

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

January 23, 2025
10:00 a.m.

90 Church Street, 4th Floor, Conference Rooms 4 A/B, NYC, 10007

I. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Gary Kalkut, M.D., Vice Chair

A. Applications for Construction of Health Care Facilities/Agencies

Acute Care Services- Construction

Exhibit # 1

	<u>Number</u>	<u>Applicant/Facility</u>
1.	242176 C	NYU Langone Hospitals (Westchester County)
2.	242222 C	Montefiore Nyack (Rockland County)
3.	242247 C	South Shore University Hospital (Suffolk County)

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

Home Care Service Agency Licensures

Exhibit # 2

New Licensed Home Care Services Agencies

	<u>Number</u>	<u>Applicant/Facility</u>
1.	231189 E	St. Michael's Home, Inc. d/b/a St. Michael's Home Care (Please see exhibit for list of Geographical Service Area)
2.	241073 E	First Class Care LLC d/b/a Homestead LHCSA (Please see exhibit for list of Geographical Service Area)
3.	241149 E	Westchester PACE Program LLC (Please see exhibit for list of Geographical Service Area)

Changes of Ownership

<u>Number</u>	<u>Applicant/Facility</u>
1. 232100 E	Oyster Bay Manor Home Care, Inc. d/b/a Oyster Bay Manor Home Care (Please see exhibit for list of Geographical Service Area)
2. 241136 E	Vista on 5 th Corp. d/b/a Vista on 5th (Please see exhibit for list of Geographical Service Area)

Residential Health Care Facilities – Establish/Construct

Exhibit # 3

<u>Number</u>	<u>Applicant/Facility</u>
1. 232078 E	Brooklyn-Queens Nursing Home (Kings County)

Ambulatory Surgery Centers – Establish/Construct

Exhibit # 4

<u>Number</u>	<u>Applicant/Facility</u>
1. 242152 E	Central New York Eye Center (Dutchess County)
2. 242159 E	Capital Region Ambulatory Surgery Center (Albany County)
3. 242161 B	East End Surgery Center, LLC (Suffolk County)
4. 242189 B	Southern Tier Surgery Center, LLC (Broome County)

Diagnostic Treatment Centers – Establish/Construct

Exhibit # 5

<u>Number</u>	<u>Applicant/Facility</u>
1. 242037 B	ABC Little Clinic 115 (New York County)

C. Certificates

Exhibit # 6

Certificate of Dissolution

Applicant

Living Resources Certified Home Health Agency, Inc.



Project # 242176-C
NYU Langone Hospitals

Program: Hospital
Purpose: Construction

County: Westchester
Acknowledged: October 11, 2024

Executive Summary

Description

NYU Langone Hospitals (NYULH), an existing New York voluntary, not-for-profit corporation, requests approval to certify a new multi-specialty ambulatory surgery center extension clinic at 4 Westchester Park Drive, West Harrison (Westchester County). The extension clinic will specialize in orthopedic surgery.

The applicant will lease a portion of the ground and third floor in a five-story multi-business building. The site will include (4) four operating rooms with a combined sterile/supply core, pre- and post-procedure areas, (12) twelve universal bays, and requisite support areas. The project will enable NYULH patients to access medical services closer to home. The proposed facility's name is NYU Langone-Westchester Ambulatory Surgery Center, which is subject to change.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 1,650 procedures in Year One and 3,300 visits in Year Three with 10.1% Medicaid and 3.6% 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 \$35,290,444 will be met with accumulated funds from NYU Langone Hospitals.

Budget:	<u>Year One</u>	<u>Year Three</u>
Revenues	\$23,810,337	\$ 47,620,675
Expenses:	<u>21,039,562</u>	<u>26,260,111</u>
Net Income	\$2,770,775	\$ 21,360,564

Health Equity Impact Assessment

The information and analysis presented in the Health Equity Impact Assessment and the applicant's mitigation plan demonstrate the proposed project will not result in any significant adverse health equity impacts.

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 3.20 LSC Chapter 20 New Ambulatory Healthcare Public Use, for review and approval. [DAS]
3. 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 **September 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, 2025**, and construction must be completed by **June 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 staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

February 6, 2025

Need Analysis

Background and Analysis

NYU Langone Hospitals, an existing 813 bed Article 28 Hospital at 550 First Avenue, New York, 10016 (New York County), is seeking approval to certify a hospital extension clinic specializing in orthopedic surgery at 4 Westchester Park Drive, West Harrison, 10604 in Westchester County. The facility plans to have four (4) operating rooms. Upon approval, the clinic will be known as NYU Langone – Westchester Ambulatory Surgery Center, which is subject to change.

The primary service area is Westchester County. The population of Westchester County is estimated at 997,904 based on 2022 American Community Survey data and is expected to increase to 1,033,428 by 2029 per projection data from the Cornell Program on Applied Demographics. Demographics for the primary service area are noted below including a comparison with New York State.

Demographics	Westchester County	New York State
Total Population-2022 Estimate	997,904	19,994,379
Hispanic or Latino (of any race)	25.8%	19.5%
White (non-Hispanic)	51.2%	53.8%
Black or African American (non-Hispanic)	13.3%	13.8%
Asian (non-Hispanic)	6.1%	8.8%
Other (non-Hispanic)	3.6%	4.1%

Source: 2022 American Community Survey (5-year Estimates Data Profiles)

In 2022, 95.1% of the population of Westchester County had health coverage as follows:

Employer Plans	56.1%
Medicaid	14.1%
Medicare	12.9%
Non-Group Plans	11.6%
Military or VA	0.326%

Source: Data USA

Ambulatory Surgery within a 5-mile radius of Proposed Center

Facility Name	Type	Patient Visits			
		2020	2021	2022	2023
White Plains Hospital Center	Hospital	12,347	17,695	21,030	23,835
White Plains Hospital Ambulatory Surgery Center (opened 9/2020)	Hospital Ext Clinic	UNAVAIL	29	366	1,814
Surgical Specialty Center of Westchester	ASC	2,712	3,330	3,329	3,450
New York-Presbyterian Westchester (CON 231308 approved 12/2024)	Hospital Ext Clinic	UNAVAIL	UNAVAIL	UNAVAIL	UNAVAIL
Total Visits		15,059	21,054	24,725	29,099

Source: HFIS and SPARCS

The applicant projects 1,711 procedures in Year One and 3,422 visits in Year Three. The projected payor mix includes 10.06% Medicaid and 3.57% Charity Care for the first and third years. They explain the addition of a freestanding ASC in Westchester County will enable patients who reside in or closer to Westchester to access orthopedic services closer to home. Currently NYU Langone patients residing in Westchester or outside of the service area must travel to Manhattan for these services, which creates time and cost burdens for patients.

Per the applicant, NYU Langone Health has a Charity Care Committee, and the proposed site will align with their financial assistance and charity care policy. NYU Langone Health offers charity care, which covered approximately \$93 million in care in Fiscal Year 2023.

The table below shows Year One and Three's projected payor source utilization.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Comm Ins FFS	992	58.0%	1,985	58.0%
Comm Ins MC	77	4.5%	154	4.5%
Medicare FFS	209	12.2%	417	12.2%
Medicare MC	96	5.6%	193	5.6%
Medicaid FFS	3	0.2%	6	0.2%
Medicaid MC	169	9.9%	338	9.9%
Private Pay	11	0.6%	21	0.6%
Charity Care	61	3.6%	122	3.6%
Other (Workers' Comp)	93	5.4%	186	5.4%

The hours of operation of the facility will be Monday through Saturday, 8am to 5pm.

Conclusion

Approval of this project will provide improved access to orthopedic surgical services for the residents of Westchester County and the surrounding areas.

Program Analysis

Project Proposal

Current Operator	NYU Langone Hospitals
To Be Known As	NYU Langone-Westchester Ambulatory Surgery Center
Site Address	4 Westchester Park Drive, West Harrison, New York 10604 (Westchester County).
Specialties	CERTIFY: Ambulatory Surgery - Multi Specialty (Orthopedic Surgery)
Hours of Operation	Monday through Saturday, 8 am to 5 pm
Staffing (1st Year / 3rd Year)	47.0 FTEs / 65.0 FTEs
Medical Director(s)	Joseph A. Bosco, M.D.

The following table shows the projected FTEs in Year One and Year three after completion of the project.

Positions	First Year FTE	Third Year FTE
Management & Supervision	4.0	4.0
Technicians & Specialists	6.0	8.0
Aides, Orderlies & Attendants	3.0	5.0
Registered Nurse	13.0	19.0
Physicians	1.0	1.0
Physician Assistants	2.0	4.0
Nurse Practitioners	1.0	1.0
Supply Chain & CSPD Managers	8.0	12.0
Clerical and Other Administrative	4.0	4.0
Anesthesiologist & CRNA	5.0	7.0
Totals	47.0	65.0

The Medical Director will be **Joseph Anthony Bosco III**. Dr. Bosco received a Master's in Medicine degree from the University of Vermont in 1986 and a Bachelor of Science degree in Chemistry from Union College in 1982; completed a Fellowship in Adult Reconstructive Surgery at the University of North Carolina Hospitals, in Chapel, North Carolina in 1992; completed a Residency in Orthopedic Surgery at the University of North Carolina Hospitals in 1991; and Interned in General Surgery at the University of North Carolina Hospitals in 1987.

Dr. Bosco is Board certified with the American Board of Orthopedic Surgeons (ABOS) since 1995. Currently, Dr. Bosco is an Attending Physician at the New York University Langone Medical Center; and a Professor and the Vice Chair at NYU Langone Department of Orthopedic Surgery.

Compliance with Applicable Codes, Rules, and Regulations

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

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

NYU Langone Hospitals (NYULH), based in New York County, is requesting approval for the addition of a freestanding ambulatory surgery center in Westchester County. This project will improve access to orthopedic services and reduce time and cost burdens for patients and medically underserved groups who reside in or closer to Westchester.

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

- Prevent Chronic Diseases
- Promote a Healthy and Safe Environment
- Promote Healthy Women, Infants and Children

The proposed project will advance the Prevention of Chronic Diseases through improving the access to orthopedic care and enhancing patients' capacity for engaging in physical activity.

As per the latest available report, NYULH spent \$36,293,694 on community health improvement services in 2022, representing 0.48 % 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 are estimated at \$35,290,444, broken down as follows:

Renovation & Demolition	\$18,000,000
Asbestos Abatement or Removal	15,000
Design Contingency	1,800,000
Construction Contingency	1,800,000
Architect/Engineering Fees	1,350,000
Construction Manager Fees	900,000
Other Fees	500,000
Movable Equipment	8,930,419
Telecommunications	1,800,000
Application Fee	2,000
Additional Processing Fee	<u>193,025</u>
Total Project Cost	\$35,290,444

The applicant's financing plan appears as follows:

Applicant's accumulated surplus \$35,290,444

BFA Attachment A, NYU Langone Hospitals' August 31, 2022, and 2023 Certified Financial Statements show 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>	
Revenues:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Medicaid-FFS	\$2,802	\$8,407	\$2,802	\$16,814
Medicaid-MC	\$5,815	982,764	\$5,815	1,965,528
Medicare-FFS	\$4,058	848,123	\$4,068	1,696,247
Medicare-MC	\$4,797	460,468	\$4,772	920,936
Commercial-FFS	\$20,746	20,579,694	\$20,735	41,159,388
Commercial-MC	\$18,321	1,410,750	\$18,321	2,821,501
Private Pay	\$3,899	42,892	\$4,085	85,784
All Other	\$5,153	479,193	\$5,153	958,385
Bad Debt		<u>-1,001,954</u>		<u>-2,003,908</u>
Total		\$23,810,337		\$47,620,675
Expenses:				
Operating	\$11,700	\$20,019,228	\$7,353	\$25,161,453
Capital	<u>\$596</u>	<u>1,020,334</u>	<u>\$321</u>	<u>1,098,658</u>
Total	\$12,296	\$21,039,562	\$7,674	\$26,260,111
Net Income		\$2,770,775		\$21,360,564
Total Visits		1,711		3,422

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>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid-FFS	3	0.18%	6	0.18%
Medicaid-MC	169	9.88%	338	9.88%
Medicare-FFS	209	12.22%	417	12.19%
Medicare-MC	96	5.61%	193	5.64%
Commercial-FFS	992	57.98%	1,985	58.01%
Commercial-MC	77	4.50%	154	4.50%
Private Pay	11	0.64%	21	.061%
Charity	61	3.57%	122	3.57%
All Other	<u>93</u>	<u>5.42%</u>	<u>186</u>	<u>5.42%</u>
Total	1,711	100%	3,422	100%

The following is noted for the submitted budget:

- Revenue is based on the historical ambulatory surgery payor mix applied to the projected volume multiplied by payor-specific contractual rates.
- Utilization was projected based on internal data and historical experience from similar ambulatory surgery centers.
- The number and mix of staffing are based on projected annual volume.
- Salary and wage expenses were based on the average annual salary for the required full-time equivalent (FTE).
- Operating expenses are based on historical cost accounting averages based on case type.
- The applicant indicated they are committed to serving all persons in need without regard to the patient's ability to pay or the payment source.

Lease Rental Agreement

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

Date:	July 1, 2024
Premises:	31,839 square feet located at 4 Westchester Drive, West Harrison, NY 10604
Landlord:	Westchester Holdings DE, LLC
Lessee:	New York University (on behalf of its administrative unit NYU Grossman School Of Medicine)
Term:	15 years
Rental:	\$955,170 year one – starts 15 months following commencement date. (\$30 per sq. ft.) 2.5% annual increases
Provisions:	Utilities, Maintenance, and Insurance

The applicant has submitted an affidavit attesting that the lease is an arms-length agreement. The applicant has submitted two letters from New York State real estate brokers attesting that the rental rate is fair market value.

Capability and Feasibility

The total project cost of \$35,290,444 will be met with accumulated funds from NYU Langone Hospitals.

Working capital requirements are estimated at \$4,376,685 based on two months of third-year expenses, funded with equity from NYULH. The submitted budget projects a net income of \$2,770,775 and \$21,360,564 during years one and three of operations, respectively. The budget appears reasonable.

BFA Attachment A presents NYULH's 2022 - 2023 Certified Financial Statements that show positive working capital, net assets, and a net income of \$715.1 million.

Conclusion

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

Health Equity

Health Equity Impact Assessment Summary

The proposed project aims to add a multi-specialty surgery center for orthopedic services in Westchester County located at 4 Westchester Park Drive, West Harrison, NY 10604. Currently patients residing in Westchester are traveling far distances to Manhattan to access services. Transportation is expected to improve since travel times will be shorter, valet parking will be available, and the proposed location is accessible by nearby buses and subways. The project will benefit patients with mobility impairments by eliminating the need to navigate uneven sidewalks and curbs which are challenging for those using wheelchairs and walkers. All patient populations are expected to experience positive outcomes from the project, including women and racial and ethnic minorities. However, meaningful engagement feedback indicated that people with disabilities, mobility issues, older adults, low-income individuals, and persons living in rural areas would significantly be impacted. The Independent Entity did not identify any unintended negative impacts as a result of the project.

Conclusion

The information and analysis presented in the Health Equity Impact Assessment and the applicant's mitigation plan demonstrate the proposed project will not result in any significant adverse health equity impacts.

Attachments

BHFP Attachment	Map
BFA Attachment A	NYS Langone Hospitals Consolidated Balance Sheets and Statement of Operations for years ending as of August 31, 2022, and August 31, 2023
OHEHR Attachment	Health Equity Impact Assessment



Project # 242222-C
Montefiore Nyack

Program: Hospital
Purpose: Construction

County: Rockland
Acknowledged: November 13, 2024

Executive Summary

Description

Montefiore Nyack Hospital, a 375-bed acute care facility at 160 North Midland Avenue, Nyack (Rockland County) requests the addition of Therapeutic Radiology Service to the hospital's OPCERT and to certify two linear accelerators currently operated by a private medical group on the hospital campus with requisite renovations.

On August 27, 2024, Montefiore Nyack received emergency approval to use one of the LINAC's operated by the group due to the inability of the private practice to continue.

The Medical Director is Joanne Zhung, M.D., who works for Montefiore Nyack Hospital in the Department of Radiation Oncology on campus.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 3,764 treatments in the first year and 4,100 by the third with Medicaid at 17% and Medicare 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 of \$4,374,996 will be met with equity of \$437,500 from the hospital and \$3,937,496 from an inter-company loan between Montefiore Nyack Hospital and Montefiore Health System, Inc. (MHS).

<u>Budget:</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$6,161,398	\$6,981,597
Expenses	4,045,941	4,361,651
Net Income	\$2,115,457	\$2,619,946

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. Submission of an executed loan commitment, acceptable to the Department. [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 **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 **August 6, 2025**, 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. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

Council Action Date

February 6, 2025

Need Analysis

Project Description

Montefiore Nyack Hospital, a 375-bed acute care facility at 160 North Midland Avenue, Nyack (Rockland County), seeks certification of Radiology - Therapeutic services. They propose operating two (2) linear accelerators (LINACs) currently operated by a private medical group in the Medical Office Building (MOB) on the hospital campus.

On August 27, 2024, the Department granted Emergency Approval to operate one of the LINAC's as the private practice was unable to continue operations allowing the cancer patients in the service area to continue to receive treatment.

Background and Analysis

The primary service area for this project is Rockland County. The population of Rockland County in 2022 was estimated to be 337,326 according to the most recent US Census Bureau population estimates data. The county's population is estimated to increase to 354,877 by 2029 per projection data from the Cornell Program on Applied Demographics, an increase of 5.2%.

In 2022, 95.9% of the population of Rockland County had health coverage as follows:

Employer plan	44.2%
Medicaid	28.4%
Medicare	11.6%
Non-group plans	11.5%
Military or VA plans	0.198%

Source: Data USA

Demographics	Rockland County	New York State
Total Population – 2022 Estimate	337,326	19,994,379
Hispanic or Latino (of any race)	18.6%	19.5%
White (non-Hispanic)	61.9%	53.8%
Black or African American (non-Hispanic)	10.9%	13.8%
Asian (non-Hispanic)	6.0%	8.8%
Other (non-Hispanic)	2.6%	4.1%

Source: 2022 American Community Survey (5-Year Estimates Data Profiles)

The applicant's projected payor mix for the new service is shown below.

Applicant Projected Payor Mix		
Payor	Year One	Year Three
Commercial	31.00%	31.00%
Medicare	45.01%	45.00%
Medicaid	17.00%	17.00%
Private Pay	6.99%	7.00%

In July of 2024 when the applicant submitted the request for emergency approval, they had 17 patients who required LINAC services at any given time, and within a month, approximately 45 to 50 patients were treated. The applicant is projecting to treat 259 patients (3,764 treatments) in Year One and 282 patients (4,100 treatments) in Year Three. Without these services, patients would be sent to Montefiore's main campus in the Bronx approximately 20 miles away.

The hospital is in the Hudson Valley region which currently has 24 existing or approved LINACs and has a determined need for 32 LINACs.

Based on 709.16, the public need for linear accelerators in the Hudson Valley health planning region is:

	LINAC Need in Hudson Valley Region	Total
1	Number of Cancer Cases per Year	13,880
2	60% will be Candidates for Radiation Therapy	8,328.00
3	50% of (2) will be Curative Patients	4,164.00
4	50% of (2) will be Palliative Patients	4,164.00
5	Course of Treatment for Curative Patients is 35 Treatments	145,740.00
6	Course of Treatment for Palliative patients is 15 Treatments	62,460.00
7	The Total Number of Treatments [(5) + (6)]	208,200.00
8	Need for LINAC Machines ¹ [(7)/6,500]	32.03
9	Existing/Approved Resources	24.00
10	Remaining Need for MEV Machines [(8)-(9)]	8.03

¹Each LINAC Machine has capacity for 6,500 Treatments

Conclusion

This project will allow Montefiore to provide therapeutic radiology services to patients who had been receiving cancer treatments on the hospital campus.

Program Analysis

Project Proposal

Montefiore Nyack (the Hospital), a 375-bed acute care facility at 160 North Midland Avenue, Nyack, New York (Rockland County), seeks approval to add Radiology - Therapeutic services to the Hospital's operating certificate. The Hospital proposes to operate two (2) linear accelerators (LINACs), of which one will be a new, state-of-the-art machine, the second LINAC which is an existing LINAC that will be used as a backup until it is replaced with a newer version.

This building will be providing Radiology -Therapeutic services and will house (2) Tomotherapy (radiation machine) rooms, (1) CT simulator room, and (3) existing exam rooms. The renovations will consist of altering the existing Radiation Oncology space on the Ground Floor of the Montefiore Nyack Hospital Cancer Center to bring it up to Article 28 standards. The alteration will consist of renovations of 1,627 square feet and will be constructed in multiple phases. The existing space to remain is 4,568 square feet and the total square footage of the Radiation Oncology space will be 6,195 square feet.

The Applicant reports Montefiore Nyack is accredited as a Comprehensive Cancer Program by the Commission on Cancer (CoC) of the American College of Surgeons. Cancer patients at Montefiore Nyack are under the care of physicians affiliated with Montefiore Einstein. Montefiore Nyack's plan includes efforts to reduce fragmentation by developing a "one-stop shop" for diagnosis and treatment of oncology care in the community.

The Hospital provides a full range of cancer services from prevention and screenings through diagnosis and treatment to survivorship. Treatments include targeted therapy, immune therapy, chemotherapy, and hormone therapy, as well as opportunities to participate in clinical trials that explore breakthrough cancer drugs and treatments.

The Medical Director is Joanne Zhung, M.D., who currently is employed by Montefiore-Nyack Hospital in the Department of Radiation Oncology on campus.

The Applicant states that the extension clinic will be open for forty (40) hours per week.

Staffing will increase because of this renovation project by .25 FTEs. There will be 9.90 FTEs in Year One and 10.15 FTEs by Year Three.

Prevention Agenda

Montefiore Nyack, located in Rockland County, requests approval to certify therapeutic radiology to operate two linear accelerators (LINAC) and perform renovation in the medical office building on the hospital campus. This project will allow the cancer patients in the service area to continue to receive cancer treatment.

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

- Prevent Chronic Diseases
- Prevent Communicable Diseases

The proposed project will advance the Prevention Agenda priorities of Preventing Chronic Diseases and Preventing Communicable Diseases by allowing Montefiore Nyack to provide services to community members affected by obesity, pre-diabetes, diabetes, and cardiovascular disease; to improve prevention rates of HIV and other sexually transmitted infections.

As per the latest available report, Montefiore Nyack spent \$1,076,699 on community health improvement services in 2022, representing 0.31 % 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

Total project cost for renovation and equipment in 2024 dollars is \$4,374,996 broken down as follows:

Renovation & Demolition	\$1,783,104
Design Contingency	178,311
Construction Contingency	178,311
Fixed Equipment	2,137,250
Architect Engineering Fees	72,100
Application Fee	2,000
Processing Fee	<u>23,920</u>
Total Project Cost	\$4,374,996

The applicant's financing plan is as follows:

Cash Equity (Hospital)	<u>\$437,500</u>
Loan from MHS	<u>3,937,496</u>
Total	<u>\$4,374,996</u>

Montefiore Health System, Inc. will enter into a consolidated loan agreement with the Hospital for \$10,000,000 due to other future projects not affiliated with this project. The \$3,937,496 from the agreed \$10,000,000 will be used for this project. The loan will have an interest rate estimated at 6% over a 15-years term. A letter of interest from MHS has been submitted.

Operating Budget

The applicant has submitted an operating budget in 2024 dollars for the first and third years, summarized below:

Revenues:	<u>Per Visit</u>	<u>Year One</u>	<u>Per Visit</u>	<u>Year Three</u>
Commercial MC	\$3,906	\$4,558,343	\$4,064	\$5,165,144
Medicare FFS	\$798	990,902	\$830	1,122,810
Medicare MC	\$824	372,633	\$858	422,237
Medicaid FFS	\$54	4,061	\$56	4,602
Medicaid MC	\$247	139,783	\$258	158,391
Private Pay	\$364	<u>95,676</u>	\$378	<u>108,413</u>
Total Operating Revenues		\$6,161,398		\$6,981,597
<u>Expenses:</u>				
Operating	\$886.94	\$3,338,448	\$896.10	\$3,674,018
Capital	187.96	<u>707,493</u>	167.72	<u>687,633</u>
Total	\$1,074.90	\$4,045,941	\$1,063.82	\$ 4,361,651
Net Income		<u>\$2,115,457</u>		<u>\$2,619,946</u>
Total Visits		3,764		4,100

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

	<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial MC	1,167	31.0%	1,271	31.0%
Medicare FFS	1,242	33.0%	1,353	33.0%
Medicare MC	452	12.0%	492	12.0%
Medicaid FFS	75	2.0%	82	2.0%
Medicaid MC	565	15.0%	615	15.0%
Private Pay	<u>263</u>	<u>7.0%</u>	<u>287</u>	<u>7.0%</u>
Total	3,764	100.0%	4,100	100.0%

The following is noted with respect to the submitted budget:

- Expense and utilization assumptions are based on the regional incidence of cancer in the geography the facility serves and the current experience that exists within the Mid-Hudson region covering seven (7) counties.
- Revenues reflect current outpatient reimbursement methodologies for radiology services currently provided.
- Reimbursement is limited to \$36,735 consisting of 15% of A&E fees plus CON application and processing fees.

Capability and Feasibility

Total project costs of \$4,374,996 will be met with equity of \$437,500 from the Hospital and a loan from MHS (co-operator and active parent) in the amount of \$3,937,496 with a 15-year term at approximately 6% fixed interest rate. Working capital requirements are estimated at \$726,942, which is based on two months of third-year expenses and will be funded through the ongoing operations of the Hospital. The submitted budget projects an income of \$2,115,457 and \$2,619,946 operating income during Year One and Year Three, respectively.

BFA Attachment A, Montefiore Health Systems 2022-2023 Certified Consolidated Financial Statements, show a positive working capital, positive net asset position, and a net loss of (\$221,671,000) and \$192,144,000 in 2022 and 2024, respectively. The 2022 loss was primarily due to a deficiency in Vital Access Provider Program of \$155,863,000 and a loss in Marketable Securities of \$106,264,000. Note that 2023 had a turn-around indicating the financial position did strengthen.

BFA Attachment B, Montefiore Health System's Internal Financial Statements for the period ended September 30, 2024, show the facility reported positive working capital, a positive net asset position, and a net income of \$208,942,000.

BFA Attachment C, 2023 Montefiore Nyacks Internal Financial Statements for the period January 1, 2024, through October 31, 2024 show the Hospital had a negative working capital position, negative net asset position, and a net loss of (\$1,528,000).

Conclusion

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

Attachments

BFA Attachment A	Consolidated – Montefiore Health System Certified Financial Statement (2022-2023)
BFA Attachment B	Internal Financial Statement - MHS (January 1, 2024, thru September 30, 2024)
BFA Attachment C	Internal Financial Statement for Nyack Hospital – (January 1, 2024, thru 10/31/2024)
BFA Attachment D	Organizational Chart for MHS Inc.



Project # 242247-C
South Shore University Hospital

Program: Hospital
Purpose: Construction

County: Suffolk
Acknowledged: November 18, 2024

Executive Summary

Description

In this application, South Shore University Hospital (Hospital), a 325-bed not-for-profit, Article 28 tertiary care hospital at 301 East Main Street, Bay Shore (Long Island), amends the previously approved CON 201151 to add a 30-bed intensive care unit (ICU) in previously unused shell space on the Hospital's sixth floor to the approved new inpatient pavilion with sixty (60) private medical/surgical rooms, six (6) operating rooms, two (2) endoscopy rooms, and forty-nine (49) prep and recovery Post-Anesthesia Care Unit (PACU) bays. The project also includes a new main entry with reception, security, a café, and shell space for future development. The Hospital's licensed bed complement will increase to 415 beds upon completion.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant is projecting 1,577 discharges in Year One and Year Three with Medicaid at 27% and 0.5% 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

Total project costs of \$529,822,263 will be met with \$69,654,066 in equity from South Shore University Hospital and the \$460,168,197 balance financed with a tax-exempt bond issued through the Dormitory Authority of the State of New York (DASNY) at an interest rate of 5% for a thirty-year term.

<u>Incremental</u>	<u>Year One</u>	<u>Year Three</u>
<u>Budget:</u>		
Revenues	\$128,239,700	\$189,142,200
Expenses	<u>157,938,914</u>	<u>194,116,017</u>
Net Income (Loss)	(\$29,699,214)	(\$4,973,817)

<u>Enterprise</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<u>Budget:</u>			
Revenues	\$786,051,800	\$914,291,500	\$975,194,000
Expenses	<u>712,786,600</u>	<u>870,725,514</u>	<u>906,902,617</u>
Net Income (Loss)	\$73,265,200	\$43,565,986	\$68,291,383

Health Equity Impact Assessment

The information and analysis presented in the Health Equity Impact Assessment and the applicant's mitigation plan demonstrate the proposed project will not result in any significant adverse health equity impacts.

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. Complete submission and satisfactory review of DD/SHC phase review documents. Current application submission materials are incomplete, and no responses have been provided to completed DASNY DD/SHC review comments to date. [DAS]

Approval conditional upon:

1. This project must be completed by **September 15, 2029**, 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, 2025**, and construction must be completed by **June 15, 2029**, 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. This project is approved to be initially funded with Northwell Health, Inc. Obligated Group equity, with the prospect that the project will be 86.85% percent financed as part of Northwell Health, Inc. Obligated Group tax-exempt bond financing through the Dormitory Authority of the State of New York (DASNY). The bond issue is expected to include a 5% interest rate and a 30-year term. Financing is conditioned upon the Department having the opportunity to review the final financing proposal in advance to ensure that it meets approval standards. [BFA]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

Council Action Date

February 6, 2025

Need Analysis

Project Description

South Shore University Hospital is a 325-bed tertiary hospital at 301 East Main Street, Bay Shore, New York (Suffolk County). The applicant is proposing a project that supersedes CON 201151 and will include the addition of 30 intensive care unit (ICU) beds and their associated support spaces on the 6th floor. The original application approved the addition of 60 medical surgical beds, 6 new operating rooms, 2 new endoscopy rooms, 41 prep, and recovery/PACU bays/rooms, and additional renovations.

Background and Analysis

The primary service area for this project is Suffolk County. The hospital's community is predominately the neighborhoods of Bay Shore, Brentwood, and Central Islip. The population of Suffolk County population is estimated at 1,524,486 and the 65+ population is estimated at 263,382 based on 2022 American Community Survey data. The total population is expected to decrease to 1,490,674 by 2029 but the 65+ population is expected to increase to 353,304 per projection data from the Cornell Program on Applied Demographics, a decrease of 2.2% and an increase of 34.1%.

Demographics	Suffolk County	New York State
Total Population – 2022 Estimate	1,524,486	19,994,379
Hispanic or Latino (of any race)	20.6%	19.5%
White (non-Hispanic)	65.1%	53.8%
Black or African American (non-Hispanic)	7.0%	13.8%
Asian (non-Hispanic)	4.2%	8.8%
Other (non-Hispanic)	3.1%	4.1%

Source: 2022 American Community Survey (5-Year Estimates Data Profiles)

In 2022, 95.6% of the population of Suffolk County had health coverage as follows:

Employer plans	57.5%
Medicaid	11.9%
Medicare	13.1%
Non-group plans	12.7%
Military or VA plans	0.449%

Source: Data USA

The table below provides current and projected payor mix data for inpatient and outpatient services.

