plans in coordination with the residents, families, and ombudsman, notification and coordination of clinical staff, outside pharmacy, coordination of resident assessments, and transportation of residents and staff.
  - Routine facility reports are submitted to the DOH, and regularly scheduled meetings continue to ensure consistent compliance.
  - As a result of the improvements resulting from monthly meetings with the DOH and the applicant, the DOH can recommend approval at this time.

#### Need Review

In accordance with 10 NYCRR §765-1.16(c)2, this application is exempt from Public Need review as the agency is only serving 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

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 New York State Public Health Law §3605.

Attachments
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OALTC Attachment A	Workforce Review
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## 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:** January 10, 2024

**Subject:** Certificate of Amendment of the Restated Certificate of Incorporation of Lake Shore Hospital Foundation, Inc.

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The attached package was prepared by Mark Schweitzer, 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 memorandum and kindly return the package to Mark Schweitzer for further processing.

Thank you.

## MEMORANDUM

**To:** Colleen Leonard, Executive Secretary  
Public Health and Health Planning Council

**From:** Mark Schweitzer, Associate Attorney  
Bureau of Program Counsel  
Division of Legal Affairs

**Date:** January 18, 2024

**Subject:** Certificate of Amendment of Certificate of Incorporation of Lake Shore Hospital Foundation, Inc.

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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 June 26, 2023 letter to Colleen Leonard requesting approval to amend the name and powers and purposes stated in Lake Shore Hospital Foundation, Inc.’s Certificate of Incorporation from Patricia C. Sandison, legal counsel for the Corporation.
- 3) A Certificate of Incorporation of Lake Shore Hospital Foundation, Inc., and annexed documents filed November 4, 1981.
- 4) A Certificate of Amendment of the Certificate of Incorporation of Lake Shore Hospital Foundation, Inc., and annexed documents filed May 21, 1982.
- 5) A Certificate of Amendment of the Certificate of Incorporation of Lake Shore Hospital Foundation, Inc., and annexed documents filed February 2, 1983.
- 6) A Certificate of Amendment of the Certificate of Incorporation of Lake Shore Hospital Foundation, Inc., and annexed documents (including Public Health Council (“PHC”) Approval Letter) filed June 19, 2003.
- 7) A Proposed Certificate of Amendment of the Certificate of Incorporation of Lake Shore Hospital Foundation, Inc., dated March 31, 2003.
- 8) The Amended and Restated Corporate Bylaws of Lake Shore Hospital Foundation, Inc., adopted January 20, 2023.

- 9) An original signed and dated letter dated May 24, 2023 from the CEO of Brooks-TLC Hospital System, Inc., Kenneth Morris, a duly-authorized representative of the intended supported organization, acknowledging that it will accept funds for it raised by the corporation.
- 10) A May 24, 2023 addendum stating a generalized description of the fundraising activities to be undertaken by the Foundation; a list of the requisite information regarding the Foundation's current Board of Directors, including past and present affiliations with other charitable or non-profit organizations; and Confirmation that there are no other entities that control or are controlled by the Foundation at this time.
- 11) January 20, 2023 Meeting Minutes, approving of and authorizing the name change.

## MEMORANDUM

**To:** Public Health and Health Planning Council

**From:** Kathy Marks, General Counsel *KSM*

**Date:** January 18, 2024

**Subject:** Certificate of Amendment of the Certificate of Incorporation of Lake Shore Hospital Foundation, Inc.

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Lake Shore Hospital Foundation, Inc. (“LSHF”) requests Public Health and Health Planning Council (“PHHPC”) approval of a proposed Certificate of Amendment of its Certificate of Incorporation, to change the Corporation’s name and purposes.

LSHF is a charitable corporation formed under the New York Not-for-Profit Corporation Law, and was incorporated on November 4, 1981. LSHF includes among its purposes: the solicitation of funds, contributions, or grants from any source to benefit a facility that is located within the State of New York, and that is licensed pursuant to Public Health Law (“PHL”) Article 28. As a brief history, the Corporation amended its Certificate of Incorporation on May 21, 1982, on Feb 2, 1983, and on June 19, 2003, obtaining the appropriate approvals.

The Public Health Council (“PHC”) consented to the filing of the Amended (Current) Certificate of Incorporation of LSHF on July 22, 2002. Consents from the Attorney General’s Office and State Supreme Court were also obtained. LSHF now seeks PHHPC approval to file a Certificate of Amendment to its Certificate of Incorporation dated March 32, 2023. Pursuant to NY Not-For-Profit Corporation Law (“N-PCL”) §804(a)(i); 10 NYCRR § 600.11; and N-PCL § 404(b), (o), and (t), PHHPC must consent to the requested changes prior to the filing of any amended certificate.

Because the Foundation is a not-for-profit corporation that includes among its purposes the solicitation of funds, contributions, or grants from any source to benefit Brooks-TLC (a facility that is located within the State of New York, and that is licensed pursuant to PHL Article 28), additional required documents were provided for this request. Those documents are specifically described herein. Additionally, consent from the NYS Attorney General’s Office will need to be obtained for the requested changes, once Department of Health (“DOH”) and PHHPC approvals are provided.

The proposed March 31, 2023 amendments to the Certificate of Incorporation of the Corporation were authorized by an affirmative unanimous vote of all the members of the Board of Directors of the corporation entitled to vote thereon at a meeting of the Board of Directors duly called and held on January 20, 2023. The corporation has no members, and the meeting minutes are annexed hereto.

The amendment seeks to change the Corporate name and purposes as follows:

- (1) To change the name of the Foundation from Lake Shore Hospital Foundation, Inc. to Brooks-TLC Hospital Foundation, Inc., and;
- (2) To change the purposes of the Foundation to clarify that the Foundation will be a supporting organization for Brooks-TLC Hospital System, Inc. ("Brooks-TLC"), and that, going forward, the Foundation will be organized and operated exclusively as a supporting organization of Brooks-TLC and the affiliates and subsidiaries of Brooks-TLC. Brooks-TLC is the legal successor entity to the Foundation's prior supported organization, TLC Health Network.

The current main purpose of the Corporation is to provide support to and for the benefit of TLC NETWORK - Lake Shore Hospital and Lake Shore Nursing Home, in Irving, New York.

Brooks-TLC is the legal successor entity to the Foundation's prior supported organization, TLC Health Network. The Corporation now seeks approval from the Public Health and Health Planning Council ("PHHPC") to change its corporate name to Brooks-TLC Hospital Foundation, Inc., and to change the Corporate purposes to clarify that the Foundation will be a supporting organization for Brooks-TLC Hospital System, Inc. ("Brooks-TLC"), and that, going forward, the Foundation will be organized and operated exclusively as a supporting organization of Brooks-TLC and the affiliates and subsidiaries of Brooks-TLC.

The Foundation's charitable purpose is to provide support to Brooks-TLC Hospital System, Inc. and its affiliates ("Brooks-TLC"). The fundraising activities to be undertaken by the Foundation will consist of soliciting contributions, gifts, donations, and grants from various grantors, including the general public, via capital campaigns, grant applications, and by hosting fundraising galas and events for the benefit and support of Brooks-TLC, including without limitation to help promote the Brooks-TLC facility and in furtherance of the betterment of rural healthcare.

Attached is a written request for the proposed amendments from Attorney Patricia Sandison, on behalf of LSHF to the Department, the Corporate Meeting Minutes of LSHF from January 30, 2023, approving the amendment, the current Restated Certificate of Incorporation of LSHF, Prior Amendments to the Certificate of Incorporation, as well as the proposed Certificate of Amendment of the Restated Certificate of Incorporation of LSHF, and the Bylaws of LSHF.

Attached, as required, is a letter dated May 24, 2023 from the CEO of Brooks-TLC Hospital System, Inc., as a duly authorized representative, to acknowledge and confirm, that Brooks-TLC will accept funds and contributions raised for it by Lake Shore Hospital Foundation, Inc. (the "Foundation"), and to acknowledge, confirm, and agree on behalf of Brooks-TLC that Brooks-TLC is a designated supported organization of the Foundation and that the Foundation is organized and operated exclusively as a supporting organization of Brooks-TLC and the affiliates and subsidiaries of Brooks-TLC.

Also attached, as required, is a statement of a generalized description of the fundraising activities to be undertaken by the Foundation; a list of the requisite information regarding the Foundation's current Board of Directors, including past and present affiliations with other charitable or non-profit organizations; and Confirmation that there are no other entities that control or are controlled by the Foundation at this time.

There is no legal objection to the proposed Certificate of Amendment of the Certificate of Incorporation.

Attachments

Patricia C. Sandison  
Partner  
Direct Dial: 518.433.2427  
psandiso@hodgsonruss.com



June 26, 2023

**VIA E-MAIL AND**  
**FEDEX PRIORITY OVERNIGHT**

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  
(518) 402-0964  
E-mail: [PHHPC@health.ny.gov](mailto:PHHPC@health.ny.gov)

Re: Lake Shore Hospital Foundation, Inc. (the "Foundation")

Dear Ms. Leonard:

On behalf of our client, Lake Shore Hospital Foundation, Inc., we hereby submit for your review and approval a copy of a proposed Certificate of Amendment. The proposed Certificate of Amendment (i) changes the name of the Foundation from Lake Shore Hospital Foundation, Inc. to Brooks-TLC Hospital Foundation, Inc. and (ii) changes the purposes of the Foundation to clarify that the Foundation will be a supporting organization for Brooks-TLC Hospital System, Inc. ("Brooks-TLC"), and that, going forward, the Foundation will be organized and operated exclusively as a supporting organization of Brooks-TLC and the affiliates and subsidiaries of Brooks-TLC. Brooks-TLC is the legal successor entity to the Foundation's prior supported organization, TLC Health Network.

Because the Foundation is a not-for-profit corporation that includes among its purposes the solicitation of funds, contributions or grants from any source to benefit Brooks-TLC (a facility that is located within the State of New York and that is licensed pursuant to PHL Article 28), we note the following additional requirements are met:

1. A full copy of the initial certificate of incorporation of the Foundation, and all amendments to same, are enclosed;
2. The enclosed proposed Certificate of Amendment specifically identifies the name of the supported organization (Brooks-TLC);



3. The enclosed proposed Certificate of Amendment specifically includes the requisite disclaimer language relating to the limitations of the Foundation's authority;
4. A copy of the current amended and restated Bylaws of the Foundation is enclosed;
5. An original signed and dated letter from a duly-authorized representative of Brooks-TLC, which is the intended supported organization, acknowledging that it will accept funds for it raised by the Foundation, is enclosed; and
6. Also enclosed is an additional document outlining the following:
  - a. a generalized description of the fundraising activities to be undertaken by the Foundation;
  - b. a list of the requisite information regarding the Foundation's current Board of Directors, including past and present affiliations with other charitable or non-profit organizations; and
  - c. confirmation that there are no other entities which control or are controlled by the Foundation at this time.

We respectfully request consent from your office for the proposed Certificate of Amendment to the Foundation's Certificate of Incorporation, and confirm by this letter that we will not file the proposed Certificate of Amendment with the New York State Department of State until we have obtained final approval from both the Attorney General's Charities Bureau and your office.

After the Certificate of Amendment is filed with the New York State Department of State, we will provide a copy of the document and the filing evidence to you.

Thank you very much for your assistance. As always, I would be happy to discuss any questions or concerns you may have.

Very truly yours,



Patricia C. Sandison /mam

Patricia C. Sandison

PCS/MNM  
Enclosure

STATE OF NEW YORK  
DEPARTMENT OF STATE

I hereby certify that the annexed copy for LAKE SHORE HOSPITAL FOUNDATION, INC., File Number A810811-11 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 29, 2021.

*Brendan C. Hughes*

Brendan C. Hughes  
Executive Deputy Secretary of State

CERTIFICATE OF INCORPORATION

OF

LAKE SHORE HOSPITAL FOUNDATION, INC.

Under Section 402 of the Not-For-Profit Corporation Law.

The undersigned, for the purpose of forming a corporation under Section 402 of the Not-For-Profit Corporation Law, HEREBY CERTIFIES:

1. The name of the corporation is LAKE SHORE HOSPITAL FOUNDATION, INC. and is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law.

2. The corporation is a Type B corporation as provided under Section 201 of the Not-For-Profit Corporation Law.

3. The purposes for which the corporation is to be formed are:

To carry on, conduct activities for charitable, educational, literary or scientific purposes for the benefit of the Lake Shore Hospital, Inc., Lake Shore Nursing Home, Inc. or any other health related facility in the Towns of Hanover, Pomfret and Sheridan in Chautauqua County, New York or Towns of North Collins, Brant and Evans in Erie County, New York. The object of the corporation shall be to effectuate in the following respects:

(a) To accept, hold, invest, reinvest, solicit, acquire, receive and administer any gifts, bequests, devises, benefits or trusts and property of any sort, without limitation as to amount of value, and to use, disburse or donate the income or principal thereof to Lake Shore Hospital, Inc., Lake Shore Nursing Home, Inc. or any other health related facility in the Towns of Hanover, Pomfret and Sheridan in Chautauqua County,

4810811



New York or Towns of North Collins, Brant and Evans in Erie County, New York, and at their direction, said funds to be used exclusively in furtherance of their non-profit, educational, scientific or charital purposes which are set forth in their Certificate of Incorporation.

(b) To give, convey, or assign any of its property outright, or upon lawful terms regarding the use thereof, to other organizations, provided that (1) such organizations shall be organized and operated exclusively for charitable, educational or scientific purposes; (2) transfers of property to such organizations shall, to the extent then permitted under the statutes of the United States Government, be exempt from gift, succession, inheritance, estate or death taxes (by whatever name called) imposed by the United States Government; and (3) such organizations shall, to the extent then permitted under the statutes of the United States Government, be exempt from income taxes imposed by the United States Government.

(c) To the extent permitted by law, to exercise its rights, powers, and privileges, to hold meetings of its Board of Directors, to have one or more offices, and to keep the books of the corporation, in any part of the world.

(d) Alone or in cooperation with other persons or organizations to do any and all lawful acts and things which may be necessary, useful, suitable or proper for the furtherance, accomplishment, or attainment of any or all of the purposes or powers of the corporation.

(e) To assist in the financing of Hospital or Nursing Home facilities, operations, buildings, equipment and supplies which are used in carrying out the charitable, educational or scientific purposes.

(f) In general, to do any and all acts and things, and to exercise any and all powers which may now or hereafter be lawful for the corporation to do or exercise under and pursuant to the laws of the State of New York for the purpose of accomplishing any of the purposes of the corporation.

(g) The corporation shall not engage, nor shall any of its funds, property or income be used in carrying on propaganda or otherwise attempting to influence legislation, nor shall the corporation participate in or intervene in any political campaign on behalf of any candidates for public office, nor shall the corporation engage in subversive or un-American activities.

(h) To do any act or thing incidental to or connected with the foregoing purposes or advancement thereof, but not for the pecuniary profit or financial gain of its members, directors or officers except as permitted under Article 5 of the Not-For-Profit Corporation Law.

4. The office of the corporation shall be located at Routes 5 & 20, Irving, Town of Hanover, County of Chautauqua and State of New York.

5. The corporation's activities will be conducted primarily in the Eighth Judicial District of the State of New York.

6. The names and addresses of the initial directors are:

- (a) John Talbot  
9497 Lake Shore Road  
Angola, New York 14006
- (b) Arthur F. Riordan  
112 Long Avenue  
Hamburg, New York 14075
- (c) J. Leland Parker  
17 Parkway  
Silver Creek, New York 14136
- (d) James B. Foster  
4742 Lilydale Drive  
Hamburg, New York 14075

7. The duration of the corporation shall be perpetual.

8. The Secretary of State is hereby designated as the agent of the corporation upon whom process against the corporation may be served. The Post Office address to which the Secretary of State shall mail a copy of any notice required by law is: Routes 5 & 20, Irving, Town of Hanover, New York 14081.

9. All approvals or consents required to be obtained are endorsed upon or annexed to this Certificate.

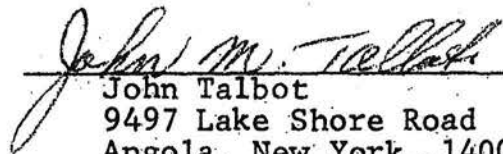
10. There shall be two (2) classes of Trustees of the Lake Shore Hospital Foundation, Inc. Class One shall consist of members of the Board of Directors of the Lake Shore Hospital, Inc. Their total representation on the Board of Trustees of Lake Shore Hospital Foundation, Inc. shall not exceed twenty-five percent

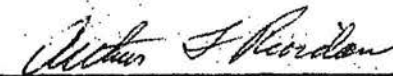
(25%) of the total number of Trustees of the Lake Shore Hospital Foundation, Inc. Class Two shall consist of individuals from the community who are of good reputation and who are not members of the Board of Directors of the Lake Shore Hospital or Lake Shore Nursing Home.


11. In the event of dissolution, all of the remaining assets and property of the corporation shall, after necessary expenses thereof, be distributed to such organizations which qualify under Section 501(c) of the Internal Revenue Code of 1954, as amended, subject to an Order of a Justice of the Supreme Court of the State of New York.


12. That each of the subscribers is over the age of twenty-one (21) years.

IN WITNESS WHEREOF, this Certificate has been signed by each of the subscribers, this 20th day of August, 1981.

  
John Talbot  
9497 Lake Shore Road  
Angola, New York 14006

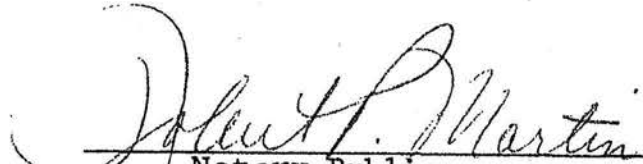
  
Arthur F. Riordan  
112 Long Avenue  
Hamburg, New York 14075

  
J. Leland Parker  
17 Parkway  
Silver Creek, New York 14136

  
James B. Foster  
4742 Lilydale Drive  
Hamburg, New York 14075

State of New York)  
County of Chautauqua: SS.

On this 20th day of August, 1981, before me personally came JOHN TALBOT, ARTHUR F. RIORDAN, J. LELAND PARKER and JAMES B. FOSTER to me known and known to me to the persons described in and who executed the foregoing Certificate of Incorporation and they individually acknowledged to me that they executed the same.

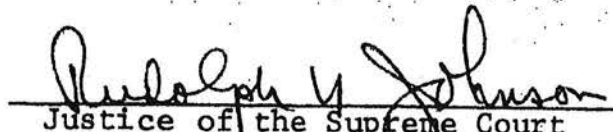
  
Notary Public

ROBERT P. MARTIN  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires March 30, 19... 83

I, RUDOLPH U. JOHNSON, J.S.C., a Justice of the Supreme Court of the Eighth Judicial District, do hereby approve the foregoing Certificate of Incorporation and consent that the same be filed.

(92)

DATED: ~~August~~ <sup>SEPTEMBER</sup> 30, 1981.

  
Justice of the Supreme Court  
RUDOLPH U. JOHNSON, J.S.C.



RESOLUTION

WHEREAS, there is a proposed formation of a new corporation pursuant to the Laws of the State of New York, with the name of LAKE SHORE HOSPITAL FOUNDATION, INC.; and

WHEREAS, there is a similarity of the name of the proposed Foundation with the name of Lake Shore Hospital, Inc.; and

WHEREAS, this corporation has considered the matter, be it

RESOLVED, that the name of the new corporation does not so nearly resemble the name of this corporation as to be calculated to deceive and, therefore, this corporation consents to the use of the name of the LAKE SHORE HOSPITAL FOUNDATION, INC.

LAKE SHORE HOSPITAL, INC.

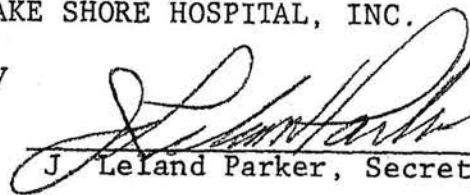
By *Joseph P. Morgano*

\_\_\_\_\_  
Joseph P. Morgano, President

THIS IS TO CERTIFY, that the foregoing is a true copy of the Resolution duly adopted by the Board of Directors of the LAKE SHORE HOSPITAL, INC. on February 23, 1981, at Routes 5 and 20, Irving, New York 14081.

LAKE SHORE HOSPITAL, INC.

By



J. Leland Parker, Secretary

**Kenneth J. Braun**  
Sheriff

**Thomas F. Higgins**  
Undersheriff



Ten Delaware Avenue  
Buffalo, New York 14202  
(716) 846-7600

## Sheriff of Erie County

Re: Lake Shore Hospital Foundation, Inc.

Dear Sir:

The records of the Erie County Sheriff's Department disclose no reference identifiable with the following listed persons who executed a certificate of incorporation for the above-referenced corporation, dated no date given 19 , nor with the persons listed therein as directors until the first annual meeting.

Mr. John Talbot  
Dr. Arthur Francis Riordan  
Mr. James Bristol Foster

This identification is by name only, and is not to be construed as a positive identification. Please be advised that the files of the Sheriff's Department contain arrests only when made by our Department or where a person is or has been in the custody of the Sheriff of Erie County.

Very truly yours,

KENNETH J. BRAUN,  
SHERIFF OF ERIE COUNTY

*Charles P. Fink*  
By: CHARLES P. FINK, CHIEF  
IDENTIFICATION BUREAU

cc: Loretta Chrosniak, Clerk  
Supreme Court, Special Term







STATE OF NEW YORK  
DEPARTMENT OF LAW

ALBANY, N.Y. 12224

Telephone: 474-7206

ROBERT ABRAMS  
ATTORNEY GENERAL

JAMES G MCSPARRON  
ASSISTANT ATTORNEY GENERAL  
IN CHARGE  
LITIGATION BUREAU

September 25, 1981

Robert P. Martin, Esq.  
43 Court Street  
Buffalo, New York 14202

Dear Mr. Martin:


Re: LAKE SHORE HOSPITAL FOUNDATION, INC.

Due and timely service of the notice of application for the approval of the proposed certificate of incorporation of the above-entitled organization is hereby admitted.

The Attorney General does not intend to appear at the time of application.

Very truly yours,

ROBERT ABRAMS  
Attorney General

By   
RICHARD S. REDLO  
Assistant Attorney General

CERTIFICATE OF  
INCORPORATION

DATED: August , 1981.

ROBERT P. MARTIN

████████████████████  
████████████████████  
████████████████████  
43 COURT STREET  
BUFFALO, NEW YORK 14202

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED NOV - 4 1981

AMT. OF CHECK \$ 50  
FILING FEE \$ 50  
TAX \$ \_\_\_\_\_  
COUNTY FEE \$ \_\_\_\_\_  
COPY \$ \_\_\_\_\_  
CERT \$ \_\_\_\_\_  
REFUND \$ \_\_\_\_\_  
SPEC HANDLE \$ \_\_\_\_\_

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**STATE OF NEW YORK**  
**DEPARTMENT OF STATE**

I hereby certify that the annexed copy for LAKE SHORE HOSPITAL FOUNDATION, INC., File Number A870559-6 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 29, 2021.

*Brendan C. Hughes*

Brendan C. Hughes  
Executive Deputy Secretary of State

A870559

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
LAKE SHORE HOSPITAL FOUNDATION, INC.

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

WE, the undersigned, President and Secretary of LAKE SHORE HOSPITAL FOUNDATION, INC. hereby certify:

1. The name of the corporation and the name under which it was formed is LAKE SHORE HOSPITAL FOUNDATION, INC. and is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation.
2. The Certificate of Incorporation of the corporation was filed by the Department of State on November 4, 1981.
3. The corporation is a Type B corporation as provided under Section 201 of the Not-For-Profit Corporation Law.
4. Annexed to the original Certificate of Incorporation was the approval of the Department of Law and a Supreme Court Justice of the State of New York as required under Section 102 (a)(3) of the Not-For-Profit Corporation Law. This Certificate of Amendment shall also have affixed to it the approval of the Department of Law and a Justice of the Supreme Court of the State of New York prior to filing with the Department of State of the State of New York.
5. The Certificate of Incorporation is amended:
  - (a) To change the corporate purposes: Paragraph 3 of the Certificate is amended to read:
    3. The purposes for which the corporation is to be formed are:



To carry on, conduct activities for charitable, literary or scientific purposes for the benefit of the Lake Shore Hospital and Lake Shore Nursing Home, both located on Routes 5 & 20, Irving, New York, 14081 and other qualifying organizations. The object of the corporation shall be to effectuate in the following respects:

(a) To accept, hold, invest, reinvest, solicit, acquire, receive and administer any gifts, bequests, devises, benefits or trusts and property of any sort, without limitation as to amount or value, and to use, disburse or donate the income or principal thereof to Lake Shore Hospital or Lake Shore Nursing Home, both located on Routes 5 & 20, Irving, New York, 14081, and other qualifying organizations, and at their direction, said funds to be used exclusively in furtherance of their non-profit, scientific or charitable purposes which are set forth in their Certificate of Incorporation.

(b) To assist in the financing of Hospital or Nursing Home facilities, operations, buildings, equipment and supplies which are used in carrying out their charitable, literary or scientific purposes.

(c) In general, to do any and all acts and things, and to exercise any and all powers which may now or hereafter be lawful for the corporation to do or exercise under and pursuant to the laws of the State of New York for the purpose of accomplishing any of the purposes of the corporation.



(d) The corporation shall not engage, nor shall any of its funds, property, or income be used, in carrying on propaganda or otherwise attempting to influence legislation, nor shall the corporation participate in or intervene in any political campaign on behalf of any candidates for public office, nor shall the corporation engage in subversive or un-American activities.

(e) To do any act or thing incident to or connected with the foregoing purposes or advancement thereof, but not for the pecuniary profit or financial gain of its members, trustees or officers except as permitted under Article 5 of the Not-For-Profit Corporation Law.

5. (b) To change the corporate address. Paragraph 8 of the Certificate is amended to read:

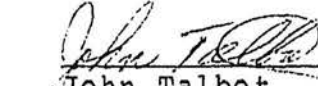
8. The Secretary of State is hereby designated as the agent of the corporation upon whom process against the corporation may be served. The Post Office Address within the State of New York to which the Secretary of State shall mail a copy of any process is 845 Routes 5 & 20, Irving, New York, 14081.

The Post Office Address to which the Secretary of State shall mail a copy of any notice required by law is 845 Routes 5 & 20, Irving, New York, 14081.

6. The above amendments to the Certificate were authorized by a vote of the majority of all trustees entitled to vote thereon at a Meeting of the Board of Trustees.

7. The corporation has no members.

IN WITNESS WHEREOF, we have executed this Certificate on this 8<sup>th</sup> day of April, 1982.

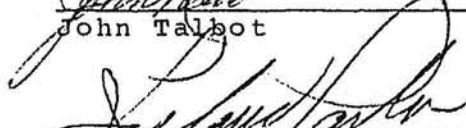
  
John Talbot  
President

  
J. Leland Parker  
Secretary

STATE OF NEW YORK )  
COUNTY OF CHAUTAUQUA) SS:

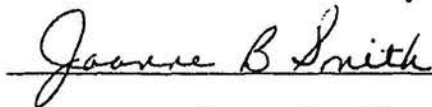
JOHN TALBOT and J. LELAND PARKER, each being severally, duly sworn, depose and say, each for himself, that he, JOHN TALBOT, is the President of LAKE SHORE HOSPITAL FOUNDATION, INC., and he, J. LELAND PARKER, is the Secretary of said Corporation; that they have read the foregoing Certificate of Amendment under Section 803 of the Not-For-Profit Corporation Law and know the contents thereof; that the same is true to their own knowledge, information and belief, and that as to those matters, they believe it to be true.

  
John Talbot

  
J. Leland Parker


Subscribed and sworn to before me this 8<sup>th</sup> day of April, 1982.

JOANNE B. SMITH, Notary Public,  
State of New York. Qualified in  
Erie County. No. 4727816. My  
Commission Expires Mar. 30, 1984  
Certificate filed in Chaut. County.



I, a Justice of the Supreme Court, of the Eighth Judicial District, hereby approve the foregoing Amendment of the Certificate of Incorporation of LAKE SHORE HOSPITAL FOUNDATION, INC.

Dated: APR 19 1982, 1982

  
Justice of the Supreme Court  
JOSEPH J. RICOTTA J. S. C.

OK.  
Toni



STATE OF NEW YORK

DEPARTMENT OF LAW

ALBANY, N.Y. 12224

Telephone: 474-7206

ROBERT ABRAMS  
ATTORNEY GENERAL

JAMES G. MCSPARRON  
ASSISTANT ATTORNEY GENERAL  
IN CHARGE  
LITIGATION BUREAU

April 15, 1982

Robert P. Martin, Esq.  
43 Court Street  
Buffalo, N.Y. 14202

Dear Mr. Martin: .

RE: LAKE SHORE HOSPITAL FOUNDATION, INC.

Due and timely service of the notice of application for the approval of the proposed certificate of amendment of the certificate of incorporation of the above-entitled organization is hereby admitted.

The Attorney General does not intend to appear at the time of application.

Very truly yours,

ROBERT ABRAMS  
Attorney General

By

A handwritten signature in cursive script, appearing to read "Richard S. Redlo".

RICHARD S. REDLO  
Assistant Attorney General

022058

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF

LAKE SHORE HOSPITAL FOUNDATION, INC.

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

DATED: April 8, 1982

*F*

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED MAY 21 1982

AMT. OF CHECK \$ 30  
FILING FEE \$ 30  
TAX \$ \_\_\_\_\_  
COUNTY FEE \$ \_\_\_\_\_  
COPY \$ \_\_\_\_\_  
CERT \$ \_\_\_\_\_  
REFUND \$ \_\_\_\_\_  
SPEC HANDLE \$ \_\_\_\_\_

BY: *Chantongue*  
*type B*

ROBERT P. MARTIN  
Attorneys and Counselors at Law  
43 COURT STREET  
BUFFALO, NEW YORK 14202

A870559

6

*S/S*



**STATE OF NEW YORK  
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for LAKE SHORE HOSPITAL FOUNDATION, INC., File Number A947046-4 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 29, 2021.

*Brendan C. Hughes*

Brendan C. Hughes  
Executive Deputy Secretary of State

947046

CERTIFICATE OF AMENDMENT

of the

CERTIFICATE OF INCORPORATION

of

LAKE SHORE HOSPITAL FOUNDATION, INC.

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

WE, the undersigned, President and Secretary of LAKE SHORE HOSPITAL FOUNDATION, INC. hereby certify:

1. The name of the corporation and the name under which it was formed is LAKE SHORE HOSPITAL FOUNDATION, INC. and is a corporation as defined in subparagraph (a) (5) of Section 1.02 of the Not-for-Profit Corporation.

2. The Certificate of Incorporation of the corporation was filed by the Department of State on November 4, 1981 under Section 402 for the Not-for-Profit Corporation.

3. The Corporation is a Type B corporation as provided under Section 201 of the Not-for-Profit Corporation Law.

4. Annexed to the original Certificate of Incorporation was the approval of the Department of Law and a Supreme Court Justice of the State of New York as required under Section 102 (a) (3) of the Not-for-Profit Corporation Law. This second Certificate of Amendment shall also have affixed to it the approval of the Department of Law and a Justice of the Supreme Court of the State of New York prior to filing with the Department of State of the State of New York.

5. The Certificate of Incorporation is amended by:

(a) Adding the following paragraph to the corporate purpose:

1) Notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment, or for the prevention of cruelty to children or animals, as specified in Section 501 (c) (3) of the

Internal Revenue Code of 1954, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under Section 501 (c) (3) of the Internal Revenue Code of 1954.

(b) No part of the net earnings of the Corporation shall inure to the benefit of any member, 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 member, trustee, officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets upon dissolution of the Corporation.

(c) In the event of dissolution, all of the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed to such organizations as shall qualify under Section 501 (c) (3) of the Internal Revenue Code of 1954, as amended, or, to another organization to be used in such manner as in the judgment of a Justice of a Supreme Court of the State of New York will best accomplish the general purposes for which this Corporation was formed.

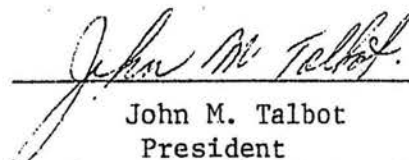
(d) Designating the Secretary of State as agent of the Corporation upon whom process against it may be served and the address to which the Secretary of State shall mail a copy of such process served upon him is Lake Shore Hospital Foundation, Inc., 845 Routes 5 & 20, Irving, NY, 14081.

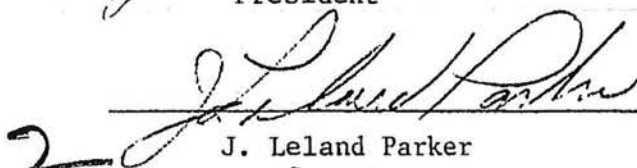
6. Paragraph 11 of the original Certificate of Incorporation of the LAKE SHORE HOSPITAL FOUNDATION, INC. is hereby deleted in its entirety.

7. The above Amendments to the Certificate were authorized by a vote of the majority of all trustees entitled to vote thereon at a meeting of the Board of Trustees.

8. The Corporation has no members.

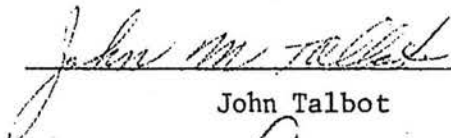
IN WITNESS WHEREOF, we have executed this Certificate on this 8<sup>th</sup> day of October, 1982.

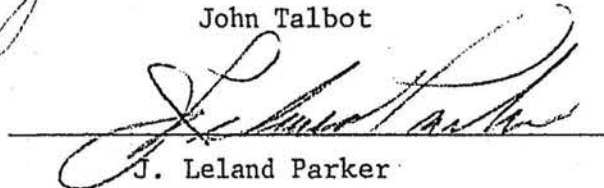
  
\_\_\_\_\_  
John M. Talbot  
President

  
\_\_\_\_\_  
J. Leland Parker

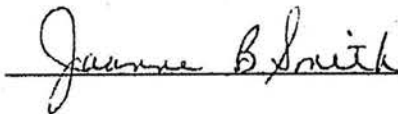
STATE OF NEW YORK )  
COUNTY OF CHAUTAUQUA ) SS:

JOHN TALBOT and J. LELAND PARKER, each being severally, duly sworn, depose and say, each for himself, that he, JOHN TALBOT, is the President of LAKE SHORE HOSPITAL FOUNDATION, INC. and he, J. LELAND PARKER, is the Secretary of said Corporation; that they have read the foregoing Certificate of Amendment under Section 803 of the Not-For-Profit Corporation Law and know the contents thereof; that the same is true to their own knowledge, information and belief, and that as to those matters, they believe it to be true.

  
\_\_\_\_\_  
John Talbot

  
\_\_\_\_\_  
J. Leland Parker

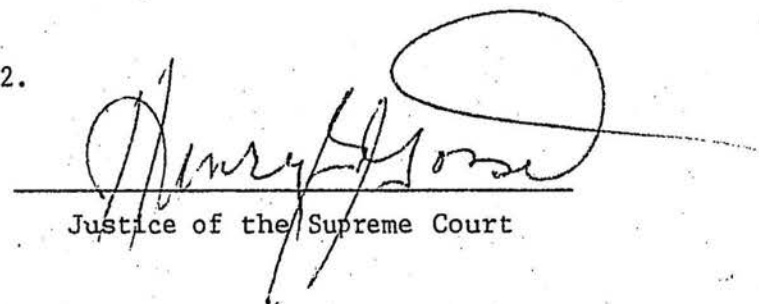
Subscribed and sworn to before me  
this 8<sup>th</sup> day of October, 1982.

  
\_\_\_\_\_

JOANNE B. SMITH, Notary Public,  
State of New York. Qualified in  
Erie County. No. 4727816. My  
Commission Expires Mar. 30, 1984  
Certificate filed in Chaut. County.

I, a Justice of the Supreme Court of the Eighth  
Judicial District, hereby approve the foregoing Amendment of the Certificate  
of Incorporation of LAKE SHORE HOSPITAL FOUNDATION, INC.

Dated: October 14, 1982.

  
\_\_\_\_\_  
Justice of the Supreme Court



A 947046

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CERTIFICATE OF AMENDMENT

of the

CERTIFICATE OF INCORPORATION

of

LAKE SHORE HOSPITAL FOUNDATION, INC.

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

A810811-11

Hanover, Chautauqua County

L-A870559-6

845 Routes 5 & 20

Irving, NY 14081

DATED: November 10, 1982

Lake Shore Hospital Foundation, Inc.  
845 Routes 5 & 20  
Irving, NY 14081

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED FEB 2 - 1983

AMT. OF CHECK \$ 30  
FILING FEE \$ 33  
TAX \$ \_\_\_\_\_  
COUNTY FEE \$ \_\_\_\_\_  
COPY \$ \_\_\_\_\_  
CERT \$ \_\_\_\_\_  
REFUND \$ \_\_\_\_\_  
SPEC HANDLE \$ \_\_\_\_\_

BY: \_\_\_\_\_

*Chautauqua  
type B*

*11/12/82  
Hanover, Chautauqua  
A8 10811-11  
Type: B  
845 Route 5 & 20,  
Irving, NY 14081  
A 8 70559-6*

13200

ON \_\_\_\_\_



**STATE OF NEW YORK  
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for LAKE SHORE HOSPITAL FOUNDATION, INC., File Number 030619000679 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 29, 2021.



*Brendan C. Hughes*

Brendan C. Hughes  
Executive Deputy Secretary of State

E-12

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF

F030619000675

LAKE SHORE HOSPITAL FOUNDATION, INC.

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

THE UNDERSIGNED, being the President and Secretary of Lake Shore Hospital Foundation, Inc. (the "Corporation"), hereby certify:

1. The name of the Corporation and the name under which it was formed is LAKE SHORE HOSPITAL FOUNDATION, INC.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State on November 4, 1981, under 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 it is and shall hereafter continue to be a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.
4. The Certificate of Corporation of the Corporation is hereby amended to change the purposes for which the Corporation was formed. Paragraph 3 of the Certificate of Incorporation is hereby amended to read in its entirety as follows:

"3. The purposes for which the Corporation is formed are:

(a) To be organized and operated exclusively for charitable and educational purposes by conducting and supporting activities, including the solicitation of funds, for the benefit of and to further the purposes of TLC Health Network ("TLC"), and the affiliates and subsidiaries of TLC that are public charities and Qualified Organizations. An organization is a "Qualified Organization" only if it is described in Section 501(c)(3) and Sections 509(a)(1) or (2) of the United States Internal Revenue Code, as amended (the "Code") and operates within TLC's geographic service area. If TLC or any other Qualified

Organization ceases to be a **Qualified Organization**, the Corporation shall cease to be operated exclusively for the benefit of and to further the purposes of such organization and **shall be operated exclusively for the benefit of and to further the purposes of other organizations which are Qualified Organizations.**

(b) Solely for the above purposes, the Corporation is empowered to receive and administer funds and property for charitable and educational purposes and to that end to take and hold by bequest, devise, gift, grant, purchase, lease, or otherwise, either absolutely or jointly with any other person, persons, or corporations, property, real, personal, tangible, or intangible, or any undivided interest therein, without limitation as to amount or value; to sell, convey, or otherwise dispose of any such property and to invest, reinvest, or deal with the principal or the income thereof, in such manner as, in the judgment of the Board of Directors, will best promote the purposes of the Corporation, except such limitations, if any, as may be contained in the instrument under which such property is received, this Certificate of Incorporation, the bylaws of the Corporation, or any laws applicable thereto.

(c) In general, **to do any and all acts and things, and to exercise any and all contractual and legal powers** that it may now or hereafter be lawful for the Corporation to do or exercise under and pursuant to the laws of the State of New York for the benefit of and **to further the purposes of a Qualified Organization.**

(d) To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its directors or officers except as permitted under Article 5 of the Not-for-Profit Corporation Law.

(e) The Corporation shall be organized and operated in such a manner that no part of its net earnings shall inure to the benefit of any director, officer, or other private individual, and it shall not carry on propaganda or otherwise attempt to influence legislation, and further, it shall not participate in or intervene in, (including the publishing and distribution of statements) any political campaign on behalf of any candidate for public office.

(f) It is intended that this Corporation shall have the status of a corporation that is exempt from federal income taxation under Section 509(a) of the Code as an organization described in Section 501(c)(3) of the Code and which is other than a private foundation by reason of being described in Section 509(a)(3) of the Code. This Certificate of Incorporation shall be construed



accordingly, and all powers and activities of the Corporation shall be limited accordingly.

(g) The Corporation is organized exclusively for educational and charitable purposes as defined in Section 501(c)(3) of the Code and shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Code. Upon dissolution of the Corporation, its assets shall, after necessary expenses and payments to creditors, be distributed exclusively for charitable and educational purposes to one or more Qualified Organizations in such manner and amount as the Board of Directors shall determine, subject to an order of a justice of the Supreme Court of the State of New York.

(h) The Corporation is not authorized to establish, operate, or maintain a hospital, or to provide hospital service or health related service or to operate a home care services agency, a hospice, a health maintenance organization, or a comprehensive health services plan, as defined in and covered by Articles 28, 36, 40, and 44, respectively, of the Public Health Law. In addition, the Corporation's purposes do not authorize the Corporation to establish, operate or maintain an adult home, residence for adults or enriched housing program as provided for by Article 7 of the Social Services Law, or to solicit contributions for any such purpose."

5. The Certificate of Incorporation of the Corporation is further amended to delete in its entirety paragraph ten of the Certificate of Incorporation, which refers to two classes of Trustees of the Corporation. Said paragraph ten is hereby deleted in its entirety.

6. The foregoing amendments to the Certificate of Incorporation of the Corporation were authorized and approved by majority vote of the entire Board of Directors of the Corporation, there being no Members of the Corporation entitled to vote thereon.

7. 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 process against Corporation that may be served upon him is:

Lake Shore Hospital Foundation, Inc.  
845 Routes 5 and 20  
Irving, New York 14081

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Amendment of the Certificate of Incorporation of Lake Shore Hospital Foundation, Inc. and affirm under penalties of perjury that the statements made herein are true this 14 day of November, 2001.

Thomas E Syroczyński, President  
Thomas Syroczyński, President

Mark Catalano, Secretary  
Mark Catalano, Secretary

568189 v3

THE ATTORNEY GENERAL HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE AND DEMANDS SERVICE OF THE FILED CERTIFICATE. SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.

Will C. Hilde 9-23-02  
ASSISTANT ATTORNEY GENERAL DATE

**APPROVAL**

I, Joseph G. Makowski, a Justice of the Supreme Court of the Eighth Judicial District, do hereby approve the Certificate of Amendment of the Certificate of Incorporation of Lake Shore Hospital Foundation, Inc., and consent that the same be filed.

Dated: September 27, 2002

**GRANTED**

SEP 27 2002 19

*[Signature]*  
COURT CLERK

*[Signature]*  
\_\_\_\_\_  
Joseph G. Makowski  
Justice of the Supreme Court



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

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July 22, 2002

Mr. Steven I. Rubinstein  
Damon & Morey LLP  
1000 Cathedral Place  
298 Main Street  
Buffalo, New York 14202-4096

Re: Certificate of Amendment of the Certificate of Incorporation of Lake Shore Hospital  
Foundation, Inc.

Dear Mr. Rubinstein:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 19<sup>th</sup> day of July, 2002, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Lake Shore Hospital Foundation, Inc., dated November 14, 2001.

Sincerely,

Karen S. Westervelt  
Executive Secretary

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030619000674

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
LAKE SHORE HOSPITAL FOUNDATION, INC.  
*Under Section 803 of the Not-for-Profit Corporation Law*

100  
STATE OF NEW YORK  
DEPARTMENT OF STATE

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BY: Chny  
JUN 19 2003

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ADD

DRAWDOWN

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DAMON & MOREY LLP  
1000 CATHEDRAL PLACE  
298 MAIN STREET  
BUFFALO, NEW YORK 14202-4096

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**CERTIFICATE OF AMENDMENT**  
**OF THE**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**LAKE SHORE HOSPITAL FOUNDATION, INC.**

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

The undersigned, being the President of LAKE SHORE HOSPITAL FOUNDATION, INC., does hereby certify:

1. The name of the corporation and the name under which it was formed is LAKE SHORE HOSPITAL FOUNDATION, INC.
2. The Certificate of Incorporation was filed by the New York State Department of State on November 4, 1981. The corporation was formed under the Not-for-Profit Corporation Law of the State of New York.
3. The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-for-Profit Corporation Law and is considered to be a charitable corporation under Section 201 of the Not-for-Profit Corporation Law. After the filing of this Certificate of Amendment, the corporation shall continue to be charitable corporation.
4. The Certificate of Incorporation is hereby amended as follows:

A. To change the name of the corporation. Paragraph 1 of the Certificate of Incorporation, which states the name of the corporation, is hereby amended to read in its entirety as follows:

“The name of the Corporation is Brooks-TLC Hospital Foundation, Inc.”


B. To change the purposes for which the Corporation was formed. Paragraph 3 of the Certificate of Incorporation, which sets forth the purposes of the corporation, is hereby amended to clarify the name of the successor entity to the prior supported organization TLC Health Network, by replacing all references to TLC Health Network (“TLC”) in Paragraph 3 of the Certificate of Incorporation with its successor, Brooks-TLC Hospital System, Inc. (“Brooks-TLC”), so that going forward, the Foundation will be organized and operated exclusively as a supporting organization of Brooks-TLC and the affiliates and subsidiaries of Brooks-TLC. In addition, subsection (h) of Paragraph 3 is hereby deleted in its entirety and replaced, to read in its entirety as follows:

“(h) 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 (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 or 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 (SSL); 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 hold itself out as providing, or to 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.”

5. The foregoing amendments to the Certificate of Incorporation of the corporation were authorized by an affirmative unanimous vote of all the members of the Board of Directors of the corporation entitled to vote thereon at a meeting of the Board of Directors duly called and held on January 20, 2023. The corporation has no members.

6. 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. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him or her is: c/o the Corporation, 529 Central Avenue, Dunkirk, New York 14048.

**IN WITNESS WHEREOF**, the undersigned has subscribed this certificate and affirmed it as true under the penalties of perjury this 31 day of March, 2023.



---

Matthew Bogosian, President

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
LAKE SHORE HOSPITAL FOUNDATION, INC.**

---

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

Filed by:     Hodgson Russ LLP  
              Attn: Meredith A. McCarthy, Paralegal  
              677 Broadway, Suite 401  
              Albany, New York 12207

**AMENDED AND RESTATED BY-LAWS**  
**OF**  
**LAKE SHORE HOSPITAL FOUNDATION, INC.**

A corporation governed by the  
Not-for-Profit Corporation Law of New York

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**ARTICLE I**  
**MEMBERS**

Section 1. Members. LAKE SHORE HOSPITAL FOUNDATION, INC. (the “Corporation”), being a charitable corporation as defined in Section 102 of the New York Not-for-Profit Corporation Law, as may be amended from time to time (the “NPCL”), has no members.

**ARTICLE II**  
**BOARD**

Section 1. Management of Corporate Affairs. Except as otherwise provided by law, the certificate of incorporation of the Corporation or these by-laws, the activities, property and affairs of the Corporation will be managed by the board of directors (the “Board”).

Section 2. Number and Qualifications. The Board will consist of at least three directors; the exact number will be determined from time to time by the Board. The Board may increase or decrease the number of directors of the Corporation by a vote of the majority of the entire Board, but the number of voting directors constituting the entire Board may not be less than three. As used in these by-laws, the term “entire Board” means the total number of directors entitled to vote which the Corporation would have if there were no vacancies (i.e., the number of directors set by the Board, so long as there are three or more, and if not so set by the Board, the number of directors that were elected as of the most recently held election of directors, as well as any directors whose terms have not yet expired). No decrease in the number of directors will shorten the term of any incumbent director. All of the directors will be at least 18 years of age. The CEO of Brooks-

TLC Hospital System, Inc., or his or her designee, will serve as an ex-officio voting director on the Board.

Section 3. Election and Term of Office. Except as otherwise provided by law or these by-laws, each director of the Corporation will be elected at an annual meeting of the Board and shall serve for a term of three years and until his or her successor is elected and qualified. No director (other than ex-officio directors) will be permitted to serve for more than two consecutive three-year terms.

Section 4. Vacancies. Newly created directorships resulting from an increase in the number of directors and vacancies occurring in the Board for any reason will be filled by a vote of a majority of the directors then in office, even if less than a quorum exists. A director elected to fill a vacancy will hold office until the next annual meeting at which the election of directors is in the regular order of business, and until his or her successor is elected and qualified.

Section 5. Resignation. Any director may resign at any time by giving a written resignation to the President, a Vice President or the Secretary. A resignation will be effective upon delivery unless it specifies an effective date, in which case the resignation is effective at the time specified. Unless the resignation specifies otherwise, Board acceptance of the resignation is not necessary to make it effective.

Section 6. Removal. Any director may be removed for cause by the affirmative vote of a majority of the Board at any meeting of the Board, notice of which referred to the proposed action.

Section 7. Compensation. No director will be compensated for serving as a director, except that the Corporation may reimburse directors for expenses necessarily incurred in effecting one or more of the corporate purposes of the Corporation, provided that such expenses are approved by the President or the Board. Expenses incurred by the President will be approved by the Board.

Section 8. Honorary Directors. The Board may at any time, or from time to time, elect honorary directors for such periods and in such numbers as the Board may determine. Unless otherwise specified by the Board, each honorary director will serve for a one-year term. Honorary directors shall be given notice of all Board meetings but shall not be required to attend, shall not be



counted for the purpose of a quorum, and shall not vote or have any liability with respect to any action taken by the Board.

Section 9. Independent Directors. The Audit Committee, if any, or the Independent Directors on the Board or a committee of the Board comprised solely of Independent Directors shall perform the duties set forth in Section 712-a of the NPCL as and when required by law or directed by the Board, which requires that solely Independent Directors will oversee the Corporation's audit matters as may be required from time to time pursuant to the terms of Article IV, Section 4 (Audit Committee). As used in these by-laws, the term "Independent Director" shall have the meaning set forth in Section 102(a)(21) of the NPCL, as may be amended from time to time.

### **ARTICLE III** **MEETINGS OF DIRECTORS**

Section 1. Regular Meetings. Regular meetings of the Board, for the transaction of business set forth in the notice of the meeting, will be held at a time and place, within or without the State of New York, determined by the Board and specified in the notice of the meeting.

Section 2. Special Meetings. Special meetings of the Board may be called at any time by the President, or in his or her absence or disability, the Vice President, and must be called by such officer on written request by three or more directors. Such request will state the purpose or purposes for which the meeting is to be called. Each special meeting of the Board will be held at a time and place determined by the person calling the meeting and specified in the notice of the meeting.

Section 3. Annual Meeting. The annual meeting of the Board will be the regular meeting held in March each year, or such other regular meeting designated by the Board.

Section 4. Notice of Meetings. Notice of each regular or special meeting of the Board stating the time and place of the meeting will be given by the President, the Vice President or the Secretary to each director at least three days before the meeting, by mailing the notice, postage prepaid, addressed to each director at his or her residence or usual place of business, or at least two days before the meeting, by delivering the notice to each director personally, by facsimile, by electronic communication or by telephone. A director's attendance at a meeting without protesting, before or at the commencement of such meeting, the lack of notice to him or her constitutes waiver



of notice. A director also may waive notice by submitting a waiver of notice before or after a 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.

Section 5. Quorum. At all meetings of the Board, except as otherwise provided by law, the certificate of incorporation or these by-laws, a quorum is required for the transaction of business. The quorum will consist of a majority of the entire Board.

Section 6. Procedure. The order of business and all other matters of procedure at every meeting of the directors may be determined by the person presiding at the meeting.

Section 7. Action by the Board. Except as otherwise provided by law, the certificate of incorporation or these by-laws, the vote of a majority of the directors present will decide any question that may come before the meeting. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time or place without notice other than announcement at the meeting of the time and place to which the meeting is adjourned.

Section 8. 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 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 will be filed with the minutes of the proceedings of the Board or committee.

Section 9. Presence at Meeting by Remote Means. Any one or more members of the Board or any committee thereof who is not physically present at a meeting may participate by means

of a conference telephone or similar remote communications equipment or by electronic video screen communication. Participation by such means shall constitute presence in person at a meeting as long as all persons participating in the meeting can hear each other at the same time and each director can participate in all matters before the Board 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.

Section 10. Confidentiality. It is the policy of the Corporation that the directors treat as confidential the proceedings of all Board and committee meetings, and all information concerning the business activities of the Corporation, except as otherwise authorized by the Board or until there has been general public disclosure, or unless the information is a matter of public record or common knowledge.

#### **ARTICLE IV** **COMMITTEES**

Section 1. Committees of the Board. The Board, by resolution or resolutions adopted by a majority of the entire Board, may designate from among its members an Executive Committee and, by a majority vote of the directors present at a meeting, may designate from among its members such other committees of the Board as it may deem advisable. The Board shall appoint the members of each committee of the Board. Each such committee of the Board will consist of three or more directors, and all members of committees of the Board must be Directors. Each committee of the Board will serve at the pleasure of the Board and will have, to the extent provided in the resolution establishing the committee, all the authority of the Board except as otherwise provided by law. All acts done and power and authority conferred by the Executive Committee (if appointed) within the scope of its authority are deemed to be, and may be specified as being, the acts of and under the authority of the Board; provided, however, that the Board may not delegate, and the Executive Committee (and any other committee) shall have no authority as to, any of the following matters:

- (a) filling of vacancies in the Board or in any committee of the Board;
- (b) amendment or repeal of these By-Laws or the adoption of new By-Laws;
- (c) amendment or repeal of any resolution of the Board which, by its terms, shall not be so amendable or repealable;

- (d) changing the number of directors;
- (e) election or removal of officers and directors;
- (f) approval of a merger or plan of dissolution;
- (g) approval of the sale, lease, exchange or other disposition of all, or substantially all, the assets of the Corporation; or
- (h) amendment of the Corporation's certificate of incorporation.

Section 2. Executive Committee. The Executive Committee, if appointed, will consist of three or more directors who are also officers of the Corporation. Except as otherwise provided by law, the members of the Executive Committee shall be appointed by a majority of the entire Board or a higher vote, if required by law. In the interim between meetings of the Board, the Executive Committee has all the authority of the Board except as otherwise provided by law. All acts done and power and authority conferred by the Executive Committee within the scope of its authority are deemed to be, and may be specified as being, the acts of and under the authority of the Board.

Section 3. Committees of the Corporation. In addition to committees of the Board, the Board may create committees of the Corporation to serve at the pleasure of the Board and to perform tasks assigned by the Board. Persons other than directors may be members of committees of the Corporation. Committees of the Corporation have no authority to act on behalf of the Board or to bind the Board.