Applicant Projected Payor Mix						
Payor	Current	Year One	Year Three	Current	Year One	Year Three
	Inpatient			Outpatient		
Commercial	26.01%	26.30%	26.41%	29.69%	29.69%	29.69%
Medicare	44.15%	44.63%	44.85%	25.23%	25.23%	25.23%
Medicaid	27.81%	27.11%	26.81%	36.01%	36.01%	36.01%
Charity Care	0.51%	0.51%	0.51%	2.19%	2.19%	2.19%
Other	1.52%	1.45%	1.42%	6.88%	6.88%	6.88%

This project aims to accommodate growing inpatient care needs within the service area, reduce wait times, and reduce risks to patient safety while improving patient experience and quality. South Shore is licensed for 44 critical care beds (10 CCUs and 34 ICUs). The addition of 30 ICU beds, which were approved for shelled space in CON 201151 will increase the ICU beds to 64.

South Shore University Hospital Inpatient Beds			
Bed Type	Current Beds	Bed Change	Beds After Project Completion
Coronary Care	10		10
Intensive Care	34	30	64
Maternity	29		29
Medical / Surgical	235	60	295
Neonatal Intermediate Care	11		11
Pediatric	6		6
Total	325		415

Source: HFIS

According to the applicant, the increased demand for services has strained their resources. They report being above 100% acute care occupancy for 196 out of 365 days in 2023. For 137 days the hospital was above capacity with an excess of 10 or more patients in need of an acute or critical care bed. There were 88 days within 2023 where the ICU capacity exceeded the applicant's number of operating ICU beds. The table below provides historical SPARCS data and applicant data.

South Shore University Hospital Inpatient Beds, Average Daily Census, Occupancy												
		2021		2022		2023			Year One*		Year Three*	
Service Category	Beds 2024	ADC	Occ.	ADC	Occ.	ADC	Occ.	Projected Beds	ADC	Occ.	ADC	Occ.
Med/Surg	279	257.9	92.4%	257.4	92.3%	263.2	94.3%	369	355.2	96.3%	381.0	103.2%
Obstetric	29	14.9	51.4%	17.0	58.7%	18.0	62.0%	29	29	99.9%	31.1	107.1%
Pediatric	6	0.7	11.8%	1.4	23.8%	1.3	21.2%	6	3.3	55.5%	3.6	59.5%
High-Risk Neonates	11	10.6	96.6%	11	99.9%	12.1	109.8%	11	9.2	83.7%	9.9	89.8%
Total	325	290.4	89.4%	294.3	90.5%	301.6	92.8%	415	396.7	95.6%	425.6	102.6%

Source: Applicant (SPARCS data, based on MS-DRG's*)

The demand for services also impacts the Emergency Department (ED). The applicant reports on average 36 patients being held within the ED awaiting inpatient beds. Below is a table showing the applicant's Emergency Department utilization and wait times for PACU recovery, time to see a provider, ED Holds, and time to an inpatient bed. The total ED bays include 9 specialty bays.

South Shore University Hospital Emergency Department Utilization							
	Years					PROJECTED	
	2019	2020	2021	2022	2023	Year 1	Year 3
Total Bays	73	73	73	73	73	73	73
Visits	74,555	59,089	83,931	77,588	79,520	81,508	83,546
Visits Per Bay	1,021	809	1,150	1,063	1,089	1,117	1,144
Total Number of Operating Rooms	10	10	12	12	14	20	20
Number of OR Procedures (Cases)	7,837	6,393	7,664	8,608	9,960	12,773	14,166
Procedures (Cases) per OR	784	639	639	717	692	639	708
Arrival Time in ED to Time Seen by Provider (Minutes)	42	28	31	40	47	54	61
Average Time from Admission to Inpatient Bed (Minutes)	981	1,086	1,228	1,199	1,132	120	300
Average ED Holds	19	27	40	38	34	3	15
Average PACU Recovery Time (Minutes)	133	132	130	120	77	130	120

Source: Applicant

The lack of critical care beds requires other hospital areas to make adjustments to care for high-acuity patients. The applicant provided the data below to show how their undersized critical care is impacting areas of the facility. In 2023, they noted critical care patients being held in the following areas:

- General medical/surgical units – which creates delays in placing non-critical care patients.
- Emergency Department – which contributes to high numbers of ED holds.
- PACU – post-operative patients cannot be moved from the OR to PACU which then creates backup and OR delays which prevent the start of new surgical cases.
- Cardiac Cath Lab – patients remain in the recovery area awaiting beds.

South Shore also serves as the major destination for patient transfers from surrounding Northwell hospitals within the Long Island region. In 2023, approximately 1,400 transfer patients were admitted from Peconic Bay Medical Center, Plainview Hospital, Mather Hospital, Huntington Hospital, and Syosset Hospital. Most of these patients were transferred in due to stroke/brain hemorrhage and coronary artery disease. The average length of stay for med/surg services was 4.5 days and 2.2 days for intensive care services. South Shore also serves as the cardiac surgery backup facility for cardiac catheterization labs within Peconic Bay Medical Center, Mather Hospital, and Plainview Hospital, with 129 cardiac transfers in 2023. Overall, there is an increased reliance on South Shore for care both within the service area and among surrounding hospitals for additional med/surg and ICU bed capacity.

Conclusion

The addition of ICU beds combined with additional medical/surgical beds will enable the applicant to serve Suffolk County's increasingly diverse and elderly population while addressing the increased reliance on South Shore from both the community and surrounding hospitals.

Program Analysis

Project Proposal

This is a superseding application proposed to include the addition of 30 intensive care unit (ICU) beds and their associated support spaces on the 6th floor. This expansion will significantly enhance the hospital's capacity to provide critical care services.

The proposed pavilion will add 60 state-of-the-art, private, medical-surgical patient rooms, 6 new operating rooms, 2 new endoscopy rooms, 41 prep and recovery/PACU bays/rooms, and decentralized charting stations. Additionally, the project includes a new main entry with reception and security, a cafe, shell space for future development, and appropriate engineering support. Upon completion, South Shore Hospital's licensed bed complement will increase to 415.

The following table shows the projected FTEs following Year One and Year Three after completion of this project:

Position	Year One	Year Three
Management and Supervision	229.5	242.3
Technician and Specialist	270.1	270.1
Registered Nurses	1077.0	1198.9
Licensed Practical Nurses	1.4	4.4
Aides, Orderlies & Attendants	374.1	410.8
Physicians	3.5	3.5
PGY Physicians	64.4	64.4
Physicians' Assistants	136.6	151.5
Nurse Practitioners	31.6	31.6
Social Workers and Psychologists	19.5	19.5
Physical Therapists and PT Assistants	17.7	17.7
Occupational Therapists and OT Assistants	1.9	1.9
Speech Therapists and Speech Assistants	3.8	3.8
Other Therapists and Assistants	44.7	44.7
Clerical and Other Administrative	213.9	213.9
Infection Control, Environment and Food Service	278.4	304.4
Other	275.2	275.2
Totals	3043.3	3258.6

Compliance with Applicable Codes, Rules, and Regulations

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

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 South Shore University Hospital (SSH), in Suffolk County, is requesting approval to include an additional 30 intensive care unit (ICU) beds and their associated support spaces on the 6th floor. This project will strengthen SSH's ability to meet the needs of the increasingly diverse and elderly population in Suffolk County.

The SSH 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 Use Disorders
- Promoting Healthy Women, Infants, and Children

The proposed project will enhance access to inpatient care; however, SSH's application did not explicitly mention any of the selected priorities in their most recent 2022-2024 Community Service Plan (CSP).

According to the latest available report, SSH spent \$11,506,889 on community health improvement services in 2022, representing 1.2% 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

The total project cost under CON 242247, and amended and superseded CON 201151 is \$529,822,263, broken down as follows:

<u>Category</u>	<u>Original Article 28</u>	<u>Add 30 ICU Beds Article 28</u>	<u>Revised Shell Space</u>	<u>Revised Project Total</u>
New Construction	\$241,399,993	\$54,485,264	\$13,668,772	\$309,554,029
Renovation and Demolition	1,328,940	696,960	0	2,025,900
Site Development	21,743,401	0	0	21,743,401
Temporary Utilities	2,247,986	0	0	2,247,986
Asbestos Abatement	1,000,000	0	0	1,000,000
Design Contingency	24,998,622	5,176,100	1,298,533	31,473,255
Construction Contingency	14,377,234	2,724,263	683,439	17,784,936
Planning Consultant Fees	5,289,447	1,634,558	410,063	7,334,068
Architect/Engineering Fees	21,157,787	4,358,821	1,096,582	26,613,190
Construction Manager Fees	10,230,249	2,724,263	683,439	13,637,951
Other Fees (Consultant)	10,578,893	2,724,263	683,439	13,986,595
Moveable Equipment	31,953,290	12,109,685	0	44,062,975
Telecommunications	9,000,000	2,442,138	0	11,442,138
Financing Costs	19,940,116	4,176,977	0	24,117,093
CON Fee	2,000	0	0	2,000
Additional Processing Fee	<u>2,283,853</u>	<u>512,893</u>	<u>0</u>	<u>2,796,746</u>
Total Project Cost	\$417,531,811	\$93,766,185	\$18,524,267	\$529,822,263

Reimbursable project costs are limited to \$511,297,996 (\$417,531,811+93,766,185).

The applicant's financing plan appears as follows:

Equity	\$69,654,066
Tax-exempt bonds (DASNY) (5%, 30 years)	<u>460,168,197</u>
Total	\$529,822,263

Morgan Stanley has submitted a letter of interest to underwrite the bond financing.

The project will initially be funded with Northwell Health, Inc. Obligated Group accumulated funds or interim financing through bank revolving credits. Hence, financing is conditioned upon the Department's ability to review the final bond financing proposal in advance to ensure it meets approval standards. BFA Attachment A, Northwell Health, Inc. 2022-2023 Consolidated Certified Financial Statements and their June 30, 2024, Internal Financial Statements, indicate sufficient resources to fund the project cost.

Operating Budget

The applicant has submitted an operating budget, in 2025 dollars, for the first and third years, as summarized below:

	<u>Current Year.</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>
Revenues-Inpatient:						
Medicaid FFS	\$15,260	\$15,260,000	\$17,947	\$20,137,000	\$18,982	\$22,399,000
Medicaid MC	\$11,495	68,881,000	\$13,365	87,677,000	\$14,131	96,486,000
Medicare FFS	\$18,622	124,990,000	\$21,679	165,195,000	\$22,897	184,530,000
Medicare MC	\$20,513	90,012,000	\$23,289	117,142,000	\$24,378	130,131,000
Commercial MC	\$48,571	317,799,000	\$47,345	353,054,700	\$46,885	369,733,200
All Other	\$21,061	<u>7,982,000</u>	\$24,288	<u>9,958,000</u>	\$25,562	<u>10,787,000</u>
Sub-Total		\$624,924,000		\$753,163,700		\$814,066,200
Revenues-Outpatient:						
	<u>Per Visits</u>	<u>Current Yr.</u>	<u>Per Visit</u>	<u>Year One</u>	<u>Per Visit</u>	<u>Year Three</u>
Medicaid FFS	\$314	\$1,533,000	\$314	\$1,533,000	\$314	\$1,533,000
Medicaid MC	\$486	14,806,000	\$486	14,806,000	\$486	14,806,000
Medicare FFS	\$1,368	19,078,000	\$1,368	19,078,000	\$1,368	19,078,000
Medicare MC	\$1,458	15,771,000	\$1,458	15,771,000	\$1,458	15,771,000
Commercial MC	\$3,237	94,263,000	\$3,237	94,263,000	\$3,237	94,263,000
All Other	\$469	<u>3,162,000</u>	\$469	<u>3,162,000</u>	\$469	<u>3,162,000</u>
Subtotal-outpatient		\$148,613,000		\$148,613,000		\$148,613,000
Other Operating*		<u>\$12,514,800</u>		<u>\$12,514,800</u>		<u>\$12,514,800</u>
Total Revenue		\$786,051,800		\$914,291,500		\$975,194,000
Expenses						
Operating		\$670,462,500		\$778,164,900		\$815,139,300
Capital		<u>42,324,100</u>		<u>92,560,614</u>		<u>91,763,317</u>
Total Expenses		\$712,786,600		\$870,725,514		\$906,902,617
Net Income (Loss)		\$73,265,200		\$43,565,986		\$68,291,383
Inpatient discharges		25,142		28,343		29,865
Outpatient Visits		98,110		98,110		98,110

*Other Operating: Risk Pool and Capitation \$6,702,500, Cafeteria and Gift Shop \$1,506,900, Grants \$1,118,700, and Other \$3,186,700.

The following is noted concerning the submitted budget:

- The current year reflects the Hospital's 2023 revenue and expenses.
- Revenues and expenses are based on South Shore University Hospital's experience and incorporate data from Northwell Health's internal cost accounting system.
- The number and mix of staff are based on the Hospital's clinical and operational personnel using existing staffing models.
- Utilization is based on the Hospital's current surgery experience.

Utilization by payor source is as follows:

<u>Inpatient</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Disch.</u>	<u>%</u>	<u>Disch.</u>	<u>%</u>	<u>Disch.</u>	<u>%</u>
Medicaid FFS Commercial	1,000	3.98%	1,122	3.96%	1,180	3.95%
Medicaid MC	5,992	23.83%	6,560	23.15%	6,828	22.86%
Medicare FFS	6,712	26.70%	7,620	26.88%	8,059	26.98%
Medicare MC	4,388	17.45%	5,030	17.75%	5,338	17.87%
Commercial MC	6,543	26.01%	7,457	26.30%	7,886	26.41%
Charity	128	0.51%	144	0.51%	152	0.51%
All Other	<u>379</u>	<u>1.52%</u>	<u>410</u>	<u>1.45%</u>	<u>422</u>	<u>1.42%</u>
<u>Total by Payor</u>	25,142	100%	28,343	100%	29,865	100%

<u>Outpatient</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid FFS Commercial	4,887	4.98%	4,887	4.98%	4,887	4.98%
Medicaid MC	30,440	31.03%	30,440	31.03%	30,440	31.03%
Medicare FFS	13,946	14.21%	13,946	14.21%	13,946	14.21%
Medicare MC	10,815	11.02%	10,815	11.02%	10,815	11.02%
Commercial MC	29,124	29.69%	29,124	29.69%	29,124	29.69%
Charity	2,149	2.19%	2,149	2.19%	2,149	2.19%
All Other	<u>6,749</u>	<u>6.88%</u>	<u>6,749</u>	<u>6.88%</u>	<u>6,749</u>	<u>6.88%</u>
<u>Total by Payor</u>	98,110	100%	98,110	100%	98,110	100%

Capability and Feasibility

Total project costs of \$529,822,263 will be met with \$69,654,066 in equity from South Shore University Hospital operations, with the \$460,168,197 balance financed with a tax-exempt bond issued through the Dormitory Authority of the State of New York (DASNY) at an interest rate of 5% for a thirty-year term. Morgan Stanley has provided a letter of interest to underwrite the bond financing. Northwell intends to issue permanent debt in periodic increments to finance major projects.

The working capital contribution is estimated at \$37.3 million based on two months of third-year incremental expenses of \$32.3 million plus a projected loss of \$5.0 million funded through operations. The incremental budget projects a loss in the first and third years of (\$29,699,214) and (\$4,973,817), respectively. Notably, depreciation (non-cash expense) of \$25,997,640 was included in both years. The enterprise budget shows a surplus of \$43,565,986 in the first year and \$68,291,383 in the third year. Northwell Health, Inc.'s senior vice president and chief financial officer has submitted a letter committing to supporting the projected incremental losses. The budget appears reasonable.

BFA Attachment A, Northwell Health, Inc.'s 2022-2023 Consolidated Certified Financial Statement shows \$3.35 billion in working capital and \$7.194 billion in net assets. They generated \$197.7 million in excess operating income over expenses before non-operating gains and losses, which, when added, increased the net income to \$915.2 million. On June 30, 2024, the Internal Financial Statements showed positive working capital, net income, and net assets, which have grown to \$7.721 billion.

Conclusion

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

Health Equity Impact Assessment

Health Equity Impact Assessment Summary

The Applicant intends to complete a hospital construction project for 60 medical/surgical beds, 30 intensive care unit (ICU) beds, 6 operating rooms, 2 endoscopy rooms, and 49 post-anesthesia care unit (PACU) bays. The addition of 30 ICU beds will resolve bed capacity issues and improve patient care in Suffolk County. This project intends to improve access to high acuity care for medically underserved communities in the Applicant's service area, specifically for groups with high service utilization rates; adults aged 65 or older, residents identifying as Hispanic or Latino and Black or African American, lower-income individuals, and Asian residents. There is also an increasing number of older adults at risk for serious illness.

It is the belief of the Independent Entity that this project will improve the general quality of care for ICU patients but will have little impact on quality of life and overall health equity for the medically underserved groups in the community. The project has the support of the community, and although staffing concerns for the additional beds were raised, the Applicant ensured that there will be adequate staff to meet the needs of the residents. The assessment did not address concerns voiced by the community about parking.

Conclusion

Approval is recommended based on the information and analysis presented in the Health Equity Impact Assessment and the applicant's mitigation plan, which demonstrates the proposed project will not result in any significant adverse health equity impacts.

Attachments

BFA Attachment A	Northwell Health, Inc., 2022-2023 certified financial statements and the June 30, 2024, internal financial statements.
OHEHR Attachment	Health Equity Impact Assessment



Department of Health

Public Health and Health Planning Council

Project # 231189-E

St. Michael's Home, Inc. d/b/a St. Michael's Home Care

Program: LHCSA
Purpose: Establishment

County: Nassau
Acknowledged: May 19, 2023

Executive Summary

Description

St. Michael's Home, Inc. d/b/a St. Michael's Home Care requests approval to establish a new Licensed Home Care Services Agency (LHCSA) pursuant to Article 36 of the Public Health Law. This LHCSA will serve only the residents of its affiliated Assisted Living Program, St. Michael's Home, located at 1220 Front Street, Uniondale, New York 11553.

OALTC Recommendation Approval

Need Summary

In accordance with 10 NYCRR §765-1.16(c)(3), this application is exempt from the public need review as the agency is affiliated with an Assisted Living Program (ALP), as attested to by the applicant.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in 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 conditional upon:

1. This project must be completed by one year from the date of the approval letter, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date.
[PMU]

Council Action Date

February 6, 2025

Program Analysis

Background

St. Michael's Home, Inc. d/b/a St. Michael's Home Care requests approval to establish a new Licensed Home Care Services Agency (LHCSA) that will only serve the residents of its affiliated Assisted Living Program, St. Michael's Home, located at 1220 Front Street, Uniondale, New York 11553.

The applicant is proposing to serve the residents of the following county:

- Nassau

The applicant is proposing to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care Aide

Character and Competence Review

St. Michael's Home, Inc. d/b/a St. Michael's Home Care will be comprised of the following board members:

Haeda Mihaltses (President, Board of Directors)

Employment:

- Director, Sterling Project Development (January 2021 – Present)

Affiliations

- St. Michael's Home (January 2007 – Present)

Warren Herz (Treasurer, Board of Directors)

Employment:

- President and Managing Partner, Precision Approach Solutions, Inc. (April 2021 – Present)

Affiliations

- No offices held or ownership interests in Health Facilities.

Peter Lambros (Vice President, Board of Directors)

Employment:

- Managing Partner, Coritsidis & Lambro, PLLC (1993 – Present)

Affiliations

- St. Michael's Home, Inc. (2008 – Present)

Eleni Constantinides (Secretary, Board of Directors)

Employment:

- Retired in August 2009

Affiliations

- St. Michael's Home, Inc. (2019 – Present)

Nikitas Drakotos (Board Member)

Employment:

- President, M&N Management (1970 – Present)

Affiliations:

- St. Michael's Home, Inc. (1990 – Present)

Efthalia Katos (Board Member)

Employment:

- Retired

Affiliations

- St. Michael's Home, Inc. (2000 – Present)

Savas Konstantinides (Board Member)

Employment:

- President, Omega EMS Brokerage (1976 – Present)

Affiliations:

- St. Michael's Home, Inc. (2010 – Present)

Konstantinos (Dean) Mihaltses (Board Member)

Employment:

- Retired March 2022

Affiliations:

- St. Michael's Home, Inc. (2012 – Present)

Manny Kratsios (Board Member)

Employment:

- Retired February 2023

Affiliations:

- St. Michael's Home, Inc. (2017 – Present)

John Lardas (Board Member)

Employment:

- Presiding Priest, The Archangel Michael Greek Orthodox Church (2016 – Present)

Affiliations:

- St. Michael's Home, Inc. (2014 – Present)

Spiro Dongaris (Board Member)

Employment:

- Principal, Athenica Environmental Services, Inc. (1987 – Present)

Affiliations:

- St. Michael's Home, Inc. (2023 – Present)

Antonia Makkos (Board Member)

Employment:

- Retired 1992

Affiliations:

- St. Michael's Home, Inc. (2012 – Present)

James Lolis (Board Member)

Employment:

- Medical Director, Northwell Health System (1996 – Present)

Affiliations:

- St. Michael's Home, Inc. (2023 – Present)

Nicholas Tjartjalis (Board Member)

Employment:

- Owner, NTA Design Group, LLC (2003 – Present)

Affiliations:

- St. Michael's Home, Inc. (2003 – Present)

Stamatiki Valiotis (Board Member)

Employment:

- Real Estate Executive and Principal, Alma Realty (1996 – Present)

Affiliations:

- St. Michael's Home, Inc. (2018 – Present)

Maria Skiadas (Board Member)

Employment:

- Retired 1997

Affiliations:

- St. Michael's Home, Inc.

Gregory Panos (Board Member)

Employment:

- Parish Priest, Transfiguration of Christ Church (2019 – Present)

Affiliations:

- St. Michael's Home, Inc. (2023 – Present)

Peter Orfanakos (Board Member)

Employment:

- Priest, Saint Barbara Greek Orthodox Church (1996 – Present)

Affiliations:

- St. Michaels Home, Inc. (2022-Present)

Irene Hotzoglou (Board Member)

Employment:

- Owner/Manager, Carle Place Diner (1986 – Present)

Affiliations:

- St. Michael's Home, Inc. (2023 – Present)

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

Facility Compliance/Enforcement

The information provided by the Center of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety, and welfare of patients and, to prevent recurrent code violations.

The information provided by the Center for Residential Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm, maintain the health, safety, and welfare of residents, and to prevent recurrent code violations.

Need Review

In accordance with 10 NYCRR §765-1.16(c)(3), this application is exempt from the public need review as the agency is only serving patients associated with the Assisted Living Program (ALP), as attested to by the applicant.

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 A for the agency's Workforce Summary.

Conclusion

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.

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

OALTC Attachment A	Workforce Summary
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Department
of Health

Public Health and Health Planning Council

Project # 241073-E

First Class Care, LLC d/b/a Homestead LHCSA

Program: LHCSA
Purpose: Establishment

County: Queens
Acknowledged: February 21, 2024

Executive Summary

Description

First Class Care, LLC d/b/a Homestead LHCSA, a limited liability company, requests approval to obtain licensure to establish a new Licensed Home Care Services Agency (LHCSA) under Article 36 of the Public Health Law to provide home care services exclusively to residents of New Homestead Home for Adults Inc.'s Assisted Living Program.

OALTC Recommendation

Approval

Need Summary

In accordance with 10 NYCRR §765-1.16(c)3, 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 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 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 conditional upon:

1. This project must be completed by one year from the date of the approval letter, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]

Council Action Date

February 6, 2025

Program Analysis

Background

First Class Care, LLC d/b/a Homestead LHCSA, requests approval to obtain licensure to establish a new Licensed Home Care Services Agency (LHCSA) to serve residents of the Assisted Living Program (ALP) to be operated by New Homestead Home for Adults, Inc. The LHCSA and the ALP will have identical membership.

The applicant proposes to serve the residents of the following county from an office located at 82-45 Grenfell Street, Kew Gardens, New York 11415:

- Queens

The applicant proposes to provide the following healthcare services:

- Nursing
- Home Health Aide
- Personal Care Aide

Character and Competence Review

First Class Care, LLC d/b/a Homestead LHCSA will be comprised of the following individuals:

Jacob Schonberger – 99%

Employment

- New Homestead Home for Adults (January 1973 – Present)

Affiliations

- New Homestead Home for Adults (Adult Care Facility), (January 1973 - Present)
- Ideal Care SP, LLC (LHCSA), (January 2004 - December 2016)
- The New Golden Acres SP, LLC (Adult Care Facility), (January 2004 - December 2016)
- Golden Acres Home for Adults SP, LLC (LHCSA), (January 2004 - December 2016)

Gloria Schonberger – 1%

Employment

- Self-Employed, Director, Independent Senior Living (January 1972 – Present)

Affiliations

- New Homestead Home for Adults (January 2017 - Present)

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

Facility Compliance/Enforcement

A review of the compliance history of the above-mentioned affiliated facilities reveals the following:

- New Homestead Home for Adults, Inc. was fined \$3,500 pursuant to a Stipulation and Order for inspection findings on Feb 8, 2019, and May 26, 2020, for violations of Article 7 of the Social Services Law and 18 NYCRR Part 486.

Need Review

In accordance with 10 NYCRR §765-1.16(c)(3), this application is exempt from Public Need review as the agency is only serving patients associated with the New Homestead Home for Adults, Inc. Assisted Living Program (ALP), as attested to by the current operator.

Financial Review

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.

Workforce Review

The applicant's response regarding the recruitment and retention of the workforce was adequately addressed in their project narrative. Please refer to Attachment A for the agency's Workforce Response.

Conclusion

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.

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

OALTC Attachment A	Workforce Response
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Project # 241149-E
Westchester PACE Program LLC

Program: LHCSA
Purpose: Establishment

County: Westchester
Acknowledged: April 12, 2024

Executive Summary

Description

Westchester PACE Program LLC ("Westchester PACE"), a limited liability company wholly owned by Hudson Palisades PACE, Inc., requests approval to establish a new Licensed Home Care Services Agency (LHCSA) under Article 36 of the Public Health Law.

The LHCSA will exclusively serve enrollees of Westchester PACE's Article 44 Program of All-Inclusive Care for the Elderly (PACE). Westchester PACE Program LLC has applied to be certified as a PACE provider under Article 44 of the Public Health Law and the application is currently under review by the Office of Health Insurance Programs.

OALTC Recommendation
Approval

Need Summary

In accordance with 10 NYCRR §765-1.16(c)(3), this application is exempt from the Public Need review as the agency will exclusively serve a Program of All-Inclusive Care for the Elderly (PACE).

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3605(4).

Financial Summary

In accordance with 10 NYCRR §765-1.2(b)3, the applicant has submitted financial documents prepared by a Certified Public Accountant (CPA) demonstrating the financial feasibility of the agency.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Aging and Long-Term Care

Approval conditional upon:

This project must be completed by one year from the date of the approval letter, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]

Council Action Date

February 6, 2025

Program Analysis

Background

Westchester PACE Program LLC requests approval to establish a new Licensed Home Care Services Agency (LHCSA) under Article 36 of the Public Health Law.

The LHCSA will exclusively serve enrollees of Westchester PACE's Article 44 Program of All-Inclusive Care for the Elderly (PACE). Westchester PACE Program LLC has applied to be certified as a PACE provider under Article 44 of the Public Health Law and the application is currently under review by the Office of Health Insurance Programs.

The LHCSA will serve PACE enrollees in the following county from an office located at 1 Wartburg Place, Mount Vernon, New York 10522:

- Westchester County

The applicant will provide the following healthcare services:

- Nursing
- Personal Care Aide

Character and Competence Review

Westchester PACE Program, LLC will be manager-managed and will be comprised of the following individuals:

James Rosenman (Manager – Westchester PACE Program, LLC)

Employment

- CEO, Andrus on Hudson (RHCF) (January 2019 – Present)

Affiliations

- No offices held or ownership interest in any healthcare facilities.

Elizabeth Shogren (Board Member)

Employment

- Owner, Moon Shogren, LLC (2013 – Present)

Affiliations

- Andrus on Hudson (RHCF) (2009 – Present)

Jocelyn Downie (Board Member)

Employment

- Professor, Dalhousie University (1996 – Retired June 2023)

Affiliations

- Andrus on Hudson (RHCF) (2014 – Present)

Jeffrey George (Board Member)

Employment

- System Engineer Manager, Leidos (February 2003 – Present)

Affiliations

- Andrus on Hudson (RHCF) (2017 – Present)

Alexandra Cardon (Board Member)

Employment

- Chief Curator of Samuel Bak Museum, University of Nebraska Omaha (January 2017 – Present)

Affiliations

- Andrus on Hudson (RHCF) (2016 – Present)

Robert Cadoux (Board Member)

Employment

- Attorney, Self-employed Attorney (1982 – 2022)

Affiliations

- Andrus on Hudson (RHCF) (2004 – Present)

Robert Hedlund (Board Member)

Employment

- President, Eldorado Software Corporation (December 2016 – Present)

Affiliations

- Andrus on Hudson (RHCF) (February 2009 – Present)

Andrew Sherman (Board Member)

Employment

- General Counsel, BankLeumi USA (September 2018 – Retired March 2022)

Affiliations

- Andrus on Hudson (RHCF) (2014 – Present)

Davis Benedict (Board Member)

Employment

- Emulator/Department Head, St. Edward's School (August 2017 – Retired June 2021)

Affiliations

- Andrus on Hudson (RHCF) (2014 – Present)

Lindsey Griffith (Board Member)

Employment

- Senior Director, United States, Clean Air Task Force (May 2020 – Present)

Affiliations

- Andrus on Hudson (RHCF) (January 2020 – Present)

Dozene Guishard (Board Member)

Employment

- Director, Health and Wellness Initiatives, Carter Burden Network (March 2014 – Present)

Affiliations

- Andrus on Hudson (RHCF) (January 2020 – Present)

Colette Phipps (Board Member)

Employment

- Director of Program Development and Research, Westchester County Department of Senior Programs and Services (October 2000 – Present)
- Adjunct Professor, Fordham University (2008 – Present)

Affiliations

- Andrus on Hudson (RHCF) (January 2022 – Present)

Kimberly Kaupe (Board Member)

Employment

- Founder, Bright Ideas Only, LLC (January 2021 – Present)

Affiliations

- Andrus on Hudson (RHCF), (January 2023 – Present)

Marc de Venoge (Board Member)

Employment

- Vice President, Finance and Investing, Surdna Foundation, Inc. (October 1990 – Present)

Affiliations

- Andrus on Hudson (RHCF) (November 1997 – Present)

A search of the individuals and entities named above revealed no matches in either the Medicaid Disqualified Provider List or the OIG Exclusion List.

Facility Compliance/Enforcement

A review of the compliance history of the above-mentioned affiliated facilities reveals the following:

- Andrus on Hudson was fined \$6,000 pursuant to a stipulation and order from a March 17, 2023 survey for violations of 10 NYCRR §415.19(a)(1-3), Infection Control.

The information provided by the Center for Residential Surveillance 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)(3), this application is exempt from the Public Need review as the agency will exclusively serve a Program of All-Inclusive Care for the Elderly (PACE).

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 A.

Conclusion

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.

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

OALTC Attachment A	Workforce Summary
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Department
of Health

Public Health and Health Planning Council

Project # 232100-E

Oyster Bay Manor Home Care, Inc. d/b/a Oyster Bay Manor Home Care

Program: LHCSA
Purpose: Establishment

County: Nassau
Acknowledged: October 31, 2023

Executive Summary

Description

Oyster Bay Manor Home Care, Inc. d/b/a Oyster Bay Manor Home Care, a Licensed Home Care Services Agency (LHCSA) is requesting approval for a 25% ownership transfer from one deceased shareholder to the remaining shareholder.

OALTC Recommendation

Approval

Need Summary

In accordance with 10 NYCRR §765-1.16(c)(3), 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 §765-1.2(b)(3), the applicant has submitted financial documents prepared by a Chief Financial Officer (CFO) 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 Conditional Upon:

1. This project must be completed by one year from the date of the approval letter, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date.
[PMU]

Council Action Date

February 6, 2025

Program Analysis

Background

Oyster Bay Manor Home Care, Inc. d/b/a Oyster Bay Manor Home Care, a Licensed Home Care Services Agency (LHCSA) is requesting approval for a 25% ownership transfer from one deceased shareholder to the remaining shareholder.

The current membership of Oyster Bay Manor Home Care, Inc. d/b/a Oyster Bay Manor Home Care was as follows:

- Rachel Dombrowsky (75%)
- Nicholas Mormondo (25%)

The proposed membership of Oyster Bay Manor Home Care, Inc. d/b/a Oyster Bay Manor Home Care will be as follows:

- Rachel Dombrowsky (100%)

The applicant will continue to serve the residents of the following county from an office located at 150 South Street Oyster Bay, NY 11771:

- Nassau

The applicant will continue to provide the following healthcare services:

- Home Health Aide
- Nursing
- Personal Care

Character and Competence Review

Oyster Bay Manor Home Care, Inc. d/b/a Oyster Bay Manor Home Care will be comprised of the following individual:

Rachel Dombrowsky – 100%

Employment:

- Administrator, Oyster Bay Manor (October 1993 – Present)
- Operator/Owner, Harbor House Assisted Living (January 2002 – Present)

Affiliations:

- Oyster Bay Manor (Adult Care Facility), (January 1994-Present)
- Harbor House Assisted Living (Adult Care Facility), (January 2002 – Present)
- Brookville Home Care LLC (LHCSA), (January 2014 – Present)

A search of the individual and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

Facility Compliance/Enforcement

The information provided by the Center 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.

A review the compliance history of the above-mentioned affiliated facilities reveals the following:

- Oyster Bay Manor was fined \$780 pursuant to a Stipulation and Order from a December 16, 2016 and March 16, 2017 survey for violations of Article 7 of Social Services Law and 18 NYCRR §487.4(b)(9).

Need Review

In accordance with 10 NYCRR §765-1.16(c)(3), 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(b)3 the applicant has submitted financial documents prepared and signed by the Chief Financial Officer (CFO) demonstrating financial feasibility of the agency.

Workforce Review

The applicant's response regarding the recruitment and retainment of the workforce was adequately addressed. Please refer to Attachment A for the agency's Workforce Summary.

Conclusion

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.

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

OALTC Attachment A	Workforce Response
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Department
of Health

Public Health and Health Planning Council

Project # 241136-E

Vista on 5th Corp. d/b/a Vista on 5th

Program: LHCSA
Purpose: Establishment

County: New York
Acknowledged: April 15, 2024

Executive Summary

Description

The Vista on 5th Corp. d/b/a Vista on 5th is requesting approval for a corporate restructuring and the transfer of 100% interest to a new sole member, Cardinal Angelo Sodano Holy Land Foundation, Inc., an existing not-for-profit entity. The Licensed Home Care Services Agency (LHCSA) to be known as Vista on 5th will only serve patients associated with the Assisted Living Program (ALP), also named Vista on 5th. The LHCSA and the ALP will have identical membership.

There are no changes being proposed to the counties served or the healthcare services being provided.

OALTC Recommendation

Approval

Need Summary

In accordance with 10 NYCRR §765-1.16(c)(3), 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 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 conditional upon:

1. This project must be completed by one year from the date of the approval letter, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date.
[PMU]

Council Action Date

February 6, 2025

Program Analysis

Background

The Vista on 5th Corp. d/b/a Vista on 5th is requesting approval for a corporate restructuring and the transfer of 100% interest to a new sole member, Cardinal Angelo Sodano Holy Land Foundation, Inc. The Licensed Home Care Services Agency (LHCSA) will only serve patients associated with the Assisted Living Program (ALP), also named Vista on 5th.

There are no changes being proposed to the counties served or for the healthcare services being provided.

The applicant will continue to serve the residents of the following counties from an office located at 1261 Fifth Avenue, New York, New York 10029:

- Bronx
- Kings
- New York
- Queens

The applicant will continue to provide the following healthcare services:

- Nursing
- Personal Care
- Specialty – Assisted Living Program (ALP)

Character and Competence Review

The Vista on 5th Corp. d/b/a Vista on 5th will be comprised of the following board members:

Concetto Ruta (President)

Employment:

- Consultant, TCR Consulting (2013 – Present)
- Consultant/Management, Silver Solutions, LLC (January 2019 – December 2021)
- Consultant/Management, Boonton Care Center (January 2019 – December 2020)

Affiliations:

- Mountain Laurel Rehabilitation and Nursing (RHCF – Virginia), (July 2021 – Present)

Lorenzo Cesare (Vice President)

Employment:

- CFO, Knights Care, LLC (November 2023 – Present)
- Director of Finance, Hope Community, Inc. (April 2018 – October 2023)
- Director of Finance, Sky Management Services, LLC (September 2002 – April 2018)

Affiliations:

- No offices held or ownership interests in health facilities.

Chester Striplin (Secretary)

Employment:

- Retired (December 2017)
- Service Director, Newins Bay Shore Ford, Inc (January 1985 – December 2017)

Affiliations:

- No offices held or ownership interests in health facilities.

John Digilio Jr. (Treasurer & Board Member)

Employment:

- Retired (June 2012)

Affiliations:

- No offices held or ownership interests in health facilities.

Michael Webb (Board Member)

Employment:

- CEO, Language Fundamentals (October 2021 – Present)

Affiliations:

- No offices held or ownership interests in health facilities.

Leonard Walsh (Board Member)

Employment

- Chief Operating Officer, SBH Health System – (December 2007 – June 2021)
- Retired (June 2021)

Affiliations:

- SBH Health System (Hospital), (December 2007 – June 2021)

James Cameron (Board Member)

Employment:

- Retired (December 2021)
- Licensed Nursing Home Administrator, Ellis Hospital (April 2021 – November 2021)

Affiliations:

- No offices held or ownership interests in health facilities.

Anthony Lechich (Board Member)

Employment:

- Medical Director, ArchCare (July 1994 – Present)

Affiliations:

- No offices held or ownership interests in health facilities.

Patricia Francis (Board Member)

Employment:

- Retired (2009)

Affiliations:

- No offices held or ownership interests in health facilities.

Yves Ades (Board Member)

Employment:

- President, Ades Integrated Health Strategies – (2014 – Present)

Affiliations:

- No offices held or ownership interests in health facilities.

Rhonda Fleming (Board Member)Employment

- Retired (2015)

Affiliations:

- No offices held or ownership interests in health facilities.

Randy Cleghorne (Board Member)Employment:

- Chief Information Officer, Goodwill Industries of Greater New York – (November 2020 – Present)

Affiliations:

- No offices held or ownership interests in health facilities.

Greg Erber (Board Member)Employment:

- CEO, DZ Management – (2008 – Present)

Affiliations:

- No offices held or ownership interests in health facilities.

Nicole Atanasio (Board Member)Employment:

- President & CEO, Vista on 5th Corp – (February 2014 – Present)

Affiliations:

- No offices held or ownership interests in health facilities.

Facility Compliance/Enforcement

The State of Virginia responded to the out-of-state compliance request and noted that there is no history of enforcement for Mountain Laurel Rehabilitation and Nursing and that the facility is operating in compliance with all state regulations.

A review of the operations of SBH Health System for the time period indicated above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order BHS-18-005 for surveillance findings on 04/30/2018. Deficiencies were found under 10 NYCRR 405.7(b)(3) – Patient's Rights.

Need Review

In accordance with 10 NYCRR §765-1.16(c)(3), 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. Please refer to Attachment A for the agency's Workforce Summary.

Conclusion

A Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a Licensed Home Health Agency.

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

OALTC Attachment A	Workforce Summary
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Project # 232078-E
Brooklyn-Queens Nursing Home

Program: Residential Health Care Facility
Purpose: Establishment

County: Kings
Acknowledged: September 11, 2023

Executive Summary

Description

Brooklyn Queens Nursing Home, Inc., a 140-bed Residential Health Care Facility (RHCF) at 2749 Linden Blvd, Brooklyn, New York, requests approval for the transfer of 50% ownership interest from Leopold Berkowitz to Yaakov Klein.

The current and proposed ownership of Brooklyn Queens Nursing Home is as follows:

Current Operator	
Brooklyn-Queens Nursing Home, Inc.	
Member	Ownership %
Leopold Berkowitz	100%

Proposed Operator	
Brooklyn-Queens Nursing Home	
Members	Ownership %
Leopold Berkowitz	50%
Yaakov Klein	50%

OALTC 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

The purchase price of \$2,135,000 will be met with equity from the personal net worth of Yaakov Klein. Since there are no changes to the facility or the services provided, operating budgets were not reviewed as a part of this application.

Health Equity Impact Assessment

This project does not meet the requirements for a Health Equity Impact Assessment under Public Health Law §2802-B.

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 conditional upon:

1. This project must be completed by one year from the date of the recommendation letter, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date.
[PMU]

Council Action Date

February 6, 2025

Program Analysis

Project Description

	Existing	Proposed
Facility Name	Brooklyn-Queens Nursing Home	Same
Address	2749 Linden Blvd, Brooklyn, New York 11208	Same
RHCF Capacity	140 beds	Same
ADHCP Capacity	N/A	N/A
Type of Operator	Business Corporation	Same
Class of Operator	Proprietary	Same
Operator	Brooklyn-Queens Nursing Home, Inc. <u>Membership:</u> Leopold Berkowitz 100%	Brooklyn-Queens Nursing Home, Inc. <u>Membership:</u> Leopold Berkowitz* 50% Yaakov Klein** 50% *President **Vice President

Character and Competence – Assessment

Yaakov Klein lists concurrent employment as the Director of Operations for Bensonhurst Center for Rehabilitation and Healthcare in Brooklyn, NY, and as the Director of Operations of Fairview Nursing Care Center, Inc. in Forest Hills, NY. Previously, Yaakov was employed as a teacher with Derech Institute in Jerusalem, Israel. Yaakov Klein holds a bachelor's degree in Talmudic Studies from Yeshiva Machzikei Hadas and discloses the following healthcare facility ownership interests:

New York Nursing Homes

Bensonhurst Center for Rehabilitation and Healthcare (40%)	02/2012 to Present
Fairview Nursing Care Center (99%)	08/2021 to Present
Mayfair Care Center	Pending
Central Queens Rehabilitation Nursing Center	Pending
Fulton Commons Care Center, Inc.	Pending
Bridge View Nursing Home	Pending

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
Yaakov Klein	2	1	0%	1	0%

*Duration of Ownership as of 02/06/2025

Data date: 11/2024

New York. The proposed owner's portfolio includes ownership in two New York facilities. Both facilities have a CMS overall quality rating of average or higher.

Facility	Ownership Since	Overall	Health Inspection	Quality Measures	Staffing
New York					
Brooklyn-Queens Nursing Home	Subject Facility	*	*	****	**
Bensonhurst Center for Rehabilitation and Healthcare	Current	***	***	****	**
	02/2012	***	***	****	***
Fairview Nursing Care Center	Current	***	**	*****	***
	08/2021	****	***	*****	**

Data date: 11/2024

Enforcement History

New York

A review of the operations of Bensonhurst Center for Rehabilitation and Healthcare for the time period indicated above reveals no enforcements.

A review of the operations of Fairview Nursing Care Center for the time period indicated above reveals the following:

- The facility was fined \$18,000 pursuant to Stipulation and Order NH-24-027 for surveillance findings on 10/25/2021. Deficiencies were found under 10 NYCRR 415.19(a)(1), and (2) Infection Control. Specifically, the facility failed to establish and maintain an infection control program under which it investigates, controls, and takes action to prevent infections in the facility, and failed to implement appropriate universal precaution procedures for individual residents. This is evidenced by the facility's failure to cease indoor visitation during a COVID-19 outbreak at the facility; and failure to quarantine residents diagnosed with or exposed to someone diagnosed with COVID-19. A total of 9 violations. A federal CMP of payment denial was also assessed on 10/25/2021 for failure to provide and implement an infection prevention and control program under F880 at an F level.

Conclusion

The individual background review indicates the applicant has met the standards as set forth in Public Health Law §2801-a(3).

Financial Analysis

Background

The applicant is proposing no change to the operations as a result of this transaction. The financial performance prior to this application was satisfactory, and the entity is financially viable. Therefore, there are no operating budgets presented in this report.

Stock Purchase Agreement

The applicant has submitted an executed stock purchase agreement, which is summarized below:

Date	November 16, 2020
Purpose	The sale of 50% stock ownership of Brooklyn Queens Nursing Home
Seller	Leopold Berkowitz
Purchaser	Yaakov Klein
Purchase Price	\$2,135,000
Payment of Purchase Price	Cash at Closing

Capability and Feasibility

The purchase price of \$2,135,000 will be funded with equity from Yaakov Klein. There are no project costs associated with this application or changes to services provided. BFA Attachment A is the personal net worth statement of Yaakov Klein, indicating the availability of sufficient funds to meet the purchase price.

BFA Attachment B, Financial Summary of Brooklyn Queens Nursing Home's 2022-2023 Certified Financial Statements, indicates the entity had an average positive working capital position and net asset position for the period. The entity achieved an average income of \$207,438 in 2022, and the facility incurred an operating loss of \$2,329,169 in 2023. Losses in 2023 were due to increased nursing costs, and costs associated with a significant renovation scheduled for completion at the end of 2024. The applicant has indicated they've implemented steps to improve operations, such as making vendor payments within 90 days or less. As a result, the facility was able to lower added vendor interest and or late fees and payments. The facility provides more sub-acute care, wound care, and short-term rehabilitation services to residents, which is a higher acuity and should improve operations.

BFA Attachment C, 2022-2023 Financial Summaries of Bensonhurst Center for Rehabilitation and Healthcare and Fairview Nursing Center, indicates a positive working capital position and a positive net asset position. Also, the entities achieved positive operating income in the periods shown.

Conclusion

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

Attachments

LTCOP Attachment	Long-Term Care Ombudsman Program Recommendation
BFA Attachment A	Personal Net Worth Statement- New Shareholder
BFA Attachment B	Financial Summary - Brooklyn Queens
BFA Attachment C	Financial Summary - Bensonhurst Center and Fairview Nursing



Project # 242152-E
Central New York Eye Center

Program: Diagnostic and Treatment Center
Purpose: Establishment

County: Dutchess
Acknowledged: September 26, 2024

Executive Summary

Description

Central New York Eye Center, Ltd. (CNYEC), an existing single specialty Article 28 Ambulatory Surgery Center (ASC) at 22 Green Street, Poughkeepsie, NY (Dutchess County), is seeking approval to transfer 100.00% ownership interest from two withdrawing members Dr. Lawrence Fox (94%) and Dr. David Steinberg (6%) to one new member Dr. Satish Modi (100%). The facility is certified for ophthalmology and has been in operation for over 15 years. There will be no changes in services offered or the area served.

On September 12, 2024, the current shareholders entered into a stock purchase agreement to sell outstanding shares in CNYEC.

Ownership before and after the requested change is as follows:

Current Operator
Central New York Eye Center, Ltd.

Members:

Dr. Lawrence Fox	94%
Dr. David Steinberg	6%
Total	100%

Proposed Operator
Central New York Eye Center, Ltd.

Member:

Dr. Satish Modi	100%
Total	100%

Dr. Naixi Li will serve as the Medical Director. CNYEC has an existing transfer and affiliation agreement that will remain in place with Vassar Brothers Medical Center to provide backup and

emergency services, 2.8 miles (7 minutes travel time) from the Center.

OPCHSM Recommendation

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

Need Summary

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

Program Summary

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

Financial Summary

There are no project costs associated with this application. The total purchase price is \$3,191,489 and will be funded with a loan with a five-year term, with an estimated interest rate of 7.36%,

<u>Budget:</u>	<u>Current</u> <u>Year</u>	<u>Year One</u>	<u>Year Three</u>
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Revenues:	\$4,758,835	\$4,877,806	\$5,124,745
Expenses:	4,279,360	4,403,045	4,923,814
Net Income:	\$479,475	\$474,761	\$200,931

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 an executed loan document, acceptable to the Department of Health. [BFA]
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. Reports should include:
 - a) Data displaying actual utilization including procedures;
 - b) Data displaying the breakdown of visits by payor source;
 - c) Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d) Data displaying the number of emergency transfers to a hospital;
 - e) Data displaying the percentage of charity care provided;
 - f) The number of nosocomial infections recorded during the year reported;
 - g) A list of all efforts made to secure charity cases; and
 - h) A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]

Council Action Date

February 6, 2025

Program Analysis

Project Proposal

Central New York Eye Center (CNYEC) is seeking to transfer 100% ownership interest of Central New York Eye Center at 22 Green Street, Poughkeepsie. CNYEC has been an established single-specialty Article 28 Ambulatory Surgery Center specializing in Ophthalmology for over 15 years. CNYEC is currently owned by Dr. Lawrence Fox (94% owner) and Dr. David Steinberg (6% owner). The current ownership is submitting this application to sell 100% of their ownership in CNYEC to Dr. Satish Modi.

Character and Competence

The proposed membership of Central New York Eye Center is provided in the chart below.

Member Name	Membership Interest
Satish S. Modi, MD	100%

Satish S. Modi, MD has been employed at Alterman, Modi & Wolter PLLC, since 1976 as a managing partner and ophthalmologist. Dr. Modi has also been employed from 2022 to present as an ophthalmologist for Central New York Eye Center. Prior to this from 1998-2022, Dr. Modi was a founding member and part owner of Dutchess Ambulatory Surgery Center. Satish S. Modi graduated with a bachelor's degree in medicine and surgery from Seth G.S. Medical College in Bombay, India. Dr. Modi completed his medical, surgical, and ophthalmology residency in 1972 receiving his medical degree from King Edward Memorial Hospital. Satish S. Modi continued a surgical internship at New York Municipal Hospital Center in 1973 and an additional ophthalmology residency at Albert Einstein College of Medicine from 1973-1976.

Dr. Satish S. Modi has disclosed a lawsuit in July of 2022 in which he was the plaintiff, suing Dutchess Ambulatory Surgery Center LLC, for breaking a lease in which he was the leaseholder and landlord. This was settled in 2023. Nondisclosed cases include the following: 1) Frolish, Karen vs. Modi M.D., Satish S. et al in Dutchess County Supreme Court. This is an ongoing case related to Tort-Medical, Dental, or Podiatric Malpractice in which the plaintiff alleges that Dr. Modi failed to recognize and account for plaintiff's dry eye condition, Epithelial Basement Membrane Dystrophy (EBMD), when he performed LASIK surgery on January 15, 2019. Plaintiff began to make complaints of dry eyes in status post LASIK and alleges to suffer from the following injuries as a result of the Defendants' negligence: worsening of vision, trouble performing daily activities of living, scarring of the corneas, difficulty performing at work, inability to read books, difficulty reading, inability to drive at night, "ghost vision," partial shadow vision, inability to see or read road signs at night, exacerbation of her dry eye condition, the need for further vision correction surgery in the future, loss of enjoyment of life, pain and suffering, anxiety, fear of further vision loss, and partial vision loss. 2) Stier, Ira et al vs. Modi M.D., Satish S. et al in Dutchess Supreme Court. This is an ongoing case related to Tort-Medical, Dental, or Podiatric Malpractice. Ira Stier, the plaintiff, alleges that from June 10, 2019, to January 4, 2021, he was a patient of the defendants, and that the defendants were negligent in the medical and surgical care provided to him. Specifically, plaintiff alleges the defendants ignored plaintiff's prior history of LASIK surgery and used a multifocal lens in a patient with a history of undergoing LASIK. Plaintiff further alleges that the defendants failed to inform plaintiff of the risk associated with using a multifocal lens, and ignored and failed to recognize the plaintiff's eye pathology which contraindicated this specific lens before performing cataract surgery. As a result, plaintiff alleges to suffer from diminished visual acuity, cloudy and distorted vision, diplopia, cosmetic deformity of the eye, hypertension, conscious pain and suffering, mental anguish, emotional distress, psychological trauma, and loss of enjoyment of life, all permanent in nature. Mr. Stier is also asserting a claim of lost earnings in the amount of \$3,025,545.00. Co-plaintiff, Kamini Uppadhyaya alleges to be deprived of support, services, and consortium from her husband.

Naixi Li, MD will be the medical director of the facility. Dr. Li has been the director of the Department of Anesthesiology at New York Presbyterian, Lawrence Hospital Center since 2013 and an attending anesthesiologist for New York Presbyterian, Lawrence Hospital Center since 2012. Dr. Li graduated from Beijing Medical University in 1991 obtaining a Doctoral of Medicine and graduated from the Department

of Cell Biology & Anatomy Graduate School of Basic Medical Sciences at New York Medical College obtaining a master's degree in 1996 and a doctoral degree in 1998.

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

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

Conclusion

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

Financial Analysis

Operating Budget

The applicant has provided the current year results and the first- and third-year operating budget, in 2024 dollars, after the change in ownership. The budget is summarized below:

	<u>Current Year (2023)</u>		<u>Year One</u>		<u>Year Three</u>	
	Per Visit.	Total	Per Visit.	Total	Per Visit	Total
Revenues:						
Commercial MC	\$1,495	\$849,160	\$1,532	\$870,389	\$1,610	\$914,452
Medicare FFS	\$967	\$1,232,925	\$991	\$1,263,748	\$1,041	\$1,327,725
Medicare MC	\$867	\$926,823	\$889	\$949,994	\$934	\$998,087
Medicaid FFS	\$1,346	\$13,460	\$1,380	\$13,797	\$1,450	\$14,495
Medicaid MC	\$1,171	\$129,981	\$1,200	\$133,231	\$1,261	\$139,975
Private Pay Add on services *		\$1,566,121	\$	\$1,605,274		\$1,686,541
All Other	\$1,495	\$40,365	\$1,532	\$41,374	\$1,610	\$43,469
Total Revenue		<u>\$4,758,835</u>		<u>\$4,877,806</u>		<u>\$5,124,745</u>
Expenses:						
Operating	\$1,347.33	\$4,122,845	\$1,387.75	\$4,246,530	\$1,557.94	\$4,767,300
Capital	<u>\$51.15</u>	<u>\$156,521</u>	<u>\$51.15</u>	<u>\$156,515</u>	<u>\$51.15</u>	<u>\$156,515</u>
Total Expenses	\$1,398.48	<u>\$4,279,360</u>	\$1,438.90	<u>\$4,403,045</u>	\$1,609.09	<u>\$4,923,814</u>
Net Income/(Loss)		\$479,475		\$474,761		\$200,931
Visits		3,060		3,060		3,060
Cost/Visit		\$1,398.48		\$1,438.90		\$1,609.09

**Approximately one-third of revenue is directly paid by patients for services and supplies that are not covered by insurance, these payments are reflected in private pay with no corresponding visits associated with it. The visits are counted under the primary payor/insurer.*

The following is noted with respect to the submitted budget:

- Revenues and expenses are based on 2023 Cost Report data, the experience of the applicant in providing the services outlined in this application.
- Utilization in Years One and Three is based on the experience of the current operator. They have chosen to keep the utilization the same as the current year to be conversative.
- The applicant expects to sustain the current volume of procedures with a 5% increase in revenues and a 12% increase in expenses over the period.
- As of December 2, 2024, the facility had no outstanding Medicaid overpayment liabilities.

Utilization by payor source during first and third years is broken down as follows:

	<u>Current Year and</u> <u>Years One and Three</u>
Commercial MC	18.56%
Medicare FFS	41.67%
Medicare MC	34.93%
Medicaid FFS	.33%
Medicaid MC	3.63%
All Other	<u>.88%</u>
Total	100.0%

Stock Purchase Agreement

The applicant has submitted an executed Stock Purchase Agreement, effectuated on September 12, 2024, and summarized as follows:

Date:	September 12, 2024
Seller:	Dr. Lawrence Fox (94% ownership interest) and Dr. David Stenberg (6% ownership interest)
Buyer:	Dr. Satish Modi
Purchase and Sale of Shares	100% transfer of ownership of Central New York Eye Center, Ltd.
Purchase Price:	\$ 3,191,489 - \$3,000,000 for Dr. fox and \$191,489 for Dr. Stenberg
Seller's Deliverables	Ownership of Central New York Eye Center, Ltd.
Buyer's Deliverables	Payment at closing

Lease Agreement

The applicant provided an executed Lease Agreement for the existing site, the terms of which are summarized below:

Date:	January 1, 2021
Premises:	22 Green Street, Poughkeepsie, NY
Landlord:	Fox Realty Holding Corp
Lessee:	Central New York Eye Center Ltd
Term:	January 1, 2021-December 31, 2030
Rent:	\$69,030 annually for year 1 (\$5,752.50 monthly) with an annual 2% increase for years 2 going forward
Provisions:	Triple net lease

The applicant has submitted an affidavit stating that the lease arrangement is an arm's length agreement.

Capability and Feasibility

There are no project costs associated with this application. The total purchase price is \$3,191,489. The purchase price will be paid through a loan with a 5-year term at 7.36% interest. Busey Bank has provided a letter of interest for the loan.

BFA Attachment B presents the 2022-2023 Certified Financial Statements and 1/1/2024-6/30/2024 Internal Financial Statements of Central New York Eye Center, Ltd. The 2022-2023 Certified Financial Statements show a positive average working capital position, positive average net asset position, and an average net income of \$736,538. The Internal Financial Statements for the period 1/1/24-6/30/24 show a positive working capital position, positive net asset position, and a net income of \$310,443.

Conclusion

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

Attachments

BFA Attachment A	Personal Net Worth Statement of Proposed Owner of Central New York Eye Center, Ltd.
BFA Attachment B	2022-2023 Certified Financial Statements and 1/1/24-6/30/24 Internal Financial Statements of Central New York Eye Center, Ltd.



Project # 242159-E
Capital Region Ambulatory Surgery Center

Program: Diagnostic and Treatment Center
Purpose: Establishment

County: Albany
Acknowledged: October 2, 2024

Executive Summary

Description

Capital Region Ambulatory Surgery Center (CRASC), an existing limited liability company, is a dual single-specialty (Orthopedics and Pain Management) freestanding ambulatory surgery center at 1367 Washington Avenue, Suite 401, Albany (Albany County). The applicant is proposing to transfer 89.48% from eight (8) withdrawing members and two (2) continuing members to seventeen (17) new members. CRASC will have 19 members, all with an equal membership interest of 5.26%.

Since the Center began operations more than 20 years ago, several members have joined and withdrawn from CRASC. When new members joined, or existing members withdrew from CRASC over the years, the Center did not understand that it was required to notify the Department and seek prior approval for those ownership changes. When the Center recently became aware of the requirements, it acted and is now seeking to correct this historical oversight.

Shankar P. Das will continue to serve as the Medical Director of Capital Region Ambulatory Surgery Center. CRASC has an existing transfer and affiliation agreement with Albany Medical Center, approximately 3.6 miles and 16 minutes travel time from the Center.

OPCHSM Recommendation

Approval with conditions and contingencies with an expiration of the operating certificate three years from the date of its issuance.

Need Summary

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

Program Summary

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

Financial Summary

There are no project costs associated with this application. Per the Operating Agreement, any person who shall become a member pursuant to the provisions of the Operating Agreement shall make a capital contribution of \$1,000.

Budget:	<u>Year One</u>	<u>Year Three</u>
Revenues	\$29,936,500	\$30,834,595
Expenses	<u>21,395,472</u>	<u>22,037,007</u>
Net Income	\$8,541,028	\$8,797,588

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 with an expiration of the operating certificate three years from the date of its issuance, contingent upon:

1. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
 - a. Data displaying actual utilization, including procedures;
 - b. Data displaying the breakdown of visits by payor source;
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data displaying the number of emergency transfers to a hospital;
 - e. Data displaying the percentage of charity care provided;
 - f. The number of nosocomial infections recorded during the year reported;
 - g. A list of all efforts made to secure charity cases; and
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]

Council Action Date

February 6, 2025

Program Analysis

Project Proposal

Capital Region Ambulatory Surgery Center (CRASC or the Center) is a dual single-specialty (Orthopedics and Pain Management) freestanding ambulatory surgery center (FASC) at 1367 Washington Avenue, Suite 401, Albany (Albany County), New York 12206. The Center was established in Project No. 991182-B and it opened in November 2000. The applicant is proposing to transfer 89.48% from eight (8) withdrawing members and two (2) existing members to seventeen (17) new members. CRASC will have 19 members, all with an equal membership interest of 5.26%.

Since the Center began operations more than 20 years ago, several members have joined and withdrawn from CRASC. When new members joined, or existing members withdrew from CRASC over the years, the Center did not understand that it was required to notify the Department and seek prior approval for those ownership changes. When the Center recently became aware of the requirements, it acted and is now seeking to correct this historical oversight. CRASC is submitting this Full Review Certificate of Need (C.O.N.) Application seeking Establishment approval of the historical ownership changes that have occurred within CRASC over the last 20 years.

The following are the proposed FTEs for Year One and Year Three following completion of this project:

Position	First Year	Third year
Management and Supervision	4.0	4.0
Technician and Specialist	15.0	16.0
Registered Nurses	46.0	48.0
Aides, Orderlies & Attendants	3.0	3.0
Clerical and Other Administrative	14.0	14.0
Materials Management	2.0	2.0
Human Resources	1.0	1.0
Total	85.0	88.0

Shankar P. Das will continue to serve as the Medical Director of Capital Region Ambulatory Surgery Center. CRASC has an existing transfer and affiliation agreement with Albany Medical Center, approximately 3.6 miles and 16 minutes travel time from the Center.

When Project No. 991182-B was approved, CRASC had 10 members, each of whom had a 10.0% interest in CRASC. One (1) of the 10 original members of CRASC (James E. Striker, M.D.) withdrew from CRASC in 2010. Seven (7) of the 10 original members of CRASC (Jeffrey Lozman, M.D., John Czajka, M.D., Robert J. Hedderman, M.D., Richard H. Alfred, M.D., Marc D. Fuchs, M.D., Richard R. Whipple, M.D. and David E. Quinn, M.D.) have withdrawn from CRASC over the past 10 years. Two (2) original members of CRASC (R. Maxwell Alley, M.D. and Robert A. Cheney, M.D.) are still members of CRASC. Since 2000, 17 additional members have joined the membership of CRASC. Today, there are 19 total individual physician members of CRASC.