Section 4. Audit Committee. If, at any time, the Corporation registers under Article 7-A to solicit contributions and raises more than \$1 Million in annual total support, then it shall appoint an Audit Committee, which will be a committee of the Board and will consist solely of Independent Directors as defined in Article II, Section 9. The Audit Committee, if appointed, will be a committee of the Board. The Audit Committee shall oversee the accounting and financial reporting processes of the Corporation and any audit of the Corporation's financial statements. In addition, 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. In addition, such Audit Committee shall also comply with all the additional audit oversight obligations in accordance with Section 712-A of the NPCL when and as required.

Section 5. Acts and Proceedings. Each committee will keep regular minutes of its proceedings and report its actions to the Board when required.

Section 6. Meetings of Committees. Committees will meet at such times and places as the chairperson of the committee determines and the notice of the meeting specifies. Meetings of committees of the Board will be governed by the provisions of Sections 4, 5, 6, 7, 8, 9 and 10 of Article III of these by-laws, which govern meetings of the entire Board, except that notice of meetings of the Executive Committee will be given not less than twenty-four hours before such meeting.

## **ARTICLE V** **OFFICERS**

Section 1. Officers. At its annual meeting, the Board will elect from among its members a President, a Vice President, a Secretary, and a Treasurer. The Board may from time to time elect additional officers having titles, authority and duties determined by the Board. Except as otherwise provided by law, no employee of the Corporation shall serve as President of the Board or hold any other title with similar responsibilities unless such employee is elected President or such other title with similar responsibilities by at least a two-thirds vote of the entire Board, provided that the Board contemporaneously documents in writing the basis for such approval.

Section 2. Term of Office. Unless otherwise determined by the Board, officers will hold office until the next annual meeting of the Board and until their successors have been elected and qualified.

Section 3. Removal. Any officer may be removed or have his or her authority suspended by the Board at any time, with or without cause.

Section 4. Resignation. Any officer may resign at any time by giving a resignation in writing to the Board, the President or the Secretary. A resignation will be effective upon delivery unless it specifies an effective date, in which case the resignation is effective at the time specified. Unless the resignation specifies otherwise, Board acceptance of the resignation is not necessary to make it effective.

Section 5. Vacancies. If any Board office becomes vacant for any reason, the Board has the power to fill that vacancy.

Section 6. Duties of Officers May Be Delegated. If an officer is absent or unable to perform his or her duties, or for any other reason that the Board deems sufficient, the Board, except where otherwise provided by law, may delegate the powers or duties of any officer to any other officer or to any director.

Section 7. Officers Holding Two or More Offices. Any two or more Board offices, except those of President and Secretary, may be held by the same person, but no officer will 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. Compensation. No officer will be compensated for serving as an officer, except that the Corporation may reimburse officers for expenses necessarily incurred in effecting one or more of the corporate purposes of the Corporation, provided that such expenses are approved by the President or the Board. Expenses incurred by the President will be approved by the Board.

Section 9. The President. The President will be the chief executive and administrative officer of the Corporation and will have the general powers and duties of supervision and management of the Corporation and will perform all such other duties as usually pertain to the office or are properly required by the Board. The President will preside at all meetings of the Board.

Section 10. Vice President. The Vice President will, in the absence or at the request of the President, perform the duties and exercise the powers of the President. The Vice President will also have such powers and perform all such other duties as usually pertain to the office or are properly required by the Board. The Vice President, in the absence of the President, will preside at all meetings of the Board.

Section 11. The Secretary. The Secretary will ensure that the minutes of the Board are properly kept. He or she will: attend to the giving and serving of all notices of the Corporation; have charge of such books and papers as the Board may direct; attend to such correspondence as may be assigned; and perform all such other duties as usually pertain to the office or are properly required by the Board.

Section 12. The Treasurer. The Treasurer will ensure monitoring of the financial activities of the Corporation by the Board. The Treasurer will perform all such other duties as usually pertain to the office or are properly required by the Board. The Treasurer will present the annual report to the Board setting forth in full the financial resources of the Corporation.

**ARTICLE VI**  
**INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Section 1. Right of Indemnification. The Corporation will indemnify any person who is made, or is threatened to be made, a party to an action or proceeding by reason of the fact that he or she (or his/her testator or intestate) was a director or officer of the Corporation. Such indemnification will be in accordance with and to the fullest extent permitted by the NPCL or other applicable law, as such law now exists or is subsequently adopted or amended. It will apply to any action or proceeding or related appeal, whether criminal, civil, administrative or investigative, and will apply regardless of whether the director or officer is in office at the time of the action or proceeding. However, the Corporation will indemnify a director or officer in connection with an action or proceeding initiated by that director or officer only if the action or proceeding was authorized by the Board.

Section 2. Advancement of Expenses. The Corporation may pay expenses incurred by a director or officer in connection with an action or proceeding described in Section 1 of this Article in advance of the final disposition of that action or proceeding. Such advances may be paid only if: (a) the director or officer agrees in a signed writing to repay the advance if he or she is ultimately found not to be entitled to indemnification; and (b) the advance is approved by the Board acting by a quorum consisting of directors who are not parties to the action or proceeding or, if such a quorum is not obtainable, then by vote of a majority of the entire Board. To the extent permitted by law, the Board may advance expenses under this provision without having to find that the director or officer met the applicable standard of conduct required for indemnification.

Section 3. Availability and Interpretation. To the extent permitted under applicable law, the rights provided in Sections 1 and 2 of this Article:

- (a) will be available with respect to events occurring prior to the adoption of this Article;

- (b) will continue to exist after any rescission or restrictive amendment of this Article with respect to events occurring prior to such rescission or amendment;
- (c) will be interpreted on the basis of applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding or, at the sole discretion of the director or officer (or his/her testator or intestate), on the basis of applicable law in effect at the time the rights are claimed; and
- (d) will be in the nature of contract rights that may be enforced in any court of competent jurisdiction as if the Corporation and the director or officer seeking such rights were parties to a separate written agreement.

Section 4. Other Rights. The rights provided in Sections 1 and 2 of this Article are not exclusive of any other rights to which a director or officer of the Corporation or other person may now or subsequently be otherwise entitled, whether contained in the certificate of incorporation, these by-laws, a resolution of the Board or an agreement providing for such indemnification; the creation of such other rights is expressly authorized. Without limiting the generality of this section, the rights provided in Sections 1 and 2 of this Article are not exclusive of any rights, pursuant to statute or otherwise, of a director or officer or other person to have his or her costs and expenses in an action or proceeding assessed or allowed in his or her favor, against the Corporation or otherwise.

Section 5. Severability. If this Article or any part of it is held unenforceable in any respect by a court of competent jurisdiction, it will be deemed modified to the minimum extent necessary to make it enforceable, and the remainder of this Article will remain fully enforceable. Any payments made pursuant to this Article will be made only out of funds legally available for such payments.

## **ARTICLE VII** **CORPORATE FINANCE**

Section 1. Corporate Funds. The funds of the Corporation will be deposited in its name with banks or other depositories designated by the Board. All checks, notes, drafts and other negotiable instruments of the Corporation will be signed only by those officers, agents or employees authorized by the Board to sign. No officers, agents or employees of the Corporation, alone or with others, have the power to make any checks, notes, drafts or other negotiable instruments in the name of the Corporation or to bind the Corporation thereby, except as provided in this Section.

Section 2. Fiscal Year. The fiscal year of the Corporation will be the twelve-month period ending on December 31, unless otherwise determined by the Board.

Section 3. Loans to Directors, Officers, and Key Persons. No loans will be made by the Corporation to its Directors, Officers, or Key Persons (as such term is defined in Article VIII below) or to any other corporation, firm, association or other entity in which one or more of its Directors, Officers or Key Persons are directors, officers or key persons or hold a substantial financial interest, except a loan by one charitable corporation to another charitable corporation.

Section 4. Gifts. The Board, the Executive Committee or any authorized officer, employee or agent of the Corporation may accept on behalf of the Corporation any contribution, gift, bequest or devise for any general or special purpose or purposes of the Corporation.

Section 5. Income from Corporate Activities. All income from activities of the Corporation will be applied to the maintenance, expansion or operation of the lawful activities of the Corporation.

Section 6. Annual Report. At the annual meeting of the Board, the President and Treasurer will present to the Board a report, verified by the President and Treasurer, showing in appropriate detail the following:

- (a) the assets and liabilities, including the trust funds, of the Corporation as of the end of a twelve-month fiscal period of the Corporation terminating not more than six months prior to said meeting;
- (b) the principal changes in assets and liabilities, including trust funds, during said fiscal period;
- (c) the revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, during said fiscal period; and
- (d) the expenses or disbursements of the Corporation, for both general and restricted purposes, during said fiscal period.

Such report will be filed with the minutes of the annual meeting of the Board.



**ARTICLE VIII**  
**CONFLICT OF INTEREST POLICY**

Section 1. Purpose. The purpose of the Conflict of Interest policy is to protect the Corporation's interest when it is contemplating entering into a Related Party Transaction, or other transaction or arrangement that might benefit the private interest of an officer, director, Key Person or might result in a possible excess benefit transaction. This policy supplements but does not replace any other applicable state and federal laws governing conflicts of interest applicable to the Corporation.

Section 2. Definitions.

(a) “*Affiliate*” of the Corporation, as set forth in Section 102(a)(19) of the NPCL, means any entity controlled by, or in control of, the Corporation.

(b) “*Compensation*” includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

(c) A “*Conflict of Interest*” shall exist: (i) when an Interested Person has a Financial Interest in a proposed transaction; or (ii) with respect to all proposed Related Party Transactions; or (iii) if the Deciding Body makes the determination in its sole discretion that a Conflict of Interest exists.

(d) “*Deciding Body*” means the Board, or a committee thereof appointed by the Board, which is responsible for overseeing the implementation of and compliance with the Corporation's Conflict of Interest Policy.

(e) “*Financial Interest*”: A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

(i) an ownership or investment interest in any entity with which the Corporation has a transaction or arrangement,

(ii) a Compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement, or

(iii) a potential ownership or investment interest in, or Compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement.

(f) “*Interested Person*”: An Interested Person is any (i) Related Party or (ii) any director, officer, Key Person or member of a committee with Board-delegated powers, who has a direct or indirect Financial Interest, or who has any other interest or relationship that could reasonably be viewed as having the potential to affect his or her decision-making judgment.

(g) “*Key Person*” as set forth in Section 102(a)(25) of the NPCL, means any person other than a director or officer, whether or not an employee of the Corporation, who: (i) has responsibilities, or exercises powers or influence over the Corporation as a whole similar to the responsibilities, powers, or influence of directors and officers; (ii) manages the Corporation, or a segment of the Corporation that represents a substantial portion of the activities, assets, income or expenses of the Corporation; or (iii) alone or with others controls or determines a substantial portion of the Corporation’s capital expenditures or operating budget.

(h) “*Related Party*”, as set forth in Section 102(a)(23) of the NPCL, means: (i) any director, officer or key person of the Corporation or any affiliate of the Corporation; (ii) any relative of any director, officer, or key person of the Corporation or any affiliate; or (iii) any entity in which an individual described in clause (i) or (ii) has a 35% or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of 5%. Said information shall be disclosed to the Corporation by a director upon joining the Board and annually thereafter.

(i) “*Related Party Transaction*”, as set forth in Section 102(a)(24) of the NPCL, means any transaction, agreement, or other arrangement in which a “related party” has a financial interest and in which the Corporation or any of its affiliates is a participant, except that a transaction shall not be a related party transaction if: (i) the transaction or the related party’s financial interest in the transaction is de minimis; (ii) the transaction would not customarily be reviewed by the board or boards of similar organizations in the ordinary course of business and is available to others on the same or similar terms; or (iii) the transaction constitutes a benefit provided to a related party solely as a member of a class of the beneficiaries that the Corporation

intends to benefit as part of the accomplishment of its mission which benefit is available to all similarly situated members of the same class on the same terms.

(j) “*Relative*” of an individual, as set forth in Section 102(a)(22) of the NPCL, means: (i) his or her spouse or domestic partner as defined in section twenty-nine hundred ninety-four-a of the public health law; (ii) his or her ancestors, brothers and sisters (whether whole or half-blood), children (whether natural or adopted), grandchildren, great-grandchildren; or (iii) the spouse or domestic partner of his or her brothers, sisters, children, grandchildren, and great-grandchildren.

### Section 3. Procedures.

(a) Duty to Disclose. In connection with any actual or possible Conflict of Interest, an Interested Person must disclose the existence of the financial or other interest and be given the opportunity to disclose all material facts to the Deciding Body.

(b) Determining Whether a Conflict of Interest Exists. After disclosure of the interest and all material facts, and after any discussion with the Interested Person, he or she will leave the Deciding Body’s meeting while the determination of a Conflict of Interest is discussed and voted upon. The remaining Deciding Body members will decide if a Conflict of Interest exists.

(c) Procedures for Addressing the Conflict of Interest. The Deciding Body will determine by a majority vote of the disinterested directors whether the transaction or arrangement is fair, reasonable and in the Corporation’s best interest. In conformity with the above determination it will make its decision as to whether to enter into the transaction or arrangement.

(d) Additional Procedures for Addressing Certain Conflicts of Interest. The Corporation shall not enter into a Related Party Transaction unless the transaction is determined by the Deciding Body to be fair, reasonable and in the Corporation’s best interest at the time of such determination. Any director, officer or Key Person who has an interest in a Related Party Transaction shall disclose in good faith to the Deciding Body the material facts concerning such interest. In addition, with respect to any Related Party Transaction in which a Related Party has

a substantial Financial Interest, the Deciding Body shall: (i) prior to entering into the transaction, consider alternative transactions to the extent available; (ii) approve the transaction by not less than a majority vote of the directors or committee members present at the meeting; and (iii) contemporaneously document in writing the basis for the Deciding Body's approval, including its consideration of any alternative transactions.

(e) No Improper Attempts to Influence Vote. The Interested Person with the Conflict of Interest is prohibited from making any attempt to influence improperly the deliberation or voting on the matter giving rise to the Conflict of Interest.

(f) Violations of the Conflicts of Interest Policy. If the Deciding Body has reasonable cause to believe that an individual has failed to disclose actual or possible Conflicts of Interest, it will inform the individual of the basis for such belief and afford the individual an opportunity to explain the alleged failure to disclose. If, after hearing the individual's response and after making further investigation as warranted by the circumstances, the Deciding Body determines the individual has failed to disclose an actual or possible Conflict of Interest, it will take appropriate disciplinary and corrective action.

Section 4. Records of Proceedings. The minutes of the Deciding Body's meeting will contain the names of persons who disclosed or otherwise were found to have a Financial Interest in connection with an actual or possible Conflict of Interest, the nature of the Financial Interest, any action taken to determine whether a Conflict of Interest was present, the Deciding Body's decision as to whether a Conflict of Interest in fact existed, the names of persons who were present for discussions, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Section 5. Compensation. Any person (or family member of such person) who receives Compensation or other payment, directly or indirectly, from the Corporation is precluded from voting on matters pertaining to his/her Compensation or other payment. Notwithstanding the previous sentence, no director will be prohibited from deliberating or voting concerning Compensation for service on the Board that is to be made available or provided to all directors of the Corporation on the same or substantially similar terms. Directors who receive Compensation,

directly or indirectly, from the Corporation may provide information to the Deciding Body regarding Compensation.

Section 6. Initial and Annual Statements. Each director will annually sign a statement which affirms that he or she is aware of and understands the Corporation's Conflict of Interest policy, has agreed to comply with the policy, and understands that the Corporation is charitable and, in order to maintain its federal tax exemption, it must engage primarily in activities that accomplish one or more of its tax-exempt purposes. In addition, each Director shall initially (prior to his or her initial election) and annually thereafter complete, sign and submit to the Secretary of the Corporation (or a designated compliance officer) a written statement identifying, to the best of his or her knowledge, any entity of which such director is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), or employee and with which the Corporation has a relationship, and any transaction in which the Corporation is a participant and in which the director might have a Conflict of Interest. The Secretary of the Corporation (or a designated compliance officer) shall provide a copy of all completed statements to the Chair of the Deciding Body.

Section 7. Periodic Reviews. To ensure the Corporation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its section 501(c)(3) tax-exempt status, the Board will conduct periodic reviews, including, at a minimum, whether Compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining, and whether any partnerships, joint ventures, and arrangements with management organizations conform to the Corporation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction. The Corporation may, but need not, use outside advisors to assist it in its periodic reviews. If outside advisors are used, their use will not relieve the Board of its responsibility for ensuring periodic reviews are conducted.

**ARTICLE IX**  
**WHISTLEBLOWER POLICY**

Section 1. Whistleblower Policy. The Corporation will adopt a Whistleblower Policy if and when it has 20 or more employees and in the prior fiscal year had annual revenue in excess of \$1 Million.

**ARTICLE X**  
**AMENDMENTS**

Section 1. Procedure for Amending By-Laws. By-laws of the Corporation may be adopted, amended or repealed at any meeting of the Board, notice of which detailed the proposed action, by the vote of two-thirds of the entire Board on at least ten days' prior notice, which notice shall set forth the proposed bylaws modifications.

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BROOKS-TLC HOSPITAL SYSTEM, INC.


May 24, 2023

Re: Supported Organization of the Lake Shore Hospital Foundation, Inc. (the "Foundation")

To Whom it May Concern:

On behalf of Brooks-TLC Hospital System, Inc. ("Brooks-TLC"), I hereby acknowledge and confirm, as a duly authorized representative of Brooks-TLC, that as a general matter Brooks-TLC will accept funds and contributions raised for it by Lake Shore Hospital Foundation, Inc. (the "Foundation"). I further acknowledge, confirm, and agree on behalf of Brooks-TLC that Brooks-TLC is a designated supported organization of the Foundation and that the Foundation is organized and operated exclusively as a supporting organization of Brooks-TLC and the affiliates and subsidiaries of Brooks-TLC.

Very truly yours,

  
Name:  
Title: *President / CEO*



BROOKS-TLC HOSPITAL SYSTEM, INC.

**Lake Shore Hospital Foundation, Inc.**

ADDENDUM STATEMENT OF ADDITIONAL INFORMATION  
RELATING TO PROPOSED CERTIFICATE OF AMENDMENT APPROVAL.

Dated May 24, 2023

In connection with the proposed Certificate of Amendment:

**a. A generalized description of the fundraising activities to be undertaken by the Foundation**

Lake Shore Hospital Foundation, Inc. (to be named Brooks-TLC Hospital Foundation, Inc.) (the "Foundation") is a charitable corporation formed under the New York not-for-profit corporation law. The Foundation has no members and exists as an independent, stand-alone supporting organization governed by a self-perpetuating board of directors. The Foundation's charitable purpose is to provide support to Brooks-TLC Hospital System, Inc. and its affiliates ("Brooks-TLC"). The fundraising activities to be undertaken by the Foundation will consist of soliciting contributions, gifts, donations, and grants from various grantors, including the general public, via capital campaigns, grant applications, and by hosting fundraising galas and events for the benefit and support of Brooks-TLC, including without limitation to help promote the Brooks-TLC facility and in furtherance of the betterment of rural healthcare.

**b. A list of the requisite information regarding the Foundation's current Board of Directors, including past and present affiliations with other charitable or non-profit organizations**

Matthew Bogosian, Director & President

12165 Forestville Rd  
Silver Creek, NY 14136  
716-672-9181 - Cell  
716-934-2099 – Home

Email: [matt@thebackline.com](mailto:matt@thebackline.com)

- Mr. Bogosian is owner of The Back Line in Silver Creek
- Mr. Bogosian was on the Board of Lake Shore Hospital previously



Thomas Syroczyński, Director & Vice President  
21578 Bellhaven Way  
Estero, FL 33928  
716-866-4690 – Cell  
Email: [Kemms4@aol.com](mailto:Kemms4@aol.com)

- Mr. Syroczyński is currently retired
- Mr. Syroczyński was on the Board of Lake Shore Hospital Foundation previously

Dr. James Wild, Director and Secretary of Lake Shore Hospital Foundation  
732 Lake Street  
Angola, NY 14006  
716-241-7067 - Cell  
Email: [jwild@roadrunner.com](mailto:jwild@roadrunner.com)

- Dr. Wild is a physician at Tri County Family Medicine – now The Chautauqua Center
- Dr. Wild is on the Board of Lake Shore Hospital Foundation

In addition, the bylaws of the Foundation provide that the CEO of Brooks-TLC or their designee will serve as ex-officio voting director of the Foundation. Kenneth Morris, CEO/President of Brooks-TLC Hospital System, 3 Primrose Lane, Fredonia, NY 14063, 716-363-7207. He is not part of any other non-profit affiliates or past/present board member.

**c. Confirmation that there are no other entities that control or are controlled by the Foundation at this time.**

There are no other entities that control or are controlled by the Foundation at this time.

**Lake Shore Hospital Foundation Meeting**

January 20<sup>th</sup>, 2023

2:30 pm – Medical Library/phone

**Present:** Matt Bogosian - President, Thomas Syroczyński - Vice President via phone, James Wild MD – Secretary/Treasurer, Ken Morris, President and CEO of Brooks-TLC Hospital System, Inc., Julie Morton, COO/CNO, Christine Bonaguide, Attorney Hodgson Russ

TOPICS	DISCUSSION	ACTION
<b>Call to Order</b>	The meeting was called to order at 2:30 pm	Informational.
<b>Approval of Agenda</b>	Agenda was approved.	Agenda was approved.
<b>Counsel’s Report</b>	Christine Bonaguide, Attorney from Hodgson Russ attended the meeting and reviewed documents as presented and each item discussed and approved.	Informational on Board Governance Matters.
<b>Board Governance Matters:</b>	<p>Consideration for approval of proposed amendment and restatement of the Foundation’s Bylaws to effect compliance with statute changes and Board governance developments including the Conflict of Interest Policy included as Article VIII therein – Requisite vote – two-thirds of entire board.</p> <p>With approval of the proposed amendment, Looking to expand the size of the Board of Directors to fix the number of directors at four and Elect CEO of Brooks-TLC Hospital System Inc., or his or her designee as ex-officio voting Director.</p> <p>Certificate of Amendment of the Foundation was reviewed and discussion was held.</p>	<p>Discussion on proposed amendment and restatement noted - Reviewed and adopted.</p> <p>Amendment was adopted and with this Ken Morris was appointed as ex-officio.</p> <p>Approved and will be filed by Christine Bonaguide with the Attorney General – Will take several months to process.</p>

TOPICS	DISCUSSION	ACTION
	<p>Conflict of Interest Disclosure statement was reviewed by the committee and action taken</p> <p>Next Steps – The Annual meeting will be held in March where potential board members will be reviewed and move forward with increasing the size of the board. Welcome letters to go out to the potential board members. At this time, there are a couple of candidates. Dr. Wild to speak to Christina Jimerson about potential Seneca Nation representation on the Board. At the June meeting, Voting will occur for the new members.</p> <p>For potential donations, If funds are restricted by donor, there is a Grant agreement or endorsement agreement that needs to be completed. Christine Bonaguide will provide the form. If no restrictions, they just need to be applied accordingly.</p> <p>Name change for the Lake Shore Hospital Foundation to be noted – Brooks TLC Hospital Foundation Inc. Paperwork changed and will sent out for signature and filed appropriately.</p> <p>Banking paperwork with Evans National to be completed to have the appropriate signors on the accounts.</p>	<p>All were in-agreement and will sign and send back before the next Board meeting.</p> <p>Discussion and next steps were reviewed by the Board.</p> <p>Informational on potential donations was discussed with the Board.</p> <p>Reviewed and approved of name change but can continue as Lake Shore Hospital Foundation until the final approval is given by State.</p> <p>Follow-up on banking to occur with Evans Bank and reported at the next meeting.</p>

TOPICS	DISCUSSION	ACTION
	Consideration for prospective new directors for election at the 2023 annual meeting was discussed. Any potential new members will be brought to this meeting and reviewed by the Board.	This will be included on the Agenda for the Annual meeting.
<b>Open Discussion</b>	Nothing at this time.	Nothing to report at this time.
<b>Meeting adjournment</b>	Meeting was adjourned at 3:05 pm	Informational.

Respectfully Submitted By

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Carrie Fix Executive Assistant – COO/CNO, Submitted on: 1-23-2023

## MEMORANDUM

**To:** Kathy Marks, General Counsel

**From:** Jason Riegert, Deputy Director  
Bureau of Program Counsel

**Date:** January 12, 2024

**Subject:** Open Door Family Medical Center, Inc. – Amend Certificate of Incorporation

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The attached package was prepared by Mark Schweitzer, 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 Mark Schweitzer for further processing.

Thank you.

## MEMORANDUM

**To:** Colleen Leonard, Executive Secretary  
Public Health and Health Planning Council

**From:** Mark A. Schweitzer, Associate Attorney  
Division of Legal Affairs, Bureau of Health Facility Planning and Development

**Date:** January 12, 2024

**Subject:** Open Door Family Medical Center, Inc. – Amend Certificate of Incorporation

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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 Open Door Family Medical Center, Inc., dated August 23, 2023;
- 3) An Affidavit of the President of the Corporation, sworn to August 22, 2023, Certifying the submitted documents.
- 4) A photocopy of the proposed Amended Certificate of Incorporation of Open Door Family Medical Center, Inc., dated August 22, 2023;
- 5) A photocopy of the current and prior Certificates of Incorporation and Amendments of Open Door Family Medical Center, Inc., including associated approvals, consents, resolutions, and certifications;
- 6) Corporate Bylaws;
- 7) Resolutions of the Board of Directors of Open Door Family Medical Center, Inc., dated March 22, 2023, authorizing the amendment of the Certificate of Incorporation and the addition of corporate purposes;
- 8) NYS Office of Mental Health Approval Letter and Certificate for filing the Proposed Amended Certificate of Incorporation;

Attachments

## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Kathy Marks *KSM*  
General Counsel

**Date:** January 11, 2024

**Subject:** Open Door Family Medical Center, Inc. – Amend Certificate of Incorporation

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Open Door Family Medical Center, Inc. (“ODFMC”) requests Public Health and Health Planning Council (“PHHPC”) approval to change its corporate purposes to add language to engage in the following:

"To operate programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law and the rules and regulations adopted pursuant thereto, as each may be amended from time to time, which shall require as a condition precedent before engaging in the conduct of such services, an Operating Certificate from the New York State Office of Mental Health and the corporation may not establish any such facility or program without first obtaining such Operating Certificate."

ODFMC is a Not-for-Profit Corporation operating a Diagnostic and Treatment Center that was initially approved by the Public Health Council (“PHC”) on April 7, 1975, as Ossining Open Door Associates, Inc., when PHC Consented to the filing of its initial Certificate of Incorporation. Later amendments to the Certificate of Incorporation were made and approved by PHC and the other required entities. Those amendments are listed below, and the documents and approvals are attached. PHHPC consented to the filing of the current Certificate of Incorporation of ODFMC on February 1, 2006, which was filed with the NYS Department of State on April 28, 2006.

A brief background of the prior Amendments to the Certificate of Incorporation is as follows: The Certificate of Incorporation of the Corporation was filed with the Department of State on May 2, 1975 pursuant to the Not-for-Profit Corporation Law of the State of New York (the “NPCL”); A Certificate of Amendment of the Certificate of Incorporation was filed on April 30, 1986; a Certificate of Amendment of the Certificate of Incorporation was filed on March 17, 1992; a Certificate of Amendment of the Certificate of Incorporation was filed on December 27, 1999; and a Restated Certificate of Incorporation of the Corporation (the current Certificate of Incorporation) was filed on April 28, 2006.