Upon approval of this Application, CRASC will have the following 19 members all with an equal membership interest of 5.26%: R. Maxwell Alley, M.D.; Robert A. Cheney, M.D.; James Schneider, M.D.; Shankar P. Das, M.D.; John Dipreta, M.D.; Daniel Phelan, M.D.; Jordan Lisella, M.D.; George Zanos, M.D.; Andrew Gerdeman, M.D.; Jared Roberts, M.D.; Michael Flaherty, M.D.; Andrew Morse, M.D.; Cory Czajka, M.D.; Alexander Harbin, M.D.; Joseph Zimmerman, M.D.; Patrick Marinello, M.D.; Alexander Riccio, M.D.; Matthew Tetreault, M.D.; and Thomas Kryzak, M.D.

Original Membership Structure:

Member	Ownership
James E. Striker, M.D.	10.00%
Jeffrey Lozman, M.D.	10.00%
John Czajka, M.D.	10.00%
Robert J. Hedderman, M.D.	10.00%
Richard H. Alfred, M.D.	10.00%
Marc D. Fuchs, M.D.	10.00%
Richard R. Whipple, M.D.	10.00%
David E. Quinn, M.D.	10.00%
R. Maxwell Alley, M.D.	10.00%
Robert A. Cheney, M.D.	10.00%
TOTAL	100%

Proposed membership structure:

Member	Ownership
R. Maxwell Alley, M.D.	5.26%
Robert A. Cheney, M.D.	5.26%
James Schneider, M.D.	5.26%
Shankar P. Das, M.D.	5.26%
John Dipreta, M.D.	5.26%
Daniel Phelan, M.D.	5.26%
Jordan Lisella, M.D.	5.26%
George Zanaros, M.D.	5.26%
Andrew Gerdeman, M.D.	5.26%
Jared Roberts, M.D.	5.26%
Michael Flaherty, M.D.	5.26%
Andrew Morse, M.D.	5.26%
Cory Czajka, M.D.	5.26%
Alexander Harbin, M.D.	5.26%
Joseph Zimmerman, M.D.	5.26%
Patrick Marinello, M.D.	5.26%
Alexander Riccio, M.D.	5.26%
Matthew Tetreault, M.D.	5.26%
Thomas Kryzak, M.D.	5.26%
TOTAL	100%

Character and Competence

James Schneider, M.D. has worked for Capital Region Orthopedic since 1998 and has hospital privileges at Albany Medical Center. Dr. Schneider is currently a team physician for University at Albany Sports and Rensselaer High School Football, previously working as a team physician for the Boston Celtics from 1996-1997. Dr. Schneider received a bachelor's degree from Siena College in 1987 and a Doctor of Medicine for the State University of New York School of Medicine in 1991. Dr. Schneider completed a residency in orthopedic surgery at Albany Medical Center in 1996 and completed a fellowship in sports medicine at New England Baptist Bone and Joint Institute in 1997.

Shankar P. Das, M.D. is the Medical Director of Capital Region Orthopedic Associates. Dr. Das is board-certified orthopedic surgeon with fellowship training in orthopedic sports medicine. Dr. Das has served as the Medical Director of CRASC since 2006, presiding over the clinical review committee, overseeing medical staff, and helping to develop quality improvement, risk management, and peer review programs. Dr. Das also presently works for Capital Region Orthopedic Associates and has been in this role since 1999, working as an orthopedic consultant for various athletic teams, teaching orthopedic residents and physician assistants, and leading numerous lectures and grand rounds on orthopedic sport medicine topics. Dr. Das received a bachelor's degree from the University of Rochester in 1988 and attended the Medical College of Virginia from 1988-1989 and received their Doctor of Medicine from Eastern Virginia Medical School in 1993.

John Dipreta, M.D. has been an attending physician at CRASC as well as Albany Medical Center, St. Peter's Hospital, Albany Memorial Hospital, and Stratton Veteran Affairs Medical Center since 2001. Dr. Dipreta graduated from Villanova University with a bachelor's degree in 1990 and received a Doctor of Medicine from the University of Rochester School of Medicine and Dentistry in May 1995.

Daniel Phelan, M.D. has been working as the attending surgeon for Capital Region Orthopedics for one (1) year. Dr. Phelan has also been the clinical assistant professor of the Division of Orthopedics at Albany Medical College for the past 20 years. Dr. Phelan has been the team physician for Rensselaer Polytechnic Institute and Colonie Central High School since 2004. Dr. Phelan graduated with a bachelor's degree from Springfield College in 1994 and obtained a Doctor of Medicine from Albany Medical College in 1998. Dr. Phelan has disclosed being named in a pending malpractice case regarding the treatment of a slipped capital femoral epiphysis.

Jordan Lisella, M.D. has worked for Capital Region Orthopedic Associates since 2007. Dr. Lisella received a bachelor's degree from Cornell University in 1997 and a Doctor of Medicine from SUNY Downstate Medical College in 2001. Dr. Lisella completed a surgical internship at Lenox Hill Hospital in 2002 and a orthopedic residency at Albany Medical Center in 2006 as well as a fellowship at Michigan International Foot and Ankle Center in 2007.

George Zanaros, M.D. has worked for Capital Region Orthopedic Group since 2008. Dr. Zanaros graduated with a bachelor's degree from Cornell University in 1997 and received a medical degree from Albany Medical College in 2002. Dr. Zanaros completed an Orthopedic Surgery Residency at Albany Medical Center in June of 2007, and Allegheny General Hospital Hand and Upper Extremity Fellowship in July of 2008.

Andrew Gerdeman, M.D. has been an orthopedic surgeon for Capital Region Orthopedics since 2009. Dr. Gerdeman graduated from the University of Dayton in 1993 with a bachelor's degree. Dr. Gerdeman attended the University of Harford from 1995-1997 studying neuroscience and received a Doctor of Medicine from the University of Medicine and Dentistry of New Jersey in May of 2003. Dr. Gerdeman completed their residency at Albany Medical College in orthopedic surgery in 2008 and completed a fellowship in the Division of Sports Medicine at the University of Virginia in 2009.

Jared Roberts, M.D. currently is an attending physician for Capital Region Orthopedic Group. Dr. Roberts has worked as an attending physician for Albany Medical Center and St. Peters Hospital since August of 2011. Dr. Roberts graduated from Utica College of Syracuse University with a bachelor's degree in 1998 and received a Doctor of Medicine from Albany Medical Center in 2005. Dr. Roberts completed a residency in orthopedic surgery at Albany Medical Center in 2010 and a fellowship at Anderson Orthopedic Research Institute in 2011.

Michael Flaherty, M.D. has been an Orthopedic Surgeon, Associate Medical Director, and Board member of Capital Region Orthopedic Associates since 2013. Dr. Flaherty graduated from Georgetown University with a bachelor's degree in 2003, received a Doctor of Medicine from St. George's University School of Medicine in 2007 and completed a orthopedic surgery residency at Albany Medical Center in 2012. Dr. Flaherty completed a Sports Medicine Fellowship for the University of Massachusetts in 2013.

Andrew Morse, M.D. has worked for Capital Region Orthopedic Associates since 2014. Dr. Morse graduated from Saint Anselm College with a bachelor's degree in 2003. Dr. Morse obtained a Doctor of Medicine from the University of Massachusetts Medical School in 2008 and completed an orthopedic surgery residency at Albany Medical center in 2013. Dr. Morse completed a hand and upper extremity fellowship at the University of Pittsburgh Medical Center in 2014.

Cory Czajka, M.D. currently works for Capital Region Orthopedic Group subspecializing in orthopedic trauma. Dr. Czajka is also a clinical assistant professor at Albany Medical Center. Prior to this, Dr. Czajka worked from 2001-2005 as an Intelligence Officer for the United States Central Intelligence Agency. Dr. Czajka graduated from the College of the Holy Cross with a bachelor's degree in political science in 2001. In 2005 Dr. Czajka attended Georgetown University for one year in the post- baccalaureate premedical program. In 2010 Dr. Czajka received a Doctor of Medicine from George Washington University School of Medicine and went on to complete a residency in orthopedic surgery at Albany Medical College in 2015, and a fellowship in orthopedic trauma from the University of Texas at Houston, Memorial Hermann Hospital in 2016. Dr. Czajka has been named in an initially undisclosed lawsuit: Scannapieco vs. Alfred M.D./ Albany Supreme Court/ 908628-23/Tort-Medical, Dental, or Podiatric Malpractice. Per the applicant, this is an open case.

Alexander Harbin, M.D. has been an attending physician at Capital Region Orthopedics since 2017. Dr Harbin graduated from the University of Kansas with a bachelor's degree in finance in 2007 and graduated from the University of Kansas School of Medicine with a Doctor of Medicine in 2011. Dr. Harbin completed a general surgery internship at University of Kansas Department of General Surgery in 2012 and an orthopedic surgery residency at Albany Medical Center. Dr. Harbin completed an adult reconstruction fellowship at Northshore University Health System in 2017.

Joseph Zimmerman, M.D. has been an attending physician Capital Region Orthopedics since 2017. Dr. Zimmerman graduated from Siena College in 2005 with a bachelor's degree and received a Doctor of Medicine from Albany Medical College in 2011. Dr. Zimmerman completed an orthopedic surgery residency at Albany Medical Center in 2016 and a fellowship in orthopedic sports medicine at UHZ Sports Medicine Institute in 2017.

Patrick Marinello, M.D. has worked for Capital Region Orthopedic Associates since 2018. Dr. Marinello graduated from Siena College with a bachelor's degree in 2008 and received a Doctor of Medicine from Albany Medical College in 2012. Dr. Marinello completed an orthopedic surgery residency at Cleveland Clinic in 2017 and a hand and upper extremity fellowship at OrthoCarolina in 2018.

Alexander Riccio, M.D. currently is a spine surgeon working for Capital Region Spine and Capital Region Orthopedics. Dr. Riccio is affiliated with Albany Medical Center Neurosurgery and Orthopedic Departments and residency programs. Dr. Riccio graduated with a bachelor's degree from Siena College in 2008 and received a Doctor of Medicine from Albany Medical College in 2012. Dr. Riccio completed a neurological surgery residency at Albany Medical Center in 2018 and a spine surgery fellowship at New York University in 2019.

Matthew Tetreault, M.D. currently works for the Mayo Clinic Health System Internal Moonlighting and has been there since 2018. Prior to this, Dr. Tetreault was the Chief Resident of Orthopedic Surgery at Rush University Medical Center from 2017-2018. From 2009- 2010 Dr. Tetreault was a coordinator for Orthopedic Surgery Interest Group at the University of Pittsburgh School of Medicine. Dr. Tetreault graduated with a bachelor's degree from Williams College in 2008 and received their Doctor of Medicine from the University of Pittsburgh School of Medicine in 2013.

Thomas Kryzak, M.D. has been a staff orthopedic surgeon for Mid Coast Hospital since 2017. Prior to this, Dr. Kryzak was the medical director for orthopedic surgery, member of the executive committee of the medical staff, member of the surgical services committee, and staff orthopedic surgeon at Langley Air Force Base from 2011- 2016. From 2014-2016, Dr. Kryzak was a staff orthopedic surgeon for Veterans Affairs Medical Center. From 2012-2014, Dr. Kryzak was a staff orthopedic surgeon for Riverside Regional Medical Center. From 2011-2012, Dr. Kryzak was a staff orthopedic surgeon for Al Udeid Air Base in Qatar, and a lead orthopedic surgeon with the Mobile Field Surgical Team. Dr. Kryzak graduated from Union College with a bachelor's degree in 1998 and from Tufts University School of Medicine in June 2005 with a Doctor of Medicine. Dr. Kryzak completed a preliminary internship at the Mayo Clinic in General Surgery in June 2006 and completed a orthopedic residency at the United States Air Force, San Antonio Military Medical Center in July of 2017. Dr. Kryzak completed an orthopedic fellowship at Cleveland Clinic in July 2017.

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 2025 dollars, for the current year (2023), Year One and Year Three after the change in membership interest, summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Procedure</u>	<u>Total</u>	<u>Per Procedure</u>	<u>Total</u>	<u>Per Procedure</u>	<u>Total</u>
Revenues:						
Commercial FFS	\$1,556	\$140,012	\$1,551	\$144,212	\$1,547	\$148,538
Commercial MC	\$3,975	\$20,140,049	\$3,976	\$20,744,250	\$3,975	\$21,366,577
Medicare FFS	\$1,874	\$2,567,741	\$1,874	\$2,644,773	\$14,705	\$2,724,116
Medicare MC	\$1,874	\$2,807,646	\$1,874	\$2,891,876	\$1,875	\$2,978,632
Medicaid FFS	\$1,653	\$314,163	\$1,651	\$323,587	\$1,650	\$333,295
Medicaid MC	\$1,653	\$767,218	\$1,653	\$790,235	\$1,654	\$813,942
Other	\$2,005	<u>\$2,327,724</u>	\$2,005	<u>\$2,397,567</u>	\$2,004	<u>\$2,469,495</u>
Total		\$29,064,553		\$29,936,500		\$30,834,595
Expenses:						
Operating	\$1,879.55	\$18,601,863	\$1,879.34	\$19,159,919	\$1,878.75	\$19,734,388
Capital	<u>\$219.30</u>	<u>\$2,170,439</u>	<u>\$219.28</u>	<u>\$2,235,553</u>	<u>\$219.21</u>	<u>\$2,302,619</u>
Total Expenses	\$2,098.85	\$20,772,302	\$2,098.62	\$21,395,472	\$2,097.96	\$22,037,007
Net Income		\$8,292,251		\$8,541,028		\$8,797,588
Procedures		9,897		10,195		10,504

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

- Expense and utilization assumptions are based on the historical experience of the Center and conservative growth that the Center is anticipating based on its historical experience.
- Revenue assumptions are based on the experience of the applicant in providing the services and conservative growth that the Center is anticipating because of its historical experience.

Utilization by payor source is broken down as follows:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	0.91%	0.91%	0.91%
Commercial MC	51.20%	51.18%	51.18%
Medicare FFS	13.84%	13.84%	13.83%
Medicare MC	15.14%	15.15%	15.13%
Medicaid FFS	1.92%	1.92%	1.92%
Medicaid MC	4.69%	4.69%	4.68%
Charity Care	0.58%	0.59%	0.62%
Other	<u>11.73%</u>	<u>11.71%</u>	<u>11.72%</u>
Total	100.00%	100.00%	100.00%

Capability and Feasibility

There are no purchase agreements for the acquisition of membership interest. Per the Operating Agreement, any person who shall become a member pursuant to the provisions of the Operating Agreement shall make a capital contribution of \$1,000.

The working capital requirements are estimated at \$3,672,834, which is equivalent to two months of third year expenses. The applicant will provide equity from the proposed members' personal net worth to meet the working capital requirement. The applicant has provided an affidavit that they will provide equity

disproportionate to ownership interest. Presented as BFA Attachment A are the Personal Net Worth Statements of CRASC, which indicates the availability of sufficient funds for the equity contribution.

The submitted budget indicates a net income of \$8,541,028 and \$8,797,588 during the first and third years after the change of ownership. Revenue assumptions are based on current reimbursement methodologies for the existing Center. The submitted budget appears reasonable.

BFA Attachment C, 2022-2023 Certified Financial Statements of Capital Region Ambulatory Surgery Center, shows the Center had an average positive working capital position, average positive net asset position, and an average net income of \$8,543,764.

Conclusion

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

Attachments

BFA Attachment A	Net Worth Statement New Members
BFA Attachment B	Original Ownership Structure and Proposed Ownership Structure
BFA Attachment C	2022-2023 Certified Financial Statements of Capital Region Ambulatory Surgery Center.



Project # 242161-B
East End Surgery Center, LLC

Program: Diagnostic and Treatment Center **County:** Suffolk
Purpose: Establishment and Construction **Acknowledged:** September 30, 2024

Executive Summary

Description

East End Surgery Center, LLC, an existing limited liability company, requests approval to establish and construct a single specialty ambulatory surgery center (ASC) for gastroenterology through conversion of an existing private practice. The Center will consist of two procedure rooms in leased space at 287 Wading River Road, 2A, Manorville. .

The sole member and manager of East End Surgery Center, LLC is Mark Coronel, MD. Dr. Coronel is Board-Certified in internal medicine and gastroenterology and will serve as the Center's Medical Director.

Dr. Coronel has committed to performing procedures that he currently performs in his private practice at this proposed ASC. All procedures to be performed at the proposed ASC will originate from Suffolk County and there will be no procedures from local hospitals.

The applicant will enter into a transfer affiliation agreement with Peconic Bay Medical Center, 12 miles/20 minutes away.

OPCHSM Recommendation

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

Need Summary

The number of projected procedures is 2,500 in Year One and 2,601 in Year Three, with Medicaid at 17% 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 cost of \$506,167 will be met with equity from the proposed members' personal resources.

Budget:	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,719,022	\$1,788,471
Expenses	<u>1,303,396</u>	<u>1,349,661</u>
Net Income	\$415,626	\$438,810

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 with an expiration of the operating certificate five years from the date of its issuance, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
 - a. Data displaying actual utilization including procedures;
 - b. Data displaying the breakdown of visits by payor source;
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data displaying the number of emergency transfers to a hospital;
 - e. Data displaying the percentage of charity care provided;
 - f. The number of nosocomial infections recorded during the year reported;
 - g. A list of all efforts made to secure charity cases; and
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
4. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
5. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0 [AER]
6. Acceptance by the Bureau of the Applicant's responses to the remaining open RFAI comments. [AER]

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 **July 15, 2025**, 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. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator / Director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date
February 6, 2025

Need Analysis

Project Description

East End Surgery Center, LLC (the Center) is seeking approval to establish a single-specialty ambulatory surgery center (ASC) at 287 Wading River Road, Unit 2A, Manorville, NY 11949 in Suffolk County. This will be achieved by converting a private, office-based surgical practice into a freestanding ASC specializing in gastroenterology. The Center will have two procedure rooms.

Background & Analysis

The service area consists of Suffolk County. The population of Suffolk County is estimated at 1,524,486 based on 2022 American Community Survey data and is projected to decline to 1,490,674 by 2029 per projection data from the Cornell Program on Applied Demographics (PAD), a decrease of 2.2%. Demographics for the service area are noted below including a comparison with New York State:

Demographics	Suffolk County	New York State
Total Population – 2022 Estimate	1,524,486	19,994,379
White (non-Hispanic)	65.1%	53.8%
Hispanic or Latino (of any race)	20.6%	19.5%
Black or African American (non-Hispanic)	7.0%	13.8%
Asian (non-Hispanic)	4.2%	8.8%
Other (non-Hispanic)	3.1%	4.1%

Source: 2022 American Community Survey (5-year Estimates Data Profiles)

The population cohort aged 45 to 75 years old was 38.7% of the total population in 2022. This cohort is more likely to utilize the Center's services in line with the current colorectal screening guidelines from the Centers for Disease Control and the American Cancer Society recommendation that adults aged 45 to 75 years old be screened for colorectal cancer. By 2029, Cornell PAD estimates this cohort will be 37.1% of the total population, a decrease of 1.6%.

In 2022, 95.6% of the population of Suffolk County had health coverage as follows:

Employer Plans	57.5%
Medicaid	11.9%
Medicare	13.1%
Non-Group Plans	12.7%
Military or VA	0.449%

Source: Data USA

The table below shows the number of patient visits for relevant ambulatory surgery centers in Suffolk County for 2021 through 2023.

Ambulatory Surgery within a 13-Mile Radius of Proposed Center				
Facility Name	Type	Patient Visits		
		2021	2022	2023
Suffolk Surgery Center	ASC	3,953	4,081	4,258
Long Island Community Hospital	Hospital	4,295	3,812	4,943
Great South Bay Endoscopy Center	ASC	7,056	8,205	8,909
Peconic Bay Medical Center	Hospital	5,483	6,218	7,665
Total Visits		20,787	22,316	25,775

Source: SPARCS

All of the facilities listed above provide multi-specialty services with the exception of Great South Bay Endoscopy Center, which provides single-specialty gastroenterology service. In addition, Suffolk Surgery Center had submitted CON 242101 to create a new procedure room in which the applicant also stated

they would cease performing gastroenterology procedures as the gastroenterologist had left. There is also another proposed multi-specialty ambulatory surgery center that is currently under review by the Department of Health (CON 231348) in Suffolk County, about 12.7 miles away and a 20-minute drive from this site.

The number of projected procedures is 2,500 in Year One and 2,601 in Year Three with Medicaid at 17% and Charity Care at 2%. These projections are based on the current private practice of the participating surgeon. The applicant states that all of the procedures moving to this center are currently being performed in a private physician office setting and no procedures will come from local hospitals. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	1,350	54%	1,405	54%
Commercial MC	0	0%	0	0%
Medicare FFS	500	20%	520	20%
Medicare MC	175	7%	182	7%
Medicaid FFS	25	1%	26	1%
Medicaid MC	400	16%	416	16%
Charity Care	50	2%	52	2%

Source: Applicant

The Center expects to contract with the following Medicaid Managed Care plans: UHC Community Plan; Fidelis Medicaid; Healthfirst; and Emblem Medicaid. The Center will work collaboratively with local Federally Qualified Health Centers (FQHC) and others 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 hours of operation will be from Monday through Friday from 7:00 am to 5:00 pm. The Center also has a transfer agreement with Peconic Bay Medical Center.

Conclusion

Approval of this project will provide improved access to gastroenterology surgery services in an outpatient setting for the residents of Suffolk County.

Program Analysis

Project Proposal

Proposed Operator	East End Surgery Center, LLC
To Be Known As	East End Surgery Center, LLC
Site Address	287 Wading River Road, 2A, Manorville, NY 11949 (Suffolk County)
Specialties	Certify: Ambulatory Surgery-Single Specialty (Gastroenterology)
Hours of Operation	Monday through Friday, 7:00 a.m. to 5:00 p.m.
Staffing (1st Year / 3rd Year)	12.0 FTEs / 12.0 FTEs
Medical Director	Mark Coronel, M.D.
Emergency, In-Patient, and Backup Support Services Agreement and Distance	To be provided by - Peconic Bay Medical Center 12 miles / 20 minutes away

East End Surgery Center, LLC (East End or the Center) submitted a Full Review Certificate of Need (CON) application to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) to be certified as a single-specialty Freestanding Ambulatory Surgical Center (FASC) specializing in gastroenterology.

Procedures will be performed under local anesthesia or conscious sedation and will not require overnight stays in an acute care hospital. The goal is to provide improved access to gastroenterology surgery services in an outpatient setting for residents of Suffolk County.

East End will provide clinical care by bringing existing cases currently being performed in a private physician office setting into new Article 28 FASC. Dr. Coronel has committed to performing procedures at the proposed FASC that he currently performs in his private practice. All procedures to be performed at the proposed FASC will originate from Suffolk County with no procedures coming from local hospitals.

East End Surgery Center, LLC will seek accreditation from either the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Accreditation Association for Ambulatory Health Care (AAAHC), or the American Association for the Accreditation of Ambulatory Surgery Facilities, Inc. (AAAASF) within two (2) years of becoming operational. The Center intends to have a management information system on-site.

The Center will occupy approximately 2,770 square feet of space on the 1st floor of the building; and have two (2) procedure rooms; pre-operative and recovery areas and support areas. Renovations will include modifying and upgrading the existing HVAC and sprinkler systems. Completion of the renovations is expected to take approximately five (5) months.

Projected procedures are 2,500 in Year One and 2,601 by Year Three. The hours of operation will be from Monday through Friday from 7:00 am to 5:00 pm. Weekend and/or evening procedures will be made available, if needed, to accommodate patient scheduling issues.

No patient will be admitted to the Center for care unless the patient's physician is a member of the Center's medical staff. East End will work to ensure all physicians working at the Center become credentialed at a backup hospital. An anesthesiologist and/or another physician will be qualified in resuscitative techniques and emergency care will be present and available until all patients are discharged.

There will be no changes in staffing levels as a result of this CON:

Position	Year One	Year Three
Management and Supervision	2.0	2.0
Technician and Specialist	3.2	3.2
Registered Nurses	1.2	1.2
Licensed Practical Nurses	0.6	0.6
Physicians	1.0	1.0
Infection Control, Environment and Food Service	1.0	1.0
Clerical and Other Administrative	2.0	2.01
Totals	12.0	12.0

Anesthesiologists will be approved by the Center's Credentials Committee, and pharmaceutical services will be provided at the Center.

Integration with Community Resources

The Center will work collaboratively with the local Federally Qualified Health Centers (FQHC) and others to provide services for the under-insured in their service area. The Center will develop a financial assistance policy with a sliding fee scale to be utilized when the Center is operational. The proposed facility will not be in a Health Professional Shortage Area (HPSA) or Medically Underserved Area (MUA/P). It is anticipated that payor sources will include 17% Medicaid and 2% in Charity Care in year one (1) and in year three (3).

Character and Competence

Membership of East End Surgery Center, LLC is:

Name	Membership Interest
Mark Coronel, M.D.	100%
Total	100%

Mark Jacob Coronel, M.D. will serve as the Center's Medical Director. Dr. Coronel is Board-Certified in Internal Medicine and Gastroenterology and currently has admitting privileges at Peconic Bay Medical Center. Dr. Coronel graduated with a Medical Degree from the Albert Einstein College of Medicine in New York in 2005; and received a Bachelor's Degree from Yeshiva University in New York in 2000.

Currently, Dr. Coronel owns and operates East End Gastroenterology & Hepatology, a private practice in Manorville, New York since 2012; and has been a per diem Hospitalist Physician at South Nassau Communities Hospital in Oceanside, New York since 2008.

Dr. Coronel disclosed that he was named in two (2) malpractice cases that have been closed and dismissed.

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 agencies/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

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$506,167, broken down as follows:

Renovation and Demolition	\$349,856
Design Contingency	34,986
Construction Contingency	34,986
Architect/Engineering Fees	34,986
Construction Manager Fees	8,746
Other Fees (Consultant)	20,000
Moveable Equipment	17,849
CON Fee	2,000
Additional Processing Fees	<u>2,758</u>
Total Project Cost	\$506,167

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

Operating Budget

The applicant has submitted an operating budget, in 2025 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u>	<u>Total</u>	<u>Year Three</u>	<u>Total</u>
	<u>Per Procedure</u>		<u>Per Procedure</u>	
Revenues:				
Commercial FFS	\$742.11	\$1,001,855	\$741.87	\$1,042,330
Medicare FFS	\$873.08	\$436,538	\$873.41	\$454,174
Medicare MC	\$742.11	\$129,870	\$742.40	\$135,117
Medicaid FFS	\$478.80	\$11,970	\$478.96	\$12,453
Medicaid MC	\$346.97	<u>\$138,789</u>	\$347.11	<u>\$144,397</u>
Total Revenues		\$1,719,022		\$1,788,471
Expenses:				
Operating	\$493.94	\$1,234,860	\$491.83	\$1,279,248
Capital	<u>\$27.41</u>	<u>\$68,536</u>	<u>\$27.07</u>	<u>\$70,413</u>
Total Expenses	\$521.36	\$1,303,396	\$518.90	\$1,349,661
Net Income		\$415,626		\$438,810
Procedures		2,500		2,601

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

- Utilization assumptions are based on the private practice experience. The applicant submitted a physician referral letter in support of utilization projections.
- Expense assumptions are based on the experience of the applicant and its sole member is providing surgical services, and on industry norms for FASCs.
- Commercial FFS is based on 85% of the 2024 Medicare FFS rate. Medicaid MC rate is based on 85% of the 2024 Medicaid Rate. Medicare rate is based on 85% of the 2024 Medicare Rate.

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

	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	54.00%	54.02%
Medicare FFS	20.00%	19.99%
Medicare MC	7.00%	7.00%
Medicaid FFS	1.00%	1.00%
Medicaid MC	16.00%	15.99%
Charity Care	<u>2.00%</u>	<u>2.00%</u>
Total	100.00%	100.00%

Master Lease Rental Agreement

The applicant has submitted an executed lease rental agreement, summarized below:

Premises	4,950 square feet located at "Manorville Square" within the certain property and improvements in the building located at 383 North Service Road at Sunrise Highway in Manorville, New York.
Lessor	Royal Development, LLC
Lessee	Manorville Management Group, LLC
Term	20 years expiring December 31, 2041.
Rental	2022: \$0 annually
	2023 and 2024: \$108,900 annually (\$22.00 per sq.ft.)
	2025: \$111,078 annually (\$22.44 per sq.ft.)
	Each year thereafter the rental will increase by 2% per year.
Provisions	The lessee shall be responsible for real estate taxes, maintenance, and utilities.

The applicant has indicated that the master lease agreement will be a non-arms-length lease arrangement.

Sublease Agreement

The applicant has submitted an executed sublease rental agreement, summarized below:

Premises	2,770 square feet located at 287 Wading River Road, Unit 2A, Manorville, New York.
Sublessor	Manorville Management Group, LLC
Sublessee	East End Sc, LLC
Term	18 years
Rental	\$44,649 annually (\$16.12 per sq.ft.) and a 2% increase each year thereafter.
Provisions	The sublessee will be responsible for real estate taxes, maintenance, and utilities.

The applicant has indicated that the lease agreement will be a non-arms-length lease arrangement. The applicant has provided two real estate letters attesting to the reasonableness of the per-square-foot rental.

Capability and Feasibility

The total project cost for this application is \$506,167 and will be met with equity from the proposed members. The working capital requirements are estimated at \$224,943, which is equivalent to two months of third-year expenses. The working capital requirement will be met with equity from the proposed members. Presented as BFA Attachment A is the personal net worth statement of the proposed member of East End Surgery Center, LLC, indicating the availability of sufficient funds to meet the equity contribution for the total project cost and the working capital. Presented as BFA Attachment B is the pro forma balance sheet on the first day of operations, which indicates a positive net asset position of \$731,110.

The submitted budget indicates a net income of \$415,626 and \$438,810 during the first and third years of operations, respectively. Revenues are based on current reimbursement methodologies for gastroenterology services. The submitted budget appears reasonable.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Pro Forma Balance Sheet



Project # 242189-B
Southern Tier Surgery Center, LLC

Program: Diagnostic and Treatment Center **County:** Broome
Purpose: Establishment and Construction **Acknowledged:** October 16, 2024

Executive Summary

Description

This application amends and supersedes CON 222227-B, which received final PHHPC approval in August of 2024 and is currently under construction.

Under that approval, Southern Tier Surgery Center, LLC (Southern Tier), a New York limited liability company, sought approval to establish and construct an Article 28 freestanding ambulatory surgery center certified as a dual single-specialty specializing in pain management and orthopedics. The applicant is leasing space in an existing one-story building at 601 Harry L. Drive, Johnson City (Broome County). The site will include four (4) operating rooms, shell space for one (1) additional operating room for future use, and requisite support areas.

CON 222227 is being amended to accommodate the following changes:

- Three (3) of the original Class A physician members will no longer be members in the Center.
- Two (2) members of the Class B member of the Center (New York Holdco, LLC), have changed.
- The representatives of Binghamton Health Corporation, the corporate member of New York Holdco, LLC have changed.
- The Total Project Cost has increased due to changes in the scope of the project and general cost inflation.
- The development consultant, administrative services provider, and billing consultant has

changed from Regent Surgical Health to Constitution Surgery Alliance.