Because PHHPC (and its predecessor) previously approved of ODFMC’s Certificates of Incorporation and their filing, ODFMC now requires and requests PHHPC approval to amend its Certificate of Incorporation to add the certain purposes proposed above, and as required by NPCL § 804(a)(i) and 10 NYCRR § 600.11. PHHPC must consent to the requested changes prior to the filing of any amended certificate. Once the changes are made, ODFMC will then need to apply to the New York State Office of Mental Health for appropriate licensure.

ODFMC has submitted Resolutions of the Board of Directors to add the requested language, a copy of its current Operating Certificates, current, prior, and proposed corporate documents, and the associated approvals, consents, and certifications, and an Affidavit certifying the submitted documents.

There is no legal objection to the requested change in corporate purposes, and the Restated Certificate of Incorporation of ODFMC is in legally acceptable form.

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.: 14272.0011

August 23, 2023

Ms. Colleen Frost  
Executive Secretary, Department of Health  
Empire State Plaza  
Corning Towers, Room 1805  
Albany, NY 12237

**Via FEDERAL EXPRESS: 203-399-0514**

Re: Request for Consent to Amend Certificate of Incorporation of Open Door Family Medical Center, Inc. (the "Corporation").

To Whom It May Concern:

I enclosed a copy of the proposed Amendment to the Certificate of Incorporation of the Corporation. We request Public Health and Health Planning Council and Department of Health approval of this proposed Amendment to the Certificate of Incorporation or a letter from the Department of Health stating that no formal approval of the Department of Health or the Public Health and Planning Council is required. The purposes of the Corporation will be amended to include the following:

“To operate programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law and the rules and regulations adopted pursuant thereto, as each may be amended from time to time, which shall require as a condition precedent before engaging in the conduct of such services, an Operating Certificate from the New York State Office of Mental Health and the corporation may not establish any such facility or program without first obtaining such Operating Certificate.”

This amendment is being filed subsequent to the consent of the Board of Directors of the Corporation to make the amendment stated above and to amend the Corporation's Certificate of Incorporation.

Also enclosed to aid you in your review are copies of filed Certificate of Incorporation and all subsequent amendments to the Certificate of Incorporation of the Corporation. Also enclosed is an affidavit of the President of the Corporation, attesting that the Certificate of Incorporation documents provided herein are true, correct and complete.

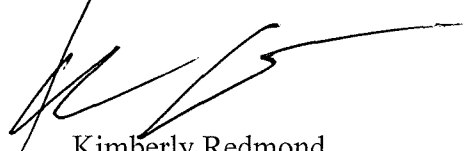


August 23, 2023

Page 2

Please contact me at (203) 399-0514 or via e-mail at kredmond@garfunkelwild.com, if there is any additional information that you require, or if you have any further questions.

Regards,

A handwritten signature in black ink, appearing to read 'Kimberly Redmond', with a long horizontal flourish extending to the right.

Kimberly Redmond  
Paralegal

Cc: Barbara D. Knothe, Esq.

**GARFUNKEL WILD, P.C.**

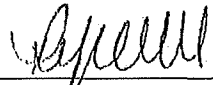
# Affidavit

STATE OF NEW YORK )  
 )  
COUNTY OF Westchester )

The undersigned, Lindsay Farrell, President, being duly sworn, deposes and says:

1. I am the duly elected President of Open Door Family Medical Center, Inc. (the "Corporation"). The Corporation is a New York not-for-profit corporation located in Westchester County.
2. The documents enclosed herein, all of which comprise the Certificate of Amendment of the Certificate of Incorporation, the Restated Certificate of Incorporation, Certificate of Incorporation and all subsequent Amendments to the Certificate of Incorporation, have been examined by me and to the best of my knowledge and belief, the contents thereof are true, correct and complete.

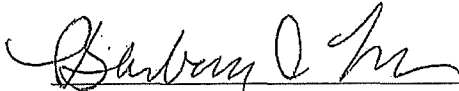
Dated: August 22, 2023



\_\_\_\_\_  
Name: Lindsay Farrell  
Title: President

Sworn to before me this

22nd day of August, 2023

  
\_\_\_\_\_  
Notary Public

BARBARA A LUNA  
NOTARY PUBLIC - STATE OF NEW YORK  
Registration No. 01LU5046125  
Qualified in Orange County  
Commission Expires July 03, 2027

**Certificate of Amendment of the Certificate of  
Incorporation**

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
OPEN DOOR FAMILY MEDICAL CENTER, INC.**

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

The undersigned, being the President of Open Door Family Medical Center, Inc. hereby certifies:

1. The name of the corporation is OPEN DOOR FAMILY MEDICAL CENTER, INC. (the "Corporation"). The name under which the Corporation was formed was "OSSINING OPEN DOOR ASSOCIATES, INC."

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on May 2, 1975 pursuant to the Not-for-Profit Corporation Law of the State of New York (the "NPCL"). A Certificate of Amendment of the Certificate of Incorporation was filed on April 30, 1986, a Certificate of Amendment of the Certificate of Incorporation was filed on March 17, 1992, Certificate of Amendment of the Certificate of Incorporation was filed on December 27, 1999 and a Restated Certificate of Incorporation of the Corporation was filed on April 28, 2006.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

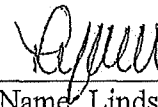
4. The Certificate of Incorporation is hereby amended to effect the following change as authorized under subparagraph (b)(1) of Section 801 of the NPCL: Paragraph THIRD of the Certificate of Incorporation, which provides the purposes of the Corporation is hereby deleted in its entirety and replaced as follows:

“THIRD: The purposes for which the Corporation is formed and shall be operated are as follows:

- A. To establish, operate and maintain one or more diagnostic and treatment centers, as defined in Article 28 of the Public Health Law of the State of New York, for the prevention, diagnosis and treatment of human disease, pain, injury or physical condition;
- B. To establish, maintain and operate programs of enriched housing consisting of small unit, decentralized group housing arrangements in which persons aged 65 or older who are functionally impaired, but not in need of continuous medical or nursing care, are provided a systematic program of support services enabling the resident to live within the community with a maximum degree of independence and privacy;
- C. To operate programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law and the rules and regulations adopted pursuant thereto, as each may be amended from time to time, which shall require as a condition precedent before engaging in the conduct of such services, an Operating Certificate from the New York State Office of Mental Health and the corporation may not establish any such facility or program without first obtaining such Operating Certificate; and
- D. To engage in any and all other lawful activities incidental to and in pursuit of the foregoing purposes, except as restricted herein.

5. This Amendment of the Certificate of Incorporation of the Corporation was authorized at a meeting of the Board of Directors of the Corporation, held on April 24, 2023, at which a quorum was present and acting throughout.

Dated: August 22, 2023



---

Name: Lindsay Farrell  
Title: President

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF**

**OPEN DOOR FAMILY MEDICAL CENTER, INC.**

(Under Section 803 of the Not-for-Profit Corporation Law of the State of New York)

FILED BY:  
KIMBERLY REDMOND, PARALEGAL  
GARFUNKEL WILD, P.C.  
*ATTORNEYS AT LAW*  
350 BEDFORD STREET, SUITE 406A  
STAMFORD, CT 06901

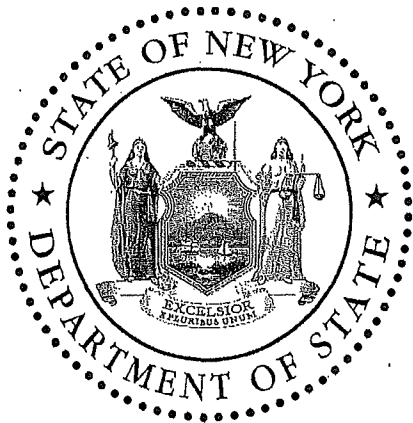


**Certificate of Incorporation and all  
subsequent Amendments to the Certificate of  
Incorporation**

**STATE OF NEW YORK**  
**DEPARTMENT OF STATE**

I hereby certify that the annexed copy for OPEN DOOR FAMILY MEDICAL CENTER, INC., File Number A231009-15 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 August 18, 2023.



*Brendan C. Hughes*

Brendan C. Hughes  
Executive Deputy Secretary of State



**The University of the State of New York**

4221019

STATE OF NEW YORK: ; SS.  
COUNTY OF ALBANY ;

Pursuant to the provisions of Section 216 of the Education Law and Section 404, subdivision (d) of the Not-For-Profit Corporation Law, consent is hereby given to the filing of the annexed certificate of incorporation of

OSSINING OPEN DOOR ASSOCIATES, INC.  
as a not-for-profit corporation.

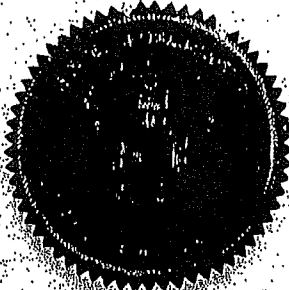
This consent to filing, however, shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such corporation, nor shall it be construed as giving the officers or agents of such corporation the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State of New York or the State Education Department in its publications or advertising matter.

This consent to filing is granted with the understandings and upon the conditions set forth on the reverse side of this form.

IN WITNESS WHEREOF this instrument is executed and the seal of the State Education Department is affixed this 10th day of February, 1975.

Ewald B. Nyquist  
Commissioner of Education

By: *[Signature]*  
Robert D. Stone  
Counsel and  
Deputy Commissioner  
for Legal Affairs



This consent to filing is granted with the understanding that nothing contained in the annexed certificate of incorporation shall be construed as authorizing the corporation to engage in the practice of law, except as provided by subdivision 5 of Section 495 of the Judiciary Law, or of any of the professions designated in Title VIII of the Education Law, or to use any title restricted by such law, or to conduct a school for any such profession, or to hold itself out to the public as offering professional services.

This consent to filing is granted with the further understanding that nothing contained in the certificate of incorporation shall be construed as authorizing the corporation to operate a nursery school, kindergarten, elementary school, secondary school, institution of higher education, cable television facility, educational television station pursuant to Section 236 of the Education Law, library, museum, or historical society, or to maintain an historic site.

This consent to filing shall not be deemed to be or to take the place of registration for the operation of a private business school in accordance with the provisions of Section 5002 of the Education Law, nor shall it be deemed to be, or to take the place of, a license granted by the Board of Regents pursuant to the provisions of Section 5001 of the Education Law, a license granted by the Commissioner of Motor Vehicles pursuant to the provisions of Section 394 of the Vehicle and Traffic Law, a license as an employment agency granted pursuant to Section 172 of the General Business Law, or any other license, certificate, registration, or approval required by law.

6

CERTIFICATE OF INCORPORATION

OF

OSSINING OPEN DOOR ASSOCIATES, INC.

Pursuant to Section 402 of the  
Not-For-Profit Corporation Law

I, the undersigned, a natural person of the age of  
nineteen years or over, desiring to form a corporation pursuant  
to the provisions of the Not-For-Profit Corporation Law of the  
State of New York, hereby certify as follows:

FIRST: The name of the corporation is:

OSSINING OPEN DOOR ASSOCIATES, INC.

hereinafter sometimes called "the Corporation."

SECOND: That it is a corporation as defined in  
subparagraph (a) (5) of Section 102 of the Not-For-Profit  
Corporation Law and is a Type B Corporation under Section 201.  
That its purposes are not for pecuniary profit or financial  
gain and no part of the income of the Corporation shall inure  
to the benefit of any member, director, officer of the Cor-  
poration, 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, 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.

THIRD: The Corporation seeks to carry out the public objective of providing certain specified medical services, and to that end the purposes for which the Corporation is formed are:

To establish and maintain in the Village of Ossining, County of Westchester, an independent, out of hospital facility. To refer such persons where appropriate to licensed physicians and other licensed facilities. To disseminate educational and informational material on health care and preventive medicine. Nothing herein shall be construed as authorizing the Corporation to engage in the practice of medicine.

To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors or officers, except as permitted under Article 5 of the Not-For-Profit Corporation Law.

FOURTH: Subject to the limitations prescribed by the statute and in furtherance of its corporate purposes, the Corporation shall have the following powers, which shall not be deemed to be exclusive of any other powers provided by law:

To purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated; to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, or create a security interest in, all or any of its property, or any interest therein, wherever situated; to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ,

sell, lend, lease, exchange, transfer, or otherwise dispose of, mortgage, pledge, use and otherwise deal in and with, bonds and other obligations, shares, or other securities or interests issued by others, whether engaged in similar or different business, governmental, or other activities.

To make contracts, give guarantees and incur liabilities, borrow money at such rates of interest as the Corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property or any interest therein, wherever situated, to lend money, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

To be a member, associate or manager or other non-profit activities or to the extent permitted in any other jurisdiction to be an incorporator of other corporations.

To make donations, irrespective of corporate benefit, for the public welfare or for community fund, hospital, charitable, educational, scientific, civic or similar purposes, and in time of war or other national emergency in aid thereof.

To exercise such powers which now are or hereafter may be conferred by law upon a corporation organized for the purposes hereinabove set forth, or necessary or incidental to the powers so conferred, or conducive to the attainment of the purposes of the Corporation.

In furtherance of its corporate purposes, the corporation shall have all general powers enumerated in Section 202 N-PCL subject to any limitations thereof contained in this Certificate of Incorporation, together with the power to solicit grants and contributions for its corporate purposes.

The Corporation will not charge a fee for any referral service of any kind or nature. The Corporation will not solicit or accept, directly or indirectly, funds from any medical facility or physician to whom it refers patients.

Nothing herein shall authorize this corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in the Not-For-Profit Corporation Law Section 404 [b] - [p] or Executive Law, Section 757.

No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting, to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of this Certificate of Incorporation, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal Income Tax under Section 501 [c] [3] of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law) or (b) by a corporation, contributions to which are deductible under Section 170[c] [2] of the Internal Revenue Code of 1954 (or corresponding provisions of any subsequent Federal tax laws).

FIFTH: The Office of the Corporation in the State of New York is to be located in the Village of Ossining, County of Westchester, State of New York.



SIXTH: The territory in which the operations of the Corporation are principally to be conducted is the County of Westchester, State of New York, but the Corporation may do any one or more of the acts herein set forth as its purposes within or without the State of New York, the United States of America or in any part of the world.

SEVENTH: Nothing contained in the Certificate of Incorporation shall authorize the Company to carry on propaganda or otherwise attempt to influence legislations, or to participate in, or intervene in (including the publishing or distributing of statements), and political campaign on behalf of any candidate for public office.

EIGHTH: The names and addresses of the initial directors, until the first annual meeting of the Corporation are:

<u>NAME</u>	<u>ADDRESS</u>
Walter Brooks	130 Main Street Ossining, N. Y.
Toby Cosin	130 Underhill Rd. Ossining, N. Y.
Roland Crawford	14 Water St. Ossining, N. Y.
John Crutcher	8 Emwilton Pl. Ossining, N. Y.
Grace Edwards	28 State St. Ossining, N. Y.
Annette Gelfand	81 Macy Rd. Briarcliff Manor, N. Y.

7

NAMEADDRESS

Dorothy Goldman	Twin Ridges Rd. Ossining, N. Y.
Lewis Goldman	6 Cherry Hill Cir. Ossining, N. Y.
Leslie Grey	Pinesbridge Rd. Ossining, N. Y.
Dr. George Hill	30 State St. Ossining, N. Y.
Neville Horne	40 James St. Ossining, N. Y.
Denise Johnson	133 S. Highland Ave. Ossining, N. Y.
Elmer Jones	11 Independence Pl. Ossining, N. Y.
Benetta Morris	92 State St. Ossining, N. Y.
Martha Murray	76 State St. Ossining, N. Y.
Pat Ryan	64 Matthes Rd. Briarcliff Manor, N. Y.
Sylvia Schneer	Overlook Rd. Ossining, N. Y.
Al Slade	72 Hunter St. Ossining, N. Y.
Dot Stevens	172 Spring St. Ossining, N. Y.
Robert Sylvor.	605 Third Avenue New York, N. Y.
Dallas Tatum	91 State St. Ossining, N. Y.

8

<u>NAME</u>	<u>ADDRESS</u>
Henry Vess, Jr.	24 Meadowbrook Dr. Ossining, N. Y.
Andi Volpe	25 Grace Lane Ossining, N. Y.
Betty Woodward	136 Birch Rd. Briarcliff Manor, N. Y.
Marge Griesmer	Inningwood Rd. Ossining, N. Y.

NINTH: The address within the State to which the Secretary of State shall mail a copy of any notice required by law is c/o Robert Sylvor, 605 Third Avenue, County of New York and State of New York.

TENTH: Notwithstanding any other provision of this Certificate, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or (b) by a corporation, contributions to which are deductible under Section 170 (c)(2) of such Code. Furthermore, for those periods (if any) during which the Corporation is a private foundation within the meaning of Section 509 of such Code, the income of the Corporation shall be distributed at such time and in such manner as not to subject the Corporation to tax under Section 4942 of such Code, and the Corporation shall not engage in any act of self-dealing (as defined in Section 4941(d) of such Code), shall not retain any excess business holdings (as defined in

Section 4943(c) of such Code, shall not make any investments in such manner as to be subject to tax under Section 4944 of such Code, and shall not make any taxable expenditures (as defined in Section 4945(d) of such Code). In the event of dissolution, all of the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed to such organizations as shall qualify under Section 501(c) 3 of the Internal Revenue Code of 1954 as amended, subject to an order of a Justice of the Supreme Court of the State of New York. All the foregoing references to sections of the Internal Revenue Code of 1954 are intended to apply to corresponding provisions of any future United States Internal Revenue Law.

ELEVENTH: Prior to delivery to the Department of State for filing, all approvals or consents required by law will be endorsed upon or annexed to this Certificate.

IN WITNESS WHEREOF, I hereunto sign my name and affirm that the statements made herein are true under the penalties of perjury, this 22nd day of January, 1975.



---

Robert Sylvor  
605 Third Avenue  
New York, N.Y. 10016

10

I, HON. HAROLD L. WOOD, a Justice  
of the Supreme Court of the State of New York, NINTH  
Judicial District, do hereby approve the annexed  
Certificate of Incorporation of OSSINING OPEN DOOR  
ASSOCIATES, INC.

*Handwritten initials*

Dated: April 23, 1975  
White Plains, N.Y.

*Handwritten signature of Harold L. Wood*  
Justice of the Supreme Court of the  
State of New York, NINTH  
Judicial District

HON. HAROLD L. WOOD  
J.S.C.

Notice of Application (11/16/75)  
(This is not to be deemed  
approval or disapproval of the  
Department of Agency of the  
State of New York, nor is  
authority of said department  
otherwise limited by law.)

Dated: 4/16/75  
LOUIS J. [unclear]  
Attorney General

By: *Handwritten signature of Louis J. [unclear]*  
Assistant Attorney General

*Handwritten mark*



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
ALBANY 12237

# PUBLIC HEALTH COUNCIL

April 7, 1975

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 4th day of April, 1975, I hereby certify that the Certificate of Incorporation of Ossining Open Door Associates, 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: Stephen C. Silverberg, Esq.  
Bandler and Kass  
605 Third Avenue  
New York, New York 10016

Ossining Open Door Associates, Inc.  
c/o First Baptist Church  
Main Street  
Ossining, New York 10562

COUNCIL

NORMAN S. MOORE, M.D.  
CHAIRMAN  
GEORGE BARHR, M.D.  
BLONEVA P. BOND  
DEYLEV BRONK, Ph. D.  
GORDON E. BROWN

MORTON P. HYMAN  
GERALD B. MANLEY, M.D.  
GEORGE METCALF  
JAMES F.X. O'ROURKE, M.D.  
W. KENNETH RILAND, D.O.

HOWARD A. RUSK, M.D.  
JOHN M. WALSH  
HOLLIS S. INORAHAM, M.D.  
EX OFFICIO

EX OFFICIO

14

- 15

4231009

CERTIFICATE OF INCORPORATION

- OF -

OSSINING OPEN DOOR ASSOCIATES, INC.

4/29

Dated: January 22, 1975

*Style B*

STATE OF NEW YORK  
 DEPARTMENT OF STATE  
 TAX \$ 1000  
 FILING FEE \$ 50  
 FILED MAY - 2 1975  
*Handwritten signature*  
 Secretary of State  
 By *Ans*

*P 60 It patches  
Style B*

15

**BANDLER & KASS**

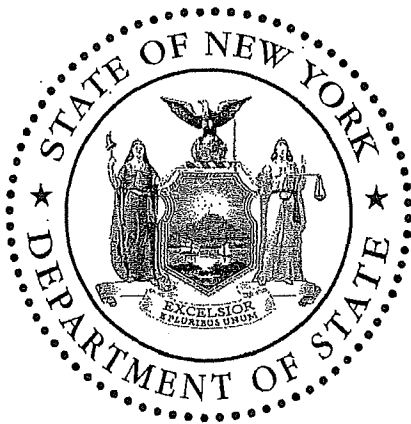
ATTORNEYS AT LAW

605 THIRD AVENUE • NEW YORK, N.Y. 10016

**STATE OF NEW YORK  
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for OPEN DOOR FAMILY MEDICAL CENTER, INC., File Number B352281-6 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 August 18, 2023.



*Brendan C. Hughes*

Brendan C. Hughes  
Executive Deputy Secretary of State



CERTIFICATE OF AMENDMENT OF THE  
CERTIFICATE OF INCORPORATION OF  
OSSINING OPEN DOOR ASSOCIATES, INC.  
UNDER SECTION 803 OF THE NOT-FOR-PROFIT  
CORPORATION LAW

The undersigned being the President and Secretary  
of Ossining Open Door Associates, Inc. hereby certify:

1. The name of the Corporation is Ossining Open Door Associates, Inc. It was formed under that name and the name has not been changed.
2. The Certificate of Incorporation of said Ossining Open Door Associates, Inc. was filed in the office of the Department of State on May 2, 1975. The said Corporation was formed under the Not-for-Profit Corporation Law.
3. The Ossining Open Door Associates, Inc. is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and is and remains a Type B corporation under Section 201 of said law, even though the corporate purposes are being changed as hereinafter set out.
4. Article Fourth of the Certificate of Incorporation of the Ossining Open Door Associates,

B352281

Inc. is hereby amended effective upon the execution and filing of a Certificate of Amendment

(a) to effect a change in the next to last

paragraph so that it reads in full as follows:

"Nothing herein shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in the Not-For-Profit Corporation Law Section 404 [c] - [u].

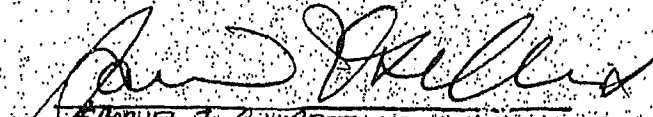
and (b) to add the following paragraph before the next to last paragraph as follows:

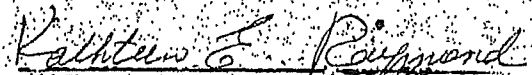
"To establish, maintain and operate within the County of programs of enriched housing consisting of small unit, decentralized group housing arrangements in which persons aged 65 or older who are functionally impaired, but not in need of continuous medical or nursing care, are provided a systematic program of support services enabling the residents to live within the community with a maximum degree of independence and privacy."

5. The manner in which this Amendment of the Certificate of Incorporation was authorized was by the consent of a majority of the Board of Directors of Ossining Open Door Associates, Inc. voting in person at a meeting duly called; said meeting was held at the Ossining Open Door Associates, Inc., Main Street, Ossining, New York on January 15, 1986. There are no members eligible to vote.

6. The Secretary of State of the State of New York is hereby designated the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him as agent of the corporation is Marge Greismer, Scarborough Manor, Ossining, New York, 10510.

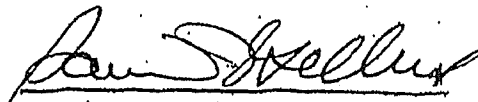
IN WITNESS WHEREOF, the undersigned have executed this certificate <sup>as of</sup> this 29<sup>th</sup> day of January, 1986.


  
SAMUEL J. GILBERT, President

  
KATHLEEN E. RAYMOND, Secretary

IN WITNESS WHEREOF, the undersigned affirm the statements contained herein as true under penalties of perjury and affirm that they have made and signed this certificate as of the 29th day of January, 1986.

---

  
SAMUEL J. GILBERT

3   
KATHLEEN E. RAYMOND

STATE OF NEW YORK  
DEPARTMENT OF SOCIAL SERVICES  
ALBANY, NEW YORK

KNOW ALL MEN BY THESE PRESENTS:

Pursuant to the provisions of Section 460-a of the Social Services Law and subdivision (b) of Section 804 of the Not-for-Profit Corporation Law, due inquiry and investigation having been made, approval hereby is given to the filing of the annexed proposed certificate of amendment of the certificate of incorporation of Ossining Open Door Associates, Inc.



IN WITNESS WHEREOF, this document is executed and the seal of the State Department of Social Services is affixed this 14th day of April, 1986.

Cesar A. Perales  
Commissioner

By:

*Corinne Plummer*  
Corinne Plummer  
Deputy Commissioner  
Division of Adult Services

I CONSENT TO THE FILING OF THE WITHIN AMENDMENT TO THE CERTIFICATE  
OF INCORPORATION OF OSSINING OPEN DOOR ASSOCIATES, INC.

DATED: MARCH 14, 1986

Lucius Palk Bull  
Justice of the Supreme Court

THE UNDERSIGNED HAS NO OBJECTION  
TO THE GRANTING OF SPECIAL  
APPROVAL HEREON AND WAIVES  
STATUTORY NOTICE.

ROBERT ABRAMS, ATTORNEY  
STATE OF NEW YORK

*Allan E. Kirstein 3-13-86*

ALLAN E. KIRSTEIN  
Assistant Attorney General

8352284

16

CERTIFICATE OF AMENDMENT OF THE  
CERTIFICATE OF INCORPORATION OF  
OSSINING OPEN DOOR ASSOCIATES, INC..  
UNDER SECTION 803 OF THE NOT-FOR-PROFIT  
CORPORATION LAW

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STATE OF NEW YORK  
DEPARTMENT OF STATE  
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TANNER GILBERT PROPP & STERNER  
ATTORNEYS AT LAW  
99 PARK AVENUE  
NEW YORK, N.Y. 10016  
(212) 986-7714

**STATE OF NEW YORK  
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for OPEN DOOR FAMILY MEDICAL CENTER, INC., File Number 920317000513 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 August 17, 2023.



*Brendan C. Hughes*

Brendan C. Hughes  
Executive Deputy Secretary of State

F920317000513

CERTIFICATE OF AMENDMENT OF THE  
CERTIFICATE OF INCORPORATION OF  
OSSINING OPEN DOOR ASSOCIATES, INC.  
UNDER SECTION 803 OF THE NOT-FOR -PROFIT  
CORPORATION LAW

The undersigned being the President and Secretary of Ossining Open Door Associates, Inc. hereby certify:

1. The name of the Corporation is Ossining Open Door Associates, Inc. It was formed under that name and the name has not been changed.
2. The Certificate of Incorporation of said Ossining Open Door Associates, Inc. was filed in the office of the Department of State on May 2, 1975. The said Corporation was formed under the Not-For-Profit Corporation Law.
3. The Ossining Open Door Associates, Inc. is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law.
4. The Ossining Open Door Associates, Inc. is and remains a Type B Corporation under Section 201 of said law, even though the corporate purposes are being changed as hereinafter set out.
5. Article Fourth of the Certificate of Incorporation of the Ossining Open Door Associates, Inc. is hereby amended effective upon the execution and filing of this Certificate of Amendment (a) to effect a change in the next to last paragraph so that it reads in full as follows:

1



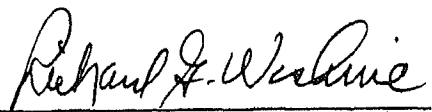
"Nothing herein shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in the Not-For-Profit Corporation Law Section 404 [c]-[t]."

and (b) to add the following paragraph before the next to last paragraph as follows:


"To operate a substance abuse program within the meaning of Article 19 of the Mental Hygiene Law and the rules and regulations adopted pursuant thereto as each may be amended from time to time."

6. The manner in which this Amendment of the Certificate of Incorporation was authorized was by the consent of a majority of the Board of Directors of Ossining Open Door Associates, Inc. voting in person at a meeting duly called: said meeting was held at the Ossining Open Door Associates, Inc., Main Street, Ossining, New York on October 9, 1991. There are no members eligible to vote.
7. The Secretary of State of the State of New York is hereby designated the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him as agent of the corporation is Marge Greismer, 78 Valeria, Peekskill, New York 10566.

IN WITNESS WHEREOF, the undersigned have executed this certificate as of this 9th day of October, 1991.

  
Richard G. Wishnie, Vice President

  
EDGAR E. PYATT, PRESIDENT

2   
REGINA J. BERTA  
SECRETARY

IN WITNESS WHEREOF, the undersigned affirm the statements  
contained herein as true under penalties perjury and affirm that they have  
made and signed this certificate as of the 9th day of October, 1991.

Richard G. Wishnie  
Richard G. Wishnie,  
Vice President

Regina T. Berta  
Regina T. Berta, Secretary

State of New York  
Division of Substance Abuse Services  
Albany, New York

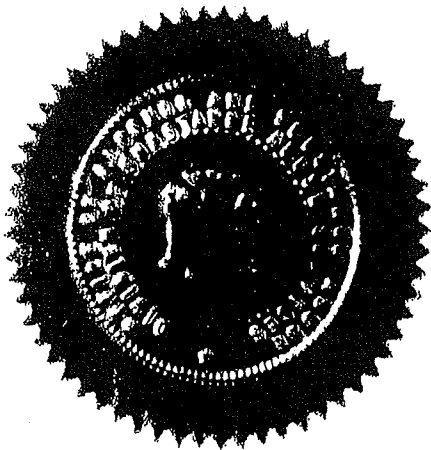
Know All Persons By These Presents:

Pursuant to the provisions of Paragraph (U) of Section 404 of the Not-For-Profit Corporation Law, consent is hereby given to the filing with the Department of State of the annexed:

Certificate of Amendment  
Of The  
Certificate of Incorporation  
Of  
Ossining Open Door Associates, Inc.

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

This consent to filing shall in no way be construed as an authorization for the corporation to operate a substance abuse program for which a certificate of approval may be necessary pursuant to the provisions of Mental Hygiene Law, Section 23.01.



IN WITNESS WHEREOF this instrument is executed and the Seal of the State Division of Substance Abuse Services is affixed this 25<sup>th</sup> day of *October, 1991.*

Arthur Y. Webb  
Director

By: *A. Thomas Storace*

The undersigned has no objection to the granting of Judicial approval hereon and waives statutory notice.

NO OBJECTION TO JUDICIAL APPROVAL AND WAIVES STATUTORY NOTICE.

ROBERT ABRAMS  
ATTORNEY GENERAL  
STATE OF NEW YORK

by:

ROBERT ABRAMS, ATTORNEY GEN.  
STATE OF NEW YORK

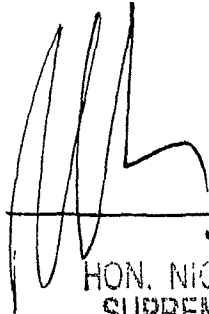
by *Laura Werner*  
*December 11, 1991*  
ASSISTANT ATTORNEY GENERAL

\_\_\_\_\_

Date: \_\_\_\_\_

I, **HON. NICHOLAS COLABELLA**  
**SUPREME COURT JUSTICE**, a Justice of the Supreme Court of the State of New York for the *Ninth* Judicial District do hereby approve the foregoing Certificate of Amendment of the Certificate of Incorporation of *Ossining Open Door Associates, Inc.* and consent that the same be filed.

Date: *1/27/92*

  
\_\_\_\_\_  
JSC  
HON. NICHOLAS COLABELLA  
SUPREME COURT JUSTICE

F920817000513

CERTIFICATE OF AMENDMENT

OF  
Ossining OPEN DOOR Associates, Inc.

Under section 803 of the ~~Not-For-Profit~~ Corporation Law

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED MAR 17 1992

TAX \$

none

BY:

PE  
WEST

Filed by:

OPEN DOOR Family Health Center  
165 Main Street  
Ossining NY 10562

6

920817000553

**STATE OF NEW YORK  
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for OPEN DOOR FAMILY MEDICAL CENTER, INC., File Number 991227000180 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 August 17, 2023.



*Brendan C. Hughes*

Brendan C. Hughes  
Executive Deputy Secretary of State

F-9912270001FO

The  
 University of the  
 Education  State of New York  
 Department

STATE OF NEW YORK :  
 : SS.:  
 COUNTY OF ALBANY :

In accordance with the provisions of section 805 of the Not-for-Profit Corporation Law, consent is hereby given to the change of name of **OSSINING OPEN DOOR ASSOCIATES, INC.** to **OPEN DOOR FAMILY MEDICAL CENTER, INC.** contained in the annexed certificate of amendment of the certificate of incorporation.

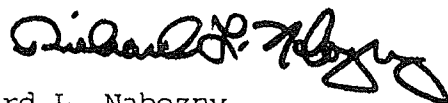
This consent to filing, however, shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such corporation, nor shall it be construed as giving the officers or agents of such corporation the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State of New York or the State Education Department in its publications or advertising matter.

This consent to filing is granted with the understandings and upon the conditions set forth on the reverse side of this form.

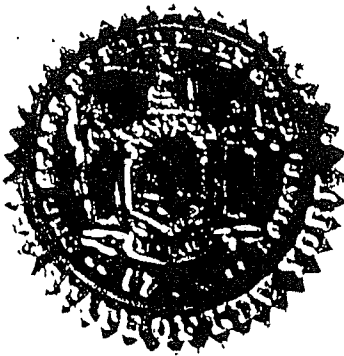
IN WITNESS WHEREOF this instrument is executed and the seal of the State Education Department is affixed this 26th day of October, 1999.

Richard P. Mills  
 Commissioner of Education

By:



Richard L. Nabozny  
 Senior Attorney



1

This consent to filing is granted with the understanding that nothing contained in the annexed corporate document shall be construed as authorizing the corporation to engage in the practice of law, except as provided by subdivision 7 of section 495 of the Judiciary Law, or of any of the professions designated in Title VIII of the Education Law, or to conduct a school for any such profession, or to hold itself out to the public as offering professional services, nor shall the corporation provide home care services, hold itself out as or call itself a home health services agency, a home health agency or a home care services agency unless or until the corporation is approved pursuant to Article 28 of the Public Health Law.

This consent to filing is granted with the further understanding that nothing contained in the annexed corporate document shall be construed as authorizing the corporation to operate a nursery school, kindergarten, elementary school, secondary school, institution of higher education, cable television facility, educational television station pursuant to section 236 of the Education Law, library, museum, or historical society, or to maintain an historic site.

This consent to filing shall not be deemed to be or to take the place of registration for the operation of a business school in accordance with the provisions of section 5001 of the Education Law, nor shall it be deemed to be, or to take the place of, a license granted by the Board of Regents for the operation of a private school pursuant to the provisions of section 5001 of the Education Law, a license granted by the Commissioner of Motor Vehicles pursuant to the provisions of section 394 of the Vehicle and Traffic Law, a license as an employment agency granted pursuant to section 172 of the General Business Law, or any other license, certificate, registration, or approval required by law.

2



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## Certificate of Amendment of the Certificate of Incorporation of

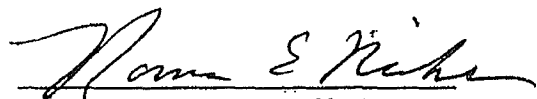
Ossining Open Door Associates, Inc.  
under Section 803 of the Not-for-Profit Corporation Law

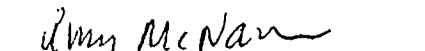
IT IS HEREBY CERTIFIED THAT:

- (1) The name of the corporation is Ossining Open Door Associates, Inc.
- (2) The certificate of incorporation was filed by the Department of State on the 2nd day of May 1975. Ossining Open Door Associates, Inc. was formed under the Not-For-Profit Corporation Law and is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law and is and remains a Type B corporation under Section 201 of said law.
- (3) Article First of the certificate of incorporation is hereby amended to read:  

The name of the corporation is: Open Door Family Medical Center, Inc.
- (4) The amendment to the certificate of incorporation was authorized by a unanimous vote of the Membership of the corporation.
- (5) The corporation designates the Secretary of State as agent for service of process. The address within the State to which the Secretary of State shall mail a copy of any process against it may be served upon him is The Corporation at, 165 Main Street, Ossining, New York, 10562

IN WITNESS WHEREOF, this certificate has been subscribed this 17th day of June, 1998 by the undersigned who affirm that statements made herein are true under the penalties of perjury.

  
Norman E. Nichols, Chairperson

  
Amy McNamara, Secretary

RESOLUTION

RESOLVED, that the Public Health Council, on this 29th day of January, 1999, approves the filing of the Certificate of Amendment of the Certificate of Incorporation of Ossining Open Door Associates, Inc., hereafter to be known as Open Door Family Medical Center, Inc., dated June 17, 1998.

14



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

February 9, 1999

Stephanie B. Kosmos  
Kellner, Chehebar & Deveney  
One Madison Avenue  
New York, New York 10010

Re: Certificate of Amendment of Certificate of Incorporation of Ossining Open Door Associates, Inc.

Dear Ms. Kosmos:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 29<sup>th</sup> day of January, 1999, I hereby certify that the Certificate of Amendment to the Certificate of Incorporation of Ossining Open Door Associates, Inc., hereafter to be known as Open Door Family Medical Center, Inc. dated June 17, 1998 is approved.

Sincerely,

Karen S. Westervelt  
Executive Secretary

5

STATE OF NEW YORK  
OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES  
ALBANY, NEW YORK

KNOWN ALL PERSONS BY THESE PRESENTS:

Pursuant to the provisions of Section 32.31 of the Mental Hygiene Law, and Section 803 and paragraph (u) of Section 404 of the Not-For-Profit Corporation Law, approval is hereby given to the filing of the annexed Certificate of Amendment of the Certificate of Incorporation of

**OSSINING OPEN DOOR ASSOCIATES, INC.**

This approval shall not be construed as an authorization for the corporation to engage in any activity for which the provisions of Article 32 of the Mental Hygiene Law require an Operating Certificate issued by the Office of Alcoholism and Substance Abuse Services unless said corporation has been issued such Operating Certificate; nor shall it be construed to eliminate the need for said corporation to meet any and all of the requirements and conditions precedent set forth in Article 32 of such law and the regulations promulgated thereunder for the issuance of said Operating Certificate.

IN WITNESS WHEREOF, this instrument is executed and the Seal of the New York State Office of Alcoholism and Substance Abuse Services is affixed this 25TH day of OCTOBER, 1999



ELLIOTT LEFKOWITZ  
Assistant Director  
Project Review Unit

*Elliott Lefkowitz*



**New York State  
Office of  
Children & Family  
Services**

December 14, 1999

George E. Pataki  
Governor

John A. Johnson  
Commissioner

Eugene F. Getty, Esq.  
KELLNER, CHEHEBAR & DEVENEY  
One Madison Avenue  
New York, New York 10010

Re: **Ossining Open Door Associates, Inc.**  
Name is being changed to **Open Door Family Medical Center, Inc.**

Dear Mr. Getty:

**Riverview Center-6th Floor**

40 North Pearl Street  
Albany, New York 12243

This letter is in reply to your letter of October 17, 1999, under cover of which you submitted a certificate of amendment of the certificate of incorporation of the above named corporation for our review.

The amendment in question appears to confine itself to the above-mentioned change of name. This corporation does not appear to currently involve itself with any of the activities which come under the auspices of this Office. The amendment, therefore, does not require the approval of the New York State Office of Children and Family Services.

This letter should not be construed as an indication that further amendments will not require this Office's approval.

You may send the executed original certificate of amendment of the certificate of incorporation to the Secretary of State together with this letter, and if it is otherwise in proper form and all required approvals are attached, it should be accepted for filing.

Very truly yours,

Gloria A. Lekki-Macri  
Assistant Counsel  
House Counsel



1991227000180

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Certificate of Amendment of the  
Certificate of Incorporation of

Ossining Open Door Associates, Inc.

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

---

West

Filed By: Kellner, Chehebar & Deveney  
One Madison Avenue, 29th Flr.  
New York, New York 10010  
(212) 889-2121

l.c.  
STATE OF NEW YORK  
DEPARTMENT OF STATE  
DEC 27 1999

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west

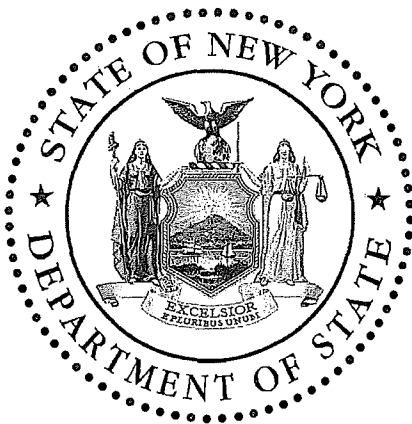
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**STATE OF NEW YORK  
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for OPEN DOOR FAMILY MEDICAL CENTER, INC., File Number 060428000221 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 August 17, 2023.



*Brendan C. Hughes*

Brendan C. Hughes  
Executive Deputy Secretary of State

NCR-26  
x/5602

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QC

RESTATED CERTIFICATE OF INCORPORATION

OF

OPEN DOOR FAMILY MEDICAL CENTER, INC.

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

**FILED**  
AND  
**ENTERED**  
ON 4-13-2006  
WESTCHESTER  
COUNTY CLERK

**RECEIVED**  
APR 03 2006  
CHIEF CLERK  
WESTCHESTER SUPREME  
AND COUNTY COURTS

I, the undersigned, being the Chairperson of OPEN DOOR FAMILY MEDICAL CENTER, INC., (hereinafter the "Corporation") do hereby certify:

1. The name of the Corporation is OPEN DOOR FAMILY MEDICAL CENTER, INC. The Corporation was formed under the name Ossining Open Door Associates, Inc.

2. The Corporation's certificate of incorporation was filed by the New York State Department of State on May 2, 1975.

3. The Certificate of Incorporation of the Corporation is amended to effect the following amendments authorized by the Not-For-Profit-Corporation Law (the "N-PCL"):

a. Article **SECOND** setting out, *inter alia*, the definition of the Corporation under the Not-for-Profit Corporation Law and the general prohibition on inurement is amended to read in its entirety as follows:

**SECOND:** The Corporation is a corporation as defined in subparagraph (a) (5) of § 102 of the Not-For-Profit Corporation Law (hereinafter referred to as "N-PCL") and is a Type B corporation under N-PCL § 201.

b. Article **THIRD** setting out the purposes of the Corporation is amended to read in its entirety as follows:

**THIRD:** The purposes for which the Corporation is formed and shall be operated are as follows:

A) To establish, operate and maintain one or more diagnostic and treatment centers, as defined in Article 28 of the Public Health Law of the State of New York, for the prevention, diagnosis and treatment of human disease, pain, injury, deformity or physical condition;

To establish, maintain and operate programs of enriched housing consisting of small unit, decentralized group housing arrangements in which persons aged 65 or older who are functionally impaired, but not in need of continuous medical or nursing care, are provided a systematic program of support services enabling the residents to

**FILED**  
APR 13 2006  
TIMOTHY G. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER



live within the community with a maximum degree of independence and privacy; and

- C. To engage in any and all other lawful activities incidental to and in pursuit of the foregoing purposes, except as restricted herein.

Nothing herein contained shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities not otherwise authorized or approved pursuant to N-PCL §404(a)-(v).

- c. Article **FOURTH** setting forth the powers of the Corporation is amended to read in its entirety as follows:

**FOURTH:** In furtherance of its corporate purposes, the Corporation shall have all general and special powers enumerated in N-PCL § 202, together with the power to solicit grants and contributions for corporate purposes. The Corporation shall be authorized to accept subventions from members or non-members on terms and conditions not inconsistent with the N-PCL, and to issue certificates therefor. Such subventions shall consist of money or other property, tangible or intangible, actually received by the Corporation or expended for its benefit or for its formation or reorganization, or a combination thereof, and shall be evidenced by the issuance of subvention certificates in accordance with the provisions of N-PCL § 505. The Corporation shall have the right to exercise such other powers as now are, or hereafter may be, conferred by law upon a corporation organized for the purposes set forth in Article **THIRD** hereof or necessary or incidental to the powers so conferred or conducive to the furtherance thereof.

- d. Article **SIXTH**, designating the territory in which the operations of the Corporation are to be principally conducted, is deleted and replaced by the following:

**SIXTH:** No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director or officer of the Corporation or any private individual, firm, corporation or association, except that reasonable compensation may be paid for services rendered and payments and distributions may be made in furtherance of the purposes set forth in Article **THIRD** hereof, and no member, trustee, director or officer of the Corporation, nor any private individual, firm, corporation or association, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation, except as provided in Article **ELEVENTH**.

- e. Article **SEVENTH**, setting forth the limitation on the Corporation with respect to carrying on propaganda and otherwise influencing legislation is hereby amended to read in its entirety, as follows:

**SEVENTH:** The Corporation is organized and operated exclusively for charitable purposes qualifying it for exemption from taxation under I.R.C.

§ 501(c)(3). Except as may otherwise be permitted by I.R.C. § 501(h) or any other provision of the Internal Revenue Code of 1986, as amended, no substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, and no part of the activities of the Corporation shall be participating in, or intervening in, any political campaign on behalf of or in opposition to any candidate for public office (including the publishing or distributing of statements).

f. Article NINTH, designating the post office address to which the Secretary of State shall mail a copy of any process against the Corporation, is amended to read in its entirety as follows:

NINTH: The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him or her as agent of the Corporation is:

Open Door Family Medical Center, Inc.  
165 Main Street  
Ossining, New York 10562 Att: Lindsay Farrell

g. Article TENTH setting forth certain limitations of Corporation, with respect to the I.R.C. is amended to read in its entirety as follows:

TENTH: Notwithstanding any other provision herein, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status as a corporation (i) which is exempt from Federal income taxation under § 501(a) of the Internal Revenue Code of 1986, as amended (hereinafter referred to as "I.R.C."), as an organization described in I.R.C. § 501(c)(3), and (ii) contributions to which are deductible under I.R.C. §§ 170(c)(2), 2055(a)(2) and 2522(a)(2). In any year in which the Corporation is a private foundation as defined in I.R.C. § 509, (i) it will distribute such amounts for such taxable year at such time and in such manner as not to be subject to the excise tax on undistributed income under I.R.C. § 4942, (ii) it will not engage in any act of self-dealing that is subject to the excise tax under I.R.C. § 4941, (iii) it will not retain any excess business holdings that are subject to tax under I.R.C. § 4943, (iv) it will not make any investments that subject it to tax under I.R.C. § 4944 and (v) it will not make any taxable expenditures that are subject to the tax under the I.R.C. § 4945.

h. Article ELEVENTH, setting forth the procedures for approvals and consents for filing amendments to the Certificate of Incorporation as required under the law and regulations is deleted and replaced by the following:

ELEVENTH: Upon the dissolution of the Corporation, its Board of Directors, after paying or making provision for the payment of all of the liabilities

of the Corporation, and subject to providing prior notice to the New York State Attorney General, obtaining the approval of the Supreme Court of the State of New York, and complying with the laws of the State of New York, shall distribute or arrange for the distribution of all of the assets of the Corporation to any one or more organizations which then are (i) described in I.R.C. § 501(c)(3), and classified as a public charity pursuant to I.R.C. § 509(a) and the Treasury Regulations promulgated thereunder, and (ii) contributions to which are deductible under I.R.C. §§ 170(c)(2), 2055(a)(2) and 2522(a)(2).

4. The text of the certificate of incorporation is hereby restated as amended to read herein set forth in full:

**FIRST:** The name of the Corporation is OPEN DOOR FAMILY MEDICAL CENTER, INC. (hereinafter referred to as the "Corporation").

**SECOND:** The Corporation is a corporation as defined in subparagraph (a) (5) of § 102 of the Not-For-Profit Corporation Law (hereinafter referred to as "N-PCL") and is a Type B corporation under N-PCL § 201.

**THIRD:** The purposes for which the Corporation is formed and shall be operated are as follows:

- A. To establish, operate and maintain one or more diagnostic and treatment centers, as defined in Article 28 of the Public Health Law of the State of New York, for the prevention, diagnosis and treatment of human disease, pain, injury, deformity or physical condition;
- B. To establish, maintain and operate programs of enriched housing consisting of small unit, decentralized group housing arrangements in which persons aged 65 or older who are functionally impaired, but not in need of continuous medical or nursing care, are provided a systematic program of support services enabling the residents to live within the community with a maximum degree of independence and privacy; and
- C. To engage in any and all other lawful activities incidental to and in pursuit of the foregoing purposes, except as restricted herein.

Nothing herein contained shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities not otherwise authorized or approved pursuant to N-PCL §404(a)-(v).

**FOURTH:** In furtherance of its corporate purposes, the Corporation shall have all general and special powers enumerated in N-PCL § 202, together with the power to solicit grants and contributions for corporate purposes. The Corporation shall be authorized to accept subventions from members or non-

members on terms and conditions not inconsistent with the N-PCL, and to issue certificates therefor. Such subventions shall consist of money or other property, tangible or intangible, actually received by the Corporation or expended for its benefit or for its formation or reorganization, or a combination thereof, and shall be evidenced by the issuance of subvention certificates in accordance with the provisions of N-PCL § 505. The Corporation shall have the right to exercise such other powers as now are, or hereafter may be, conferred by law upon a corporation organized for the purposes set forth in Article THIRD hereof or necessary or incidental to the powers so conferred or conducive to the furtherance thereof.

**FIFTH:** The office of the Corporation in the State of New York is to be located in the Village of Ossining within the County of Westchester.

**SIXTH:** No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director or officer of the Corporation or any private individual, firm, corporation or association, except that reasonable compensation may be paid for services rendered and payments and distributions may be made in furtherance of the purposes set forth in Article THIRD hereof, and no member, trustee, director or officer of the Corporation, nor any private individual, firm, corporation or association, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation, except as provided in Article ELEVENTH.

**SEVENTH:** The Corporation is organized and operated exclusively for charitable purposes qualifying it for exemption from taxation under § 501(c)(3) of the Internal Revenue Code of 1986, as amended (hereinafter the "I.R.C."). Except as may otherwise be permitted by I.R.C. § 501(h) or any other provision of the Internal Revenue Code of 1986, as amended, no substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, and no part of the activities of the Corporation shall be participating in, or intervening in, any political campaign on behalf of or in opposition to any candidate for public office (including the publishing or distributing of statements).

**EIGHTH:** The names and addresses of the initial directors, until the first annual meeting of the Corporation are:

NAME	ADDRESS
Walter Brooks	130 Main Street Ossining, NY
Toby Cosin	130 Underhill Rd. Ossining, NY
Roland Crawford	14 Water St. Ossining, NY

NAME	ADDRESS
John Crutcher	8 Emwilton Pl. Ossining, NY
Grace Edwards	28 State St. Ossining, NY
Annette Gelfand	81 Macy Rd. Briarcliff Manor, NY
Dorothy Goldman	Twin Ridges Rd. Ossining, NY
Lewis Goldman	6 Cherry Hill Cir. Ossining, NY
Leslie Gray	Finesbridge Rd. Ossining, NY
Dr. George Hill	30 State St. Ossining, NY
Neville Horne	40 James St. Ossining, NY
Denise Johnson	133 S. Highland Ave. Ossining, NY
Elmer Jones	11 Independence Pl. Ossining, NY
Benetta Morris	92 State St. Ossining, NY
Martha Murray	76 State St. Ossining, NY
Pay Ryan	64 Matthes Rd. Briarcliff Manor, NY
Sylvia Schneer	Overlook Rd. Ossining, NY
Al Slade	72 Hunter St. Ossining, NY
Dot Stevens	172 Spring St. Ossining, NY
Robert Sylvor	605 Third Avenue New York, NY
Dallas Tatum	91 State St. Ossining, NY

NAME	ADDRESS
Henry Vess, Jr.	24 Meadowbrook Dr. Ossining, NY
Andi Volpe	25 Grace Lane Ossining, NY
Betty Woodard	136 Birch Rd. Briarcliff Manor, NY
Marge Griesmer	Immingwood Rd. Ossining, NY

**NINTH:** The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him or her as agent of the Corporation is:

Open Door Family Medical Center, Inc.  
165 Main Street  
Ossining, New York 10562 Att: Lindsay Farrell

**TENTH:** Notwithstanding any other provision herein, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status as a corporation (i) which is exempt from Federal income taxation under I.R.C. § 501(a), as an organization described in I.R.C. § 501(c)(3), and (ii) contributions to which are deductible under I.R.C. §§ 170(c)(2), 2055(a)(2) and 2522(a)(2). In any year in which the Corporation is a private foundation as defined in I.R.C. § 509, (i) it will distribute such amounts for such taxable year at such time and in such manner as not to be subject to the excise tax on undistributed income under I.R.C. § 4942, (ii) it will not engage in any act of self-dealing that is subject to the excise tax under I.R.C. § 4941, (iii) it will not retain any excess business holdings that are subject to tax under the I.R.C. § 4943, (iv) it will not make any investments that subject it to tax under I.R.C. § 4944 and (v) it will not make any taxable expenditures that are subject to the tax under the I.R.C. § 4945.

**ELEVENTH:** Upon the dissolution of the Corporation, its Board of Directors, after paying or making provision for the payment of all of the liabilities of the Corporation, and subject to providing prior notice to the New York State Attorney General, obtaining the approval of the Supreme Court of the State of New York, and complying with the laws of the State of New York, shall distribute or arrange for the distribution of all of the assets of the Corporation to any one or more organizations which then are (i) described in I.R.C. § 501(c)(3), and classified as a public charity pursuant to I.R.C. § 509(a) and the Treasury

Regulations promulgated thereunder, and (ii) contributions to which are deductible under I.R.C. §§ 170(c)(2), 2055(a)(2) and 2522(a)(2).

5. The amendments and restatement of this Certificate of Incorporation of the Corporation were authorized at a meeting of the board of directors of Open Door, Inc., the sole member of the Corporation, held on January 18, 2005. A quorum was present of the Open Door, Inc. board of directors was present.

IN WITNESS WHEREOF, the undersigned has subscribed this certificate and hereby affirms it as true under penalties of perjury this 18th day of January, 2006.