Proposed membership is summarized below:

Proposed Members	
Southern Tier Surgery Center, LLC	
Class A - Physician Members	32.162%
Mohammed Ali Al-Saied, M.D.	2.000%
Brandon Ewald, D.P.M.	4.000%
Dana Klush, D.P.M.	1.787%
Colin McDonald, D.O.	3.000%
Joseph Romani, D.P.M.	3.000%
Khalid Sethi, M.D.	4.875%
Brian Timm, D.P.M.	2.000%
Robert Van Gorder, M.D.	4.500%
Darren Weinheimer, D.P.M.	2.000%
Mark Wilson, M.D.	5.000%
New York Holdco, LLC*	
Class B Members	67.838%
Binghamton Health Corporation	57.838%
Kristian Mineau	9.932%
Kenneth Rosenquest	0.068%
Total Operating Entity	100%

*New York Holdco, LLC is a Delaware Limited Liability Company authorized to conduct business in New York State. New York Holdco, LLC direct ownership: Binghamton Health Corporation 85.259%; Kristian Mineau 14.641%; and Kenneth Rosenquest 0.1%.

Mohammad Ali Al-Saied, M.D., who is board-certified in Orthopedic Surgery and will serve as the Center's Medical Director.

The Center entered into a Transfer and Affiliation Agreement (as approved in Project

No. 222227-B) for backup and emergency services with Our Lady of Lourdes Memorial Hospital, 3.7 miles (10 minutes travel time) from the Center.

Our Lady of Lourdes Memorial Hospital is part of The Guthrie Clinic, a Pennsylvania non-profit corporation that acts as the parent of The Guthrie Clinic system. Binghamton Project, LLC (LLC) is an existing New York State limited liability company that was formed to plan the development of the Center. Upon approval of this application, the LLC will amend its Articles of Organization to change its name to Southern Tier Surgery Center, LLC, and its purpose.

OPCHSM Recommendation Contingent Approval

Need Summary

The applicant projects 1,121 visits in Year One and 3,137 in Year Three, with Medicaid at 4.3% and Charity Care at 2.1% in Year One and 13.2% Medicaid and 2% Charity Care in Year Three.

Program Summary

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

Financial Summary

The total project costs of \$14,935,486 will be met with \$3,143,361 in equity, \$2,792.125 in landlord's improvement allowance, and an eight-year loan.

<u>Budget:</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$7,418,498	\$19,553,949
Expenses:	<u>7,829,283</u>	<u>15,630,450</u>
Gain/(Loss)	(\$410,785)	\$3,923,499

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]

Approval conditional upon:

1. This project must be completed by **March 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, 2025**, and construction must be completed by **December 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 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. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

February 6, 2025

Need Analysis

Project Description

Southern Tier Surgery Center, LLC is seeking approval to establish a dual single-specialty freestanding ambulatory (FASC) surgery center at 601 Harry L Drive, Johnson City, 13790 in Broome County. The center will provide pain management and orthopedic surgery services (including podiatric surgery). The facility plans to have four (4) operating rooms and space for one (1) additional operating room for future use.

Background and Analysis

The service area consists of Broome County. The population of Broome County is estimated to decrease to 187,413 by 2029 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	Broome County	New York State
Total Population-2022 Estimate	198,365	19,994,379
Hispanic or Latino (of any race)	4.8%	19.5%
White (non-Hispanic)	81.3%	53.8%
Black or African American (non-Hispanic)	5.0%	13.8%
Asian(non-Hispanic)	4.9%	8.8%
Other (non-Hispanic)	4.0%	4.1%

Source: 2022 American Community Survey (5-year Estimates Data Profiles)

In 2022, 96.2% of Broome County residents had health coverage as follows:

	Broome County
Employer Plans	43.5%
Medicaid	23.2%
Medicare	15.0%
Non-Group Plans	13.6%
Military or VA	0.977%

Source: Data USA

Ambulatory Surgery within a 5-Mile Radius of Proposed Center

Facility Name	Type	Patient Visits			
		2020	2021	2022	2023
Lourdes Pavilion (Opened 11/2022)	Hospital Ext Clinic			UNAVAIL	UNAVAIL
Our Lady of Lourdes Memorial Hospital	Hospital	16,168	17,511	16,600	17,590
UHS Inc.-Binghamton General Hospital	Hospital	8,579	8,059	10,131	10,351
UHS Inc.-Wilson Medical Center	Hospital	8,340	7,711	8,363	10,400
Wilson Place Amulatory Surgery Center ¹	Hospital Ext Clinic	4,400	4,233	2,753	4,111
Total Visits		37,487	37,514	37,847	42,452

Source: HFIS and SPARCS

¹Unable to verify specific surgeries performed

All of the facilities listed above provide multi-specialty or single-specialty services that include at least one of the specialties proposed by the applicant.

The applicant projects 1,121 visits in Year One and 3,137 in Year Three, with Medicaid at 4.3% and Charity Care at 2.1% in the first year and Medicaid at 13.2% and Charity Care at 2.0% in the third year.

The table below shows Year One and Three's projected payor source utilization.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	546	48.7%	1,317	42.0%
Commercial MC	6	0.5%	32	1.0%
Medicare FFS	208	18.6%	473	15.1%
Medicare MC	269	24.0%	792	25.2%
Medicaid FFS	1	0.1%	12	0.4%
Medicaid MC	47	4.2%	402	12.8%
Private Pay	20	1.8%	46	1.5%
Charity Care	24	2.1%	63	2.0%

The hours of operation will be Monday – Friday, 7:00 A.M. to 5:00 P.M. (with patient stays extending to 23 hours if needed). The center initially plans to obtain contracts with the following Medicaid Managed Care plans Atena Health, CDPHP, Excellus Health, MVP Health, and United Healthcare of NY. The center will work collaboratively with local Federally Qualified Health Centers 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.

Currently, all of the cases moving to the proposed surgery center are being performed at Our Lady of Lourdes Memorial Hospital.

Lourdes is a passive member of a subsidiary not-for-profit corporation that is an indirect member of the Center. Per the applicant, the center entered into a Transfer and Affiliation Agreement (as approved in CON 222227-B) for backup and emergency services with Lourdes. The applicant further states Lourdes performed 1,188 surgery cases that did not require an overnight stay in 2023 for patients residing in Broome, Tioga, Chenango, Cortland, and Delaware Counties (excluding cases performed by the surgeons who have provided letters for application). Lourdes will continue to shift appropriate ambulatory surgery cases to Southern Tier as the Center matures in its first few years of operation.

Conclusion

Approval of this project will provide increased access to pain management and orthopedic surgery in an outpatient setting for the residents of Broome County.

Program Analysis

Program Proposal

Proposed Operator	Southern Tier Surgery Center, LLC
Doing Business As	Southern Tier Surgery Center, LLC
Site Address	601 Harry L. Drive Johnson City, New York 13790 (Broome County)
Surgical Specialties	Ambulatory Surgery Dual Single Specialty Orthopedics Pain Management
Operating Rooms	4
Procedure Rooms	0
Hours of Operation	Monday to Friday 7:00 am to 5:00 pm
Staffing (1st Year / 3rd Year)	12.9 FTEs / 35.5 FTEs
Medical Director(s)	Mohammed Ali Al Saied, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Is provided by: Our Lady of Lourdes Memorial Hospital 3.7 Miles / 10 minutes
On-call service	If the patient requires assistance during hours when the Center is not in operation, the patient will have the phone number of an on-call service, which will be available 24 hours per day, seven (7) days per week, to immediately refer the patient to the Center's on-call physician, who will be a member of the Center's credentialed medical staff.

outhern Tier Surgery Center, LLC (Southern Tier or Center), a New York State limited liability company, is seeking approval for the establishment and construction of an Article 28 diagnostic and treatment center to be certified as a dual single-specialty free standing ambulatory center (FSAC) specializing in Pain Management and Orthopedics (including podiatric surgery). The Center at 601 Harry L. Drive, Johnson City (Broome County), New York, will have four (4) operating rooms and shell space for one (1) additional operating room for future use. This Application will amend and supersede Project No. 222227.

Broome County will be the primary service area. This application was developed with the cooperation and support of Our Lady of Lourdes Memorial Hospital ("Hospital" or Lourdes), which is the passive member of a subsidiary not-for profit corporation that is an indirect member of the Center. The Center will consolidate community-based physicians and bring them together into the regulatory environment of an Article 28 FSAC. All the projected ambulatory surgical cases at the proposed FASC are currently being performed at Lourdes. Binghamton Project, LLC is an existing New York State limited liability company that was formed to plan the development of the Center. The LLC will amend its Articles of Organization to change its name to Southern Tier Surgery Center, LLC, and its purpose to the operation of the proposed FASC.

The table below shows the projected FTEs after Year One and Year Three after the completion of the project:

Position	Year One	Year Three
Management and Supervision	4.8	5.0
Technician and Specialist	3.3	11.5
Registered Nurses	3.4	13.0
Clerical and Other Administrative	1.4	6.0
Total	12.9	35.5

Character and Competence

The ownership of Binghamton Project, LLC is as follows:

Member Name	Proposed Interest
Class A Members	32.162%
Mohamed Ali Al-Saied, M.D. (2.000%)	
Brandon Ewald D.P.M. (4.000%)	
Dana Klush, D.P.M. (1.787%)	
Colin McDonald, D.O. (3.000%)	
Joseph Romani, D.P.M. (3.000%)	
Khalid Sethi, M.D. (4.875%)	
Brian Timm, D.P.M. (2.000%)	
Robert Van Gorder, M.D. (4.500%)	
Darren Weinheimer, D.P.M. (2.000%)	
Mark Wilson, M.D. (5.000%)	
Class B Members (New York Holdco, LLC)	67.838%
Binghamton Health Corp. (57.838%)	
Kathryn Connerton	
Paul VerValin	
Barry McElyea	
Jennifer Yartym	
Kristian Mineau (9.932%)	
Kenneth Rosenquest (0.068%)	
TOTAL	100%

New York Holdco, LLC direct ownership: Binghamton Health Corporation 85.259%; Kristian Mineau 14.641%; and Kenneth Rosenquest 0.1%.

Dr. Mohamed Al Saied is the proposed Medical Director and an Orthopedic Surgeon at Our Lady of Lourdes Hospital since 2019. Prior to this, Dr. Al Saied worked as an orthopedic surgeon at St. Mary's Regional Medical Center from 2015 to 2019, and as an orthopedic surgeon at Humber River Regional Hospital in Toronto, Canada from 2010 to 2015. Dr. Al Saied received a medical degree from Al-Fatah University in Tripoli and completed an Orthopedic Surgery residency at the University of Toronto in 2010. They completed a Foot and Ankle Surgery fellowship at Toronto Western Hospital and a Hip and Knee Arthroplasty fellowship at McMaster University and Toronto Western Hospital. Dr. Al Saied is board certified in Orthopedic Surgery.

Katheryn Connerton is the President and CEO of Ascension Lourdes since 2014. Katheryn has led a \$440 million net revenue healthcare system with 220 bed acute care hospital, over 280-person physician network, and 3,400 associates. Katherine transformed the health system to ambulatory care with 75% outpatient revenue, led value-based care redesign, initiated cohort management formalizing relationships between community-based organizations and primary care, engineered quality review infrastructure for the health system, and led entry into the largest Clinically Integrated Network in the upstate. Prior to this, Katheryn worked as the Vice President of Internal Consulting of Bon Secours Health System from 2005 to 2014, implementing all facets of EMR, achieving the system's highest revenue performance for post-install, realized \$100 million in benefits leading a 300 person staff in implementing and supporting EHR operations in 14 hospitals, five LTCs and an 800-person physician network, and partnered with executive management to start a Medicare Shared Savings Program. Katheryn Connerton serves on the Board for Covenant Health since 2021, is a board member for Mother Cabrini Health Foundation since 2018 and is currently the board chair for the New York State DSRIP since 2018. Katheryn earned a master's degree in public administration and public policy analysis from SUNY Binghamton in 1983 and a Juris Doctorate from New England School of Law in 1986. Katheryn earned a Master of Business Administration from SUNY Binghamton in 2000.

Dr. Brandon Ewald has been a Podiatrist at Lourdes Foot and Ankle since 2018 and a Podiatrist at Southern Tier Associates in Podiatric Medicine and Surgery since 2018. Prior to this, Dr. Ewald worked as a Chief Surgical Resident at Our Lady of Lourdes Memorial Hospital from 2017-2018. Dr. Ewald received a medical degree from the New York College of Podiatric Medicine in 2015 and completed a residency in advanced Podiatric medicine and surgery with advanced certification in rearfoot and ankle surgery and deformity correction surgery in 2018. Dr. Ewald has been named in one open court case: REPSHER, TIFFANY vs. EWALD DPM, BRANDON et al/ Broome Supreme Court/ Tort-Medical, Dental, or Podiatric Malpractice/ Index # EFCA2023001747. Per applicant this case is in regard to alleged failure to properly diagnose and treat condition of right lower extremity.

Dr. Dana Klush is a Podiatric Medicine and Surgery Practice Associate at LaPorta and Associates for 13 years. Dr. Klush received a medical degree from Temple University School of Podiatric Medicine in 2008 and completed a Podiatric Medicine and Surgery Residency at Community Medical Center in 2011. Dr. Klush is board certified in Podiatric Medicine.

Dr. Colin McDonald is currently completing a fellowship at the University of Buffalo Orthopedics and Sports Medicine. Dr. McDonald completed an Orthopedic Surgery residency at the Orthopedic Residency of York, Wellspan in 2021. Dr. McDonald graduated from Cornell University with a bachelor's degree in nutrition in 2011 and received a Doctor of Osteopathy from Lake Erie College of Osteopathic Medicine in 2016.

Barry McElyea is a Registered Nurse currently working as the Vice President of Enterprise Surgical Services at the Guthrie Clinic since January of 2024. Barry has the responsibility for delivering surgical care throughout the Guthrie enterprise, which includes five hospitals and one surgical center. Prior to this, Barry worked as the Assistant Vice President of Perioperative Nursing at Inova Healthcare from May 2022 to December of 2023 and also worked as the Senior Director of Surgical Services at Inova Fair Oaks Hospital from June 2020 to May 2022. From August 2018 to June 2020, Barry worked at the Methodist Hospital of Southern California as the Executive Director of Perioperative Services and Surgical Programs. From July 2017 to August 2018, Barry worked at Sutter Health as the Clinical Director of Surgical Services. From August 2014 to July 2017, Barry worked for Sentara Healthcare as the Director of Surgical Services. Barry McElyea graduated from Liberty University with a bachelor's degree in nursing in 1996 and from Chamberlain College of Nursing with a master's in nursing in 2014. Barry McElyea disclosed pleading guilty and being charged for forgery, uttering, and embezzlement in Campbell County Circuit Court in 1997, successfully completing restitution and a two-year probation.

Kristian Mineau has been the president and CEO of Constitution Surgery Alliance since 1997, which is a leading developer and manager of Ambulatory Surgery Centers. The company has developed 26 surgery centers located in Connecticut, Massachusetts, Rhode Island, Pennsylvania, and Virginia. Kristian attended the US Air Force Academy from 1984 to 1988, earning a bachelor's degree. Kristian Mineau disclosed affiliation with 20 out of state facilities. A ten year look back of these facilities noted one enforcement that has been corrected (see below). Affidavits were received for Orthopedic Surgery Center of Palm Beach County, LLC and McLean Tysons Orthopedic Surgery Center, LLC, indicating these facilities are in good standing.

Dr. Joseph Romani has been a Podiatric Surgeon at Ascension Lourdes since 2018. Prior to this, Dr. Romani was a Podiatric Surgeon at LaPorta and Associates, PC for two (2) years. They received a medical degree from Kent State University College of Podiatric Medicine in 2013 and completed a Podiatric and Orthopedic residency at Sinai Hospital. Dr. Romani completed a Podiatric Medicine and Surgery with Reconstructive Rearfoot and Ankle residency at Our Lady of Lourdes Memorial Hospital in 2016.

Kenneth Rosenquest has worked as the Executive Vice President and Chief Operations Officer for Constitution Surgery Alliance since April 2004, leading the operational development of new ASC projects. Kenneth has over twenty years' experience as a healthcare executive, with a deep understanding and expertise in operating and managing healthcare facilities and working closely with physician partners, hospital partners, regulatory agencies, and patients. Kenneth Rosenquest graduated from the US Air Force Academy with a bachelor's degree in 1989.

Dr. Khalid Sethi has been the Director of Neurosurgery at UHS Medical Group since 2016 and the Co-Director of Surgical Services at UHSH since 2018. Dr. Sethi is a member of the UHSH Medical Executive Committee since 2018 and was an elected board member of UHS Medical Group from 2017 to 2023. Dr. Sethi has also been the Director of Neurosciences, Quality Optimization and Performance Improvement at UHSH since 2008 and the Chief of Neurosurgery at UHSH since 2003. Dr. Sethi has been the Chief of Neurosurgery at Lourdes Hospital since 2002 and an Investigator at Regional Clinical Research, Inc. since 2006. Dr. Sethi also worked as a Neurosurgeon at UHS Neurosurgery since 2016 and was a partner at Southern New York Neuro Surgical Group from 2002 to 2016. Dr. Sethi received his medical degree from the Indiana University School of Medicine in 1996 and completed a Neurological Surgery residency at the University of Minnesota Hospitals and Clinics in 2002. Dr. Sethi completed a Complex Adult Spinal Deformity fellowship at the VA Medical Center Minnesota in 2001 and a Trauma/Cerebrovascular Neurosurgery fellowship at Hennepin County Medical Center in 2001.

Dr. Brian Timm has worked as a Podiatrist at Ascension Lourdes since 2015. Prior to this, Dr. Timm worked as a Podiatrist at Family Foot and Leg Center from 2009 to 2015. Dr. Timm received a medical degree from Dr. William M. Scholl College of Podiatric Medicine in 2006. Dr. Timm completed a residency at Our Lady of Lourdes Hospital. Dr. Timm is board certified in Foot and Ankle Surgery and Reconstructive Rearfoot and Ankle Surgery. Dr. Brian Timm has been named in an open court case: Loveless, Kayla vs. Timm DPM, Brian G. et al/Broome Supreme Court/ Tort-Medical, Dental, or Podiatric Malpractice/ Index # EFCA2022001775. Per the applicant, this suit alleges failure to properly diagnose and treat a condition of the bilateral lower extremities.

Dr. Robert Van Gorder has been an Orthopedic Surgeon at Our Lady of Lourdes Hospital since 2017. Prior to this, Dr. Van Gorder worked as an Orthopedic Surgeon at Tier Orthopedics Associates, P.C. from 2015-2017. Dr. Van Gorder received a medical degree from SUNY Upstate Medical University in 2009 and completed an Orthopedic Residency at the University of Vermont in 2014 and completed an Orthopedic Sports Fellowship at the University of Rochester in 2017. Dr. Van Gorder is board certified in Orthopedics.

Paul VerValin has been the Executive Vice President and Chief Operating Officer of The Guthrie Clinic since 2013. and served as Interim President of Guthrie Robert Packer Hospital from 2017-2018. Paul VerValin graduated from the State University of New York at Fredonia with a bachelor's degree, and from Florida Institute of Technology with a Master of Business Administration.

Dr. Darren Weinheimer has been a Podiatrist at the Foot Care Center and Primary Foot Care since 1998. Dr. Weinheimer has also been a Podiatric Attending Physician at Lourdes Hospital and Binghamton General Hospital since 1998. Dr. Weinheimer is an Assistant Residency Director at Lourdes Hospital, working in this role for the past 13 years. Dr. Weinheimer has also been part of the Core Teaching Faculty at Binghamton General Hospital since 2008. Dr. Weinheimer was a Board Member of the Arthritis Foundation of Broome County from 1999-2004. Dr. Weinheimer received a medical degree from the Ohio College of Podiatric Medicine in 1995 and completed a rotating Podiatric Residency and a Podiatric Surgical Residency at St. Francis Central Hospital. Dr. Weinheimer is board certified in Podiatric Surgery and Reconstructive Rearfoot and Ankle surgery.

Dr. Mark Wilson has been an Orthopedic Surgeon at Lourdes Orthopedics Riverside since 2017. Prior to this, Dr. Wilson worked as a Physician and Partner at Tier Orthopedic Associates, P.C. from 2005 to 2017. Dr. Wilson received a medical degree from SUNY Upstate Medical University in 1999 and completed an Orthopedic residency at SUNY Upstate Medical University in 2004. Dr. Wilson completed a Sports Medicine Fellowship at Southern California Center for Sports Medicine and is board certified in Orthopedic Surgery.

Jennifer Yartym has been the Senior Vice President/President of Guthrie Cortland Medical Center since September of 2019. Prior to this, Jennifer was the Vice President of Operations at Corning Hospital from December 2015 to September of 2019. Jennifer Yartym previously worked as the Senior Director of Corning Hospital from October 2012 to December 2015. Jennifer also serves as the Vice President of the Board of Education for Bath Central School District. Jennifer Yartym graduated from the Ithaca College with a bachelor's degree in 1995 and a master's degree in 1996 and obtained their Master of Business Administration from Alfred University in December of 2016.

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

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

Enforcements:

The Pennsylvania Department of Health surveyed Guthrie Robert Packer Hospital and found several deficiencies on surveys dated 9/12/17, 1/5/18, and 6/5/18, and issued a civil penalty. The issues were corrected, and the Department confirmed the Robert Packer Hospital was in compliance with the submitted Plan of Correction on 7/10/18. The Civil Penalty was paid in full on 9/25/18.

Integration with Community Resources

The members of Southern Tier are committed to serving all persons in need of its specialty care without regard to race, sex, age, religion, creed, sexual orientation, ability to pay, source of payment or other personal characteristics. As evidence of that commitment, the operating budget projects 2.0% for charity care and 13.2% for Medicaid by the third year of operation.

Southern Tier will promote health education and will work to implement an aggressive outreach program for the benefit of the surrounding community. The Center will develop an outreach program to make residents of the surrounding community aware of the ambulatory surgical services offered at the Center. Standard methods of outreach will include advertising within the local area, attendance at community fairs and notification to local physicians, hospitals, Article 28 outpatient centers, local community groups, social service agencies and churches. Emphasis will be placed on outreach to community providers serving the underserved and uninsured. The Center will work proactively with social services agencies, safety-net providers and community-based organizations to find uninsured or underserved individuals who need outpatient orthopedic and pain management surgical services. Finally, the Center will work to support the priorities of Our Lady of Lourdes Memorial Hospital with respect to the Prevention Agenda.

With respect to the assurance of quality, in accordance with 10 NYCRR Section 755.2 (f), the Center will seek accreditation from either the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Accreditation Association for Ambulatory Health Care (AAAHC) or the American Association for the Accreditation of Ambulatory Surgery Facilities, Inc. (AAAASF) within two (2) years of becoming operational.

As part of its commitment to enhance access for the underserved population, the Center will contract with two (2) or more Medicaid managed care plans and will seek to participate in one of the provider-led designated health homes for Broome County to develop referral and other collaborative arrangements to enhance access to ambulatory surgery services to Medicaid and charity care patients. The Center will also look to establish an outreach plan to the underserved, which will include the development of referral arrangements with FQHCs, including Cornerstone Family Healthcare, which has two (2) locations in Binghamton, and other community-based providers. As part of this outreach effort, the Center will assist patients in the scheduling of pre-surgery appointments, the surgery and post-surgical follow-up.

The Center is committed to implementing an electronic medical record (EMR) system, within 18 months of opening, that qualifies under the Meaningful Use provisions of the HITECH Act, which allows the patient's health information and plan of care to be accessible to the health care providers of the Center and other health care providers outside of the Center involved in providing medical care to the patient, such as his/her primary care physician. Toward this end, the Center will comply with the current and future version of the Statewide Policy Guidelines, which includes common information policies, standards and technical

approaches governing health information exchange, and will consider joining a regional health information organization (RHIO) or qualified health information exchange (HIE) for data exchange, accessing data through the RHIO/HIE to conduct these processes, as feasible. To fulfill the data-reporting requirements outlined in 10 NYCRR Section 755.10, the Center will have a high-quality management information system on-site and has allocated funds for a data processing/accounting budget. The data will include all items required by the New York State Department of Health for each patient visit to the Center and will be submitted within 30 days of the end of each calendar quarter in a format prescribed by the Department. Care will be taken to report all required financial information and SPARCS data.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

Total project costs for renovations and the acquisition of moveable equipment are estimated at \$14,935,486, broken down as follows:

Renovation & Demolition	\$7,557,638
Design Contingency	755,764
Construction Contingency	755,764
Architect/Engineering Fees	440,000
Construction Manager Fees	188,941
Other Fees	20,000
Movable Equipment	4,593,694
Interim Interest Expense	540,000
CON Application Fee	2,000
CON Processing Fee*	<u>81,685</u>
Total Project Cost	<u>\$14,935,486</u>

The applicant's financing plan appears as follows:

Cash Equity (Members)	\$3,143,361
Landlord – Lessee improvement allowance	2,792,125
Project Loan	<u>9,000,000</u>
Total	<u>\$14,935,486</u>

Construction is in process under CON 222227-B. The Guthrie Clinic has provided a commitment letter.

Operating Budget

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

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visits</u>	<u>Total</u>	<u>Per Visits</u>	<u>Total</u>
Revenues				
Medicaid Fee-For-Service	\$3,474.00	\$3,474	\$2,957.75	\$35,493
Medicaid Managed Care	\$2,075.21	97,535	\$2,479.10	996,597
Medicare Fee-For-Service	\$4,456.60	926,973	\$4,633.27	2,191,538
Medicare Managed Care	\$5,181.80	1,393,903	\$5,153.87	4,081,862
Commercial Fee-For-Service	\$9,296.70	5,075,996	\$9,419.95	12,406,072
Commercial Managed Care	\$3,488.83	20,933	\$3,555.53	113,777
Private Pay	\$4,368.90	87,378	\$4,694.24	215,935
Bad Debt		<u>-187,694</u>		<u>-487,325</u>
Total Revenues		\$7,418,498		\$19,553,949
Expenses:				
Operating	\$4,725.83	\$5,297,650	\$4,212.22	\$13,213,725
Capital*	<u>\$2,258.37</u>	<u>2,531,633</u>	<u>\$770.39</u>	<u>2,416,725</u>
Total Expenses	\$6,984.20	\$7,829,283	\$4,982.61	\$15,630,450
Net Income or (Loss)		<u>(\$410,785)</u>		<u>\$3,923,499</u>
Utilization (Visits)		1,121		3,137

Utilization by the payor for the first and third years is summarized below:

Payor:	<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid FFS	1	0.09%	12	0.38%
Medicaid MC	47	4.19%	402	12.81%
Medicare FFS	208	18.55%	473	15.08%
Medicare MC	269	24.00%	792	25.25%
Commercial FFS	546	48.71%	1,317	41.98%
Commercial MC	6	0.54%	32	1.02%
Private Pay	20	1.78%	46	1.47%
Charity	<u>24</u>	<u>2.14%</u>	<u>63</u>	<u>2.01%</u>
Total	1,121	100%	3,137	100%

The following is noted concerning the submitted FASC budget:

- Reimbursement rates reflect current and projected Federal and State government reimbursement methodologies, with commercial and private payers reflecting adjustments based on regional experience.
- The Center's utilization is based on the physicians' LOI and Lourdes shifting cases to the Center. The payor mix is based on the participating physicians' experience at Lourdes.
- The number and mix of staff were determined by the applicant's experience in providing ambulatory services along similar FASCs in New York State.
- Expense assumptions are based on the experience of the applicant's member, the participating physicians, and industry norms for freestanding ambulatory surgery centers.
- The ten-member and two non-member physicians have provided letters of interest in performing procedures at the proposed Center. Collectively, this represents 2,328 cases. In addition, in 2023, Lourdes performed 1,188 surgery cases that didn't require an overnight stay, and it's anticipated that approximately 266 of these cases will shift to the Center in the first year. The Center projects that it will perform 1,121 cases in the first year. All of the proposed surgical cases are currently being performed at Lourdes. The proposed FASC represents Lourdes and the Centers' members efforts to enhance access to services by establishing an FASC in the community, lessening the need for patients to travel for ambulatory surgical services.

Lease Rental Agreement

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

Date:	May 14, 2024
Premises:	16,672 square feet located at 601 Harry L Drive, Johnson City, 13790
Landlord:	Spark JC, LLC
Lessee:	Binghamton Project, LLC, to be renamed _ Southern Tier Surgery Center, LLC – per Certificate of Amendment of Articles Organization
Term:	15 years with two (2) five (5) year renewal terms
Rent:	\$616,864 annually, \$37 per square foot, a 2.5% annual increase
Improvement Allowance	The landlord shall provide the lessee \$2,792,125 to construct the Tenant's Work.
Provisions:	Triple Net lease

The applicant has provided an affidavit stating that the lease is an arm's length arrangement. Letters from two NYS licensed realtors attested the rental rate as fair market value.

Membership Interest Transfer Agreement

The applicant has submitted an executed New York Holdco, LLC membership interest transfer agreement; the terms are summarized below:

Date:	October 7, 2024 (the effective date)
Transferor:	Binghamton Health Corporation (sole member of the Company)
Company:	New York Holdco, LLC
Transferee:	Kristian Mineau – purchased 14.641% of New York Holdco, LLC for \$433,429.60
Transferee:	Kenneth Rosenquest – purchased 0.1% of New York Holdco, LLC for \$2,960.40

Administrative Service Agreement

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

Date:	August 23, 2024
Facility:	Binghamton Project, LLC, to be renamed _ Southern Tier Surgery Center, LLC
Contractor:	Constitution Surgery Alliance, LLC
Services Provided:	Assist with operations; recruit new partners/users; introduce new procedures; prepare financial statements; assist with debt financing; assist with controller services; assist financial analysis; develop and monitor clinical and financial indicators; assist with contract administration; assist in managed care contracts; assist in clinical and business audits; assists purchases; assist with HIPAA and compliance programs; assist with intranet policies; attend Board Meetings; assist with surgery schedule; assist with Joint Commission or AAAHC survey; oversight of jointly paid services; and supervise billing and collections.
Term:	7 years from the first patient treated with automatic three (3) year renewals
Fee:	\$360,000 1 st year until 1 st patient is seen, \$585,000 next 12 months, and \$635,000 per year to the end of the term. Plus, any direct expenses

Members Kristian Mineau and Kenneth Rosenquest are Constitution Surgery Alliance, LLC employees. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

Billing and Other Financial Services Agreement

The applicant has submitted an executed billing and other financial services agreement; the terms are summarized below:

Date:	August 23, 2024
Facility:	Binghamton Project, LLC, to be renamed _ Southern Tier Surgery Center, LLC
Contractor:	Constitution Billing and Financial Services, LLC
Services Provided:	Perform all necessary services to bill, collect, and account for in the Company's name. Filing claim forms and supporting documentation, resubmitting disputed claims, responding to bill inquiries, statement production, daily mailings, posting charges, payments, adjustments, coding claims, monthly reporting, and deposits to the company's accounts. Maintain financial records and prepare monthly, quarterly, and annual reports. Provide requested supporting documentation, maintain the database, process invoices, record and reconcile insurance and patient payments. Prepare and process the company payroll and coordinate ancillary benefits.
Term:	3 years from facility commencement date with automatic two (2) year renewals
Fee:	A conversion factor of \$2.94 x the APC Relative Weight assigned to the primary CPT/HCPCS code. Conversion Factor adjusted by a mutually agreed change in the Consumer Price Index for all Urban Consumers (CPI-U)

Member Kristian Mineau is the President and CEO of Constitution Billing and Financial Services, LLC. Member Kenneth Rosenquest states he is also associated with Constitution Billing and Financial Services, LLC. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

Capability and Feasibility

Total project costs of \$14,935,486 will be met with \$3,143,361 in equity, \$2,792.125 in landlord's improvement allowance, and an eight-year loan for \$9,000,000 (1st-year interest only at prime + 100 basis points or 8.75%). After the first year, the loan automatically converts to a seven-year term loan at an 8% interest rate. The Guthrie Clinic has provided a commitment letter. Guthrie Lourdes Hospital's Senior Vice President has submitted a memorandum to cover the Center's projected loss.