*Walter Edge*

\_\_\_\_\_  
Name: Walter Edge  
Chairperson



THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON AND WAIVES STATUTORY NOTICE

ELIOT L. SPITZER

ATTORNEY GENERAL STATE OF NEW YORK

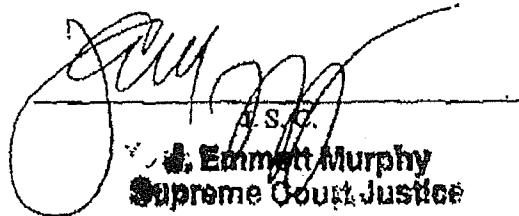
By: \_\_\_\_\_

Dated: \_\_\_\_\_

\* \* \* \* \*

I, \_\_\_\_\_, the undersigned Justice of the Supreme Court of the State of New York, County of Westchester, do hereby approve the foregoing Restated Certificate of Incorporation of OPEN DOOR FAMILY MEDICAL CENTER, INC. pursuant to Section 804(a)(ii) of the Not-For-Profit Corporation Law and consent that the same be filed.

At the Ex Parte Term of the Supreme Court of the State of New York, held in and for the County of Westchester on \_\_\_\_\_, 2006.

  
J. S. C.  
Emmett Murphy  
Supreme Court Justice

THE ATTORNEY GENERAL HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE AND DEMANDS SERVICE OF THE FILED CERTIFICATE, SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.  
*Veronica P. M. Cady* 3/28/06  
ASSISTANT ATTORNEY GENERAL DATE



NEW YORK STATE  
OFFICE OF ALCOHOLISM  
AND  
SUBSTANCE ABUSE SERVICES  
1450 Western Avenue  
Albany, New York 12203-3526

MAR 7 2006

March 3, 2006

Ms. Alice Walker Leaman  
Manatt, Phelps & Phillips, LLP  
121 State Street  
Albany, New York 12207

Re: Restated Certificate of Incorporation – Open Door Family Medical Center, Inc.  
(#025-2005CP)

Dear Ms. Walker Leaman:

The enclosed proposed Certificate of Incorporation has been reviewed. Since it is not the purpose of Open Door Family Medical Center, Inc. to provide alcoholism, substance abuse, or chemical dependence treatment services, the consent of the Commissioner of the New York State Office of Alcoholism and Substance Abuse Services (OASAS) is not required.

For your information, if alcoholism, substance abuse and/or chemical dependence treatment services were to be provided directly by this Corporation, pursuant to Article 32 of the Mental Hygiene Law, approval of an OASAS operating certificate and incorporation papers would be required.

Sincerely,

*Virginia Martin*  
Virginia Martin  
Director, Bureau of Certification

Enclosure

cc: (w/o enc.) Mark Boss  
Scott Brady



STATE OF NEW YORK  
THE STATE EDUCATION DEPARTMENT

FEB 12 2006

Albany, New York

Manatt, Phelps, & Phillips, LLP  
Attn: Alice Walker Leaman  
121 State Street, 3<sup>rd</sup> Floor  
Albany, NY 12207

Re: OPEN DOOR FAMILY MEDICAL CENTER, INC.

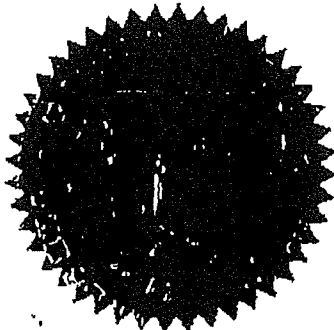
Dear Ms. Leaman:

Consent is hereby given to the filing of the annexed restated Certificate of Incorporation of the OPEN DOOR FAMILY MEDICAL CENTER, INC., pursuant to the applicable provisions of the Education Law, the Not-for-Profit Corporation Law, the Business Corporation Law, the Limited Liability Company Law or any other applicable statute.

This consent is issued solely for purposes of filing the annexed document by the Department of State and shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such entity, nor shall it be construed as giving the officers or agents of such entity the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State or New York or the State Education Department in its publications or advertising matter.

IN WITNESS WHEREOF this instrument is executed and the seal of the State Education Department is affixed.

RICHARD P. MILLS  
Commissioner of Education



By: *Susan A. Naccarato*  
Richard L. Nabozny  
or Susan A. Naccarato  
(Commissioner's designee)

*Feb. 9, 2006*  
Date

12



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

"REVISED LETTER"

February 1, 2006


Mr. Michael A. Lehmann  
Manatt, Phelps & Phillips, LLP  
7 Times Square, 23<sup>rd</sup> Floor  
New York, New York 10036

Re: Restated Certificate of Incorporation of Open Door Family Medical Center, Inc.

Dear Mr. Lehmann:

AFTER INQUIRY and INVESTIGATION, and in accordance with action taken at a meeting of the Public Health Council held on the 24<sup>th</sup> day of June, 2005, I hereby certify that the Public Health Council consents to the filing of the Restated Certificate of Incorporation of Open Door Family Medical Center, dated January 18, 2006.

Sincerely,

  
Donna W. Peterson  
Executive Secretary

/md

NCR-26

060428000221

RECEIVED  
2006 APR 27 PM 4:02

RESTATED  
CERTIFICATE OF INCORPORATION

OF

OPEN DOOR FAMILY MEDICAL CENTER, INC.

UNDER SECTION 805 OF THE  
NOT-FOR-PROFIT CORPORATION LAW

*mk*

ICC  
STATE OF NEW YORK  
DEPARTMENT OF STATE

APR 28 2006

FILED  
TAXS  
BY:           MKK          

*West.*

RECEIVED  
2006 APR 27 PM 12:13

Manatt, Phelps & Phillips, LLP  
7 Times Square  
New York, New York 10036

2006 APR 28 AM 11:20

14

DRAWDOWN

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**Amended and Restated By-laws**

**Of**

**Open Door Family Medical Center, Inc.**

**ARTICLE I. NAME, PURPOSES, OFFICES, AND MISSION**

**Section 1.01 Name.**

The name of the Corporation shall be Open Door Family Medical Center, Inc. (hereinafter, the "Corporation" or the "Health Center").

**Section 1.02 Purposes.**

The purposes of this Corporation shall be as set forth in its Certificate of Incorporation.

**Section 1.03 Offices.**

The location of the principal office of the Corporation shall be in the County of Westchester, State of New York, or at such other location within the State of New York as the Board of Directors (sometimes referred to herein as the "Board") may designate.

**Section 1.04 Mission.**

The mission of the Corporation shall be to provide primary and preventive health care services to the residents of its service area (the "Corporation's Service Area"), with a particular focus on low-income, medically underserved individuals.

**ARTICLE II. MEMBERSHIP**

**Section 2.01 Members.**

The Corporation shall not have any members.

**ARTICLE III. BOARD OF DIRECTORS**

**Section 3.01 Powers and Authority.**

- (a) The Board shall manage and control the property, business and affairs of the Corporation and have oversight of the Health Center Program project. All corporate powers, except such as are otherwise provided for in the Certificate of Incorporation, these By-laws, or the laws of the State of New York shall be and hereby are vested in and shall be exercised by the Board, whose members (each a "Director") shall meet the requirements of 42 C.F.R. § 51c.304, as amended from time to time, as set forth below in more detail in Section 3.04 of this Article IV. The Board shall have full power to adopt rules and regulations governing all actions which it takes, except as otherwise provided by the laws of the State of New York or by Federally Qualified Health Center ("FQHC") requirements, and shall have full authority with respect to the distribution and payment of monies received by the Corporation from time to time.
- (b) No individual, entity or committee (other than the Executive Committee in emergency situations for items on which the Board will subsequently vote) shall have the right to reserve approval authority or have veto power over the Board with regard to the Board's required authorities and functions.
- (c) In the event the Health Center collaborates with other entities in fulfilling the Health Center's HRSA-approved scope of project, such collaboration or agreements with the other entities shall not restrict or infringe upon the Board's required authorities and functions.

**Section 3.02 Duties and Responsibilities.**

The responsibilities of the Board of the Corporation shall include, but shall not be limited to, the following:



- (a) Hold regularly scheduled meetings, at least once each month, for which minutes, which include attendance, key actions and decisions, shall be kept;
- (b) Set the objectives and goals for the Corporation, and define the Corporation's role in meeting the health needs of the community it serves;
- (c) Evaluate the performance of the Health Center, including evaluations based on quality assurance/quality improvement assessments and other information received from Health Center management, and ensuring appropriate follow-up actions are taken regarding (a) achievement of projects, (b) service utilization patterns, (c) quality of care, (d) efficiency and effectiveness of the Health Center, and (e) patient satisfaction, including addressing any grievances;
- (d) Establish/Adopt policies for the conduct of the Health Center Program project and for updating these policies when necessary. These policies include the items listed in Sections 3.02(e), (i) – (l) below.
- (e) Establish health care policies, including (a) scope and availability of services within the Health Center Program project and decisions to subaward or contract for a substantial portion of the services, (b) service site locations and (c) hours of operation of service sites;
- (f) Assess achievement of project objectives through evaluation of Health Center activities, including service utilization patterns, quality of care, productivity (efficiency and effectiveness of the Health Center), and patient satisfaction;
- (g) Ensure that a process is developed for hearing and resolving patient grievances;
- (h) Assure major equipment and facilities are provided consistent with objectives, plans and community needs;
- (i) Establish and maintain general personnel policies for the Health Center including those addressing selection and dismissal procedures, salary and benefit scales, employee grievance procedures, and equal opportunity practices;
- (j) Adopt policies for financial management practices and a system to ensure accountability for Health Center resources, including periodically reviewing the financial status of the Health Center and the results of the annual audit to ensure appropriate follow-up actions are taken, providing for adequate financing, maintaining the fiscal soundness of the Corporation and managing its operating funds and investments;
- (k) Adopt and update a policy for eligibility for services including criteria for partial payment schedules;
- (l) Adopt and evaluate at least every three (3) years and, as needed, approve updates to policies in the following areas: (a) Sliding Fee Discount Program, (b) Quality Improvement/Assurance ((i) quality and utilization of Health Center services, (ii) patient satisfaction and patient grievance processes and (iii) patient safety, including adverse events), (c) Billing and Collections (which address, without limitation (x) the specific circumstances where the Health Center will waive or reduce fees based on the patients' inability to pay and (y) limitation of services based on refusal to pay, if applicable), (d) Financial Management, (e) Accounting Systems, and (f) Personnel;
- (m) Approve the annual Health Center Program project budget, which outlines the proposed used of both the Health Center Program award and non-Federal resources and revenues;
- (n) Oversee the development of the overall plan for the Health Center Program project;
- (o) Provide direction for and conduct long-range/strategic planning at least once every three (3) years, including, but not limited to, identifying Health Center priorities and adopting a three (3) year plan for financial management and capital expenditures;



- (p) Oversee the Health Center's management through (a) approving the selection and dismissal of the Chief Executive Officer of the Corporation, who shall act as an agent of the Board and report to the Board, (b) holding the Chief Executive Officer accountable for (x) the implementation of policies and practices and (y) oversight of other key management of the Health Center in carrying out the day-to-day activities necessary to fulfill the HRSA-approved scope of project and (c) periodically evaluating the Chief Executive Officer's performance;
- (q) Assure that the Health Center is operated in compliance with applicable Federal, State, and local laws and regulations, including, without limitation, all requirements applicable to FQHCs;
- (r) Approve the Corporation's annual Section 330 grant application, other applications related to the Section 330 project, and other requests related to the Corporation's Section 330 scope of project;
- (s) Plan for the organization's long term future;
- (t) Adopt and periodically review these By-laws, with any amended and restated versions of the By-laws being signed by a duly qualified officer of the Corporation;
- (u) Adopt and periodically review the Corporation's Conflict of Interest Policy (which shall include written standards relating to procurements) and annually complete a Conflict of Interest Disclosure Form;
- (v) Annually (a) review the risk management report and evaluate (i) completed risk management activities, (ii) status of the Corporation's performance relative to established risk management goals, and (iii) proposed risk management activities that relate and/or respond to identified areas of high organizational risk and (b) review documentation showing that any related risk management follow-up actions have been implemented;
- (w) Establish and require compliance with a corporate compliance program and a HIPAA compliance program; and
- (x) Purchase, sell, mortgage or lease real property of the Corporation; provided that such property does not constitute all or substantially all of the assets of the Corporation. In the event such action involves all or substantially all of the assets of the Corporation, such action shall require an affirmative vote of two thirds (2/3) of the entire Board (or a majority of the entire Board if there are 21 or more directors).

Section 3.03 Number.

The Board of Directors shall consist of not less than nine (9) but no more than twenty-five (25) members. The precise number shall be fixed by the Board from time to time.

Section 3.04 Composition.

- (a) Consumer Directors. A majority of the Directors shall be individuals who are registered patients of the Health Center (the "Consumer Directors") who have received, in the prior twenty-four (24) months, at least one (1) in-scope service that generated a visit at an in-scope site of the Health Center and who, as a group, represent the individuals being or to be served in terms of demographic factors such as race, ethnicity and gender.
- (b) Non-Consumer Directors. No more than one half of the remaining Directors (the "Non-Consumer Directors") may be persons who derive more than ten (10%) percent of their annual income from the health care industry, which shall mean individuals who receive their income from the provision of direct billed medical care to patients. The Non-Consumer Directors shall be representative of the community served by the Health Center or the Health Center's service area and shall be selected for their expertise in areas such as community affairs, local government, finance and banking, legal affairs, trade unions, and other commercial and industrial concerns, or social service agencies within the community.



- (c) No Director or Officer shall be an employee of the Corporation or spouse or child, parent, brother or sister by blood marriage or adoption of such an employee. The Chief Executive Officer shall serve as an ex-officio, non-voting director.

Section 3.05 Election.

- (a) The Board of Directors shall be elected by a majority vote of the Board of Directors at the annual meeting (in the event of vacancies or Directors' terms expiring) of the Board and shall serve for two consecutive years and/or until their successors are elected and/or qualified. The elected Directors shall be divided into two classes, each of which consists of one half (or as near as possible) of the total number of elected Directors.
- (b) The selection of Directors shall be accomplished in the following manner:
- (1) Officers and Directors of the Corporation as well as interested individuals shall forward names and resumes of possible candidates to the Executive Committee or such other committee as the Board may create from time to time. The Committee shall review the resumes and conduct interviews with candidates from the names offered. Thereafter, the Committee shall submit its Nomination Slate for a vote by the Board.
- (c) No entity, committee or individual (other than the Board) shall be permitted to select the Board Chairperson or the majority of the Directors, including a majority of the Non-Consumer Directors.

Section 3.06 Vacancies.

Any vacancy on the Board of Directors, occasioned by death, resignation or removal, shall be filled by a majority vote of the Board at any meeting of the Board of Directors, unless otherwise required by the law, the Certificate of Incorporation, or these By-laws. A Director elected to fill a vacancy shall serve for the unexpired term of his/her predecessor in office and until his successor shall have been elected, qualified and assumed office. In filling vacancies, elections shall be made in a manner that assures compliance with Federal regulations regarding Board composition and with Section 3.04.

Section 3.07 Removal.

Any Director may at any time be removed, with or without cause, by vote of the majority of the Directors then in office at a special meeting called for such purpose at which a quorum consisting of at least a majority of the Directors is present. Cause for removal shall include, but not be limited to, if a Director has missed three (3) consecutive regular Board meetings, or fails to participate in the work of assigned Board Committee (except for cause accepted by the Board).

Section 3.08 Resignation.

A Director may resign by providing written notice to the Chairperson. Such resignation shall be effective upon receipt, or upon any subsequent time set forth in the notice of resignation.

Section 3.09 Annual Meetings.

The Board of Directors shall hold an annual meeting on the third Wednesday in the month of May (or on such other date and time as determined by the Board from time to time) for the purpose of selecting officers and Directors and for the transaction of any other business which be properly brought before the meeting. No notice of such annual meeting need be given unless the date and time is changed from that set forth above.

Section 3.10 Regular Meetings.

Regular meetings of the Board of Directors shall be held monthly at such time and place as shall be fixed by the Board of Directors. Meetings shall be held at the offices of the Corporation or at such other place as may be designated by the Chairperson pursuant to written notice to each Director. Notwithstanding the foregoing, regular meetings may be held without notice if done pursuant to a schedule of regular meetings established by the Board.



Section 3.11 Special Meetings.

Special meetings of the Board may be called by the Chairperson, or by written demand signed by three (3) Directors. Notice of the time and place of such meeting shall be given at least twenty-four (24) hours prior to the meeting by a method determined by the Board. All notices shall set forth the place, the date, the time and the purpose of the meeting. No business other than that specified in the Notice of the Special Meeting shall be transacted at such meeting.

Section 3.12 Waiver of Notice.

No notice of any meeting of the Board of Directors need be given to any Director who attends such meeting without protesting prior to or at the commencement of the meeting the lack of notice of such meeting, or to any Director who submits, via paper form, email or facsimile, a signed waiver of notice whether before or after the meeting.

Section 3.13 Quorum: Voting.

At any duly called meeting of the Board of Directors, a majority of the entire Board shall constitute a quorum. Any corporate action to be taken by vote of the Board of Directors shall be authorized by a majority of the votes cast at a duly held meeting at which a quorum is present, unless the law, the Certificate of Incorporation, or these By-laws require a different number.

Section 3.14 Action by Unanimous Written Consent.

Any action required or permitted to be taken by the Directors may be taken without a meeting, if all the Directors shall individually or collectively consent to such action. Such consent may be written or electronic. Such consent or consents shall have the same force and effect as the unanimous vote of the Directors. Any certificate or other document filed under any provision of law which relates to action so taken shall state the action was taken by the unanimous written consent of the Directors without a meeting and that these By-laws authorized the Directors so to act. Such statement shall be prima facie evidence of such authority.

Section 3.15 Participation by Telephonic Conference.

Any one (1) or more of the Directors who is not physically present at a meeting of the Board or any Committee thereof may participate by means of a conference telephone or similar communications equipment or by electronic video screen communication. Participation by such means shall constitute presence in person at the meeting as long as all persons participating in the meeting can hear each other at the same time and each director can participate in all matters before the Board.

Section 3.16 Compensation.

Directors shall serve without compensation for serving as Directors. Directors shall be allowed reimbursement for reasonable expenses, upon resolution of the Board.

ARTICLE IV. EXECUTIVE OFFICERS

Section 4.01 Officers of the Board of Directors.

The officers of the Board are Chairperson, Vice-Chairperson, Secretary and Treasurer who shall be elected from the members of the Board of Directors by written ballot at the annual meeting as described in Section 3.09.

Section 4.02 Terms of Office, Vacancies and Removal of Officers.

The terms of office of the Officers of the Board of the Corporation shall be one (1) year or until their successors are elected and qualified and assume office. Any Officer may be removed, with or without cause, by a majority vote of the Board of Directors at a duly held meeting at which at quorum is present. The Board of Directors may at any meeting fill any Board vacancy for the unexpired term of the specified vacancy, which occurs in any office of the Corporation.

Section 4.03 The Chairperson.

The Chairperson shall preside at all meetings of the Board of Directors of the Corporation. The Chairperson shall have the authority, along with any other officers authorized by the Board of Directors, to sign on behalf of the Corporation, deeds, mortgages, bonds, contracts or other instruments approved by the Board for execution. The

Chairperson shall appoint the members of, and may alter the composition of, the Committees of the Board. In addition, the Chairperson shall perform such other duties as the Board of Directors shall require.

Section 4.04 The Vice-Chairperson.

The Vice-Chairperson shall perform such duties as may be requested by the Chairperson and shall preside as Chairperson in the absence of the Chairperson. In the event of the Chairperson's death, resignation, removal, incapacity, or refusal to act, the Vice-Chairperson shall succeed him and shall serve for the remainder of the term of his immediate predecessor, until and unless the Board of Directors shall fill such vacancy pursuant to Sections 4.01 and 4.03 of these By-laws.

Section 4.05 Secretary.

The Secretary shall, with the assistance of appropriate Corporation staff, keep the minute books of meetings of the Board of Directors; shall give and serve all required notices of meetings; shall have custody of the records of the Corporation; and shall perform all other duties incident to the office of Secretary.

Section 4.06 Treasurer.

The Treasurer shall, with the assistance of the Chief Financial Officer, be responsible for and coordinate all financial and related activities of the Corporation; shall render to the Board of Directors as the same may be required, an account of all transactions of the Treasurer and the of the financial condition of the Corporation; shall present the annual budget to the Board of Directors; and shall perform all other duties incident to the office of Treasurer.

Section 4.07 President and Chief Executive Officer.

The President shall be the Chief Executive Officer of the Corporation and as such, shall carry out the purposes of the Corporation pursuant to general and specific assignments given by the Board of Directors or the Executive Committee. The President shall be responsible for the daily conduct of all Corporation activities and programs as well as the supervision of all employees of the Corporation. The President shall be a full-time employee of the Corporation and shall be an ex-officio non-voting member of the Board of Directors.

Section 4.08 Compensation.

Officers shall not receive compensation for serving as officers of the Board.

ARTICLE V. COMMITTEES OF THE BOARD OF DIRECTORS

Section 5.01 Committees Generally

- (a) Committees of the Board. The Board of Directors, by resolution adopted by a majority of the entire Board of Directors may designate from among its members such committee or committees, each consisting of three (3) or more Directors, as they shall deem necessary or appropriate to fulfill its obligations ("Committees of the Board").
- (b) Committees of the Corporation. Committees, other than Committees of the Board, shall be committees of the Corporation ("Committees of the Corporation"). Such Committees of the Corporation may be elected or appointed in the same manner as officers of the Corporation, but no such committee shall have the authority to bind the Board of Directors.
- (c) Designation and Modification.
  - (1) There shall be the following Board Committees:
    - (i) The Executive Committee
    - (ii) Finance and Audit Oversight Committee



- (2) The designation of such Committees and the delegation thereto of authority as specified in these By-laws shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed by law.
  - (3) The Board of Directors, by resolution of a majority of the Directors then in office, may prescribe the number, nature, organization, composition or function of the Committees.
- (d) Appointment and Number of Committee Members.  
Except as otherwise stated in these By-laws, the members and the chairpersons of all Committees, all of whom shall be members of the Board of Directors, shall be appointed by the Chairperson of the Board of Directors. The Chairperson shall announce the appointments, as soon as practicable, after the annual meeting of the Board of Directors. Members of such Committees and the chairpersons thereof shall, unless otherwise stated in the By-laws, hold office for one (1) year or until death, resignation, or removal. Resignation or removal from the Board shall constitute resignation or removal from all Committees thereof. No Committee shall include less than three (3) Directors.
- (e) Resignation or Removal.
- (1) Any member of a Committee may resign at any time by giving written notice of such resignation to the chairperson of such Committee or to the Chairperson or Secretary of the Board of Directors. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by such Chairperson or such officer.
  - (2) Any member of any Committee may be removed at any time by the Board of Directors whenever, in the judgment of the Board of Directors, the best interests of the Corporation shall be served by such removal.
- (f) Vacancies.
- (1) Any vacancy on any Committee, or of the chairperson thereof, due to the resignation, removal or death of a member or of the chairperson of the Committee, shall be filled by appointment in the same manner as such member or chairperson was appointed.
  - (2) Whenever a member of any Committee, or the chairperson thereof, is unable to attend one (1) or more meetings of such Committee, or is otherwise temporarily unable to act as a member thereof, the Chairperson of the Board may appoint a Director to act as a member or chairperson of such Committee during the period of such inability.
- (g) Duties.
- (1) It shall be the duty of each Committee to make such reports as, from time to time, may be requested by the Board of Directors, or the Chairperson of the Board, or as required by these By-laws.
  - (2) In addition to the respective duties specifically assigned to Committees by the By-laws, each Committee shall perform such other duties in connection with the subject matter over which such Committee has jurisdiction as, from time to time, may be requested by the Board of Directors or the Chairperson of the Board.
- (h) Procedures.  
Subject to the provisions of these By-laws, and to such directives as may be issued by the Board of Directors, each Committee shall establish its own rules of procedure.

(i) Meetings.

- (1) Except as otherwise provided in these By-laws, each Committee shall meet upon the call of the chairperson thereof, or upon the request of the Chairperson of the Board.
- (2) Except as otherwise provided in these By-laws, notice of the time and place of meetings of all Committees shall be as directed by the chairperson thereof. Unless required by law, such notice need not state the purpose of the meeting. A written waiver of notice of any meeting, signed and filed with the records of the Committee either before or after such meeting, shall be deemed equivalent to notice, as shall attendance by a member at such meeting.

(j) Quorum and Voting Requirements.

- (1) Except as otherwise provided in these By-laws, the presence of a majority of the members of a Committee is necessary and sufficient to constitute a quorum for the transaction of business.
- (2) The act of a majority of the members present at a meeting at which a quorum is present shall be the act of the Committee.

(k) Reports to Board of Directors.

All Committees shall make reports to the Board of Directors pertaining to the proceedings, recommendations and actions of such Committee.

(l) Indemnification.

The members of all Committees shall be entitled to the right of indemnification as set forth in these By-laws and shall be deemed entitled to the same coverage as is, or may be, afforded to Directors under the Corporation's liability insurance policy for actions taken in their capacities as Committee members.

Section 5.02 Executive Committee.

(a) Membership.

The Executive Committee shall consist of the Chairperson of the Board, who shall act as chairperson of the Committee; the Vice-Chairperson of the Corporation, who shall act as chairperson of the Committee in the absence of the Chairperson; the Secretary; and the Treasurer. The Chairperson of the Board shall have the power to appoint additional members to the Executive Committee, subject to the approval of the Board of Directors.

(b) Functions.

- (1) In order to provide continuity of control, the Executive Committee shall have, and may exercise the authority of the Board of Directors in the supervision and control of the affairs of the Corporation in the interval between meetings of the Board, subject to any prior limitations which may be imposed by the Board. It shall also make such policy decisions during any interim period as it shall deem necessary to carry out the objectives of the Corporation, provided such policy decisions are not inconsistent with those adopted by the Board, and provided further that the Committee submits same to the Board of Directors for approval at its next meeting in accordance with subsection (c) hereof. The Executive Committee shall annually review the compensation of the President and Chief Executive Officer.
- (2) Between Board meetings, the Executive Committee shall have and may exercise all of the authority of the Board of Directors, to the extent allowed by applicable law, but shall be required to notify the full Board of any actions it takes or decisions made, other than those in the ordinary course of operations, within a reasonable time thereafter. Notwithstanding the foregoing, actions taken by the Executive Committee shall not conflict with the policies and expressed wishes of the



Board and the Executive Committee shall not have the authority of the Board of Directors with respect to the following matters:

- (i) the filling of vacancies on the Board of Directors or any Committee thereof;
- (ii) the fixing of compensation of the Directors for serving on the Board or on any Committee thereof;
- (iii) the amendment or repeal of these By-laws, or the adoption of new By-laws;
- (iv) the amendment or repeal of any resolution of the Board of Directors which by its terms shall not be so amendable or repealable;
- (v) the appointment or removal of the Officers of the Corporation;
- (vi) the authorization of indemnification for expenses incurred by Directors, Officers, or other persons in defending civil or criminal actions;
- (vii) The filing of a petition for non-judicial dissolution of the Corporation; a plan of merger or consolidation of any action in connection with the sale or other disposition of all, or substantially, all, of the assets of the Corporation; and
- (viii) power or authority in any matter that the Board may not delegate to a committee under Section 712 and other applicable sections of the New York State Not-For-Profit Corporation Law.

(c) Report of Action to the Board.