The working capital requirement is estimated at \$2,605,075 based on two months of third-year expenses. Funding will be met through \$2,205,075 in members' equity and a four-year loan for \$400,000 (1st year interest only at prime plus 100 basis points or 8.75%) after the first year converts to a self-amortizing three-year loan at 8%. The Center projects a net loss in the first year of (\$410,785) and a \$3,923,499 net income in the third year of operations. The budget appears reasonable.

BFA Attachment B, Our Lady of Lourdes Memorial Hospital, Inc. 2022-2023 Certified Financial Statements (sole member of Binghamton Health Corp.), and BFA Attachment C, The Guthrie Clinic's 2022-2023 Certified Financial Statements and their October 31, 2024, Internal Financial Statements reveals sufficient resources to meet all the equity requirements. BFA Attachment D, Pro Forma Balance Sheet shows \$10,932,686 in equity as of the first day of operations.

BFA Attachment B, Our Lady of Lourdes Memorial Hospital, Inc. and Affiliates' 2022-2023 Certified Financial Statements show average negative working capital, average positive net assets, and an average net loss of \$37 million. BFA Attachment C, The Guthrie Clinic's 2022-2023 Certified Financial Statements shows average positive working capital, average positive net assets in net assets, and an average net loss of \$43.8 million. For the period ending October 31, 2024, The Guthrie Clinic showed positive working capital, positive net assets, and an excess margin of \$3.4 million.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Southern Tier Surgery Center, LLC Proposed Members' Net Worth Statement
BFA Attachment B	Our Lady of Lourdes Memorial Hospital, Inc. and Affiliates' 2022-2023 Certified Financial Statements
BFA Attachment C	The Guthrie Clinic 2022-2023 Certified Financial Statement and October 31, 2024, Internal Financial Statement
BFA Attachment D	Pro Forma Balance Sheet of Southern Tier Surgery Center, LLC



Project # 242037-B
ABC Little Clinic 115

Program: Diagnostic and Treatment Center **County:** New York
Purpose: Establishment and Construction **Acknowledged:** August 26, 2024

Executive Summary

Description

Association to Benefit Children (ABC), an existing not-for-profit corporation, requests approval to establish an Article 28 Diagnostic and Treatment Center certified in primary care to serve pediatric patients. It will be on the first floor of the East Harlem Neighborhood Health Action Center at 158 East 115th Street, New York. The building is owned and operated by the City of New York, and under the jurisdiction of the NYC Department of Health and Mental Hygiene.

The proposed center will be co-located with ABC's existing NYS-licensed, Article 31 Mental Health Outpatient Treatment and Rehabilitative Service clinic. ABC's new clinic will consist of three (3) examination rooms, three (3) consultation rooms, shared office space, a reception and waiting area, and two (2) storage rooms.

ABC has an affiliation and transfer agreement with New York - Presbyterian Hospital and hopes to add ABC Little Clinic.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 10,224 visits in Year One, with 73% Medicaid and 25% Charity Care. Visits are projected at 14,896 in Year Three with 75.34% Medicaid and 23.12% Charity Care.

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 are estimated at \$456,942 and will be funded with equity.

Budget:	<u>Year One</u>	<u>Year Three</u>
Revenues	\$899,946	\$1,348,461
Expenses	<u>911,491</u>	<u>967,571</u>
Excess Revenues	(\$11,545)	\$380,890

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. Submission of an executed lease rental agreement that is acceptable to the Department of Health. [BFA]
3. Submission of two real estate letters attesting to the reasonableness of the per square foot rental. [BFA]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

Approval conditional upon:

1. This project must be completed by **May 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, 2025**, and construction must be completed by **February 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 6, 2025

Need Analysis

Project Description

Association to Benefit Children (ABC) proposes to establish an Article 28 Diagnostic and Treatment Center offering primary and preventive services to children at the East Harlem Neighborhood Health Action Center (158 East 115th Street), a building owned and operated by the City of New York, and under the jurisdiction of the NYC Department of Health and Mental Hygiene. The proposed Article 28 pediatric health clinic would be co-located with ABC's existing NYS-licensed MHOTRS (Mental Health Outpatient Treatment and Rehabilitation Services). The new clinic would provide much needed physical health services in a building that serves as a hub for the surrounding high need community, including health navigation, women's nutritional promotion programming, a family wellness suite, NYC ID services, and community health planning and coordination.

Background and Analysis

The proposed service area is Upper Manhattan in New York County and the South Bronx in Bronx County. The facility will focus on neighborhoods including East Harlem, Central Harlem, West Harlem, Washington Heights, Highbridge, Melrose, Morrisania, and Mott Haven. The proposed location is within a Health Professional Shortage Area for Dental Health, Mental Health, and Primary Care, it is also within a Medically Underserved Area.

The population of New York County is estimated to increase to 1,724,141 a 4.7% increase and Bronx County is estimated to increase to 1,597,728 a 10% increase by 2029 per projection data from the Cornell Program on Applied Demographics. Demographics for the primary service areas are noted below including a comparison with New York State.

Demographics	New York County	Bronx County	New York State
Total Population	1,645,867	1,443,229	19,994,379
Hispanic or Latino (of any race)	26.0%	56.4%	19.5%
White (non-Hispanic)	45.6%	8.6%	53.8%
Black or African American (non-Hispanic)	12.4%	28.3%	13.8%
Asian(non-Hispanic)	12.0%	3.8%	8.8%
Other (non-Hispanic)	4.0%	2.9%	4.1%

Source: 2022 American Community Survey (5-Year Estimates Data Profiles)

In 2022, 95.4% of the population of New York County and 92.4% of Bronx County had health coverage as follows:

Health Plans	New York	Bronx County
Employer plans	52.3%	30.1%
Medicaid	19.7%	43.3%
Medicare	10.5%	6.87%
Non-group plans	12.7%	11.8%
Military or VA plans	0.321%	0.379%

Source: Data USA

The projected payor mix includes:

Applicant Projected Payor Mix		
Payor	Year One	Year Three
	Inpatient	
Medicaid	73.00%	75.34%
Private Pay	2.00%	1.54%
Charity Care	25.00%	23.12%

The applicant projects 10,224 visits in Year One and 14,896 visits in Year Three.

This clinic will be dedicated to pediatric primary care. The applicant will prioritize children who are Medicaid enrollees and uninsured. The clinic will target children ages 0-17, and prioritize those who have developmental disabilities, mental health needs, and linguistic or cultural barriers. Also, in the same building, is an Article 31 pediatric outpatient mental health clinic and a family wellness center. Together these facilities will provide better continuation of care with easier access for patients. East Harlem and its surrounding communities have a large Hispanic population, and the clinic will be bilingual in English and Spanish.

According to the applicant, there are other providers in the area for pediatric services, but many uninsured and Medicaid patients do not receive the number of necessary visits. The new clinic would provide physical health services in a building that serves as a hub for the surrounding high-need community.

Prevention Quality Indicators (PDIs) 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 pediatric rates for 2021 related to this application.

Hospital Admissions per 100,000 Pediatric			
PDI Name	New York County	Bronx County	New York State
Asthma	169	379	113
Diabetes Short-Term Complications	26	42	26
Gastroenteritis	30	89	41
Urinary Tract Infection	14	30	20
Prevention Quality Overall Composite	164	324	123

Source: *Health.Data.NY.Gov*

Conclusion

Approval of this project will provide necessary pediatric primary care to a low-income and underserved population.

Program Analysis

Project Proposal

Proposed Operator	Association to Benefit Children
To Be Known As	ABC Little Clinic 115
Site Address	158 East 115th Street New York, NY 10029 (New York)
Specialties	Medical Services-Primary Care
Hours of Operation	Monday: 9am to 5pm Tuesday: 9am to 5pm Wednesday: 11am to 7pm Thursday: 9am to 5pm Friday: 8am to 4pm
Staffing (1st Year / 3rd Year)	6.6 FTEs / 6.6 FTEs
Medical Director(s)	Gerald Loughlin, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by New York Presbyterian 5 miles / 20 minutes

The following represents the FTEs for ABC Little Clinic 115:

Position	First Year	Third year
Management and Supervision	0.6	0.6
Registered Nurses	1.0	1.0
Physicians	0.6	0.6
Physicians' Assistants	1.0	1.0
Social Workers and Psychologist	0.8	0.8
Clerical and Other Administrative	1.8	1.8
Health Educator	0.8	0.8
Totals	6.6	6.6

There will be three physical examination rooms in the proposed pediatric health clinic, allowing for two clinical staff, a Physician and Physician's Assistant and a Registered Nurse. Point in time capacity and annual capacity/utilization was estimated based on overall clinical capacity, and administrative/clerical support were duly added based on anticipated need for such support. Because ABC intends to serve a high need population, the social worker and health educator were added to the staffing mix to address health-adjacent needs, including factors related to the social determinants of health.

Character and Competence:

The members of Association to Benefit Children are:

Name	Title
Tom Styron	Chairperson
Adama Bah	Director
Rebecca Banyasz	Director
Mitchell Bernard	Director
Hon. Helen Freedman	Director
Timothy Goodell	Director
Karenn Gore	Director
Stephen Graham	Director
Blanche Johnson	Secretary
Meredith Kane	Director
Joan Lacagnina	Treasurer
Gerald Loughlin	Director

Name	Title
Amie Nuttall	Director
Michael Nutter	Director
Basil Smikle	Director
Anil Stevens	Investments
Rose Styron	Director
Dermot Sullivan	Director
Michael Wolitzer	Director
Peter Wu Buchenholz	Corp. Vice President
Michael Lewis	Corp. Vice President
Gretchen Buchenholz	Director
Eri Noguchi	Assoc. Exec. Director
Matthew Manger	CFO
Marie Nguyen	Chief Program Officer

Adama Bah is presently an Emergency Medical Tech at Senior Care, NY since 2020. Prior to this Bah was a Residential Habilitation Counselor for AHRC since 2015. Bah was the Program Director for three (3) years at Pan African CDI. Bah graduated with an associate degree from Mildred Elley in 2017.

Rebecca Banyasz retired in 2008 as the Head Teacher from the Association to Benefit Children. Banyasz graduated from Brown University with a bachelor's degree in 1994 and from Bank Street College in 1996 with a master's degree.

Mitchell Bernard has been the Chief Counsel of Natural Resources Defense Council, a non-profit law business, since 1988. Bernard manages the legal program for non-profit law. Mitchell Bernard received his law degree from New York University in 1979.

Gretchen Buchenholz was the founder and Executive Director of Association to Benefit Children for 36 years. Buchenholz was previously the founder and Director of the New York State Committee Against Hunger and the founder and Director of The Hunger Committee National Coalition for the Homeless for one (1) year. Buchenholz was the founder and Director of the Yorkville Soup Kitchen for one (1) year, and an instructor in the Sociology Department at Hunter College for two (2) years. Gretchen Buchenholz graduated from Hunter College with a bachelor's degree and Colombia University with a master's degree.

Peter Wu-Buchenholz is the Adjudication Counsel for the New York State Division of Human Rights since 2000, reviewing recommended orders after hearings and preparing final orders. Wu-Buchenholz advises the Commissioners regarding cases, drafts and issues alternate proposed orders, and remands when record evidence fails to support the recommended order. Wu-Buchenholz previously worked as a Senior Attorney for 10 months. Wu-Buchenholz enforced state human rights law protecting against discrimination. Wu-Buchenholz was the Assistant Attorney General of the Labor Bureau in the New York State Department of Law for over one (1) year. He represented the Department of Labor and Workers Compensation Board on appeal. He wrote briefs and engaged in oral arguments in Article 78 appeals. Wu-Buchenholz was the Legislation Project Coordinator at Voices for Immigrant Justice for five (5) months, researching and drafting legislative proposals to effect changes to provisions of Illegal Immigration Reform and Immigrant Responsibilities Act of 1196, including governing expedited removal of asylum seekers, affidavits of support, and bars to reentry. He also worked as a Legal Intern at Main Street Legal Services for nine (9) months. Wu-Buchenholz assisted clients seeking citizenship, permanent residency, and political asylum. He was also a Pro Se Intern at the United States Court of Appeals for the Second Circuit for eight (8) months, researching and analyzing substantive issues in pending cases involving sua sponte dismissal, requests for in forma pauperis status, requests for counsel, Anders motions, and 28 USC 1983 civil rights complaints. Wu-Buchenholz received a Juris Doctor from City University of New York School of Law in 1997 and a bachelor's degree from Boston College in 1993.

Helen Freedman retired on October 31, 2014. Freedman served 36 years on the New York State bench. Freedman was an Associate Justice of the Appellate Division, First Department for six (6) years and served for over eight (8) years as a Justice in the Commercial Division. Justice Freedman was the

Presiding Justice of the Litigation Coordinating Panel for Multi-district Litigation in New York State from 2002 to 2014. Freedman graduated from New York University School of Law with a law degree in 1964.

Timothy Goodell has been the Executive Vice President, General Counsel, Corporate Secretary, and Chief Compliance Officer of Hess Corporation since 2009. Goodell graduated from Davidson College with a bachelor's degree in 1979 and the University of Virginia in 1984 with a law degree.

Karenn Gore is the Founder and Director, Center for Earth Ethics at Union Theological Seminary since 2015 and Ex Officio Faculty Member, Earth Institute, Columbia University since 2019. Gore graduated from Harvard College in 1995 with a bachelor's degree, and from Columbia Law School in 2000 with a juris doctor. Gore also graduated from Union Theological Seminary with a master's degree in 2013.

Blanche Johnson Blanche Johnson is a retired licensed certified social worker. For the last three decades, Johnson has been an advocate for children and the disabled in NYC. They graduated from Stony Brook University with a bachelor's degree in 1981 and from Fordham University with a master's in social work in 1983.

Stephen Graham has been a Professor at Colombia College and Columbia School of General Studies for three (3) years. Graham worked as a research assistant for one (1) year at Colombia University. He graduated from Harvard College in 1974 with a bachelor's degree and from Columbia School of the Arts and Sciences with a doctorate in 2004.

Meredith Kane worked as a Real Estate and Pro Bono Attorney at Paul, Weiss, Rifkind, Wharton, & Garrison for 12 years. She retired in 2020. Kane has been overseeing outpatient children's mental health clinics and other community based pediatric health screening and monitoring services as well as other mental health support, services, and care in NYC in the community and in public schools. Kane received a bachelor's degree from Yale College in 1976 and a law degree from Harvard Law School in 1982.

Joan Lacagnina retired in 2022 but previously worked for Kohlberg Kravis Roberts and Co. for 25 years. Lacagnina graduated from St. John's University in 1988 with a bachelor's degree and Pace University in 1992 with a master's degree.

Michael Lewis currently works as a Professor at the Silberman School of Social Work at Hunter College since 2018. Lewis is also an Associate Professor at CUNY Graduate Center since 2012. Lewis previously worked as Associate Professor at Silberman School of Social Work for nine (9) years. Lewis graduated from CUNY Graduate Center with a Doctor of Philosophy in Sociology in 1995 and from Columbia University with a master's degree in social welfare in 1990.

Gerald Loughlin M.D. has extensive experience in pediatrics including pediatric pulmonology and will be the medical director of the facility. Loughlin is the Chief of Pediatrics at a local major urban hospital and currently serving as the Professor of Pediatrics at Weill Cornell Medical Center. He obtained his medical degree from the University of Rochester Medical School in 1973 and graduated from Johns Hopkins University School of Professional Studies with a Master of Science in Business Health Care Finance and Administration in 1998.

Matthew Manger has been the Chief Financial Officer for Association to Benefit Children since 2004. Manger is also the Principal of MM Financial Consulting since 2004. Manger graduated from Rollins College with a bachelor's degree in economics in 1998.

Marie Nguyen has been the Chief Program Officer of Association to Benefit Children since 2018, previously holding the title of Director of Programs for twelve years. Nguyen is presently a lecturer at CUNY Hostos Community College since 2009 and a Site Coordinator for The After-School Corporation-PS 32 since 2005. Nguyen graduated from the University of Chicago with a bachelor's degree in 1998 and from Colombia University with a master's degree in 2005.

Eri Noguchi has been the Associate Executive Director of the Association to Benefit Children since 1994. Noguchi worked as an Adjunct Assistant Professor for Colombia University School of Social Work since 2004 and at the Roosevelt House Policy Institute at Hunter College since 2016.

Amie Nuttall has been on the Board of Directors of the Association to Benefit Children since 2015. Nuttall has been retired since 2012. Nuttall was formerly involved in several non-profit organizations focused on education of New York City youth in lower-income neighborhoods. Most recently, she was Director of Development at The Beginning with Children Foundation, responsible for all capital raising for this New York City focused charter school organization, which at the time had charter schools focused in Brooklyn. Nuttall graduated from John Carroll University with a bachelor's degree in 1996.

Michael Nutter is presently employed by David N. Dinkins Professor of Professional Practice in Urban and Public Affairs, School of International and Public Affairs, Columbia University, since 2016. Nutter has also been a Political Commentator for CNN since 2016. Before this Nutter worked as an Executive Fellow in Leadership for the Institute for Strategic Leadership at Drexel University for one (1) year. Nutter graduated from Wharton School of Business with a bachelor's degree in economics in 1979.

Basil Smikle has been the Director of the Roosevelt House Public Policy Institute since 2021 and has been the Founder, Political and Policy Consultant for Basil Smikle Associates since 2003. Smikle is the Director of Teachers College since 2019. Smikle graduated from Colombia University in 1996 with an MPA and in 2018 with a doctorate.

Anil Stevens has been a partner and portfolio manager of Interval Partners, LP, a hedge fund since April 2014. They worked from Parameter Capital as a Portfolio Manager from June 2010 to August 2013. They graduated from Boston College with a bachelor's degree in 1993.

Rose Styron received a bachelor's degree from Johns Hopkins University in 1993 and is currently retired.

Tom Styron has been an Associate Professor in the Department of Psychiatry at Yale University School of Medicine since 2005. Tom Styron is also the Executive Director, Community Services Network (formerly the Managed Service System) of Greater New Haven, Connecticut Mental Health Center since 2003, and the Director of the Psychology Training Program – Adult Community Mental Health track at the Connecticut Mental Health Center since 2000. Tom Styron graduated from UMass-Amherst in 1997 with a medical degree.

Dermot Sullivan has been a partner and employment law counselor for Bryan Cave. Sullivan graduated from Fairfield University with a bachelor's degree in 1993 and from St. John's University with a judicial degree in 1998.

Michael Wolitzer has been the Head of Investment Funds Practice at Simpson Thacher & Bartlett, LLP for 35 years. Wolitzer graduated from Colombia Law School in 1989 with a juris doctor degree.

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

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

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 cost, which is for renovation and the acquisition of moveable equipment, is estimated at \$456,942, broken down as follows:

Renovation and Demolition	\$283,636
Design Contingency	10,000
Construction Contingency	53,885
Planning Consultant Fees	8,000
Architect/Engineering Fees	17,500
Construction Manager Fees	12,500
Other Fees (Consultant)	7,563
Moveable Equipment	59,370
CON Fees	2,000
Additional Processing Fee	<u>2,488</u>
Total Project Cost	456,942

Operating Budget

The applicant has submitted an operating budget, in 2024 dollars, for the first and third years for the Article 28 space, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues:				
Medicaid FFS	\$118.84	\$36,484	\$118.78	\$40,862
Medicaid MC	\$118.95	851,301	\$118.95	\$1,293,978
Private pay	\$59.61	<u>12,161</u>	\$59.48	<u>\$13,621</u>
Total Revenues		\$899,946		\$1,348,461
Expenses:				
Operating	\$86.72	\$886,598	\$63.23	\$941,932
Capital	<u>\$2.43</u>	<u>24,893</u>	<u>\$1.72</u>	<u>\$25,639</u>
Total Expenses	\$89.15	\$911,491	\$64.96	\$967,571
Excess Revenues		(\$11,545)		\$380,890
Utilization: (Visits)		10,224		14,896

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

- Revenues are based on current reimbursement methodologies for pediatric primary care services.
- The projected 10,224 visits in Year One was based on 1.6 Clinician FTEs, each seeing 5 children per hour per day, for 213 days per year.
- The applicant has submitted a letter from the Executive Director indicating that the incremental losses will be offset via operations.

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid FFS	3.00%	2.31%
Medicaid MC	70.00%	73.03%
Private Pay	2.00%	1.54%
Charity Care	<u>25.00%</u>	<u>23.12%</u>
Total	100.00%	100.00%

Lease Rental Agreement

The applicant currently leases space for the Article 31 clinic. The applicant will lease additional space in the same area for the Article 28 component, which is summarized below:

Premises	1,032 square feet located at 158 East 115 th Street, New York.
Lessor	NYC Department of Health and Mental Hygiene
Lessee	Association to Benefit Children
Term	Extends through March 2024.
Rental	\$31,992 annually (\$31.00 per sq.ft.)
Provisions	The lessee shall be responsible for utilities.

The lease agreement is a non-arm's length lease arrangement. As a contingency of approval, the applicant must provide two real estate letters attesting to the reasonableness of the per square foot rental.

Capability and Feasibility

The total project cost of \$456,942 will be met with equity from Association to Benefit Children's operations. Working capital requirements of \$161,262, which is equivalent to two months of third year expenses, will be funded with equity from operations. BFA Attachment A, 2022-2023 Certified Financial Statements of Association to Benefit Children, indicates the availability of sufficient funds to meet the equity contributions.

The submitted budget indicates an incremental excess of revenues over expenses of (\$11,545) and \$380,890 during Year One and Year Three, respectively. Revenues are based on current reimbursement methodologies for pediatric primary care services. The applicant has submitted a letter from the Executive Director indicating that the incremental losses will be offset from operations. The submitted budget appears reasonable.

BFA Attachment A, shows the entity had an average positive working capital position, an average positive net asset position, and an average operating excess revenues over expenses of \$166,824 during June 30, 2022, and June 30, 2023.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Association to Benefit Children and Affiliate – Consolidated Statement of Financial Position

MEMORANDUM

To: Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

From: Vincent DiCocco, Senior Attorney
Bureau of Program Counsel
Division of Legal Affairs

Date: January 16, 2025

Subject: Proposed Dissolution of Living Resources Certified Home Health Agency, Inc.

This is to request that the above matter be included on the agendas for the next Establishment and Project Review Committee and Public Health and Health Planning Council (PHHPC) meetings.

The attachments relating to this matter include the following:

- 1) Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) A photocopy of an email letter from Legal Counsel requesting approval of the proposed Certificate of Dissolution of Living Resources Certified Home Health Agency, Inc., dated February 16, 2024;
- 3) The proposed Verified Petition to the Attorney General from Living Resources Certified Home Health Agency Inc., seeking dissolution;
- 4) A copy of the Resolutions of the Board of Directors of Living Resources Certified Home Health Agency, Inc., dated October 11, 2023, approving and authorizing the dissolution;
- 5) An executed, proposed Plan of Dissolution and Certificate of Dissolution of Living Resources Certified Home Health Agency, Inc.;
- 6) A proposed verified petition seeking the Attorney General's approval of the filing of the Certificate of Dissolution of Living Resources Certified Home Health Agency, Inc.;
- 7) A photocopy of the Certificate of Incorporation for Living Resources Certified Home Health Agency, Inc., dated June 10, 1999, and filed on September 24, 1999, and Consent to File Letter of the Public Health Council for Living Resources Certified Home Health Agency, Inc., dated August 5, 1999;
- 8) A photocopy of the Certificate of Change for Living Resources Certified Home Health Agency, Inc. to change county locations, filed on July 14, 2015;
- 9) A photocopy of the Certificate of Change for Living Resources Certified Home Health Agency, Inc. to change the address of the registered agent, filed on January 28, 2019;
- 10) A copy of the Corporate Bylaws of Living Resources Certified Home Health Agency, Inc.;
- 11) A photocopy of the Debt Guaranty, Pledge and Forgiveness Agreement; and
- 12) A certification from the treasurer of Living Resources Certified Home Health Agency, Inc. confirming that Living Resources Certified Home Health Agency, Inc. has no assets or liabilities as documented by the accompanying Receipt and Release document.

MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Kathy Marks *KSM*
General Counsel

Date: January 16, 2025

Subject: Proposed Dissolution of Living Resources Certified Home Health Agency, Inc.

Living Resources Certified Home Health Agency, Inc. requests Public Health and Health Planning Council ("PHHPC") approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law §§ 1002(c) and 1003.

The Public Health Council approved and consented to the filing of Living Resources Certified Home Health Agency, Inc.'s Certificate of Incorporation on August 5, 1999, and the Certificate of Incorporation was subsequently filed with the NYS Department of State on September 24, 1999.

Living Resources Certified Home Health Agency, Inc. was the licensed operator of a certified home health agency for developmentally disabled individuals and all others eligible for home health services pursuant to Article 36 of the NYS Public Health Law, located at 300 Washington Avenue Ext., in Albany, New York. Living Resources Certified Home Health Agency, Inc. is dissolving because the Corporation experienced several years of losses and as a result could not continue operating. Living Resources Certified Home Health Agency, Inc. entered into an Asset Purchase Agreement with Marquis Home Care North, LLC for the purchase and sale of substantially all of its assets and the Corporation sold substantially all of its assets after receiving approval of the sale from the Attorney General on March 30, 2020. As such, Living Resources Certified Home Health Agency, Inc. has no current operations and will not undertake operations at any point in the future. In light of this, Living Resources Certified Home Health Agency, Inc.'s Board of Directors have deemed it in the best interests of Living Resources Certified Home Health Agency, Inc. to dissolve. On October 11, 2023, the Board of Directors of Living Resources Certified Home Health Agency, Inc. approved and authorized the filing of the Certificate of Dissolution. Living Resources Certified Home Health Agency, Inc. has no assets or liabilities.

The following documents are enclosed: a proposed Verified Petition to the Attorney General, a Plan of Dissolution, and a proposed Certificate of Dissolution, with supporting organizational documents of Living Resources Certified Home Health Agency, Inc. and resolutions of the board of directors of Living Resources Certified Home Health Agency, Inc. authorizing the dissolution. A letter from the legal counsel for Living Resources Certified Home Health Agency, Inc. advocating for dissolution is also enclosed.

There is no legal objection to the proposed Verified Petition, Plan of Dissolution, and Certificate of Dissolution of Living Resources Certified Home Health Agency, Inc.

Attachments

DELANEY M. R. KNAPP, ESQ.

dknapp@bsk.com

P: 518.533.3258

F: 518.533.3299

February 16, 2024

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Colleen Leonard
New York State Department of Health
Public Health & Health Planning Council
Corning Tower, Room 1805
Albany, NY 12237
Colleen.leonard@health.ny.gov

Re: *Dissolution of Living Resources Certified Home Health Agency, Inc.*

Dear Ms. Leonard:

This office represents Living Resources Certified Home Health Agency, Inc. (the "Corporation"), a charitable New York Not-for-Profit Corporation established for the purpose of operating a certified home health agency. By this submission we are requesting approval from the Public Health and Health Planning Council ("PHHPC") for the Corporation's voluntary dissolution pursuant to Section 1002(c) of the New York Not-for-Profit Corporation Law.

The Corporation was incorporated on September 24, 1999 for the purpose of operating a certified home health agency for developmentally disabled individuals and all others eligible for home health services pursuant to Article 36 of the Public Health Law. The Corporation's sole corporate member is Living Resources Corporation ("Living Resources"). Living Resources is also the sole corporate member of Living Resources Home Care Agency, Inc. ("Home Care") and in that capacity provided funds and services to both the Corporation and Home Care in furtherance of their similar charitable purposes serving persons with special needs and others in the Greater Capital Region of New York State.

The Corporation experienced several years of losses which caused Living Resources to incur costs and advance funds to the Corporation in an amount in excess of \$300,000. As a result, the Corporation could not continue operating and, on or December 17, 2017, the Corporation entered into an Asset Purchase Agreement (the "Agreement") with Marquis Home Care North, LLC for the purchase and sale of substantially all of the Corporation's assets (the Agreement was subsequently amended on November 5, 2018 and again on April 8, 2019,

Ms. Colleen Leonard
February 16, 2024
Page 2

and the Corporation sold substantially all of its assets after receiving approval of the sale from the Attorney General on March 30, 2020).

Accordingly, the Board of Directors of the Corporation has determined that it is in the best interests of the Corporation to dissolve. Pursuant to the proposed Plan of Dissolution and Distribution of Assets (the "Plan"), the Corporation has no assets or liabilities other than those associated with winding up and dissolving which shall be paid by Living Resources.

Pursuant to 10 NYCRR Section 650.1, enclosed please find the following exhibits in support of this submission:

1. A copy of certified Board Resolutions approving the Corporation's Plan and the Corporation's Certificate of Dissolution; and
2. A copy of the Corporation's proposed Verified Petition to the New York State Office of the Attorney General for approval of the Certificate of Dissolution, with all exhibits included.

On behalf of the Corporation, we respectfully request that this application for the approval of the dissolution of the Corporation and the filing of the Certificate for Dissolution with the New York State Department of State be submitted to the PHHPC for consideration at its first available meeting. If you should require any additional information in connection with this request, please do not hesitate to contact us.

A copy of this letter, including all attachments, is also being provided to the Bureau of House Counsel in the New York State Department of Health's Office of Counsel.

Thank you for your attention to and consideration of this matter.

Sincerely,

BOND, SCHOENECK & KING, PLLC



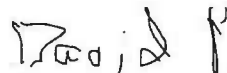
Delaney M. R. Knapp, Esq.

Enclosures

cc: Justin Pfeiffer, Esq., Bureau of House Counsel (justin.pfeiffer@health.ny.gov)

CERTIFICATION

The undersigned, being the Secretary of Living Resources Certified Home Health Agency, Inc. (the "Corporation") does hereby certify that the following is a true copy of the Resolutions of the Corporation, adopted by unanimous written consent of the directors effective October 11, 2023, and that same is in full force and effect.



David H. Philips, Jr.
Secretary, Board of Directors

**RESOLUTION
OF
THE BOARD OF DIRECTORS
OF
LIVING RESOURCES CERTIFIED HOME HEALTH AGENCY, INC.**

WHEREAS, Living Resources Certified Home Health Agency, Inc. (the “Corporation”) is a charitable New York Not-for-Profit Corporation; and

WHEREAS, pursuant to the Asset Purchase Agreement entered into by and between the Corporation and Marquis Home Care North, LLC (subsequently assigned to Marquis Certified Home Care, LLC) (“Marquis”), dated as of December 27, 2017 (subsequently amended on November 5, 2018 and again on April 8, 2019) (the “Asset Purchase Agreement”), the Corporation sold substantially all of its assets after receiving approval of the sale from the Attorney General on March 30, 2020; and

WHEREAS, since the completion of such sale, the Corporation has ceased business operations and proceeded to wind up its affairs; and

WHEREAS, the Corporation has no assets and no liabilities other than its current liabilities and expenses associated with winding up and dissolving; and

WHEREAS, the Board of Directors of the Corporation determined by a unanimous written consent effective October 11, 2023 that it is in the best interest of the Corporation to dissolve in accordance with the provisions for voluntary dissolution under the New York Not-for-Profit Corporation Law; and

WHEREAS, the Corporation is a membership corporation and has a sole corporate member, Living Resources Corporation (the “Member”), entitled to vote on the Corporation’s dissolution pursuant to the New York Not-for-Profit Corporation Law.

NOW, THEREFORE, it is hereby

RESOLVED, that the Board of Directors authorizes the dissolution of the Corporation; and it is further

RESOLVED, that the Plan of Dissolution annexed hereto as **Exhibit “A”** and incorporated as if fully set forth herein be, and hereby is, approved in all respects and adopted in substantially such form as the Plan of Dissolution; and it is further

RESOLVED, that the Plan of Dissolution shall be submitted to the Corporation’s Member for approval; and it is further

RESOLVED, that the Certificate of Dissolution annexed hereto as **Exhibit “B”** is hereby authorized to be filed with the New York State Department of State upon the approval of either the New York State Office of the Attorney General (the “Attorney General”) or the New York State Supreme Court of Albany County (the “Court”), on notice to the Attorney General, pursuant to Not-for-Profit Corporation Law Section 1002(d), and upon obtaining the consent of the Public Health and Health Planning Council of the New York State Department of Health (“PHHPC”); and it is further

RESOLVED, that the officers of the Corporation, including, without limitation, the President, are instructed and authorized to make any necessary changes to the Plan of Dissolution and to execute and deliver any and all documents necessary to effectuate the dissolution of the Corporation, including obtaining consent for dissolution from the New York State Department of Health’s PHHPC and from either the Court or the Attorney General and filing the Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law; and it is further

RESOLVED, that the officers of the Corporation, including, without limitation, the President, are authorized to take any further action and execute and deliver any agreements, instruments and documents, in the name of the Corporation, including making any revisions and edits required by New York State Department of Health’s PHHPC, the Attorney General, the Court, and/or any other governmental agency as in their judgment shall be necessary, proper or advisable in order to carry out the intent and accomplish the purposes of the resolutions adopted hereby.

EXHIBIT A

PLAN OF DISSOLUTION

OF

LIVING RESOURCES CERTIFIED HOME HEALTH AGENCY, INC.

A New York Not-for-Profit Corporation

**PLAN OF DISSOLUTION
OF
LIVING RESOURCES CERTIFIED HOME HEALTH AGENCY, INC.**

The Board of Directors of Living Resources Certified Home Health Agency, Inc. (the “Corporation”) does hereby authorize that this Corporation be dissolved in accordance with the following plan.

PROCEDURE FOR DISSOLUTION

1. The Corporation has no assets and no liabilities other than its current liabilities and expenses associated with winding up and dissolving which will be paid by Living Resources Corporation (the “Member”).

2. Upon resolution of the Board of Directors adopting this Plan of Dissolution (the “Plan”), the Board shall submit it to a vote of the Corporation’s Member for approval.

3. After the adoption of this Plan by the Board of Directors and approval by the Corporation’s Member, the Corporation shall seek approval of its Plan from (i) the Public Health and Health Planning Council of the New York State Department of Health (“PHHPC”) (and any other governmental agencies, as applicable); and (ii) either the New York State Office of the Attorney General (the “Attorney General”) or the New York State Supreme Court of Albany County (the “Court”), on notice to the Attorney General, pursuant to Not-for-Profit Corporation Law Section 1002(d).

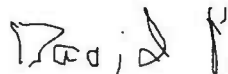
4. After obtaining approval of the Plan, the Member shall satisfy any current liabilities and expenses associated with winding up and dissolving.

5. All assets of the Corporation, if any, that shall exist or arise after the dissolution of the Corporation, shall be distributed to, and be the sole and absolute property of, its sole corporate Member, a charitable New York Not-for-profit corporation exempt from federal

income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and which is engaged in activities substantially similar to the Corporation's activities, in accordance with New York Not-for-Profit Law Section 1001(d)(3).

6. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto. Upon approval of the Certificate of Dissolution, the original Certificate of Dissolution, including all required approvals, shall be filed with the New York State Department of State.

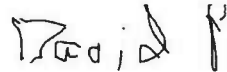
Dated: October 12, 2023

A handwritten signature in black ink, appearing to read "David H. Philips", is written above a horizontal line.

David H. Philips, Secretary
Board of Directors

CERTIFICATION

Pursuant to Section 1002(d) of the New York Not-for-Profit Corporation Law, the undersigned, being the Secretary of Living Resources Certified Home Health Agency, Inc. (the "Corporation"), does hereby certify that the following is a true copy of the Plan of Dissolution of the Corporation duly adopted by the unanimous written consent of the Board of Directors effective 11th day of October, 2023.



David H. Philips, Secretary
Board of Directors

EXHIBIT B

CERTIFICATE OF DISSOLUTION

CERTIFICATE OF DISSOLUTION
OF
LIVING RESOURCES CERTIFIED HOME HEALTH AGENCY, INC.

Pursuant to Section 1003 of the Not-for-Profit Corporation Law

The undersigned, being the President of Living Resources Certified Home Health Agency, Inc. (the "Corporation"), hereby certifies:

1. The name of the Corporation is Living Resources Certified Home Health Agency, Inc.
2. The Certificate of Incorporation was filed with the Department of State on September 24, 1999.

3. The name and address of each officer and director of the Corporation is:

<u>Name and Title</u>	<u>Address</u>
Kimberly Strauchon Verner, President	300 Washington Ave Ext., Albany, New York 12203
Diana Ostroff, Vice President	300 Washington Ave Ext., Albany, New York 12203
David Smingler, Treasurer	300 Washington Ave Ext., Albany, New York 12203
David H. Philips, Jr., Secretary	300 Washington Ave Ext., Albany, New York 12203
Roy Fruiterman	300 Washington Ave Ext., Albany, New York 12203
Alycia Gregory	300 Washington Ave Ext., Albany, New York 12203
Victoria Harkins	300 Washington Ave Ext., Albany, New York 12203

4. The Corporation is a charitable corporation.

5. At the time of the authorization of the Corporation's Plan of Dissolution as provided in Not-for-Profit Corporation Law Section 1002, the Corporation has no assets which are legally required to be used for a particular purpose.

6. The Corporation elects to dissolve.

7. The dissolution was authorized by the unanimous written consent of the Board of Directors effective _____, 2023, and by the Corporation's sole corporate member, Living Resources Corporation, by the unanimous vote of the Board of Directors of the Member at a duly noticed meeting on _____, 2023, at which a quorum was present and acting throughout.

8. On _____, the Public Health and Health Planning Council of the New York State Department of Health approved the dissolution of the Corporation. A copy of such approval is attached hereto pursuant to Not-for-Profit Corporation Law Section 1003(b)(1).

9. No other approval of the dissolution of the Corporation is required by any governmental body or officer.

10. Prior to delivery of the Certificate of Dissolution to the Department of State for filing, the Plan of Dissolution and Certificate of Dissolution were approved by the New York State Office of the Attorney General (the "Attorney General"). A copy of the Attorney General's approval is endorsed hereon or attached hereto.

Signature Page Follows

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution on
as of the ____ day of _____, 2023.

Kimberly Strauchon Verner
President, Board of Directors

CERTIFICATE OF DISSOLUTION
OF
LIVING RESOURCES CERTIFIED HOME HEALTH AGENCY, INC.

Pursuant to Section 1003 of the Not-for-Profit Corporation Law

DRAWDOWN ACCOUNT #42

Customer Reference No. 820702

Filed by:

Milena Vorndran, Paralegal
Bond, Schoeneck & King, PLLC
200 Delaware Avenue, Suite 900
Buffalo, NY 14202
Ph: 716-416-7065
Fax: 716-416-7365

PROPOSED PETITION

ATTORNEY GENERAL OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of the Application of

**LIVING RESOURCES CERTIFIED HOME
HEALTH AGENCY, INC.**

VERIFIED PETITION

For Approval of Certificate of Dissolution
pursuant to Section 1003 of the New York
Not-for-Profit Corporation Law

TO: OFFICE OF THE ATTORNEY GENERAL
The Capitol
Albany, New York 12224-0341

Petitioner, LIVING RESOURCES CERTIFIED HOME HEALTH AGENCY, INC. (the
“Corporation”), by its President, Kimberly Strauchon Verner, for its Verified Petition herein
respectfully alleges that:

1. The Corporation, whose principal address is located in the County of Albany, was
incorporated pursuant to Section 402 of the New York Not-for-Profit Corporation Law on
September 24, 1999. A copy of the Corporation’s Certificate of Incorporation, and all amendments
made thereto, is annexed hereto and made a part hereof as **Exhibit “A”** and a complete and current
copy of the Corporation’s bylaws are annexed hereto and made a part hereof as **Exhibit “B”**.

2. The names, addresses, and titles of the Corporation’s Directors and Officers are:

<u>Name and Title</u>	<u>Address</u>
Kimberly Strauchon Verner, President	300 Washington Ave Ext., Albany, New York 12203
Diana Ostroff, Vice President	300 Washington Ave Ext., Albany, New York 12203
David Smingler, Treasurer	300 Washington Ave Ext., Albany, New York 12203

David H. Philips, Jr., Secretary

300 Washington Ave Ext., Albany,
New York 12203

Roy Fruiterman

300 Washington Ave Ext., Albany,
New York 12203

Alycia Gregory

300 Washington Ave Ext., Albany,
New York 12203

Victoria Harkins

300 Washington Ave Ext., Albany,
New York 12203

3. The purposes for which the Corporation was organized are as follows: to be operated exclusively for non-pecuniary purposes, which may include charitable, educational, religious, scientific, literary, and cultural purposes within the intent and meaning of Section 501(c)(3) of the Internal Revenue Code, or corresponding sections of any future federal tax code, and in furtherance of such purposes specifically to provide home care services, as a certified home health agency, to individuals who are mentally retarded or developmentally disabled, and to others who are eligible for and could benefit from certified home health agency services, pursuant to Article 36 of the New York Public Health Law; provided, however, that unless permitted by law to do so, the corporation shall not provide certified home health agency services to any individual unless such individual would otherwise require care in a facility or program licensed by the New York State Office of Mental Retardation and Developmental Disabilities. *See Exhibit A.*

4. The Corporation is a charitable corporation.

5. The Corporation plans to dissolve in accordance with the Plan of Dissolution attached hereto and made a part hereof as **Exhibit “C”** (the “Plan”).

6. Pursuant to the Asset Purchase Agreement entered into by and between the Corporation and Marquis Home Care North, LLC (subsequently assigned to Marquis Certified Home Care, LLC) (“Marquis”), dated as of December 27, 2017 (subsequently amended on

November 5, 2018 and again on April 8, 2019) (the “Asset Purchase Agreement”), the Corporation sold substantially all of its assets after receiving approval of the sale from the Attorney General on March 30, 2020. Since the completion of such sale, the Corporation has ceased business operations and proceeded to wind up its affairs. The Corporation is dissolving because the charitable purposes for which the Corporation was formed have largely been fulfilled, and it is no longer in the Corporation’s best interests to continue its existence.

7. The Corporation is not aware of any ongoing or completed IRS audit or inquiry in the past three years.

8. The Board of Directors by unanimous written consent effective October 11, 2023 approved resolutions adopting the Plan and authorizing the filing of a Certificate of Dissolution. A copy of the unanimous written consent is attached hereto and made a part hereof as “**Exhibit “D”**”.

9. The Corporation’s sole corporate member, Living Resources Corporation (the “Member”), acting through its Board of Directors, approved a resolution adopting the Plan of Dissolution at a meeting held on September 27, 2023 at which a quorum was present and acting throughout.¹ A copy of the certified resolutions are attached hereto and made a part hereof as **Exhibit “E”**.

10. In furtherance of the aforementioned sale, a Debt Guaranty, Pledge and Forgiveness Agreement, attached hereto and made a part hereof as **Exhibit “F”**, was entered into by and between the Corporation, the Member, and Living Resources Home Care Agency, Inc. (“LHCA”), an affiliated New York not-for-profit corporation, dated as of November 18, 2019, provided that

¹ At the time of the Member’s meeting, all but one director had approved the Corporation’s resolutions and the Board was diligently trying to get in contact with said director. The Member’s Board approved the Plan of Dissolution contingent upon receiving the outstanding consent which was obtained October 11, 2023.

following the sale, after satisfaction of all outstanding liabilities, Corporation and the LHCA shall each pay to the Member any and all remaining funds as repayment for the advancement of funds and incurred costs of the Member in support of both the Corporation and the LHCA for years prior to the sale. The Corporation has no assets or liabilities other than its current liabilities and expenses associated with winding up and dissolving which will be paid by the Member.

11. The Corporation submits the signed statement from its Treasurer, David Smingler, attached hereto and made a part hereof as **Exhibit "G"**, which verifies that the Corporation has no assets or liabilities remaining at the time of filing this petition and that the Corporation acknowledges its obligation to file a final CHAR500 report with all required attachments with the Charities Bureau after the dissolution is complete.

12. In addition to approval by the Attorney General, the Public Health and Health Planning Council's approval of dissolution is required. The approval is annexed hereto and made a part hereof as **Exhibit "H"**.

13. With this petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law 1003.

WHEREFORE, Petitioner requests that the Court approve the Certificate of Dissolution of Living Resources Certified Home Health Agency, Inc., a New York not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

Signature Page Follows

IN WITNESS WHEREFORE, the Corporation has caused this Petition to be executed this

18 day of December, 2024, by:

LIVING RESOURCES CERTIFIED
HOME HEALTH AGENCY, INC.



Kimberly Strauchon Verner
President, Board of Directors

BOND, SCHOENECK & KING, PLLC

By: Delaney M. R. Knapp, Esq.
Thomas W. Simcoe, Esq.
*Attorneys for Living Resources Certified
Home Health Agency, Inc.*
Address and Post Office Address:
22 Corporate Woods Blvd, Suite 501
Albany, NY 12211
Phone: (518) 533-3235
Email: tsimcoe@bsk.com

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

Kimberly Strauchon Verner, being duly sworn, deposes and says: she is the President of the Board of Directors of LIVING RESOURCES CERTIFIED HOME HEALTH AGENCY, INC.; that she has read the foregoing Verified Petition and knows the contents thereof; that the same is true to her knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, she believes them to be true.

Kimberly Strauchon Verner

Sworn to before me this

___ day of _____, 2024

Notary Public

EXHIBIT A

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for LIVING RESOURCES CERTIFIED HOME HEALTH AGENCY, INC., File Number 990924000771 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on November 01, 2022.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

CERTIFICATE OF INCORPORATION

of

LIVING RESOURCES CERTIFIED HOME HEALTH AGENCY, INC.

under

SECTION 402 of the NOT-FOR-PROFIT CORPORATION LAW

The undersigned, being the age of eighteen years or over, for the purpose of forming a corporation pursuant to Section 402 of the Not-for-Profit Corporation Law of New York, affirms the information set forth in this Certificate under penalties of perjury:

FIRST: The name of the corporation is Living Resources Certified Home Health Agency, Inc.

SECOND: The corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law.

THIRD: The corporation is formed to be operated exclusively for non-pecuniary purposes, which may include charitable, educational, religious, scientific, literary, and cultural purposes within the intent and meaning of Section 501(c)(3) of the Internal Revenue Code, or corresponding sections of any future federal tax code, and in furtherance of such purposes specifically to provide home care services, as a certified home health agency, to individuals who are mentally retarded or developmentally disabled, and to others who are eligible for and could benefit from certified home health agency services, pursuant to Article 36 of the New York Public Health Law; provided, however, that unless otherwise permitted by law, to do so, the corporation shall not provide certified home health agency services to any individual unless such

individual would otherwise require care in a facility or program licensed by the New York State Office of Mental Retardation and Developmental Disabilities.

FOURTH: The type of corporation it shall be under Section 201 of the Not-for-Profit Corporation Law is Type B.

FIFTH: The office of the corporation shall be located in Schenectady County, New York.

SIXTH: The names and addresses of the persons constituting the initial Board of Directors of the corporation are:

Mr. Marc Lustick	199 Winne Road Delmar, New York 12054
Dr. Connell G. Frazer	34 1st Street Troy, New York 12180
Mr. Robert Bylancik	1074 Maryland Avenue Schenectady, New York 12308
Mr. Allen F. Maikels	36 Hugerford Road Albany, New York 12203
Ms. Henrietta Messier	58 Hudson Avenue Green Island, New York 12183
Mr. Herbert W. Sanderson, Ph.D.	809 Federal Street Troy, New York 12180
Mr. Kenneth C. Skinner, Jr.	49 Ryckman Avenue Albany, New York 12208

SEVENTH: The Secretary of State is 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 served against the corporation is: Living Resources Certified Home Health Agency, Inc., 2176 Guilderland Avenue, Schenectady, New York 12306.

EIGHTH: CT Corporation System, a corporation organized under the laws of the State of Delaware and authorized to do business in the State of New York, having an office at 111 Eighth Avenue, New York, New York, 10011 is designated as registered agent of the corporation upon whom process against it may be served pursuant to § 305 of the New York Not-For-Profit Corporation Law.

NINTH: No part of the net earnings of the corporation nor any distribution of its assets on dissolution will inure to the benefit of any director, officer, or other private individual, except that reasonable compensation may be paid for personal services rendered to or for the benefit of the corporation in furtherance of one or more of its purposes.

TENTH: No substantial part of the activities of the corporation will be devoted in attempting to influence legislation by propaganda or otherwise.

ELEVENTH: Notwithstanding any other provision of this Certificate, the corporation shall not carry on any other activities not permitted to be carried on by (a) a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future federal tax code, or (b) a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code, or corresponding section of any future federal tax code.

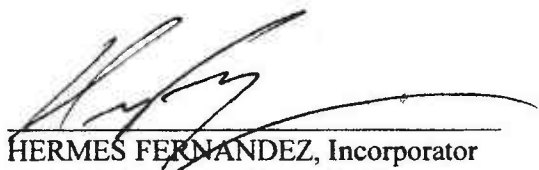
TWELFTH: Subject to the approval of a Justice of the Supreme Court, upon dissolution of the corporation its assets shall be distributed as designated by its Board of Directors for one or more exempt purposes within the meaning of Section 501(c)(3) of the

-3-
3

Internal Revenue Code, or a corresponding section of any future federal tax code. Any such assets not disposed of shall be disposed of by the Supreme Court of the county in which the principal office of the corporation is located, exclusively for such purposes or to such organizations as said Court shall determine, and which are organized and operated exclusively for such purposes.

THIRTEENTH: Directors of the corporation shall not be personally liable to the corporation or its members for monetary damages because of their breach of duty as directors unless such liability is based upon a judgment or other final adjudication adverse to the director which establishes (i) that the director's acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law, (ii) that the director personally gained in fact a financial profit or other advantage to which the director was not legally entitled, or (iii) that the director's acts violated Section 719 of the New York Not-For-Profit Corporation Law. If the New York Not-For-Profit Corporation Law is amended to authorize the further elimination or limitation of the liability of directors, the liability of a director of the corporation, in addition to the limitation on personal liability established by this Certificate, shall be further limited to the fullest extent permitted by the amended New York Not-For-Profit Corporation Law.

IN WITNESS WHEREOF, the undersigned has made and signed this Certificate
this 10th day of June, 1999, and affirms that the statements contained herein are true under
penalties of perjury.


HERMES FERNANDEZ, Incorporator
Bond, Schoeneck & King, LLP
111 Washington Avenue
Albany, New York 12210-2280
(518) 462-7421



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

August 5, 1999

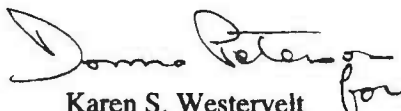
Ms. Christine Hough
Director of Planning
Living Resources Certified Home
Health Agency
2176 Guilderland Avenue
Schenectady, New York 12306

Re: Certificate of Incorporation of Living Resources Certified Home Health Agency, Inc.

Dear Ms. Hough:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 30th day of October, 1998, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Living Resources Certified Home Health Agency, Inc., dated June 10, 1999.

Sincerely,


Karen S. Westervelt
Executive Secretary

6

CERTIFICATE OF INCORPORATION
OF

LIVING RESOURCES CERTIFIED HOME HEALTH AGENCY, INC.

under

Under Section 402 of the Not-for-Profit Corporation Law

BOND, SCHOENECK & KING, LLP
ATTORNEYS AT LAW
111 WASHINGTON STREET
ALBANY, NEW YORK
12210-2280

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED SEP 24 1999

TAX S

BY: RE

SCHE

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990924000771

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for LIVING RESOURCES CERTIFIED HOME HEALTH AGENCY, INC., File Number 150714000527 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on November 01, 2022.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

150714000527

New York State Department of State
Division of Corporations, State Records and Uniform Commercial Code
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231
www.dos.ny.gov

CERTIFICATE OF CHANGE OF

Living Resources Certified Home Health Agency, Inc.

(Insert Name of Domestic Corporation)

Under Section 803-A of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is:

Living Resources Certified Home Health Agency, Inc.

If the name of the corporation has been changed, the name under which it was formed is:

SECOND: The certificate of incorporation was filed by the Department of State on:

September 24, 1999

THIRD: The change(s) effected hereby are: *(Check appropriate statement(s))*

- ☒ The county location, within this state, in which the office of the corporation is located, is changed to: Albany
- ☒ The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is changed to read in its entirety as follows:
300 Washington Avenue Extension
Albany NY 12203

☐ The corporation hereby: *(Check One)*

☐ Designates _____
as its registered agent upon whom process against the corporation may be served.

The street address of the registered agent is:

☐ Changes the designation of its registered agent to: _____

The street address of the registered agent is:

☐ Changes the address of its registered agent to: _____

☐ Revokes the authority of its registered agent.

150714000527

150714000⁵²⁷

FOURTH: The change was authorized by the board of directors.

Fredrick W Erlich *Fredrick W Erlich*
(Signature) (Name of Signer)
CEO
(Title of Signer)

CERTIFICATE OF CHANGE
OF

Living Resources Certified Home Health Agency, Inc.

(Insert Name of Domestic Corporation)

Under Section 803-A of the Not-for-Profit Corporation Law

Filer's Name: Dawn Vota, Bond Schoeneck & King PLLC

Address: 22 Corporate Woods Blvd., Suite 501 Drawdown #42/Mailbox #92

City, State and Zip Code: Albany, NY 12211

NOTE: This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$20 filing fee.

For Office Use Only

lcc
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JUL 14 2015

TAX \$ _____

BY: *mc*

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**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for LIVING RESOURCES CERTIFIED HOME HEALTH AGENCY, INC., File Number SR-29873 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on November 01, 2022.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State



CERTIFICATE OF CHANGE OF

LIVING RESOURCES CERTIFIED HOME HEALTH AGENCY, INC.

Under Section 803-A of the Not-for-Profit Corporation Law *(for use by agent)*

FIRST: The name of the corporation is: LIVING RESOURCES CERTIFIED HOME HEALTH AGENCY, INC.. Said corporation is hereinafter referred to as the "Domestic Corporation".

If the name of the Domestic Corporation has been changed, the name under which the corporation was formed is:

SECOND: The date on which the certificate of incorporation was filed by the Department of State is: 24 SEP 1999.

THIRD: The only change effected hereby is to change the address of the Registered Agent of the Domestic Corporation to read as follows:

C T CORPORATION SYSTEM, 28 Liberty St., New York, NY 10005.

FOURTH: The undersigned person, partnership, or corporation (hereinafter referred to as the "Agent") is the Registered Agent of the Domestic Corporation. The post office address previously designated by the Domestic Corporation for that purpose was the address of the undersigned Agent, and the address specified in paragraph Third above is the new address of the undersigned Agent. The undersigned Agent mailed a notice of the proposed change of address to the Domestic Corporation not less than thirty days prior to the date of delivery of this Certificate to the Department of State. The Domestic Corporation has not objected to the change of address effected hereby. The undersigned Agent is authorized by Not-for-Profit Corporation Law section 803-A(b) to sign and deliver this Certificate.

C T CORPORATION SYSTEM (Agent)

By:

Marie Hauer – Authorized Person.

Filer: C T CORPORATION SYSTEM
28 Liberty St.
New York, NY
10005.

FILE NUMBER: SR-29873 / DOS ID: 2422468 / Date Filed: 28 JAN 2019

EXHIBIT B

BY-LAWS

LIVING RESOURCES CERTIFIED HOME HEALTH AGENCY, INC.

Article I - NAME

The name of the Corporation is Living Resources Certified Home Health Agency, Inc. (hereinafter called the "Corporation").

Article II - PURPOSES

The purposes of the Corporation shall be: to provide home care services, as a certified home health agency, to anyone who could benefit from home care services, pursuant to Article 36 of the New York Public Health Law.

Article III - OFFICE

The principal office of the Corporation shall be located in County of Albany, state of New York. The Corporation may also have offices at such other places located within and without the State of New York.

Article IV - MEMBERSHIP AND MEETINGS

1. Membership. The membership of the Corporation shall consist of Living Resources Corporation.
2. Annual Meetings of Members. An annual meeting of members for the election of directors and the transaction of such other business as properly may come before it shall be held at the office of the Corporation during the month of June, or at such other place and time as agreed upon by a majority of the members. Notice of meetings shall be as stated under the "Notice of Meetings" section.
3. Special Meetings. Special meetings of the members may be called by the President at any time. Special meetings shall be called by the President or Secretary at the request of the Members or a majority of the Board of Directors. Only business specified in the notice of meeting shall be transacted at any special meeting, except that any business may be transacted at a special meeting of which notice is duly waived by all Members. Notice of meetings shall be as stated under the "Notice of Meetings" section.
4. Notice of Meetings. Notice of the regular, annual or any special meeting of members shall be given in the manner required by law. Notice of meeting shall be sent not less than ten (10) days prior to the date fixed for such meeting to each member of the

Corporation entitled to vote thereat.

5. Waiver. Notwithstanding any of the foregoing provisions, a meeting of the members may be held at any time and at any place, and any action may be taken thereat, if notice and lapse of time be waived in writing by every member having the right to vote at meetings of members.
6. Voting. Each member of the Corporation shall be entitled to one vote.

Article V - BOARD OF DIRECTORS

1. Governance of the Corporation. The Member (Living Resources Corporation) shall appoint Directors to the Board. . The affairs of the Corporation shall be governed by its Board of Directors (hereinafter called the "Board").
2. The employment of Executive Director. The Board, with the approval of the membership, shall appoint an Executive Director. The Executive Director shall have the responsibility to execute all policies and directives of the Board and the Corporation. The Executive Director shall be authorized to hire, to terminate such subordinate agency personnel as necessary and convenient and within amounts approved by the Board. The Executive Director shall be authorized to sign and execute contracts and instruments of conveyance in the name of the corporation and shall inform the board of all such contracts and instruments. For the purpose of these bylaws, the Executive Director is also the Chief Executive Officer.
3. Number of Directors. There shall be no fewer than 3 nor more than 21 directors.
4. Election and Term of Directors. The Directors of the Corporation shall be divided into three groups. Each group shall contain an equal number of Directors, but if that is not possible, the groups shall be as nearly equal in number as possible. The term of office of the first group shall expire one (1) year after their election; the term of office of the second group shall expire two (2) years after their election; and the term of office of the third group shall expire three (3) years after their election. At each annual meeting, after the initial election of Directors, Directors shall be elected for a term of three (3) years to replace those whose term shall expire. Directors may serve for a maximum of two (2) consecutive three (3) year terms, provided, however, that any person who is or has served as an officer may serve as a Director for a maximum of three (3) consecutive three (3) year terms. Any board member who leaves as a consequence of this subparagraph, shall be eligible for re-election to the

board after one year.

5. Resignation of Directors. A resignation shall be made in writing and shall take effect at the time specified therein and, if no time be specified, at the time of its receipt by the Board. The acceptance of a resignation shall not be necessary to make it effective.

Failure to attend two (2) of the four (4) quarterly Board meetings during any 12-month period may be deemed a resignation. The President shall contact the Director to request a resignation or explanation of the absences. The Board shall consider any explanation or response received at its next Board meeting. The Director shall be notified in writing that the Board will consider the Director's status at the Board's next meeting.

6. Place and Time of Board Meetings. Regular meetings of the Board shall be conducted quarterly at a time and place as the Board may from time to time establish. Minutes of such meetings shall be recorded. The Board Secretary shall review such minutes prior to presentation to the Board for approval.
7. Form of Meeting. Board and Committee meetings, including special meetings, may be held via conference call or other electronic means. Directors may participate in meetings via conference call or other electronic means. This shall constitute being present for the purpose of quorum. Directors shall be asked to provide an e-mail address to the Secretary if they have one. Directors shall be deemed to have consented to receive notice by electronic mail unless they have informed the Secretary that they do not so consent. Notice of the meeting should be sent seven (7) days before the time appointed for the meeting.
8. Quorum of Directors. A majority of the entire Board (exclusive of any vacant Board seats) shall constitute a quorum for the opening of business.
9. Action by the Board. Unless otherwise required by law or these By-laws, the vote of a majority of the Directors present at the time of a vote shall be the act of the Board. In the case of real estate, a vote of the majority of the Directors then in office shall be required. Each Director present shall have one vote. In addition, the Board may take action by unanimous written consent, which may be in writing or electronic, without a meeting
10. Parliamentary Procedure. All proceedings at the Board meetings and committee meetings shall be governed by Robert's Rules of Order to the extent that it does not conflict with the by-laws.
11. Annual Meeting. The Annual Meeting shall occur at a time and place designated by the Board. The Board shall elect its officers at the Annual Meeting and conduct such other business as it deems appropriate. Notice shall be in the same manner as stated in paragraph seven, Form of Meetings.

12. Special Meetings of the Board. Special meetings of the Board shall be held upon notice to the Directors at the call of the President, the Members of the Corporation, or at least three Directors. The notice of a special meeting shall state the purpose, place, date and hour to each Director personally not less than five (5) days before the date of the meeting. The business to be conducted at a special meeting shall be limited to that which was specified in the notice. Notice shall be in the same manner as stated in paragraph seven, Form of Meetings.
13. Vacancies. Vacancies occurring in the Board of the Directors may be filled by the Members of the Corporation. A Director elected to fill a vacancy shall hold office for the unexpired term of said Director's predecessor.
14. Conflicts of Interest and Whistleblower Policy. The Board shall adopt and oversee a Conflicts of Interest Policy and a Whistleblower Policy in accordance with the Not-for-Profit Corporation Law and such other laws as may be applicable.

The Conflict of Interest Policy shall provide, at a minimum that Directors, Officers, and Key Employees complete disclosure statements upon election and annually thereafter, that such individuals disclose related party transactions, and recuse him or herself from any consideration of such transaction and not be present for deliberations or votes on such transaction. The Policy shall further provide that the Board shall not approve the transaction unless it is fair, reasonable, and in the corporation's best interests. The Policy shall further provide that if such individual has a substantial financial interest, the Board first shall consider alternative transactions to the extent available. The minutes shall include the basis for the Board's approval, including the consideration of alternatives, if any.