All actions of the Executive Committee shall be reported to the Board at the first Regular Meeting of the Board held following any such action, and shall be subject to revision or modification by the Board.

(d) Meetings.

The Executive Committee shall meet upon the call of the Chairperson or Vice-Chairperson.

Section 5.03 Finance and Audit Oversight Committee.

(a) Membership.

The Finance and Audit Oversight Committee shall consist of not less than three (3) members of the Board of Directors, each of whom shall be independent Directors, as such term is defined in the Not-For-Profit Corporation Law. The Treasurer shall serve as Chairperson of the Committee.

(b) Functions. The Finance and Audit Oversight Committee shall have the following responsibilities:

- (1) Concerning itself with all matters relating to the financial condition of the Corporation, including making recommendations concerning the financial feasibility of the Corporation projects, acts and undertakings referred to it by the Board of Directors;
- (2) Assisting in the preparing and presenting to the Board of Directors, prior to the end of the fiscal year, capital and annual operating budgets showing the expected receipts, income and expenses for the ensuing year;
- (3) Reviewing and generally surveilling the Corporation's financial planning, its system of accounting controls, its handling and disbursement of funds, the collection or other disposition of the Corporation's accounts receivable and the recommendation to the Board of an auditor;

- (4) Overseeing financial audits and the accounting and financial reporting processes of the Corporation;
- (5) Annually retaining or renewing the retention of an independent auditor to conduct the audit and, upon completion thereof, reviewing the results of the audit and any related management letter with the independent auditor;
- (6) Reviewing with the independent auditor the scope and planning of the audit prior to the audit's commencement;
- (7) Upon completion of the audit, reviewing and discussing with the independent auditor:
  - (i) any material risks and weaknesses in internal controls identified by the auditor,
  - (ii) any restrictions on the scope of the auditor's activities or access to requested information,
  - (iii) any significant disagreements between the auditor and management, and
  - (iv) the adequacy of the Corporation's accounting and financial reporting processes;
- (8) Annually considering the performance and independence of the independent auditor;
- (9) Overseeing the adoption, implementation of, and compliance with the Conflicts of Interest and Related Party Transactions Policy and the Whistleblower, Non-Intimidation and Non-Retaliation Policy;
- (10) Overseeing the implementation and operation of the compliance program to ensure the Corporation's compliance with all federal and state laws and regulations; and
- (11) Reporting directly to the Board of Directors regarding the financial accounting and auditing practices of the Corporation.

Section 5.04 Minutes

Each Committee shall keep minutes of its proceedings.

ARTICLE VI. CONFLICT OF INTEREST/WHISTLEBLOWER POLICIES

The Corporation shall adopt a Conflict of Interest and Related Party Transactions Policy, which among its provisions shall include requirements regarding related party transactions, and a Whistleblower, Non-Intimidation and Non-Retaliation Policy. The Corporation shall review and amend such policies from time to time as appropriate and in accordance with applicable law.

ARTICLE VII. INDEMNIFICATION

Section 7.01 Indemnification.

The Corporation shall indemnify, to the full extent such indemnification is permitted by law, any person made, or threatened to be made, a party to, subject of, or otherwise involved in any (formal or otherwise) action, proceeding and/or investigation, whether civil (including administrative and investigative proceedings) or criminal, by reason of the fact that such person or such person's testator or intestate is or was a Director or Officer of the Corporation or serves or served any other Corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity at the request of the Corporation. The Corporation shall have the power to purchase and maintain insurance to indemnify the Corporation and its Directors and Officers to the full extent such indemnification is permitted by law.



Section 7.02 Applicability and Non-Exclusivity.

Every reference in this Article VII to Directors and Officers of the Corporation shall include every Director and Officer thereof or former Directors and Officers thereof. The right of indemnification herein provided shall be in addition to any and all rights to which the Director, Officer employee or agent of the Corporation otherwise might be entitled, and the provisions hereof shall neither impair nor adversely affect such rights.

ARTICLE VIII. FISCAL YEAR

Section 8.01 Fiscal Year

The fiscal year of the Corporation shall begin January 1<sup>st</sup> and end December 31<sup>st</sup> of each calendar year.

ARTICLE IX. AMENDMENTS

Section 9.01 Amendment of By-laws.

These By-laws of the Corporation may be amended, repealed, or adopted by the Board in accordance with Section 3.13.

Section 9.02 Conformity with Law.

Any amendments, emendations, alterations, changes and additions to, or deletions from, these By-laws shall be consistent with the laws of New York State which define, limit or regulate the powers of this Corporation or of its Directors.

ARTICLE X. LIMITATIONS

Section 10.01 Exempt Activities.

Notwithstanding any other provision of these Bylaws, no member, Director, Officer, employee or representative of the Corporation shall take any action or carry on any activity by or on behalf of the Corporation not permitted to be taken or carried on by an organization exempt from Federal income taxation under Code Section 501(a), as an organization described in Code Section 501(c)(3).

Section 10.02 Prohibition Against Sharing in Corporate Earnings.

No Director, Officer or employee of, or other person connected with, the Corporation, or any other private individual, shall receive at any time any of the net earnings or pecuniary profit from the operations of the Corporation, provided that this shall not prevent either the payment to any such person of reasonable compensation for services rendered to or for the benefit of the Corporation or the reimbursement of expenses incurred by any such person on behalf of the Corporation, in connection with effecting any of the purposes of the Corporation, and no such person or persons shall be entitled to share in the distribution of any of the corporate assets upon the dissolution of the Corporation. All such persons shall be deemed to have expressly consented and agreed that upon such dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, the assets of the Corporation, after all debts have been satisfied, then remaining in the hands of the Board, shall be distributed in such amounts as the Board may determine, or as may be determined by a court of competent jurisdiction or the Attorney General in accordance with Not-for-Profit Corporation Law, upon the application of the Board, exclusively to charitable, religious, scientific, literary or educational organizations that then qualify for exemption from Federal income taxation under Code 501(c)(3) and provide health care services to patients in Westchester County, New York or as otherwise set forth in the Corporation's Certificate of Incorporation.

ACKNOWLEDGEMENT

THE FOREGOING BY-LAWS, IN PRESENT FORM, were duly amended and adopted at a meeting on July 25, 2018 and ratification of said amendments are reflected in the minutes of the July 25, 2018 Board Meeting.

Dated: 7/25/18

Secretary:





**RESOLUTIONS  
OF THE  
BOARD OF DIRECTORS  
OF  
OPEN DOOR FAMILY MEDICAL CENTER, INC.**

**WHEREAS**, the Board of Directors (the “Board”) of Open Door Family Medical Center, Inc. (“Open Door”) previously approved a transaction between Open Door and Family Services of Westchester, Inc. (“FSW”), pursuant to which the parties proposed to affiliate their respective entities through a membership transaction, subject to the negotiation and approval by the respective Boards of Directors of a definitive affiliation agreement (the “Affiliation Agreement”), the execution of which was previously approved by this Board;

**WHEREAS**, pursuant to the Affiliation Agreement, Open Door would become the sole corporate member of FSW as of the closing of the transaction, which is contemplated to occur within thirty (30) days after receipt of all of the required regulatory approvals, as described in the Affiliation Agreement (the “Closing Date”);

**WHEREAS**, following the closing of the transactions described in the Affiliation Agreement, FSW will transfer to Open Door certain of FSW’s programs operated under New York Public Health Law Article 31 and licensed by the Office of Mental Health, and Open Door will become the new operator/sponsor of such Article 31 programs; and

**WHEREAS**, following the closing of the transactions contemplated by the Affiliation Agreement, the Board will amend Open Door’s Certificate of Incorporation as needed to effectuate the transactions contemplated by the Affiliation Agreement.

**NOW THEREFORE, BE IT:**

**Authorization for Acquisition of Article 31 Licenses**

**RESOLVED**, that, following closing under the Affiliation Agreement, Open Door shall accept transfer of the FSW Article 31 programs licensed by the New York State Office of Mental Health, as more specifically described in Exhibit C to the Affiliation Agreement, and Open Door shall become the new operator/sponsor of each such Article 31 program, subject to receipt of all necessary regulatory approvals; and be it further

**Amendment of Certificate of Incorporation**

**RESOLVED**, that, following the Closing Date, the Certificate of Incorporation of Open Door shall be amended substantially as set forth in Exhibit A hereto, to effectuate the transactions contemplated by the Affiliation Agreement, subject to such changes as the President shall, upon consultation with counsel, deem appropriate, including as may be requested by the New York State Office of Mental Health; and be it further

**General Authorization and Ratification**

**RESOLVED**, that each of the officers of Open Door is hereby authorized to take such further actions as he/she may deem necessary or appropriate to implement the foregoing resolutions; and be it further

**RESOLVED**, that all of the acts of the directors and officers of Open Door and of any person or persons designated and authorized to act by any of them in furtherance of these resolutions occurring to date are hereby ratified, confirmed, approved and adopted as acts of Open Door.

The undersigned hereby certifies that the foregoing resolutions were duly approved by the Board of Directors of Open Door at a meeting duly called and held on April 26, 2023 at which notice was duly given and a quorum was present and acting throughout.

Dated: March 22, 2023

  
By:

Secretary



Office of  
Mental Health

KATHY HOCHUL  
Governor

ANN MARIE T. SULLIVAN, M.D.  
Commissioner

MOIRA TASHJIAN, MPA  
Executive Deputy Commissioner

September 21, 2023

Kimberly Redmond  
Paralegal  
Garfunkel Wild, P.C.  
350 Bedford Street  
Stamford, CT 06901

Re: Certificate of Amendment of the Certificate of Incorporation for Open Door Family Medical Center, Inc.

Dear Ms. Redmond:

The Office of Mental Health has reviewed a draft copy (attached) of the Certificate of Amendment of the Certificate of Incorporation for Open Door Family Medical Center, Inc. submitted by your office on August 25, 2023. Approval on behalf of the Commissioner of Mental Health is attached.

If any changes are made to the enclosed prior to filing, please resubmit for review. Please send copies of the filing receipt when it is received by the Secretary of State.

If you have any questions, please contact Tiffany Mott at (518) 474-5570 or [tiffany.mott@omh.ny.gov](mailto:tiffany.mott@omh.ny.gov).

Sincerely,

*Gina Bae*

Gina Bae  
Director  
Bureau of Inspection and Certification

Enclosure

cc: Lindsay Farrell, Executive Director  
Shonny Capodilupo  
Theresa Brandow  
Tammy Scherer  
Kelly Bevins  
Tiffany Mott





**STATE OF NEW YORK  
OFFICE OF MENTAL HEALTH  
ALBANY, NEW YORK**

**KNOW ALL PERSONS BY THESE PRESENTS;**

Pursuant to the provisions of Section 31.22 of the Mental Hygiene Law and Section 803 of the Not-For-Profit Corporation Law, approval is hereby given to the filing of the Certificate of Amendment of the Certificate of Incorporation of

**Open Door Family Medical Center, Inc.**

This approval shall not be construed as an authorization for the corporation to engage in any activity for which the provisions of Article 31 of the Mental Hygiene Law requires an Operating Certificate issued by the Office of Mental Health unless said corporation has been issued such Operating Certificate; nor shall it be construed to eliminate the need for the said corporation to meet any and all of the requirements and conditions precedent set forth in Article 31 of such law and the regulations promulgated there under for the issuance of said Operating Certificate.

IN WITNESS WHEREOF this instrument is executed and the Seal of the Department of Mental Hygiene is affixed this 11<sup>th</sup> day of September 2023.

**Ann Marie T. Sullivan, MD**, Commissioner  
NYS Office of Mental Health

By: *Gina Bae*

**Gina Bae**  
Director  
Bureau of Inspection and Certification



## MEMORANDUM

**To:** Kathy Marks  
General Counsel

**From:** Jason Riegert  
Deputy Director, Bureau of Program Counsel

**Date:** January 10, 2024

**Subject:** Pontiac Nursing Home, LLC - Operator Name Change

---

The attached package was prepared by Christopher Chin 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:** Christopher Chin, Senior Attorney  
Division of Legal Affairs, Bureau of Program Counsel

**Date:** January 18, 2024

**Subject:** Pontiac Nursing Home, LLC.: Name Change of Operator

---

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 a letter from Legal Counsel for Pontiac Nursing Home, LLC., Bridget L. Kehm, Esq., dated July 12, 2023 which includes a photocopy of the Articles of Organization of Pontiac Nursing Home, LLC signed by Carol A. Clark, Sole Organizer, dated July 29, 1999;
- 3) An executed photocopy of the proposed Certificate of Amendment of the Articles of Organization of Pontiac Nursing Home, LLC to change the Operator's name to East River Road Nursing and Rehabilitation Center, LLC, signed by Bridget L. Kehm, Esq., Authorized Person, dated July 12, 2023; and
- 4) The written consent of the members of Pontiac Nursing Home, LLC for the name change, dated June 16, 2023.

Attachments

## MEMORANDUM

**To:** Public Health and Health Planning Council

**From:** Kathy Marks, General Counsel *KSM*

**Date:** January 18, 2024

**Subject:** Pontiac Nursing Home, LLC. - Name Change of Operator

---

Attached is the proposed Certificate of Amendment of the Articles of Organization of Pontiac Nursing Home, LLC. This business operates a nursing facility pursuant to Article 28 of the Public Health Law and seeks approval to change its name to “East River Road Nursing and Rehabilitation Center, LLC” for rebranding purposes. According to the applicant, the name change is sought to provide a better descriptive name for both the location of the facility, as well as the services of the facility. The current name of the operator did not reflect its location, nor the services provided as the facility. The proposed name accomplishes both these goals.

Public Health and Health Planning Council (PHHPC) approval is required for this change of corporate name pursuant to 10 NYCRR § 600.11(a)(4), because PHHPC previously approved of the entity and the filing of its Articles of Organization. The current Articles of Organization are attached along with the proposed new Articles of Organization reflecting the name change. Also attached is a resolution by the company’s members approving the name change and a letter dated July 12, 2023, from Bridget L. Kehm, attorney for the operator, which further explains the intent and meaning of the proposed name change. This is the applicant’s first request for approval for a name change.

There is no legal objection to the proposed name change.

Attachments

LAW OFFICES OF  
**Pullano & Farrow**  
PLLC

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www.lawpf.com

Name: Bridget L. Kehm Esq.  
Phone: 585-730-4773  
Email: bkehm@lawpf.com

July 12, 2023

VIA ELECTRONIC MAIL

[colleen.leonard@health.ny.gov](mailto:colleen.leonard@health.ny.gov)

Colleen Leonard, Executive Secretary  
Public Health and Health Planning Council  
NYS Department of Health  
Corning Tower, Room 1805  
Albany, New York 12237

**Re: Request to Approve a Name Change for Operator  
Proposed Certificate of Amendment to the Articles of Organization  
Pontiac Nursing Home, Operating Certificate #3702313N**

Dear Ms. Leonard:

We are writing on behalf of our client, Pontiac Nursing Home, LLC, regarding a request to change the name of this operator entity pursuant to 10 NYCRR §§ 401.3 and 600.11. Pontiac Nursing Home, LLC operates a skilled nursing facility known as Pontiac Nursing Home, which is located at 303 East River Road, Oswego, New York 13126.

The current name of the operator entity is Pontiac Nursing Home, LLC, as stated by its Articles of Organization filed on December 23, 1999 upon receiving consent of the Public Health and Health Planning Council. A copy of the filed Articles of Organization is enclosed.

The proposed new name of the operator is East River Road Nursing and Rehabilitation Center, LLC. Upon receipt of the Public Health and Health Planning Council's consent to change the legal name of the operator as indicated herein, we will submit a copy of the proposed Certificate of Assumed Name to the Bureau of Project Management for the operator to operate the facility under the assumed name of East River Road Nursing and Rehabilitation Center.

There are several reasons for the requested change in the name of the operator. The proposed name of East River Road Nursing and Rehabilitation Center, LLC (as further shortened



July 12, 2023  
Letter to C. Leonard

to East River Road Nursing and Rehabilitation Center pursuant to its proposed Certificate of Assumed Name) is overall a better descriptive name for both the location of the facility, as well as the services of the facility. The current name of the operator/facility does not refer to its location on East River Road next to the Oswego River. The current name of the operator/facility also does not reference the nursing and rehabilitation services that the facility provides. The new proposed name therefore accomplishes both goals. Additionally, the operator proposes to change its legal name in an effort to rebrand the facility.

We have included a copy of the executed proposed Certificate of Amendment to the Articles of Organization for the Council's review and approval. Please let us know if you have any questions or concerns regarding the proposed name change. Any correspondence regarding this request may be sent to our attention.

Sincerely,

PULLANO & FARROW



Bridget L. Kehm, Esq.

Enclosures

cc: Michael Stelluti ([michael.stelluti@health.ny.gov](mailto:michael.stelluti@health.ny.gov))  
Patrick Pullano, Esq. ([ppullano@lawpf.com](mailto:ppullano@lawpf.com))

Attachments to Letter to C. Leonard re:  
Operator Name Change

Attachment:

Filed Articles of Organization for Pontiac Nursing Home, LLC

(see attached)

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Law Offices of Pullano & Farrow PLLC

69 Cascade Dr. Suite 307 • Rochester • New York • 14614 • 585.730.4773 phone • 888.971.3736 fax

# ***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  
May 14, 2019.

A handwritten signature in black ink that reads "Whitney Clark". The signature is written in a cursive style.

Whitney Clark  
Deputy Secretary of State for Business and  
Licensing Services

f 991223000484

**ARTICLES OF ORGANIZATION**  
**OF**  
**PONTIAC NURSING HOME, LLC**

Under Section 203 of the Limited Liability Company Law  
of the State of New York

THE UNDERSIGNED, being a natural person at least eighteen (18) years of age and acting as the organizer of the limited liability company hereby being formed under Section 203 of the Limited Liability Company Law of the State of New York (the "LLCL"), hereby certifies that:

FIRST: The name of the new limited liability company is PONTIAC NURSING HOME, LLC (the "Company").

SECOND: The purpose of the Company is to operate a residential health care facility known as Pontiac Nursing Home, LLC presently located at 303 East River Road, Oswego, New York 13126 and to engage in any lawful act or activity incidental thereto for which limited liability companies may be organized under the LLCL.

THIRD: The county within the state in which the office of the Company is to be located is Oswego. More specifically, the location of the principal office of the limited liability company is 303 East River Road, Oswego, New York 13126.

FOURTH: The Secretary of State is designated as the 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 303 East River Road, Oswego, New York 13126.

FIFTH: The Company is to be managed by one or more of the Members. Unless the Members agree in writing, all decisions regarding the management of the Company's business, operations and affairs shall be made by the consent or approval of Members holding at least seventy-six percent (76%) of the units. This paragraph FIFTH setting forth the management structure nor the provision setting forth such structure of the Company may not be deleted, modified or amended without the approval of the Department of Health.

SIXTH: No person may own ten percent (10%) or more of the membership interests of the limited liability company who has not been approved for the ownership of such membership interests by the Public Health Council.

|

SEVENTH: A member's interest in the limited liability company may be evidenced by a certificate issued by the limited liability company. All such certificates, if any, shall bear on the face thereof the following:

- (1) no person shall own ten percent (10%) or more of the membership interests of the limited liability company unless he has been approved for such ownership by the Public Health Council;
- (2) a statement that any transfer, assignment or other disposition of ten percent (10%) or more of the membership interests or of ten percent (10%) of the voting rights thereunder of the limited liability company or the transfer, assignment or other disposition of the membership interests or voting rights of the limited liability company which results in the ownership or control of more than ten percent (10%) of the membership interests or voting rights thereunder of the limited liability company by any person shall be subject to approval by the Public Health Council; and
- (3) a statement that no membership interests or voting rights thereunder of the limited liability company may be owned or controlled by a corporate member whose corporate stock is owned by another corporation.

EIGHTH: The membership interests of the limited liability company shall consist of only one class and any transfers, assignments or other dispositions of membership interests or voting rights must be effectuated in accordance with Public Health Law Section 2801-a(4)(b).

IN WITNESS WHEREOF, we have subscribed this certificate and do hereby affirm the foregoing as true under the penalties of perjury, this 29<sup>th</sup> day of July, 1999.



Carol A. Clark  
Sole Organizer  
O'CONNELL AND ARONOWITZ  
100 State Street  
Albany NY 12207  
Tel. (518) 462-5601



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

December 15, 1999



Mr. Philip J. Sgarlata  
O'Connell and Aronowitz  
100 State Street  
Albany, New York 12207-1885

Re: Articles of Organization of Pontiac Nursing Home, LLC

Dear Mr. Sgarlata:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 22nd day of October, 1999, I hereby certify that the Public Health Council consents to the filing of the Articles of Organization of Pontiac Nursing Home, LLC, dated July 29, 1999.

Sincerely,

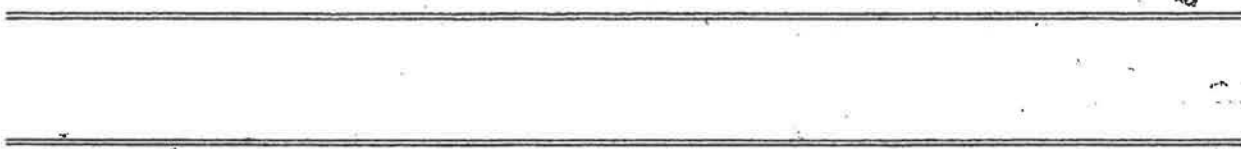
Karen S. Westervelt  
Executive Secretary

3

ARTICLES OF ORGANIZATION  
OF  
PONTIAC NURSING HOME, LLC

991223000484

Under Section 203 of the Limited Liability Company Law  
of the State of New York



O'CONNELL AND ARONOWITZ, P.C.  
ATTORNEYS AND COUNSELLORS AT LAW

*100 State Street*  
*Albany, New York 12207*  
AREA CODE 518 462-5601

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED DEC 23 1999  
TAX \$ \_\_\_\_\_  
BY: JM

4

991223000508

Attachments to Letter to C. Leonard re:  
Operator Name Change

Attachment:

Proposed Certificate of Amendment to the Articles of Organization for  
Pontiac Nursing Home, LLC  
to Change the Legal Name to  
East River Road Nursing and Rehabilitation Center, LLC

(see attached)

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**Law Offices of Pullano & Farrow PLLC**

69 Cascade Dr. Suite 307 • Rochester • New York • 14614 • 585.730.4773 phone • 888.971.3736 fax



CERTIFICATE OF AMENDMENT OF  
THE ARTICLES OF ORGANIZATION OF  
PONTIAC NURSING HOME, LLC

Under Section 211 of the New York Limited Liability Company Law

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**FIRST:** The name of the limited liability company is Pontiac Nursing Home, LLC.

**SECOND:** The Articles of Organization were filed by the New York Department of State on December 23, 1999.

**THIRD:** The Articles of Organization are amended by this Certificate of Amendment to change the name and purpose of the limited liability company by amending the **FIRST** and **SECOND** paragraphs as follows:

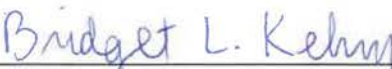
Paragraph **FIRST** of the Articles of Organization relating to the name of the limited liability company is hereby amended to read in its entirety as follows:

**FIRST:** The name of the limited liability company is East River Road Nursing and Rehabilitation Center, LLC.

Paragraph **SECOND** of the Articles of Organization relating to the purpose of the limited liability company name is hereby amended to change the name of the residential health care facility which the limited liability company operates and is hereby amended to read in its entirety as follows:

**SECOND:** The purpose of the Company is to operate a residential health care facility known as East River Road Nursing and Rehabilitation Center, LLC presently located at 303 East River Road, Oswego, New York 13126 and to engage in any lawful act or activity incidental thereto for which limited liability companies may be organized under the LLCL.

IN WITNESS WHEREOF, this certificate has been subscribed to this 12<sup>th</sup> day of July, 2023.

  
\_\_\_\_\_  
By: Bridget L. Kehm, Esq., Authorized Person

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CERTIFICATE OF AMENDMENT OF  
THE ARTICLES OF ORGANIZATION OF  
PONTIAC NURSING HOME, LLC

Under Section 211 of the New York Limited Liability Company Law

---

Filed by:  
Law Offices of Pullano & Farrow PLLC  
69 Cascade Drive, Suite 307  
Rochester, NY 14614

CERTIFICATE OF AMENDMENT OF  
THE ARTICLES OF ORGANIZATION OF  
PONTIAC NURSING HOME, LLC

Under Section 211 of the New York Limited Liability Company Law

---

**FIRST:** The name of the limited liability company is Pontiac Nursing Home, LLC.

**SECOND:** The Articles of Organization were filed by the New York Department of State on December 23, 1999.

**THIRD:** The Articles of Organization are amended by this Certificate of Amendment to change the name and purpose of the limited liability company by amending the **FIRST** and **SECOND** paragraphs as follows:

Paragraph **FIRST** of the Articles of Organization relating to the name of the limited liability company is hereby amended to read in its entirety as follows:

**FIRST:** The name of the limited liability company is East River Road Nursing and Rehabilitation Center, LLC.

Paragraph **SECOND** of the Articles of Organization relating to the purpose of the limited liability company name is hereby amended to change the name of the residential health care facility which the limited liability company operates and is hereby amended to read in its entirety as follows:

**SECOND:** The purpose of the Company is to operate a residential health care facility known as East River Road Nursing and Rehabilitation Center, LLC presently located at 303 East River Road, Oswego, New York 13126 and to engage in any lawful act or activity incidental thereto for which limited liability companies may be organized under the LLCL.

IN WITNESS WHEREOF, this certificate has been subscribed to this 12<sup>th</sup> day of July, 2023.

  
By: Bridget L. Kehm, Esq., Authorized Person

---

CERTIFICATE OF AMENDMENT OF  
THE ARTICLES OF ORGANIZATION OF  
PONTIAC NURSING HOME, LLC

Under Section 211 of the New York Limited Liability Company Law

---

Filed by:  
Law Offices of Pullano & Farrow PLLC  
69 Cascade Drive, Suite 307  
Rochester, NY 14614

**WRITTEN CONSENT OF  
THE MEMBERS OF  
PONTIAC NURSING HOME, LLC**

June 16, 2023

The undersigned, being all of the members of Pontiac Nursing Home, LLC a New York limited liability company (“**Company**”), do hereby take, pursuant to the New York Limited Liability Company Law, the following action, which action is required or permitted to be taken by vote, without a meeting, on written consent:

Name Change, Notice to the Department of Health, and Biennial Statement

**RESOLVED**, that it is in the best interests of the Company to change the name of the Company to East River Road Nursing and Rehabilitation Center, LLC by filing a Certificate of Amendment of the Articles of Organization, attached as Exhibit A.

**RESOLVED**, that it is in the best interests of the Company to file a Certificate of Assumed Name to do business as “East River Road Nursing and Rehabilitation Center” by filing a Certificate of Assumed Name, attached hereto as Exhibit B.

**RESOLVED**, that the Law Offices of Pullano & Farrow PLLC is hereby authorized to send in notice to the New York State Department of Health’s Public Health and Health Planning Council and Bureau of Project Management as required by 10 NYCRR 600.11 and 401.3 with respect to the proposed name change of an operator entity and the proposed new assumed name of an operator entity.

**RESOLVED**, that Patrick Pullano, Esq. and/or Bridget L. Kehm, Esq. of the Law Offices of Pullano & Farrow PLLC are each hereby authorized to sign the proposed Certificate of Amendment to the Articles of Organization and the Certificate of Assumed Name as an authorized person of Company.