Article VI - OFFICERS

1. Officers. The Officers of the Corporation shall be a president, vice-president, secretary and treasurer. No person may hold more than one office concurrently.
2. Election and Term of Office. All Officers shall be elected by the Board at the annual meeting of the Board of Directors. Officers shall be elected from among Directors to hold office for a term of one (1) year and until said Officer's successor has been elected. No person shall hold the same office for more than three (3) consecutive terms unless by resolution of the Board passed by affirmative vote of majority of the board, that there are exceptional circumstances that warrant an additional one (1) year term.
6. President. The president shall be the presiding officer of the Board and ex-officio member

of all committees. The president has the right to vote. The president shall appoint all committee chairpersons and assign Directors to specific committees with the consent of the Board.

The president, with the consent of the Board, shall create ad hoc committees as may be desirable. The members of such committees shall be appointed by the president. Ad hoc committees shall have only the responsibilities specifically delegated to them by the Board. The president shall perform all the duties usually incidental to the office of the president.

7. Vice-President. The vice-president shall, in absence or disability of the president, perform the duties and exercise the powers of the president. The vice-president shall have such powers and perform such duties as may be delegated to vice-president by the president or prescribed by the Board.
5. Secretary. The secretary shall keep the minutes of all meetings of the Board and shall attend to the giving and serving of all notices of the Corporation and shall have charge of such books and papers as the Board may direct. The secretary shall attend to such correspondence as may be assigned to said secretary and perform all the duties incidental to said office. All such books and papers shall be physically kept at the Office of the Corporation. The secretary shall, at all reasonable times, exhibit the books and papers to any Director upon application at the office of the Corporation during ordinary business hours. The Secretary shall collect an electronic mail address from each Director that has one.
6. Treasurer. The treasurer shall have the responsibility for proper care of all the funds and securities of the Corporation. The treasurer shall, at all reasonable times, exhibit the books and accounts to any Director upon application at the office of the Corporation during ordinary business hours, and shall be the chair of the Finance Committee. The treasurer shall arrange for the preparation of regular financial reports to the Board and shall perform all duties incidental to said office.
7. Vacancies Among Officers. If an office becomes vacant, the Directors may elect any Board member to fill such vacancy. Such officer shall serve the unexpired term of his/her predecessor and until his/her successor is elected.
8. Compensation of Officers and Board Members. No Officer or Board member shall receive a salary or other compensation for ordinary services rendered as such Officer or Board Member. Reimbursement for actual and necessary expenses incurred is acceptable with Board approval.
9. Signing of Checks. All persons authorized to sign checks shall be bonded in a sum designated by the Board.

Article VII - COMMITTEES OF THE BOARD

1. Standing Committees of the Board

There shall be the following four (4) standing committees: Executive; Finance and Personnel; Program; and, Nominating.

The Board, by resolution, based on recommendations of the President, shall give its consent to committee appointments. All standing committees, other than the Executive Committee shall consist of at least three (3) persons, at least one (1) of whom shall be a Director.

Committee meetings may be held via conference call or other electronic means.

2. Executive Committee.

The Executive Committee shall consist of the Officers of the Board. The Executive Committee may take action between Board meetings in the event of an emergency. The Executive Committee shall review the by-laws from time to time. If changes are recommended, such changes shall be presented first to the full Board and then to the members of the Corporation at the Annual Meeting of Members. Directors shall be informed in writing of any recommended changes not later than the Board meeting preceding the Annual Meeting of members of the Corporation.

3. Finance and Personnel Committee - This committee shall be chaired by the Treasurer and shall perform the following functions:

- a. Appraise and review the financial condition of the corporation.
- b. Develop an annual budget for approval by the board.
- c. Review of the annual independent audit of the corporation financial records.
- d. Provide policy direction for the corporation personnel practices.
- e. Review the written personnel practices of the corporation.
- f. Review annual Conflict of Interest statements by all Board Members, summarize and make available for the Board.
- g. A representative, as chosen by the Finance Committee, will be nominated as an ex-officio member of the Audit Committee of Living Resources and will report back to the CHHA Finance Committee.

4. Program Committee - This committee shall perform the following functions:

Living Resources Certified Home Health Agency

Revised: December 12, 2014

Page 6

- a. Provide policy direction for review of all program services provided by the corporation for approval by the Board. At a minimum, the review process shall address corporation compliance with regulatory requirements, service gaps, and any other significant program issues.
 - b. Recommend to the Directors persons to serve on the Professional Advisory Committee as required by 10 NYCRR Part 763.11(a)(13).
 - c. Review and approve the annual Program Evaluation as required by 10 NYCRR Part 763.11(a)(13)(ii)(a-c).
 - d. Review and approve the corporation's strategic plan, on an annual basis, for the Director's review.
 - e. This committee shall serve as the Corporate Compliance Committee.
5. Nominating Committee – This committee shall perform the following functions:
 - a. Recommend individuals to the member for election to the Board of Directors.
 - b. Recommend nominees for the election of officers.

Article VIII - BOARD INDEMNIFICATION

1. Indemnification of Directors and Officers

If a Director, Officer or Executive Director of the Corporation is made a party to any civil or criminal action or proceeding in any matter arising from the performance by such Director or Officer of his or her duties for or on behalf of the corporation, then, to the full extent permitted by law, the Corporation, upon affirmative vote of the Board, a quorum of directors being present at the time of the vote who are not parties to the action or proceeding, shall:

- a. Authorize advance payment to such Director, Officer or Executive Director all sums found by the Board, so voting, to be necessary and appropriate to enable the Director or Officer to conduct his or her defense or appeal, in the action or proceeding, and
- b. Indemnify such Director, Officer or Executive Director for all sums paid by him or her in the way of judgments, fines, amounts paid in settlement, and reasonable expenses, including attorney's fees actually and necessarily incurred, in connection with the action or proceeding, or appeal therein, subject to the proper application of credit for any sums advanced to the Director or Officer pursuant to clause (a) of this paragraph.

2. Indemnification of the Board of Directors

If the Board of the Corporation is made a party to any civil or criminal action or proceeding

in any matter arising from the performance by the Board of its duties for or on behalf of the Corporation, then, to the full extent permitted by law, the Corporation, upon affirmative vote of the Board, a quorum of Directors being present at the time of the vote, shall:

- a. Authorize advance payment to the Board all sums found by the Board, so voting, to be necessary and appropriate to enable the Board to conduct its defense, or appeal, in the action or proceeding, and
- b. Indemnify the Board for all sums paid by it for any judgments, fines, amounts paid in settlement, and reasonable expenses, including attorney's fees actually and necessarily incurred, in connection with the action or proceeding, or appeal therein, subject to the proper application or credit for any sums advanced to the Board pursuant to clause (a) of this paragraph.

Article IX – REMOVAL OF DIRECTORS AND OFFICERS

Any Director or Officer may be removed by the affirmative vote of two-thirds (2/3) of the Members of the Corporation at a regular or special meeting of the Members of the Corporation duly called as herein before provided.

The terms of this Article do not apply to the Chief Executive Officer, if any.

Article X - SEAL

The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization, and the words, "Corporate Seal - New York". The Seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced.

Article XI - DISSOLUTION

Subject to the approval of a Justice of the Supreme Court, upon dissolution of the Corporation its assets shall be distributed as designated by its Board of Directors for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or a corresponding section of any future federal tax code. Preference shall be given to the sole member of the Corporation, Living Resources Corporation, provided that Living Resources Corporation at the time of distribution is an

exempt organization within the meaning of Section 501(c)(3) of the Internal Revenue Code, or a corresponding section of any future federal tax code. Any such assets not disposed of shall be disposed of by the Supreme Court of the county in which the principal office of the Corporation is located, exclusively for such purposes or to such organizations as said Court shall determine, and which are organized and operated exclusively for such purposes.

Article XII – AMENDMENT AND REPEAL OF BYLAWS

A motion to amend, repeal, or adopt a bylaw may be submitted at any regular meeting of the Board. If the motion is seconded, the proposed bylaw revision shall be submitted to the Executive Committee. If the Executive Committee approves the proposed bylaw revision, such revision shall be provided to the Board at least ten (10) days before the next scheduled Board Meeting. Any bylaw revision shall require the affirmative vote of two-thirds (2/3) of the Directors then in office.

EXHIBIT C

**PLAN OF DISSOLUTION
OF
LIVING RESOURCES CERTIFIED HOME HEALTH AGENCY, INC.**

The Board of Directors of Living Resources Certified Home Health Agency, Inc. (the “Corporation”) does hereby authorize that this Corporation be dissolved in accordance with the following plan.

PROCEDURE FOR DISSOLUTION

1. The Corporation has no assets and no liabilities other than its current liabilities and expenses associated with winding up and dissolving which will be paid by Living Resources Corporation (the “Member”).

2. Upon resolution of the Board of Directors adopting this Plan of Dissolution (the “Plan”), the Board shall submit it to a vote of the Corporation’s Member for approval.

3. After the adoption of this Plan by the Board of Directors and approval by the Corporation’s Member, the Corporation shall seek approval of its Plan from (i) the Public Health and Health Planning Council of the New York State Department of Health (“PHHPC”) (and any other governmental agencies, as applicable); and (ii) either the New York State Office of the Attorney General (the “Attorney General”) or the New York State Supreme Court of Albany County (the “Court”), on notice to the Attorney General, pursuant to Not-for-Profit Corporation Law Section 1002(d).

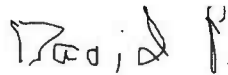
4. After obtaining approval of the Plan, the Member shall satisfy any current liabilities and expenses associated with winding up and dissolving.

5. All assets of the Corporation, if any, that shall exist or arise after the dissolution of the Corporation, shall be distributed to, and be the sole and absolute property of, its sole corporate Member, a charitable New York Not-for-profit corporation exempt from federal

income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and which is engaged in activities substantially similar to the Corporation's activities, in accordance with New York Not-for-Profit Law Section 1001(d)(3).

6. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto. Upon approval of the Certificate of Dissolution, the original Certificate of Dissolution, including all required approvals, shall be filed with the New York State Department of State.

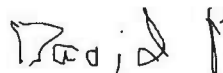
Dated: October 12, 2023

A handwritten signature in black ink, appearing to read "David H. Philips", is positioned above a horizontal line.

David H. Philips, Secretary
Board of Directors

CERTIFICATION

Pursuant to Section 1002(d) of the New York Not-for-Profit Corporation Law, the undersigned, being the Secretary of Living Resources Certified Home Health Agency, Inc. (the "Corporation"), does hereby certify that the following is a true copy of the Plan of Dissolution of the Corporation duly adopted by the unanimous written consent of the Board of Directors effective 11th day of October, 2023.

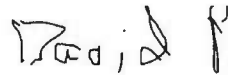


David H. Philips, Secretary
Board of Directors

EXHIBIT D

CERTIFICATION

The undersigned, being the Secretary of Living Resources Certified Home Health Agency, Inc. (the "Corporation") does hereby certify that the following is a true copy of the Resolutions of the Corporation, adopted by unanimous written consent of the directors effective October 11, 2023, and that same is in full force and effect.



David H. Philips, Jr.
Secretary, Board of Directors

**RESOLUTION
OF
THE BOARD OF DIRECTORS
OF
LIVING RESOURCES CERTIFIED HOME HEALTH AGENCY, INC.**

WHEREAS, Living Resources Certified Home Health Agency, Inc. (the “Corporation”) is a charitable New York Not-for-Profit Corporation; and

WHEREAS, pursuant to the Asset Purchase Agreement entered into by and between the Corporation and Marquis Home Care North, LLC (subsequently assigned to Marquis Certified Home Care, LLC) (“Marquis”), dated as of December 27, 2017 (subsequently amended on November 5, 2018 and again on April 8, 2019) (the “Asset Purchase Agreement”), the Corporation sold substantially all of its assets after receiving approval of the sale from the Attorney General on March 30, 2020; and

WHEREAS, since the completion of such sale, the Corporation has ceased business operations and proceeded to wind up its affairs; and

WHEREAS, the Corporation has no assets and no liabilities other than its current liabilities and expenses associated with winding up and dissolving; and

WHEREAS, the Board of Directors of the Corporation determined by a unanimous written consent effective October 11, 2023 that it is in the best interest of the Corporation to dissolve in accordance with the provisions for voluntary dissolution under the New York Not-for-Profit Corporation Law; and

WHEREAS, the Corporation is a membership corporation and has a sole corporate member, Living Resources Corporation (the “Member”), entitled to vote on the Corporation’s dissolution pursuant to the New York Not-for-Profit Corporation Law.

NOW, THEREFORE, it is hereby

RESOLVED, that the Board of Directors authorizes the dissolution of the Corporation; and it is further

RESOLVED, that the Plan of Dissolution annexed hereto as **Exhibit "A"** and incorporated as if fully set forth herein be, and hereby is, approved in all respects and adopted in substantially such form as the Plan of Dissolution; and it is further

RESOLVED, that the Plan of Dissolution shall be submitted to the Corporation's Member for approval; and it is further

RESOLVED, that the Certificate of Dissolution annexed hereto as **Exhibit "B"** is hereby authorized to be filed with the New York State Department of State upon the approval of either the New York State Office of the Attorney General (the "Attorney General") or the New York State Supreme Court of Albany County (the "Court"), on notice to the Attorney General, pursuant to Not-for-Profit Corporation Law Section 1002(d), and upon obtaining the consent of the Public Health and Health Planning Council of the New York State Department of Health ("PHHPC"); and it is further

RESOLVED, that the officers of the Corporation, including, without limitation, the President, are instructed and authorized to make any necessary changes to the Plan of Dissolution and to execute and deliver any and all documents necessary to effectuate the dissolution of the Corporation, including obtaining consent for dissolution from the New York State Department of Health's PHHPC and from either the Court or the Attorney General and filing the Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law; and it is further

RESOLVED, that the officers of the Corporation, including, without limitation, the President, are authorized to take any further action and execute and deliver any agreements, instruments and documents, in the name of the Corporation, including making any revisions and edits required by New York State Department of Health's PHHPC, the Attorney General, the Court, and/or any other governmental agency as in their judgment shall be necessary, proper or advisable in order to carry out the intent and accomplish the purposes of the resolutions adopted hereby.

EXHIBIT A
PLAN OF DISSOLUTION
OF
LIVING RESOURCES CERTIFIED HOME HEALTH AGENCY, INC.
A New York Not-for-Profit Corporation

Please see Exhibit C of Verified Petition

EXHIBIT B

CERTIFICATE OF DISSOLUTION

CERTIFICATE OF DISSOLUTION
OF
LIVING RESOURCES CERTIFIED HOME HEALTH AGENCY, INC.

Pursuant to Section 1003 of the Not-for-Profit Corporation Law

The undersigned, being the President of Living Resources Certified Home Health Agency, Inc. (the "Corporation"), hereby certifies:

1. The name of the Corporation is Living Resources Certified Home Health Agency, Inc.
2. The Certificate of Incorporation was filed with the Department of State on September 24, 1999.

3. The name and address of each officer and director of the Corporation is:

<u>Name and Title</u>	<u>Address</u>
Kimberly Strauchon Verner, President	300 Washington Ave Ext., Albany, New York 12203
Diana Ostroff, Vice President	300 Washington Ave Ext., Albany, New York 12203
David Smingler, Treasurer	300 Washington Ave Ext., Albany, New York 12203
David H. Philips, Jr., Secretary	300 Washington Ave Ext., Albany, New York 12203
Roy Fruiterman	300 Washington Ave Ext., Albany, New York 12203
Alycia Gregory	300 Washington Ave Ext., Albany, New York 12203
Victoria Harkins	300 Washington Ave Ext., Albany, New York 12203

4. The Corporation is a charitable corporation.

5. At the time of the authorization of the Corporation's Plan of Dissolution as provided in Not-for-Profit Corporation Law Section 1002, the Corporation has no assets which are legally required to be used for a particular purpose.

6. The Corporation elects to dissolve.

7. The dissolution was authorized by the unanimous written consent of the Board of Directors effective _____, 2023, and by the Corporation's sole corporate member, Living Resources Corporation, by the unanimous vote of the Board of Directors of the Member at a duly noticed meeting on _____, 2023, at which a quorum was present and acting throughout.

8. On _____, the Public Health and Health Planning Council of the New York State Department of Health approved the dissolution of the Corporation. A copy of such approval is attached hereto pursuant to Not-for-Profit Corporation Law Section 1003(b)(1).

9. No other approval of the dissolution of the Corporation is required by any governmental body or officer.

10. Prior to delivery of the Certificate of Dissolution to the Department of State for filing, the Plan of Dissolution and Certificate of Dissolution were approved by the New York State Office of the Attorney General (the "Attorney General"). A copy of the Attorney General's approval is endorsed hereon or attached hereto.

Signature Page Follows

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution on
as of the ____ day of _____, 2023.

Kimberly Strauchon Verner
President, Board of Directors

CERTIFICATE OF DISSOLUTION
OF
LIVING RESOURCES CERTIFIED HOME HEALTH AGENCY, INC.

Pursuant to Section 1003 of the Not-for-Profit Corporation Law

DRAWDOWN ACCOUNT #42

Customer Reference No. 820702

Filed by:

Milena Vorndran, Paralegal
Bond, Schoeneck & King, PLLC
200 Delaware Avenue, Suite 900
Buffalo, NY 14202
Ph: 716-416-7065
Fax: 716-416-7365

EXHIBIT E

CERTIFICATION

The undersigned, being the Secretary of Living Resources Certified Home Health Agency, Inc. (the "Corporation"), does hereby certify that the following is a true copy of the Resolutions of the Corporation's sole Member, adopted by unanimous vote at a duly noticed and constituted meeting of the Board of Directors of the Member held on the 27th day of September, 2023, at which a quorum was present and acting throughout, and that same is in full force and effect.

David H. Philips, Jr.

David H. Philips, Jr.
Secretary, Board of Directors

**RESOLUTION
OF
THE MEMBER
OF
LIVING RESOURCES CERTIFIED HOME HEALTH AGENCY, INC.**

WHEREAS, Living Resources Corporation is the Sole Member (the “Member”) of Living Resources Certified Home Health Agency, Inc. (the “Corporation”), a charitable New York Not-for-Profit Corporation; and

WHEREAS, the Board of Directors of the Corporation has authorized the dissolution of the Corporation, and has further authorized a Plan of Dissolution which is in substantially the form annexed hereto as **Exhibit “A”**; and

WHEREAS, the Member of the Corporation is required under the New York Not-for-Profit Corporation Law to approve the Plan of Dissolution authorized by the Board of Directors of the Corporation.

NOW, THEREFORE, it is hereby

RESOLVED, that Living Resources Corporation, the sole Member of the Corporation, acting through its Board of Directors, does hereby unanimously approve the annexed Plan of Dissolution; provided that it is duly authorized by the Board of Directors of the Corporation via unanimous written consent.¹

¹ The Plan of Dissolution was ultimately authorized by unanimous written consent of the Board of Directors of the Corporation effective October 11, 2023. No changes were made to the Plan of Dissolution approved by the Member.

EXHIBIT A

**PLAN OF DISSOLUTION
OF
LIVING RESOURCES CERTIFIED HOME HEALTH AGENCY, INC.**

A New York Not-for-Profit Corporation

Please see Exhibit C of Verified Petition

EXHIBIT F

DEBT GUARANTY, PLEDGE AND FORGIVENESS AGREEMENT

This Debt Guaranty, Pledge and Forgiveness Agreement ("**Agreement**") between and among Living Resources Corporation ("**Living Resources**"), Living Resources Home Care Agency, Inc. ("**Home Care**"), and Living Resources Certified Home Health Agency, Inc. ("**Home Health**"), is entered into and effective this 18th day of November 2019. Living Resources, Home Care, and Home Health are each sometimes referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, each Party is a charitable New York not-for-profit corporation that has been recognized by the Internal Revenue Service as exempt from federal income tax as an organization described in 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, Living Resources is the sole member/parent of Home Care and Home Health, and all Parties are part of a network of affiliated social and human services and health care organizations serving persons with special needs and others in the Greater Capital Region of New York State; and

WHEREAS, Living Resources, in its capacity as sole member/corporate parent of each of Home Care and Home Health, has provided funds and other resources to allow both Home Care and Home Health to continue to provide services in furtherance of the Parties' charitable purposes despite many years of losses experienced by each of Home Care and Home Health, which, as of September 30, 2019, has resulted in the advancement of funds and incurrence of costs by Living Resources of approximately \$1,037,523 for Home Care (the "**Home Care Member Payable**") and \$300,402 for Home Health (the "**Home Health Member Payable**", and collectively with the Home Care Member Payable, the "**Member Payable**"), which represents unpaid management fees, rent, health insurance premiums and payroll for staff, as well as other expenses, due to Living Resources; and

WHEREAS, the Boards of Directors of all the respective Parties have determined that it is in the best interests' of Home Care and Home Health and shall further their respective purposes to sell substantially all of their assets; and

WHEREAS, Home Care has entered into an agreement with Marquis Home Care North, LLC dated December 27, 2017 (the "**Home Care Agreement**") for the purchase and sale of substantially all of the assets of Home Care (which was subsequently assigned to Marquis Home Care, LLC), as first amended on November 5, 2018 (the "**First Amendment**") and second amended on April 8, 2019 (the "**Second Amendment**"); and

WHEREAS, Home Health has contemporaneously entered into an agreement with Marquis Certified Home Care, LLC dated December 27, 2017 (the "**Home Health Agreement**") for the purchase and sale of substantially all of the assets of Home Health, also first amended on November 5, 2018 (the "**Home Health First Amendment**") and second amended on April 8, 2019 (the "**Home Health Second Amendment**", and collectively, the Home Care Agreement, Home Care First Amendment, Home Care Second Amendment, Home Health Agreement, Home Health First Amendment, and Home Health Second Amendment are referred to herein as the "**Asset Purchase Agreements**"); and

WHEREAS, as detailed in the Asset Purchase Agreements, the proceeds (the "**Proceeds**") of the proposed combined sale of the assets of Home Care and Home Health (the "**Combined Sale**") total \$1,500,000, with \$1,300,000 to be paid by the Purchaser to Home Care and Home Health in cash or immediately available funds on the Closing Date (as such term is defined in the Asset Purchase Agreements (the "**Closing Date**")), and \$200,000 to be paid in the form of a promissory note (the "**Promissory Note**") in two (2) substantially equal annual installments, together with interest, beginning twelve (12) months following the Closing Date. The Proceeds are to be allocated as follows:

a. The portion of the Proceeds allocated to the Home Care Agreement are \$500,000, representing: (i) a deposit of \$20,000 which was paid to Home Care on December 27, 2017; and (ii) the sum of \$480,000 to be paid by Marquis Home Care, LLC to Home Care at the Closing Date.

b. The portion of the Proceeds allocated to the Home Health Agreement are \$1,000,000, representing: (i) a deposit of \$30,000 which was paid to Home Health on December 27, 2017; (ii) the sum of \$770,000 to be paid by Marquis Certified Home Care, LLC to Home Health at the Closing Date; and (iii) the Promissory Note in the amount of \$200,000, together with interest, payable in two (2) substantially equal annual installments of \$102,813.66, to be paid by Marquis Certified Home Care, LLC, to Home Health, beginning twelve months from the Closing Date; and

WHEREAS, Living Resources, as sole member/corporate parent approved the Combined Sale in the best interests of the Corporations, including the satisfaction of the Member Payable consistent with the application of the Proceeds as described herein; and

WHEREAS, Home Care and Home Health will apply the Proceeds to satisfy certain liabilities identified on **Schedule A** hereto (the "**Liabilities**"); and

WHEREAS, Home Care and Home Health have, and anticipate that they will have at and after closing, cash on hand and received with respect to accounts receivable generated prior to the sale ("**Available Funds**"), that will be sufficient to make payments due to their respective vendors and, other than the Member Payable, their accounts payable in the ordinary course of business incurred through Closing Date and during a reasonable period thereafter for purposes of winding up their respective affairs (the "**Accounts Payable**"); and

WHEREAS, Home Care and Home Health anticipate that, after satisfying the Liabilities and Accounts Payable, they will have additional funds remaining from the Proceeds and Available Funds (the "**Remaining Funds**").

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the Parties agree as follows:

1. Payment of Remaining Funds. That, after a reasonable period of time has passed for payment of the Liabilities and all Accounts Payable after the Closing Date, Home Care and Home Health shall each pay to Living Resources any and all Remaining Funds, up to the full amount of each of the Home Care Member Payable and Health Member Payable, respectively, as payment with respect thereto (the "**Payment**").

2. Confirming Records. That Home Care and Home Health shall provide to Living Resources such records or documents as Living Resources shall reasonably request (the "**Records**") in order to confirm that all Proceeds and Available Funds have been applied in payment of Liabilities and Accounts Payable.

3. Limited Guaranty and Pledge. Each of Home Care and Home Health hereby irrevocably and unconditionally guarantees and pledges to Living Resources, solely to extent of any Remaining Funds, the full and prompt payment of moneys sufficient to pay any Member Payable owing by the other organization with respect to such other organization's obligation to make the Payment under paragraph 1 hereof (the "**Limited Guaranty**"), in consideration of the Member's current and prior support and approval of the Agreements and in furtherance of the charitable purposes of the Parties.

4. Cancellation of Member Payable. That, upon delivery of the Payment as set forth in paragraph 1 hereof (including any Payment pursuant to the Limited Guaranty and Pledge under paragraph 3 hereof), the Member shall, in furtherance of Member's charitable purposes, forgive and fully discharge Home Care and Home Health's obligations to pay any and all remaining amounts of the Member Payables, if any.

5. Entire Agreement. This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof and shall supersede all oral and written agreements entered into before or at the same time as this Agreement. This Agreement may only be amended by a written agreement between the Parties.

6. Acknowledgment and Incorporation of Recitals. The recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by reference.

7. Applicable Law: Venue. This Agreement shall be governed by, and construed under, the laws of the State of New York applicable to contracts entered into and to be performed in such State. Venue for all purposes shall be in the County of Albany, State of New York, and each party hereby consents to the personal jurisdiction of any court in such county.

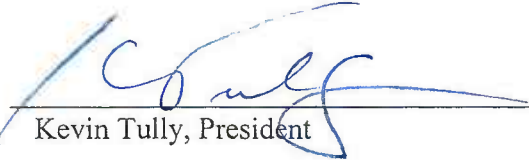
8. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way, and the invalid provision replaced by an enforceable provision most nearly approximating the intent of the Parties.

9. Counterparts: Waiver. This Agreement may be executed in separate counterparts, each of which when executed shall be deemed an original, but all of which taken together shall constitute one and the same Agreement. Each Party agrees that no failure or delay in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof or of any subsequent exercise of such power, right or privilege. No waiver shall be effective unless in writing and signed by the waiving Party.

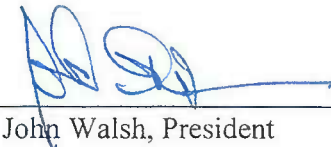
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names by their duly authorized representatives, and have caused this Agreement to be dated as the date first set forth above.

LIVING RESOURCES CORPORATION

By: 
Kevin Tully, President

**LIVING RESOURCES CERTIFIED HOME
HEALTH AGENCY, INC.**

By: 
John Walsh, President

**LIVING RESOURCES HOME CARE AGENCY,
INC.**

By: 
Kimberly Strauchon Verner, President

EXHIBIT G


LIVING RESOURCES CERTIFIED HOME HEALTH AGENCY, INC.

I am the Treasurer of Living Resources Certified Home Health Agency, Inc. (the "Corporation"), and as such am fully familiar with all matters pertaining to the Corporation's finances.

The Corporation has no assets or liabilities. On September 19, 2023, all of the remaining assets of the Corporation, consisting solely of cash, were distributed to Living Resources Corporation as documented by the Receipt and Release attached hereto as **Exhibit "1"**.

The Corporation acknowledges its responsibility to file a final IRS Form 990 and CHAR500 once its dissolution is complete.

Date: January 12, 2024

By: 

David Smingler
Treasurer

Exhibit “1”

RECEIPT AND RELEASE

This Receipt and Release ("Agreement") by and between Living Resources Corporation ("LRC") and Living Resources Certified Home Health Agency, Inc. ("CHHA") (collectively referred to herein as the "Parties"), is entered into as of the date executed by both Parties hereto.

WHEREAS, pursuant to the Asset Purchase Agreement entered into by and between CHHA and Marquis Home Care North, LLC (subsequently assigned to Marquis Certified Home Care, LLC) ("Marquis"), dated as of December 27, 2017 (subsequently amended on November 5, 2018 and again on April 8, 2019) (the "Asset Purchase Agreement"), CHHA sold substantially all of its assets after receiving approval of the sale from the Attorney General on March 30, 2020; and

WHEREAS, in furtherance of the sale, a Debt Guaranty, Pledge and Forgiveness Agreement entered into by and between LRC, CHHA, and Living Resources Home Care Agency, Inc. ("LHCA") and dated as of November 18, 2019, provides that following the sale, after satisfaction of all outstanding liabilities, CHHA and LHCA shall each pay to LRC any and all remaining funds as repayment for the advancement of funds and incurred costs of LRC in support of both CHHA and LHCA for years prior to the sale; and

WHEREAS, on September 19, 2023, CHHA paid \$262,797.62 to LRC in accordance with Section 1 of the Debt Guaranty, Pledge and Forgiveness Agreement; and

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Receipt and Release. LRC hereby acknowledges receipt of the amount of \$262,797.62 (the "Final Payment") as full and final satisfaction of the remaining funds due and owed to LRC pursuant to Section 1 of the Debt Guaranty, Pledge and Forgiveness Agreement and otherwise in full and final satisfaction of any and all amounts payable to LRC, and hereby releases and discharges CHHA and its officers, directors, members, agents and employees from any and all liability or claims related thereto or arising therefrom without limitation; provided, however, that should any additional funds be received by LRC from any source without limitation hereafter they shall be paid to LRC, and any and all rights to receive any such funds are hereby assigned to LRC.
2. Dissolution Costs. LRC hereby agrees, as consideration for the prompt payment of the Final Payment and in furtherance of the Parties' shared charitable purposes, to pay any liabilities and expenses associated with winding up and dissolving CHHA.
3. Miscellaneous. This Agreement and any terms and conditions expressly incorporated by reference herein embodies the whole agreement of the Parties with respect to the matters described herein. There are no promises, terms,

conditions, or obligations referring to the subject matter, other than those contained herein or incorporated herein by reference. This Agreement may be executed in counterparts each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. This Agreement shall be effective and binding upon the Parties once signed by both Parties and a fully executed copy is provided to each Party or to their attorneys. The Parties agree to waive any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this Agreement, regardless of whether the original of said contract is in existence. No other party shall be determined to be a third-party beneficiary of any right or obligation of the parties contained in this Agreement. This Agreement is made in and shall be governed, interpreted and enforced under the laws of the State of New York, without regard to its principles of conflicts of laws. The person executing this Agreement on behalf of each Party certifies that such person is authorized to sign this Agreement on behalf of such Party and to commit such Party to the obligations set forth herein.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

LIVING RESOURCES
CORPORATION

Date: 11/15/23

LIVING RESOURCES CERTIFIED
HOME HEALTH AGENCY, INC.

Date: 11/16/23

By: [Signature]
Name: Elizabeth Martin
Title: CEO

By: [Signature]
Name: Kimberly Strauchon Verne
Title: President CHHA Board

EXHIBIT H

[Pending PHHPC Approval]