**RESOLVED**, that the Law Offices of Pullano & Farrow PLLC is hereby authorized to file the Certificate of Amendment to the Articles of Organization upon receiving consent from the Public Health and Health Planning Council.

**RESOLVED**, that the Law Offices of Pullano & Farrow PLLC is hereby authorized to file the Certificate of Assumed Name upon receiving consent from the New York State Department of Health Bureau of Project Management.

**RESOLVED**, that Patrick Pullano, Esq. and/or Bridget L. Kehm, Esq. of the Law Offices of Pullano & Farrow PLLC are each hereby authorized to sign and file a Biennial Statement of Company with the New York State Department of State as an authorized person of Company.

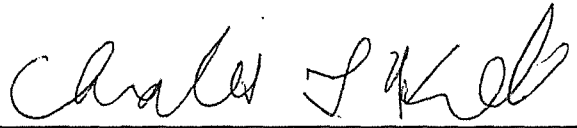
[Remainder of Page Intentionally Remains Blank. Signature Page Follows]

IN WITNESS WHEREOF, we have executed this Written Consent as of the date noted above. This Written Consent may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.



---

Cosimo Mastropierro, Member



---

Charles Knoll, Member

Exhibit A

[see attached]

CERTIFICATE OF AMENDMENT OF  
THE ARTICLES OF ORGANIZATION OF  
PONTIAC NURSING HOME, LLC

Under Section 211 of the New York Limited Liability Company Law

---

**FIRST:** The name of the limited liability company is Pontiac Nursing Home, LLC.

**SECOND:** The Articles of Organization were filed by the New York Department of State on December 23, 1999.

**THIRD:** The Articles of Organization are amended by this Certificate of Amendment to change the name and purpose of the limited liability company by amending the FIRST and SECOND paragraphs as follows:

Paragraph FIRST of the Articles of Organization relating to the name of the limited liability company is hereby amended to read in its entirety as follows:

FIRST: The name of the limited liability company is East River Road Nursing and Rehabilitation Center, LLC.

Paragraph SECOND of the Articles of Organization relating to the purpose of the limited liability company name is hereby amended to change the name of the residential health care facility which the limited liability company operates and is hereby amended to read in its entirety as follows:

SECOND: The purpose of the Company is to operate a residential health care facility known as East River Road Nursing and Rehabilitation Center, LLC presently located at 303 East River Road, Oswego, New York 13126 and to engage in any lawful act or activity incidental thereto for which limited liability companies may be organized under the LLCL.

IN WITNESS WHEREOF, this certificate has been subscribed to this \_\_\_\_ day of \_\_\_\_\_, 2023.

---

By: Bridget L. Kehm, Esq., Authorized Person



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CERTIFICATE OF AMENDMENT OF  
THE ARTICLES OF ORGANIZATION OF  
PONTIAC NURSING HOME, LLC

Under Section 211 of the New York Limited Liability Company Law

---

Filed by:  
Law Offices of Pullano & Farrow PLLC  
69 Cascade Drive, Suite 307  
Rochester, NY 14614

Exhibit B

[see attached]

CERTIFICATE OF ASSUMED NAME  
OF  
EAST RIVER ROAD NURSING AND REHABILITATION CENTER, LLC

Under Section 130 of the General Business Law of the State of New York

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1. The name of the limited liability company is:

East River Road Nursing and Rehabilitation Center, LLC (“Company”)

2. The Company was formed under the New York Limited Liability Company Law

3. The Corporation will be doing business under the assumed name:

East River Road Nursing and Rehabilitation Center

4. The Company’s principal place of business in New York State is:

303 East River Road  
Oswego, New York 13126

5. The Company will be doing business under the assumed name in the following counties in the State of New York:

Oswego

6. The address at which the Company will be doing business under the assumed name is:

303 East River Road  
Oswego, New York 13126

Date: \_\_\_\_\_ 2023

\_\_\_\_\_  
Bridget L. Kehm, Esq., Authorized Person

---

CERTIFICATE OF ASSUMED NAME  
OF  
EAST RIVER ROAD NURSING AND REHABILITATION CENTER, LLC

Under Section 130 of the General Business Law of the State of New York

---

Filed by:  
Law Offices of Pullano & Farrow PLLC  
69 Cascade Drive, Suite 307  
Rochester, NY 14614

## MEMORANDUM

**To:** Kathy Marks  
General Counsel

**From:** Jason Riegert  
Deputy Director  
Bureau of Program Counsel

**Date:** January 10, 2024

**Subject:** Proposed Amended and Restated Certificate of Incorporation of The Guidance Center of Westchester, Inc. to Amend its Corporate Purposes

---

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:** January 18, 2024

**SUBJECT:** Proposed Amended Restated Certificate of Incorporation of The  
Guidance Center of Westchester, Inc. to Amend its Corporate  
Purposes

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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. A letter dated May 2, 2023, from Amy Poirier on behalf of The Guidance Center of Westchester, Inc. to the Department;
3. The resolutions of the Supports for Living, Inc., the sole member of The Guidance Center of Westchester, Inc. approving the amended and restated Certificate of Incorporation dated April 26, 2023;
4. The 1984 Certificate of Amendment of the Certificate of Incorporation of The Guidance Center of Westchester, Inc. with corresponding Public Health Council approval; and
5. The Proposed Amended Restated Certificate of Incorporation of The Guidance Center of Westchester, Inc.

Attachments

cc: Jason Corvino

## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Kathy Marks *KSM*  
General Counsel  
Division of Legal Affairs

**Date:** January 18, 2024

**Subject:** Proposed Amended Restated Certificate of Incorporation of The Guidance Center of Westchester, Inc. to Amend its Corporate Purposes

---

The Guidance Center of Westchester, Inc. (GCW) requests Public Health and Health Planning Council (PHHPC) approval of the proposed amendment and restatement of its certificate of incorporation.

GCW, a New York not-for-profit charitable corporation was formed on January 24, 1950, with the stated purpose to establish, maintain and operate a diagnostic and treatment clinic and dispensary for behavior problems and emotional maladjustments in Westchester County. Subsequently, in a 1984 Certificate of Amendment of the Certificate of Incorporation, GCW was approved by PHHPC to operate a Diagnostic and Treatment Center as defined by Article 28 of Public Health law.

The proposed amendment and restatement to the Certificate of Incorporation would add specific language to its purposes that includes the operation of outpatient programs to accommodate mentally disabled patients under Article 31 of the Mental Hygiene Law.

Attached is a May 2, 2023, letter from Amy Poirier on behalf of GCW to PHHPC, the Bylaws of GCW, the resolution of a vote of the sole Member acting through its Board of Directors approving the amendment, the 1984 Certificate of Amendment of the Certificate of Incorporation of GCW as well as the proposed Restated Certificate of Incorporation of GCW.

There is no legal objection to the proposed Restated Certificate of Incorporation of GCW, and it is in legally acceptable form.

Attachments



CRUSH & VARMA  
LAW GROUP PC

Crush & Varma Law Group P.C.

15 Matthews Street, Suite 301  
Goshen, NY 10924

(845) 615-9010

www.cvlawgroup.com

May 2, 2023

NYS Public Health and  
Health Planning Council  
Via Email: [phhpc@health.ny.gov](mailto:phhpc@health.ny.gov)

Re: Approval of Restated Certificate of Incorporation of  
The Guidance Center of Westchester, Inc.  
Our File No.: 1214.45

To Whom It May Concern:

The Guidance Center of Westchester, Inc., a New York not-for-profit charitable corporation ("The Guidance Center"), is approved by the Public Health and Health Planning Council ("PHHPC") to operate a Diagnostic and Treatment Center as defined by Article 28 of the Public Health Law.

The Guidance Center is amending its Certificate of Incorporation, *inter alia*, to add the following specific language to its purposes: "*To operate outpatient programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law, subject to the issuance of an operating certificate by the Office of Mental Health. The Corporation may not establish any facility or program without first obtaining such operating certificate.*"

To this end, and due to the fact that the Certificate of Incorporation of the Guidance Center has been amended several times through the years, and has never been restated, The Guidance Center desires to amend and restate its Certificate of Incorporation.

**As a result of filing such amended and restated Certificate of Incorporation ("Restated Certificate of Incorporation") with the Department of State, there will be no changes in the purposes of The Guidance Center pertaining to the operation and provision of PHHPC services, as previously approved by PHHPC.** Please find enclosed the original Certificate of Incorporation of the Guidance Center, with all amendments made to date for your convenience and reference.



NYS Public Health and  
Health Planning Council  
May 2, 2023  
Page 2

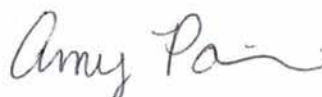
The Office of Mental Health (“OMH”) has approved the amendment to the Certificate of Incorporation. The OMH approval is also attached for your convenience.

In accordance with Section 404(o) of the New York Not-for-Profit Corporation Law, we seek the approval of PHHPC of the Restated Certificate of Incorporation (enclosed with this letter) to attach to the Restated Certificate of Incorporation for filing with the New York Secretary of State.

Please provide the required approval to my attention at the address listed above, or via email if possible at [vikas@cvlawgroup.com](mailto:vikas@cvlawgroup.com). If you have any questions regarding the enclosed documents, or need additional information, please do not hesitate to contact my office at (845) 615-9010.

We would greatly appreciate it if this request could be expedited in any way.

Yours sincerely,



For Vikas Varma

Enclosures



**STATE OF NEW YORK  
OFFICE OF MENTAL HEALTH  
ALBANY, NEW YORK**

**KNOW ALL PERSONS BY THESE PRESENTS;**

Pursuant to the provisions of Section 31.22 of the Mental Hygiene Law and Section 805 of the Not-For-Profit Corporation Law, approval is hereby given to the filing of the Certificate of Amendment to the Certificate of Incorporation of

**The Guidance Center of Westchester, Inc.**

This approval shall not be construed as an authorization for the corporation to engage in any activity for which the provisions of Article 31 of the Mental Hygiene Law requires an Operating Certificate issued by the Office of Mental Health unless said corporation has been issued such Operating Certificate; nor shall it be construed to eliminate the need for the said corporation to meet any and all of the requirements and conditions precedent set forth in Article 31 of such law and the regulations promulgated there under for the issuance of said Operating Certificate.

IN WITNESS WHEREOF this instrument is executed and the Seal of the Department of Mental Hygiene is affixed this 10<sup>th</sup> day of April 2023:

Ann Marie T. Sullivan, MD  
Commissioner  
NYS Office of Mental Health

By: *Gina Bae*  
**Gina Bae**, Director  
Bureau of Inspection and Certification



**RESOLUTIONS  
OF  
THE GUIDANCE CENTER OF WESTCHESTER, INC. (“TGCW”)  
AND  
ACCESS: SUPPORTS FOR LIVING, INC. (the “Sole Member”)**

Adopted at a Joint Meeting of the Sole Member and  
the Board of Directors

**Held on April 26, 2023**

Re: Authorizing the Restated Certificate of Incorporation of The Guidance Center of  
Westchester, Inc.

**WHEREAS**, Access: Supports for Living Inc. is the sole member (the “Sole Member”) of The Guidance Center of Westchester, Inc. (“TGCW”); and

**WHEREAS**, the members of the Board of Directors of the Sole Member and TGCW desire to amend and restate the Certificate of Incorporation of TGCW pursuant to Section 805 of the Not-for-Profit Corporation Law of the State of New York; and

**WHEREAS**, to effect the amendment and restatement TGCW is required to file a Restated Certificate of Incorporation of TGCW with the Department of State of the State of New York (the “Restated Certificate”), the form of which has been presented to the meeting; and

**WHEREAS**, the members of the Board of Directors of the Sole Member and TGCW have reviewed and discussed the amendment and restatement, and the filing of the Restated Certificate and the documents related thereto, and have found it to be in the best interests of the Sole Member and TGCW, to file and effect the Restated Certificate.

**NOW, THEREFORE, IT IS:**


**RESOLVED**, that the actions of Ronald J. Colavito, as President and Chief Executive Officer of the Corporation and as President and Chief Executive Officer of TGCW and other officers of the Sole Member and TGCW, taken in connection with the amendment and restatement, be and hereby are, authorized, ratified and approved in all respects; and it is further

**RESOLVED**, that the Restated Certificate, in the form presented to the meeting, and annexed hereto as **Exhibit A**, is hereby approved, with such execution being evidence of such determination, and further that Ronald J. Colavito, as President and Chief Executive Officer of the Sole Member and TGCW, be and hereby is, authorized and directed, in the name of and on behalf of TGCW, to execute and deliver the Restated Certificate; and it is further

**RESOLVED**, that in connection with the amendment and restatement, Ronald J. Colavito, as President and Chief Executive Officer of the Sole Member

and TGCW, be and hereby is, authorized and directed, in the name of and on behalf of the Sole Member and TGCW, to do such things, take such actions and to execute and deliver such certificates and documents as shall be necessary, in the discretion of such officer doing, taking, executing and delivering same, to obtain the necessary consents and approvals of any other governmental agencies and other persons and entities, in each case as required to effect the filing of the Restated Certificate; and it is further

**RESOLVED**, that Ronald J. Colavito, as President and Chief Executive Officer of the Sole Member and TGCW, be and hereby is, authorized and directed, in the name of and on behalf of the Sole Member and TGCW, to do such things, take such actions and to execute and deliver such certificates and documents as shall be necessary, in the discretion of such officer doing, taking, executing and delivering same, to effectuate the purposes and intents of the foregoing resolutions.

A handwritten signature in black ink that reads "Thomas J. Buchanan". The signature is written in a cursive style with a horizontal line underneath the name.

Thomas J. Buchanan, Chairperson

Exhibit A

**RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**THE GUIDANCE CENTER OF WESTCHESTER, INC.**

***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  
September 11, 2008.

*Paul LaPointe*

Paul LaPointe  
Special Deputy Secretary of State

CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF  
INCORPORATION OF THE GUIDANCE CENTER OF NEW ROCHELLE,  
INC. UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORA-  
TION LAW.

The undersigned, President and Secretary of the  
Guidance Center of New Rochelle, Inc. do hereby certify  
as follows:

1. The name of the corporation is the Guidance  
Center of New Rochelle, Inc.
2. The Certificate of Incorporation was filed by  
the Department of State on February 8, 1950.
3. The Certificate of Incorporation is hereby  
amended to add an additional subdivision to be numbered 2(c)  
to read as follows:  
  
2(c). To establish, operate and maintain a  
Diagnostic and Treatment Center, as that term is defined by  
Article 27 of the Public Health Law.
4. The amendment of the Certificate of Incorporation  
was authorized by vote of a majority of all members entitled  
to vote thereon at a meeting of members held on September 20,  
1983.
5. The Corporation shall hereafter be a Type C  
Corporation.

B064318

6. The Certificate of Incorporation as filed were endorsed and approved by the Department of Social Welfare of the State of New York and by Hon. James W. Bailey, a Justice of the Supreme Court of the State of New York in Westchester County New York and prior to the delivery of this Certificate of Amendment to the Department of State for filing the consent of the Public Health Council of the State of New York Department of Health will be endorsed on and annexed to the Certificate as well as the approval thereof by the New York State Department of Social Welfare and the Supreme Court of the State of New York, Westchester County.

7. The Secretary of State is hereby appointed as Agent of the Corporation upon whom process against it may be served and the Post Office address within or without this State to which the Secretary of State shall mail a copy of any process against it serve upon him is 70 Grand Street, New Rochelle, New York 10801.

IN WITNESS WHEREOF, we have signed this Certificate the 3rd day of October, 1983.

*Allan Ross*

Signature

Allan Ross

Name

President

*Claire K. Brown*

Signature

Claire K. Brown

Secretary

2



STATE OF NEW YORK  
COUNTY OF WESTCHESTER

SS:

ALLEN ROSS and CLAIRE BROWN both being duly sworn,  
depose and say: That he is the President and she is the Secre-  
tary of the Guidance Center of New Rochelle, Inc., the corporation  
named in the foregoing Certificate and they are the persons  
who signed the same and know the contents thereof and that the  
same is true to their own knowledge.

Sworn to before me this

3rd day of October, 1983.

*Lauren Wooley*  
LAUREN WOOLEY  
Notary Public, State of New York  
My Comm. Expires  
October 31, 1985  
Qualified in Orange County  
Commencement Section 1000, N.Y.S.

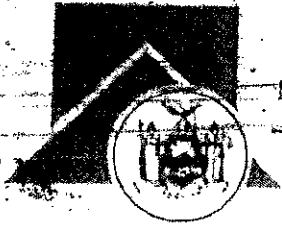
Notary Public

*Allen Ross*

ALLEN ROSS

*Claire Brown*

CLAIRE BROWN



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
ALBANY 12237

# PUBLIC HEALTH COUNCIL

October 27, 1983

KNOW ALL MEN BY THESE PRESENTS:

I hereby certify that after inquiry and investigation, the application of The Guidance Center of New Rochelle, Inc. to operate a diagnostic and treatment center is APPROVED, the contingency having now been fulfilled satisfactorily. The Public Health Council had considered this application and imposed the contingency at its meeting of September 16, 1983.

The Certificate of Amendment of the Certificate of Incorporation of The Guidance Center of New Rochelle, Inc. is also 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.

*Mary A. Massaroni*  
MARY A. MASSARONI  
Acting Secretary

Sent to: Bernard Margolis, Esq.  
271 North Avenue  
New Rochelle, New York 10801

cc: Mr. Henry Herbstein  
Executive Director  
The Guidance Center of  
New Rochelle, Inc.  
50 Grand Street  
New Rochelle, New York 10801

Robert Hamburg, M.D.  
James Introne  
Victor Stool, M.D.  
Gerald Thomson, M.D.

The undersigned has no objection to the granting of judicial approval hereon and waives statutory notice.

ROBERT ABRAMS  
ATTORNEY GENERAL  
STATE OF NEW YORK

by:

*Bernard Abram*  
Assistant Attorney General

Date:

*Jan 4, 1984*

I, HON. GEORGE BEISHEIM, JR. JUSTICE, a Justice

of the Supreme Court of the State of New York for the 9<sup>th</sup> Judicial District do hereby approve the foregoing Certificate of Amendment of the Certificate of Incorporation of The Guidance Center of New Rochelle, Inc. and consent that the same be filed.

Date:

*1/2/84*  
*White Plains NY*

*George Beisheim, Jr.*  
JSC

HON. GEORGE BEISHEIM, JR. JUSTICE

Index No. B064318

Year 19

CERTIFICATE OF AMENDMENT OF THE  
CERTIFICATE OF INCORPORATION OF  
THE GUINANCE CENTER OF NEW  
ROCHELLE, INC.  
UNDER SECTION 501 OF THE NOT-  
FOR-PROFIT CORPORATION LAW.

BERNARD WARGOLIS

271 NORTH AVENUE  
ROCHELLE, N.Y. 10801

Is hereby admitted

Notary Public

Notary Public

Notary Public

299400

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JAN 21 1984

AMT. OF GREY \$ 30

FILING FEE \$

TAX \$

COUNTY FEE \$

COPY \$

RECORD \$

REFUND \$

SPEC. HANDLE \$

*Wargolis*  
*Wargolis*  
*Wargolis*

*Wargolis*  
*Wargolis*  
*Wargolis*

**RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**THE GUIDANCE CENTER OF WESTCHESTER, INC.**

---

Under Section 805 of the Not-For-Profit Corporation Law of the State of New York

The undersigned, for the purposes of amending and restating the Certificate of Incorporation of the Corporation pursuant to Section 805 of the Not-for-Profit Corporation Law of the State of New York, does hereby certify:

1. The name of the corporation is The Guidance Center of Westchester, Inc. (the "Corporation"). The name under which the Corporation was originally formed was The Guidance Center of New Rochelle, Inc.
2. The certificate of incorporation of the Corporation (the "Certificate of Incorporation") was filed by the New York State Department of State on February 8, 1950. A Certificate of Amendment was filed on January 31, 1984; a Certificate of Amendment was filed on April 30, 1987; a Certificate of Amendment was filed on January 13, 2012; and a Certificate of Amendment was filed on January 25, 2022.
3. The law the Corporation was formed under is the Membership Corporation Law of the State of New York.
4. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.
5. The Certificate of Incorporation is amended as follows:
  - (a) Paragraph 2 of the Certificate of Incorporation, relating to the purposes for which the Corporation is to be formed, is hereby amended to add the following clause as clause 2(g):

"2(g) To operate outpatient programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law, subject to the issuance of an operating certificate by the Office of Mental Health. The Corporation may not establish any facility or program without first obtaining such operating certificate."
  - (b) Paragraph 5 of the Certificate of Incorporation, relating to the number of directors of the Corporation, is hereby deleted in its entirety and replaced with the following:

“5. The activities of the Corporation shall be managed by its Board of Directors. The number of Directors constituting the entire Board shall not be less than three (3) and not more than twenty-five (25); and subject to such minimum may be increased or decreased from time to time by amendment of the by-laws in a manner not prohibited by law.”

(c) Paragraph 6 of the Certificate of Incorporation, relating to the names and residences of the initial directors of the Corporation, is hereby deleted in its entirety and replaced with the following:

“6. Access: Supports for Living Inc., shall be the single member of the Corporation.”

(d) Paragraph 7 of the Certificate of Incorporation, relating to the original subscribers to the Certificate of Incorporation, is deleted in its entirety and replaced with the following:

“7. 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 in that it is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the corporation shall be distributable to, or inure to the benefit of, its members, directors, officers or any private person. The Corporation is a charitable corporation.”

(e) A new Paragraph 8 of the Certificate of Incorporation relating to the Corporation’s tax-exempt status is hereby added to read as follows:

“8. The following language is related 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 2.

(a) Notwithstanding any other provisions 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, as amended, (the “Code”) and shall not carry on any activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501(c)(3) or corresponding provisions of any subsequent Federal tax laws or (b) by a corporation, contributions to which are deductible under §170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law).

(b) No part of the net earnings of the Corporation shall inure to the benefit of any member, director, officer of the Corporation, or any private individual, and no director, 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.

(c) No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation except as otherwise provided by Section 501(h) of the Code, as amended, or participating in, or intervening in including the publication or distribution of statements, any political campaign on behalf of any candidates for public office.”

(f) Paragraph 8 of the Certificate of Incorporation, relating to the service of process address of the Corporation, shall be renumbered as Paragraph 9.

(g) Paragraph 9 of the Certificate of Incorporation, relating to the dissolution of the Corporation, shall be renumbered as Paragraph 10.

6. The certificate of incorporation is thereby restated as amended to read as follows:

RESTATED CERTIFICATE OF INCORPORATION  
OF  
THE GUIDANCE CENTER OF WESTCHESTER, INC.

1. The name of the corporation is The Guidance Center of Westchester, Inc.

2. The purposes for which it is to be formed are:

(a) To establish, maintain and operate, regardless of race, creed or color, a guidance center as a diagnostic and treatment clinic and dispensary for behavior problems and emotional maladjustments in children and adults; to promote mental health in and to render psychotherapeutic treatment to children and adults; and to cooperate with governmental and private agencies concerned with the mental health of children and adults.

(b) To solicit, collect, and otherwise raise funds for the above purposes.

(c) To establish, operate and maintain a Diagnostic and Treatment Center, as that term is defined by Article 28 of the Public Health Law.

(d) To establish, maintain and operate health, mental health, educational, and human service programs, and to solicit, collect and otherwise raise funds for the foregoing purposes.

(e) To operate chemical dependence, alcoholism and/or substance abuse services, within the meaning of Articles 19 and 32 of the Mental Hygiene Law and the Rules and Regulations adopted pursuant thereto as each may be amended from time to time, which shall require as a condition precedent before engaging in the conduct of any such services an Operating Certificate from the New York State Office of Alcoholism and Substance Abuse Services.

(f) To operate early intervention program services within the meaning of Title II-A of Article 25 of the Public Health Law and the Codes Rules and Regulations adopted pursuant thereto as each may be amended from time to time which shall require as a condition precedent before engaging in the conduct of any such services obtaining all approvals required by Title II-A of Article 25 of the Public Health Law, Title 10 of the Codes of Rules and Regulations of the State of New York, or any other applicable law or regulation.

(g) To operate outpatient programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law, subject to the issuance of an operating certificate by the Office of Mental Health. The Corporation may not establish any facility or program without first obtaining such operating certificate.

3. The territory in which its operations are principally to be conducted is Westchester County, State of New York.

4. The location of the office is Westchester County, New Rochelle, New York.

5. The activities of the Corporation shall be managed by its Board of Directors. The number of Directors constituting the entire Board shall not be less than three (3) and not more than twenty-five (25); and subject to such minimum may be increased or decreased from time to time by amendment of the by-laws in a manner not prohibited by law.



6. Access: Supports for Living Inc., shall be the single member of the Corporation.

7. 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 in that it is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the corporation shall be distributable to, or inure to the benefit of, its members, directors, officers or any private person. The Corporation is a charitable corporation.

8. The following language is related 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 2.

(a) Notwithstanding any other provisions 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, as amended, (the "Code") and shall not carry on any activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501(c)(3) or corresponding provisions of any subsequent Federal tax laws or (b) by a corporation, contributions to which are deductible under §170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law).

(b) No part of the net earnings of the Corporation shall inure to the benefit of any member, director, officer of the Corporation, or any private individual, and no director, 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.

(c) No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation except as otherwise provided by Section 501(h) of the Code, as amended, or participating in, or intervening in including the publication or distribution of statements, any political campaign on behalf of any candidates for public office.


9. The Secretary of State is designated as the agent of the Corporation upon whom process against it may be served. The address within or without this state to which the Secretary of State shall mail a copy of any process accepted on behalf of the Corporation is: The Guidance Center of Westchester, Inc., c/o Access: Supports for Living Inc., 15 Fortune Road West, Middletown, New York 10941.

10. In the event of the dissolution of the Corporation, the Board of Directors, after paying or making provision for the payment of all of the liabilities and obligations of the Corporation and after complying with Federal and State agency assurances regarding the use of funds received through certain grants, shall distribute in proportions considered prudent, all of the remaining assets and property of the Corporation to Access: Supports for Living Inc. ("Access"), or any other entity the financial information of which is consolidated with Access for financial statement purposes, collectively "Access Affiliates", or the Access: Supports for Living Foundation Inc. (the "Foundation" with Access and the Access Affiliates, the "System"), provided Access, such Access Affiliate or the Foundation, as the case may be, shall then qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (or the corresponding provision of any future United States Internal Revenue Law) (the "Code") subject to proper authorization of the Office of the New York Attorney General or an order of a Justice of the Supreme Court of the State of New York, as appropriate and applicable; if no entity in the System 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 charitable, religious, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code, subject to proper authorization of the Office of the New York Attorney General or an order of a Justice of the Supreme Court of the State of New York, as appropriate and applicable.

7. The Secretary of State is designated as the agent of the Corporation upon whom process against it may be served. The address within or without this state to which the Secretary of State shall mail a copy of any process accepted on behalf of the Corporation is: The Guidance Center of Westchester, Inc., c/o Access: Supports for Living Inc., 15 Fortune Road West, Middletown, New York 10941.

8. This Restated Certificate of Incorporation was duly authorized by the written consent of the single member of the Corporation.

IN WITNESS WHEREOF, the undersigned has subscribed this certificate and affirms the statements herein as true under the penalties of perjury this 2nd day of May, 2023.

By:   
Name: Ronald J. Colavito  
Title: President and Chief Executive Officer